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SOLAR RIGHTS AND SHADE IN CALIFORNIA

THE PENDING CONFLICT BETWEEN SOLAR POWER, PROPERTY RIGHTS,
AND ENVIRONMENTAL PROTECTION

By Matthew M. Gorman and Anthony Marinaccio

In a uniquely California event, the Solar Rights Act and Solar Shade Control Act have put environmentalists at odds with each other as they decide which is more important: allowing trees to grow to full maturity or allow them to be cut down so that solar panels may receive full sunlight.

The Solar Rights Act¹ restricts local regulation of solar power and streamlines the process for establishing solar energy systems. The Act is hailed by clean energy proponents as a necessary measure to prevent cities, counties, and homeowners' associations from restricting the installation of solar energy systems. However, whether the Act applies to large "solar farms" – which may have adverse effects on biological resources – is unclear. Additionally, the Act may threaten the aesthetic character of historic neighborhoods.

Conversely, the Solar Shade Control Act² restricts the planting and growing of trees which cast shade on solar panels, thereby interfering with solar power generation. While advancing the cause for clean energy, the Solar Shade Control Act ignores the energy saving benefits caused by the shade of mature trees, and may offend those favoring tree-planting as a means to reduce greenhouse gasses.

As green building efforts intensify and Californians move toward sustainable sources for electric power, the Solar Rights Act and Solar Shade Control Act may figure more prominently in land development, property management, and urban planning. At an extreme, the Acts may even give rise to disputes between those favoring protection of biological resources and those favoring clean energy.

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This article summarizes the key provisions of the Solar Rights Act and the Solar Shade Control Act, setting both Acts in context with the current green building movement. Developers, landowners, public agencies, urban planners, property managers, and others involved in the green building movement should be aware of the interplay between these Acts and their likely impact on sustainable development in California.

Background

Rising Demand for Solar Power

The Solar Rights Act and Solar Shade Control Act are California's attempt to allow for greater accessibility and less red-tape for solar energy systems. Although the Acts were passed nearly thirty years ago, they are currently experiencing a renewed interest as solar energy becomes more popular coinciding with California's green building movement. For example, California's Million Solar Roofs Initiative aims at providing incentives to homeowners and businesses that install solar roof panel systems that are less than one megawatt. In addition, there are numerous tax credits – both federal and state – offered to those who install solar energy panels on their home or business. Large power companies are also seeking to develop solar power as an energy source – such as the proposed plan for Southern California Edison to install 33,700 solar panels on a 600,000 square foot warehouse, and plans for a 3,400 acre solar power facility in San Bernardino County.



In the midst of these changes, reports of “solar spats” – infighting over the installation of solar panels and other alternative energy systems – are on the rise as neighbors, who often consider themselves to be environmentalists, are pitted against each other arguing what is better for the environment: preserving full grown and mature trees or installing solar panels.³ Similar disputes are anticipated as large-scale “solar farms” are proposed in desert and wilderness areas, spurring fear over the harms posed to wildlife habitat, and general concern over impacts to the natural landscape and the character of the rural environment.⁴

In the coming years, disputes between neighbors, naturalists, solar power advocates, policymakers and power companies will likely escalate. Both the Solar Rights Act and Solar Shade Control Act will be critical to deciding these disputes.

Historic Roots of Solar Rights and Shade

Although addressing very modern issues, both Acts are in many ways simply a restatement of ancient property principles with a modern twist. For example, the Solar Shade Control Act effectively establishes “solar easements” on properties neighboring a solar energy site for the purpose of preserving access to sunlight for the operation of solar collectors. This concept is not new: the “ancient lights” doctrine was an English concept, having roots as far back as ancient Rome, restricting a property owner from obstructing sunlight to a neighbor's property.⁵



American jurisprudence rejected this concept, and traditionally allowed an owner to “build a fence on his own land as high as he pleases, however much it may obstruct his neighbor’s light and air.”⁶ But even here, California legislators have intervened through such enactments as the “anti-spite fence” statute, which prohibits a landowner from erecting a fence more than ten feet high for the purpose of annoying one’s neighbors.⁷

Such legislative enactments continue the spirit, if not the letter, of long-standing concepts of solar rights. In this manner, both the Solar Rights Act and the Solar Shade Control Act can be viewed as simply a “modern spin” on a long tradition of preserving access to sunlight between neighboring landowners.

