THE CITY OF SAN DIEGO

REPORT TO THE CITY COUNCIL

DATE ISSUED: March 9, 2010 REPORT NO: 10-033

ATTENTION: Council President and City Council

SUBJECT: San Diego Clean Generation Program – Proposed Formation of the City of San Diego Renewable Energy, Energy Efficiency, and Water Conservation Improvement District No. 1

REQUESTED ACTION:

Adopt a Resolution of Intention to form the City of San Diego Renewable Energy, Energy Efficiency, and Water Conservation Improvement District No. 1 and a Resolution of Intention to Incur Bonded Indebtedness in a maximum aggregate amount not to exceed $200 million to facilitate access of interested property owners to special tax financing for the acquisition, installation, and improvement of renewable energy, energy efficiency, and water conservation improvements and equipment to their properties.

STAFF RECOMMENDATION: Approve the requested actions.

SUMMARY:

Background

The Mello-Roos Communities Facilities Act of 1982, as amended, (the "Act) allows local governments in California to finance community facilities and services through the levy of special taxes. In February 2010, the City Council passed Ordinance No. O-19930, which amended Chapter 6, Article 1 of the San Diego Municipal Code (the "Code") by creating Division 26, Sections 61.2601 through 61.2619. The amendment to the Code provides a legal framework under the City's Charter Authority and through reference to the Act to form a special tax district that interested property owners can "opt in" to access special tax financing for the acquisition, installation and improvement of renewable energy, energy efficiency, and water conservation improvements and equipment (the "Improvements") to their properties. Once the Code was amended, staff was to return to City Council with the next actions required to form the City of San Diego Renewable Energy, Energy Efficiency, and Water Conservation Improvement District No. 1 (the "District").

Initiation of District Formation

The proposed actions constitute the initiation proceedings to form the District. These actions include City Council consideration and adoption of the Resolution of Intention to Establish the District and the Resolution of Intention to Incur Bonded Indebtedness.

- Resolution of Intention to Form the District – This resolution would: (1) designate the name and boundaries of the District; (2) identify the types of eligible facilities to be financed through the District; (3) declare the intention to levy special taxes; (4) approve the Rate and Method of Apportionment of special taxes for the District; (5) set the time and place for public hearing on the establishment of the District; and (6) establishing voting procedures.

- Resolution of Intention to Incur Bonded Indebtedness – This resolution would: (1) set the maximum aggregate principal amount of bonds to be issued in connection with the District; and (2) set the time and place for a public hearing on the proposed debt issuances.

The boundaries of the City of San Diego Renewable Energy, Energy Efficiency, and Water Conservation Improvement District No. 1 would be coterminous with the boundaries of the City. This would allow any interested property owner within the City's boundaries to opt into the District after it is formed. The eligible facilities as set forth under Section 61.2611 of the Municipal Code include *"acquisition, construction, expansion, installation and improvement of energy efficiency, water conservation, including pollution control, and renewable energy improvements and equipment with an expected useful life of five years or longer to or on real property and in buildings, whether such real property or buildings are privately or publicly owned."*

The City will facilitiate the financing for the Improvements through the issuance of special tax bonds as property owners opt into the District. The Improvements associated with each individual property will be financed through proceeds derived from the issuance and sale of individual special tax bonds in an amount sufficient to fund the costs of the Improvements and related incidental expenses associated only with that particular property. Participation by interested property owners would be strictly voluntary, and would be accomplished by execution of various documents which clearly spell out the obligations associated with their participation. The bonds will be taxable (versus tax-exempt) because the Improvements being financed will be privately owned. The maximum aggregate principal amount of bonds issued over the life of the District would not exceed $200 million. In conjunction with the City Council actions pertaining to the issuance of debt, property owners opting into the District would need to authorize the issuance of the special tax bonds to finance the Improvements. Any bonds or other indebtedness financing the Facilities would be issued under the Act, the Code, and an indenture for and on behalf of participating property owners, and would be payable from special tax revenues according to the Rate and Method of Apportionment of Special Tax.

