

California's Solar Shade Control 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.¹ 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 thirty years, we now examine this groundbreaking legislation for two reasons. First, consumers and businesses often misunderstand the provisions and application of these laws. Second, given the significant financial incentives available for solar technologies in California and the availability of property-assessed clean energy (“PACE”) financing programs,² it is likely that the number of operating solar energy systems will increase dramatically. As a result, it is reasonable to expect that the number of solar access questions in California will also increase.

This paper examines Sections 25980–25986 of the California Public Resources Code,³ known as the Solar Shade Control Act (hereinafter “the Act”), and reviews lawsuits brought under the Act. Through the Act, which was enacted in 1978⁴ and later amended in 2008,⁵ the Legislature sought to balance the desired effects of planting trees and shrubs for shade and visual appeal with the desire for increased use of solar energy devices, whose performance can be hindered by shade from nearby vegetation. The Act provides for specific and limited controls of trees and shrubs to protect the use of nearby solar energy systems. However, the extent to which the Act protects solar energy systems from vegetation-created shade is frequently misunderstood, and the subject of many disputes between neighboring property owners. Thus, this paper is intended to provide solar energy users and neighboring tree and shrub owners more information about the content and application of California’s solar laws.

1.1. Organization of the Paper

This paper is organized into the following sections:

1. Section 2 provides detailed information about the Act, including key provisions, and discusses how and to whom the Act applies.
2. Section 3 lists statutory criteria included in the Act to help solar energy system owners and tree owners⁶ determine whether the provisions of the Act apply.

¹ A solar energy tax credit was created in 1976 and codified in California Revenue and Taxation Code Section 23601 (repealed 1987).

² PACE programs allow local government entities to offer sustainable energy project loans to eligible property owners. Through the creation of financing districts, property owners can finance renewable onsite generation installations and energy efficiency improvements through a voluntary assessment on their property tax bills.

³ Unless otherwise indicated, all further references are to this code.

⁴ 1978 Cal. Stat. ch. 1366.

⁵ 2008 Cal. Stat. ch. 176.

⁶ The Solar Shade Control Act refers to both shrub owners and tree owners. In this paper, we use only the phrase “tree owner” for simplicity.

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3. Section 4 discusses California case law under the Act.
4. Section 5 follows with a general conclusion.
5. The Appendix, Section 6, provides other informative resources related to the Act, and the full text of the Act.

2. THE SOLAR SHADE CONTROL ACT

In concept, California's solar access laws spring from deep historical roots. The Romans, whose architecture was designed to take advantage of the sun's light and heat, likely were the first to codify protections of a homeowners' access to sunlight.⁷ Similarly, the doctrine of ancient lights protected landowners' access to sunlight as far back as seventeenth century Great Britain.⁸

California's interest in solar access laws began in 1973, when the United States faced an energy crisis on multiple fronts, including an inadequate electricity supply, climbing fuel prices, and an oil embargo. This crisis, in conjunction with a second that occurred in 1979-1980, increased consumer and government interest in resource conservation and alternative energy technologies. Consequently, in 1978 California passed, among other energy-related measures, legislation that provided financial incentives for consumers and businesses to invest in solar energy technologies, as well as Assembly Bill 2321, the Solar Shade Control Act.⁹ The Act was later amended in 2008 after the story of two Santa Clara County residents being criminally prosecuted and convicted under the Act for letting their redwoods cast shade on a neighbor's solar panels received national attention.¹⁰

The Act provides limited protection to solar energy system owners from shading caused by trees and shrubs on adjacent properties. Generally speaking, the Act prohibits a property owner from allowing trees or shrubs to shade an existing solar energy system installed on a neighboring property, provided the shading trees or shrubs were planted after the solar collecting device was installed.¹¹ The Act includes the following key provisions.

2.1. California's Policy Intent

Section 25980 provides a policy rationale for the Act: "It is the policy of the state to promote all feasible means of energy conservation and all feasible uses of alternative energy supply sources." This section also encourages the planting of trees and shrubs to create shade and moderate ambient air temperature.¹² But with passage of the Act, the Legislature recognized that circumstances may exist "in which the need for widespread use of alternative energy devices, such as solar collectors, requires specific and limited controls on trees and shrubs" when plant shading interferes with the use of solar systems on adjacent properties.¹³

⁷ Melvin M. Eisenstadt, *Access to Solar Energy: The Problem and its Current Status*, 22 Nat. Resources J. 21, 21 (1982).

⁸Id.

⁹ See 1978 Cal. Stat. ch. 1366 (enacted the Act); 1978 Cal. Stat. ch. 1154 (provided for solar easements and a solar tax credit).

¹⁰ See Felicity Barringer, *In California Neighbors' Dispute, Officials Find It's Time to Speak for the Trees*, N.Y. Times, July 23, 2008. See also 2008 Cal. Stat. ch. 176.

