

RESOLUTION NO. 2008-99

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY CALLING AN ELECTION ON NOVEMBER 4, 2008, FOR THE PURPOSE OF SUBMITTING A BALLOT ISSUE FOR CLEAN ENERGY OPTIONS LOCAL IMPROVEMENT DISTRICT; ORDERING THAT THE BALLOT ISSUE BE VOTED COUNTY-WIDE; SETTING THE TITLE AND CONTENT OF THE BALLOT ISSUE FOR THE ELECTION; AND PROVIDING OTHER MATTERS RELATING THERETO.

WHEREAS, Boulder County, Colorado (the "County") is a Colorado county duly organized and operating under the Constitution and laws of the State of Colorado (the "State"); and

WHEREAS, pursuant to Part 6 of Article 20 of Title 30, Colorado Revised Statutes, as amended (the "Act"), the County is authorized to initiate a local improvement district for the purpose of encouraging, accommodating, and financing Renewable Energy Improvements and Energy Efficiency Improvements (both as defined in the Act); and

WHEREAS, the County desires to encourage, accommodate and provide financing for Renewable Energy Improvements and Energy Efficiency Improvements ("RE/EEI") in the County (the "Project") and accordingly expects to initiate a local improvement district to be known as Boulder County Clean Energy Options Local Improvement District (the "District") pursuant to the Act for the purpose of accomplishing the Project, including paying all costs necessary and incidental thereto; and

WHEREAS, coal and natural gas are the principal sources of generation of commercial quantities of electric energy for the power grid in the western United States, and home and business consumption accounts for 73% of the overall usage of electric energy; and

WHEREAS, although new building codes can impact energy usage in new structures, there is a vast quantity of existing structures with many years of remaining life before replacement, and these structures are not very energy efficient by today's standards, nor do they have renewable energy systems installed to provide some or all of their electric energy needs; and

WHEREAS, the continued increase in the costs of electricity and natural gas will have a financial impact on home and business owners, the ability to invest in energy efficiency and renewable energy will decrease this negative impact by allowing for decreasing energy use; and

WHEREAS, if the United States is serious about moving away from fossil fuels in order to limit the greenhouse gas effect leading to global warming, the existing occupied building stock must be retrofitted with energy efficiency materials and modalities, and significant progress towards provision of renewable electric energy, as well as renewable energy for water and space heating, for use in these structures must take place very soon; and

WHEREAS, solving this problem will require creative ways of financing that will provide incentives for property owners to seek to install RE/EEI now rather than later; and

WHEREAS, existing homeowners, and to a certain extent business property owners, are highly leveraged on their properties currently. Even if there is equity available to further pledge for financing for RE/EEI, a declining-value housing market would keep property owners from taking that plunge, for fear of being unable to realize sufficient resale value for these improvements. Since the average homeowner moves every 7-9 years, and the expected life of these improvements is 20 – 25 years, and the energy savings paybacks for at least some of these improvements will take around 20 – 25 years as well, these property owners are unlikely to undertake home equity financing that extends from 20 to 30 years; and

WHEREAS, Boulder County and other local governments in Colorado and elsewhere have attempted to be creative in finding ways to make incentives for financing these improvements available now, and have created legal mechanisms, via Colorado House Bill 08-1350, that allow solar, wind, and other renewable energy and energy efficiency improvements to be financed by local governments with a repayment over 20 years through special assessments collected via the property tax collection system. The responsibility for repayment remains with the property, so that the property owner does not have to worry about covering the improvements costs in the resale price they get for the property. The payment responsibility remains with the person who is getting the benefit of the annual energy costs savings; and

WHEREAS, Boulder County and other local governments will be able to offer, in part, below-market-rate financing through the creation of funding via issuance of double-tax-exempt bonds; and

WHEREAS, the District will be formed pursuant to a separate resolution of the Board of County Commissioners of the County (the “Board”) to be adopted pursuant to and in accordance with the provisions of the Act subsequent to the date of adoption of this Resolution; and

WHEREAS, funding the construction and acquisition of the Project requires the issuance of special assessment bonds of the County and, pursuant to the requirements of the Act and Article X of Section 20 of the Colorado Constitution, voter approval is required prior to the issuance of such special assessment bonds; and

WHEREAS, the Board has therefore determined to submit a ballot issue at an election to be held on November 4, 2008, and to set the title and content of the ballot issue to be submitted at the election called by this Resolution; and

