BOARD OF SUPERVISORS AGENDA LETTER

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:

Department Name:	Community Services
Department No.:	057
For Agenda Of:	January 15, 2019
Placement:	
Estimated Tme:	30 minutes
Continued Item:	Yes
If Yes, date from:	April 3, 2018
Vote Required:	Majority

TO:	Board of Supervisors	
FROM:	Department Director(s)	George Chapjian, Community Services Director (805) 568-2467
	Contact Info:	Ashley Watkins, Co-Division Chief (805) 568-3514

SUBJECT: **Residential Property Assessed Clean Energy Financing**

County Counsel Concurrence
As to form: Yes

Auditor-Controller Concurrence
As to form: Yes

Other Concurrence: Risk Management
As to form: Yes

Recommended Actions:

That the Board of Supervisors on January 15, 2019:

a. Receive and file this briefing on Residential Property Assessed Clean Energy Financing; and,

b. Direct staff to either:

   i. Not pursue implementation of a Residential Property Assessed Clean Energy Financing program further at this time; OR

   ii. Pursue implementation of a third-party Residential Property Assessed Clean Energy Financing program; and

ii. Determine that the above recommended actions do not constitute a project subject to environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378(b)(4), finding that the actions are the creation of a governmental funding mechanism or other government fiscal activity, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

Summary Text:

Property Assessed Clean Energy Financing (PACE) programs allow property owners to finance the upfront cost of energy efficiency, water efficiency and renewable energy projects and repay these costs over time through an assessment on the property. PACE programs are available for both residential and commercial property owners and are respectively known as residential PACE (R-PACE) and commercial PACE (C-PACE). PACE liens are considered "super-priority liens" and therefore take priority over any existing mortgages. PACE programs must be authorized by state and local governments

The County of Santa Barbara moved forward with approving a C-PACE program for the unincorporated areas of the County on April 3, 2018. At that time, the Board also directed staff to return with a report on R-PACE. The Board last took policy action on R-PACE in 2010, when it passed Resolution No. 10-201 halting implementation of a County-administered PACE program due to concerns expressed by the Federal Housing and Finance Agency (FHFA), which regulates Fannie Mae and Freddie Mac, two of the largest purchasers and backers of home mortgages.

This agenda item provides the Board with an update on R-PACE and provides an opportunity for the Board to give additional direction to staff.

Background:

About Property Assessed Clean Energy Financing

Property Assessed Clean Energy Financing (PACE) programs allow property owners to finance the upfront cost of energy efficiency, water efficiency and renewable energy projects such as solar panels, HVAC systems and windows and repay these costs over time through an assessment lien on the property. PACE liens are considered "super-priority liens" and therefore take priority over any existing mortgages. PACE programs must be authorized by state and local governments and were originally envisioned as being implemented by local governments. However, external third-party administrators now operate the majority of PACE programs. These third-party administrators have financing partners that release bonds to cover program costs including the financing. Typically, the bonds are securitized and sold to investors allowing for replenishment of capital. Unlike other types of financing, PACE requires some County administration as PACE liens are recorded by the Clerk Recorder, assessments are added to the County property tax bill, and repayment is collected via the County property tax bill. The Office of the Auditor Controller then distributes the collected funds to the appropriate third-party administrator. California first enabled PACE in 2008 with the passage of Assembly Bill 811.

Board Action related to PACE

In 2010, per Board direction, the County completed all steps required by statute to implement and internally administer a PACE program for both residential and commercial property owners under the emPower program. However, in July 2010, the FHFA issued a statement (Attachment 1) relaying concerns about R-PACE's senior lien position over mortgages. The letter instructed residential mortgage lenders under FHFA's oversight to refuse to purchase any mortgages secured by properties subject to R-PACE liens. Given potential risks to consumers, the Board adopted Resolution No. 10-201 (Attachment 2) on July 13, 2010, directing staff not to accept R-PACE applications until FHFA's concerns had been resolved. Since that time, FHFA has not changed its position and last reiterated its stance in testimony to the California legislature on June 9, 2016 (Attachment 3). As a result, a significant number of homeowners with R-PACE liens have been required to pay off these liens prior to refinance or sale of their home. In addition, the Federal Housing Administration (FHA) does not to insure FHA mortgages on residential properties encumbered by PACE obligations.

The County of Santa Barbara moved forward with approving a C-PACE program using the California Statewide Communities Development Authority's Open PACE program model for the unincorporated areas of the County in April 2018. C-PACE is considered less risky than R-PACE because C-PACE programs typically require the existing mortgage lender's consent prior to providing financing and a lien being placed. C-PACE programs also typically require an energy audit and cost benefit analysis be conducted. Additionally, commercial lenders are not regulated by FHFA. To date, no C-PACE liens have been recorded in Santa Barbara County.

Potential R-PACE Benefits and Concerns

R-PACE programs are currently operating in hundreds of jurisdictions throughout the state, including the cities of Santa Barbara and Lompoc. To date, there have been seventeen R-PACE liens recorded in the City of Lompoc and none in the City of Santa Barbara. The City of Carpinteria recently voted not to move forward with adopting a PACE program at this time. On a statewide level, the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) reports that there are currently 145,450 R-PACE financings projects valued at about $3.46 billion[1]. R-PACE programs use home improvement contractors to market their programs and drive participation.

