BOARD OF SUPERVISORS AGENDA LETTER

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:

Department Name:	County Executive Office
Department No.:	
For Agenda Of:	November 10, 2009
Placement:	Set Hearing for December 1, 2009
Estimated Tme:	30 minutes
Continued Item:	No
If Yes, date from:	
Vote Required:	Majority; 2/3 for Outside Counsel

TO:	Board of Supervisors	
FROM:	Department Director(s)	John McInnes, Assistant County Executive Officer and Housing & Community Development Director 568-3552
	Contact Info:	David Matson, Housing & Community Development Director (Designate) 568-2068

SUBJECT: **County Municipal Energy Financing District**

County Counsel Concurrence	**Auditor-Controller Concurrence**
As to form: Yes	As to form: Yes

Other Concurrence: N/A

Recommended Actions:

That the Board of Supervisors (Board) set a hearing for December 1, 2009 to consider and take the following actions:

a) Receive and accept a feasibility study and draft program administrative guidelines on the concept of developing a municipal energy financing program (Attachments 1 and 2); and,

b) Adopt and execute a resolution agreeing to use ARRA grant funds for the proposed Central Coast Energy Independence Program (CCEIP), and direct staff to seek additional opportunities to offset costs (Attachment 3); and,

c) Direct staff to begin formal program implementation:
   1. Seek formal program participation commitments from cities within Santa Barbara County,
   2. Develop job descriptions and salary ranges for CCEIP personnel; and,

3. Return to the Board by January 12, 2010 to adopt a "resolution of intention" to form the Central Coast Energy Independence Program, and again on February 2, 2009 for formal program adoption; and,

d) Approve and authorize the Chair to execute an Agreement for Professional Legal Services with Bond Counsel (Attachment 5), and authorize County Counsel to use Bond Counsel to initiate a judicial validation action, if needed; and,

e) Authorize up to $1 million as an advance receivable from the General Fund for program start-up and administration costs, to be reimbursed by ARRA grants, in two disbursements:

1. $250,000 between now and January 12, 2010 for bond counsel, program set-up and pre launch activities.
2. Up to an additional $750,000, to be considered on January 12, 2010, for program launch.

Summary Text:

On July 21, 2008, California enacted Assembly Bill (AB) 811 as an urgency measure, amending Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code to provide California counties and cities with a new way to help property owners finance energy improvements. AB 811 authorizes the establishment of municipal energy finance districts to incentivize the installation of energy efficiency retrofits, water conservation improvements, and solar photovoltaic panels that are permanently affixed to real property. Under this program, voluntary participants could install a wide variety of eligible improvements and be allowed to finance those improvements over time through a supplemental assessment on their property tax bill. If the property owner were to sell the property, the remaining assessment balance is maintained with the property and transferred to the next owner.

On June 23, 2009, the Santa Barbara County (County) Board of Supervisors (Board) voted 5-0 to direct staff to analyze the market, programmatic, financial, and legal considerations necessary for local implementation of a municipal energy financing district, pursuant to AB 811. The results of this analysis demonstrate that implementation of a County-managed municipal energy financing program is feasible.

Increasingly, federal and state investments are being directed towards municipal energy financing programs, which are seen as a successful strategy for ensuring job creation and retention, increasing the economic multipliers flowing through local economies, and delivering public health and social co-benefits such as increased building comfort and improved air quality. Accordingly, immediate funding opportunities are available through the American Recovery and Reinvestment Act (ARRA) to launch a regional municipal energy financing program and, given the Board's direction, position the County to bring forward the first coastal program in the nation.

Notably, approximately 25 percent of the greenhouse gas (GHG) emission reduction targets required by AB 32 are attributable to the built environment.[1] Clearly, a municipal energy financing program constitutes early implementation of an important action related to the development of an overarching County Climate Action Strategy, and would position the County to address a significant portion of these statewide targets. In addition, a County-managed program would align with the Board's adoption of the Santa Barbara County Climate Change Guiding Principles by promoting the incubation of clean technology and renewable energy, as well as the creation of partnerships between the public and private sectors necessary to achieve the AB 32 reductions.

