

TOWN COUNCIL STAFF REPORT
(March 9, 2010)

TO: Town Council
FROM: Town Attorney
SUBJECT: Solar Collector Ordinance

RECOMMENDATION / DISCUSSION

After further discussion at Town Council's direction, the Planning Commission is recommending that Town Council adopt the Commission's proposed ordinance without the amendments Town Council made at its last meeting. A copy of the February 16, 2010 Planning Commission staff report is attached for your review. You are also being provided with a summary of the "California Solar Access Laws" along with copies of the actual State statutes that are referenced in the summary.

The Planning Commission's discussion largely focused on the height and setback limitations. The "Additional Issues" contained in the February 16, 2010 report will be dealt with in the future. Planning Commission did express thoughts concerning those. Planning Commission also asked a number of questions concerning the scope of State law. Because State law focuses on different sub-issues, it is easy to misinterpret what it really says. For example, one statute preempts local rule while another does not. It is clear that state law encourages the use of solar collectors and prevents localities from adopting ordinances with "unreasonable barriers to . . . installation . . . including . . . design review for aesthetic purposes." (Cal. Gov't. Code § 65850.5(a)).

The Planning Commission felt that limiting the height of solar collectors to six (6) feet when other structures are allowed to be fifteen (15) feet high would violate the intent (and probably the letter) of state law. It also felt that limiting the height to six (6) feet would make it confusing to apply the location requirements contained in the Solar Shade Act which key off of a ten (10) foot height marker. See Cal. Pub. Res. Code § 25981(d).

As far as providing that solar collectors can only be located within a setback if there is a neighboring fence, Planning Commission felt that this could prevent a solar collector from being placed in a necessary location in violation of State law. It also felt that hinging a zoning requirement on the existence of a neighboring fence was problematic. Also, in smaller yards there tend to be fences so the issue is covered.

The upshot of the Planning Commission deliberations was that the Commission continues to feel comfortable making its initial recommendation. Obviously, we can amend the ordinance as many times as we want to, in order to address various issues as they arise.

PLANNING COMMISSION STAFF REPORT
February 16, 2010

RECOMMENDATION

Read this in preparation for further discussion of the solar collector ordinance.

DISCUSSION

At Town Council's last meeting, it discussed the Planning Commission's proposed solar collector ordinance dealing with setback and height requirements. Two things occurred: (1) Council introduced for first reading an amended version of the Planning Commission's proposed ordinance, subject to further input from the Planning Commission and an analysis of whether its revisions violate State law; and (2) Council directed staff to review the possibility of addressing several specific issues concerning solar collectors outside of this ordinance in the future.

Council Amendments

Recall that the Planning Commission's ordinance provides three things: (1) ground mounted solar arrays less than six feet tall can be placed anywhere on a residential lot; (2) those which are six feet or more must meet the setback requirements in the applicable zoning table; and (3) ground mounted solar arrays may not exceed fifteen feet in height.

Council has changed the height limit from fifteen to six feet, and has provided that solar collectors are only allowed to be placed anywhere on the lot if there is a six foot solid fence in place.

Staff will review State law implications prior to your next meeting. You are being asked to give Council your thoughts concerning these changes.

Additional Issues

Council also asked that we address the following issues in the future: (1) explicitly provide that solar arrays are included in the Town's impermeable surface calculations; (2) provide that homes should be oriented to allow roof-top solar arrays (see sustainable building codes); and (3) explicitly provide that solar arrays on residentially zoned property should be incidental to the primary use as a residence.

Your input on these issues will be solicited as well during discussion of this agenda item.

TOWN OF LOOMIS

ORDINANCE NO. 246

AN ORDINANCE AMENDING THE MUNICIPAL CODE BY ADDING SETBACK AND HEIGHT REQUIREMENTS FOR GROUND MOUNTED SOLAR COLLECTORS

WHEREAS, the Town of Loomis wishes to add setback and height requirements for ground mounted solar collectors to the Loomis Municipal Code in order to lessen the impacts of such devices on adjacent neighbors, among other things;

NOW, THEREFORE, the Town Council of the Town of Loomis ordains as follows:

Section 1. Section 13.30.110G.6 is hereby added to the Loomis Municipal Code to read in its entirety as follows:

“6. Ground mounted solar collectors in residential zones. All ground mounted solar collectors in residential zones shall comply with the setback requirements of this section.

a. **Definition.** For purposes of this section, a “ground mounted solar collector” means 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 is installed on the ground.

b. **Setbacks.**

(1) Ground mounted solar collectors which are less than six (6) feet in height may be located anywhere on a residential lot.

