

Property Assessed Clean Energy (PACE) Programs

November 16, 2012

Board Action:

**SUPPORT THE CREATION
OF ADDITIONAL PACE PROGRAMS WITH
MINIMAL FISCAL IMPACT**

Rationale:

Providing several alternative models for property owners to choose between when financing energy and water efficiency as well as rooftop solar will create a competitive marketplace that will provide the best chance for success. The programs proposed employ public-private partnerships that limit costs and risk to government agencies. Because any program may be successful or fail, and there is limited cost and risk to public agencies, providing options is ideal so that the preferred program(s) can be chosen by the market.

Background:

Although energy and water efficiency improvements and properly sized renewable energy generation projects can “pay for themselves” through decreased utility bills, not all property owners have access to enough capital to make the investment. This reality has created a market for financing efficiency and renewable energy projects. The risk associated with lending has proven to be substantial enough to limit the activity in this market. Property Assessed Clean Energy (PACE) programs allow property owners to finance all of the costs of energy or water efficiency projects as well as renewable generation projects by connecting the financing to the property owner’s property tax bill. The amount of financing available to any given property owner is determined by the property’s assessed value and is paid back annually over a period up to 20 years. In addition, the assessment follows the property if it is sold or transferred.

AB 811 (July 2008)

Private investment in energy efficiency and renewable energy production lessen the demand on the energy grid. Investment in water efficiency similarly takes pressure off of regional infrastructure. In recognition of this public benefit the California Legislature passed Assembly Bill (AB) 811 allowing local governments to create a district in which “property owners may enter into contractual assessments to finance the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to real property.”

AB 811 allows for local governments to create or opt into programs that allow property owners to more easily obtain financing by securing loans through senior liens on real property and servicing loans through their property tax bill. This increased assurance to lenders encourages investment that is beneficial to the public.

AB 474 (2009) expands the list of improvements that can be financed in this manner to include water efficiency improvements.

CaliforniaFIRST

A Joint Powers Authority (JPA) sponsored by the League of California Cities and the California State Association of Counties called California Communities created a program to allow efficiency upgrades to be secured by a senior lien on property called CaliforniaFIRST. Initially, CaliforniaFIRST was to be focused on single-family residential homes. Financing from this program is funded through bonds issued by California Communities. While Renewable Funding LLC and RBC Capital Markets were selected to provide administration and financing services, the platform was established to allow for other providers to participate as well. CaliforniaFIRST is an open market program and is currently working with multiple lenders and anticipates more in the future including allowing property owners to bring their own lenders.

County of San Diego District (December 2009)

The County of San Diego determined that participating in a PACE program was advantageous and that participation in the CaliforniaFIRST program was more cost-effective than forming and administering an AB 811 district for the County alone, and making loans to property owners.

The County's action allowed for participation by property owners within the unincorporated areas of the county. In addition, it was determined that the participation of local cities is contingent upon the County's participation. Property owners' participation is voluntary.

Participating in the CaliforniaFIRST program came at a relatively minor cost of \$25,000 to buy into the program. In addition, the County committed to waiving an estimated \$100,000 and \$300,000 of permit fees for solar panel permits.

Improvements are financed by the issuance of bonds by California Communities. California Communities created and is the administrator of an AB 811 district. They levy contractual assessments on property to repay the portion of the bonds issued to finance the improvements. California Communities works with Renewable Funding LLC and RBC Capital Markets to provide administration and financing.

City of San Diego Clean Generation Program (May 2010)

Following the signing of AB 811 in 2008, Mayor Sanders announced his intent to pursue a PACE program to facilitate financing options for energy efficiency investments such as insulation, heating and cooling systems, windows and doors, water efficiency projects such as reclaimed water systems and efficient irrigation, and renewable energy generation such as solar panels. In 2009, a Request For Qualifications (RFP) was issued and nine responses were received. Three bidders were asked to prepare proposals. Ultimately, Renewable Funding LLC was selected and partnered with the California Center for Sustainable Energy for Program Administration Services.

A working group was established in late 2009 to give recommendations to Mayor Sanders regarding the design of a San Diego Clean Generation Program.

In May of 2010, the City of San Diego City Council approved the Clean Generation Program which established a PACE district to finance residential and commercial energy upgrades. This program was focused on residential properties.

Federal Housing and Finance Administration (FHFA) Intervened (July 2010)

In July 2010, the Federal Housing and Finance Administration (FHFA) instructed Fannie Mae and Freddie Mac to avoid home mortgages with PACE liens. The implementation of the City's residential program was effectively stopped in its tracks due to the dramatic impact on the market caused by the policy change of the massive Fannie Mae and Freddie Mac.¹

SB 555 (October 2011)

SB 555 made clean energy projects acceptable improvements to be paid for by Mello-Roos taxes by expanding the definition of PACE bonds to include those paid through a tax levied by community facilities districts.² SB 555 programs can also be set up to be open and competitive and market-based incorporating all qualified contractors and financing sources.³

¹ Presentation to City of San Diego City Council. Eric Engelman. September 18, 2012.
http://granicus.sandiego.gov/MediaPlayer.php?view_id=3&clip_id=5516.