[1] California Air Resources Board AB 32 Scoping Plan

Background/Discussion:

On June 23, 2009, the Santa Barbara County (County) Board of Supervisors (Board) voted 5-0 to direct staff to analyze the market, programmatic, financial, and legal considerations necessary for local implementation of a municipal energy efficiency and solar financing district, pursuant to Assembly Bill (AB) 811. Since Board direction in June, staff has continued work to complete a regional program feasibility study. The County's project team, with members from the Auditor/Controller's Office, the Treasurer/Tax Collector, County Counsel, County Housing & Community Development, and Planning & Development, continued meeting weekly to analyze issues and keep abreast of the state and national policy environments regarding municipal energy financing programs. The project team presented a series of four status reports to the County's Debt Advisory Committee (DAC), illustrating a preliminary program approach based on best-practices; financial and legal implementation options; and, the likely economic benefits that a program would bring to the region.[2] This work has demonstrated the feasibility of a regional municipal energy financing program, as described in further detail below.

Feasibility Study Recommendations

As illustrated in Attachment 1, the feasibility of a regional municipal energy financing program is influenced by the ability to develop solutions, mitigate risks, and enhance the benefits associated with four areas:

- Market Feasibility: Program Scale and Demand
- Program Feasibility: Administration and Design
- Financial Feasibility: Start-up, Interim, and Long-term
- Legal Feasibility

Market Feasibility: Program Scale and Demand

As illustrated in other jurisdictions, an adequate level of participation in, or demand for, a regional program is critical for sustained financial feasibility. For example, as discussed in Section 3 of the feasibility study (Attachment 1), both Sonoma County (California) and Boulder County (Colorado) – the two most successful self sustaining programs to date – target a potential customer base of approximately 112,000 and 75,000 homeowners, respectively.[3] Compared to the 15,000 homeowners in Palm Desert, both Sonoma County (California) and Boulder County (Colorado) are capable of sustaining a program with a relatively low proportion of overall property owner participation. This ability to achieve scale and reach the largest potential pool of customers is particularly important for areas in mild climate zones, because the financial payback associated with replacements of costly items such as aging air conditioners may be less than compared to other climate zones. Accordingly, staff has actively worked with incorporated cities throughout Santa Barbara County, as well as neighboring counties, to gauge levels of interest in participating in a regional program. The response to these efforts has been significant, and all eight Santa Barbara County incorporated cities are expected to formally express interest in participating in a regional County-managed program, provided that the Board directs staff to move forward with implementation. In addition, Ventura County has expressed interest in participation.

[2] DAC meetings occurred on March 16, 2009; July 30, 2009; September 21, 2009; and, November 9, 2009.

[3] Program details at http://www.sonomacountyenergy.org/ and http://www.bouldercounty.org/bocc/cslp/cslpintro.html

To further assess the likely demand for municipal energy financing program in Santa Barbara County, the feasibility study evaluates factors related to forecasted participation, including the local climate data, demographics, quality and type of the existing building stock, the extent to which a skilled workforce is available to service the region, and complementary program incentives. Statistically valid demand surveys conducted by the California Statewide Community Development Authority (CSCDA) and Sonoma County have provided supplemental insight into these factors, and further illuminate the level of demand that could be expected in Santa Barbara County and the central coast. In summary, the feasibility study shows that a program would be sustainable, even if just 3 percent of all owner-occupied single family homes were retrofitted through 2020.[4]

Program Feasibility: Administration and Design

Given forecasted levels of program participation, Section 4 of the feasibility study illustrates that a County-managed municipal energy finance program similar to the model created by Sonoma County, California,[5] would include start-up costs of up to $170,000 for bond counsel and program services necessary to establish appropriate documentation. Normalized ongoing administrative expenses of up to $1 million would be required to service a total funded annual contractual assessment volume of approximately $12 million; however, revenue from contractual assessments and grants will offset these costs, as discussed in further detail below. Following program start-up, these ongoing expenses would include:

- Initially four full-time program staff with specialized lending knowledge to service up to 400 funded contractual assessments per year.[6]
- A reserve fund to preserve programmatic integrity and risk mitigation options.
- Marketing and advertising materials, including a strong internet presence.
- Rent and overhead for storefronts in the northern and southern regions of the County.

Based on current market dynamics, contractual assessment volume estimates, and projected administrative costs, the program is expected to have minimal negative impact on County resources. Administrative costs would increase or decrease incrementally with program participation, as staffing levels and related costs would fluctuate in alignment with the program demand.