The Increasing Importance of Solar Rights and Shade

In light of further efforts to advance alternative energy, such as the California Solar Initiative, California’s Global Warming Solutions Act of 2006 (AB 32), and even the pro-solar component of the recent Federal “bailout,” the Solar Rights and Solar Shade Control Acts will undoubtedly have increasing influence on construction, development, and urban planning in the upcoming years. The California Solar Initiative (“CSI”)⁸ is a State program to install 3,000 megawatts of new, grid-connected solar systems by 2016 by giving rebates and incentives to utility customers. Both the Solar Rights and Solar Shade Control Act may be critical in the long-term implementation of CSI goals.



AB 32⁹ established mandatory reductions in statewide greenhouse gas emissions by 2020. As it is implemented in the coming years, reliance on solar energy will be a cornerstone to achieve greenhouse gas reductions, and the green energy incentives provided in the 2009 American Recovery and Reinvestment Act¹⁰ will likely accelerate the pace of solar power development.

In this context, the Solar Rights Act and Solar Shade Control Act are more relevant now than ever. While these Acts have their roots in long-standing legal traditions, it is likely that their application to sustainable development and future energy efficiency programs will be decisive.

The Solar Rights Act

The Solar Rights Act consists of several California Code sections found in the Civil Code, Government Code, and Health & Safety Code.¹¹ These sections work in tandem to restrict local regulation of solar energy systems.

Limiting Local Control Over Solar Energy Systems

The Solar Rights Act establishes a statewide policy favoring the installation of solar energy systems: “It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems....”¹² In furtherance of this policy, the Act specifically provides that local agencies must “administratively approve



applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit.”¹³

In general, this means that a city or county may not establish impediments to the installation of solar energy systems, such as onerous permit requirements, restrictions on system location, inspection requirements, etc. Indeed, the Act expressly limits even the local authority over building permits and similar nondiscretionary permits for solar energy systems: ***a local agency may only deny a permit if the system would cause an adverse impact upon public health or safety.***¹⁴

As such, cities, counties, and other local jurisdictions have little (if any) discretionary authority over the permitting of solar energy systems. The Act does allow a local agency to require a use permit if the agency determines, in good faith, that the system would have a specific impact upon public health and safety. However, even under such circumstances, the agency may deny the use permit only if there is no “feasible method to satisfactorily mitigate or avoid the specific, adverse impact.”¹⁵



To qualify under the Act, a solar energy system must meet all local health and safety standards.¹⁶ In addition, a solar energy system for heating water must be certified by the Solar Rating Certification Corporation or other comparable national organization, and 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.¹⁷

If the foregoing requirements are satisfied, and public health and safety impacts are absent, the local agency is essentially ***required*** to approve the solar energy system. Because public health and safety impacts are either wholly absent or nearly impossible to determine, the Solar Rights Act may be viewed as a “near-guaranty” of local agency approval for solar energy systems.

Restricting Solar Energy Systems Through CC&R’s

While cities and counties are significantly curtailed in their authority to limit the installation of solar energy systems, the Solar Rights Act is less aggressive when it comes to privately-imposed restrictions on solar systems. The Act prohibits a covenant, restriction, or condition in a deed, contract, or security instrument (i.e., CC&R’s and similar deed restrictions) which would effectively prohibit or restrict the installation or use of a solar energy system. However, reasonable restrictions that do not significantly increase the cost of the system or decrease its efficiency are permitted.¹⁸ Thus, while cities and counties have little discretionary authority over installation of solar energy systems, the Solar Rights Act preserves private regulation of solar systems through CC&R’s, provided that the restrictions are reasonable and will not affect system cost or efficiency.