WHEREAS, because the Act permits property to be included within the District subsequent to the initial formation thereof by agreement of the owner of such property to such inclusion, it will not be possible for the Board to determine the electors of the District as of the time of such election; and

WHEREAS, the County desires to retain the ability to advance funds for the payment of a portion of such special assessment bonds and reimburse itself for such advances by collecting unpaid assessments as provided in the Act; and

WHEREAS, pursuant to the Act, any ballot issue for any special assessment bonds which are secured by such County advances must be submitted to all registered electors of the County; and

WHEREAS, the County will seek to obtain municipal consent from each municipality in the County for the properties within each municipality respectively to be eligible to become a part of the district and to finance improvements to said properties through the district, and therefore the Board finds it appropriate to submit the ballot issue to all registered electors of the County; and

WHEREAS, the Board has therefore determined to submit such ballot issue to all registered electors of the County; and

WHEREAS, pursuant to Section 1-5-203(3), Colorado Revised Statutes, as amended (“C.R.S.”), no later than September 5, 2008, the order of the ballot and ballot content must be certified to the County Clerk and Recorder of the County (the “County Clerk”);

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY, COLORADO HEREBY RESOLVES:

1. An election shall be held on Tuesday, November 4, 2008 (the 2008 general election) at which there shall be submitted to the registered electors of the County a ballot issue regarding the issuance of special assessment bonds (the “Ballot Issue”), which ballot issue shall be in substantially the form attached hereto as Appendix A. Appendix A is hereby incorporated into this Resolution as if set forth in full herein. Pursuant to Section 30-20-619(6), C.R.S., the Board hereby orders that all registered electors of the County shall be eligible to vote on the Ballot Issue.

2. The election shall be conducted as a coordinated election in accordance with articles 1 to 13 of title 1, C.R.S. (the “Uniform Election Code”). The costs of the election shall be paid by the County; provided that the County may elect to reimburse itself for such cost from assessments paid by property owners in the District as a portion of the Project in accordance with the Act.

3. No later than September 5, 2008, the Designated Election Official shall certify the order of the ballot and ballot content to the Clerk and Recorder of the County (the “County Clerk”). The “Designated Election Official” shall be Jana Petersen, Administrative Assistant and Clerk to the Board.

4. For purposes of Section 1-11-203.5, C.R.S., this Resolution shall serve to set the ballot title for the ballot issue set forth herein and the ballot title for such ballot issue shall be as set forth in Appendix A hereto, and the text of the ballot issue shall be the text of this Resolution.

5. The order of the ballot shall be determined by the County Clerk as provided in Section 1-5-407(5), C.R.S., and the rules of the Secretary of State. In accordance therewith, if the County refers more than one ballot issue, the order of the ballot shall, in accordance therewith, be as follows: first, measures to increase taxes; second, measures to retain revenues in excess of its fiscal year spending limit; third, measures to increase debt; fourth, citizen petitions;

and fifth, other referred measures. If the County refers more than one ballot issue within any such type of ballot issue, the order within such type of ballot issue shall, unless otherwise determined by the Board, be the same as the order of the ballot issues in the resolution of the Board that orders that such ballot issues be so referred (with questions set forth in separate resolutions listed in the order in which such resolutions were adopted).

6. The Designated Election Official is hereby authorized and directed to proceed with any action necessary or appropriate to effectuate the provisions of this Resolution and comply with the Uniform Election Code, Article X, Section 20 of the Colorado Constitution (“TABOR”) and other applicable laws; provided that all acts required or permitted by the Uniform Election Code relevant to voting by early voters’ ballots, absentee ballots and emergency absentee ballots which are to be performed by the designated election official shall be performed by the County Clerk. The election shall be conducted in accordance with the Uniform Election Code, TABOR and all other applicable laws.

7. No later than September 23, 2008, the Designated Election Official shall submit to the County Clerk, in the form, if any, specified by the County Clerk, the notice of election required by subsection (3)(b) of TABOR.

8. No later than October 15, 2008, the Designated Election Official shall ensure that, in accordance with Section 1-7-908, C.R.S., the posting of financial notice required thereby is made on the County’s website.

9. The Designated Election Official, the County Clerk and other County officials and employees are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Resolution.

10. All actions not inconsistent with the provisions of this Resolution heretofore taken by the members of the Board and the officers and employees of the County and directed toward holding the election for the purposes stated herein are hereby ratified, approved and confirmed.