² Goodwin Proctor. <http://www.goodwinsustainabledevelopment.com/uncategorized/new-hope-for-pace-program/>. Accessed October 9, 2012.

³ Michael Lemyre. Ygrene Energy Fund. September 18, 2012.

CaliforniaFIRST revised (January 2012)

As described earlier, a Joint Powers Authority (JPA) sponsored by the League of California Cities and the California State Association of Counties called California Communities created a program called CaliforniaFIRST prior to the policy change of Fannie Mae and Freddie Mac. In January of 2012, that program was revised to sidestep the issues raised by FHFA by steering clear of single-family residential properties until there is resolution on those issues, and requiring property owners to get approval from their mortgage lender prior to executing a PACE lien.⁴ With these revisions, CaliforniaFIRST was able to officially launch for the first time. Currently, 12 jurisdictions within San Diego County have opted into the program.

City of San Diego City Council Approved Joining CaliforniaFIRST (September 2012)

Because CaliforniaFIRST is not an exclusive program, the San Diego City Council both approved joining CaliforniaFIRST and directed staff to continue assessing alternative PACE programs in September 2012.

In addition to the City of San Diego, several other local jurisdictions have opted into the CaliforniaFIRST program including:

- Carlsbad
- Chula Vista
- Coronado
- Del Mar
- Encinitas
- Escondido
- La Mesa
- Lemon Grove
- Oceanside
- Poway
- Santee
- Solana Beach

Proposals:

Ygrene's SB 555 Program

As described in the previous section, SB 555 made clean energy projects acceptable improvements to be paid for by Mello-Roos taxes by expanding the definition of PACE bonds to include those paid through a tax levied by community facilities districts.⁵

The SB 555 program being proposed by Ygrene Energy Fund is also an open and competitive market-based program that is open to all qualified contractors and financing sources.⁶

By establishing a SB 555 district, the City of San Diego would be open for other companies as well as Ygrene.⁷

An October 2012 staff report to the San Diego City Council presents the following “Nuanced” advantages of an SB 555 district:

- Minimum waiting period between placement of lien and bond issuance is shortened from 30 to 15 days.
- Lien amount placed on property is only for annual repayment obligation, rather than all amortized future repayments.
- Public agency liability limited to district creation and operation rather than program creation and operation.

⁴ Presentation to City of San Diego City Council. Eric Engelman. September 18, 2012.

http://granicus.sandiego.gov/MediaPlayer.php?view_id=3&clip_id=5516.

⁵ <http://www.goodwinsustainabledevelopment.com/uncategorized/new-hope-for-pace-program/>

⁶ Michael Lemyre. Ygrene Energy Fund. Public Comment to City of San Diego City Council. September 18, 2012.

⁷ “Report and recommendations on additional PACE financing options, PACE program metrics and PACE stakeholder meeting.” City of San Diego. October 8, 2012.

- Some properties exempt from taxes are eligible to participate versus only taxpaying properties.
- Under very limited circumstances, new construction is eligible versus only existing construction.
- Payments may be billed off tax role in all situations rather than only in some situations.

The San Diego City Attorney's Office has expressed concern that because the only use of SB 555 so far is the City of Sacramento, which is in its early stages, it is too early to assess the viability of setting up a PACE program under SB 555 rather than AB 811. In addition, the Office of the City Attorney has noted that "compared to existing PACE programs, the City is much more involved under a SB 555 program and therefore, has more potential risk exposure."⁸ At its October 23, 2012 meeting, the San Diego City Council approved the City Attorney's request to obtain outside counsel with related expertise to provide support for this evaluation.

While this action is believed to be appropriate due diligence on the part of the City Attorney, Ygrene feels they can adequately address the concerns as they have satisfied similar concerns brought up by the City of Sacramento.⁹ The City of Sacramento's program will be administered by Ygrene Energy Fund.¹⁰

Ygrene has committed to reimbursing the City for all one-time district setup costs including the cost of the outside legal services requested by the City Attorney.

California PACE

Operated by the Joint Power Authority California Economic Development Authority, the California PACE program is administered by San Diego based Figtree Energy Resources Company. Figtree has developed a pooled PACE bond program. The San Diego City Council entered the City into this program at its October 23, 2012 meeting.¹⁰

The California PACE program provides property owners a choice of multiple lenders and contractors. There is no cost for California local governments to opt into the California PACE program.¹⁰

Although California PACE is designed to work for residential properties as is CaliforniaFIRST, it currently excludes single-family homes pending a resolution regarding the FHFA issue.¹¹

HERO Program¹⁰

The HERO program differs from the previously discussed programs by being available to residential property owners immediately. In addition, the program will not finance water efficiency projects. The San Diego based company Renovate America, Inc operates the HERO program.

