



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of  
Supervisors

105 E. Anapamu Street, Suite  
407

Santa Barbara, CA 93101  
(805) 568-2240

**Department Name:** Auditor-Controller  
**Department No.:** 061  
**For Agenda Of:** 12/02/2014  
**Placement:** Administrative  
**Estimated Tme:**  
**Continued Item:** No  
**If Yes, date from:**  
**Vote Required:** Majority

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**TO:** Board of Supervisors

**FROM:** Department Robert W. Geis, CPA 568-2101  
Director(s)  
Contact Info: Katie Roth, A-C Division Chief, Advanced Accounting x2141

**SUBJECT:** Property Assessed Clean Energy (PACE) Special Assessments

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**County Counsel Concurrence**

As to form: Yes

**Auditor-Controller Concurrence**

As to form: Yes

**Other Concurrence: \* CEO \***

As to form: Yes

**Recommended Actions:**

1. Approve the Special Assessment Agreement with Western Riverside Council of Governments (WRCOG) establishing a fee for placement of voluntary residential special assessments on the County tax roll pursuant to Streets and Highways Code section 5898.20 (b) and reimbursing County for expenses incurred for annual processing, correction of errors and special reporting requests.
2. Authorize the Auditor-Controller to place residential special assessments administered by Western Riverside Council of Governments (WRCOG) on the County tax rolls for the City of Lompoc, who has entered into a joint powers agreement with WRCOG, in compliance with all applicable law, in order to participate and enroll in the WRCOG California Home Energy Renovation Opportunity (HERO) Program which is a residential Property Assessed Clean Energy (PACE) program.
3. Find that the proposed actions are not a project under the California Environmental Quality Act (CEQA) pursuant to Sections 15378(b)(4) and 15378(b)(5) of the CEQA Guidelines, because they are government fiscal, organizational, or administrative activities that will not result in direct or indirect physical changes in the environment. "

**Summary Text:**

Pursuant to AB 811 (2008), a city or county may designate an area where property owners can receive financing for energy efficiency upgrades and renewable energy installations on their private properties by entering into voluntary contractual assessments where the costs for the improvement are paid via the assessment on their property tax bill.

The Auditor-Controller (A-C) in accordance with AB 811, requests that your Board authorize the placement of the Western Riverside Council of Governments (WRCOG) PACE assessments on the County tax rolls for the City of Lompoc. Additionally, the Auditor-Controller requests that your Board authorize the Auditor to implement a fee agreement, summarized in the following table, with WRCOG to place the PACE assessments on the County tax rolls per AB811.

\$1	Per assessment, per Assessor parcel number
\$100	Per correction to special assessments requested by WCROG
\$100	Per special assessment removed from tax bill due to delinquency
\$200	Per fund, created to collect and account for the special assessment(s)
Actual costs	Any other services requested by WRCOG

If your Board approves the above actions, the Auditor-Controller will enter into an agreement with WRCOG that indemnifies the County and its officers and establishes fees for collection as well as additional operational costs and corrections of errors. This will be the first agreement in Santa Barbara County for special assessments where the governmental entity responsible for the special assessment exists outside the County borders and the first since other counties have entered into similar agreements.

Once the program is operational, the Auditor will place the voluntary special assessment(s) on the Property Tax bills for participants in the City of Lompoc, on the behalf of WRCOG. The Treasurer-Tax Collector will collect the payments along with property taxes twice annually. Delinquent amounts will be removed from the tax bills and handled by WRCOG. The amount of the voluntary special assessment and parcel/property will be determined by WRCOG and delivered to the County. Corrections of errors caused by WRCOG will be billed to WRCOG for full cost reimbursement as well as special or customized reporting.

**Background:**

**WRCOG**

The City of Lompoc completed the legal actions to become an Associate Member of WRCOG and participate in WRCOG's California HERO program, which could result in PACE assessments on County property tax bills. If a property owner in the City of Lompoc chooses to participate, the installed improvements will be financed by the issuance of bonds by a joint powers authority, WRCOG. The bonds are secured by a voluntary contractual assessment levied on the owner's property, with no recourse to the local government or other participating jurisdictions.