In application, these provisions allow a homeowners’ association to restrict the installation of solar energy systems in common areas, require approval to install a solar energy system in the



separate interest of another, and require installers of solar energy systems to indemnify or reimburse the association for damage caused by the installation, maintenance, or use of the system.¹⁹ For example, in *Palos Verdes Homes Association*,²⁰ a homeowner installed a passive water heating system on her roof without the required prior HOA Board approval. The CC&R's effectively prohibited **passive** solar heating systems because they conflicted with roofline limits, but **active** systems which were within roofline limits were permitted. The court found that the restriction was reasonable because other types of solar energy systems were just as efficient and had a similar cost as the passive system the homeowner installed.²¹



Whether this same ability to “reasonably restrict” solar energy systems may be employed by cities and counties is unclear. As noted above, cities and counties may deny a permit for a solar energy system only if the system would cause an adverse impact on public health or safety – a standard which makes denial extremely difficult to uphold. However, some have argued that, because “reasonable restrictions” may be imposed on solar energy systems through CC&R's, cities and counties may likewise adjust their permit-review process to consider such reasonable restrictions, or impose conditions on a permit which contains such reasonable restrictions. This view has been advanced by the California Office of Historic Preservation as a means to address the fact that solar energy systems can ruin the character and visual appeal of historic buildings.²²

Based upon the express language of the Solar Rights Act, it is difficult to see how cities and counties can impose reasonable restrictions on solar energy systems in the absence of CC&R's or similar private deed restrictions. However, as of yet, this issue has not been addressed by the courts, and it is likely that further clarity will be provided as such matters are litigated in the years to come.

Limitations And Concerns Over The Solar Rights Act

While the policy set forth in the Solar Rights Act is laudable, its impact has not been welcomed by all. Because the Act may essentially mandate the approval of solar energy systems regardless of aesthetic concerns, the Act can lead to installation of solar systems which conflict with local land use regulations, such as historic preservation requirements.

Consider a home designated as a historical landmark. Because the Act mandates approval of a solar energy system unless it would threaten public health or safety, a city or county must allow a solar energy system to be installed on a historic landmark unless some aspect of the installation would pose a danger to the public. Of course, doing so may destroy the very character of the landmark sought to be preserved by its historic designation – but the Solar Rights Act provides no exception for impacts on aesthetics, historic resources, or visual concerns.²³

More broadly, the application of the Solar Rights Act to large-scale solar power projects is unclear. The Act requires cities and counties to approve applications to “**install** solar energy systems,”²⁴ but nowhere does it address the **construction** of wholly new solar power **facilities**,



such as large solar power plants. As such, an argument can be made that, while the Act applies to individual homeowners and businesses wishing to install small-scale solar energy systems for private use, the Act does **not** apply to the construction and development of large “solar farms” or similar solar power facilities which provide energy to the public at large.

This distinction may become increasingly relevant, as proposals for devoting large swaths of wilderness to solar power generation are currently under consideration in a variety of areas.²⁵ In California, concern has been raised over the grading and stormwater impacts of such facilities, along with their impact on protected species – particularly those found in the desert, such as the desert tortoise (*Gopherus agassizii*) and the Peninsular Bighorn Sheep (*Ovis Canadensis nelsoni*).²⁶ Elsewhere, these concerns were so great as to cause the Bureau of Land Management to briefly impose a moratorium on the development of solar energy projects on public land.²⁷ If the Solar Rights Act is deemed to apply to such projects, these legitimate



concerns may be rendered wholly irrelevant because the Solar Rights Act provides no exception for impacts on biological resources, nor does it permit the denial of a solar energy system based on such impacts.

Similarly, environmental review of such large-scale solar power projects may be curtailed if the Solar Rights Act is deemed to apply. For example, under the California Environmental Quality Act (“CEQA”),²⁸ a government agency must undertake an environmental review of a project before granting a discretionary permit

for its approval.²⁹ If, however, the necessary permit requires only **ministerial** or **administrative** review, CEQA will generally not apply. Because the Solar Rights Act essentially converts all city and county oversight of solar energy systems into a ministerial – rather than discretionary – review process, the Solar Rights Act may trump CEQA altogether, thereby forcing approval of large solar power projects in wilderness areas, regardless of the environmental consequences.

