

# **California's Solar Rights Act**

## **A Review of the Statutes and Relevant Cases**

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## 1 INTRODUCTION

California has been a leader in promoting solar energy since 1976, when it began to provide financial incentives for investment in solar energy technologies.<sup>1</sup> One legacy of California's early interest in solar energy is a series of laws designed to protect a consumer's right to install and operate solar energy technology on a home or business, including access to sunlight, or solar access. Although California's solar energy laws have been around for nearly 30 years, we now examine this groundbreaking legislation for two reasons. Consumers and businesses often misunderstand the provisions and application of these laws. And, California law makers and regulators recently approved the California Solar Initiative (CSI), which allocated over \$3 billion to provide financial incentives to residential and non-residential customers to install photovoltaics and solar water heaters on their homes and businesses.<sup>2</sup> As of October 2006, there were about 23,000 photovoltaic systems operating in California representing approximately 180 megawatts (MW) of electric generating capacity.<sup>3,4</sup> The CSI has established a goal of encouraging Californians to install 3,000 MW of photovoltaics by 2016, sufficient to power more than 600,000 homes.<sup>5</sup> Such a dramatic increase in the number of operating solar energy systems could multiply solar access questions arising from these installations.

This paper examines the sections of California law known collectively as the Solar Rights Act (or "the Act"), and reviews lawsuits brought under the Act.<sup>6</sup> Through the Act, which was enacted in 1978, the legislature sought to balance the needs of individual solar energy system owners with other property owners by developing solar access rights.<sup>7</sup> The Act limits the ability of covenants, conditions, and restrictions, typically enforced by homeowner associations (HOA), and local governments to restrict solar installations. These are perhaps the most well known and

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<sup>1</sup> California created a solar energy tax credit in 1976; it was codified in Cal. Rev. & Tax. Code § 23601.

<sup>2</sup> Cal. Pub. Util. Comm'n Decision D.06-01-024. (This decision also provides for a pilot solar water heating program for the San Diego region.)

<sup>3</sup> See "Grid Connected PV Capacity (kW) Installed in California" available at [http://www.energy.ca.gov/renewables/emerging\\_renewables/GRID-CONNECTED\\_PV.PDF](http://www.energy.ca.gov/renewables/emerging_renewables/GRID-CONNECTED_PV.PDF) (December 14, 2006).

<sup>4</sup> One megawatt (MW) equals 1,000,000 watts, or 1,000 kilowatts (kW). In the case of photovoltaics, 1 MW could generate enough energy to power approximately 200-225 homes, depending on solar resources and average residential consumption levels.

<sup>5</sup> SB 1 allocates up to over \$100 million for solar water heating incentives. At the time of writing there were no estimates on how many solar water heaters this might encourage but the CPUC was considering a pilot solar water heating program.

<sup>6</sup> The Solar Rights Act comprises the following California codes of law: California Civil Code Sections 714 and 714.1, California Civil Code Section 801, California Civil Code Section 801.5, California Government Code Section 65850.5, California Health and Safety Code Section 17959.1, California Government Code Section 66475.3 and California Government Code Section 66473.1.

<sup>7</sup> Assembly Bill 3250.

important provisions.<sup>8</sup> But the Act also creates the legal right to a solar easement and requires local governments to preserve passive cooling and heating opportunities to the extent feasible in new development projects. The extent to which the Act protects solar energy system owners from restrictions by HOAs and local governments is frequently misunderstood and the subject of many disputes. This paper is intended to provide solar energy users, HOAs, and local governments more information about the content and application of California's main solar access law.

## **1.1 ORGANIZATION OF THE PAPER**

The paper is organized into the following sections.

- Section 2 provides a brief overview of the key provisions of the Act.
- Section 3 discusses the ability of covenants, conditions, and restrictions, such as those enforced by homeowners associations, to restrict the solar energy installations.
- Section 4 discusses how provisions of the Act limit the ability of local governments to restrict solar energy installations.
- Section 5 provides information about the definition and use of solar easements, which are provided for in the Act.
- In Section 6, we examine solar easements in new developments, as required and permitted by the Act.
- In Section 7, we provide general conclusion.
- The Appendix, Sections 8 and 9, includes other resources regarding the Act and the full text of the codes comprising the Act.

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<sup>8</sup> While not all common interest developments associations are called homeowner associations (HOAs), for simplicity we use HOA throughout this paper to denote all associations.

## 2 OVERVIEW OF THE SOLAR RIGHTS ACT

The Solar Rights Act creates a legal framework for “solar access.” It includes limited protections to allow consumers access to sunlight and to limit the ability of homeowner associations (HOA) and local governments from preventing installation of solar energy systems.

The Act was adopted in 1978 and went into effect on January 1, 1979.<sup>9,10</sup> Its enactment contributed to California’s strong policy commitment to solar energy. According to the original legislation, the purpose of the Act is “to promote and encourage the widespread use of solar energy systems and to protect and facilitate adequate access to the sunlight which is necessary to operate solar energy systems.” The Act further states that the “use of solar energy systems will reduce the state’s dependence on nonrenewable fossil fuels, supplement existing energy sources, and decrease the air and water pollution which results from the use of conventional energy sources. It is ... the policy of the state to encourage the use of solar energy system.” This policy rationale is relevant today and continues to drive California’s solar energy policy initiatives.

### 2.1 COMPONENTS OF THE SOLAR RIGHTS ACT

For the purposes of this paper, we focus on the following six key provisions of the Act that remain in California law today.

1. Limits on Covenants, Conditions, and Restrictions to Restrict Solar Installations – The Act prohibits covenants, conditions, and restrictions (CC&Rs), like those enforced by HOAs, which would unreasonably restrict use or installation of solar energy systems. (California Civil Code Sections 714 and 714.1)
2. Solar Easements – The Act establishes the legal right to a solar easement, which protects access to sunlight across adjacent properties. (California Civil Code Section 801). It also describes the minimum requirements needed to create a solar easement. (California Civil Code Section 801.5)
3. Definition of a Solar Energy System – The Act defines which solar energy systems are covered by its provisions, including active solar devices and passive solar design strategies. (California Civil Code Section 801.5)
4. Limits to Local Government Restrictions on Solar Installations – The Act discourages local governments from adopting an ordinance that would unreasonably restrict the use of solar energy systems. (California Government Code Section 65850.5) It also requires local governments to use a non-discretionary permitting process for solar energy

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<sup>9</sup> Robert L. Thayer, Solar Access: “It’s the Law!,” ASLA Environmental Quality Series, no. 34 Institute of Governmental Affairs, Institute of Ecology, University of California, Davis. (January 1981.)

<sup>10</sup> The Solar Rights Act was amended twice in recent years: AB 1407 (Wolk) was signed into law on September 3, 2003; and AB 2473 (Wolk) was signed into law on September 24, 2004.

