A Comprehensive Review of Solar Access Law in the United States

Suggested Standards for a Model Statue and Ordinance

Prepared by

Colleen McCann Kettles

Florida Solar Energy Research and Education

Solar America Board for Codes and Standards

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Solar America Board for Codes and Standards Report

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Executive Summary

Solar energy systems require direct access to sunlight to operate efficiently. The installation of a solar energy system on a new or existing building requires exterior modifications that are subject to building codes and private regulation. This report reviews the ability of existing law and regulation to protect solar access and recommends specific measures to improve solar access.

The solar access issue will be separated into two distinct areas: solar easements and solar rights. "Solar easements" refers to the ability of one property to continue to receive sunlight across property lines without obstruction from another's property (buildings, foliage, or other impediment). "Solar rights" refers to the ability to install solar energy systems on residential and commercial property that is subject to private restrictions, i.e., covenants, conditions, restrictions, bylaws, condominium declarations, as well as local government ordinances and building codes.

The United States has held that there is no common-law right to sunlight. This has required that specific statutory authority be established to protect the rights of solar users in terms of both their ability to install a solar energy system on their property and after that system is installed to protect their access to sunlight, so that the system remains operational.

Land use planning, authority for solar easements, and prohibiting covenants, conditions, and restrictions that impede the use of solar have all been employed to protect solar access with varying degrees of success. This report reviews traditional legal mechanisms that govern the operation of public and private governments, as well as solar specific ordinances and statutes that have evolved over the years. It concludes that most current law has been ineffective or too expensive because of the lack of enforcement mechanisms.

The recommended elements of a comprehensive approach to protecting solar access are outlined, and a model solar statute has been developed based upon the best practices found across the United States. The model statute is intended to serve initially as a *straw man* for discussion among stakeholders and will be revised to reflect feedback based upon their needs. The statutory references that constitute the best practices are provided in the appendix to facilitate discussion and feedback from stakeholders.

Author Biography

Colleen Kettles is the Executive Director of the Florida Solar Energy Research and Education Foundation. She formerly served as the Associate General Counsel and Director of Institutional Affairs for the Florida Solar Energy Center. Colleen has 30 years of legal and policy research, program development, and implementation in the field of solar energy and energy efficiency. Colleen has also served as a contractor to the Florida Energy Office, Florida Solar Energy Center, National Renewable Energy Laboratory, and Department of Energy. She has provided policy analysis for issues before the Florida Public Service Commission and committees of the Florida Legislature on matters related to solar energy. She has published and presented numerous papers on the range of issues dealing with solar energy and energy efficiency policy. Colleen is a graduate of the University of Florida College of Law and is a member of the Florida Bar and the American Bar Association. She serves on the board of directors of the Florida Solar Energy Industries Association and the Florida Renewable Energy Association, and was a founding director of the Florida Green Building Coalition.

Florida Solar Energy Research and Education Foundation Web site:
www.flaseref.org

Solar America Board for Codes and Standards

The Solar America Board for Codes and Standards (Solar ABCs) is a collaborative effort among experts to formally gather and prioritize input from the broad spectrum of solar photovoltaic stakeholders including policy makers, manufacturers, installers, and consumers resulting in coordinated recommendations to codes and standards making bodies for existing and new solar technologies. The U.S. Department of Energy funds Solar ABCs as part of its commitment to facilitate wide-spread adoption of safe, reliable, and cost-effective solar technologies.

For more information, visit the Solar ABCs Web site:
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Introduction

Solar energy systems, whether thermal or photovoltaic, require direct access to sunlight to operate efficiently. The installation of a solar energy system on a new or existing building requires exterior modifications that are subject to building codes and private regulation. As our energy policies shift to advancing solar energy as a significant source of our energy portfolio, the conventional view of building codes and restrictive covenants must yield to guaranteeing access to sunlight to the fullest extent possible.

This report is divided into several sections. The first reviews common law and conventional statutes that might serve to protect solar access. The second reviews modern day efforts to afford access to sunlight through solar easements and solar rights. Finally, in developing a model solar access statute, we identify the best practices employed by state and local government and provide a recommended model. The appendix provides the full text of the statutes that were used in developing the model, and can be referred to in the event that more detail is desired in the model statute adopted for implementation.

Solar Access

The solar access issue is generally thought to involve the potential shading of solar collectors by neighboring structures or vegetation. There is, however, another aspect to the solar access issue: public and private restrictions on the use of property, including restrictive covenants in deeds, condominium and homeowner association bylaws, architectural controls, and local government ordinances.

For discussion purposes, the issue of solar access in this report is separated into two clearly defined areas: solar easements and solar rights. "Solar easements" refers to the ability of one property to continue to receive sunlight across property lines without obstruction from another's property (buildings, foliage, or other impediment). "Solar rights" refers to the ability to install solar energy systems on residential and commercial property that is subject to private restrictions, i.e., covenants, conditions, restrictions, bylaws, condominium declarations, as well as local government ordinances and building codes.

Historical Perspective

The Doctrine of Ancient Lights

"Ancient Lights" is a doctrine based on English law that refers to a negative easement that prevents the owner or occupier of an adjoining structure from building or placing on his own land anything that has the effect of obstructing the light of the dominant tenement. In common law, a person who opened a window in his house had a natural right to receive the flow of light that passed through it. Quite literally, when a window had been opened for so long a time as to constitute immemorial usage in law, the light became an "ancient light" that the law protected from disturbance. The Prescription Act of 1832 created a statutory prescription for light. It provided that

> *when the access and use of light to and for (any building) shall have been actually enjoyed therewith for the full period of 20 years without interruption, the right thereto shall be deemed absolute and indefeasible, any local usage or custom to the contrary notwithstanding, unless it shall appear that the same was enjoyed by some consent or agreement, expressly made or given for that purpose by deed or writing (UK Statute Law Database).*

The Fontainebleau Case

The Sunshine State—Florida—has the dubious distinction of formalizing the rejection of the Ancient Lights doctrine and pronouncing that there is no common law right to sunlight. The leading case in America on the right to sunlight is Fontainebleau Hotel Corp. v. Forty-Five Twenty-Five, Inc. (Fontainebleau Hotel Corp., 1959). In this case, the Fontainebleau Hotel in Miami Beach proposed a 14-story addition in the late 1950s. The Eden Roc Hotel, which was located immediately adjacent to the Fontainebleau, objected to this addition. They claimed that during the winter months, from approximately 2 p.m. to sunset, the shadow of the proposed addition would extend over the cabana, swimming pool, and sunbathing areas of the Eden Roc.

They also contended that the addition would interfere with the light and air on the beach in front of the Eden Roc and cast a shadow of such size as to render the beach wholly unfit for the use and enjoyment of the guests of the Eden Roc. In addition, it was charged that one of the reasons for the construction was actual malice and ill will on the part of the President of the Fontainebleau toward the President of the Eden Roc.

The trial court ruled in favor of the Eden Roc on the grounds that no person has a right to use his property to the injury of another (Caton & Kettles, 1980). However, that decision was reversed on appeal and construction was allowed to continue. Several principles of law were set forth by the Third District that are still followed today and laid the groundwork for some of the principles of solar law. The principles established by this court are as follows:

- A property owner must never use his property so as to injure the lawful rights of another. A property owner may put his own property to any reasonable and lawful use, so long as he does not thereby deprive the adjoining landowner of any right of enjoyment of his property that is recognized and protected by law and as long as his use is not such a one as the law will pronounce a nuisance.
- A landowner does not have any legal right to the free flow of light and air across the adjoining land of his neighbor.
- The English doctrine of Ancient Lights has been unanimously repudiated in other states where that question has arisen and has no validity in Florida.
- Because there is no legal right to the free flow of light and air from the adjoining land, there is no cause of action for nuisance, damages, or injunctive relief even though a building or structure interferes with the passage of light and air to adjoining premises.

Early efforts to address solar access

During the height of the 1978-1985 tax credits for solar energy equipment, a host of articles and books were published promoting solar conscious land use planning (Kraemer, 1978). While not widely adopted, these guidelines provided some excellent and well thought out approaches to protecting solar access in new home construction. These guidelines remain useful today but will typically only apply to new construction and not address the vast inventory of existing homes and neighborhoods.

Land use planning

Local governments have the ability to adopt solar-access policies within the framework of the local comprehensive and land use plans. A policy statement recognizing the benefits of solar energy and supporting public regulations to promote these benefits establishes the public purpose and validity of such actions. Incorporating solar-site planning in land use planning allows the developer to maximize southern exposures so

that as many buildings and lots as possible can have maximum access to sunlight. Trees, major vegetation, and taller buildings must be placed in such a way that the shadowing of adjacent residential structures will be minimized. In the site-planning process, a developer can provide that the solar sky space above neighboring parcels of land will remain clear and unobstructed to preserve solar access. One way to accomplish this objective is to provide for solar easements, which are defined as restrictions on adjoining lots that would prohibit intrusions into the solar sky space, such as another building or trees. A restrictive covenant can accomplish this as well by providing that no solar energy collector shall be shaded by any building, vegetation, or obstruction between certain hours on a certain date of any year.

Landscape ordinances can be modified to promote vegetation that complements solar energy use or provides exemptions for trees and vegetation that block solar access.

Solar Easements

A solar easement is the prevalent method of assuring solar access. The general principle of law in effect in the US is that a land owner owns at least as much of the air space above the ground as he can occupy or use in connection with the land, and the fact that he does not occupy it in a physical sense by erection of buildings and the like is not material (Caton, 1980). Because the property owner does have property rights in the air space above the land, he has the right to grant an easement for light within that air space. However, an easement for light and air cannot be created by implication nor can it be implied by any length of continuous enjoyment (Caton, 1980). This decision further eroded the doctrine of Ancient Lights and resulted in the need for statutory authority for modern solar easements (Caton, 1980).

Covenants, Conditions, and Restrictions

Condominium and homeowner associations are fairly common entities in residential communities today. The associations generally govern the affairs of the community and, in addition to enforcing and amending restrictive covenants, may impose other restrictions on property owners subject to their rules.