¹¹ Cal. Pub. Res. Code § 25982 (2009).

¹² § 25980.

¹³ Id.

2.2. Definition of “Solar Collector”

Section 25981(a) of the Act provides the statutory definition of a solar collector as “a fixed device, structure, or part of a device or structure . . . that is used primarily to transform solar energy into thermal, chemical, or electrical energy.” In 2008, the Act was amended to exclude from its protection any solar device or structure that is “designed and intended to offset more than the building’s electricity demand.”¹⁴ Under the Act, a solar collector is to be used as part of a system which makes use of solar energy for water heating, space heating or cooling, or power generation.¹⁵ Based on this statutory definition, the following common solar energy systems would be considered “solar collectors”:

- Photovoltaics.
- Solar water heating for use in buildings.
- Solar water heating for space heating.
- Solar pool heating.

The Act does not specify whether a residential structure designed to take advantage of the sun’s light and warmth, sometimes referred to as a passive solar home, would be defined as a solar collector by the Act. However, this question was answered in *Sher v. Leiderman*, in which the California Court of Appeal held that a passive solar home would not meet the definition of a “solar collector,” as defined in Section 25981.¹⁶ The court reasoned that statutory language defining a solar collector was not intended to accord protection to passive systems.¹⁷ Consequently, the *Sher* court held that exclusively passive solar homes are not protected from shading by the Solar Shade Control Act.¹⁸

Confusion over what systems are “active” or “passive” under the Act is compounded by system-specific terminology. For example, there are two main types of solar water heating systems: active and passive. Active systems use 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 through the collector. But, because both active and passive solar water heating systems are used primarily to convert solar energy into hot water, they are “solar collectors” under the Act, and entitled to protections from shading thereunder.

2.3. Installation Requirements

A solar collector is defined under Section 25981(a) as including only those devices or structures fixed on the roof of a building.¹⁹ However, if “a solar collector cannot be installed on the roof of [a] building receiving

¹⁴ § 25981(c).

¹⁵ § 25981(a).

¹⁶ *Sher v. Leiderman*, 181 Cal. App. 3d 867, 883 (1986).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ § 25981(a).

the energy due to inappropriate roofing material, slope of the roof, structural shading, or orientation of the building,” the Act promulgates that a solar collector can instead be installed on the ground.²⁰

Whether affixed to the roof or the ground, Section 25981(d) provides that the Act’s protections only apply to solar collectors, as defined above, that have been installed and comply with all local building and setback regulations. In relevant part, the Act specifies that solar collectors must “be set back not less than five feet from the property line, and not less than 10 feet above the ground. A collector may be less than 10 feet in height, only if, in addition to the five-foot set back, the solar collector is set back three times the amount lowered.”²¹ Thus, it is possible that a solar energy system that meets Section 25981’s definition of a solar collector may be installed in a manner that violates the Section 25981(d) setback requirements. In such a case, the solar energy system would not be protected by the provisions of the Act.

2.3.1. Optional Notice Prior to Installation

The Act’s amendment authorizes property owners contemplating solar collector installations to provide notice to affected neighbors of a proposed solar collector installation. While this is not required, Section 25982.1(a) states that the owner of a property where a solar collector is proposed to be installed may provide, no more than sixty days prior to its installation, a written notice by certified mail to the owners of the affected property using a specified form. The notice would state, in part, the property owner’s contact information, the specific location of where the solar collector will be installed on the property, and the proposed installation date of the solar collector.²² A copy of the specified form to be used is provided in Section 25982.1(a) and included here in Section 6.2 of the Appendix.

2.4. Threshold for Violation

Specifically, Section 25982 of the Act prohibits certain tree owners from planting or allowing a newly planted tree or shrub to cast a shadow over more than ten percent of a solar collector on a neighboring property at any one time during the hours of 10:00 a.m. and 2:00 p.m. However, the Act’s amendment exempts all trees and shrubs planted prior to the time of the installation of a solar collector.²³ In other words, the Act allows trees and shrubs to grow and shade solar panels without penalty as long as they predate the neighboring solar collector.

2.5. Who is Liable Under the Act?

Section 25983 provides that “the person who maintains or permits the tree or shrub to be maintained” can be liable if they violate the Act. Specifically, the Act states that those people who fail to “remove or alter the tree or shrub after receiving a written notice from the owner or agent of the affected solar collector requesting compliance with the requirements” of the Act can be held responsible for violations of the Act.²⁴

²⁰ § 25981(b).

²¹ § 25982.

²² § 25982.1(a).

²³ § 25984(a). The Act, however, does not explicitly define the phrase “time of installation.”

²⁴ § 25983.