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systems. (California Government Code Section 65850.5 and California Health and Safety Code Section 17959.1). Provisions of the Act also require local governments seeking state-sponsored incentives for solar energy systems to demonstrate compliance with certain provisions of the Act. (California Civil Code Section 714)

5. Passive Solar Opportunities in Subdivisions – The Act requires certain subdivisions to provide for future passive and natural heating and cooling opportunities to the extent feasible. (California Government Code Section 66473.1)
6. Allowance for Requiring Solar Easements – The Act allows cities and counties to require by ordinance the dedication of solar easements in certain subdivision developments as a condition of tentative map approval. (California Government Code Section 66475.3)

### **3 LIMITS ON COVENANTS, CONDITIONS, AND RESTRICTIONS TO RESTRICT SOLAR INSTALLATIONS**

In California, common interest developments such as condominiums and planned communities typically have associations to manage their affairs and enforce their rules. These associations, often called homeowner associations, or HOAs, are widespread and an increasingly important part of homeownership in California.<sup>11</sup> HOAs have rules and regulations, expressed in part through covenants, conditions, and restrictions (CC&R), that govern many aspects of homeownership within the common interest development, including installation of solar energy systems. To ensure that CC&Rs do not place unreasonable restrictions on use of solar energy, California enacted Civil Code Section 714 in 1978 as part of the Solar Rights Act. This section of law limits the ability of HOAs to restrict solar energy system installations through unreasonable CC&Rs and prohibits undue discrimination in processes used to consider and approve solar energy installations.

#### **3.1 WHAT ARE COVENANTS, CONDITIONS, AND RESTRICTIONS?**

Covenants, conditions, and restrictions, or CC&Rs as they are commonly called, are the governing documents that dictate how an HOA operates and what rules the owners, their tenants, and guests must obey. CC&Rs include three distinct legal mechanisms: (1) covenants, (2) conditions, and (3) restrictions. “Covenants,” also called “restrictive covenants,” are enforceable promises that assign either a benefit or a burden to a property. Covenants are usually part of the property title or deed and therefore apply to subsequent property owners. “Conditions” relate to the circumstances that may end an ownership interest (e.g., right of first refusal, dissolution of the subdivision). “Restrictions” refer to legal restrictions placed on the ownership or use of the property, such as easements or liens. In common interest developments, restrictive covenants typically dictate the manner in which solar energy systems can be installed.<sup>12</sup> Although the provisions of the Act regarding CC&Rs apply mainly to restrictive covenants in practice, the law refers to covenants, conditions, and restrictions and the limits imposed by restrictive covenants on solar energy systems are commonly referred to as the collective CC&Rs; therefore, we refer to CC&Rs throughout this paper.

#### **3.2 DOES THE SOLAR RIGHTS ACT PROHIBIT ALL CC&RS FROM RESTRICTING SOLAR INSTALLATIONS?**

The Act contains many provisions and broadly addresses solar access issues, but it is perhaps best known for prohibiting CC&Rs that unreasonably restrict solar energy system installations. California Civil Code Section 714 (a) prohibits “any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or

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<sup>11</sup> Common Interest Developments: Housing at Risk? Julia L. Johnston and Kimberly Johnston-Dodds, California Research Bureau (Requested by Senator Tom Torlakson), p. 6, August 2002.

<sup>12</sup> Thomas Starrs, Les Nelson & Fred Zalzman, Bringing Solar Energy to the Planned Community: A Handbook on Rooftop Solar Systems and Private Land Use Restrictions at [http://www.sdenergy.org/uploads/Final\\_CC&R\\_Handbook\\_1-01.pdf](http://www.sdenergy.org/uploads/Final_CC&R_Handbook_1-01.pdf)

any interest in, real property that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.”

Although the intent of Section 714 (a) is to prohibit CC&Rs from placing restrictions on solar energy system installation, other subsections of 714 and 714.1 allow CC&Rs to impose certain reasonable restrictions on solar installations.<sup>13</sup> The following provides information to determine whether a restriction is considered reasonable under the Act.

### **3.2.1 Cost and Performance Criteria for Reasonable Restrictions**

The Act permits CC&Rs to impose requirements that don’t “significantly” increase the cost of the system or decrease its efficiency or performance.<sup>14</sup> California Civil Code Sections 714 (d)(1)(A) and 714 (d)(1)(B) provide criteria to define when a restriction has “significantly” altered system price or performance for both solar water heating and photovoltaic systems. Restrictions cannot increase the cost of solar water heating systems by more than 20 percent or decrease the system’s efficiency by more than 20 percent.<sup>15</sup> Restrictions on photovoltaics cannot increase the system cost by more than \$2,000 or decrease system efficiency by more than 20 percent.<sup>16</sup> Restrictions on either type of system need only increase cost or decrease efficiency to be determined unreasonable under the Act.

With limited case law in this area, it is unclear whether these criteria could also be applied to restrictions imposed by local governments (e.g., restrictions or requirements imposed during the permitting process). We discuss local governments ability to restrict solar energy systems in Section 4.

### **3.2.2 Alternative Comparable System**

California Civil Code Section 714(b) also permits reasonable restrictions that allow a prospective solar energy system owner to install “an alternative system of comparable cost, efficiency, and energy conservation benefits.” For example, an HOA could prohibit installation of passive solar water heaters, which can extend above the roof surface, but allow comparable active solar water heaters, which can have a lower profile on the roof and similar performance.<sup>17</sup>

### **3.2.3 Other Restrictions Permitted under the Solar Rights Act**

Section 714.1 of the California Civil Code permits CC&Rs to impose certain restrictions on solar energy system installations despite the cost, efficiency, and comparable system criteria provided for in Section 714. Separate from the reasonable restrictions permissible under Section 714, Section 714.1 allows CC&Rs to impose the following reasonable restrictions.