The condominium association is a corporate entity and has the authority to govern its affairs in accordance with a set of duly adopted bylaws. The bylaws of a condominium association are included in the declaration of condominium, the provisions of which are considered binding agreements that run with the land. Generally, condominium bylaws will not be invalidated unless their application is arbitrary, they are in violation of public policy, or they infringe upon a constitutional right. Where the bylaws empower the board of directors of the association with discretionary authority, such as architectural review and approval, its action must be reasonably related to the promotion of the health, happiness, and peace of mind of the unit owners. In addition, the courts have held that where the decision to allow a particular use is within the discretion of the board, the use must be allowed unless it can be demonstrated to be antagonistic to the legitimate objectives of the association.

A homeowners association is an organization consisting of property owners within a subdivision that has been granted or assumes certain powers and is in essence residential private government. Its authority and powers are contained in a variety of documents, including restrictive covenants and bylaws. Restrictive covenants are mutual agreements contained in deeds to real property. They are typically part of planned communities and subdivisions where the developer has stipulated the architectural form and general scheme of construction in the community. These restrictions are not personal in nature but rather are considered to “run with the land.” That is, they are effective against all subsequent owners of the affected property.

The most frequently found restrictive covenants relating to the use of solar energy include restrictions on where collectors may be located (e.g., a place other than on the front of the house), those that require board-of-architect approval as a condition precedent to external structural alterations (such as the installation of the solar collectors anywhere on the house), prohibitions against protrusions above roof level (television antennas are the usual subject of these restrictions but they can also affect roof-mounted solar collectors), or an outright prohibition of solar systems.

Homeowner association bylaws often contain the details as to how the powers of the association will be exercised and will often include the specifics of the guidelines to be followed by architectural review boards. Regarding the validity of homeowner association bylaws, it has been suggested that the power of the association is without limit, although basic consideration regarding the validity of use restrictions may still be relied upon.

Courts have long held restrictive covenants to be valid exceptions to the general principle against restraint on free use of property. Judicial acceptance of restrictive covenants is premised on the supposition that such recognition is not contrary to public policy or express law. The restriction must also be reasonable. A subdivision's restrictive covenant that effectively or directly prohibits the use of solar will not be upheld where state or local law expressly provides otherwise through a solar-rights statute or ordinance. If the restrictive covenant precedes the effective date of the statute or ordinance, the restriction may be invalidated by the court based on public policy considerations.

In the absence of a solar-rights law, it may still be possible for a homeowner to overcome a restrictive covenant that prohibits the use of solar energy. The deed that conveyed the covenant may stipulate a time of expiration for the restriction. In addition, the owners subject to the restriction and the courts may terminate the restriction under certain conditions.

Express termination

The restrictive covenant may specifically include the time and conditions under which it will no longer be effective. From a practical point of view, however, it is doubtful that a provision of this kind would be found in a restriction against solar energy. Since the motivating rationale behind these restrictions is usually based on aesthetics, the doctrine of "once an eyesore, always an eyesore" will usually make an express termination date unlikely. An alternative provision would stipulate the time for termination with a provision for automatic extension upon landowner approval. In either case, provisions dictating duration are valid and are consistent with the principle affording free use and enjoyment of land.

Modification

A landowner who is subject to restrictive covenants may, by release or upon agreement with the other owners within the subdivision, modify the restrictions. The deed may specify the manner by which the modification will be made, for example, by all or a majority of the affected owners. The developer may also exercise his or her right to modify the restrictions. However, agreement by the landowners to such modification is necessary unless the developer expressly reserved the right to future modifications.

Modification of a restrictive covenant could effectively operate to remove restrictions against the use of solar equipment. For example, where a restrictive covenant prohibits alterations to the street-facing facades of homes in the subdivision, an exception could be provided when the alteration is a solar energy system. The exception could remove all restrictions against the use of solar energy or allow the use of solar energy, subject to approval of an architectural review board. In either case, the restriction would still be effective against all frontal alterations except solar energy systems.

Cancellation

A court of competent jurisdiction may also act to terminate restrictive covenants. In a case in which a homeowner is violating a restriction, other parties to the covenant may sue to recover damages for breach of the covenant, or an injunction may be sought to enforce the restriction. The court may award damages or grant the injunction where it determines the activity is in fact a violation of a valid restriction. The court may, on the other hand, determine the activity is not a violation and deny an award of damages or the injunction. Or, the court may determine on the basis of "changed conditions" that the restriction is no longer valid and thus may order it cancelled. The latter instance is another method of terminating restrictive covenants that prohibit solar and one that has a good chance for success, given current energy policies favoring the use of solar energy.

There are affirmative defenses that can be raised in a situation in which the homeowner is taken to court by his association. Where other homeowners have acted in violation of the same restrictive covenant and the homeowners in the subdivision took no action or approved of the action, the solar owner may allege a waiver or abandonment of the restriction.

For example, in a subdivision where solar collectors are prohibited on the street-facing facade, yet one or more homeowners have installed collectors on this facade without reprisal from other homeowners, the court may deny any request for an injunction against subsequent homeowners installing solar collectors on the street-facing facade. Allowing collectors on the side-yard facing facades of the home that were, nonetheless, visible from the street may not constitute a waiver or abandonment of the restriction. One could maintain an argument for abandonment in that the overall effect is the same, that is, the introduction of a readily visible nonconforming or unaesthetic element into the community. Where work on an installation subject to the restriction has been allowed to progress to the point or where an injunction would present an undue hardship to the defendant, an injunction may only be granted where a nuisance has developed. The scope of the solar project would have an impact on the use of this defense. As in all equitable considerations, the benefits and burdens of competing interests are weighed by the court in arriving at its decision.

Local ordinances

Cities and counties are authorized to adopt ordinances for a variety of purposes. This typically includes the authority to prepare and enforce comprehensive plans, zoning regulations and building codes and to adopt ordinances and resolutions necessary for the exercise of its powers. Despite these broad grants of power for local self-government, the local ordinance is still subject to judicial scrutiny. In addition to the requirement that an act be one within the authority of the local government, it must be reasonable, equal, and impartial in its operation. However, there is a strong presumption of validity of a local ordinance, since local officials are in a better position than the courts are to have knowledge of any local conditions upon which the ordinance is predicated.

In spite of the scope of authority of the local governing body, the principles affecting the validity of its actions still provide several bases to void an anti-solar ordinance. The concepts of reasonableness, consistency and promoting the public interest will be considered. The reasonableness of a local ordinance will be gauged in the context of current events. What was reasonable in an era of inexpensive, plentiful fossil fuel supplies may no longer be considered reasonable given today's energy policies that encourage the use of renewable energy.

While there is authority indicating that land use restrictions may be based on aesthetic considerations alone, the courts have generally held that building regulations based solely on aesthetic considerations cannot be supported under the police power or in the absence of an actual finding of fact that the restrictions bear a reasonable relation to the public welfare. Given our current energy predicament, it would appear that restrictions

imposed on the use of solar energy devices would contravene rather than promote the public interest.

Where a state law prohibits a local government from enacting an ordinance, which directly or effectively prohibits the use of solar energy, the state law will take precedence over the local ordinance. In the case of an ordinance that was in effect prior to the state law, the solar owner may still prevail by citing public policies that favor the use of solar energy.

Analysis of State Solar Access Laws

Thirty-four states (and a handful of municipalities) have some kind of protection for solar easements or solar rights. That leaves 16 states that have no protection. Some of the states lacking solar easements or solar rights laws are surprising, given the other pro-solar/renewable energy policies in the state (Connecticut, Illinois, Pennsylvania, Texas, Vermont, for example). However, even those states that do have solar easements or solar rights laws have enforcement issues that can render the laws ineffective or subject to expensive litigation to enforce. The preliminary review of state solar access and solar rights laws indicates a real need for simplified enforcement of the protection afforded by solar rights laws. In addition, the voluntary nature of solar easement statutes makes them useless to property owners that have neighbors unwilling to provide the solar easement.

There are, however, some notable exceptions to this generalization, and the draft model statute will incorporate features of those states with good law.

Solar easement statutes

Solar easement statutes have very common elements, and virtually all are "voluntary," meaning that a solar owner cannot require that their neighbor agree to a solar easement. The standard elements of a typical solar access law are that it must be in writing, be recorded (as any other real property interest), express the horizontal and vertical angles of the easement, include provisions relating to the grant or termination of the easement, and provide for any compensation arrangements to the grantor for maintaining the easement or to the grantee in the event of interference.

Short of mandating solar easement, one approach used by a state includes a registration process that allows a solar owner to register their solar system with the local governing body—essentially putting their neighbors on notice that the solar system is in place. In that event, a solar owner can, in essence, impose a solar easement on the neighbor. This is a very unique and potentially effective solar access tool. There are also states that direct the local governing body to require a solar access element in subdivision or development plans submitted for their review and approval. While this is noteworthy, it will only protect solar access in new construction.

Solar rights

There are essentially two models that have perpetuated over the last two-plus decades that attempt to protect the right of homeowners to install solar energy systems. The first model addresses local government ordinances; the second model addresses private land use restrictions, such as covenants, conditions, and restrictions in deeds, as well as declarations in condominiums documents. Some states address both.

The typical language of a statute that protects solar rights at the state or local government level will contain language such as, "The adoption of an ordinance by a governing body which prohibits or has the effect of prohibiting the installation of solar collectors is expressly prohibited." The typical language of a statute that protects solar rights in the context of private land use restrictions is, "Any covenant, restriction, or

condition contained in any deed, contract, security agreement, or other instrument affecting the transfer or sale of or any interest in real property which effectively prohibits the installation or use of a solar energy device is void and unenforceable." Some states distinguish their laws from others by defining solar energy device, providing or prohibiting retroactive effect, defining "effectively prohibiting" (usually by assigning a cost of compliance with a requirement). For the most part, the laws apply strictly to residential buildings, including condominiums.