Whether the Solar Rights Act has such an expansive application has not been decided by the courts. However, given the broad role that solar energy is expected to play in the future, it is possible that litigation of these questions will be needed. In gauging the likely outcome of such litigation, the following points are pertinent:

- First, a review of the legislative history of the Solar Rights Act indicates that the law was intended to apply to relatively small installations, such as those on homes and small businesses which neighbors might view as unsightly or not in character with their neighborhood.
- Second, the Act itself uses the term “**install**” when referring to solar systems subject to its provisions, and does not use terms such as “**develop**,” “**construct**,” or “**build**” when referring to such systems. This may indicate an intention to limit the Act to only situations where components of solar



energy systems are being attached, affixed, or incorporated into existing structures – not to construction of new multi-acre power facilities.

- Third, the Act speaks in terms of “solar energy **systems**” rather than “solar power **generation facilities**,” and refers to section 801.5 of the California Civil Code to define that term. Under section 801.5, the term “solar energy systems” is likewise described as **equipment** or **design features**, and not as entirely new power facilities.³⁰
- Finally, while case law interpreting the Act is extremely sparse, those decisions which do exist have applied the Act only in the context of solar installations on homes, and have not applied the Act to large-scale solar power facilities or power projects.³¹

Thus, while the policy advanced by the Solar Rights Act is clear, a host of legal questions remain unaddressed. Given the prominent role that solar power will play in California’s future, it is likely that these issues will ultimately be presented to the courts for resolution as disputes over solar power projects arise.

The Solar Shade Control Act

Historic Use Of Solar Easements And Application In California

The Solar Shade Control Act finds its roots in the historic doctrine of “ancient lights,” which provided for the establishment of “solar easements” to safeguard access to sunlight and prevent land from becoming shaded by adjoining properties.³² An easement is a “non-possessory interest in the land of another that gives its owner the right to use the land of another or to prevent the property owner from using his land.” The use of solar easements gives a landowner the legal right to prevent adjoining owners from erecting structures, growing trees, or establishing other uses which block light to his/her property.

While American courts repudiated application of this doctrine in the United States,³³ California’s legislators have recognized that solar rights are an important component of future energy development and conservation, and have preserved the right to solar easements through enactments such as the Solar Shade Control Act. Thus, California law now permits an easement for “the right of receiving sunlight upon or over land,”³⁴ provided that a description of the dimensions of the easement, and the restrictions placed upon vegetation, structures, or other objects that obstruct sunlight, are included in the easement.³⁵

Development Of The Solar Shade Control Act

The Solar Shade Control Act expands the concept of solar easements by making shade control rights a statewide policy. Originally enacted in 1978, the Solar Shade Control Act was amended in 2008 in response to the criminal prosecution of homeowners in Sunnyvale, California, who refused to cut mature redwoods that blocked sunlight onto their neighbors’ solar panels.³⁶ The case gained nationwide notoriety because it forced two legitimate environmental causes to compete for priority against each other: one homeowner sought to protect trees by



maintaining mature redwoods, while the other sought to advance clean energy by preserving efficient use of solar power.³⁷ In this dispute, solar power prevailed.

Prior to the 2008 amendment, the Solar Shade Control Act prohibited all planting and maintenance of trees or shrubs which cast shade on a solar collector, and made violation of the Act a misdemeanor. As a result of the Sunnyvale case, the Act was perceived as overly restrictive because it failed to distinguish between **pre-existing** vegetation grown **before** solar collectors are installed, and **newly-planted** vegetation established **after** the installation. In order to prevent the Act from requiring removal of vegetation which pre-dates the installation of a solar collector, the 2008 amendments exempt all trees that were planted prior to the installation of the solar collector even if later growth shades the collectors.³⁸

Application Of The Solar Shade Control Act

To determine whether the Solar Shade Control Act applies, the first step is to assess whether the solar collector is protected by the Act. To be protected under the Act, a solar collector must only provide enough energy for the building's energy demand and may be used for water heating, space heating or cooling, or power generation.³⁹ In addition, the solar collector must comply with all local building and setback regulations.⁴⁰