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<sup>13</sup> Cal. Civ. Code §§ 714 (b), 714 (d)(1)(A), and 714 (d)(1)(B) (Deering 2006)

<sup>14</sup> Cal. Civ. Code § 714(b) (Deering 2006)

<sup>15</sup> Cal. Civ. Code § 714 (d)(1)(A) (Deering 2006)

<sup>16</sup> Cal. Civ. Code § 714 (d)(1)(B) (Deering 2006)

<sup>17</sup> See *Palos Verdes Ass’n v. Rodman*, 182 Cal. App. 3d 324 (1986)

- Restrictions on Common Area Installations – Section 714.1(a) permits CC&Rs to “impose reasonable provisions” that restrict solar energy installations in common areas. Common areas are defined in California Civil Code Section 1351(b) as “the entire common interest development except the separate interests therein.” That is, a common area is the area of the development not owned separately by individuals. For example, in a condominium or planned development, all the property other than units, homes, parcels, and lots owned by individuals would be considered common areas. These typically include community centers, walkways, or common hallways.
- Prior Approval – Section 714.1(b) requires “the owner of a separate interest, as defined in Section 1351, to obtain the approval of the association for the installation of a solar energy system in a separate interest owned by another.” California Civil Code Section 1351 defines an “association” as “a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.” This definition generally refers to HOAs. In the context of Section 714.1 (b), a common interest development is a (1) community apartment project, (2) condominium project, (3) planned development, or (4) a stock cooperative.<sup>18</sup> In general, a property owner in a common interest development seeking to install a solar energy system should contact the HOA to determine installation policies and guidelines.
- Maintenance and Repair – Section 714.1(c) allows HOAs to create requirements relating to the maintenance, repair, or replacement of roofs or other building components affected by solar energy installations.
- Indemnification or Reimbursement – Section 714.1(d) allows associations to require solar energy system installers to reimburse the association for loss or damage caused by installation, maintenance, or use of the system.

### 3.3 DEFINITION OF A SOLAR ENERGY SYSTEM

The Solar Rights Act defines what types of solar energy systems qualify for its legal protections. For the purposes of the Act, California Civil Code Section 801.5 (a)(1) defines a solar energy system as any solar collector or other solar energy device or any structural design feature of a building 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.<sup>19</sup> Section 714 (d)(2) states that the definition of a solar energy system as provided in California Civil Code Section 801.5 applies

Based on this statutory definition, the following common solar energy systems would be considered “solar energy systems”:

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<sup>18</sup> Each of these common interest development types is defined in Cal. Civ. Code § 1351.

<sup>19</sup> The Solar Rights Act’s definition of a solar energy system differs from the statutory definition of a “solar collector” in Cal. Pub. Res. Code § 25981.

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- Photovoltaics (solar electric)
- Solar water heating for use within a building
- Solar water heating for space heating
- Solar pool heating

### 3.3.1 Further Criteria to Supplement the Definition of a Solar Energy System

Section 714 (c)(1) provides further criteria that supplement the definition of a solar energy system. These criteria likely would have to be met in addition to the standard definition provided in Section 801.5 in order to be considered an eligible solar energy system under the Section 714.

- Health and Safety Requirements – Section 714 (c)(1) provides that a solar energy system must meet applicable health and safety standards and requirements imposed by state and local permitting authorities.
- Solar Water Heating Certification – Section 714 (c)(2) requires a solar energy system used to heat water to be certified by the Solar Rating Certification Corporation (SRCC), a nonprofit third party organization, or other nationally recognized certification agencies.<sup>20</sup> This section specifies that the entire solar energy system and installation process must receive certification, rather than simply certifying each of its component parts.
- Solar Electric Standards – Section 714 (c)(3) requires a solar energy system used to produce electricity, such as photovoltaics, to also meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the California Public Utilities Commission regarding safety and reliability.

## 3.4 FAIR APPROVAL PROCESS FOR SOLAR ENERGY SYSTEMS

The Act also seeks to ensure that processes to consider and approve solar energy system installations are fair to the applicant. California Civil Code Sections 714(e) provides that “whenever approval is required for the installation or use of a solar energy system, the application for approval shall be processed and approved by the appropriate approving entity in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed.” This subsection uses broad language that could apply to the approval processes of an HOA or a local government. Given the context of the other parts of Section 714 and existing case law, this language on fair approval processes most likely applies to HOAs. It is unclear whether it also applies to approval processes of local

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<sup>20</sup> SRCC is a nonprofit third party supported by the United States Department of Energy. See [www.solar-rating.org](http://www.solar-rating.org)

governments. California Government Code Section 65850.5 specifically addresses city and county permitting of solar energy systems. We discuss this topic in more detail in Section 4.

### **3.5 VIOLATION OF CALIFORNIA CIVIL CODE SECTIONS 714**

California Civil Code Sections 714 (f) describes the penalties for violation of this section of the Solar Rights Act. It states that “any entity, other than a public entity, that willfully violates this section shall be liable to the applicant or other party for actual damages occasioned thereby, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).” In addition, California Civil Code Sections 714 (g) provides that reasonable attorney’s fee will be awarded to the prevailing party in a case brought to enforce compliance with Section 714.

### **3.6 RELEVANT CASES**

Case law relating to the Solar Rights Act is limited. This is particularly true for cases relating to HOAs imposing unreasonable restrictions on solar energy systems installations. Lack of awareness on the part of homeowners and HOAs about the Act’s provisions and potentially high litigation costs could account for the limited case law.<sup>21</sup>

This section provides a summary of the following cases involving HOAs and individual solar energy system owners.

- *Palos Verdes Home Association v. Rodman*, 182 Cal. App. 3d 324 (1986)
- *Garden Lakes Community Association v. Madigan*, 204 Ariz. 238 (2003)

#### **3.6.1 Palos Verdes Home Association v. Rodman**

*Palos Verdes Home Association v. Rodman* provides guidance on what constitutes a “reasonable restriction” on solar energy system installations.<sup>22</sup> The issue in this case is whether the HOA’s actions violate the standard of “reasonable restriction” provided in Section 714.

Rodman, a resident of the Palos Verdes Home Association, sought to install a passive solar water heating system on his home.<sup>23</sup> The Palos Verdes Association’s CC&Rs required a homeowner to receive HOA approval for any improvements made outside of a home. The CC&R also contained guidelines for installing a solar energy system. The CC&Rs allowed for the installation of active systems, but prohibited installation of passive systems. The prohibition on passive systems, such as the one Rodman proposed to install, was based primarily on

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<sup>21</sup> 10 Widener J. Pub. L. 109, 131 (2000): Widener Journal of Public Law.

<sup>22</sup> *Palos Verdes Home Ass’n v. Rodman*, 182 Cal. App. 3d 324, 324 -329, 1986.

<sup>23</sup> There are two main types of solar water heating systems: active and passive. Active systems have pumps and sensors to control the flow of water into and out of the collector. Passive systems have no moving parts and rely on existing water pressure from the home’s plumbing and convection to move water in and out of the collector.

aesthetics. The HOA argued that such collectors typically extend 18 inches above the roof surface, are painted black, and resemble an upside down bath tub.<sup>24</sup> If Rodman had followed HOA guidelines, he would have had to build the system into the roof so it did not sit above the roof. That modification would have added \$1,400 to \$1,800 to the cost of his system.

