



## City of Biggs

### Agenda Item Staff Report For the Regular City Council Meeting: March 11, 2014

TO: Honorable Mayor and Members of the City Council

FROM: City Administrator

**SUBJECT:** Consider the Inclusion of Land within the Territorial Jurisdiction of the City of Biggs in the County of Butte Community Facilities District 2013-1 (Clean Energy)

#### **Fiscal Analysis**

No impact to the City. Potential local economic activity associated with job creation and increased demand for energy efficiency / renewable energy / water conservation products and services.

#### **Background**

On October 8, 2013, the Butte County (County) Board of Supervisors held a hearing to take necessary steps to establish a program with Ygrene Energy Fund (Ygrene) and a community facilities district (CFD) to be used for financing or refinancing the acquisition and installation of energy-efficiency, water-conservation, and renewable-energy improvements (Clean Energy Improvements) to commercial buildings. The CFD is authorized under the Mello-Roos Community Facilities Act of 1982 as amended by Senate Bill 555 (SB 555). This type of program is often referred to as "Property Assessed Clean Energy" (PACE) financing. PACE financing is completely voluntary: only property owners that choose to seek financing through the CFD for energy- and water-related improvements to their property and unanimously vote to annex their property into the CFD will be subject to this program.

Section 53315.8 of the Mello-Roos Community Facilities Act provides that the County may not form a district within the territorial jurisdiction of a city without the consent of the legislative body of the city. The County has designated the entire jurisdictional territory of the County as territory proposed for annexation to the CFD in the future, and the City Council must consent to annexations from within Biggs before any owner of a parcel within the city may annex the parcel to the CFD and take advantage of the benefits of the Ygrene PACE financing program.

#### **PACE Financing**

Recent changes to state law (Assembly Bill 811 and SB 555) enable cities and counties to set up property-supported financing programs in which property owners may obtain financing for the acquisition and installation of energy-efficiency, water-conservation, and renewable-energy improvements to or on their real property, including homes and commercial buildings. Property owners that choose to obtain

such financing would repay it through assessments or special taxes on their property tax bills over a set period of time. This type of program is often referred to as PACE financing. PACE financing is completely voluntary: only property owners that choose to seek financing through the CFD for energy- and water-related improvements to their property and unanimously vote to annex their property into the CFD will be subject to this program. No property may be annexed into the CFD or subject to any part of this program without the express willing, unanimous consent of the property owner(s).

PACE financing addresses two major financial hurdles to capital-intensive energy-efficiency and renewable-energy projects: the high up-front cost and the potential that those costs will not be recovered upon sale of the property. With PACE financing, there is little or no up-front cost to the property owner, and if the property is sold before the investors are repaid, unless a prepayment is arranged, the new owner will assume responsibility for the remaining assessments or special taxes as part of the property's annual tax bill. By overcoming these barriers, PACE financing presents a substantial opportunity to stimulate construction and building activity, reduce peak energy demand, increase property values, and generate savings on utility bills for property owners.

The Butte County Board of Supervisors on August 13th adopted a Resolution of Intention (Resolution 2013-25) declaring the County's intention to establish a CFD and levy special taxes therein (only on properties where the County receives a voluntarily request from a property owner to annex into the CFD) to finance or refinance acquisition and installation of energy efficiency, water-conservation, and renewable-energy improvements. The Board also authorized the county administrator to execute a contract with Ygrene to design, fund, implement, and market the County's program consistent with terms negotiated with the County and city staff representatives.

### **Community Facilities District Formation Process**

State law prescribes the process by which a jurisdiction may create a CFD for purposes of offering financing for Clean Energy Improvements. The process includes two hearings. Following its August 13th hearing, the Board of Supervisors held a second hearing on October 8th and took the following actions:

Adoption of "Local Policies and Procedures," as required by the Mello-Roos Act before proceedings are initiated to establish CFDs (Gov. Code, §53312.7). Hearing of testimony. Adoption of a Resolution of Formation (ROF) of the CFD. The ROF establishes the Future Annexation Area/CFD, authorizes the Orrick firm to file validation action, and approves the forms of Unanimous Approval Agreement and Assignment Agreement contained in the Hearing Report, which was incorporated into the ROF by reference.

The Hearing Report describes how the program will function and acts as a user guide, providing information on program benefits, requirements and parameters, eligible improvements, how property owners and contractors can participate, and other information. Attached to the Hearing Report are the following documents:

- Unanimous Approval Agreement. Specifies the terms and conditions under which property owners unanimously approve annexation of their property to the district and levy of the special tax.

- Notice to Lender of Proposed Special Tax. Letter sent to lender(s) with existing lien(s) on the participating property notifying them of the proposed special tax and lien.
- Assignment Agreement. Agreement between County and Ygrene whereby the County assigns the special tax revenue stream to Ygrene upon funding of each project.
- Property Owner's Acknowledgment of Sole Responsibility to Deal with Lenders. Participating property owners must sign this acknowledgment indicating they are responsible to deal with existing mortgage lenders and aware of the potential risks therein.
- Notice of Special Tax Lien. A Special Tax Lien on the property secures the financing. The Notice of Special Tax Lien is recorded prior to commitment of funds and commencement of construction.

The Staff Report and the Hearing Report are available at [http://buttecounty.granicus.com/MetaViewer.php?view\\_id=2&clip\\_id=113&meta\\_id=20640](http://buttecounty.granicus.com/MetaViewer.php?view_id=2&clip_id=113&meta_id=20640). And have also been sent to Council electronically.

