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VIA E-MAIL

REPLY TO: VANCOUVER OFFICE

January 3, 2007

Ms. Rosalyn Tanner
Director of Financial Services
District of Central Saanich
1903 Mt. Newton Cross Road
Saanichton, BC V8M 2A9

Dear Ms. Tanner:

**Re: Solar Panel Financing
Our File No. 00050-0384**

You requested our opinion on whether the District has the authority to finance energy efficiency improvements such as solar energy panels on private property, through the means of a local area service under the *Community Charter*, and whether it could use the CorpFinance financing described by the Pembina Institute in a December 20 e-mail to Gary Nason.

The District's authority in respect of local area services is set out in s. 210 of the *Community Charter*. This section provides that the only services that may be provided as local area services are "services that the council considers provide particular benefit to part of the municipality, and business improvement area services" (our emphasis). The term "service" is broadly defined in the *Charter* as "an activity, work or facility undertaken or provided by or on behalf of the municipality". These provisions are much broader than they were under previous enabling legislation, under which a limited number of conventional municipal services such as water supply systems and sewer systems could be provided. The availability of the broad service powers places much more responsibility on municipal Councils to ensure that services undertaken are actually of benefit to the community, and can be effectively undertaken by the municipality.

In our opinion, the District likely has the authority to finance an improvement of this type on private property by way of a local area service, provided that there is a benefit to part of the municipality. It seems possible that energy efficiency improvements on private property could provide a benefit to the public. Energy efficiency improvements primarily benefit property owners and occupiers in the form of reduced energy costs. In our view, however, it could be argued that the municipality benefits from an environmental point of view, through a reduction in the use of the municipality's conventional energy supply, thereby avoiding or delaying infrastructure improvements such as new transmission lines that would otherwise be needed and that may have a community impact. There may be other technical benefits of which we are not

aware. Should the District choose to consider financing such improvements by way of a local area service, the expected benefits to the municipality should be set out in a staff report to Council, and the bylaw that establishes the service.

The installation of works on private property via a local area service scheme presents certain complications that are not typically encountered when more conventional local area services are installed in District highways. In the installation phase, if the District is to manage the installation, it will need to obtain some form of permission to go on the properties to carry out the installation, and there will have to be indemnities arranged in relation to damage to buildings that becomes apparent both during construction and afterwards. Such indemnities should also deal with consequential damage that might be done to these properties by the heating systems if they are improperly installed or maintained, or if they prove to be defective. As well, the District might want to include in such agreements an acknowledgement by the owner that the District is not warranting or representing that the owner will benefit from energy cost savings or otherwise. If there are demonstration purposes associated with these installations, the District might also wish to secure a limited right to enter on these properties to demonstrate the installation to others, and/or require the owners to provide energy consumption information to permit the District to evaluate the effectiveness of the project.

The District should also determine whether these works will remain the property of the District, or whether they will become the property of the owner of the building on which they are installed. In each case some sort of permanent agreement between the District and the property owner will be required. If the District retains ownership, the agreement would have to expressly oust the common law of fixtures, according to which this equipment would, like other building components, automatically become part of the land on which it is installed. If ownership of the equipment is to pass to the property owner, the agreement would have to deal with the transfer of title and any applicable manufacturer's or installer's warranties. If there is to be a contractual disincentive for the owner to remove or disconnect the equipment, it would have to be included in such an agreement.

In either case, the matter of maintenance would have to be dealt with, as presumably the point of the project is at least in part to demonstrate effectiveness and perhaps energy cost savings over an extended period of time, and while the current owners of the properties may be well-motivated in this regard, that might not describe subsequent owners of these properties. If the District is to have an extended maintenance obligation, whether it retains ownership of this equipment or not, it will require some sort of ongoing permission to go on the properties to do the maintenance, supported again by an indemnity in relation to damage that work might cause. If the owner is going to be responsible for maintenance, those responsibilities should be set out in a covenant registered against title to the land and binding on subsequent owners, and again the District might want to reserve some right to go on the property to conduct maintenance work on behalf of the owner if the owner defaults. The robustness of these arrangements could be significant to the threshold question of whether these installations are in fact of any benefit to the community, such that they can properly be undertaken as a local area service.

The District should ensure that, if the proposed service area is a development permit area, these installations would not be inconsistent with the applicable development permit guidelines, and should determine whether the area is subject to any private building scheme or restrictive covenant that would prevent the installation of this equipment.

On the matter of financing, s.182 of the *Community Charter* prohibits the borrowing of funds for local improvements in the District under a loan authorization bylaw, except by the Capital Regional District through the Municipal Finance Authority.

Sincerely,

LIDSTONE, YOUNG, ANDERSON

A handwritten signature in cursive script, appearing to read "Bill Buholzer".

Bill Buholzer
buholzer@lya.bc.ca

BB/js