Program Administration

Given available organizational options, a municipal energy finance program is recommended to reside within the County Housing and Community Development Department (CHCD). Accordingly, the Director of CHCD would be the designated Program Administrator. In addition to leveraging the existing skills of employees familiar with the financing process, this would complement existing CHCD programs aimed at revitalizing the regional building stock and providing investments to foster economic development. When compared to other organizational options analyzed in Section 4 of the feasibility

[4] Demographic and socioeconomic data for this section is from the 2005-2007 Census American Community Survey Estimates.

[5] Sonoma County and the City of Palm Desert are the only two jurisdictions to operate ongoing municipal energy finance programs in California. The City of Berkeley completed a pilot program.

[6] Sonoma County reports that approximately 70 percent of funding applications are approved, meaning that 30 percent of the requests processed are not actually funded. No interest income is collected from these unfunded applications, even though staff resources have been committed to processing associated paperwork and interacting with potential customers.

study, such as participation in a statewide pilot program being overseen by the California Statewide Community Development Authority (CSCDA), a County-designed and managed program yielded the highest ability meet the unique needs of communities in the region, deliver appropriate levels of customer service, and maximize the economic multipliers flowing to the region.

Program Design

Effective program design is necessary to: 1) ensure an adequate level of program participation, 2) capture data required to demonstrate successful compliance with state regulations and funding requirements, and 3) provide the flexibility to meet customer needs. Underscoring the importance of effectively designed program requirements, the federal government has established formal policy guidance on national municipal energy financing programs, setting standards for consumer protection through audits and inspections, as well as underwriting criteria and property owner qualifications.[7] This federal policy guidance is consistent with program design requirements put forth by the CEC concerning municipal energy finance programs using American Recovery and Reinvestment Act (ARRA) funds.

Given that the use of ARRA funds will be important for offsetting program administrative costs, the draft program administrative guidelines (Attachment 2) reflects the federal and state requirements for successful ARRA grant applications. Accordingly, the local program described in the draft program administrative guidelines would encourage participation from both commercial and residential property owners. A wide variety of accepted energy efficiency retrofits would be allowed, including a "custom measure" track, whereby property owners would propose innovative projects not previously included in the program administrative guidelines. Stringent participant qualification requirements would be enforced, and participants would be encouraged to obtain energy audits to identify the most cost-effective energy improvements. Finally, follow-up inspections and quality assurance activities would be included to ensure proper installation, and provides directly for program performance and evaluation monitoring.[8]

To support the program, the project team has made progress working with the Departments that already oversee complimentary activities such as permitting and incentives overseen by Planning and Development, training and workforce enhancement facilitated by the Workforce Investment Board, and water conservation and storm water management plans overseen by Public Works.[9] Through the implementation phase, staff will continue working with interested parties and stakeholders, including the incorporated cities, local community colleges; utilities; the building, construction, and industrial trades organizations; and workforce development boards to foster economic development, train workers, create or save jobs, and determine the most effective way to collect necessary program data to provide continuous program improvement.

Financial Feasibility

With program administration and design established, contractual assessments would be processed for property owners to purchase and install energy efficiency and solar improvements. As described in

[7] The federal *PACE Principles* and the report *Recovery Through Retrofits* can be accessed at the following sites:
http://www.whitehouse.gov/assets/documents/Recovery_Through_Retrofit_Final_Report.pdf
http://www.whitehouse.gov/assets/documents/PACE_Principles.pdf

[8] Both federal and state guidelines encourage local agencies to ensure that energy assessments on a given property do not exceed 10 percent of the property value. Additionally, property owners must be current on property taxes.

[9] As reported in the California Air Resources Board (CARB) AB 32 Scoping Plan, water conservation measures are critical for ensuring energy savings, since up to 20 percent of statewide energy use is related to the treatment and transport of water.

Section 5 of the feasibility study, contractual assessments would be provided through short term (interim) sources using County funds. Available ARRA grants would be coupled with the income generated from contractual assessments to support program start-up and ongoing costs. However, for a program to be sustainable and ongoing, interim resources must be converted to long-term financing through the issuance of bonds or private placements with interested investors. Should the Board direct staff to move forward with implementation, it is recommended that a new enterprise fund within the County's Housing & Community Development Department be established to operate the program. This would support the financing process, as described in further detail below, and preserve resources for other General Fund programs.