Rodman ignored the CC&Rs and had the system installed by a private company. The HOA notified Rodman that his system was not in compliance with their guidelines and filed a complaint against Rodman. A lower court ruled in favor of the HOA, requiring Rodman to remove his system. Rodman appealed, arguing the HOA restrictions violated California Civil Code Section 714. Rodman argued that the HOA's solar installation guidelines effectively restricted his solar energy system installation by significantly increasing the system's cost and decreasing its efficiency. The HOA responded by noting that Section 714 allows for reasonable restrictions as long as an alternative system of comparable cost could be installed.

The appeals court also ruled in favor of the HOA, arguing that an installer of a solar energy system cannot ignore HOA guidelines when those guidelines would only minimally increase installation costs. The court relied on expert testimony presented by the HOA. This testimony, given by an engineer, concluded that the active systems allowed by the HOA were comparable in cost and performance to the prohibited passive systems. The court reasoned that even though there would have been a significant increase in cost to install the passive system under HOA guidelines, Rodman could have installed an active system with no cost increase. As a result, the court concluded that the association's restrictions were "reasonable" and did not violate Section 714.

### **3.6.2 Garden Lakes Community Association v. Madigan**

*Garden Lakes Community Association v. Madigan*,<sup>25</sup> which was heard in an Arizona court, also seeks to define what can be considered a reasonable restriction on solar installations. In this case, the court ruled that the increased cost required to meet the HOA's CC&Rs was too restrictive. Because this decision was made in an Arizona court, California courts are not required to abide by its holding. In addition, the decision deals with Arizona's solar rights law, which uses different language than California law. We include it here as a reference.

The Garden Lakes Community Association sued resident Madigan for installing solar panels that did not meet the HOA's requirements. Under the CC&Rs, panels cannot be visible to the public and must be screened. In this instance, the solar panels were not screened. Arizona's solar rights law precludes HOAs from "effectively prohibiting" the installation of solar energy systems. Homeowners have the burden of proof to demonstrate that this has occurred.

The court ruled in favor of Madigan, deciding the additional costs from installing screening materials to hide the panels from public view would be high enough to dissuade the homeowner from installing the system.

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<sup>24</sup> *Palos Verdes Home Ass'n v. Rodman*, 182 Cal. App. 3d at 328.

<sup>25</sup> *Garden Lakes Community Ass'n v. Madigan* 204 Ariz. 238 (2003)

## 4 LOCAL GOVERNMENT'S ABILITY TO RESTRICT SOLAR INSTALLATIONS

In this section, we discuss how California Government Code Section 65850.5 and California Civil Code Section 714 (h) limit the ability of local governments to restrict solar energy systems by requiring use of a non-discretionary permitting process and by requiring local governments to certify compliance with section 714 prior to receiving state-sponsored solar energy incentives.<sup>26</sup>

### 4.1 NON-DISCRETIONARY PERMITTING OF SOLAR ENERGY SYSTEMS<sup>27</sup>

California Government Code Section 65850.5 establishes permitting standards and requires local governments to use a non-discretionary permitting process rather than a discretionary permitting process to review solar applications. This portion of the Act includes the following provisions.

#### 4.1.1 Solar as a Statewide Affair

Section 65850.5 (a) states that “implementing statewide standards to achieve the timely and cost effective installation of solar energy systems is not a municipal affair... but a matter of statewide concern.” This statement provides a basis to establish a statewide standard for permitting and discourage local governments from enacting varying and subjective permitting standards.<sup>28</sup>

#### 4.1.2 Legislative Intent Language

Section 65850.5 (a) expresses the state of California's intent to promote and encourage solar energy systems. It also states the legislature's intent to prohibit local governments from implementing burdensome permitting requirements and encourages public agencies to remove any barriers to solar energy installations. While codified in California statutes, this “legislative intent” language does not *expressly* prohibit any actions by local governments, rather it discourages certain actions; therefore, it is unclear how such language would be enforced by the courts. However this it does express the state's support and commitment to solar energy. This section of law includes the following policy statements.

- Discourage Local Governments from Placing Barriers on Solar installations – This section states that it is the intent of the legislature to prohibit local governments from adopting “ordinances that create unreasonable barriers to the installation of solar energy

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<sup>26</sup> Two bills added provisions to the Act that expand its reach to local governments: AB 1407, which was enacted in 2003, and SB 2473, which was enacted in 2004.

<sup>27</sup> The Solar Rights Act also created Section 17959.1 of the California Health and Safety Code, which is largely the same as the language from 65850.5. The substantial differences are that Section 17959.1 does not include a subsection on legislative intent or the appeals process. It also has a shortened version of 65850.5 (b).

<sup>28</sup> This statement might also have been included to require charter cities to comply with the provisions of this section of law. See 10 Pac Law Journal 478, 481 (1979).

systems, including but not limited to, design review for aesthetic purposes...” This subsection section seeks to prevent a local jurisdiction from restricting a solar installation based solely on discretionary factors such as aesthetics, but stops short of expressly prohibiting such restrictions. Instead the language is expressed as legislative intent; therefore, it is unclear how a court might enforce this section of law.<sup>29</sup>

- California Policy to Promote Solar Energy – This section also states that it is the policy of the state of California to “promote and encourage the use of solar energy systems and to limit obstacles to their use.”
- Encourage Local Governments to Remove Barriers to Solar Energy – This section states that it is the intent of the legislature that “local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of solar energy system by removing obstacles to, and minimizing costs of, permitting for such systems.”

#### 4.1.3 Permitting Standards

Section 65850.5 (b) and the remaining subsections establish permitting standards for solar energy systems based on health and safety concerns and equipment certification and performance standards. The Act requires cities and counties to “administratively” approve applications to install solar energy systems by issuing a building permit or other non-discretionary permit. Based on this section of law, local governments cannot use a discretionary permitting process to review solar energy applications. Instead, they must use a ministerial or administrative process that is based on the following criteria:

- Health and Safety – Local review of solar energy applications must be limited to “those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety.” The law defines “adverse impact upon the public health or safety” to mean “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.” To determine if an adverse impact exists, permitting officials must limit their review to local, state, and federal laws.
- Solar Water Heater Certification – A solar water heating system must be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agency.<sup>30</sup> Certification must apply to the entire solar energy system and installation process.

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<sup>29</sup> On interpretation is that this language does prevent cities and counties from enforcing ordinances that effectively prohibit or unreasonably restrict the use of solar energy systems other than for preservation or protection of public health and safety. This interpretation also presumes the statutory definition of unreasonable restrictions in California Civil Code Section 714 that applies to CC&Rs would also apply here to restrictions imposed by local governments. See 10 Pac Law Journal 478, 481 (1979).

<sup>30</sup> SRCC is a nonprofit third party supported by the United States Department of Energy. See [www.solar-rating.org](http://www.solar-rating.org).

- Photovoltaics Compliance with Applicable Codes – A photovoltaics, or solar electric, system must meet all “applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.”

