SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

ITEM: 3.16
(ID # 11848)
MEETING DATE:
Tuesday, April 07, 2020

FROM: FACILITIES MANAGEMENT:

SUBJECT: FACILITIES MANAGEMENT (FM): 179D Energy Efficiency Tax Deduction Allocation Program - California Environmental Quality Act Exempt; Authorization of Facilities Management to Develop the 179D Energy Efficiency Tax Deduction Allocation Program for County-Owned Buildings; Designate the Director of Facilities Management as Representative for the County of Riverside to Allocate the Tax Deduction to Construction Professionals who Design or Install Energy Efficient Systems in County-Owned Buildings, All Districts. [$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the Project is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15378 and Section 15061(b)(3);

2. Authorize Facilities Management to develop the 179D Energy Efficiency Tax Deduction Allocation Program for county-owned buildings; and

3. Designate the Director of Facilities Management as Representative for the County of Riverside to allocate or transfer the tax deduction to construction professionals who design or install energy-efficient systems in new or renovated county-owned buildings.

ACTION: Policy

Rose Salgado, Director of Facilities Management 3/5/2020

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Spiegel, seconded by Supervisor Perez and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes:	Jeffries, Spiegel, Washington, Perez and Hewitt
Nays:	None
Absent:	None
Date:	April 7, 2020
xc:	FM

Kecia R. Harper
Clerk of the Board
By: Deputy

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FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	$ 0	$ 0	$ 0	$ 0
NET COUNTY COST	$ 0	$ 0	$ 0	$ 0
SOURCE OF FUNDS: N/A			**Budget Adjustment:** No	
			For Fiscal Year: 2020/2021	

C.E.O. RECOMMENDATION: Approve.

BACKGROUND:
Summary

The 179D Commercial Buildings Energy-Efficiency Tax Deduction (Internal Revenue Code §179D(d)(4) and Notice 2008-40) was enacted into law as part of the Energy Policy Act of 2005 to encourage the energy-efficient design and construction of new or renovated properties. Per the statute, building owners of energy efficient commercial buildings may take a tax deduction arising from the installation of energy-efficient commercial building property as part of the interior lighting, HVAC and hot water systems, or building envelope systems. Each one of these elements has the potential of a tax deduction from $0.60 per square foot to a possible total of $1.80 per square foot.

Because the County of Riverside is a governmental agency not subject to tax, any construction or renovations covered under the code section would not provide the County any benefit. However, the law provides authorization for government entities to allocate or transfer part or all of the tax deduction to the architect, engineer, contractor, environmental consultant or an energy services provider that contributed to the technical specifications of the energy-efficient county building.

County buildings eligible for the tax deduction must be certified to achieve from 10% to 50% of savings in energy and power costs. A site observation is required to be performed by a licensed third-party professional engineer or contractor paid by the consultant requesting the tax allocation deduction. The systems must meet the energy efficiency standards as outlined by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, or ASHRAE. The amount of tax deduction depends on the percentage of energy savings certified.

In order for the County to allocate or transfer its 179D energy efficiency tax deduction, the County must provide a written allocation letter to the consultant identifying the subject project, related information, and confirming the scope of work performed as eligible. The allocation letter does not make any statement towards the energy efficiency of the county building nor establish a tax deduction amount. The consultant requesting the tax allocation obtains the computed savings percentage from an independent consultant using a computer modeling certification of the power savings as compared to the ASHRAE standards and the County receives a record of the document.

The 179D Commercial Buildings Energy-Efficiency Tax Deduction Program has a planned sunset date of December 31, 2020. Staff recommends approval of this item.

The 179D Commercial Buildings Energy-Efficiency Tax Deduction Program was reviewed and determined to be exempt from CEQA pursuant to State CEQA guidelines Section 15378, and Section 15061 (b) (3) – Common Sense Exemption. The Program is limited to the creation of funding mechanism to allow for the transfer and allocation of energy efficiency tax deductions from the County to consultants to encourage the development of energy efficient facilities. No direct or indirect physical environmental impacts would occur. Therefore, the project is exempt as the project meets the scope and intent of the Common Sense Exemption identified in Section 15061 (b)(3), and Section 15378. A Notice of Exemption will be filed by FM staff with the County Clerk within five days of Board approval.

Impact on Residents and Businesses

The purpose of this program is to incentivize architects, engineers, contractors, environmental consultants or energy services providers to incorporate energy-efficient plans to save on energy consumption and reduce operational costs in county buildings.

Additional Fiscal Information

There is no contractual or financial obligation to the County as a result of this program.

RS:VC:SP:sc:tv Gen Form 11 – 179D Energy Efficiency Tax 11848 – 14054
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Steven Atkeson 3/26/2020 Gregory P. Priamos, Director County Counsel 3/17/2020

COUNTY OF RIVERSIDE
EDA
ECONOMIC DEVELOPMENT AGENCY

Original Negative Declaration/Notice of Determination was routed to County Clerks for posting on.

Via FM

Date Initial

NOTICE OF EXEMPTION

February 10, 2020

Project Name: Riverside County 179D Energy Efficiency Tax Deduction Allocation Program for County-Owned Buildings

Project Number: FM051000

Project Location: Countywide

Description of Project: The 179D Commercial Buildings Energy-Efficiency Tax Deduction (Internal Revenue Code §179D(d)(4) and Notice 2008-40) was enacted into law as part of the Energy Policy Act of 2005 to encourage the energy-efficient design and construction of new or renovated properties. Per the statute, building owners of energy efficient commercial buildings may take a tax deduction arising from the installation of energy-efficient commercial building property as part of the interior lighting, HVAC and hot water systems, or building envelope systems. Each one of these elements has the potential of a tax deduction from $0.60 per square foot to a possible total of $1.80 per square foot.