If the solar collector qualifies for protection under the Act, a property owner may not place or grow a tree or shrub that will cast a shadow on an area greater than 10% of the collector's absorption surface at any time between 10:00 a.m. and 2:00 p.m.⁴¹



Additionally, the 2008 amendments authorize a property owner who installs a solar collector to provide written notice of the Solar Shade Control Act's shade-protection requirements. The notice may be provided to all property owners who have trees or shrubs which might obstruct the solar collector. The 2008 amendments also authorize the owner to provide the names of the notice-recipients to future purchasers of the property, and authorize the recipients to likewise provide such notice to subsequent purchasers of their property.⁴² These provisions provide a mechanism for placing owners and subsequent-purchasers on notice of restrictions against future planting and tree-growth.

Despite its broad protections for solar collectors, several categories of trees are expressly exempted from the Solar Shade Control Act's requirements:

- Trees planted prior to the installation of the solar collector;⁴³
- Commercial timberland or land for commercial cultivation of crops;⁴⁴
- Trees planted subsequent to installation of the solar collector, but which serve as replacements for those planted prior to the installation and were removed for protection of public health, safety, or the environment;⁴⁵ and
- Trees subject to a city or county ordinance.⁴⁶



City And County Authority Under The Solar Shade Control Act

While the Solar Rights Act impairs cities and counties from regulating solar energy systems, the same is not true under the Solar Shade Control Act: under the Act, a city or county may exempt itself from its requirements by enacting an ordinance providing for such exemption.⁴⁷ The exemption may even be adopted **after** a dispute has arisen between a property owner and the local entity.⁴⁸

This provision may be significant to cities and counties as local solar energy systems are increasingly installed on homes, apartments, and businesses. Due to the quantity of trees maintained on public property, one would expect cities and counties to be significantly exposed to Solar Shade Control Act claims, as owners adjacent to public property install solar energy systems which might some day become shaded by city and county landscaping. By allowing a city or county to exempt itself from solar shade restrictions, the Act allows cities and counties to plant and grow trees regardless of their impact on adjacent solar collectors.



Significantly, the Act's exception for trees "subject to a city or county ordinance" may also be an important alteration to the Act's implementation. While this provision is not clearly described in the Act, and no case has interpreted it, it is nevertheless clear that a city or county may adopt tree preservation or solar shade control ordinances which would supersede the provisions of the Solar Shade Control Act,⁴⁹ providing another means for cities and counties to bypass the Act's requirements.

Moreover, this provision appears to authorize cities and counties to adopt a wholly separate regime for solar shade regulations, either through restrictions on trees which **exceed** those under the Act or, conversely, by **scaling-back** restrictions on solar shade by allowing trees to encroach on solar energy users. In this manner, each city and county may decide which environmental policy it favors more: protecting solar collectors from trees and shrubs, or preserving the full growth and propagation of trees and vegetation even where it infringes on solar energy users.

Interplay Between The Solar Rights And Solar Shade Control Acts

On a practical level, the differences between the Solar Rights Act and Solar Shade Control Act are stark: the Solar Rights Act greatly impairs a city or county's authority to restrict the installation of solar energy systems; whereas the Solar Shade Control Act empowers cities and counties to exempt themselves from shade-control restrictions and to even establish their own shade-control standards (which may be completely independent from, and contradictory to, those provided in the Act). This illustrates a key element in the interplay between the Solar Shade Control Act and the Solar Rights Act: the Solar Rights Act can **require** a city or county to approve solar energy systems which might ultimately become shaded by city or county landscaping; but exceptions in the Solar Shade Control Act **preserve** a city or county's right to



plant and grow this landscaping despite its shade impacts. Such are the unique results expected to occur as solar energy becomes increasingly used by residents and businesses.