Introduction of Ordinance Levying Special Tax. The ordinance was subsequently adopted at the October 22, 2013 Board of Supervisors meeting.

File and prosecute to judgment a validation suit (including CFD formation documents, program documents, validity of special tax, and lien priority of special tax). A validation action is a summary legal proceedings brought to confirm the legal validity of certain types of documents associated with a public agency's financial transaction. Validation actions serve the important purpose of quickly providing certainty to the agency and other parties involved in the agency's transaction that a subsequent legal challenge will not invalidate or unwrap the transaction. Because PACE financing is a new form of financing, a validation action is desirable to give the County and cities certainty, before embarking on the transaction, that a subsequent legal challenge will not invalidate or unwrap the transaction. The validation judgment was completed on Jan. 29, 2014.

### **City Action Required**

Section 53315.8 of the Mello-Roos Community Facilities Act provides that the County may not form a district within the territorial jurisdiction of a city without the consent of the legislative body of the city. The County has designated the entire jurisdictional territory of the County as territory proposed for annexation to the CFD in the future. The City Council must consent to annexations from within Biggs before the owner of any parcel within the city may annex the property to the CFD and take advantage of the benefits of Ygrene PACE financing program.

**Discussion**

The Ygrene program can provide substantial benefits to commercial and residential property owners. Examples of eligible projects include solar panels; duct and building envelope sealing; insulation; multi-pane windows; energy-efficient heating and air conditioning systems, new roofs, lighting systems and controls, water heaters, industrial equipment and motors, and new chillers and freezers; water-efficiency measures; and other deferred maintenance and systems replacement projects.

Providing the opportunity for property owners to participate in the Ygrene PACE program can help to stimulate local construction activity, reduce energy demand and associated greenhouse gas emissions attributable to community energy use, increase property values, and generate savings on utility bills for property owners.

Because the Ygrene program includes outreach and marketing, contractor training, and borrower consultation with Ygrene staff, no City staff or budget resources would need to be expended as a result of City Council consent to the inclusion of land within the jurisdictional limits of the City of Biggs in the County's CFD 2013-1 (Clean Energy). Upon adoption and Ygrene implementation, the City would assist in communicating the availability of this new tool to the business community.

**Attachment**

1. Resolution to grant consent to the Butte County Board of Supervisors to annex property within the jurisdiction of the City to the Butte County Community Facilities District 2013-1

**Recommendations**

Consider adopting resolution 2014-04 granting consent to the Butte County Board of Supervisors to annex property within the jurisdiction of the City of Biggs to Butte County Community Facilities District 2013-1 (Clean Energy).

**RESOLUTION NO. 2014-04**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BIGGS GRANTING  
CONSENT TO INCLUSION OF LAND WITHIN THE TERRITORIAL JURISDICTION  
OF THE CITY IN THE COUNTY OF BUTTE COMMUNITY FACILITIES DISTRICT  
2013-1 (CLEAN ENERGY)**

WHEREAS, the Board of Supervisors (the “Board”) of the County of Butte (the “County”) has formed its Community Facilities District No. 2013-1 (Clean Energy) (the “District”) pursuant to the Mello-Roos Community Facilities Act of 1982 (California Government Code §§ 53311 and following, the “Act”) with particular reference to Section 53328.1 thereof and its provision that the only means by which a parcel may be included in the District is through the unanimous written consent of all of the owners of that parcel; and

WHEREAS, Section 53315.8 of the Act provides that the County may not form a district within the territorial jurisdiction of a city without the consent of the legislative body of the city; and

WHEREAS, the County has designated the entire jurisdictional territory of the County as territory proposed for annexation to the District in the future, subject to the requirement that before any parcel within incorporated territory may annex to the District, the city council of the incorporated city must consent to annexations from within its territory; and

WHEREAS, this City Council (the “Council”) of the City of Biggs (the “City”) wishes to grant its consent to the annexation, to the District, of any parcel within the territorial jurisdiction of the City; and

WHEREAS, the Council is fully advised in this matter;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BIGGS AS FOLLOWS:

Section 1. The above recitals are true and correct, and the Council so finds and determines.

Section 2. The Council, as the legislative body of the City, hereby grants its consent to the Board of Supervisors of the County to annex property within the territorial jurisdiction of the City to the District.

Section 3. The inclusion of any parcel of land within the City in the District shall be in accordance with the Unanimous Approval Agreement that must be executed by all of the owners of that parcel, and that parcel shall be treated by the County in respect of the District on the same basis and under all the same terms and conditions as if the parcel were not within the territorial jurisdiction of the City but, instead, were located in unincorporated territory of the County.

Section 4. This consent is intended to fulfill the requirements of Section 53315.8 of the Act.

Section 5. This resolution shall take effect immediately upon its passage.

**I HEREBY CERTIFY** that the foregoing **RESOLUTION** was duly introduced, passed and adopted at a regular meeting of the City Council of the City of Biggs, held on the 11<sup>th</sup> day of March, 2014 by the following vote:

AYES: Council Members: \_\_\_\_\_

NOES: Council Members: \_\_\_\_\_

ABSENT: Council Members: \_\_\_\_\_

ABSTAIN: Council Members: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Roben Dewsnup, CITY CLERK

\_\_\_\_\_  
Roger Frith, MAYOR