

COMMUNITY DEVELOPMENT AGENCY  
**PLANNING DIVISION**

July 21, 2015

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Marin County Board of Supervisors  
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**SUBJECT:** Authorization of additional Property Assessed Clean Energy (PACE) financing programs to create Open PACE Marketplace

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Dear Supervisors,

**RECOMMENDATION:**

1. Authorize the Community Development Agency (CDA) Director to sign Agreements for Collaborative Services for PACE Financing Marketplace with approved Program Providers
2. Adopt the required resolutions provided as Attachments 4 - 9 allowing property owners in the unincorporated areas of Marin County to participate in the California HERO, Ygrene, Figtree and CSCDA's Open Market PACE financing programs.

**SUMMARY:**

Property Assessed Clean Energy (PACE) Financing is a means for local home and business owners to finance energy efficiency, water conservation, and renewable energy improvements to their properties. Using PACE Financing, property owners can finance the up-front cost of energy and water related improvements via a special voluntary property tax. The County of Marin, in partnership with Marin Clean Energy (MCE), has been working to establish an "Open PACE Marketplace Model" which allows any PACE operator to provide services in the region if they execute and comply with the Agreement for Collaborative Services for PACE Financing Marketplace.

**DISCUSSION:**

Legislative Background:

PACE financing programs for the installation of distributed generation renewable energy sources (e.g. rooftop solar electric systems), energy efficiency, and/or water conservation improvements that are permanently fixed to real property can be set up and administered under either of two different statutory frameworks: the Improvement Act of 1991 as amended by Assembly Bill (AB) 811 or the Mello-Roos Act as amended under Senate Bill (SB) 555.

AB 811, signed into law on July 21, 2008, amended Chapter 29 of Part 3 of Division 7 of the Streets & Highways Code of the State of California ("Chapter 29") and authorizes a legislative body to designate an area within which authorized public officials and willing property owners may enter into voluntary contractual assessments to finance the installation of distributed generation renewable energy

sources, energy efficiency, and/or water conservation improvements that are permanently fixed to real property, as specified.

SB 555 amended the Mello-Roos Community Facilities Act, set forth in sections 53311 through 53368.3 of the California Government Code and particularly in accordance with sections 53313.5(l) and 53328.1(a) ("Mello-Roos Act"), to allow for the creation of Community Facilities Districts ("CFDs") for the purpose of financing or refinancing the acquisition, installation, and improvement of energy efficiency, water conservation, renewable energy and electric vehicle charging infrastructure improvements permanently affixed to private or publicly-owned real property. Individual properties can be annexed into the district and be subject to the special tax that is imposed to repay project financing only if (i) the Board adopts a resolution consenting to the inclusion of parcels in the unincorporated areas of the County within the CFD and (ii) each participating owner provides its unanimous written approval for annexation of its property into the PACE CFD.

In December 2012, the Board of Supervisors authorized the County of Marin to join the California Statewide Communities Development Authority (CSCDA) sponsored CaliforniaFIRST program and offer PACE financing opportunities to our commercial and residential property owners. Since the program's Marin launch in August 2014, CaliforniaFIRST has received 145 applications and funded 34 projects for a total of \$678,000 of approved financing. Currently, CaliforniaFIRST is authorized in all but two jurisdictions in Marin County.

#### Collaborative Services Agreement for Financing Marketplace

In addition to CaliforniaFIRST, there are several other PACE financing programs operating in the state. Each program offers financing terms that may be attractive to different property owners (Attachment 1 provides a comparison matrix of the programs under consideration). Allowing additional PACE programs to operate in Marin County will provide competition and choice for Marin property owners, particularly if those programs are required to adopt and abide by the same basic set of 'best practices'.

In order to safeguard consumer interests and promote program success, County and MCE staff developed an "Agreement for Collaborative Services for PACE Financing Marketplace" ("Agreement") which establishes the terms, conditions and roles each PACE financing program provider ("Providers") will follow when operating in Marin County. MCE and County staff have worked together to adopt the Agreement which draws largely from the agreement currently in use in Sonoma County, and have worked with each of the Providers to consider suggested edits to the Agreement.

Features of the attached Agreement include:

- Establishes County and MCE as a 'team' to interface and manage the Provider network in Marin County.
- Designates MCE as the liaison to the Providers locally; MCE will offer marketing and outreach activities and would serve as a local storefront where local residents could ask questions and learn more about the programs.