On a deeper level, interplay between the Solar Rights Act and Solar Shade Control Act reflects competing environmental interests which may be of greater prominence as California's efforts toward a more-sustainable society advance. The need to expedite development of solar power capacity is embodied in the Solar Rights Act, with the laudable goal of reducing dependence on fossil fuels, restricting emission of greenhouse gasses, and combating global warming. These goals are complemented by the Solar Shade Control Act. However, these interests come at a cost, and may not adequately protect historic, aesthetic, and biological resources.



Moreover, the policies advanced by the Solar Rights and Solar Shade Control Acts may actually run counter to other environmental efforts which advance the goals of energy efficiency, reducing fossil fuel dependence, restricting greenhouse gas emissions, and curtailing global warming. For example, strict adherence to the Solar Shade Control Act will

eventually **curtail** the number and size of trees in a community (to the extent the trees cast shade on solar collectors), even though those trees **reduce energy needs** by shading homes, lowering air temperatures, and reducing wind speed. A study for the City of Berkeley found that the net effect of trees in the City amounted to electricity savings of 3,469 MWh per year,⁵⁰ and a study of the Los Angeles Department of Water and Power estimated annual savings of 81 kWh per tree.⁵¹ As solar energy systems increasingly become a normal part of neighborhoods, the Solar Shade Control Act may actually **prevent** these natural energy-saving resources from being fully realized.

Studies have also shown that the energy-saving benefits of trees are most effective during periods of maximum sun and temperature, reducing energy demand at times when conservation is most-needed.⁵² Seasonally, trees may provide their greatest energy savings during summer months when energy use is at its highest and power suppliers must curtail peak demand to avoid rolling blackouts. A study of 460 homes in the City of Sacramento found, for example, that well-placed trees reduce summertime electricity use by 185 kWh.⁵³ However, as home-mounted solar energy systems proliferate in neighborhoods, the Solar Shade Control Act may require extensive trimming or removal of the very trees which provide these benefits.

Trees also serve as "carbon sinks," sequestering carbon dioxide while they grow and reducing greenhouse gasses. Indeed, the City of Berkeley study noted above found that trees in the City sequestered 29% more carbon dioxide than that emitted in the City,⁵⁴ and the study of homes in Sacramento estimated that merely the planting of one London plane tree on the west side of a house would reduce summertime carbon emissions by an average of 31% over 100 years.⁵⁵

One would expect, therefore, the current effort to reduce greenhouse gasses would seek to advance policies which favor the planting and full growth of trees. However, the Solar Rights



Act and Solar Shade Control Act not only fail to address this issue, but may even *discourage* it by favoring the development of solar power systems at the expense of trees.

Thus, while both Acts serve as an important springboard for jumpstarting development of sustainable energy in California, the need for further refinement and incorporation with other conservation measures is evident. Future action to refine the Acts and make them compatible with other conservation efforts is needed.

Conclusion

The Solar Rights and Solar Shade Control Acts have not been fully assessed by the courts and their impacts are open to interpretation. However, one fact is certain: as the green-building movement becomes increasingly popular, and California becomes a more active partner in advancing the cause for solar energy, both Acts will likely gain prominence.

From a practical standpoint, solar power advocates, environmental activists, businesses, policymakers, and homeowners should be aware of the unique legal issues concerning development of solar energy resources. On a deeper level, the policies advanced by the Solar Rights and Solar Shade Control Acts may foretell deeper divisions between competing environmental interests. Such divisions may become more apparent in the coming years as California's effort to develop sustainable energy advances.

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¹ The Solar Rights Act, enacted in 1978, comprises the following California Code sections: Civil Code §§ 714.1, 801, 801.5; Government Code §§ 65850.5, 66475.3, 66473.1; Health & Safety Code § 17959.1.

² Public Resources Code § 25980, *et seq.*

³ Connie Skipitares, *Solar Panel Dispute Ends*, SAN JOSE MERCURY NEWS, Mar. 15, 2005 (neighbors disputing over shade created by property owner's tree obstructing solar panels of other property owner); Felicity Barringer, *Trees Block Solar Panels, and a Feud ends in Court*, THE NEW YORK TIMES, April 7, 2008; Marla Dickerson, *Hey, Your Shade Trees are Blocking my Solar Array*, LOS ANGELES TIMES, November 15, 2008 (Culver City neighbors disputing over solar panels placed on commercial property and neighboring shade trees blocking panels).