In January of this year, the Western Riverside Council of Governments (WRCOG) launched the HERO Program. WRCOG is a Joint Powers Authority with 18 members in Western Riverside County.

An additional restriction with the HERO program is that refinancing or a transfer in property allows for the lender, or the buyer's lender, to require that the remaining assessment balance be paid off in full.

As of September 2012, the program had approved 1,800 residential projects totaling \$56 million. Approximately two thirds are energy efficiency projects and the remaining are solar panel projects. In August of 2012, WRCOG amended its Joint Powers Agreement to allow any California jurisdiction to participate in the HERO program.

⁸ "Analysis of options for a property assessed clean energy (PACE) program under SB 555 and review of the Sacramento SB 555 PACE program". The City Attorney: City of San Diego. October 8, 2012.

⁹ Crystal Crawford, Ygrene Energy Fund. Phone conversation October 9, 2012.

¹⁰ Meeting of the San Diego City Council. October 23, 2012.

¹¹ Figtree Energy Resources Company. <http://www.figtreecompany.com/commercial-pace-faq/>. Accessed October 9, 2012.

	<i>CaliforniaFIRST</i>	<i>California PACE</i>	Ygrene	<i>HERO</i>
Administrated by	California Communities	Figtree	Ygrene (open to others)	Renovate America Inc.
Under Law	AB 811	AB 811	SB 555	AB 811
Funding Source	Clients bring own financing	Multi-jurisdictional Bonds	Bonds	Bonds
Initial Interest Rate	7% to 8%	8% - 9%	Targeted 7%	6% - 8.25%
Additional Fees/Costs	2.5% to 4%	\$500, 5% closing costs 5% principle and interest payments max annual fees	\$50	5.35% closing, \$95 one time, Annual \$25
Cost to Government Dollars	~\$25,000	None	Reimbursed	Reimbursed
Financed (CA)	unknown	\$6 million (in pipeline)	Yet to initiate	\$59 million total funded to date
Covers Residential	Not yet	Not yet	Not yet	Yes
Covers Commercial	Yes	Yes	Yes	No
Minimum Financing	\$50,000	\$5,000	\$2,500	\$5,000

Sources: Ygrene Energy Fund, CaliforniaFIRST, Figtree, HERO, City of San Diego

Fiscal Impact:¹²

Each of the proposed programs have minimal direct costs to local government. For Ygrene’s SB 555 proposal, one public employee is expected to be needed to administer the program. However, Ygrene has committed to reimbursing the City for their time in addition to the cost of setting up the district and hiring outside legal services in order to make it cost neutral.

Both the California PACE program and the HERO program have made this same commitment to reimburse any direct costs to local government.

In addition, there is some discussion at the City of San Diego regarding tracking metrics to assess the success of the programs. This cost is expected to be minimal and performed with existing staff. The City will maintain the ability to add a fee to applications to cover these costs.

Policy Discussion:

While the City Attorney’s office at the City of San Diego has brought up some concerns specific to the California PACE program, Ygrene has said that they feel confident these issues can be addressed. Each of the four programs has gone, or will go through, a legal validation process.

- CaliforniaFIRST – Validated
- California PACE – Validation action filed – validation expected in early December.
- Ygrene – Validation action will be filed
- HERO – Validation action will be filed

If the models are found to be legal, the remaining question would be the concern raised by the San Diego City Attorney in the October 8, 2012 memo “Analysis of Options for a Property Assessed Clean Energy (PACE) Program under SB 555 and Review of the Sacramento SB 555 PACE Program,” that the City would be more

¹² Eric Engelman. City of San Diego. Phone Conversation. October 9, 2012.

involved in SB 555 programs than in AB 811 programs. The specific feature of the SB 555 programs that the City Attorney feels warrants specialized outside counsel is that a more complex financing technique would be used in which loans may be pooled and sold as asset backed securities. One question that the City Attorney is recommending outside counsel should be asked is if the City would have any vulnerability to lawsuits by authorizing the complex financing technique. The City, in this process, is ensuring adequate protection to the City given that it would delegate “to the administrator the right to collect the special taxes and if the City allows the administrator to hold this money in its own account.” The memo goes on to note that the City may be able to mitigate these risks through negotiations with the administrator which is consistent with Ygrene’s statements to SDCTA staff.

List of Proponents:

The following organizations have expressed support for PACE in general:

- CleanTech San Diego
- San Diego Regional Chamber of Commerce
- Environmental Health Coalition
- California Center for Sustainable Energy
- US Green Building Council
- San Diego Gas and Electric
- CB Richard Ellis
- Clean Fund
- Structure Finance Associates
- REC Solar

Proponent Arguments:

- Will increase energy conservation
- Will increase water conservation
- Will help the environment
- Will create countless jobs

List of Opponents:

- Federal Housing and Finance Administration

Opponent Arguments:

- The senior liens make buying and selling properties more risky for the mortgage lender
- Although unlikely, the local government cannot be removed from all risk of litigation