Typical cases

Previous work has identified some of the shortcomings of traditional solar access laws (Starrs, Nelson, & Zalcman, 1999). The lack of awareness and understanding of solar rights statutes is one of the biggest obstacles to enforcement. The lack of awareness by homeowner associations and architectural review boards can lead to delays in processing applications and lawsuits that are expensive to defend and cost all parties, regardless of who prevails. Because, when a solar rights law awards the court costs and attorney fees to the prevailing party, and the homeowner is the prevailing party, they still end up paying since all homeowners in the community bear the common expenses, such as attorney fees. The lack of understanding of solar rights laws by homeowners and solar contractors can lead to missteps in the approval process. Most solar rights laws are not absolute; they still require that the homeowner apply to the architectural review board for approval, and the board has a degree of discretion in the approval process. Many homeowners and contractors believe that approval is not required and proceed with the installation without prior approval. This can lead to legal recourse by the association that has no bearing on the solar rights laws but rather pertain to the failure to follow association rules.

The following cases are examples of real events and represent the range of scenarios that occur on a daily basis.

Case 1: A homeowner purchases a solar energy system. The contractor arrives on site for installation. As neighbors notice the activity, they confront the homeowner and inquire as to the architectural review board's approval. The neighbor cites the solar rights law and says permission is not necessary. The association advises the homeowner to cease and desist work and to restore the premises to its original condition and levies a fine for every day they are in violation.

Case 2: A homeowner purchases a solar energy system. Approval from the architectural review board (ARB) is pending. The contractor applies for a permit from the local building agency, which refuses to issue the permit until a copy of the ARB approval is received. Alternately, the ARB requires a copy of the permit before approval is granted. The building permit process is so cumbersome, the contractor does not pull a permit, and ARB approval is denied.

Case 3: A homeowner considers purchase of a solar energy system. Deed restrictions require that the system not be visible from the street. The homeowner has a corner lot, and the only area not visible from the street faces north. The contractor devises a reverse mount for the collectors and runs afoul of local wind and structural codes.

Case 4: A homeowner/condominium association owns the exterior of the residence including the roof (common property). The request to install the solar energy system is denied, as they fear the roof warranty being voided, and question the liability for any damage to common property.

Case 5: A homeowner installs a solar energy system. A neighbor to the south has

several very mature trees that are creeping into the solar window. The homeowner asks the neighbor to trim the trees, but the neighbor refuses, arguing that the shade of the trees reduces their air-conditioning load.

Case 6: A developer builds all homes in the community with a solar water heater and photovoltaic system. The solar window requires that a tree protected by the local landscape ordinance be removed. The developer is required to purchase and replant $20,000 trees to compensate for the removal of the protected tree.

These are just a handful of the cases, all of which occurred in states with solar rights and solar access laws. The bottom line is that the law failed to protect the solar owner or cost the solar owner more than the value of the solar energy system to secure that protection.

Exemplary Solar Access Laws

In the effort to develop a model solar access statute, we first reviewed the current law on point and critiqued the relative effectiveness of those laws, given the outcomes that were available, in terms of lawsuits, media coverage, and other resources that reported pertinent disputes. Our review of the text of solar access laws in the United States reveals some excellent provisions that can be used to draft a model solar access statute. Our goal was to be able to resolve the typical case via the provisions of the model statute. In addition, the solar industry has developed model solar installation guidelines that can be adopted by homeowner associations.

City of Gainesville, Florida

- Allows the removal of regulated (i.e., protected) trees, where they will prevent the installation of solar energy equipment (Statutory Reference 1).

State of Hawaii

- Provides a very comprehensive list of instruments that are affected (covenant, declaration, bylaws, restriction, deed, lease, term, provision, condition, codicil, contract, or similar binding agreement, how ever worded) declaring that no person shall be prevented by anyone from installing a solar energy device on any single-family residential dwelling or townhouse that the person owns, making any provision in any lease, instrument, or contract contrary to the intent of the law void and unenforceable.
- Also provides that every private entity (meaning community association) adopt rules for the placement of solar collectors: "The rules shall facilitate the placement of solar energy devices and shall not unduly or unreasonably restrict that placement so as to render the device more than twenty-five percent less efficient or to increase the cost of the device by more than fifteen percent."
- Spells out the relative risks and responsibilities, when installing solar energy equipment on common property (Statutory Reference 2).

State of Massachusetts

- Provides for, among other things, a solar easement as well as a solar access permit.
- Voids restrictions against use of solar energy.
- Provides for solar access guidelines in subdivision regulation.
- Also provides for solar access in zoning ordinances, including the regulation of planting and trimming of vegetation on public property to protect solar access on public and private solar energy systems.
- Solar access permit language is novel and provides an excellent model:

Zoning ordinances or bylaws may also provide for special permits to protect access to direct sunlight for solar energy systems. Such ordinances or bylaws may provide that such solar access permits would create an easement to sunlight over neighboring property. Such ordinances or bylaws may also specify what constitutes an impermissible interference with the right to direct sunlight granted by a solar access permit and how to regulate growing vegetation that may interfere with such right. Such ordinances or bylaws may further provide standards for the issuance of solar access permits, balancing the need of solar energy systems for direct sunlight with the right of neighboring property owners to the reasonable use of their property within other zoning restrictions. Such ordinances or bylaws may also provide a process for issuance of solar access permits including, but not limited to, notification of affected neighboring property owners, opportunity for a hearing, appeal process and recordation of such permits on burdened and benefited property deeds. Such ordinances or bylaws may further provide for establishment of a solar map identifying all local properties burdened or benefited by solar access permits. Such ordinances or bylaws may also require the examination of such solar maps by the appropriate official prior to the issuance of a building permit (Statutory Reference 3).

State of New Jersey

- While this law's prohibition against deed restrictions that prohibit solar energy is fairly typical, it provides for enforcement of the law by the state's Department of Community Affairs, which hopes to avoid the need for expensive litigation (Statutory Reference 4).

State of New Mexico

- Provides that a homeowner can record ownership of a solar energy system and allows the owner to establish a solar easement: "A solar right may be claimed by an owner of real property upon which a solar collector…has been placed. Once vested, the right shall be enforceable against any person who constructs or plans to construct any structure, in violation of the terms of the Solar Rights Act…or the Solar Recordation Act… A solar right shall be considered an easement appurtenant, and a suit to enforce a solar right may be brought at law or in equity" (Statutory Reference 5).

City of Ashland, Oregon

- Establishes a procedure for a obtaining a solar access permit to protect a solar energy system from vegetation that would shade the collector.
- Provides for recording the easement.
- This detailed ordinance provides a level of protection that a voluntary solar easement does not. The procedures for obtaining the permit are comprehensive and protect the interests of all parties involved (Statutory Reference 6).

Virgin Islands

- Provides that deed restrictions (and other instruments) that prohibit the use of solar and wind energy are void and unenforceable.
- Also provides for a greater height restriction for solar and wind energy devices and provides for the dedication of solar easements as a condition of subdivision approval (Statutory Reference 7).

State of Wisconsin

- Provides local governments with the authority to enact an ordinance to require the trimming of vegetation that blocks solar energy equipment.
- Also, provides that restriction against the use of solar or wind energy are void (Statutory Reference 8).

Recommendations

Given the fact that many of the current laws that purport to protect solar access are ineffective or too expensive to enforce, every state should examine its practices and consider amending them to conform to the model statute. At the state level, the adoption of the model statute that addresses state and local practices on use of solar energy equipment is recommended. The model statute should include prescriptive measures—such as community design, solar easements, as well as prohibitive measures, such as measures restricting the use of solar energy.

At the local level, it is recommended that the focus be on implementation and enforcement of state law, requirement that site-plan review and approval include an element to address the current and future use of solar energy (such as solar easements, landscaping, building height restriction, and orientation).

The key to the usefulness of a solar access law is enforcement. It is imperative that a specific entity be charged with oversight of the statute. These responsibilities must include responding to consumer and community association inquiries, conflict resolution, and the authority to impose penalties for violation of the statute.

Through strategic partnerships with the League of Cities, Association of Counties, and the Community Association Institute, education and awareness of solar access laws can proactively avoid disputes among neighbors. It is further recommended that partnering with these entities be explored to expand the outreach of this effort.

Components of Solar Access Legislation

Elements of a Solar Rights and Access Law

1. Preamble
    a. Public Purpose (needed to assure constitutionality)
    b. Policy Statement in Support of Solar Energy (needed to allow for retroactive effect and overcome constitutional challenge)
    c. Legislative Intent (for example
        i. Energy security
        ii. Cost of energy
        iii. Green House Gas reduction strategy
        iv. Economic development
        v. Fossil fuel offset
        vi. Renewable Portfolio Standard
        vii. Other
2. Definitions
    a. Solar Energy Device (active and passive)
    b. Other renewable measures (wind, geothermal, etc)
    c. Buildings included (residential, commercial, multi-family, condominium)
    d. Other

3. Application
    a. CCRs
    b. Solar contract
    c. Condominium declarations
    d. Ordinances
    e. Enforcement
        i. Litigation
        ii. Prevailing party legal fee award
        iii. Penalties
        iv. Code enforcement

4. Where the law should be codified
    a. Constitutional amendment
    b. Municipal law section
    c. Building code section
    d. Condominium regulation section
    e. Homeowner association section

MODEL STATUTE/ORDINANCE TO ENCOURAGE ACCESS TO SOLAR ENERGY

STATE/CITY/COUNTY _____

CHAPTER/SECTION NO. _____

A LAW PROVIDING FOR SOLAR EASEMENTS; INVALIDATING PUBLIC AND PRIVATE RESTRICTIONS RESTRICTING THE USE OF SOLAR ENERGY SYTEMS; ESTABLISHING GUIDELINES FOR THE INSTALLATION OF SOLAR ENERGY SYSTEMS, INCLUDING STANDARDS AND PERMIT REQUIREMENTS; PROVIDING FOR CERTIFICATION OF INSTALLERS OF SOLAR ENERGY SYSTEMS; PROVIDING FOR ENFORCEMENT AND PENALTIES; SUPERSEDING ALL LAWS IN CONFLICT OR INCONSISTENT HEREWITH; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State/City/County of _____ wishes to advance the use of solar energy by all of its citizens, businesses and industries; and,

WHEREAS, the State/City/County of _____has determined that public and private land use and property restrictions can impair the ability of our citizens, businesses and industries to install said systems; and,

WHEREAS, properly designed land use standards can prepare communities for greater access to solar energy; and,

WHEREAS, the installation of solar energy systems according to established guidelines by properly trained and certified personnel is essential to the safe and efficient operation of said systems;

[ADD OTHER STATE SPECIFIC POLICIES THAT MIGHT BE CITED HERE]

NOW, THEREFORE, it is in the interest of the health, welfare and safety of the people of _____ to provide the infrastructure to assure the effective deployment of solar technology.