2.6. Penalties for Violation

Prior to its amendment in 2008, violators of the Act could be criminally prosecuted and convicted of maintaining a public nuisance for allowing their trees to shade neighboring solar collectors.²⁵ California legislators acted to change this punishment after the story of two Santa Clara County residents being criminally convicted and ordered to prune their redwood trees sparked national debate.²⁶ After the Act's amendment, violations are no longer considered criminal.²⁷ Instead, Section 25983 provides that violations of Section 25982 now constitute a private nuisance, as defined in Section 3481 of the California Civil Code. It should be noted, however, that the 2008 amendment is not retroactive. In other words, any criminal convictions issued under the prior Act still stand.

2.7. Procedures for Seeking Protection Under the Act

Before the Act's amendment became effective January 1, 2009, solar collector owners seeking to enforce the Act had to have their claims prosecuted by a district attorney or other prosecutor. This entailed demonstrating to the prosecutor that a violation occurred, having the prosecutor deliver a thirty day abatement notice to the offending tree owner to cure the violation, and finally prosecuting the tree owner if the violation was not abated within thirty days.²⁸

Now that violations of the Act are no longer criminally prosecuted, the solar collector owner is solely responsible for enforcing the protections afforded by the Act. This is essentially a two step process. First, the affected solar collector owner must provide the tree owner written notice requesting compliance with the requirements of Section 25982.²⁹ Second, if the tree owner fails to comply with the written notice requesting compliance with the Act, the affected solar collector owner may bring a private nuisance suit under the Act against the neighboring tree owner to remedy the solar shading.³⁰

2.8. Exemptions for Certain Property Owners

The Act both explicitly and implicitly exempts certain property owners and certain trees and shrubs from the Act. Indeed, the solar collector owner's right to sunlight is not absolute.

2.8.1. Exemption for Existing Trees or Shrubs

Section 25984(a) states that the Act does not apply to trees or shrubs planted prior to the installation of a solar collector. Therefore, trees or shrubs planted before a solar collector is installed and later grow to cast a shadow over more than ten percent of the solar collector are completely exempt from the Act.

²⁵ Cal. Pub. Res. Code § 25983 (2007), *amended by* Cal. Pub. Res. Code § 25983 (2009).

²⁶ Felicity Barringer, *Trees Block Solar Panels, and a Feud Ends in Court*, N.Y. Times, April 7, 2008.

²⁷ § 25983 (2009).

²⁸ § 25983 (2007), *amended by* Cal. Pub. Res. Code § 25983 (2009).

²⁹ § 25983 (2009).

³⁰ *Id.*

2.8.2. Exemption for Timberland and Agricultural Land

Section 25984(b) of the Act specifically exempts all trees planted, grown, or harvested on timberland or on land devoted to the production of commercial agricultural crops.³¹

2.8.3. Exemption for Replacement Trees³²

Section 25984(c) provides an exemption for trees or shrubs planted to replace trees or shrubs that had been growing prior to the installation of a solar collector. Consequently, if a tree planted prior to the installation of the solar collector dies, or is removed for the protection of public health, safety, or the environment, and is subsequently replaced, the replacement tree is exempt from the Act, even if it shades the solar collector in a way that would otherwise violate the Act.³³

2.8.4. Exemption for Trees Subject to a Local Ordinance

Section 25984(d) exempts from the provisions of the Act any “tree or shrub that is subject to a city or country ordinance.”

2.8.5. Exemption for Municipalities

Section 25985(a) of the Act allows any city or unincorporated areas of a county to adopt an ordinance exempting itself from the Act.³⁴ This exemption applies only to trees planted and maintained by the municipality itself, and not to trees owned by private citizens. *Zipperer v. County of Santa Clara*, 133 Cal. App. 4th 1013 (2005), discussed in Section 4.3 of this paper, further discusses this exemption.

2.8.6. Exemption for Passive Systems

Section 25986 permits owners of passive solar systems that would cast a shadow over a solar collector on an adjacent property to seek an exemption from the Act. To grant an exemption, the court must find that the net energy savings from the passive solar system would exceed those of the shaded solar collector.³⁵

As discussed in Section 2.2 of this paper, the statute does not clearly define what solar energy systems or structures constitute a “passive or natural solar heating system or cooling system” and are exempt from the

³¹ § 4526 defines "Timberland" as:

[L]and, other than land owned by the federal government and land designated by the board as experimental forest land, which is available for, and capable of, growing a crop of trees of any commercial species used to produce lumber and other forest products, including Christmas trees. Commercial species shall be determined by the board on a district basis after consultation with the district committees and others.

³² § 25984 does not specifically define what constitutes a replacement tree.

³³ § 25984(c).