Funding for Program Start-up and Administration

Grants made available through ARRA will offset the costs of establishing a program. In fact, the CEC has already allocated over $772,000 in Energy Efficiency and Conservation Block Grant (EECBG) funds to the County, which the County Executive Office has recommended be used for program implementation. To receive and use these funds for a municipal energy financing district, the Board must adopt a resolution (Attachment 3), and partner with a "large" jurisdiction, as defined by the CEC. The City of Santa Barbara, which meets the CEC's "large" jurisdiction definition, has agreed to participate in this partnership role, and is expected to adopt a similar resolution on November 17, 2009 (Attachment 4). Additionally, $120 million in competitive grants have been made available through the State Energy Program (SEP) in support of ongoing state and local efforts to launch AB 811-type programs. The County is actively pursuing SEP resources, and intends to submit a cooperative grant request with Ventura County in the amount of at least $3 million. Furthermore, the County Executive Office has requested support letters from the eight incorporated cities in Santa Barbara County for inclusion in the SEP application to the CEC on November 30, 2009.

Financing Options

Funding opportunities and credit provided through banks, investors, grants, and internal County funds all provide means of supporting the initial funding for residential and commercial customers through the CCEIP. Of these options discussed in the feasibility study, the Santa Barbara County Treasurer's Investment Pool is recommended as the most viable source of interim capital, given that structured assessment notes or bonds meet the requirements of the Treasurer's Investment Policy and pay a market rate. Approximately $900 million is managed in the County's Treasurer's Investment Pool, and a maximum of $40 million – just under 5 percent – could be set aside for interim funding made through the CCEIP. To transfer this money into the County's municipal energy finance program, while also providing the flexibility to respond to market conditions, short term advancements would be made from the General Fund to the program in increments up to $3 to $5 million. Once this threshold is reached, the County municipal energy financing program could sell an assessment district bond or note to the Treasurer's Investment Pool, repay the General Fund, and resume financing contractual assessments. Once $15 to $25 million in interim financing is achieved, permanent financing would be put in place. Notably, this advanced accounting procedure makes capital available for interim funding to customers, while also preserving other programs funded through the General Fund.

In summary, this approach provides a mechanism to establish fixed terms with the Treasurer's Investment Pool at specific increments, which is important, given that the Treasurer's Investment Pool can only hold notes for up to five years. The municipal energy finance program would pay off the assessment district note to the Treasurer's Investment Pool by accessing long term financing and the debt market after two to three years, based on the accumulated volume of contractual assessments and prevailing market dynamics. Given the statewide and national momentum supporting these programs, this may occur sooner, because policy direction is driving increased market acceptance.[10] Under the federal government's current proposal, the US Department of Energy would guarantee contractual assessments made by all municipal energy finance programs nationwide. This would protect investors against property owner defaults, thereby significantly lowering any risk associated with municipal energy bonds. In addition, the County has been allocated approximately $4.2 million in special Qualified Energy Conservation Bonds, which may be used for AB 811-type programs. In support of CCEIP programmatic efforts, the Treasurer/Tax Collector and Auditor/Controller are working collectively to secure access to these federally-backed zero-coupon bonds. The US Department of Energy is expected to make a final determination regarding the use of this funding stream in the January 2010 timeframe. If approved, this could provide a very cost-effective means of carrying out the County's first issuance, as market risk would be mitigated.

Legal Feasibility

Without a doubt, the financial feasibility of a local program is contingent upon the resolution of well-known legal issues, as discussed in Section 6 of the feasibility study, that require substantial due diligence. Notably, all jurisdictions implementing AB 811-type programs have used bond counsel to assist in program set-up, develop proper financial instruments, and file a judicial validation action to address issues such as the senior lien status of AB 811-type contractual assessments. County staff has engaged in a thorough interview process to identify and recommend bond counsel for selection. Given the Board's direction, bond counsel will provide legal advice regarding financing options and the establishment of an energy efficiency financing district, draft applicable documents, and file a judicial validation action regarding the program. Importantly, Sonoma County's validation action was approved on September 23, 2009, clearing the way for successful implementation of its program.