The Federal Housing Financing Agency (FHFA) issued a statement of concern over PACE's senior lien position over mortgage investments. Given potential risks to consumers and local governments, your Board adopted a Resolution (7/13/10) directing staff not to accept the County emPower residential PACE applications until FHFA's concerns had been resolved and approved a redesigned County emPower program that does not utilize PACE assessments.

The loan position risk with FHFA for PACE financing has not changed. The California HERO program is to be offered in the Lompoc area which historically has lower assessed values and higher loan to value ratios. These financial factors coupled with lower incomes and continued high unemployment creates properties with a greater risk of foreclosure.

The current financing terms to the participant per their agreement with WRCOG include repayment of principal and interest at a rate based on market rates, plus application fees, a one-time program administration fee of 6.95% of the principal amount of the assessment, recording fees, and an annual assessment administrative fee of \$35 the first year that is subject to adjustment in subsequent years but not to exceed \$95. Failure to repay the assessment lien could result in other interest and penalties and may result in foreclosure by WRCOG.

### **PACE Programs**

Since adoption in 2008 of Assembly Bill 811 (AB 811), counties and cities in the State of California have had the opportunity to join and implement Property Assessment Clean Energy (PACE) programs. PACE programs allow for residential and commercial upgrades to buildings relating to energy and water efficiency, renewable energy, and other improvements that increase building energy performance, through a funding mechanism that allows for repayment as annual assessments to property tax rolls over the course of the improvement loan.

In 2010, your Board completed all requirements to establish PACE financing under the County emPower program to provide financing for energy and water efficiency improvements through voluntary property tax assessments. However, in July 2010, the Federal Housing Financing Agency (FHFA) issued a statement of concern over PACE's senior lien position over mortgage investments. Given potential risks to consumers and local governments, your Board adopted a Resolution (7/13/10) directing staff not to accept residential PACE applications until FHFA's concerns had been resolved. In 2011, your Board approved a redesigned, non-PACE financing option that allowed emPower to provide grant-funded credit enhancements to two local credit unions to facilitate affordable unsecured loans for residential energy improvements. emPower continues to provide a range of energy improvement services to homeowners and contractors, and was recently expanded to serve Ventura and San Luis Obispo Counties.

Several attempts at legislation and lawsuits failed to remedy FHFA's concerns about PACE. FHFA guidance to Freddie Mac and Fannie Mae include:

- PACE violates mortgage contracts and can be considered an act of default.
- Lenders may require larger down payments for all new mortgages issued in communities that offer PACE financing.
- Lenders may require mortgage holder consent prior to homeowners receiving PACE financing.
- Lenders may tighten underwriting requirements to make it harder for buyers to qualify for new mortgages in entire communities that offer PACE financing.

Despite these challenges from FHFA, several programs continue to provide residential PACE financing and vendors are soliciting services to local governments to administer a PACE programs. They have enrolled over 170 local governments in California and have financed over \$300 million in PACE liens the last 2 years.

In early 2014, California's Governor announced a PACE loss reserve program to cover losses to mortgage lenders associated with PACE (California Senate Bill 96 (2013)), but FHFA's May 2014 response indicated that the reserve would not alleviate their concerns. Furthermore, in 2013, the 9th Circuit Court held that the FHFA directive to Freddie Mac and Fannie Mae not to purchase

mortgage loans secured by properties with outstanding first lien PACE obligations was a lawful exercise of FHFA's power as conservator of Freddie Mac and Fannie Mae.<sup>1</sup> County of Sonoma v. Federal Housing Finance Agency (2013) 710 F. 3d 987

**Performance Measure: \* N/A**

**Budgeted: No**

**Key Contract Risks**

The contract will be managed and monitored in the Auditor-Controller's office for compliance with terms and conditions. Despite the tumultuous climate of PACE lending and lien position with FHFA, there appears to be low risk related to this specific agreement.

**Fiscal Analysis:**

Direct fiscal impact is estimated to be minimal and is subject to the number of participants in the PACE program and the accuracy of WRCOG's data and processing. General risks to economic factors related to FHFA's position on purchasing mortgage loans secured by properties with outstanding PACE obligations are unknown at this time.

**Staffing Impacts:**

**Special Instructions:**

**Attachments:**

Contract for Collection of Special Taxes and Assessments with WRCOG

**Authored by:**

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Katie Roth, AC Division Chief, Advanced Accounting  
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**cc:**

County Counsel  
County Executive Office