- Requires all Providers to have clearly visible disclosures regarding the FHFA's policies on residential PACE programs.
- Requires that commercial applicants acquire affirmative acknowledgement from their primary lender regarding their plans to add an assessment to their property.
- Requires all Providers to either participate in the state's Loan Loss Reserve Program or a comparable program.
- Limits claims that Providers (or their designated contractors) can make to applicants regarding the tax deductibility of PACE assessments.
- Requires data sharing between the Providers and MCE and the County so MCE and County staff can track participation in the PACE programs locally.
- Requires Providers to accept responsibility for negligence in administering PACE programs.

#### Federal Housing Finance Authority Update and Governor's Loan Loss Reserve

In July 2010, the Federal Housing Finance Agency (FHFA) announced its opposition to PACE financing programs. FHFA's rationale for opposing PACE programs is based on the senior lien status afforded by California law to PACE transactions. This means that in the event of a default, borrowers could be required to repay PACE lenders prior to repaying their original mortgage lenders. FHFA fears that this priority in repayment could make mortgages on properties participating in PACE more risky for mortgage lenders. Since 2010, the State of California, in conjunction with PACE providers, has taken several actions to ensure PACE does not pose a risk to the mortgage industry.

In 2013, Senate Bill 96 directed the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) to develop the PACE Loss Reserve Program to mitigate the potential risk to mortgage lenders associated with residential PACE financing. The \$10 million Loss Reserve will make first mortgage lenders whole for any losses in a foreclosure or a forced sale that are attributable to a PACE lien covered under the Loss Reserve Program. The goal of the Loss Reserve Program is to put first mortgage lenders in the same position they would be in without a PACE lien.

PACE program providers can participate in the Loss Reserve Program by applying to CAEATFA and demonstrating that they meet the Program's minimum underwriting criteria. Once a PACE program is enrolled, the Loss Reserve will cover assessments issued by that program for their full terms, or until funds are exhausted. Enrolled PACE programs report their financing activity to CAEATFA semi-annually.

Given the program data to date from the Sonoma County PACE program (launched in 2009) and the HERO program (launched in 2012), the risk of a property owner defaulting on a PACE assessment is very low. After more than five years offering PACE financing, Sonoma's program has a 0% default rate and less than 1% tax delinquency rate while providing over \$69 million in financing to nearly 2,100 residential energy efficiency retrofit projects and over 60 commercial upgrade projects. In October 2014, Sonoma opened their marketplace to also offer

CaliforniaFIRST and HERO financing. They are currently considering adding Figtree and Ygrene as well. Like Sonoma's program, HERO also has a 0% default rate.

Marin Open PACE Marketplace Programs under Consideration

The following programs have approached the County and several local jurisdictions requesting authorization:

**California HERO (Home Energy Renovation Opportunity) Program:**

Since its launch in late 2012, the HERO Program has been very successful in Western Riverside County providing over \$279 million in financing to 14,982 projects. It has since expanded to over 323 jurisdictions throughout the state. On a statewide basis, the HERO program has financed 35,953 projects to date representing \$703 million in financing. County participation in the California HERO Program requires the County to join the Western Riverside Council of Governments (WRCOG) JPA as an Associate Member. Joining the JPA is accomplished by adopting the resolution accompanying this staff report and approving and executing an amendment to the joint exercises of powers agreement to add the County as an associate member solely for the purposes of implementing the PACE program within the County's jurisdictional boundaries.

**Figtree:**

The Figtree PACE program provides 100% upfront financing to residential and commercial property owners for a wide range of eligible property improvements. Over 100 municipalities throughout California have already joined the Figtree program which is offered through its JPA partner the California Enterprise Development Authority (CEDA), of which the County is already a member. Together, Figtree and CEDA offer the program as a complete turn-key PACE solution. Currently, Figtree offers commercial financing only but will launch a residential program in 2015. The authorizing resolution allows for both commercial and residential financing.

**CSCDA Open PACE including AllianceNRG:**

The CSCDA established the Open PACE platform to offer its members a turn-key PACE solution that provides residential and commercial property owners the choice among prequalified PACE financing providers based on their business practices, qualifications, experience and capital commitment to the California PACE market. CSCDA would add program providers to the Open PACE platform as each applied and demonstrated compliance with the platform requirements. The theory is that by adopting one resolution, cities and counties provide residential and commercial property owners a competitive PACE program offered by different administrators.