Next Steps

Should the Board provide direction to initiate program implementation, a required legal process must be followed, consistent with the provisions of AB 811, to establish the County's municipal energy finance program. This includes working with bond counsel to develop final program documents and a draft "resolution of intention" that each participating city Council must approve, prior to the Board's ultimate adoption of a program. Work to address these requirements will continue through the December timeframe, along with efforts to identify storefronts, establish a web presence, and define staff qualifications. Accordingly, two subsequent Board hearings will be necessary to implement the municipal energy financing program and the associated assessment district. This would position the County's program to be open for business by April 2010.

Given the Board's direction, program implementation will proceed in a two-phase process. Phase 1 will include tasks leading up to January 12, 2010 Board adoption of a "resolution of intention" to establish a program, and Phase 2 will include the tasks between mid January and April 2010, when a program is forecasted to be open for business. These tasks and associated costs are described in the Fiscal Analysis section below.

[10] House Resolution 3836

Fiscal Analysis:

Funding Sources	Current FY Cost:	Annualized On-going Cost:	Total One-Time Project Cost
General Fund	$ 228,000.00		
State	$ 772,000.00		
Federal			
Fees			
Other:		$ 1,000,000.00	
Total	$ 1,000,000.00	$ 1,000,000.00	$ -

Narrative:

ARRA resources provided through EECBG and SEP funding will increase the feasibility of a municipal energy finance program, while also reducing the risk to the General Fund. However, resources are provided through the CEC on a "reimbursement" basis, meaning that the County must first pay for the necessary programmatic start-up and administrative costs, and then submit follow-up documentation for reimbursements to the CEC. Importantly, annualized ongoing costs will be wholly reimbursed through program revenues. In short, the expected impact of start-up, interim, and long-term program costs to the General Fund is minimal.

Accordingly, to address the need for upfront resources, a short-term County General Fund advance receivable is needed to hire bond counsel and staff, set up storefronts, establish a reserve fund, and conduct outreach activities, among other tasks, as illustrated in the pro formas provided in Appendix B of the feasibility study. It is recommended that this receivable be provided in two increments: one in the amount of $250,000 for work leading up to the projected January 12, 2010 Board adoption of a "resolution of intention" to establish a program (Phase 1), and another for approximately $750,000 to address tasks between mid January and the target date of April 2010, when the program will be open for business (Phase 2). This strategy enables the County to proceed using a portion of the guaranteed EECBG resources to cover Phase I costs, and provide Phase II funding following the CEC's announcement of successful SEP grant awards. In all cases, proceeds resulting from the EECBG or a competitive award of SEP funds, as well as income earnings from contractual assessments, would be used to reimburse the General Fund in a timely manner. Specific tasks for each phase, as well as estimated County staff and contractor resource requirements are summarized below.[11]

Phase 1 ($250,000): Tasks accomplished prior to January 12, 2010.

- Work with Bond Counsel to establish formal program documentation, contracts, financial instruments, and judicial validation documents.
- Seek resolutions of support and participation from the other jurisdictions, including the eight incorporated cities within Santa Barbara County, needed for ARRA grant applications.
- Develop job descriptions and salary ranges for CCEIP personnel.
- Initiate statutory program adoption proceedings, which include:
  - Developing the "resolution of intention" and associated program reports.
  - Working with cities to adopt resolutions of intention, consenting to the inclusion of incorporated territory in the program.

[11] Staff and contractor resources are eligible for ARRA grant reimbursement.

- Establish a web presence.
- Establish program business procedures, process controls, and quality assurance.
- Return to the Board for adoption of the "resolution of intention" on January 12, 2010.

Phase 2 ($750,000): Tasks accomplished between January 2010 and April 2010.

- Return the Board on February 2, 2010, pursuant to State law, to adopt the formal program and assessment district.
- Establish accounting structure and reserve fund to address cash flow needs.
- Entering into formal program agreements with incorporated cities.
- Initiating judicial validation proceedings for the program, if uncontested.
- Recruit and hire staff.
- Establish storefronts, procure software, update website.
- Develop media to outreach materials launch program.

Staffing Impacts:

Legal Positions:	FTEs:
NA	NA

Special Instructions:

Provide a signed copy of Attachment 3 to the Housing and Community Development Department.

Attachments:

Attachment 1: Santa Barbara County Municipal Energy Financing District Feasibility Study
Attachment 2: Draft Central Coast Energy Independence Program Administrative Guidelines
Attachment 3: ARRA EECBG Resolution
Attachment 4: Sample ARRA EECGB Partnership Resolution
Attachment 5: Agreement for Professional Legal Services

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