Because the County is a governmental agency not subject to tax, any construction or renovations covered under the code section would not provide the County any benefit. However, the County may allocate or transfer part or all of the tax deduction to the architect, engineer, contractor, environmental consultant or an energy services provider that contributed to the technical specifications of the energy-efficient county building. In order for the County to allocate or transfer its 179D energy efficiency tax deduction, the County must provide a written allocation letter to the consultant identifying the subject project, related information, and confirming the scope of work performed as eligible. The allocation letter does not make any statement towards the energy efficiency of the county building nor establish a tax deduction amount. The consultant requesting the tax allocation obtains the computed savings percentage from an independent consultant using a computer modeling certification of the power savings as compared to the ASHRAE standards and the County receives a record of the document. The 179D Commercial Buildings Energy-Efficiency Tax Deduction Program has a planned sunset date of December 31, 2020.

The establishment of the County program to allocate or transfer its 179D energy efficiency tax deduction to eligible architects, engineers, contractors, environmental consultants or energy services providers is identified as the proposed project under the California Environmental Quality Act (CEQA). No additional direct or indirect physical environmental impacts are anticipated.

Name of Public Agency Approving Project: County of Riverside, Economic Development Agency

Name of Person or Agency Carrying Out Project: County of Riverside, Economic Development Agency

Exempt Status: Not a project as defined in CEQA Section 21065 and State CEQA Guidelines 15378; State CEQA Guidelines, Section 15061(b) (3), General Rule or "Common Sense" Exemption, Codified under Public Resources Code Division 13, Chapter 2.5, Section 21065, and California Code of Regulations Title 14, Articles 5, 19, and 20, Sections 15061, 15301, and 15378.

Reasons Why Project is Exempt: The establishment of the program to allocate or transfer its 179D energy efficiency tax deductions to eligible consultants is not a project as defined by State CEQA Section 21065 and CEQA Guidelines Section 15378.

Section 15378 (a) provides three conditions in which the whole of the action has the potential to result in a direct physical or indirect reasonable foreseeable change in the environment. These activities include: (a) a direct activity undertaken by a public agency; (b) an activity undertaken by a person which is supported through public agency assistance; or (c) an activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement by one or more public agency. The establishment of the program does not involve any of these three conditions as the action entails the creation of a funding mechanism to incentivize the completion of energy efficiency at existing County buildings. This establishment of this program would not result a direct undertaking, or in an action which issues a lease, permit, license, certificate, or other entitlement; therefore, the amendment would not result in a direct activity which would have a direct physical or indirect reasonably foreseeable effect on the environment. Section 15378 (b) provides a list of five activities that are not considered a project under CEQA. The program would qualify under condition (5), organizational or administrative activity of the government that will not result in direct or indirect physical changes to the environment. The establishment of the program is limited to a financing mechanism that will help facilitate that improvements at existing County facilities incorporate energy efficiency. Based on the above conditions, the establishment of the fund not a project as defined by CEQA Section 21065 and State CEQA Guidelines Section 15378.

In addition, the indirect effects of the project are categorically exempt from the provisions of CEQA specifically by the State CEQA Guidelines as identified below. The project will not result in any specific or general exceptions to the use of the categorical exemption as detailed under State CEQA Guidelines Section 15300.2. The project will not cause an impact to an environmental resource of hazardous or critical concern nor would the project include unusual circumstances which could have the possibility of having a significant effect on the environment. The project would not result in impacts to scenic highways, hazardous waste sites, historic resources, or other sensitive natural environments, or have a cumulative effect to the environment. No significant environmental impacts are anticipated to occur with the establishment of a County program to allocate or transfer its 179D energy efficiency tax deductions.

- **Section 15061 (b) (3) – "Common Sense" Exemption:** In accordance with CEQA, the use of the Common Sense Exemption is based on the "general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment." State CEQA Guidelines, Section 15061(b) (3). The use of this exemption is appropriate if "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." *Ibid.* This determination is an issue of fact and if sufficient evidence exists in the record that the activity cannot have a significant effect on the environment, then the exemption applies and no further evaluation under CEQA is required. See *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68. The ruling in this case stated that if a project falls within a category exempt by administrative regulation or 'it can be seen with certainty that the activity in question will not have a significant effect on the environment', no further agency evaluation is required. With certainty, there is no possibility that the project may have a significant effect on the environment. The establishment of the tax deduction allocation program would be limited to the allocation of resources for future actions at existing County-owned facilities that will each individually undergo CEQA review action and would not result in any physical direct or reasonably foreseeable indirect impacts to the environment. The program would incentivize the inclusion of energy efficiency improvements at County-owned facilities which would result in a benefit to the environment. Therefore, in no way, would the project as proposed have the potential to cause a significant environmental impact and the project is exempt from further CEQA analysis.

Based upon the identified exemptions above, the County of Riverside, Economic Development Agency hereby concludes that no physical environmental impacts are anticipated to occur and the project as proposed is exempt under CEQA. No further environmental analysis is warranted.

Signed: ______________________ **Date:** 2/10/20

Mike Sullivan, Senior Environmental Planner
County of Riverside, Economic Development Agency