(2) Ground mounted solar collectors which are six (6) feet or more in height, shall comply with the applicable front, side-interior, side-corner and rear setback requirements set out in Table 2-3 and 2-4 of Section 13.24.040.

Notes:

- (i) In addition to complying with the above setback requirements, one should refer to the State law entitled “Solar Shade Control Act” (Public Resources Code §§ 25980 et al.) which contains other setback & additional requirements that must be complied with in order to protect your solar collector to the extent allowed from shade caused by neighbors’ landscaping & trees.
- (ii) On a related note, the maximum allowable height of a ground mounted solar collector is set out in § 13.30.050 D.4.”

Section 2. Section 13.30.050 D.4.is hereby added to the Loomis Municipal Code to read in its entirety as follows:

- “4. The maximum height for a “ground mounted solar collector” as that term is defined in Section 13.30.110 G.6. shall be fifteen (15) feet, measured from the natural pre-development grade, to the top of the array.”

Section 3. The Town Clerk shall cause this Ordinance to be published as required by law in the Loomis News, a newspaper of general circulation, and posted at three (3) locations within fifteen (15) days of the certification to be entered in the Book of Ordinances of the Town.

The foregoing Ordinance was introduced at a regular meeting of the Council of the Town of Loomis duly held on the 9th day of November, 2010, and was approved and enacted at a duly held regular meeting of the Council held on the 9th day of March, 2010, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

APPROVED AS TO FORM:

Town Clerk

Town Attorney

California's Solar Access Laws

By Kurt Newick & Andy Black

California has several laws designed to encourage solar access and prevent restrictions on solar energy systems. These laws address municipal restrictions, residential landscaping, and homeowner association restrictions.

- Solar Rights Act amended in 2004 by AB 2473 (Civil code section 714, Health and Safety Code section 17959.1, Government code section 65850.5): Prohibits local governments from restricting the installation of a solar energy system based on aesthetics.
- Solar Rights Act amended in 2003 by AB 1407 (Civil Code section 714): Requires that public entities do not place unreasonable restrictions on the procurement of solar energy systems when applying for state-sponsored grants and loans.
- Solar Shade Control Act of 1979 (Public Resources Code sections 25980-25986): addresses shade from neighboring vegetation.
- Solar Rights Act of 1978 (Civil Code section 714): Homeowner associations must not place unreasonable restrictions on homeowners wishing to install solar energy systems.
- Solar Easement Law (Civil code sections 801 & 801.5): Provides the opportunity to protect future solar access via a negotiated easement with neighboring property owners.
- Many cities and counties have local solar access laws and guidelines. For regional specific information on these and financial incentives, including tax credits, that make solar power more affordable, go to www.dsireusa.org.

Solar Rights Act amended by AB 2473

This law became effective on 1/1/2005. It is the intent of this law 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." Local authorities shall approve applications through permit issuance and can only restrict solar installations based on health and safety reasons. It is thus intended to encourage installations by removing obstacles and minimizing permitting costs. Additional key changes limit aesthetic solar restrictions to those that cost less than \$2,000 and limits a building official's review of solar installations to only those items that relate to specific health and safety requirements or local, state and federal law.

Solar Rights Act modified by AB 1407

This law prohibits public entities from receiving state grant funding or loans for solar energy systems if it places unreasonable restrictions on their installations. This law specifically

applies to cities, counties and other public entities and thus does not directly affect private parties.

Solar Shade Control Act of 1979

This act prohibits shading of solar collectors that result from tree growth occurring after a solar collector is installed. It applies to solar systems for electric generation, water heating and space heating or cooling.

It states that no plant may be placed or allowed to grow such that it shades a collector more than 10% from 10 am to 2 pm. It does not apply to plants already in place or replacement of plants that die after the installation of the solar collectors. It does require trees already in place, but not yet shading the system, to be trimmed and maintained so that they do not impact the system.

The solar collectors are required to meet building setback requirements, or a minimum of 5 feet from the property line and 10 feet from the ground. Further setback is required if the collector is lower than 10 feet.

A city or county may adopt an ordinance exempting its jurisdiction from the provisions of the act. Alternatively, some cities have passed ordinances that are more favorable to solar. In some cases, they require existing vegetation to be cleared to allow good solar access in at least some suitable place on a property.

