



## **The “TREES VS. SOLAR” Issue Put to Rest in the Capitol**

By David Dockter, City of Palo Alto

### Introduction

On July 22, 2008, the contentious issue of "trees versus solar power" — that produced a criminal conviction and drew international attention — has been put to rest. State Senator Joe Simitian (D-Palo Alto) announced today that Governor Schwarzenegger has signed his Senate Bill 1399 (see bottom of article for summary).

The Solar Shade Control Act, Chapter 176 of the California Public Resources Code, fundamentally is all about solar collectors and tree shade. [http://www.leginfo.ca.gov/cgi-bin/postquery?bill\\_number=sb\\_1399&sess=CUR&house=B&search\\_type=email](http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_1399&sess=CUR&house=B&search_type=email)

"In my 10 years as an urban forester and landscape specialist for the City of Palo Alto, I have seen a number of conflicts relating to trees, from their leaves to their roots. But I've never run into anything as odd as the battle between trees' right to life and some people's desire to put solar panels in their shadow, forcing trimming or felling of the trees."

### Recent Case Law

The governor clarified the California Solar Shade Act law that was problematic, as recently interpreted by a County of Santa Clara judge and district attorney in a 2007 Sunnyvale/Santa Clara high profile case. The tragic outcome of the legal case and judge's decision failed to recognize the original intent of the law:--to encourage solar collector use and placing them in an optimum location outside of current and future limitations of preexisting trees on neighboring properties. The case involved a rear yard landscape design which included spaced groupings of Aptos blue coast redwoods responding to each side yard with grass and shrub plantings between and bordering a view fence overlooking a creek setting. A neighbor later installed solar collectors on the roof in several areas and also in the shade area of a lower section of the backyard. The district attorney argument and eventual judges decision (there was no jury trial) sidestepped the 'preexisting element' part of the statute and settled on a subjective call to subordinate the preexisting trees to new solar collectors' placed in their current and future shade. The remedy became a draconian order requiring entire removal, topping or stripping the preexisting trees from shading the collectors. The national news impressions and fallout from onlookers ranged from bewilderment, to humor to serious polarization on both side of the issue. The issue took a life of its own suggesting that environmental law is unreasonable and laughable, and, what one media reporter pitted, 'environmentalist vs. environmentalist'.

Why this matters?

From the standpoint of an urban forester, steward of public money expenditures on public trees, the potential consequences of the Sunnyvale/Santa Clara decision would be long-term and catastrophic, increasing immediate contract trimming workload and create sizable and recurring budget increases. For example, if a solar collector were to be installed in a poor location (current or future shade) and the precedent interpretation and case law was consistently applied on a case by case basis, one or more of the following consequences would be realized by the affected community or property owner.

- Continued random placement of solar collectors in conflict of surroundings. In local agency permitting protocol, staff typically reviews siting of solar collectors for zoning ordinance (setback and daylight plane) and uniform building code (safety). The law specifically prohibits denial based on aesthetics or other location reasons. My observation experience in the above noted case and in several undocumented cases in five other cities concludes that the solar industry experts selling the units do not prioritize optimum location of the units based on current or future shade limitations, but rather prioritize the capacity, mounting of fixtures and weight bearing ability of the structure supporting the units. Of course, there are exceptions, but the local permitting agency is not this gatekeeper. The client has the last say, in any event, and contractor will usually install the units in less-than-optimum locations due to tree shade or orientation simply because the property owner wants to. Subsidy rebates may or may not recognize these criteria.
- Public funds spent for private property benefits. The district attorney and public resources would be able to support a claim by any property owner to require mature and growing city-owned public tree resources to be cut clear (topping) of the (10 am-2 pm) shade window period at the expense of the tree owner, who most often would be an adjacent neighbor. A neighbor in not respective, and would include a city, park, right-of-way, commercial property, multi-family and other lands.
- Core community values exempted. A local tree or zoning ordinance prohibiting removal or topping would not be exempt from the case law order and consequence.
- Infrastructure benefit value diminished. Urban foresters have quantified substantial financial benefits of trees to a community, paying back \$2 for every dollar spent from stormwater management, air quality, cooling and real estate value. Municipalities and agencies, being asked or legally mandated to keep their public and parkland trees clear of newly installed solar collectors would stand to lose millions of dollars to premature destruction of mature tree benefits. In some cases, the solar clearance cutting may devalue the investment dollars spent on trees just reaching the critical point of paying back benefits to the community.
- Infrastructure operating cost increase. General fund budgets would realize an unexpected and annual cost to maintain trees in a custom fashion on an annual or frequent basis, irrevocably committing to keep a privately owned solar collector clear at

the expense of public funds. Conceivably, this could include century old oaks on parkland, specimen landmark trees or trees regulated by tree code and zoning ordinances.

- Diminishment of property value and curb appeal. Property values could be negatively affected with substandard pruning and deformation of mature trees resulting from mandatory clearance cutting. Clearance cutting on mature or young trees would trump current pruning best management practices, so decline and premature mortality of trees and groupings of trees may result. Thus, recurring topping, and increasingly severe reduction would be realized on many trees, both private and publicly owned.