The Rate and Method of Apportionment of Special Tax for the District generally provides that an amount would be levied annually on each parcel subject to the special tax to pay principal and interest due on the amount financed to construct the Improvements, and on-going administrative costs of the District. When a property owner annexes into the District, a Rate Supplement will be prepared for the subject property with the specific terms of the annual special tax unique to that property. The special tax will be levied and collected in the same manner as ordinary ad valorem property taxes, and will be secured by a continuing lien on participating property that will be superior to any mortgage recorded on the property.

Upon the City Clerk being notified that the first parcel or parcels are requesting annexation to the District, the City Clerk shall call an election at which a proposition to approve the Rate and Method of Apportionment and a proposition to incur the bonded indebtedness shall be submitted to the qualified elector or qualified electors of such parcel or parcels. If there have been fewer than twelve registered voters within the District for each of the 90 days prior to the election, then the qualified electors at the election shall be the owner or owners of the parcel or parcels to be annexed. If there have been more than twelve registered voters residing at the parcels proposed for annexation for each of the 90 days prior to the election, then the qualified electors shall be the registered voter or voters residing at such parcel or such parcels. If two-thirds or more of the votes cast at the election are in favor of a proposition, then that proposition shall carry. Thereafter, the election process would be through the written unanimous approval of property owners to annex their property into the District as set forth in the Form of Unanimous Approval (Exhibit C to the Resolution of Intention to Form the District).

The resolutions specify that a public hearing will be held on April 27, 2010 regarding the establishment of the District and the proposed issuance of indebtedness.

Next Steps

The City Council must take the following additional actions to establish the District and to authorize debt to finance the Improvements:

1. The County Assessor's Office records the boundary map filed with the City Clerk pursuant to the Resolution of Intention. The District will consist solely of territory proposed for annexation to the District in the future.

April 27, 2010 Public Hearing:

2. The City Council holds a duly noticed public hearing on the proposed establishment of the District, the levy of the special tax, and the proposed issuance of indebtedness, and considers adoption of:
    a. Resolution of Formation of the Special Tax District, that establishes the District, establishes Facilities, adopts the Rate and Method of Apportionment and calls an election to authorize the levy of a special tax within the District.
    b. Resolution of Necessity to Incur Bonded Indebtedness, that declares the necessity to incur bonded indebtedness and calls an election to establish the maximum bonded debt for the District.

3. The City Council considers and adopts an Ordinance Levying Special Taxes, which provides for the levy of the special taxes on parcels that will annex to the District and provides for apportionment and collection of the special taxes.

Policy Considerations

Due to the unique nature of the proposed District as compared to the more typical financing mechanisms such as Mello-Roos CFD financing contemplated in the City's Debt Policy – Special District Formation and Financing Policy (the "Policy"), a few issues of a policy nature arose with respect to the proposed District. A brief summary of these issues is described below:

a. Types of Eligible Facilities

The current Policy does not provide for the financing of private facilities. However, revisions to the Policy are currently being proposed to provide for the financing of private facilities in accordance with recent amendments to the Municipal Code, which added Chapter 6, Article 1, Division 26: "Renewable Energy, Energy Efficiency and Water Conservation Improvements, and Equipment Financing Program" (MC Sections 61.2601 through 61.2619).

b. Debt Service Coverage

The Policy provides that the maximum special tax rate must provide a minimum of 110% coverage of debt service in order to finance delinquencies out of special tax revenues. In addition, the Policy provides that an allowance for delinquent properties will be factored in when calculating each year's special tax. Due to the fact that the special tax rate for a particular property is derived directly from an individual bond issued to fund the cost of the Improvements associated only with that individual property, for the proposed District, the maximum special tax rates will incorporate only 100% debt service coverage, and any allowance for delinquencies will apply only to that property when calculating the subsequent year's special tax.