Solar Rights Act of 1978

This law relates to homeowner associations. This code states that Community Covenants and Restrictions (CC&Rs) that prohibit or unreasonably restrict the installation or use of solar energy systems are void and unenforceable. It does provide for reasonable restrictions that don't significantly (more than 20%) increase the cost or reduce the output of a solar system from the original design.

Reasonable restrictions include 1) that the owner of the system take responsibility for roof maintenance, repair and replacement and 2) that the installers indemnify the association for any damage caused by the installation, maintenance, or use of the solar energy system.

Any homeowner covered by CC&Rs who has a roof immediately above his or her living space can use the roof for a solar system. A strategy to get maximum flexibility and output from the final "compromise" design is to propose a system designed to optimize solar production, at minimum cost, not considering other factors. Then, through the necessary negotiation stages to adjust for aesthetics, a final design might be achieved that isn't far from the owners original intention.

There may be significant costs associated with taking on responsibility for the roof maintenance that should be discussed and negotiated before project advancement. It may be possible to have a portion of association dues for roofing held separately.

Solar Easement Law

A solar easement can be written up and attached to the deed of neighboring properties to legally protect your right to receive future sunlight. Such an easement can be used to address concerns regarding neighboring structural changes. New developments may be required to include a solar access easement (a deed restriction to protect solar access within a development). Local building codes regarding building height restrictions, building set back requirements relative to property lines and solar orientation relative to neighboring properties may reduce the need for an easement.

To view these California laws see: www.leginfo.ca.gov/calaw.html

California Municipalities with specific Solar Access Laws/Guidelines

- o Los Angeles - Zoning Code
- o Marin County - Energy Conservation
- o Sacramento - Zoning and Subdivision Regulations
- o San Diego County - Solar Access Regulations
- o San Jose - Solar Access Design Guidelines
- o Santa Cruz - Solar Access Ordinance
- o Santa Cruz County - Solar Access Protection
- o Sebastopol - Solar Access

FOR MORE INFORMATION

DSIRE Database Summary of California Solar benefits – scroll down to end for Solar Access laws:

<http://www.dsireusa.org/library/includes/statesearch.cfm?State=CA&back=finab&CurrentPageID=7&Search=TableState>

Energy Efficiency and Renewable Energy:

<http://www.eere.energy.gov/consumerinfo/factsheets/ja1.html>

Includes reference material, example solar access ordinances, bibliography including web resources.

American Planning Association 1313 East 60th Street Chicago, IL 60637(312) 955-9100 <http://www.planning.org/>

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714. Unenforceability of deeds, contracts or instruments prohibiting or restricting installation or use of solar energy system

(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, and any provision of a governing document, as defined in subdivision (j) of Section 1351, 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)(1) 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.

(2) For an approving entity that is a homeowners' association, as defined in subdivision (a) of Section 1351, and that is not a public entity, both of the following shall apply:

(A) The approval or denial of an application shall be in writing.

(B) If an application is not denied in writing within 60 days from the date of receipt of the application, the application shall be deemed approved, unless that delay is the result of a reasonable request for additional information.

(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.

➡§ 714.1. Solar energy systems; common interest developments; approval; maintenance; Indemnification or reimbursement

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.

➡§ 17959.1. Solar energy systems; approval of applications through issuance of building permits; denial; conditions imposed; health and safety standards; definitions

(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.

→§ 65850.5. Solar energy systems; limitations on ordinances that create unreasonable barriers to installation; approval or denial of applications; appeal; conditions imposed; health and safety standards; definitions

(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.

➔§ 25980. Short title; public policy

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. Solar collector

(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 installation of solar collector; placement or growth of tree or shrub on property of another

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.

→§ 25982.1. Solar shade control notice; requirements

(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 § 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. Violations; private nuisance; written notice from owner of solar collector

A tree or shrub that is maintained in violation of Section 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 Section 25982.

⇒§ 25984. Application of chapter; exemptions

This chapter does not apply to any of the following:

- (a) A tree or shrub planted prior to the installation of a solar collector.
- (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. Ordinance to exempt city or unincorporated areas from provisions of chapter; requirements

(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. Passive or natural solar system which impacts on adjacent active solar system; action to exempt from provisions of chapter

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.

§ 801. Easements; servitudes attached to land

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;
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.

§ 801.5. Solar easement and solar energy system defined; minimum description in instrument

(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.