³⁴ § 25985(a) further states that “adoption of the ordinance shall not be subject to the California Environmental Quality Act.” The following California jurisdictions have exempted themselves from the Act: Butte County, City of Santee, City of Shasta Lake, Sacramento County, and Santa Clara County. Note that this is not an exhaustive list. Review local municipal codes or contact local officials to determine if a municipality has an exemption.

³⁵ § 25986.

Act's protections. A passive or natural solar heating or cooling system could be interpreted to mean a structure or building that is designed to use orientation, thermal mass, and shading for passive heating or cooling. Alternatively, a passive or natural solar heating or cooling system could be interpreted to mean deciduous trees that would block summer sunlight but permit winter sunlight to enter a building. Trees or shrubs used as passive or natural solar heating or cooling systems that shade an adjacent active solar system may be exempt from the provisions of the Act, provided the court finds that the passive system provides greater net energy savings than the adjacent solar collector.³⁶

³⁶ See generally John W. Gergacz, *Legal Aspects of Solar Energy: Statutory Approaches for Access to Sunlight*, 10 B.C. Envtl. Aff. L. Rev. 1, 20 (1982) (“tree and shrub placement may work passively with the design of a building to naturally heat or cool it, at least in part”).

3. HOW THE PROVISIONS AFFECT EACH PARTY

We have grouped the key provisions of the Act to demonstrate the threshold for the solar collector owner to demonstrate a violation under the Act, and the tree owner to determine if the alleged violation is actionable.

3.1. Solar Collector Owner

The following provides a listing of the statutory conditions necessary to demonstrate that a tree or shrub on an adjacent property is shading a solar collector in a way violates the Act. The solar collector owner must be able to answer the following questions in the affirmative to be protected by the Act:

- Was the tree or shrub in question planted after the solar collector's installation?
- Was the solar collector installed pursuant to Section 25981(d)'s setback requirements?
- Does the solar collector meet the statutory definition of a "solar collector" provided in Section 25981?
- Does the neighboring tree or shrub shade more than ten percent of the solar collector between 10:00 a.m. and 2:00 p.m. local standard time?

3.2. Tree Owner

The following provides a list of the statutory conditions necessary to determine if a property or tree owner is violating the Act. There may be no violation of the Act if the tree owner can answer in the negative to any of the following questions:

- Does the tree or shrub shade more than ten percent of the solar collector between 10:00 a.m. and 2:00 p.m. local standard time?
- Was the tree or shrub in question planted after the solar collector was installed?
- Did the solar collector owner, or their agent, provide written notice requesting compliance with the requirements of Section 25982?

Further, there may be no violation of the Act if the tree owner also can answer any of the following questions in the affirmative:

- Was the solar collector designed and intended to offset more than the building's electricity demand?
- Is the tree or shrub in question owned by a municipality that has passed an ordinance exempting itself from the Act?
- Is the tree or shrub subject to a city or county ordinance?
- Is the tree or shrub in question growing on land designated as timberland or agricultural land?
- Are the trees or shrubs in question part of a passive cooling and heating strategy in which net energy savings from the passive solar system are demonstrably greater than those of the shaded solar collector?

4. CASES RELATING TO THE ACT

Though relatively few cases have examined the Solar Shade Control Act since its enactment in 1978, the following cases provide insight into the Act's interpretation and legal argumentation:

- *California v. Bissett*, No. BB727255 (Cal. Sup. Ct. Santa Clara County Mar. 28, 2008).
- *Sher v. Leiderman*, 181 Cal. App. 3d 867 (1986).
- *Zipperer v. County of Santa Clara*, 133 Cal. App. 4th 1013 (2005).
- *Kucera v. Lizza*, 59 Cal. App. 4th 1141 (1997).
- *Prah v. Maretti*, 108 Wis. 2d 223 (1982).

4.1. California v. Bissett

The first and only prosecution under the Act occurred in *California v. Bissett*.³⁷ The story begins in 1996, when defendant Bissett and her husband Treanor introduced three redwood trees in their backyard.³⁸ Over the next five years, they planted five more redwoods.³⁹ In 2001, plaintiff neighbor Vargas installed solar panels on his roof and shortly thereafter asked the defendants to remove or prune the shading redwood trees.⁴⁰ After the defendants refused to comply, the District Attorney's Office commenced its prosecution against the defendants under the Act.⁴¹

Upon concluding that some of the redwood trees were in violation of the Act, Judge Kumli of the Santa Clara County Superior Court convicted Bissett and Treanor under the state's nuisance law.⁴² As part of the conviction, Judge Kumli ordered Bissett and Treanor to alter or remove any offending tree so that less than ten percent of Vargas' solar panels would be shaded.⁴³ After the conviction, and in order to comply with the court's order, the defendants eventually pruned one of the redwood tree's upper branches.⁴⁴

As a result of this case, and the widespread attention it received nationwide following the conviction, California State Senator Joe Simitian introduced Senate Bill 1399 (2008), an amendment to the Solar Shade Control Act.⁴⁵ The bill exempting all trees and shrubs planted prior to the installation of a solar panel was signed into law by Governor Arnold Schwarzenegger in July 2008 and became effective January 1, 2009.⁴⁶

³⁷ No. BB727255 (Cal. Sup. Ct. Santa Clara County Mar. 28, 2008).

