

# Building the solar city:

*What developers, builders and real estate professionals should know about the law of solar rights and shade*

## INTRODUCTION

With environmental concerns and the cost of energy reaching an all-time high, governments, businesses, and property owners are desperately searching for alternative, environmentally friendly, and cost-effective sources of energy. One such source of energy, solar power, is becoming exceedingly popular. This has focused attention on two little-known laws that regulate solar power development in California: the *Solar Rights Act* and the *Solar Shade Control Act*.

The Solar Rights Act and the Solar Shade Control Act advance a state policy in favor of solar power development. Under the acts, developers have special rights in seeking permits for solar energy installations, as well as rights against others who cast shade on those systems. As solar power becomes an increasingly common part of the community, builders, developers, property owners, property managers, and others should be aware of the legal issues surrounding the installation, maintenance, and use of solar energy technologies.

## OVERVIEW OF THE SOLAR RIGHTS ACT

Enacted in 1978, the Solar Rights Act established a number of provisions that make it easier for developers to incorporate solar energy systems into their projects (codified at Civil Code Sections 714, 714.1, 801 and 801.5; Government Code Sections 65850.5, 66475.3 and 66473.1; and Health & Safety Code Section 17959.1.) The Act bars cities and counties from establishing roadblocks to the installation of solar energy systems and expedites the is-

suance of permits for those systems. Under the Act, a developer is essentially granted the absolute right to a permit for a solar energy system, so long as the system will not cause an adverse impact upon public health or safety. Thus, cities, counties, and other local agencies have little, if any, discretionary authority to restrict the permitting of solar energy systems.

In order to determine whether a system qualifies for protection under the Act, a developer must ensure the system meets the following requirements:

- The system meets all local health and safety standards.
- A solar energy system for heating water must be certified by the Solar Rating Certification Corporation or other comparable national organization.
- A solar energy system for producing electricity must meet all applicable standards in the National Electric Code and the Public Utilities Commission regarding safety and reliability.

If these requirements are satisfied, and public health and safety impacts are absent, the Solar Rights Act effectively guarantees a developer's right to install a solar energy system.

Notably, while the issuance of government permits for solar energy systems is expedited under the Solar Rights Act, the Act is less aggressive when it comes to *privately imposed* building restrictions, such as restrictions imposed through homeowners associations and private deed restrictions. Under the Act, such private restrictions may be placed on solar energy systems provided that the restrictions do not significantly increase the cost of the

system or decrease its efficiency. However, the Solar Rights Act prohibits covenants, restrictions, or conditions in a deed, contract, or security instrument (i.e., CC&Rs and similar deed restrictions) that establish a flat-out prohibition on the installation or use of a solar energy system.

Thus, while developers are guaranteed the right to install systems on buildings subject to private covenants, the type of system can be regulated. Developers, property managers, and landowners installing solar systems on buildings subject to covenants should be aware of the restrictions in place and, if appropriate, seek approval of the type of system prior to installation to ensure it meets covenant restrictions.

## PROBLEMS WITH THE SOLAR RIGHTS ACT

Left unanswered in the Solar Rights Act is whether a developer must comply with a local agency's conditions on solar energy permits. If, for example, a local agency believes a solar installation will disrupt the visual appearance of a neighborhood, may conditions be imposed that address aesthetic impacts? This issue has not been addressed by the courts, but the prudent developer should consider the possible reasonable conditions a city or county may impose on permits authorizing installation of a solar energy system.

One of the most controversial applications of the Solar Rights Act is the Act's interference with historic buildings and landmarks. Because the Act mandates approval of a solar energy system unless it would threaten public health or safety, a developer can install a solar energy system on a historical building, unless some aspect of the

installation would pose a danger to the public. While this may detract from (or destroy) the very historic character of the building or structure sought to be preserved by its historic designation, the Solar Rights Act provides no exception for impacts on aesthetics, historic resources, or visual concerns.

Other concerns have been voiced over the Act's application to large-scale solar power projects. While courts have not yet decided whether the Solar Rights Act applies in this context, the pace of large-scale solar power development may make this issue ripe for judicial review in the coming years. Environmental concerns such as storm water runoff from the solar panels, wetland protection, and environmental preservation may inhibit large-scale solar construction projects, if those projects are not protected by the Act.

#### THE SOLAR SHADE CONTROL ACT

The Solar Shade Control Act (codified at Section Section 25980, *et seq.*, of the California Public Resource Code), restricts the planting and growing of trees which cast shade on solar panels. As amended in 2008, the Act prevents any property owner from the planting or maintaining of any tree or brush that will cast a shadow on greater than 10% of the solar collector's absorption surface at any time between the hours of 10:00 a.m. and 2:00 p.m. The Act in effect grants an implied solar easement to developers, restricting neighboring land owners from blocking a collector's access to sunlight.

However, this limitation on tree growth does not apply to trees or bushes grown subject to a city or county ordinance. Under the Act, local government agencies can exempt themselves from its requirements by enacting ordinances providing for such exemption. Thus, while the implied solar easement protects against private landowners, governing agencies are granted immunity from easement protection.

Because local agencies may infringe solar rights, property owners should consider the natural environmental and aesthetic benefits trees provide when planning con-

struction projects. Recent studies prove, for example, that placing mature trees near homes and businesses increases energy efficiency and reduces greenhouse gasses. Additionally, California law requires developers to take advantage of passive or natural cooling and heating alternatives when planning projects.

While the laws requiring developers to utilize trees and other natural environmental benefits seemingly conflict with efforts to utilize solar energy, developers should view this as an opportunity. The competing energy conservation methods allow developers to present their clients with environmentally friendly building options, regardless of the building site location.

#### CONCLUSION

As the popularity of solar energy sys-

tems rises, real estate professionals should be aware of the laws governing such systems and the rights implicated by the Solar Rights and Shade Control Acts. Installers of solar energy systems in subdivisions should be aware of their important rights in obtaining local permits and approval, but should also be wary of potential restrictions on use, including those imposed through deed restrictions or CC&Rs. Particular awareness of the unique legal issues governing the interplay of solar energy, tree growth, and access to sunlight is also important.

With such understanding in mind, the Solar Rights Act and Solar Shade Control Act promise to streamline the process for incorporating solar energy systems into current properties and new projects. ■



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