NOW, BE ENACTED BY THE STATE OF _____ OR
NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF CITY/COUNTY COMMISSIONERS OF _____ _____, that:
(City/County) (State)

This Section Is Intended to be Interactive among Stakeholders to Explore the Options and Get Feedback from States/Cities with Best Practices as Identified in the Exemplary Law Section.

Section 1. Definitions

"Solar Energy Device" (active and passive): (Florida model) Solar energy device means the equipment and requisite hardware that provide and are used for collecting, transferring, converting, storing, or using incident solar energy for water heating, space heating, cooling, generating electricity, or other applications that would otherwise require the use of a conventional source of energy such as petroleum products, natural gas, manufactured gas, or electricity produced from a nonrenewable resource.

"Other renewable measures" - [Each jurisdiction needs to evaluate their renewable energy resources to determine which technologies to include in the statute.]

Section 2. Solar Easements

(Massachusetts model, others to consider: New Jersey and New Mexico, City of Ashland)

A. An easement of direct sunlight may be acquired over the land of another by express grant or covenant, or by a solar access permit as set forth in section 2. Any instrument creating a solar easement may include, but the contents are not limited to, 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 which would impair or obstruct the passage of sunlight through the easement.

(3) The amount, if any, of permissible obstruction of the passage of sunlight through the easement, expressed in measurable terms, such as a specific percentage of sunlight that may be obstructed.

(4) The provisions for trimming vegetation that would impermissibly obstruct the passage of sunlight through the easement including any compensation for trimming expenses.

(5) Any provisions for compensation of the owner of property benefiting from the easement in the event of impermissible obstruction of the easement.

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

Any instrument creating a solar easement shall be recorded in the registry of deeds in the county or district or, in the case of registered land, in the registry district of the land court in which the land affected is situated.

B. Zoning ordinances or community association bylaws may provide for special permits to protect access to direct sunlight for solar energy systems. Such ordinances or bylaws may provide that such solar access permits create an easement to sunlight over neighboring property. Such ordinances or bylaws may also specify what constitutes an impermissible interference with the right to direct sunlight granted by a solar access permit and how to regulate growing vegetation that may interfere with such right. Such ordinances or bylaws may further provide standards for the issuance of solar access permits balancing the need of solar energy systems for direct sunlight with the right of neighboring property owners to the reasonable use of their property within other zoning restrictions. Such ordinances or bylaws may also provide a process for issuance of solar access permits including, but not limited to, notification of affected neighboring property owners, opportunity for a hearing, appeal process and recordation of such permits on burdened and benefited property deeds. Such ordinances or bylaws may further provide for establishment of a solar map identifying all local properties burdened or benefited by solar access permits. Such ordinances or bylaws may also require the examination of such solar maps by the appropriate official prior to the issuance of a building permit.

Section 3. Solar Rights

(Massachusetts model, others to consider: Hawaii and Wisconsin)

Solar energy systems; installation or use; restrictive provisions
Any provision in an instrument relative to the ownership or use of real property which purports to forbid or unreasonably restrict the installation or use of a solar energy system or the building of structures that facilitate the collection of solar energy shall be void.
A community association shall not adopt and shall not enforce any rule related to the installation or maintenance of solar collectors, if compliance with a rule or rules would increase the solar collectors' installation or maintenance costs by an amount which is estimated to be greater than 10 percent of the total cost of the initial installation of the solar collectors, including the costs of labor and equipment. A community association shall not adopt and shall not enforce any rule related to the installation or maintenance of solar collectors, if compliance with such rules inhibits the solar collectors from functioning at their intended maximum efficiency. The [Agency] shall enforce the provisions of this law in accordance with the authority granted under [section x].

Section 4. Local Ordinances

(Massachusetts model, Florida provision)

A. Zoning ordinances or bylaws adopted or amended pursuant to section five of this chapter may encourage the use of solar energy systems and protect solar access by regulation of the orientation of streets, lots and buildings, maximum building height limits, minimum building set back requirements, limitations on the type, height and placement of vegetation and other provisions. Zoning ordinances or bylaws may also establish buffer zones and additional districts that protect solar access which overlap existing zoning districts. Zoning ordinances or bylaws may further regulate the planting and trimming of vegetation on public property to protect the solar access of private and public solar energy systems and buildings. Solar energy systems may be exempted from set back, building height, and roof and lot coverage restrictions.

B. Notwithstanding any provision of general or special law, the adoption of an ordinance by a city or county which prohibits or has the effect of prohibiting the installation of solar energy systems [or other device based on renewable resources] is expressly prohibited.

References

Boyd v. McDonald. 408 P.2d 717. (1965).

Caton, D., & Kettles, CM (1980). Solar Law, Vol 4, No. 77, Florida Municipal Record.

Fontainebleau Hotel Corp. v. Forty-Five Twenty-Five, Inc., 114 So.2d 357 (1959), cert. denied 117 So.2d 842.

Kramer, SE (1978). Solar Law. Colorado Springs, CO, Shepards, Inc.

United States v. Causby, 328 U.S. 256, 66 S.1. 1062 (1946).

Sacramento and San Joaquin Drainage District v. Reed, 215 Cal. App. 2d 60 (1963)

T. Starrs, L. Nelson, and F. Zalcman, (1999). *Bringing Solar Energy to the Planned Community: A Handbook on Rooftop Solar Systems and Private Land Use Restrictions* (Contract Number: DE – FG01 – 99EE10704), U.S. Department of Energy, Office of Scientific and Technical Information: Oak Ridge, TN.

UK Statute Law Database, Office of Public Sector Information, United Kingdom.

APPENDIX

Statutory References

1. CITY OF GAINESVILLE, FLORIDA

§30-254. Permits for tree removal.

(e) Permit approval criteria. Removal or relocation of regulated trees shall be approved by the city manager or designee upon a finding that the trees pose a safety hazard; have been weakened by disease, age, storm, fire or other injury; or prevent the reasonable development of the site, including the installation of solar energy equipment. Regulated trees shall not be removed, damaged or relocated for the purpose of locating utility lines and connections unless no reasonably practical alternative as determined by the city manager or designee is available.

2. STATE OF HAWAII

§196-7 Placement of solar energy devices.

(a) Notwithstanding any law to the contrary, no person shall be prevented by any covenant, declaration, bylaws, restriction, deed, lease, term, provision, condition, codicil, contract, or similar binding agreement, however worded, from installing a solar energy device on any single-family residential dwelling or townhouse that the person owns. Any provision in any lease, instrument, or contract contrary to the intent of this section shall be void and unenforceable.

(b) Every private entity shall adopt rules by December 31, 2006, that provide for the placement of solar energy devices. The rules shall facilitate the placement of solar energy devices and shall not unduly or unreasonably restrict that placement so as to render the device more than twenty-five per cent less efficient or to increase the cost of the device by more than fifteen per cent. No private entity shall assess or charge any homeowner any fees for the placement of any solar energy device.

(c) Any person may place a solar energy device on any single-family residential dwelling or townhouse unit owned by that person, provided that:

(1) The device is in compliance with the rules and specifications adopted pursuant to subsection (b);

(2) The device is registered with the private entity of record within thirty days of installation; and

(3) If the device is placed on a common element or limited common element as defined by a project's declaration, the homeowner shall first obtain the consent of the private entity; provided further that such consent shall be given if the homeowner agrees in writing to:

(A) Comply with the private entity's design specification for the installation of the device;

(B) Engage a duly licensed contractor to install the device; and

(C) Within fourteen days of approval of the solar device by the private entity, provide a certificate of insurance naming the private entity as an additional insured on the homeowner's insurance policy.

(d) If a solar energy device is placed on a common element or limited common element:

(1) The owner and each successive owner of the single-family residential dwelling or townhouse unit on which the device is placed shall be responsible for any costs for damages to the device, the common elements, limited common elements, and any adjacent units, arising or resulting from the installation, maintenance, repair, removal, or

replacement of the device. The repair, maintenance, removal, and replacement responsibilities shall be assumed by each successive owner until the solar energy device has been removed from the common elements or limited common elements. The owner and each successive owner shall at all times have and maintain a policy of insurance covering the obligations of the owner under this paragraph and shall name the private entity as an additional insured under said policy; and

(2) The owner and any successive owner of the single-family residential dwelling or townhouse unit on which the device is placed shall be responsible for removing the solar energy device if reasonably necessary or convenient for the repair, maintenance, or replacement of the common elements or limited common elements.

(e) If a material or labor roof warranty exists at the time a solar energy device is installed on a roof that is a common element or limited common element, the homeowner shall obtain confirmation in writing from the company that issued the warranty that the installation of the solar energy device will not void the roof warranty. The homeowner shall provide the private entity with a copy of the confirmation.

(f) For the purposes of this section:
"Private entity" means any association of homeowners, community association, condominium association, cooperative, or any other non-governmental entity with covenants, bylaws, and administrative provisions with which the homeowner's compliance is required.