#### **4.1.4 Adverse Impact on Health or Safety**

If a city or county finds that installing a solar energy system would result in an adverse impact on public health or safety, it can require a use permit. However, according to Section 65850.5(c), the municipality cannot deny an application for the use permit unless it “makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.” The law defines “a feasible method to satisfactorily mitigate or avoid the specific, adverse impact” as including, but is not limited to, any cost-effective method, condition, or mitigation imposed by a city or county on another similarly situated application in a prior successful application for a permit.<sup>31</sup> The law also provides that a city or county shall use its best efforts to ensure that the selected method, condition, or mitigation also meets the cost and efficiency criteria of Section 714(d)(1)(A) and (B). If the city or county places conditions on the application in order prevent the adverse impact on health and safety, those conditions must be at the lowest possible cost to the applicant.<sup>32</sup>

If the city or county denies the applicant an administrative (or ministerial) permit and/or a use permit, Section 65850.5 (d) of the California Government Code provides that the applicant can appeal the decision to the city or county planning commission.

#### **4.1.5 Definition of a Solar Energy System**

Section 65850.5 of the California Government Code uses the definition of a solar energy system included in Section 801.5 of the California Civil Code. It also includes the same language contained in Section 714(c)(1) regarding health and safety codes and certifications for solar water heating and photovoltaics systems that supplements the standard definition.

## **4.2 LOCAL GOVERNMENT COMPLIANCE WITH SECTION 714**

Section 714 (h) prohibits a public entity from receiving state-sponsored grant funding or loans for solar energy programs if it fails to certify its compliance with the requirements of Section 714. The language in this subsection is sufficiently ambiguous that it is unclear with which parts of Section 714 a public entity would have to comply to be eligible for state-sponsored incentives. Only one other subsection specifically mentions local governments: Section 714 (f), which exempts public entities from paying damages.

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<sup>31</sup> Cal. Gov’t Code § 65850.5 (g) (1) (Deering 2006)

<sup>32</sup> Cal. Gov’t Code § 65850.5 (e) (Deering 2006)

A possible interpretation of this requirement is that public entities would have to comply with Section 714 by not imposing restrictions that significantly affect the cost and efficiency of a solar energy system (e.g., restrictions imposed through the permitting process). It is also possible that public agencies are considered “approving entities” and would also have to comply with the provisions in Section 714 (e), which requires that a solar energy application be processed in the same manner used with similar applications and that the approving entity not willfully avoid or delay approval of the application. Section 714 (h)(2) also prohibits local public entities from exempting residents in its jurisdiction from the requirements of Section 714; therefore, a local government might also comply by demonstrating that it has not exempted any residents from the requirements of Section 714. In the absence of case law interpreting this specific subsection of the Act, it remains unclear which provisions in Section 714 a public entity would have to comply with to be eligible for state-sponsored solar energy incentives.

### 4.3 RELEVANT CASES

#### 4.3.1 Larsen v. Town of Corte Madera

In *Larsen v. Town of Corte Madera*, the court addressed a series of petitions by the plaintiff who sought to use the provisions of California Government Code Section 65850.5 and California Health & Safety Code Section 17959.1 to overturn the city’s denial of his petition to build a second story addition to his house, which he said would include a solar energy system. The plaintiff repeatedly sought approval for his roof renovation through the town’s design review process.

This case was originally heard in the U.S. District Court for the Northern District of California<sup>33</sup> and was reviewed by the 9<sup>th</sup> District Court in 1996.<sup>34</sup> Another case involving the same parties was brought before the U.S. District Court for the Northern District of California nine years later.<sup>35</sup> In each case, the plaintiff attempted to use laws intended to protect solar energy system owners from “unreasonable restrictions” to challenge local ordinances. Each case is summarized below.

#### *Larsen v. Town of Corte Madera, US District Court (1996)*<sup>36</sup>

This is the original case brought by Mr. Larsen. It interpreted whether California Government Code Section 65850.5 and 17959.1 could be applied in cases involving local ordinances. In 1996, the U.S. District Court for the Northern District of California ruled that these two sections of law were not applicable to local land use decisions and only applied to “ordinances passed by a local legislative body and does not apply to specific land use decisions made by a local

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<sup>33</sup> *Larsen v. Town of Corte Madera*, 1996 U.S. Dist. LEXIS 3936 (1996)

<sup>34</sup> *Larsen v. Town of Corte Madera*, 104 F.3d 365, 1996 U.S. App. LEXIS 37751 (9th Cir. Cal. 1996) This case is not-reported. It is not precedent, and no court is required to follow its ruling.

<sup>35</sup> *Larsen v. Town of Corte Madera*, 2005 U.S. Dist. LEXIS 30846

<sup>36</sup> *Larsen v. Town of Corte Madera*, 1996 U.S. Dist. LEXIS 3936

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government in its non-legislative capacities.”<sup>37</sup> After this ruling, the plaintiff appealed to the 9<sup>th</sup> Circuit Court, which reaffirmed the U.S. District Court’s ruling.

### Larsen v. Town of Corte Madera, (US District Court (2005))<sup>38</sup>

In this case, the plaintiff requested an exemption from the Town of Corte Madera’s Resolution 3331, which increased the Town’s design review fee from \$ 45 to \$ 785, plus \$ 100 per hour for time and costs. The plaintiff alleged that the increase in the town’s design review fee violated California Health & Safety Code Section 17959.1 and California Government Code sections 65860 and 65850.5.

The court ruled that the plaintiff’s arguments relating to the protection of solar energy systems “failed on their merits” for two reasons. First, the plaintiff was not entitled to the legal protections offered by the Solar Rights Act because his building failed to meet the definition of a solar energy system, provided for in California Civil Code Section 801.5. Second, the local resolution to raise the document review fee from \$45 to \$785 did not fall under the purview of California Government Code Section 65860.5 because the resolution “simply increased the design review fees” and did not target solar energy system installations. The court indicated that any local action must specifically target solar energy systems in order to fall under the provisions of the Act. Otherwise, the Act could be used indiscriminately to circumvent any local decision as long as a solar energy system was somehow involved.

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<sup>37</sup> *Id.*

<sup>38</sup> *Larsen v. Town of Corte Madera*, U.S. Dist. LEXIS 30846 (2005)

## 5 SOLAR EASEMENTS

An important factor when considering solar energy system is current and future access to unobstructed sunlight. Shade from vegetation growth, increased building heights as a result of remodeling, and construction of new buildings on adjacent parcels can affect the amount of sunlight reaching a solar energy system in the future. California's Solar Shade Control Act provides limited protection to solar energy system owners from shading caused by trees and shrubs on adjacent properties.<sup>39</sup> No similar law exists to prevent new or modified structures on an adjacent property from shading an existing solar energy system. However Section 801 and 801.5 of the California Civil Codes provides for solar easements, which allow a solar energy system owner access to sunlight across an adjacent parcel.