At this time, the Open PACE platform includes two program providers – CaliforniaFIRST and AllianceNRG. Since the County has already authorized CaliforniaFIRST, the attached resolution focuses on the other program, AllianceNRG. The resolution states that should CSCDA add additional programs in the future to Open PACE, they will notify the County in advance. The AllianceNRG

Program offers 100% financing for energy or disaster mitigation retrofits including soft costs, the cost of the product, installation and other approved ancillary costs.

**Ygrene Works:**

California Home Finance Authority ("CHF"), which is in the process of formally changing its name to Golden State Finance Authority, is a joint exercise of powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California (Section 6500 and following) (the "Act") and the Joint Power Agreement entered into on July 1, 1993, as amended from time to time.

While all of the other proposed programs seek authorization under AB 811, CHF has established two PACE financing programs under the legislative authority of both AB 811 (Improvement Act) and SB 555 (Mello Roos Act). CHF contracts with Ygrene Energy Fund CA LLC (Ygrene) to serve as the program administrator and to operate the Ygrene Works for California PACE financing program. Ygrene intends to operate their program under the auspices of SB 555 however; they believe establishing two programs under both authorities provides for the greatest flexibility and program reliability moving forward should legislation or market conditions change in the future.

To participate in the PACE programs, the County must become an Associate Member of CHF. Associate membership requires no dues or other costs to the County, but permits participation in all CHF programs including the PACE program.

Summary

All of the proposed programs allow for open marketplaces and do not require exclusivity. Nor do any of the programs result in any costs to the County and any jurisdiction can withdraw from any of the PACE programs at any time by passing a resolution rescinding the authorization.

All of the proposed PACE program providers have signed a Collaboration Agreement to become eligible for authorization by your Board.


MCE and County staff will also continue to provide support to local City and Town staff as they bring forward the resolutions required to allow property owners to access the additional financing products in their jurisdictions.


**FISCAL/STAFFING IMPACT:**

There is no anticipated fiscal impact to the County for involvement in these programs. The cost of placing assessments on the property tax roll will be covered through fees set by the County and administered by each of the program operators.

**REVIEWED BY:**       County Counsel

**SIGNATURE:**

  
Dana Armanino  
Senior Planner

  
Brian C. Crawford  
Director

**ATTACHMENTS:**

1. PACE Programs Comparison Chart
2. Agreement for Collaborative Services for PACE Financing Marketplace
3. MCE Resolution 2015-02
4. Resolution for participation for property owners in the unincorporated areas in the PACE financing product provided by HERO.
  - a. Exhibit A - Amendment to the Joint Powers of the Western Riverside Council of Governments Agreement adding the County of Marin as an Associate Member of the Western Riverside Council of Governments to permit the provision of Property Assessed Clean Energy (PACE) Program Services within such County.
5. Resolution authorizing the California Enterprise Development Authority (CEDA), through Figtree Financing, to offer their program and levy assessments within the unincorporated area of Marin County.
  - a. Exhibit A – Resolution of CEDA declaring intention to finance installation of distributed generation renewable energy sources, energy efficiency and water efficiency improvements in the County of Marin
  - b. Exhibit B - Indemnification Agreement by and between the County of Marin and Figtree Company, Inc.
6. Resolution consenting to the inclusion of properties within the territory of the County in CSCDA Open PACE Programs, including the AllianceNRG program and authorizing the CSCDA to accept applications from property owners, conduct assessment proceedings and levy contractual assessments within the territory of the County and authorizing related actions
7. Resolution Consenting to Inclusion of Properties within the County's Unincorporated Area in the CHF PACE Program to Finance Renewable Energy Generation, Energy and Water Efficiency Improvements and Electric Vehicle Charging Infrastructure via AB 811
  - a. Exhibit A – CHF Amended and Restated Joint Exercise of Powers Agreement Requesting Associate Member Status
8. Resolution Consenting to Inclusion of Properties within the County's Unincorporated Area in CHF Community Facilities District No. 2014-1 (Clean Energy) to Finance Renewable Energy Generation, Energy Efficiency, Water Conservation and Electric Vehicle Charging Infrastructure Improvements via SB 555
  - a. Exhibit A – CHF Amended and Restated Joint Exercise of Powers Agreement Requesting Associate Member Status
9. Resolution approving and authorizing execution of the Agreement for Collection of Special Taxes and Contractual Assessments as may be applicable.