"Solar energy device" means any identifiable facility, equipment, apparatus, or the like, including a photovoltaic cell application, that is applicable to a single-family residential dwelling or townhouse and makes use of solar energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for generation; provided that "solar energy device" shall not include skylights or windows. [L 1992, c 268, §1; am L 2005, c 157, §2]

3. STATE OF MASSACHUSETTS

CHAPTER 187. EASEMENTS
Chapter 187: Section 1A. Solar easements

Section 1A. An easement of direct sunlight may be acquired over the land of another by express grant or covenant, or by a solar access permit as set forth in section 9B of chapter 40A.

Any instrument creating a solar easement may include, but the contents are not limited to, 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 which would impair or obstruct the passage of sunlight through the easement.

(3) The amount, if any, of permissible obstruction of the passage of sunlight through the easement, expressed in measurable terms, such as a specific percentage of sunlight that may be obstructed.

(4) The provisions for trimming vegetation that would impermissibly obstruct the passage of sunlight through the easement including any compensation for trimming expenses.

(5) Any provisions for compensation of the owner of property benefiting from the easement in the event of impermissible obstruction of the easement.

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

Any instrument creating a solar easement shall be recorded in the registry of deeds in the county or district or, in the case of registered land, in the registry district of the land court in which the land affected is situated.

Chapter 184: Section 23C. Solar energy systems; installation or use; restrictive provisions

Section 23C. Any provision in an instrument relative to the ownership or use of real property which purports to forbid or unreasonably restrict the installation or use of a solar energy system as defined in section one A of chapter forty A or the building of structures that facilitate the collection of solar energy shall be void.

Chapter 40A: Section 1A. Definitions

Section 1A. As used in this chapter the following words shall have the following meanings:

Permit granting authority: the board of appeals or zoning administrator.

Solar access: the access of a solar energy system to direct sunlight.

Solar energy system: a device or structural design feature, a substantial purpose of which is to provide daylight for interior lighting or provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generating, or water heating.

Special permit granting authority: the board of selectmen, city council, board of appeals, planning board, or zoning administrators as designated by zoning ordinance or bylaw for the issuance of special permits.

Zoning: ordinances and bylaws adopted by cities and towns to regulate the use of land, buildings and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety and general welfare of their present and future inhabitants.

Zoning administrator: a person designated by the board of appeals pursuant to section 13 to assume certain duties of said board.

Chapter 40A, Section 9B: Solar access

Section 9B. Zoning ordinances or bylaws adopted or amended pursuant to section five of this chapter may encourage the use of solar energy systems and protect solar access by regulation of the orientation of streets, lots and buildings, maximum building height limits, minimum building set back requirements, limitations on the type, height and placement of vegetation and other provisions. Zoning ordinances or bylaws may also establish buffer zones and additional districts that protect solar access which overlap existing zoning districts. Zoning ordinances or bylaws may further regulate the planting and trimming of vegetation on public property to protect the solar access of private and public solar energy systems and buildings. Solar energy systems may be exempted from set back, building height, and roof and lot coverage restrictions.

Zoning ordinances or bylaws may also provide for special permits to protect access to direct sunlight for solar energy systems. Such ordinances or bylaws may provide that such solar access permits would create an easement to sunlight over neighboring property. Such ordinances or bylaws may also specify what constitutes an impermissible interference with the right to direct sunlight granted by a solar access permit and how to regulate growing vegetation that may interfere with such right. Such ordinances or bylaws may further provide standards for the issuance of solar access permits balancing the need of solar energy systems for direct sunlight with the right of neighboring property owners to the reasonable use of their property within other zoning restrictions. Such ordinances or bylaws may also provide a process for issuance of solar access permits including, but not limited to, notification of affected neighboring property owners, opportunity for a hearing, appeal process and recordation of such permits on burdened and benefited property deeds. Such ordinances or bylaws may further provide for establishment of a solar map identifying all local properties burdened or benefited by solar access permits. Such ordinances or bylaws may also require the examination of such solar maps by the appropriate official prior to the issuance of a building permit.

4. STATE OF NEW JERSEY

§ 45:22A-48.2. Solar collectors on certain roofs, homeowners' association authority limited

a. An association formed for the management of commonly-owned elements and facilities, regardless of whether organized pursuant to section 1 of P.L.1993, c.30 (C.45:22A-43), shall not adopt or enforce a restriction, covenant, bylaw, rule or regulation prohibiting the installation of solar collectors on certain roofs of dwelling units, as follows:

> A roof of a single family dwelling unit which is solely owned by an individual or individuals, and which is not designated as a common element or common property in the governing documents of an association; and
>
> A roof of a townhouse dwelling unit, which for the purposes of this subsection means any single-family dwelling unit constructed with attached walls to another such unit on at least one side, which unit extends from the foundation to the roof, and has at least two sides which are unattached to any other building, and the repair of the roof for the townhouse dwelling unit is designated as the responsibility of the owner and not the association in the governing documents.

b. An association may adopt rules to regulate the installation and maintenance of solar collectors on those roofs as specified in subsection a. of this section, in accordance with subsection c. of this section, and as follows:

(1) The qualifications, certification and insurance requirements of personnel or contractors who may install the solar collectors;

(2) The location where solar collectors may be placed on roofs;

(3) The concealment of solar collectors' supportive structures, fixtures and piping;

(4) The color harmonization of solar collectors with the colors of structures or landscaping in the development; and

(5) The aggregate size or coverage or total number of solar collectors, provided that the provisions of paragraph (2) of subsection c. below are met.

c. (1) An association shall not adopt and shall not enforce any rule related to the installation or maintenance of solar collectors, if compliance with a rule or rules would increase the solar collectors' installation or maintenance costs by an amount which is estimated to be greater than 10 percent of the total cost of the initial installation of the solar collectors, including the costs of labor and equipment.
(2) An association shall not adopt and shall not enforce any rule related to the installation or maintenance of solar collectors, if compliance with such rules inhibits the solar collectors from functioning at their intended maximum efficiency.

d. The Commissioner of Community Affairs shall enforce the provisions of P.L.2007, c.153 (C.45:22A-48.2) in accordance with the authority granted under section 18 of P.L.1977, c. 419 (C.45:22A-38).

e. The provisions of P.L.2007, c.153 (C.45:22A-48.2) shall not apply to associations that are under the control of the developer as provided under section 5 of P.L.1993, c.30 (C.45:22A-47).

5. STATE OF NEW MEXICO

[Statute modified by editor to clarify and update]

Solar Recordation Act – Sections 47-3-6 to-12 NMSA 1978 47-3-6. Short title.

This act [47-3-6 to 47-3-12 NMSA 1978] may be cited as the "Solar Recordation Act."

47-3-7. Legislative findings and declaration

The legislature finds that in view of the present energy crisis, all renewable energy sources must be encouraged for the benefit of the state as a whole. The legislature further finds that solar energy is a viable energy source in New Mexico, and as such, its development should be encouraged. Since solar energy may be used in small-scale installations and one of the ways to accomplish such encouragement is by protection of rights necessary for small-scale installations, the legislature declares such protection to be the purpose of the Solar Recordation Act [47-3-6 to 47-3-12 NMSA 1978] and necessary to the public interest.

47-3-8. Method of claiming; effect; limitations

A solar right may be claimed by an owner of real property upon which a solar collector, as defined in Subsection A of Section 47-3-3 NMSA 1978, has been placed. Once vested, the right shall be enforceable against any person who constructs or plans to construct any structure, in violation of the terms of the Solar Rights Act [47-3-1 to 47-3-5 NMSA 1978] or the Solar Recordation Act [47-3-6 to 47-3-12 NMSA 1978]. A solar right shall be considered an easement appurtenant, and a suit to enforce a solar right may be brought at law or in equity. The solar right shall be subject to the provisions of the Solar Recordation Act and the Solar Rights Act.

47-3-9. Recordation; effect of failure to record; contest.

A. Any person claiming a solar right shall record that right by filing a declaration in substantially the following form with the county clerk of each county in which is located any portion of the properties burdened by a solar right or any portion of the properties on which a solar right is claimed.

SOLAR RIGHT DECLARATION

[Name of person] _____owner of the real property described below, claims a solar right in favor of the following described real estate in _____county, New Mexico:

(Description either by metes and bounds, if in a platted subdivision, by lot and block subdivision name, by middle Rio Grande conservancy district tract number or other adequate legal description.)

The following named persons have each received notification by certified mail evidenced by a return receipt signed by the named person, or if the address of any person was not known and could not be ascertained by reasonable diligence, or if a return receipt signed by the named person could not be obtained, then notification to that person shall be made by publication of a copy of this declaration, with the intended date of filing, at least once a week for two consecutive weeks in a newspaper of general circulation in the county in which the property for which the solar right is being claimed is located, the last publication of which was no less than ten days prior to the filing of this declaration: (A listing of the names of the holders as shown in the records of the county clerk of any interest in property burdened by a claimed solar right, including owners, mortgagors, mortgagees, lessors, lessees, contract purchasers and contract owners or sellers, and a description, either by metes and bounds if in a platted subdivision, by lot and block and subdivision name, by middle Rio Grande conservancy district tract number or other adequate legal description, of that burdened property.)

The claimant has placed improvements on the land in the form of a solar collector, as shown by the attached survey or plot plan setting forth distances from lot lines and height from ground level of all solar collectors entitled to be recorded under the provisions of the Solar Recordation Act … and setting forth the maximum height of a theoretical fence located at the property lines of the property on which the solar collector is located which will not interfere with the solar easement.

Notice is hereby given that by virtue of the Solar Recordation Act, the holders of any interest in property described above as having been mailed notice must record a declaration, with the county clerk in each county in which solar right recordation has been filed, contesting the claimed solar right within sixty days, or the solar right shall be fully vested. Witness [Name of person]set his hand and seal this _____ day of _____, [year][Document must be notarized].

B. Any person desiring to claim a solar right must record that right and give notice to affected property owners as provided in the Solar Recordation Act as a necessary condition precedent to enforcing a solar right. Failure to so record and give notice shall constitute a jurisdictional defect and deprive any court of subject matter jurisdiction to enforce the solar right. However, nothing in this subsection shall apply to any solar right, lease, easement or contract right which has vested prior to the effective date of this subsection.