### 5.1 WHAT IS AN EASEMENT?

An easement is a right that (1) allows the holder to make some use of land that is not hers or (2) prohibits the owner of another property from using her land in some way that infringes on the rights of another property owner. There are two basic types of easements. An *affirmative easement* is a non-possessory right to use land in the possession of another. A *negative easement* restricts a property owner from using his property in some manner. A solar easement is generally considered a negative easement because it prevents a property owner from using his property in a manner that would prevent sunlight from reaching a solar energy system located on an adjacent property.

### 5.2 WHAT IS A SOLAR EASEMENT?

Because a landowner's property rights extend to the airspace directly above the land, she can grant access to the sunlight that transverses her land to a solar energy system owner on an adjacent parcel. California law calls this a solar easement.<sup>40</sup> In 1978, as part of the Act, California added the right to receive sunlight to its list of statutorily recognized easements.<sup>41</sup> California Civil Code Section 801.5 defines a "solar easement" as the "right of receiving sunlight across real property of another for use by any solar energy system." A solar easement must therefore be created for the sole purpose of accessing sunlight to create thermal or electric energy using a solar energy system, as defined by Section 801.5 of the California Civil Code. A person merely seeking to access sunlight could not seek protections under Sections 801 and 801.5.

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<sup>39</sup> Cal. Pub. Res. Code § 25982. (Deering 2006). See also S. Anders, C. Kuduk, K. Grigsby, California's Solar Shade Control Act: A Review of the Statutes and Relevant Cases, January 2007.

<sup>40</sup> Melvin M. Eisenstadt and Albert E. Utton, Solar Rights and Their Effect on Solar Heating and Cooling, 16 Nat Resources J. 363, 376 (1976)

<sup>41</sup> 10 Pac Law Journal 478, 478 (1979).

### 5.3 REQUIREMENTS TO ESTABLISH A SOLAR EASEMENT

Section 801.5 does not specifically state that a solar easement must be created in writing, but courts rulings have established that an easement must be written to be enforceable.<sup>42</sup> California Civil Code Section 801.5 specifies that “any instrument creating a solar easement” must at a minimum include the following:

- Description of the dimensions of the easement expressed in measurable terms,
- Restrictions that would impair or obstruct the passage of sunlight through the easement, and
- The terms or conditions, if any, under which the easement may be revised or terminated.

### 5.4 LIMITATIONS OF SOLAR EASEMENTS

Solar easements in theory can ensure access to unobstructed sunlight for a solar energy system; however, obtaining a solar easement can be difficult. Since a neighboring landowner must grant the easements to a solar energy system owner through a bilateral negotiation, the neighboring landowner can refuse to negotiate or to grant a solar easement. Further, easements can be burdensome and costly for individual homeowners to negotiate. Legal costs could exceed the cost savings of the system if neighbors are not willing to grant the easement for free.<sup>43</sup>

Depending on the density of houses in a neighborhood, a prospective solar energy system owner might have to negotiate with several neighbors to have access to sunlight. This is often the case in cities or when multiple houses on a slope block access to sunlight. A greater number of parties negotiating typically increases cost and reduces the chance an easement will be created.<sup>44</sup> And in certain cases a solar easement is just not possible. More established neighborhoods were built with no consideration for the need of solar access. Even if parties are willing to negotiate for a solar easement, because of the design of the neighborhood, it may be impossible to place solar collectors so that they can be used efficiently.<sup>45</sup>

### 5.5 CALIFORNIA GOVERNMENT CODE SECTION 66475.3

While easements can be difficult to negotiate on an individual basis, particularly in existing neighborhoods, California Government Code Section 66475.3 provides local governments the ability to require solar easements under certain circumstances in subdivision developments. Under this section of the law, legislative bodies of a city or county can by ordinance require certain subdivisions to create solar easements to ensure that each parcel has the right to

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<sup>42</sup> See *Zipperer v. County of Santa Clara*, 133 Cal. App. 4th 1013 (2005).

<sup>43</sup> Adrian J. Bradbrook, *Future Direction in Solar Access*, Winter, 19 *Envtl. L.* 167, 181.

<sup>44</sup> *Id.* at 180.

<sup>45</sup> *Id.* at 180.

receive sunlight across adjacent parcels or units in the subdivision. Such requirements can only be applied to subdivisions for which a tentative map is necessary. If a local jurisdiction chooses to adopt such an ordinance, it must specify the following:

- Standards for determining the exact dimensions and locations of easements.
- Restrictions on vegetation, buildings and other objects that might obstruct the passage of sunlight through the easement.
- Terms or conditions, if any, for terminating or revising the easement.
- That in establishing the easements consideration shall be given to feasibility, contour, configuration of the parcels.
- That an easement cannot reduce allowable densities or the percentage of a lot that can occupy buildings or structures under applicable planning or zoning requirements in force at the time the tentative map was filed.
- That the ordinance is not applicable to condominium projects that consist of the subdivision of airspace in an existing building where no new structures are added.

## 5.6 RELEVANT CASE: ZIPPERER V. COUNTY OF SANTA CLARA

*Zipperer v. County of Santa Clara*<sup>46</sup> is a case that specifically discusses the need for written documentation of a solar easement and establishes that all solar easements can not be implied but must be written.

The Zipperer family built a home with a “solar home central heating and cooling systems” in the mid-1980s.<sup>47</sup> The County of Santa Clara purchased the adjacent property in 1991, which had a small grove of trees on it. The County designated this land as a park reserve. The trees on this County parcel grew significantly after the County acquired the land and began to shade the Zipperer home, limiting their system’s performance. In 1997 the homeowners requested that the County trim or remove the offending trees. The County did not respond; in 2002 it passed an ordinance exempting itself from the Solar Shade Control Act.

In 2004, homeowners brought a suit against the County under several causes of action, including breach of contract stemming from an implicit right to a solar easement. The Zipperers complained that the County had implicitly entered into a contract to provide a solar easement by allowing them to construct a solar home according to County requirements. The family also contended that the County violated this solar easement by allowing the trees on the neighboring lot to grow to a height that shaded the family’s solar energy system.

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<sup>46</sup> *Zipperer v. County of Santa Clara*, 133 Cal. App. 4th 1013 (2005)

<sup>47</sup> The case did not specify what type of system the Zipperers installed in their home.

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The court ruled that written documentation is needed to create a solar easement in California, citing Section 801.5 of the California Civil Code as the “governing provision, which specifically requires a written agreement in order to create a solar easement.”<sup>48</sup> And, despite the fact that the plaintiff argued that other provisions provided exemptions to this written requirement, the court ruled that “[California Civil Code] Section 801.5 plainly is the more specific provision, since it sets forth with particularity the requirements for creation of a solar easement.”<sup>49</sup> Further, Section 801.5 requires a “description” of the easement, which implies it must be in writing.

