

# LEGAL AND FINANCIAL MECHANISMS FOR SUSTAINABLE BUILDINGS



**Douglas N. Yeoman**

Partner

Parker & Covert LLP

17862 East 17<sup>th</sup> Street, Suite 204

Tustin, California 92780

(714) 573-0900

dyeoman@parkercovert.com



## INTRODUCTION

- As part of my presentation on Legal and Financial Mechanisms for Sustainable Buildings, we will look at the following topics:
  - Alternative Energy Public Policy.
  - 4 different legal mechanisms that are available to public agencies for the development of alternative energy sources.
  - Treatment of Environmental Incentives
  - Federal Investment Tax Credit Extension

## California Alternative Energy Public Policy



- Employ measures to reduce wasteful, uneconomical, and unnecessary uses of energy, thereby reducing the rate of growth of energy consumption, prudently conserve energy resources, and assure statewide environmental, public safety, and land use goals.
- Promote all feasible means of energy and water conservation and all feasible uses of alternative energy and water supply sources, including, but not limited to solar technologies.

## Required Energy Reduction



- Gov. Schwarzenegger signed Executive Order S-20-04 on December 14, 2004, requiring reduced energy use in State-owned facilities and directing the Division of the State Architect to encourage schools built with State funds to be resource and energy efficient.
  - Priority given to conservation and energy efficiency as they are the least expensive and most environmentally protective resources.

## California Solar Initiative



- August 21, 2006, Gov. Schwarzenegger signed SB1 into law which establishes a goal in California to install solar energy systems with a generation capacity of 3,000 megawatts, to establish a self-sufficient solar industry in which solar energy systems are a viable mainstream option for both homes and businesses in 10 years, and to place solar energy systems on 50% of new homes in 13 years.

## California Global Warming Solutions Act of 2006



- On September 27, 2006, Gov. Schwarzenegger signed AB 32, the Global Warming Solutions Act of 2006.
  - Requires college and school districts by 2010 to ascertain the amount of carbon emissions from their buildings and begin efforts to offset the carbon emissions.
  - By 2020, all educational buildings required to reduce carbon emissions by 30%, based upon 1990 levels.
  - By 2050, carbon emissions must be reduced by 80%, which will require the development of new technologies that dramatically reduce dependence on fossil fuels, and shift into a landscape of clean energy, and green technology.

## AB 32 Scoping Plan



- On December 11, 2008, the California Air Resources Board (ARB) approved a 122 page scoping plan required by AB 32 to reduce the state's green house gas emission to 1990 levels by 2020.
- According to ARB Chairman Mary Nichols, the plan will "guide capital investments into energy efficiency to save us money, into renewable energy to break our dependence on oil, and promote a new generation of green jobs for hundreds of thousands of Californians."

## Renewable Energy Standard



- To comply with the California Global Warming Solutions Act carbon emission reduction requirements, SB 14 would, if approved, revise the Renewable Energy Resources Program to state the intent of the Legislature is to increase the amount of electricity generated from eligible renewable energy resources per year, so that amount equals at least 20% of total retail sales of electricity in California by December 31, 2010, and 33% by December 31, 2020.



## Local Government Renewable Energy Self-Generation Program

- Assembly Bill 2466 which was approved by the Governor on September 28, 2008, authorizes a school district to receive a bill credit (based upon the time-of-use electricity generation) to an electricity account for electricity exported to the electrical grid by an eligible renewable generating facility.



## Legal Mechanisms

- Energy Management Agreement.
  - Education Code sections 81660 – 81662 authorize community college districts to competitively bid and enter into energy management agreements for energy management systems involving solar energy or solar and energy management systems.
  - Maximum term of 15 years or estimated useful life of system, whichever is less.

# Legal Mechanisms



- Energy Service Contract and Facility Ground Lease.
  - Government Code sections 4217.10 – 4217.18 grant great flexibility to public agencies in structuring agreements for the development of energy conservation, co-generation and alternate energy supply sources. Competitive bidding is not required.
  - Conservation measures must result in reduction of energy use or more efficient use of energy.

# Legal Mechanisms



- Governing Board must determine in noticed public hearing that entering into the energy service agreement will be in the best interests of the public agency.
- Board must find (a) anticipated cost of energy from implementation of conservation measures will be less than existing energy costs without conservation measures, and if applicable, (b) the difference, if any, between fair rental value of the property and agreed rent will be offset by energy savings.

# Legal Mechanisms



- If facility financing agreement, governing board must also determine that entering into the financing agreement is in the best interest of the public agency.
- Board must make similar finding to that of a energy service agreement but in addition to finding that energy savings are projected to exist, board must also find that the energy savings will be sufficient to repay the financing or the cost of design, construction and operation of the energy conservation facility.

# Legal Mechanisms



- Power Purchase Agreement.
  - Government Code sections 5956 – 5956.10 authorize governmental agencies to utilize private investment capital to study, plan, design, construct, develop, finance, maintain, rebuild, improve, repair, or operation, or any combination thereof, of fee-producing infrastructure facilities.
  - Agency must solicit proposals as part of a competitive negotiation process, but neither competitive bidding nor compliance with any procurement provision in the Public Contract Code or Government Code is required.

# Legal Mechanisms



- Power Purchase Agreement – Cont.
  - Power Purchase Agreement required to contain certain provisions which are listed in your handout.
- Lease of Photovoltaic System.
  - In implementing the 2006 California Solar Initiative, the Los Angeles Department of Water and Power has instituted a Solar Photovoltaic Incentive Program. As part of this program, DWP has provided a lease alternative to owning the photovoltaic system.

# Legal Mechanisms



- Lease of Photovoltaic System - Cont.
  - LADWP has imposed the following 5 conditions to be eligible for the \$2.80 per installed watt incentive payment:
    - Guaranteed for minimum of 20 years.
    - System is operational and operated at expected generation production for 20 year term.
    - Customer ownership by end of 20 year term.
    - Lease payments not based on energy production from equipment.
    - Incentive payment made directly to customer.

## Treatment of Environmental Incentives



- Governmental agency should negotiate the ownership of as many environmental incentives and attributes as possible. A sample environmental incentive provision is described in handout whereby agency owned all environmental attributes and Solar Renewable Energy Credits associated with the solar generating facility.

## Federal Investment Tax Credit Extension



- Energy Improvement and Extension Act of 2008 extended credit for eligible systems into service on or before December 31, 2016.
  - Included as part of larger Emergency Economic Stabilization Act of 2008 which was passed on October 3, 2008.
- Grants credit for solar energy equal to 30% of expenditures, with no maximum credit limit.

## CONCLUSION



- During the past 30 years of legislative activity in California on the issue of alternative energy resources, a number of legal mechanisms have been initiated to encourage the development and implementation of alternative energy sources. We have examined a few such mechanisms which will only increase with the many solutions that alternative energy sources offer our global environment.