³⁸ Barringer, *supra* note 26.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Bissett*, No. BB727255.

⁴³ *Id.*

⁴⁴ Barringer, *supra* note 10.

⁴⁵ Barringer, *supra* note 26.

⁴⁶ 2008 Cal. Stat. ch. 176.

4.2. Sher v. Leiderman

Sher v. Leiderman, briefly discussed in Section 2.2 of this paper, provides guidance as to whether a passive solar home meets the Act’s definition of a “solar collector.”⁴⁷

The Shers designed and constructed a house that takes advantage of winter heat and light.⁴⁸ The Shers installed south-facing windows, skylights, and a large south-facing concrete patio as passive design features to light and heat the home’s interior.⁴⁹ The home, which did not include any solar collectors as defined by the Act, was characterized by the trial court as a “passive solar” home, even though it had no thermal mass features to store and emit radiation of heat.⁵⁰

In the decades after the Shers built their house, trees on the adjoining property, owned by the Leidermans, matured and prevented winter sunlight from reaching the Sher’s home.⁵¹ Between December and February, the trees cast a shadow on much of the Sher’s home from 10:00 a.m. to 2:00 p.m.⁵² To restore sunlight to the Sher’s home, some trimming, topping, and removal of the Leiderman’s trees would have been necessary.⁵³ As required by then-existing Section 25983, the Shers contacted the Santa Clara County District Attorney, who determined that the Solar Shade Control Act did not apply to the Sher’s situation and did not offer a notice to abate to the Leidermans.⁵⁴

The Shers then sued their neighbors on three causes of action: (1) private nuisance; (2) public nuisance under the California Solar Shade Control Act; and (3) negligent infliction of emotional distress.⁵⁵ We focus primarily on the application and interpretation of the Solar Shade Control Act in this case. The court noted in its ruling that at the time no case law had developed regarding the Act, so the question of whether a passive solar home is eligible for the protections afforded solar collectors under the Act was one of first impression.⁵⁶

The California Court of Appeal ruled against the Shers, holding that a passive solar home designed to collect solar heat does not meet the statutory definition of “solar collectors” contained in Section 25981.⁵⁷ The court also held that blockage of sunlight in and of itself does not constitute a private nuisance.⁵⁸

⁴⁷ *Sher v. Leiderman*, 181 Cal. App. 3d 867, 881–83 (1986).

⁴⁸ *Id.* at 873.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 874.

⁵² *Id.*

⁵³ *Id.* at 875.

⁵⁴ *Id.* at 880.

⁵⁵ *Id.* at 875.

⁵⁶ *Id.* at 881 (A case of first impression is the first time such a specific legal question on that specific topic has been considered by the court).

⁵⁷ *Id.* at 883.

⁵⁸ *Id.* at 879–80.

In its ruling, the court referred to then-existing Section 25981, which defined “solar collector” as “a fixed device, structure, or part of a device or structure, which is used primarily to transform solar energy into thermal, chemical, or electrical energy.”⁵⁹ The Act further provided that a “solar collector shall be used as part of a system which makes use of solar energy for any or all of the following purposes: (1) water heating, (2) space heating or cooling, and (3) power generation.”⁶⁰

The Shers argued that their passive solar home is a “structure, or part of a...structure... used as part of a system which makes use of solar energy,” thereby meeting the definition of “solar collector” as promulgated under the Act.⁶¹ The court disagreed, stating that the key word in the definition of a solar collector under the Act is “primarily,” rather than “structure.” Although the Sher’s south-facing windows were part of a strategy to passively heat and cool their home, the court did not agree that the primary function of their windows were to heat their home, since the windows also allowed light into the home.⁶²

The court further held that permitting the Sher’s home to be considered a solar collector would create a definitional problem whereby every home that has a south facing window would be considered a solar collector, regardless of any intention to passively heat or cool their home, and therefore be eligible to receive the protections of the Act.⁶³ The court additionally referred to the Act’s setback restrictions to support its conclusion that the Sher’s home was not a solar collector.⁶⁴ The court reasoned that the setback restrictions pertain to a solar collector that would be installed on a home or building and not to the home itself.⁶⁵ Lastly, the court noted that if the Legislature had intended to apply the rights and remedies of the Act to buildings, it would have indicated its intent through explicit statutory language.⁶⁶

4.3. Zipperer v. County of Santa Clara

Zipperer v. County of Santa Clara examines the municipal exemption contained in Section 25985 of the Act.⁶⁷ The central question in this case was whether a municipality could exempt itself from the Solar Shade Control Act after the alleged violation of the Act.⁶⁸

The Zipperers built a home with solar heating and cooling systems in the mid-1980s.⁶⁹ The County of Santa Clara purchased an adjacent property in 1991, which contained a small grove of trees, and designated this

⁵⁹ *Id.* at 881.