C. Any person who receives notice of the recordation may, within sixty days after receiving notice, file a declaration contesting the right, in the same manner and at the same place as the recordation was filed. If a declaration is filed contesting the claimed solar right, then the solar right shall not be enforceable against the property covered by the declaration unless agreed to by contract or ordered by a court of competent jurisdiction, and any claim of a solar right shall expire one year from the date of declaration unless the parties agree by contract to settle the solar rights dispute or unless court action has commenced by that date to establish the claim of the solar right.

47-3-10: transfer

Unless the document of conveyance otherwise specifies, upon the transfer of any realty on which a solar right exists or upon the transfer of any realty benefited by a filed declaration contesting a solar right, that solar right or declaration contesting the solar

right shall be transferred with the realty and shall be enforceable by the vendee in the same manner and to the same extent to which it was enforceable by the vendor. A solar right is appurtenant to the real property upon which the solar collector is situated. Nothing in this section shall be construed to prevent a person from agreeing to relinquish a solar right or a potential solar right. Nothing in this section shall affect any transfer of solar rights made prior to the effective date of the Solar Recordation Act … pursuant to Paragraph (3) of Subsection B of Section 47-3-4 NMSA 1978 or any local solar rights ordinance.

47-3-11: local authority

A. Notwithstanding any other provisions of the Solar Recordation Act or the Solar Rights Act, the governing body of a county or municipality may by ordinance regulate in whole or in part the claiming of solar rights in accordance with its powers to regulate zoning, planning and platting, and subdivisions; except that any solar right claimed pursuant to such local ordinance shall vest with respect to any property benefited or burdened by the solar right only after recordation as provided in Section 4 [47-3-9 NMSA 1978] of the Solar Recordation Act. Such local regulation shall not affect any solar right vested before the effective date of such ordinance, nor shall the local regulation affect any solar rights transfer, which vested prior to the effective date of such ordinance. In the absence of the local regulation of solar rights, the following principles shall apply in addition to those set forth in the Solar Rights Act. If the property burdened by a solar right has or could have improvements constructed to a maximum height of twenty-four feet, then the solar right shall be limited, as to that burdened property, to protecting an unobstructed line-of-sight path from the solar collector to the sun only as to obstructions located on the burdened property, which cast a shadow greater than the shadow cast by a hypothetical fence ten feet in height located on the property line of the property on which the solar collector is located. If the property burdened by a solar right has or could have improvements constructed in excess of twenty-four feet in height, but no greater than thirty-six feet, then the solar right shall be limited, as to that burdened property, to protecting an unobstructed line-of-sight path from the solar collector to the sun only as to obstructions located on the burdened property, which cast a shadow greater than the shadow cast by a hypothetical fence fifteen feet in height located on the property line of the property on which the solar collector is located. No solar right shall be obtained against property, which has or could have improvements constructed in excess of thirty-six feet in height unless so provided in a local ordinance or agreed to by contract. Unless otherwise provided by contract or local ordinance, a person may allow vegetation to grow or construct or plan to construct any improvement which obstructs the protected solar right so long as such obstruction does not block more than ten percent of the collectible solar energy between the hours of 9:00 a.m. and 3:00 p.m. Unless otherwise provided by contract or local ordinance, solar rights shall be protected between 9:00 a.m. and 3:00 p.m.

B. Nothing in the Solar Recordation Act shall be construed to limit any county or municipal ordinances concerning solar rights in effect prior to the effective date of this section.

47-3-12: indexing

A declaration filed pursuant to Section 4 [47-3-9 NMSA 1978] of the Solar Recordation Act shall be indexed by the county clerk in the grantees index under the names of the persons receiving notice in the declaration and in the grantors index under the name of the person filing the declaration.

6. CITY OF ASHLAND, OREGON

18.70 Solar Access

18.70.010 Purpose and Intent

The purpose of the Solar Access Chapter is to provide protection of a reasonable amount of sunlight from shade from structures and vegetation whenever feasible to all parcels

in the City to preserve the economic value of solar radiation falling on structures, investments in solar energy systems, and the options for future uses of solar energy.
18.70.020 Definitions

A. *Exempt Vegetation*: All vegetation over fifteen (15) feet in height at the time a solar access permit is applied for.

B. *Highest Shade Producing Point*: The point of a structure which casts the longest shadow beyond the northern property boundary at noon on December 21st.

C. *Natural Grade*: The elevation of the natural ground surface in its natural state, before man-made alterations. The natural ground surface is the ground surface in its original state, before any grading, excavation, or filling.

D. *Northern Lot Line*: Any lot line or lines less than forty-five (45) degrees southeast or southwest of a line drawn east-west and intersecting the northernmost point of the lot. If the northern lot line adjoins any unbuildable area (e.g., street, alley, public right-of-way, parking lot, or common area) other than a required yard area, the northern lot line shall be that portion of the northerly edge of the unbuildable area which is due north from the actual northern edge of the applicant's property.

E. *North-South Lot Dimension*: The average distance in feet between lines from the corners of the northern lot line south to a line drawn east-west and intersecting the southernmost point of the lot.

F. *Solar Energy System*: Any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for use in the heating or cooling of a structure or building, the heating or pumping of water, or the generation of electricity. A solar energy system may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member of part of the roof of a building or structure and serving as a window or wall.

G. *Solar Envelope*: A three dimensional surface which covers a lot and shows, at any point, the maximum height of a permitted structure which protects the solar access of the parcel(s) to the north.

H. *Solar Heating Hours*: The hours and dates during which solar access is protected by a solar access permit, not to exceed those hours and dates when the sun is lower than twenty-four (24) degrees altitude and greater than seventy (70) degrees east and west of true south.

I. *Solar Access Permit Height Limitations*: The height limitations on affected properties required by the provisions of a Solar Access Permit displayed as a series of five (5) foot contour lines which begin at the bottom edge of the solar energy system protected by the permit, rise at an angle to the south not less than twenty-four (24) degrees from the horizon, and extend at an angle not greater than seventy (70) degrees to the east and west of true south and run parallel to the solar energy system.

J. *Solar Setback*: The minimum distance that a structure, or any part thereof, can be located from a property boundary.

K. *Slope*:A vertical change in elevation divided by the horizontal distance of the vertical change. Slope is measured along lines extending one hundred fifty (150) feet north from

the end points of a line drawn parallel to the northern lot line through the midpoint of the north-south lot dimension. North facing slopes will have negative (-) values and south facing slopes will have positive (+) values.

L. *Sun chart*: Photographs or drawings, taken in accordance with the guidelines of the Staff Advisor, which plot the position of the sun during solar heating hours. The sun chart shall contain at a minimum the southern skyline as seen through a grid which plots solar altitude for a forty-two (42) degree northern latitude in ten (10) degree increments and solar azimuth measured from true south in fifteen (15) degree increments. If the solar energy system is less than twenty (20) feet wide, a minimum of one (1) sun chart shall be taken from the bottom edge of the center of the solar energy system. If the solar energy system is greater than twenty (20) feet wide, a minimum of two (2) sun charts shall be taken, one (1) from the bottom edge of each end of the solar energy system.

18.70.030 Lot Classifications

Affected Properties. All lots shall meet the provisions of this Section and will be classified according to the following formulas and table:

FORMULA I:
Minimum N/S lot dimension for Formula I = 30' 0.445 + S Where: S is the decimal value of slope, as defined in this Chapter.

FORMULA II:
Minimum N/S lot dimension for Formula II = 10' 0.445 + S Lots whose north-south lot dimension exceeds that calculated by Formula I shall be required to meet the setback in Section (A), below.

Those lots whose north-south lot dimension is less than that calculated by Formula I, but greater than that calculated by Formula II, shall be required to meet the setback in Section (B), below.

Those lots whose north-south lot dimension is less than that calculated by Formula II shall be required to meet the setback in Section (C), below.

18.70.040 Solar Setbacks

A. Setback Standard A. This setback is designed to insure that shadows are no greater than six (6) feet at the north property line. Buildings on lots which are classified as Standard A, and zoned for residential uses, shall be set back from the northern lot line according to the following formula:
SSB = H - 6'
0.445 + S
WHERE:
SSB = the minimum distance in feet that the tallest shadow producing point which creates the longest shadow onto the northerly property must be set back from the northern property line.
H = the height in feet of the highest shade producing point of the structure which casts the longest shadow beyond the northern property line.
S = the slope of the lot, as defined in this Chapter.

B. Setback Standard B. This setback is designed to insure that shadows are no greater than sixteen (16) feet at the north property line.
Buildings for lots which are classified as Standard B or for any lot zoned C-1, E-1 or M-1, or for any lot not abutting a residential zone to the north, shall be set back from the northern lot line as set forth in the following formula:
SSB = H - 16'
0.445 + S

C. Setback Standard C. This setback is designed to insure that shadows are no greater than twenty-one (21) feet at the north property line.
Buildings for lots in any zone whose north/south lot dimension is less than Standard B shall meet the setback set forth in the following formula:
SSB = H - 21'
0.445 + S

D. Exempt Lots. Any lot with a slope of greater than thirty percent (30%) in a northerly direction, as defined by this Ordinance, shall be exempt from the effects of the Solar Setback Section.

E. Lots Affected By Solar Envelopes. All structures on a lot affected by a solar envelope shall comply with the height requirements of the solar envelope.

F. Exempt Structures.

1. Existing Shade Conditions. If an existing structure or topographical feature casts a shadow at the northern lot line at noon on December 21, that is greater than the shadow allowed by the requirements of this Section, a structure on that lot may cast a shadow at noon on December 21, that is not higher or wider at the northern lot line than the shadow cast by the existing structure or topographical feature. This Section does not apply to shade caused by vegetation.
2. Actual Shadow Height. If the applicant demonstrates that the actual shadow which would be cast by the proposed structure at noon on December 21, is no higher than that allowed for that lot by the provisions of this Section, the structure shall be approved. Refer to Table D for actual shadow lengths.