#### Who Cares?

Because cities, agencies and programs are aggressively subsidizing solar collector installation at an unprecedented rate, the quantity and occurrence of tree shade conflicts has only begun to surface as an issue—with potential cases waiting in the wings to simply grow and manifest as a problem. To remedy a conflict, state law typically defaults to the local agency code enforcement or county district attorney prosecution. The sizable labor costs of processing 'solar panel' cases needs only to be considered once to realize the significant legal problem imbedded in the unrevised law. In the Sunnyvale/Santa Clara case, it was in the interpretation of the law.

I am a keen supporter of solar power ingenuity, tree canopy benefits, creative technology and comprehensive site planning of all the elements at our disposal. These elements, when responsibly applied, leverage each other, use less energy, become best practices and produce efficient and healthy living conditions for our communities.

The refined bi-partisan law generated by Senator Simitian (D) and co-sponsored by Senator McClintock (R) and signed by Governor Schwarzenegger is very good news to municipalities and agencies who formerly stood to lose millions of dollars to premature destruction or maintenance costs of indiscriminate cutting of the beneficial urban forest resources. I feel that he revised law SB 1399 has filled an important environmental step towards a global comprehensive environmental strategy that respect optimum benefits of solar power, urban forest benefits, air quality, stormwater and pollution management and other sustainable conservation practices. When good government works, it is reassuring to us all that acknowledge it. This bill reflects a correct application of good government.

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#### **Summary of SB 1399:**

- \* Protect trees and shrubs planted prior to the installation of a solar collector;
- \* Eliminate criminal prosecution as a penalty for violation of the law;

- \* Provide a mechanism for written notice between neighbors;
- \* Make it easier for local communities to adopt and enforce their own local ordinances on the subject; and
- \* Clarify various provisions of the law which were vague or confusing.

The bill strikes a balance between trees and solar, and provides a clear exemption from the California Solar Shade Control Act for pre-existing trees. "Right now," said Simitian, "a new neighbor can move in next to your home, install a solar energy system, and then -- under threat of criminal prosecution -- force you to take an ax to your trees if and when they grow." Simitian called the existing law, "well intended, but overreaching. Trees grow. That's what they do."

SB 1399 will also "decriminalize" violations of the California Solar Shade Control Act (a violation will no longer be considered a crime, and enforcement will be a matter for the civil court system). "It just seems a little heavy handed to call in the District Attorney over a neighbor-to-neighbor dispute -- not to mention the expense to the public," said Simitian.

"I'm hopeful that a little courtesy, common sense and a clarification of the law will help folks sort these things out," said Simitian. He noted that the new law will clarify existing provisions of the law which are vague or confusing. "The first rule of fairness," said Simitian, "is that you shouldn't be punished for violating a law that's not clear about what you can and cannot do."

Simitian's efforts initially were met with strong opposition from the solar industry, and generated vigorous debate at a pair of hearings before the Senate Energy Committee. Ultimately, however, Simitian was able to craft a bill that won unanimous support from the Senate and the Assembly. "I really do think we found a way to balance legitimate competing interests," said Simitian. That view was shared by Sue Kateley, Executive Director, California Solar Energy Industries Association who noted, "We were initially concerned," said Kateley "but the end result allows us to grow the solar industry in California and let trees grow too."

SB 1399 is one of the winning entries in Simitian's annual "There Oughta Be A Law" contest. Sunnyvale residents Richard Treanor andCarolynn Bissett, who consider themselves environmentalists, tree lovers and good neighbors, ran afoul of the 1978 law which currently provides criminal

penalties for homeowners whose trees cast shade on their neighbors' solar panels. The couple became disillusioned after they were criminally prosecuted, forced to chop off the tops of the redwood trees in their back yard and paid more than \$35,000 in legal fees.

"We're grateful that the Legislature is addressing the inequities of the California Solar Shade Control Act," said Treanor. "I understand that people who invest tens of thousands of dollars in home solar systems need to be protected. However, when solar systems are installed causing obvious conflict with existing trees, it defies logic to then subject people to criminal prosecution who legally and innocently planted those trees. This legislation will help the solar power industry in the long run by respecting everyone's interests, and getting people to interact constructively and arrive at solutions as good neighbors", Treanor said.

Both Simitian and his contest winners say that they too want to protect the rights of homeowners with solar panels, but they want to do it in a way that's fair to everyone. "That's why we entered the contest," said Treanor. "I'm glad the Legislature found a way to protect solar installations without making criminals out of neighbors with trees."

Simitian is Chair of the Senate Environmental Quality Committee and author of the California law which requires the state to get 20% of its energy from renewable sources by 2010. "I continue to support renewable energy," said Simitian, "including California's ambitious effort to encourage the construction of a million solar roofs. I'm just trying to avoid a million neighborhood arguments," he said.

To learn more about SB 1399, please visit [www.senatorsimitian.com](http://www.senatorsimitian.com)  
<<http://www.senatorsimitian.com/>>