c. Maturity Date

The Policy provides that no bonds shall be issued with a maturity date greater than the expected useful life of the facilities or improvements being financed. For the proposed District, it is anticipated that a variety of improvement types with varying useful lives may be financed through a single bond over a period of up to twenty years. Whenever possible, the bond maturity schedule will be developed to reflect repayment for the useful lives of the respective improvements, however, in some limited instances, adherence to this provision may be impractical.

d. Maximum Tax and Assessment Rates

For districts involving bond financing, the City desires to establish a maximum level of taxes to limit the overlapping debt burden on any parcel. As such, the total taxes and assessments collected through the property tax bill should not exceed 1.80% of the expected assessed value of the parcel upon final sale of the property to end users. For the proposed District, it is anticipated that in extremely rare circumstances (e.g., if a property is located in an existing Community Facilities District), this limitation may not be met. However, given the voluntary opt-in nature of the proposed District, any potential participating property owner would be able to evaluate this impact on a case by case basis prior to entering the program.

FISCAL CONSIDERATIONS:

Any special tax bonds to be issued under the Code will be repaid only from the special taxes levied and collected in the District. The costs of establishing the proposed district, costs of financing improvments, costs associated with issuing bonds, and any other administrative costs will be recovered from proceeds of the bonds. Any ongoing administrative expenses in connection with the proposed district or indebtedness would be borne by participating property owners and will be included in the special tax levy and reimbursed to the City from special tax collections under the Rate and Method of Apportionment.

EQUAL OPPORTUNITY CONTRACTING INFORMATION:

Not applicable.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

A report was presented to Natural Resources and Culture Committee on October 28, 2009, ITEM-9. SUB ITEM b. "AB 811 Action Timeline/District Formation" as an informational item for the purpose of reporting on the development and progress of the San Diego Clean Generation Program. Informational Item Only - No Action Taken.

A report was presented to Natural Resources and Culture Committee on December 9, 2009, Item – 10: Report from the Environmental Services Department regarding the Clean Generation Program. ACTION: Motion by Councilmember DeMaio, Second by Councilmember Lightner, to accept the staff recommendation and to place this as a standing item on the NR&C agenda. Direct the City Attorney's office to work with the Green Energy/Good Jobs Alliance.

An amendment to the Municipal Code allowing for the creation of the District was presented to the City Council on February 2, 2010, ITEM-330: Amending the San Diego Municipal Code by Amending Chapter 6, Article 1, by adding Division 26 titled "Renewable Energy, Energy Efficiency and Water Conservation Improvements and Equipment Financing Program". ACTION: Unanimous vote, 2 not present.

A report was presented to Natural Resources and Cultural Committee on February 24, 2010, ITEM-8: "Update from the Mayor's Office regarding the CLEAN GENERATION PROGRAM" as an informational item for the purpose of reporting on the development and progress of the San Diego Clean Generation Program. Informational Item Only - No Action Taken

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Public outreach was performed through a series of public meetings in November 2009 so property owners would have an opportunity to provide input into the design of the Clean Generation Program, of which formation of the proposed District is a part. Additionally, Mayor Sanders established a Clean Generation Program Working Group to make policy recommendations to the Mayor on issues related to the design of the San Diego Clean

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Property owners who elect to participate in the proposed District to fund their energy and water conservation improvements.

Business entities anticipated to be involved in the program and district formation include David Taussig & Associates as Special Tax Consultant, Stradling Yocca Carlson & Rauth as Formation and Bond Counsel, Renewable Funding LLC and the California Center for Sustainable Energy (CCSE) as Joint Program Administrators, and Renewable Funding and the North American Development Bank as short and long term financing providers, respectively. Applicable actions authorizing the participation of these entities for the Program implementation will be presented to the City Council in the future.

Respectfully submitted,

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Debt Management Director

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Chief Financial Officer