18.70.050 Solar Access Performance Standard

A. Assignment of Solar Factor. All land divisions which create new lots shall be designed to permit the location of a twenty-one (21) foot high structure with a setback which does not exceed fifty (50%) percent of the lot's north-south lot dimension. Lots having north facing (negative) slopes of less than fifteen percent (15%) (e.g., 10%), and which are zoned for residential uses, shall have a north-south lot dimension equal to or greater than that calculated by using Formula I. Lots having north facing (negative) slopes equal to or greater than fifteen percent (15%) (e.g., 20%), or are zoned for non-residential uses, shall have a north-south lot dimension equal to or greater than that calculated by using Formula II.

B. Solar Envelope. If the applicant chooses not to design a lot so that it meets the standards set forth in (A) above, a Solar Envelope shall be used to define the height requirements which will protect the applicable Solar Access Standard. The Solar Envelope, and written description of its effects, shall be filed with the land partition or subdivision plat for the lot(s).

18.70.060 Variances

A. Variances to this Chapter shall be processed as a Type I procedure, except that variances granted under subsection B of this Section may be processed as a Staff Permit. (Ord. 2484 S3, 1988)

B. A variance may be granted with the following findings being the sole facts considered by the Staff Advisor:

1. That the owner or owners of all property to be shaded, sign and record with the County Clerk on the affected properties' deed, a release form supplied by the City, which contains the following information:

a. The signatures of all owners or registered leaseholders who hold an interest in the property in question.
b. A statement that the waiver applies only to the specific building or buildings to which the waiver is granted.

c. A statement that the solar access guaranteed by this Section is waived for that particular structure and the City is held harmless for any damages resulting from the waiver.
d. A description and drawing of the shading which would occur, and

2. The Staff Advisor finds that:
a. The variance does not preclude the reasonable use of solar energy on the site by future buildings; and
b. The variance does not diminish any substantial solar access which benefits a habitable structure on an adjacent lot.
c. There are unique or unusual circumstances which apply to this site which do not typically apply elsewhere.

18.70.070 Solar Access Permit for Protection from Shading by Vegetation

A. A Solar Access Permit is applicable in the City of Ashland for protection of shading by vegetation only. Shading by buildings is protected by the setback provisions of this Ordinance.

B. Any property owner or lessee, or agent of either, may apply for a Solar Access Permit from the Staff Advisor. The application shall be in such form as the Staff Advisor may prescribe but shall, at a minimum, include the following:

1. A fee of fifty ($50.00) Dollars plus Ten ($10.00) Dollars for each lot affected by the Solar Access Permit.

2. The applicant's name and address, the owner's name and address, and the tax lot number of the property where the proposed solar energy system is to be located.

3. A statement by the applicant that the solar energy system is already installed or that it will be installed on the property within one (1) year following the granting of the permit.

4. The proposed site and location of the solar energy system, its orientation with respect to true south, and its slope from the horizontal shown clearly in drawing form.

5. A sun chart.

6. The tax lot numbers of a maximum of ten (10) adjacent properties proposed to be subject to the Solar Access Permit. A parcel map of the owner's property showing such adjacent properties with the location of existing buildings and vegetation, with all exempt vegetation labeled exempt.

7. The Solar Access Permit height limitations as defined in Section 18.70.050 of this Ordinance for each affected property which is necessary to protect the solar energy system from shade during solar heating hours. In no case shall the height limitations of the Solar Access Permit be more restrictive than the building setbacks.

C. If the application is complete and complies with this Ordinance, the Staff Advisor shall accept the solar access recordation application and notify the applicant. The applicant is responsible for the accuracy of all information provided in the application.

D. The Staff Advisor shall send notice by certified letter, return receipt requested, to each owner and registered lessee of property proposed to be subject to the Solar Access Permit. The letter shall contain, at a minimum, the following information:

1. The name and address of the applicant.

2. A statement that an application for a Solar Access Permit has been filed.

3. Copies of the collector location drawing, sun chart, and parcel map submitted by the applicant.

4. A statement that the Solar Access Permit, if granted, imposes on them duties to trim vegetation at their expense.

5. The advisability of obtaining photographic proof of the existence of trees and large shrubs.

6. The times and places where the application may be viewed.

7. Telephone number and address of the City departments that will provide further information.

8. That any adversely affected person may object to the issuance of the permit by a stated time and date, and how and where the objection must be made.

E. If no objections are filed within thirty (30) days following the date the final certified letter is mailed, the Staff Advisor shall issue the Solar Access Permit.

F. If any adversely affected person or governmental unit files a written objection with the Staff Advisor within the specified time, and if the objections still exist after informal discussions among the objector, appropriate City Staff, and the applicant, a hearing date shall be set and a hearing held in accordance with the provisions of Section 18.70.080.

18.70.080 Hearing Procedure

A. The Staff Advisor shall send notice of the hearing on the permit application to the applicant and to all persons originally notified of the Solar Access Permit application, and shall otherwise follow the procedures for a Type I hearing.

B. The Staff Advisor shall consider the matters required for applications set forth in Section 18.70.070(B) on which the applicant shall bear the burden of proof, and the following factor on which the objector shall bear the burden of proof: A showing by the objector that the proposed collector would unreasonably restrict the planting of vegetation on presently under-developed property.

1. If the objector is unable to prove these circumstances and the applicant makes the showings required by Section 18.70.060(B), the Staff Advisor shall approve the permit.

2. If the applicant has failed to show all structures or vegetation shading of the proposed collector location in his application, the Staff Advisor may approve the permit while adding the omitted shading structures or vegetation as exemptions from this Chapter.

3. If the objector shows that an unconditional approval of the application would unreasonably restrict development of the objector's presently under-developed property, the Staff Advisor may approve the permit, adding such exemptions as are necessary to allow for reasonable development of the objector's property.

4. If the Staff Advisor finds that the application contains inaccurate information which substantially affects the enforcement of the Solar Access Permit, the application shall be denied.

C. Any decision by the Staff Advisor is subject to review before the Planning Commission as a Type II planning action according to the usual procedures contained in this Title. (Ord. 2775, 1996)

18.70.090 Limits On Solar Access Permits

A. No Solar Access Permit may be filed which would restrict any lot which has an average slope of fifteen (15) percent in the northerly direction.

B. A Solar Access Permit becomes void if the use of the solar collector is discontinued for more than twelve (12) consecutive months or if the solar collector is not installed and

operative within twelve (12) months of the filing date of the Solar Access Permit. The applicant may reapply for a Solar Access Permit in accordance with Chapter 18.70.070, however, the application fee shall be waived.

18.70.100 Entry of Solar Access Permit Into Register

A. When a Solar Access Permit is granted, the Staff Advisor shall:

1. File the Solar Access Permit with the County Clerk. This shall include the owner's name and address and tax lot of the property where the recorded collector is to be located, any special exceptions or exemptions from the usual affects of a Solar Access Permit, and the tax lots of the ten (10) or fewer adjacent properties subject to the Solar Access Permit.

2. File a notice on each affected tax lot that the Solar Access Permit exists and that it may affect the ability of the property owner to grow vegetation, and that it imposes certain obligations on the property owner to trim vegetation.

3. Send a certified letter, return receipt requested, to the applicant and to each owner and registered lessee of property subject to the Solar Access Permit stating that such permit has been granted.

B. If a Solar Access Permit becomes void under Section 18.70.090(B), the Staff Advisor shall notify the County Clerk, the recorded owner, and the current owner and lessee of property formerly subject to the Solar Access Permit.

18.70.110 Effect and Enforcement

A. No City department shall issue any development permit purporting to allow the erection of any structure in violation of the setback provisions of this Chapter.

B. No one shall plant any vegetation that shades a recorded collector, or a recorded collector location if it is not yet installed, after receiving notice of a pending Solar Access Permit application or after issuance of a permit. After receiving notice of a Solar Access Permit or application, no one shall permit any vegetation on their property to grow in such a manner as to shade a recorded collector (or a recorded collector location if it is not yet installed) unless the vegetation is specifically exempted by the permit or by this Ordinance.

C. If vegetation is not trimmed as required or is permitted to grow contrary to Section 18.70.100(B), the recorded owner or the City, on complaint by the recorded owner, shall give notice of the shading by certified mail, return receipt requested, to the owner or registered lessee of the property where the shading vegetation is located. If the property owner or lessee fails to remove the shading vegetation within thirty (30) days after receiving this notice, an injunction may be issued, upon complaint of the recorded owner, recorded lessee, or the City, by any court of jurisdiction. The injunction may order the recorded owner or registered lessee to trim the vegetation, and the court shall order the violating recorded owner or registered lessee to pay any damages to the complainant, to pay court costs, and to pay the complainant reasonable attorney's fees incurred during trial and/or appeal.

D. If personal jurisdiction cannot be obtained over either the offending property owner or registered lessee, the City may have a notice listing the property by owner, address and legal description published once a week for four (4) consecutive weeks in a newspaper of general circulation within the City, giving notice that vegetation located on the property is in violation of this Ordinance and is subject to mandatory trimming. The City shall then have the power, pursuant to court order, to enter the property, trim or cause to have trimmed the shading parts of the vegetation, and add the costs of the trimming, court costs and other related costs as a lien against that property.

E. In addition to the above remedies, the shading vegetation is declared to be a public

nuisance and may be abated through Title 9 of the Ashland Municipal Code.

F. Where the property owner or registered lessee contends that particular vegetation is exempt from trimming requirements, the burden of proof shall be on the property owner or lessee to show that an exemption applies to the particular vegetation.

7. VIRGIN ISLANDS

§ 1001. Short title

This act shall be cited as the "Solar and Wind Energy Systems Act."