⁶⁰ Cal. Pub. Res. Code § 25981 (1986), *amended by* Cal. Pub. Res. Code § 25981 (2009).

⁶¹ *Leiderman*, 181 Cal. App. 3d at 881.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 882–83.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ 133 Cal. App. 4th 1013 (2005).

⁶⁸ *Id.* at 1023–25.

⁶⁹ *Id.* at 1018.

land as a park reserve.⁷⁰ After the County acquired the land, the trees on this parcel grew significantly and began to shade the Zipperer's home, hindering the performance of their solar system.⁷¹ In 1997, the Zipperers requested that the County trim or remove the offending trees.⁷² The County did not respond to this request, but in 2002 passed an ordinance exempting itself from the Act.⁷³ In 2004, the Zipperers brought suit against the County seeking relief under the Act.⁷⁴ The Zipperers alleged that the County violated the Act well before it exempted itself, and that allowing the exemption to retroactively apply would allow the County to escape liability for preexisting violations.⁷⁵

The court found in the County's favor, holding that Santa Clara County may, without limitation, exempt itself from the Act.⁷⁶ Because the Legislature expressly empowered cities and counties to exempt themselves from the Act, the *Zipperer* court held that the County's validly enacted ordinance extinguished any statutory Solar Shade Control Act claim.⁷⁷

4.4. **Kucera v. Lizza**

Kucera v. Lizza concerns the validity of a **town ordinance protecting property views and sunlight against unreasonable obstruction by tree growth.**⁷⁸ One of the issues addressed by the California Court of Appeal was whether the Solar Shade Control Act preempts separate local ordinances regarding blockage of sunlight not related to solar collectors.⁷⁹

A Town of Tiburon ordinance, entitled "View and Sunlight Obstruction from Trees," prohibited trees from blocking neighboring homeowners' preexisting views and access to sunlight.⁸⁰ When neighboring trees began to obstruct the Kucera's views of San Francisco Bay, the Kuceras brought suit against Lizza, the neighboring tree owner, for violating the town's ordinance. Lizza argued, in part, that the Act preempted the local ordinance due to the perceived conflict between the state law and the Town of Tiburon ordinance.⁸¹

The *Kucera* court disagreed with Lizza, holding that the Act does not preempt local ordinances restricting the growth of trees from unreasonably blocking views and sunlight.⁸² The court reasoned that the town's

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 1022, note 4.

⁷⁴ *Id.*

⁷⁵ *Id.* at 1022.

⁷⁶ *Id.* at 1023–25.

⁷⁷ *Id.* at 1025.

⁷⁸ 59 Cal. App. 4th 1141, 1143 (1997).

⁷⁹ *Id.* at 1151–53.

⁸⁰ *Id.* at 1144.

⁸¹ *Id.* at 1152–53.

⁸² *Id.* at 1153.

ordinance was not preempted by the Act partly because Lizza identified “no provisions of Tiburon’s ordinance as inconsistent with the state legislation.”⁸³ Therefore, the court’s ruling in *Kucera* holds that local ordinances principally concerned with preserving views and sunlight will not be preempted by the Act.⁸⁴

4.5. Prah v. Maretti

Prah v. Maretti is a Wisconsin Supreme Court case in which a homeowner sued a neighbor whose construction plans would block sunlight needed for the homeowner’s solar collector.⁸⁵ At the time, Wisconsin had no state law protecting access to sunlight, so the homeowners claimed that blocking sunlight from reaching their solar collector constituted a private nuisance.⁸⁶

In this case, the circuit court ruled in favor of the neighbor on a summary judgment motion.⁸⁷ The circuit court held that private nuisance law does not apply to blockage of sunlight, and therefore there is no claim upon which the homeowners can seek relief.

