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Assembly
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June 7, 2006

TO: All California City Attorneys and City Planners
All County Counsels and County Planners

FR: Assembly Member Lois Wolk

RE: **Solar Energy System Permit Fees – Legislative Intent**

Dear Friends,

As you may know, I have had the honor of refining and expanding the California Solar Rights Act as the author of Assembly Bill 1407 (Chapter 290, Statutes of 2003) and AB 2473 (Chapter 789, Statutes of 2004). During the last year I have received many calls from solar contractors and local government staff regarding the intent of this legislation. I thought it might be helpful to spell things out in more practical terms for everyone's benefit. Thus, this memorandum.

My intent in authoring this legislation was to establish a consistent set of standards for the review and approval of solar energy systems and to eliminate unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes. In addition, AB 2473 expressly declares the Legislature's intent that costs of permitting solar energy systems be minimized.

It has come to my attention that a number of quite different approaches have been taken in the design-review of solar energy systems and in the process of establishing the costs of issuing a permit for the installation of a solar energy system. Some of these approaches appear to be inconsistent with the intent of my legislation amending the California Solar Rights Act. The purpose of this letter is to clarify the Legislature's intent with respect to design review for aesthetic purposes and the assessment of fees for the permitting of solar energy systems.

Design-Review For Aesthetic Purposes May Not Restrict Installation of Solar Systems

Under the provisions of AB 2473, permitting of all types of solar systems "*shall not be willfully avoided or delayed.*" AB 2473 requires a city or county to permit the installation of a solar energy system by right if the system meets specified requirements. Among other things, my intent in enacting AB 2473 was to establish the principle that any application of a design review process for aesthetic purposes that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable. AB 2473 expressly provides that a local agency may not deny an application for a use permit to install a solar energy system unless the local agency finds a specific, adverse impact on public health and safety.

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AB 2473 amended California Civil Code Section 714(d)(1) so as to specifically limit restrictions imposed on photovoltaic systems to those that cost less than $2,000, and prohibit any restrictions that are based on aesthetics alone. In addition, AB 2473 recast Section 65850.5 of the Government Code and Section 17959.1 of the Health and Safety Code to limit a building official's review of installations to those items that relate to specific health and safety requirements of local, state and federal law.

These Sections of California law apply to current and future permitting, design/review, and approval processes, and also to review of existing permit applications.

Permit Fees Must Be Reasonable

As I am sure you are aware, California Government Code section 66005 (a), provides that "[development permit] *fees or exactions shall not exceed the estimated reasonable cost of providing the service...*" On December 22, 2005 the California State Supreme Court upheld this statute by ruling that building permit fees must be based on the "*estimated reasonable costs of providing the services for which the fees are charged*" (Barratt v. C. of Rancho Cucamonga, Ct.App. 4/2 E032578).

I have been advised by industry experts that the average time spent by local jurisdictions to permit and inspect a solar system is between 2 and 5 hours. A fixed fee method to compute solar permit fees has been shown to be an appropriate method of establishing solar permit fees, since it takes about the same amount of time to permit a 2 kilowatt photovoltaic system, a 6 kilowatt system, or a residential or commercial solar water heating system. A permit fee computation methodology that is based on the monetary valuation of the system or its sales price, rather than the estimated reasonable costs of providing the permit service is inconsistent with the intent of AB 2473 as well as the Supreme Court case cited above and may unnecessarily discourage the installation of solar energy systems.

On December 12, 2005 the California Public Utilities Commission approved the California Solar Initiative, reflecting the will of the Governor and the Legislature to establish the largest publicly supported solar energy program in the world. One purpose of this letter is to ask local governments to consider their role in achieving this major state goal by looking carefully at how you assess fees for the permitting of solar energy installations and, in so doing, encourage the utilization of solar technologies by minimizing the obstacles to their use.

I respectfully request that all local permitting agencies enact reasonable permitting policies that encourage affordable solar energy system installations (including over-the-counter permits, permit fees based on the permitting agency's actual costs, and cessation of design reviews for aesthetic concerns).

Sincerely,

Lois Wolk

Lois Wolk
Assemblywoman, 8th District

Attached: AB 1407 (Chapter 290, Statutes of 2003), AB 2473 (Chapter 789, Statutes of 2004)