11. All prior acts, orders or resolutions, or parts thereof, by the County in conflict with this Resolution are hereby repealed, except that this repealer shall not be construed to revive any act, order or resolution, or part thereof, heretofore repealed.

12. If any section, paragraph, clause or provision of this Resolution shall be adjudged to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining sections, paragraphs, clauses or provisions of this Resolution, it being the intention that the various parts hereof are severable.

13. This Resolution shall take effect immediately upon its passage.

This Resolution has been adopted this 6<sup>th</sup> day of August, 2008.

BOARD OF COUNTY COMMISSIONERS  
OF BOULDER COUNTY, STATE OF  
COLORADO

(SEAL)

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Ben Pearlman, Chair

ATTEST:

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Will Toor, Vice-Chair

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Jana Petersen,  
Administrative Assistant and  
Clerk to the Board

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Cindy Domenico, Commissioner

## APPENDIX A

### FORM OF BALLOT TITLE

**COUNTY ISSUE (Boulder County Clean Energy Options LID Debt and Multiple Fiscal Year Financial Obligation Authorization):**

SHALL BOULDER COUNTY DEBT (FOR CLEAN ENERGY OPTIONS LOCAL IMPROVEMENT DISTRICT) BE INCREASED BY UP TO \$40,000,000, WITH A MAXIMUM REPAYMENT COST OF UP TO \$96,800,000, WITH NO INCREASE IN ANY COUNTY TAX OR TAX RATE, FOR THE PURPOSE OF FINANCING THE COSTS OF CONSTRUCTING, ACQUIRING AND INSTALLING SOLAR AND OTHER RENEWABLE ENERGY SYSTEMS OR ENERGY-EFFICIENCY IMPROVEMENTS FOR PROPERTY OWNERS THAT CONSENT TO BE INCLUDED IN THE DISTRICT BY ENTERING INTO A CONTRACT OR AGREEMENT FOR INCLUSION IN THE DISTRICT, AND ANY COSTS NECESSARY OR INCIDENTAL THERETO, INCLUDING WITHOUT LIMITATION THE COST OF ESTABLISHING RESERVES TO SECURE THE PAYMENT OF SUCH DEBT, BY THE ISSUANCE OF SPECIAL ASSESSMENT BONDS PAYABLE FROM SPECIAL ASSESSMENTS IMPOSED AGAINST BENEFITED PROPERTIES FOR WHICH THE OWNERS THEREOF HAVE CONSENTED TO BE INCLUDED WITHIN THE DISTRICT BY ENTERING INTO SUCH A CONTRACT OR AGREEMENT FOR INCLUSION, AND FROM OTHER FUNDS THAT MAY BE LAWFULLY PLEDGED TO THE PAYMENT OF SUCH BONDS, WHICH BONDS SHALL BEAR INTEREST AT A MAXIMUM NET EFFECTIVE INTEREST RATE NOT TO EXCEED 10%, SHALL BE SUBJECT TO REDEMPTION, WITH OR WITHOUT PREMIUM, SHALL BE ISSUED, DATED, AND SOLD AT SUCH TIME OR TIMES, AT SUCH PRICES (AT, ABOVE OR BELOW PAR) AND IN SUCH MANNER, IN ONE OR MORE SERIES, AND SHALL CONTAIN SUCH TERMS, NOT INCONSISTENT HEREWITH, AS THE BOARD OF COUNTY COMMISSIONERS MAY DETERMINE; SHALL THE COUNTY BE AUTHORIZED TO ENTER INTO A MULTIPLE-FISCAL YEAR OBLIGATION TO ADVANCE AMOUNTS FOR PAYMENT OF A PORTION OF SUCH BONDS AND TO REIMBURSE ITSELF FOR SUCH ADVANCES BY COLLECTING UNPAID ASSESSMENTS AS PROVIDED IN SECTION 30-20-619(2), COLORADO REVISED STATUTES, AS AMENDED; AND SHALL THE REVENUES FROM SUCH SPECIAL ASSESSMENTS AND ANY EARNINGS THEREON AND FROM THE INVESTMENT OF THE PROCEEDS OF SUCH BONDS CONSTITUTE A VOTER-APPROVED REVENUE CHANGE; ALL IN ACCORDANCE WITH BOARD OF COUNTY COMMISSIONERS' RESOLUTION NO. 2008-99?