⁴ See, e.g., Judith Lewis, *High Noon*, HIGH COUNTRY NEWS, May 4, 2009; Richard Simon, *Feinstein Wants Desert Swath Off-Limits to Solar, Wind Projects*, LOS ANGELES TIMES, March 25, 2009.

⁵ Prescription Act, 1832, 2 & 3 Will. 4 c. 71 (Eng.) (initial codification of England's "ancient lights" doctrine); William C. Noyes, *The Law of Light*, NEW YORK TIMES, Mar. 31, 1860 (describing Roman jurisprudence on access to light between adjoining landowners).

⁶ *Rideout v. Knox* (1889) 148 Mass. 368, 372. California courts have rejected the doctrine of "ancient lights." See, e.g., *Western Granite & Marble Co. v. Knickerbocker* (1894) 103 Cal. 111, 113; *Venuto v. Owens-Corning Fiberglas Corp.* (1971) 22 Cal.App.3d 116, 127. However, as noted herein, through the Legislature's enactment of the Solar Shade Control Act, the doctrine's principles remain active in California.

⁷ *Wilson v. Handley* (2002) 97 Cal.App.4th 1301, 1308-09. California's "anti-spite fence" statute is codified at Cal. Civil Code § 841.5.

⁸ Further information on California's CSI program is provided at *The California Solar Initiative*, <www.cpuc.ca.gov/puc/Energy/solar> (last visited May 1, 2009).

⁹ Cal. Health & Safety Code § 38500, *et seq.*

¹⁰ American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115 (2009).

¹¹ Cal. Civil Code § 714, 714.1, 801, and 801.5; Cal. Government Code §§ 65850.5, 66575.3, and 66473.1; and Cal. Health & Safety Code § 17959.1.

¹² Cal. Government Code § 65850.5(a).

¹³ Cal. Government Code § 65850.5(b).

¹⁴ Cal. Health & Safety Code § 17959.1.

¹⁵ Cal. Government Code § 65850.5(c).

¹⁶ Cal. Government Code § 65850.5(f)(1).

¹⁷ Cal. Government Code § 65850(f)(2), (3).

¹⁸ Cal. Civil Code § 714.

¹⁹ Cal. Civil Code § 714.1.

²⁰ *Palos Verdes Homes Association v. Rodman* (1986) 182 Cal.App.3d 324.

²¹ *Id.* at 328-329.

²² See, e.g., *Solar Rights Act*, <http://ohp.parks.ca.gov/?page_id=25664> (last visited May 1, 2009).

²³ The California Office of Historic Preservation has opined that cities and counties may impose reasonable restrictions on solar energy systems installed on historic buildings, provided that such restrictions conform with the Act's allowance for private regulation under Civil Code §714.1. See footnote 24, *supra*. As noted above, it is unclear whether this position is valid or enforceable.



²⁴ Cal. Government Code § 65850.5(b) (emphasis added).

²⁵ See, e.g., Lewis, footnote 4, *supra*; Simon, footnote 4, *supra*.

²⁶ *Id.*; Designation of Critical Habitat for Peninsular Bighorn Sheep, 74 Fed. Reg. 17288 (April 14, 2009); Critical Habitat Designation for the Mojave Desert Tortoise, 59 Fed. Reg. 5820 (February 8, 1994). As an example of the environmental impacts posed by large-scale solar power projects, development of the proposed 3,400 acre Ivanpah Solar Electric Generating Station in San Bernardino County will require the grading of more than six square miles of raw land which serves as habitat for a variety of rare species, and will require the rerouting creeks due to impacts to stormwater flows expected from the graded site. See Lewis, footnote 4, *supra*; *Ivanpah Solar Electric Generating System*, <<http://www.energy.ca.gov/sitingcases/ivanpah/index.html>> (last visited May 13, 2009). Devoting other wilderness areas to large-scale solar power generation may impact wildlife corridors which serve to link preserves.