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<sup>48</sup> *Zipperer v. County of Santa Clara*, 133 Cal. App. 4th 1013 (2005)

<sup>49</sup> *Id.* at 1017.

## 6 PRESERVING PASSIVE SOLAR OPPORUNITIES IN SUBDIVISION DEVELOPMENTS

The Solar Rights Act also sought to preserve the use of passive solar design opportunities in subdivision developments. This intention was codified in California Government Code Section 66473.1 and California Civil Code Section 66475.3.

### 6.1 CALIFORNIA GOVERNMENT CODE SECTION 66473.1

For subdivisions that require a tentative map, California Government Code Section 66473.1 requires that such subdivision designs must “provide, to the extent feasible, passive or natural heating or cooling opportunities in the subdivision.”<sup>50</sup>

Section 66473.1 (b) provides the following examples of natural or passive heating and cooling opportunities:

- Heating – Design of lot size and configuration to permit orientation of a structure in an east-west alignment for southern exposure.
- Cooling – Design of lot size and configuration to permit orientation of a structure to take advantage of shade or prevailing breezes.

This section of law also provides further guidance on passive heating or cooling opportunities. When considering such opportunities, developers and permitting agencies should take into account “local climate, contour, configuration of the parcel to be divided, and other design and improvement requirements.” Such consideration should not reduce “allowable densities or the percentage of a lot that may be occupied by a building or structure under applicable planning and zoning in effect at the time the tentative map is filed.”

California Government Code Section 66473.1(d) exempts certain condominiums from this requirement. Specifically, “condominium projects which consist of the subdivision of airspace in an existing building when no new structures are added” are exempt from the requirements of this section of law.

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<sup>50</sup> Cal. Govt Code § 66426. A tentative and final map shall be required for all subdivisions creating five or more parcels, five or more condominiums as defined in Section 783 of the Civil Code, a community apartment project containing five or more parcels, or for the conversion of a dwelling to a stock cooperative containing five or more dwelling units, except where any one of the following occurs: (a) The land before division contains less than five acres, each parcel created by the division abuts upon a maintained public street or highway, and no dedications or improvements are required by the legislative body. (b) Each parcel created by the division has a gross area of 20 acres or more and has an approved access to a maintained public street or highway. (c) The land consists of a parcel or parcels of land having approved access to a public street or highway, which comprises part of a tract of land zoned for industrial or commercial development, and which has the approval of the governing body as to street alignments and widths. (d) Each parcel created by the division has a gross area of not less than 40 acres or is not less than a quarter of a quarter section. (e) The land being subdivided is solely for the creation of an environmental subdivision pursuant to Section 66418.2. (f) A parcel map shall be required for those subdivisions described in subdivisions (a), (b), (c), (d), and (e).

## **7 CONCLUSION**

The Solar Rights Act creates certain rights for homeowners and businesses to access sunlight for the purpose of creating thermal or electric energy. It defines how an HOA and a local government can limit solar energy system installations; creates the ability of a property owner to seek a solar easement to ensure access to sunlight across adjacent properties; and allows governments to preserve passive solar heating and cooling opportunities by requiring developers to create easements in certain subdivisions.

We revisit this landmark law because its provisions are by and large not well understood by the general public and because California's solar market will grow significantly in the coming decade as a result of expanded financial incentives for solar energy systems. As more homes and businesses install solar energy systems and local governments pursue renewable energy solutions, the provisions of the Solar Rights Act likely will become more relevant and important.

This paper provides information and analysis on the Act to help parties understand the provisions of the law and to understand how the law affects them. Our research should help solar collector owners determine if they are eligible for protections under the law; homeowner associations determine if they are liable for an allegation brought under the law; and cities and counties understand their role in promoting solar energy systems and enforcing solar access provisions in the law.

## 8 APPENDIX

### 8.1 OTHER RESOURCES

For more information about and other interpretations of the act, the following law review articles and books are useful:

- Thomas Starrs, Les Nelson & Fred Zalzman, Bringing Solar Energy to the Planned Community: A Handbook on Rooftop Solar Systems and Private Land Use Restrictions. Available at [http://www.sdenergy.org/uploads/Final\\_CC&R\\_Handbook\\_1-01.pdf](http://www.sdenergy.org/uploads/Final_CC&R_Handbook_1-01.pdf)
- Robert L. Thayer, Solar Access: "It's the Law!" ASLA Environmental Quality Series, no. 34 January 1981 Institute of Governmental Affairs, Institute of Ecology, University of California, Davis. A handbook that details solar laws and their practical applicability in subdivision development.
- Melvin M. Eisenstadt & Albert E. Utton, Solar Rights and Their Effect on Solar Heating and Cooling, 16 Nat Resources J. 363 (1976). An article that examines the legal history and theories behind solar easements and right to light.
- Adrian J. Bradbrook, Future Direction in Solar Access, Winter, 19 Env'tl. L. 167, 1988. A law review article generally discussing solar access laws.
- Energy; Incentives for the Use of Solar Energy, 10 Pac Law Journal 478, 478 (1979). A review of the Solar Rights Act and Solar Shade Control Act legislation. It also discusses possible legal problems and enforcement of solar easements.
- Eugene J. Riordan, and Robert L. Hiller, Describing the Solar Space in a Solar Easement, 2 Solar L. Rep 299 (1980-1981). A law review article that discusses the technicalities to be agreed upon when forming a solar easement.
- Kenneth H. Burke, Bruce N. Lemons, Simplified Solar Easements, 2 Solar L. Rep 320 (1980-1981). A law review article that discusses solar easement laws.

## 9 FULL TEXT OF STATUTES

The Solar Rights Act comprises the following California sections of law: California Civil Code Sections 714 and 714.1, California Civil Code Section 801, California Civil Code Section 801.5, California Government Code Section 65850.5, California Health and Safety Code Section 17959.1, California Government Code Section 66475.3 and California Government Code Section 66473.1. These sections of law are reprinted here in their entirety.

### 9.1 CALIFORNIA CIVIL CODE SECTION 714

(a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.

(b) This section does not apply to provisions that impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

(c) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agencies. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.

(3) A solar energy system for producing electricity shall also meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(d) For the purposes of this section:

(1) (A) For solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, "significantly" means an amount exceeding 20 percent of the cost of the system or decreasing the efficiency of the solar energy system by an amount exceeding 20 percent, as originally specified and proposed.

(B) For photovoltaic systems that comply with state and federal law, "significantly" means an amount not to exceed two thousand dollars (\$2,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 20 percent as originally specified and proposed.

(2) "Solar energy system" has the same meaning as defined in paragraphs (1) and (2) of subdivision (a) of Section 801.5.