The Wisconsin Supreme Court reversed the circuit court’s ruling and determined that the case should proceed to trial on the merits.⁸⁸ The Wisconsin Supreme Court posited that private nuisance law might apply to obstruction of sunlight for solar energy purposes, and therefore the homeowners stated a claim for which relief could be granted.⁸⁹ The case was remanded back to the circuit court.⁹⁰

In reversing the circuit court ruling, the Wisconsin Supreme Court detailed arguments for why blockage of sunlight could constitute a private nuisance. The court noted that this question “requires the court to make ‘a comparative evaluation of conflicting interests and to weigh the gravity of the harm to the plaintiff against the utility of the defendant’s conduct.’”⁹¹ The *Prah* court also examined three policy reasons explaining why other jurisdictions have traditionally been unwilling to apply the broad power of private nuisance to cases involving solar access.⁹² The first of these is the longstanding right of landowners to use property as they wish as long as they did not cause physical damage to a neighbor.⁹³ Secondly, sunlight has historically only

⁸³ *Id.*

⁸⁴ See *id.*

⁸⁵ 108 Wis. 2d 223, 224–25 (1982). Note that because *Prah* is not a California case, California courts are not required to abide by its holding.

⁸⁶ *Id.* at 229. Shortly after *Prah* was decided, Wisconsin passed legislation similar to California’s Solar Shade Control Act, and which provided two remedies for solar shading claims. See former Wis. Stat. § 66.031 (now Wis. Stat. § 66.0401) and former Wis. Stat. § 66.032 (now Wis. Stat. § 66.0403).

⁸⁷ *Id.* at 225.

⁸⁸ *Id.*

⁸⁹ *Id.* at 240.

⁹⁰ *Id.* at 243.

⁹¹ *Id.* at 230 (citation omitted).

⁹² *Id.* at 235.

⁹³ *Id.*

been valued for aesthetic enjoyment or for illumination, not as a means of power generation.⁹⁴ Third, society has a strong interest in not restricting or impeding land development.⁹⁵ The Wisconsin Supreme Court argued that all three of these policy concerns are no longer fully accepted or relevant, especially considering the increase in regulation and development of the use of sun for energy purposes.⁹⁶

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* at 236–37.

5. CONCLUSION

California's Solar Shade Control Act provides limited protections for solar collector owners whose devices are shaded by neighboring trees and shrubs. These protections are limited because the Act contains specific requirements that determine which solar collectors are eligible for protections under the Act, including the function of the collector, the manner in which it was installed on the building, and the date the offending tree or shrub was planted.

We revisit this landmark law because its provisions are generally not well understood and California's solar market will grow significantly in the coming decade as a result of expanded financial incentives for solar energy systems. 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 Act, help tree owners determine if they are liable for an allegation brought under the Act, and help municipalities understand their ability to be exempt from the provisions in the Act.

6. APPENDIX

6.1. Legal Journals and Law Review Articles

For information about the Act's possible conflicts with the U.S. Constitution, and other interpretations of the Act, the following law review articles and books are a useful resource.⁹⁷

- Sara C. Bronin, *Solar Rights*, 89 B.U.L. Rev. 1217 (2009). This article outlines the various means of protecting the right to solar access and devotes some discussion to the Act.
- Melvin M. Eisenstadt, *Access to Solar Energy: The Problem and its Current Status*, 22 Nat. Resources J. 21 (1982). This general article on solar energy devotes a few pages to specific interpretations of the Act.
- *Energy; Solar Shade Control*, 10 Pac. L.J. 484 (1979). This article provides an overview of the Act including unresolved interpretational questions.
- John. W. Gergacz, *Legal Aspects of Solar Energy: Statutory Approaches for Access to Sunlight*, 10 B.C. Envtl. Aff. L. Rev., 1 (1982–1983). This article discusses the possibility that the Act violates the U.S. Constitution and other specifics of the Act.
- Stephen B. Johnson, *State Approaches to Solar Legislation: A Survey*, 1 Solar L. Rep. 55 (1979). This article also devotes a few pages to discuss various interpretations of the Act.
- Stephen M. Murphy, *Comprehensive Solar Access Regulation in California as a Taking of Property: A Future Battleground for an Old Conflict?*, 15 U.S.F. L. Rev. 537 (1980–1981). This article also addresses the Act's potential conflicts with the U.S. Constitution.
- Robert L. Thayer, *Solar Access, "It's The Law!": A Manual on California's Solar Access Laws for Planners, Designers, Developers, and Community Officials* 9–13, (1981). This is a handbook on California's solar laws, discussing applications and interpretations of the Act.

⁹⁷ This is not intended to be an exhaustive list of resources available on the Solar Shade Control Act.

6.2. Full Text of Solar Shade Control Act

The Solar Shade Control Act is contained in the California Public Resources Code Sections 25980–25986. The full text of the statutes is provided below.⁹⁸

25980. This chapter shall be known and may be cited as the Solar Shade Control Act. It is the policy of the state to promote all feasible means of energy conservation and all feasible uses of alternative energy supply sources. In particular, the state encourages the planting and maintenance of trees and shrubs to create shading, moderate outdoor temperatures, and provide various economic and aesthetic benefits. However, there are certain situations in which the need for widespread use of alternative energy devices, such as solar collectors, requires specific and limited controls on trees and shrubs.