§ 1002. Declaration of findings and policy

The Legislature of the Virgin Islands finds and declares that the prohibitive costs of electrical power and the increasing occurrences of electrical power outages in the Virgin Islands requires the Government of the United States Virgin Islands to pursue serious consideration of other energy sources. Further, the use of renewable energy sources, such as solar energy and wind energy, will help to reduce continuing dependency and reliance on depletable energy resources such as oil, natural gas, and coal. Therefore, the Legislature declares that it is in the public interest to develop and expand solar and wind energy systems to meet the present and future energy needs of the Virgin Islands. The owner of a solar or wind energy system would be permitted to negotiate for assurance of continued access to the owner's energy source. Zoning regulations would be promulgated that would encourage and protect renewable energy systems.

§ 1003. Definitions

As used in this chapter, the term "solar or wind energy system" means any system that converts, stores, collects, protects or distributes the kinetic energy of the sun or wind into mechanical, chemical or electrical energy to provide power generation for the heating of water, the heating and cooling of buildings or other structures, and other similar purposes.

§ 1004. Prohibited conveyances

(a) Any covenant, condition, or restriction contained in any deed, contract, mortgage, security instrument, or other instrument pertaining to a conveyance, sale or transfer of real property or interest therein which prohibits or unreasonably limits the installation or use of a solar or wind energy system shall be void and unenforceable.
(b) A covenant, condition or restriction shall be considered "unreasonable" for the purposes of this chapter if it significantly increases the cost and expense of the solar or wind energy system to its owner or user, or significantly decreases its efficiency, or otherwise effectively discourages the installation or use of a solar or wind energy system.

§ 1005. Energy system height limitation

Notwithstanding the provisions of Title 29, chapter 3, Virgin Islands Code, a tower used in a solar or wind energy system may exceed the height limitation of the district in which it is located by no more than one hundred (100) feet.

§ 1006. Easement for solar or wind energy system; rules and regulations

(a) For a subdivision of land for which a preliminary plot or general subdivision plan, or any other plan or data is required pursuant to the provisions of Title 29, chapter 3, subchapter II, Virgin Islands Code, the Planning Director shall also require, as a condition of approval of such plan or plans, a dedication of easements for the purpose of assuring that each parcel or unit in the subdivision shall have the right to receive sunlight or wind across adjacent parcels or units in the subdivision.

(b) The Planning Director shall issue rules and regulations to effectuate the provisions of

this chapter and shall include therein the following:

(1) Standards for determining the exact dimensions and locations of such easements;

(2) Restrictions on vegetation, buildings and other objects which could obstruct the passage of sunlight or wind through such easements;

(3) Terms or conditions, if any, under which an easement may be revised or terminated; and

(4) Considerations of cost, feasibility, contour, and configuration of the parcels or units to be subdivided.

(c) Such an easement shall not result in reducing allowable densities on any segment of a parcel or unit of a subdivision which may be occupied by a building or other structure already constructed, or presently under construction, on October 3, 1984.

8. STATE OF WISCONSIN

66.0401 Regulation relating to solar and wind energy systems

66.0401(1)

(1) Authority to restrict systems limited. No county, city, town, or village may place any restriction, either directly or in effect, on the installation or use of a solar energy system, as defined in s. 13.48 (2) (h) 1. g., or a wind energy system, as defined in s. 66.0403 (1) (m), unless the restriction satisfies one of the following conditions:

66.0401(1)(a)
(a) Serves to preserve or protect the public health or safety.
66.0401(1)(b)
(b) Does not significantly increase the cost of the system or significantly decrease its efficiency.
66.0401(1)(c)
(c) Allows for an alternative system of comparable cost and efficiency.
66.0401(2)

(2) Authority to require trimming of blocking vegetation. A county, city, village, or town may provide by ordinance for the trimming of vegetation that blocks solar energy, as defined in s. 66.0403 (1) (k), from a collector surface, as defined under s. 700.41 (2) (b), or that blocks wind from a wind energy system, as defined in s. 66.0403 (1) (m). The ordinance may include, but is not limited to, a designation of responsibility for the costs of the trimming. The ordinance may not require the trimming of vegetation that was planted by the owner or occupant of the property on which the vegetation is located before the installation of the solar or wind energy system.

236.292 Certain restrictions void
236.292(2)
(2) All restrictions on platted land that prevent or unduly restrict the construction and operation of solar energy systems, as defined in s. 13.48 (2) (h) 1. g., or a wind energy system, as defined in s. 66.0403 (1) (m), are void.

9. STATE OF FLORIDA

SOLAR RIGHTS LAW (Sections 163.04 and 718.113, Florida Statutes)

163.04 Energy devices based on renewable resources

(1) Notwithstanding any provision of this chapter or other provision of general or special law, the adoption of an ordinance by a governing body, as those terms are defined in this chapter, which prohibits or has the effect of prohibiting the installation of solar collectors, clotheslines, or other energy devices based on renewable resources is expressly prohibited.

(2) A deed restriction, covenant, declaration, or similar binding agreement may not prohibit or have the effect of prohibiting solar collectors, clotheslines, or other energy devices based on renewable resources from being installed on buildings erected on the lots or parcels covered by the deed restriction, covenant, declaration, or binding agreement. A property owner may not be denied permission to install solar collectors or other energy devices by any entity granted the power or right in any deed restriction, covenant, or similar binding agreement to approve, forbid, control, or direct alteration of property with respect to residential dwellings and within the boundaries of a condominium unit. Such entity may determine the specific location where solar collectors may be installed on the roof within an orientation to the south or within 45° east or west of due south if such determination does not impair the effective operation of the solar collectors.

(3) In any litigation arising under the provisions of this section, the prevailing party shall be entitled to costs and reasonable attorney's fees.

(4) The legislative intent in enacting these provisions is to protect the public health, safety, and welfare by encouraging the development and use of renewable resources in order to conserve and protect the value of land, buildings, and resources by preventing the adoption of measures which will have the ultimate effect, however unintended, of driving the costs of owning and operating commercial or residential property beyond the capacity of private owners to maintain. This section shall not apply to patio railings in condominiums, cooperatives, or apartments.

718.113. Maintenance; limitation upon improvement; display of flag; hurricane shutters.

(6) Notwithstanding the provisions of this section or the governing documents of a condominium or a multicondominium association, the board of administration may, without any requirement for approval of the unit owners, install upon or within the common elements or association property solar collectors, clotheslines, or other energy-efficient devices based on renewable resources for the benefit of the unit owners.

SOLAR ENERGY SALES TAX EXEMPTION (Chapter 212, Florida Statutes)

212.02 (26) "Solar energy system" means the equipment and requisite hardware that provide and are used for collecting, transferring, converting, storing, or using incident solar energy for water heating, space heating, cooling, or other applications that would otherwise require the use of a conventional source of energy such as petroleum products, natural gas, manufactured gas, or electricity.

212.08 (hh) Solar energy systems. Also exempt are solar energy systems or any component thereof. The Florida Solar Energy Center shall from time to time certify to the department a list of equipment and requisite hardware considered to be a solar energy system or a component thereof.

SOLAR ENERGY STANDARDS ACT (Section 377.705, Florida Statute)

377.705 Solar Energy Center; development of solar energy standards.

(1) SHORT TITLE. This act shall be known and may be cited as the Solar Energy Standards Act of 1976.

(2) LEGISLATIVE FINDINGS AND INTENT

(a) The Legislature recognizes that if present trends continue, Florida will increase present energy consumption six fold by the year 2000. Because of this dramatic increase and because existing domestic conventional energy resources will not provide sufficient energy to meet the nation's future needs, new sources of energy must be developed and applied. One such source, solar energy, has been in limited use in Florida for 30 years. Applications of incident solar energy, the use of solar radiation to provide energy for water heating, space heating, space cooling, and other uses, through suitable absorbing equipment on or near a residence or commercial structure, must be extensively expanded. Unfortunately, the initial costs with regard to the production of solar energy have been prohibitively expensive. However, because of increases in the cost of conventional fuel, certain applications of solar energy are becoming competitive, particularly when life-cycle costs are considered. It is the intent of the Legislature in formulating a sound and balanced energy policy for the state to encourage the development of an alternative energy capability in the form of incident solar energy.

(b) Toward this purpose, the Legislature intends to provide incentives for the production and sale of, and to set standards for, solar energy systems. Such standards shall ensure that solar energy systems manufactured or sold within the state are effective and represent a high level of quality of materials, workmanship, and design.

(3) DEFINITIONS

(a) "Center" is defined as the Florida Solar Energy Center of the Board of Regents.

(b) "Solar energy systems" is defined as equipment which provides for the collection and use of incident solar energy for water heating, space heating or cooling, or other applications which normally require or would require a conventional source of energy such as petroleum products, natural gas, or electricity and which performs primarily with solar energy. In such other systems in which solar energy is used in a supplemental way, only those components which collect and transfer solar energy shall be included in this definition.

(4) FLORIDA SOLAR ENERGY CENTER TO SET STANDARDS, REQUIRE DISCLOSURE, SET TESTING FEES

(a) The center shall develop and promulgate standards for solar energy systems manufactured or sold in this state based on the best currently available information and shall consult with scientists, engineers, or persons in research centers who are engaged in the construction of, experimentation with, and research of solar energy systems to properly identify the most reliable designs and types of solar energy systems.

(b) The center shall establish criteria for testing performance of solar energy systems and shall maintain the necessary capability for testing or evaluating performance of solar energy systems. The center may accept results of tests on solar energy systems made by other organizations, companies, or persons when such tests are conducted according to the criteria established by the center and when the testing entity has no vested interest in the manufacture, distribution or sale of solar energy systems.

(c) The center shall be entitled to receive a testing fee sufficient to cover the costs of such testing. All testing fees shall be transmitted by the center to the Chief Financial Officer to be deposited in the Solar Energy Center Testing Trust Fund, which is hereby created in the State Treasury, and disbursed for the payment of expenses incurred in testing solar energy systems.

(d) All solar energy systems manufactured or sold in the state must meet the standards established by the center and shall display accepted results of approved performance tests in a manner prescribed by the center.

Solar America Board for Codes and Standards

www.solarabcs.org

ABCS-06-SR