(e) Whenever approval is required for the installation or use of a solar energy system, the application for approval shall be processed and approved by the appropriate approving entity in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed.

(f) Any entity, other than a public entity, that willfully violates this section shall be liable to the applicant or other party for actual damages occasioned thereby, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

(g) In any action to enforce compliance with this section, the prevailing party shall be awarded reasonable attorney's fees.

(h) (1) A public entity that fails to comply with this section may not receive funds from a state-sponsored grant or loan program for solar energy. A public entity shall certify its compliance with the requirements of this section when applying for funds from a state-sponsored grant or loan program.

(2) A local public entity may not exempt residents in its jurisdiction from the requirements of this section.

## **9.2 CALIFORNIA CIVIL CODE SECTION 714.1**

Notwithstanding Section 714, any association, as defined in Section 1351, may impose reasonable provisions which:

(a) Restrict the installation of solar energy systems installed in common areas, as defined in Section 1351, to those systems approved by the association.

(b) Require the owner of a separate interest, as defined in Section 1351, to obtain the approval of the association for the installation of a solar energy system in a separate interest owned by another.

(c) Provide for the maintenance, repair, or replacement of roofs or other building components.

(d) Require installers of solar energy systems to indemnify or reimburse the association or its members for loss or damage caused by the installation, maintenance, or use of the solar energy system

## **9.3 CALIFORNIA CIVIL CODE SECTION 801**

The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements:

1. The right of pasture;
2. The right of fishing;
3. The right of taking game;
4. The right-of-way;
5. The right of taking water, wood, minerals, and other things;

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6. The right of transacting business upon land;
7. The right of conducting lawful sports upon land;
8. The right of receiving air, light, or heat from or over, or discharging the same upon or over land;
9. The right of receiving water from or discharging the same upon land;
10. The right of flooding land;
11. The right of having water flow without diminution or disturbance of any kind;
12. The right of using a wall as a party wall;
13. The right of receiving more than natural support from adjacent land or things affixed thereto;
14. The right of having the whole of a division fence maintained by a coterminous owner;
15. The right of having public conveyances stopped, or of stopping the same on land;
16. The right of a seat in church;
17. The right of burial;
18. The right of receiving sunlight upon or over land as specified in Section 801.5.

### **9.4 CALIFORNIA CIVIL CODE SECTION 801.5**

(a) The right of receiving sunlight as specified in subdivision 18 of Section 801 shall be referred to as a solar easement. "Solar easement" means the right of receiving sunlight across real property of another for any solar energy system.

As used in this section, "solar energy system" means either of the following:

- (1) Any 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.
- (2) Any 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.

(b) Any instrument creating a solar easement shall include, at a minimum, all of the following:

- (1) A description of the dimensions of the easement expressed in measurable terms, such as vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector, device, or structural design feature may not be obstructed, or a combination of these descriptions.

(2) The restrictions placed upon vegetation, structures, and other objects that would impair or obstruct the passage of sunlight through the easement.

(3) The terms or conditions, if any, under which the easement may be revised or terminated.

#### **9.5 CALIFORNIA GOVERNMENT CODE SECTION 65850.5**

(a) The implementation of consistent statewide standards to achieve the timely and cost-effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install solar energy systems. It is the policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use. It is the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of solar energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.

(b) A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. The requirements of local law shall be limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.

(c) A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

(d) The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city or county.

(e) Any conditions imposed on an application to install a solar energy system shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

(f) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agency. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.

(3) A solar energy system for producing electricity shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(g) The following definitions apply to this section:

(1) "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by a city or county on another similarly situated application in a prior successful application for a permit. A city or county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code.

(2) "Solar energy system" has the same meaning set forth in paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the Civil Code.

(3) A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

## **9.6 CALIFORNIA HEALTH & SAFETY CODE SECTION 17591**

(a) A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.

(b) A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. This finding shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

(c) Any conditions imposed on an application to install a solar energy system must be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

(d) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agency. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.

(3) A solar energy system for producing electricity shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical

and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(e) The following definitions apply to this section:

(1) "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost effective method, condition, or mitigation imposed by a city or county on another similarly situated application in a prior

successful application for a permit. A city or county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code.

(2) "Solar energy system" has the meaning set forth in paragraphs

(1) and (2) of subdivision (a) of Section 801.5 of the Civil Code.

(3) A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

### **9.7 CALIFORNIA GOVERNMENT CODE SECTION 66475.3**

For divisions of land for which a tentative map is required pursuant to Section 66426, the legislative body of a city or county may by ordinance require, as a condition of the approval of a tentative map, the dedication of easements for the purpose of assuring that each parcel or unit in the subdivision for which approval is sought shall have the right to receive sunlight across adjacent parcels or units in the subdivision for which approval is sought for any solar energy system, provided that such ordinance contains all of the following:

(1) Specifies the standards for determining the exact dimensions and locations of such easements.

(2) Specifies any restrictions on vegetation, buildings and other objects which would obstruct the passage of sunlight through the easement.

(3) Specifies the terms or conditions, if any, under which an easement may be revised or terminated.

(4) Specifies that in establishing such easements consideration shall be given to feasibility, contour, configuration of the parcel to be divided, and cost, and that such easements shall not result in reducing allowable densities or the percentage of a lot which may be occupied by a building or a structure under applicable planning and zoning in force at the time such tentative map is filed.

(5) Specifies that the ordinance is not applicable to condominium projects which consist of the subdivision of airspace in an existing building where no new structures are added.

For the purposes of this section, "solar energy systems" shall be defined as set forth in Section 801.5 of the Civil Code.

For purposes of this section, "feasibility" shall have the same meaning as set forth in Section 66473.1 for the term "feasible".

**9.8 CALIFORNIA GOVERNMENT CODE SECTION 66473.1**

(a) The design of a subdivision for which a tentative map is required pursuant to Section 66426 shall provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision.

(b) (1) Examples of passive or natural heating opportunities in subdivision design, include design of lot size and configuration to permit orientation of a structure in an east-west alignment for southern exposure.

(2) Examples of passive or natural cooling opportunities in subdivision design include design of lot size and configuration to permit orientation of a structure to take advantage of shade or prevailing breezes.

(c) In providing for future passive or natural heating or cooling opportunities in the design of a subdivision, consideration shall be given to local climate, to contour, to configuration of the parcel to be divided, and to other design and improvement requirements, and that provision shall not result in reducing allowable densities or the percentage of a lot that may be occupied by a building or structure under applicable planning and zoning in effect at the time the tentative map is filed.

(d) The requirements of this section do not apply to condominium projects which consist of the subdivision of airspace in an existing building when no new structures are added.

(e) For the purposes of this section, "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.