25981. (a) As used in this chapter, "solar collector" means a fixed device, structure, or part of a device or structure, on the roof of a building, that is used primarily to transform solar energy into thermal, chemical, or electrical energy. The solar collector shall be used as part of a system that makes use of solar energy for any or all of the following purposes:

- (1) Water heating.
- (2) Space heating or cooling.
- (3) Power generation.

(b) Notwithstanding subdivision (a), for the purpose of this chapter, "solar collector" includes a fixed device, structure, or part of a device or structure that is used primarily to transform solar energy into thermal, chemical, or electrical energy and that is installed on the ground because a solar collector cannot be installed on the roof of the building receiving the energy due to inappropriate roofing material, slope of the roof, structural shading, or orientation of the building.

(c) For the purposes of this chapter, "solar collector" does not include a solar collector that is designed and intended to offset more than the building's electricity demand.

(d) For purposes of this chapter, the location of a solar collector is required to comply with the local building and setback regulations, and to be set back not less than five feet from the property line, and not less than 10 feet above the ground. A solar collector may be less than 10 feet in height only if, in addition to the five-foot setback, the solar collector is set back three times the amount lowered.

25982. After the installation of a solar collector, a person owning or in control of another property shall not allow a tree or shrub to be placed or, if placed, to grow on that property so as to cast a shadow greater than 10 percent of the collector absorption area upon that solar collector surface at any one time between the hours of 10 a.m. and 2 p.m., local standard time.

⁹⁸ All current California laws can be found at <http://www.leginfo.ca.gov>.

25982.1. (a) An owner of a building where a solar collector is proposed to be installed may provide written notice by certified mail to a person owning property that may be affected by the requirements of this chapter prior to the installation of the solar collector. If a notice is mailed, the notice shall be mailed no more than 60 days prior to installation of the solar collector and shall read as follows:

SOLAR SHADE CONTROL NOTICE

Under the Solar Shade Control Act (California Public Resources Code Sec. 25980 et seq.) a tree or shrub cannot cast a shadow greater than 10 percent of a solar collector absorption area upon that solar collector surface at any one time between the hours of 10 a.m. and 2 p.m. local standard time if the tree or shrub is placed after installation of a solar collector. The owner of the building where a solar collector is proposed to be installed is providing this written notice to persons owning property that may be affected by the requirements of the act no more than 60 days prior to the installation of a solar collector. The building owner is providing the following information:

Name and address of building owner:

Telephone number of building owner:

Address of building and specific location where a solar collector will be installed (including street number and name, city/county, ZIP Code, and assessor's book, page, and parcel number):

Installation date of solar collector:

Building Owner, Date

(b) If the owner of the building where a solar collector is proposed to be installed provided the notice pursuant to subdivision (a), and the installation date is later than the date specified in that notice, the later date shall be specified in a subsequent notice to persons receiving the initial notice.

(c) (1) A transferor of the building where the solar collector is installed may provide a record of persons receiving the notice pursuant to subdivision (a) to a transferee of the building.

(2) A transferor receiving a notice pursuant to subdivision (a) may provide the notice to a transferee of the property.

25983. A tree or shrub that is maintained in violation of § 25982 is a private nuisance, as defined in Section 3481 of the Civil Code, if the person who maintains or permits the tree or shrub to be maintained fails to remove or alter the tree or shrub after receiving a written notice from the owner or agent of the affected solar collector requesting compliance with the requirements of § 25982.

25984. This chapter does not apply to any of the following:

(a) A tree or shrub planted prior to the installation of a solar collector.

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(b) A tree planted, grown, or harvested on timberland as defined in Section 4526 or on land devoted to the production of commercial agricultural crops.

(c) The replacement of a tree or shrub that had been growing prior to the installation of a solar collector and that, subsequent to the installation of the solar collector, dies, or is removed for the protection of public health, safety, or the environment.

(d) A tree or shrub that is subject to a city or county ordinance.

25985. (a) A city, or for unincorporated areas, a county, may adopt, by majority vote of the governing body, an ordinance exempting their jurisdiction from the provisions of this chapter. The adoption of the ordinance shall not be subject to the California Environmental Quality Act (commencing with Section 21000).

(b) Notwithstanding the requirements of this chapter, a city or a county ordinance specifying requirements for tree preservation or solar shade control shall govern within the jurisdiction of the city or county that adopted the ordinance.

25986. Any person who plans a passive or natural solar heating system or cooling system or heating and cooling system which would impact on an adjacent active solar system may seek equitable relief in a court of competent jurisdiction to exempt such system from the provisions of this chapter. The court may grant such an exemption based on a finding that the passive or natural system would provide a demonstrably greater net energy savings than the active system which would be impacted.