²⁷ Dan Frosch, *Citing Need for Assessments, U.S. Freezes Solar Energy Projects*, THE NEW YORK TIMES, June 27, 2008. Shortly after it was imposed, the BLM lifted the moratorium, reportedly under pressure from solar power advocates. See, e.g., Dan Frosch, *U.S. Lifts Moratorium on New Solar Projects*, THE NEW YORK TIMES, July 3, 2008. Nevertheless, these circumstances underscore the environmental concerns over siting large-scale solar power facilities on public lands and in wilderness areas.

²⁸ Cal. Public Resources Code § 21000, *et seq.*

²⁹ Cal. Public Resources Code § 21080.

³⁰ Cal. Civil Code § 801.5(a) (“As used in this section, ‘solar energy system’ means either ... [¶] (1) [a]ny solar **collector** or other solar energy **device** whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating...[or ¶] (2) [a]ny **structural design feature of a building**, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.” Emphasis added.)

³¹ See, e.g., *Larsen v. Town of Corte Madera* (9th Cir. Cal. 1996) 104 F.3d 365 (plaintiff filed equal protection action after town denied building permit to construct roof addition); *Larsen v. Town of Corte Madera* (N.D. Cal. July 11, 2005; Case No. C-04-05212) 2005 WL 1656888 (same plaintiff filed similar action after town required Design Board review of plans for solar energy system).

³² See, footnote 5, *supra*.

³³ See footnote 6, *supra*.

³⁴ Cal. Civil Code § 801.

³⁵ Cal. Civil Code § 801.5.

³⁶ June 16, 2008, Assembly Committee on Utilities and Commerce Report on S.B. 1399 at p. C.

³⁷ Paul Rogers, *In trees vs. solar battle, old trees score a new law*, SAN JOSE MERCURY NEWS, July 22, 2008.

³⁸ S.B. 1399, 2008 Leg. (Cal. 2008).

³⁹ Cal. Public Resources Code § 25981.

⁴⁰ *Id.* In addition to locally-imposed setback requirements, the Act establishes thresholds for minimum setbacks: the solar collector must be set back at least five feet from the property line, and not less than ten feet above the ground, unless the collector is set back three times the amount lowered.

⁴¹ Cal. Public Resources Code § 25982.

⁴² Cal. Public Resources Code § 25982.1.

⁴³ Cal. Public Resources Code § 25984(a).

⁴⁴ Cal. Public Resources Code § 25984(b).



⁴⁵ Cal. Public Resources Code § 25984(c).

⁴⁶ Cal. Public Resources Code § 25984(d).

⁴⁷ Cal. Public Resources Code § 25985.

⁴⁸ *Zipperer v. County of Santa Clara* (2005) 133 Cal.App.4th 1013, 1025.

⁴⁹ Cal. Public Resources Code § 25985(b).

⁵⁰ Scott E. Maco, *et al.*, *City of Berkeley, California municipal tree resource analysis*, Internal Report CUFR-8, USDA Forest Service, Pacific Southwest Research, Center for Urban Forest Research (2005).

⁵¹ E. Gregory McPherson, *et al.*, *Benefits and costs of LADWP's "Trees for a Green LA" shade tree program*, USDA Forest Service, Pacific Southwest Research Station, Center for Urban Forest Research (2001).

⁵² David N. Laband and John P. Sophocleus, *An Experimental Analysis of the Impact of Tree Shade on Electricity Consumption*, *Arboriculture and Urban Forestry* (2009, forthcoming) (citing John H. Parker, *Landscaping to reduce the energy used in cooling buildings*, *Journal of Forestry* (1983) at 81:82-104; G. McPherson and J. R. Simpson, *Shade trees as a demand-side resource*, *Home Energy Magazine* (Mar-Apr 1995) at 12:11-17).

⁵³ Geoffrey H. Donovan and David T. Butry, *The value of shade: Estimating the effect of urban trees on summertime electricity use*, *Energy and Buildings* Vol. 41, Issue 6 (2009) at 662-668.

⁵⁴ See footnote 50, *supra*.

⁵⁵ See footnote 53, *supra*.