R-PACE proponents contend that R-PACE programs have multiple benefits including:

- Increased deployment of renewable energy and water- and energy- efficiency projects
- 100% financing with no upfront out-of-pocket costs
- Reduction in greenhouse gas emissions
- Improved property value
- Increased job creation/economic development

There has been limited independent study of the benefits associated with R-PACE. A study conducted by Lawrence Berkeley National Laboratory entitled, "Impacts of Property Assessed Clean Energy Programs on Residential Solar Photovoltaic Deployment in California, 2010-2015"[2] infers that, on average, cities with R-PACE programs were associated with greater solar photovoltaic deployment during the study period of 2010-2015. R-PACE program effects were strongest in 2010-2011 and the study goes on to state that "As PV [photovoltaic] financing has evolved, R-PACE impacts on PV deployment have declined on a per-household basis, though they have grown in an absolute sense as the program has expanded across the state". The study was conducted prior to the implementation of recent legislation that requires additional consumer protection measures. R-PACE administrators report that

[1] https://www.treasurer.ca.gov/caeatfa/pace/activity.pdf
[2] http://eta-publications.lbl.gov/sites/default/files/berkeley_lab_r-pace_pv_deployment_-_final_03202018.pdf

since the adoption of new R-PACE regulations, they have seen a 40 percent to 50 percent decrease in R-PACE financing projects.

As R-PACE programs have expanded across California, they have come under increased scrutiny and criticism from consumer advocates and some homeowners. In a brief dated January 2018, the non-profit, National Consumer Law Center states that "Over the last two years there has been a sharp increase in homeowners seeking assistance from legal services and other organizations in relation to PACE loans".[3]

Some of the concerns expressed by R-PACE critics include:

- A significant number of homeowners have been unable to refinance or sell their home without paying off the R-PACE lien
- Predatory lending practices
- Failure to screen low-income homeowners for free or low cost energy services
- Ability of PACE providers to foreclose on property
- Represented as a "government sponsored" program
- Uses local government resources to perform private services

R-PACE financing is tied to the property, not the property owner. As a result, a significant number of homeowners have been required to pay off these liens prior to refinance or sale of their home if the prospective buyer is using a mortgage product backed by Fannie Mae or Freddie Mac or is unwilling to take on the R-PACE lien repayment . Some homeowners contend that this information was not properly disclosed to them prior to entering into an R-PACE agreement.

Critics argue that R-PACE financing is more expensive than other lending products and prior to recently passed legislation; income was not factored into the eligibility criteria for R-PACE. As a result, R-PACE critics have expressed concerns that homeowners have taken out loans they cannot afford. An example of an R-PACE financing contract with information on rates and fees can be found in Attachment 4.

Homeowners have also reported that home improvement contractors offering R-PACE financing have represented it as a government sponsored program, which has resulted in confusion over who is responsible for project costs. Kern County and its largest city, Bakersfield, voted in 2017 to end their PACE programs due to concerns about home improvement contractors misrepresenting how R-PACE loans are to be paid back.

The Office of the Auditor-Controller does not support implementation of an R-PACE program and has authored a whitepaper outlining its concerns found in Attachment 5. Accordingly, the Auditor-Controller supports the continuation of the current policy of not accepting R-PACE applications as stated in Resolution No. 10-201.

PACE program administrators acknowledge that there have been customer complaints but state that these complaints represent only a small percentage of customers. They also contend that many of these issues have been addressed through recently passed legislation discussed in more detail below.

[3] https://ncler.acl.gov/pdf/PACE%20Loans%20Issue%20Brief.pdf

PACE Legislation

To address some of the concerns related to R-PACE, two bills (AB 1284 and SB 242), were signed into law by Governor Brown in 2017. The bills provide additional protection for consumers taking out R-PACE loans. Collectively the bills require:

- Income to be factored into underwriting criteria
- Minimum training requirements for R-PACE participating contractors
- No kickbacks to R-PACE participating contractors
- PACE administrators must have a phone call with homeowner prior to taking out the loan to ensure they understand terms
- Regulatory oversight of PACE administrators by the California Department of Business Oversight, with implementation of the above requirements

While AB 1284 and SB 242 sought to provide additional protection for consumers, concerns arose that there were too many loopholes in the legislation, specifically the vagueness in sections on income and the ability-to-pay analysis. As a result, SB 1087 and AB 2063 were passed by the legislature in 2018 to clarify and correct certain provisions in AB 1284 and SB 242. SB 465 was also passed in 2018, which enables local governments to opt to include wildfire safety improvements as financeable measures in areas they designate as high fire zones.

It is unclear whether recently passed legislation related to increased consumer protection will achieve the appropriate level of oversight, especially given that the policies adopted in 2017 have had little time to take effect and policies adopted in 2018 just became effective in January 1, 2019.

Residential Financing Options

In addition to R-PACE financing, there are many other energy efficiency and renewable energy financing options available to homeowners. The State of California has launched the Residential Energy Efficiency Loan program, which is now available statewide. Solar and HVAC companies typically offer their own financing options, and homeowners with equity in their homes can access Home Equity Lines of Credit (HELOC).

Fiscal and Facilities Impacts:
Budgeted: No. If the Board directs staff to pursue R-PACE, there could be potential staffing costs to provide oversight of third-party R-PACE providers. Staff estimates costs of approximately $32,000 to cover a .25 FTE.

Fiscal Analysis:
The Sustainability Division does not have specific funding for R-PACE implementation and oversight. To date, staff has been allocating PACE related expenses to Energy and Climate Action Plan implementation funding.

Staffing Impacts:

None

Special Instructions:

Please send one copy of the signed minute order to Ashley Watkins.

Attachments:

Attachment 1: FHFA Statement
Attachment 2: Resolution No. 10-201
Attachment 3: FHFA Statement CA Legislature
Attachment 4: Example of R-PACE Contract
Attachment 5: Office of the Auditor-Controller Whitepaper
Attachment 6: R-PACE PowerPoint Presentation

Authored by:

Ashley Watkins, Co-Division Chief, Sustainability Division