




# TOWN OF FAIRFAX

## STAFF REPORT

### September 3, 2014

**TO:** Mayor and Town Council

**FROM:** Garrett Toy, Town Manager 

**SUBJECT:** Adopt a resolution to opt-in to the California FIRST PACE program enabling property owners in the Town of Fairfax to access PACE financing for eligible renewable energy, energy efficiency, and water conservation improvements to real property.

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#### **RECOMMENDATION**

Adopt a resolution to opt-in to the California FIRST program.

#### **DISCUSSION**

Councilmember Coler requested this program to be considered by the Town Council.

The CaliforniaFIRST Program is a property assessed clean energy ("PACE") program. PACE is being instituted by California Communities to allow owners of property in participating cities and counties to finance renewable energy, energy efficiency and water efficiency improvements on their property. California Communities is a joint powers authority sponsored by the League of California Cities (Fairfax is a member) and the California State Association of Counties. The program is now available to both commercial and residential property owners.

If a property owner chooses to participate, the improvements will be financed by the issuance of bonds by California Communities. California Communities will levy "contractual assessments" on the owner's property to repay the portion of the bonds issued to finance the improvements on that property.

The benefits to the property owner include:

- Only property owners who choose to participate in the program will have assessments imposed on their property.
- In today's economic environment, there may not be attractive private enterprise alternatives for property owners to finance renewable energy/energy efficiency/water efficiency improvements.
- Even if there were private enterprise alternatives, most private loans are due on sale of the benefited property, which makes it difficult for property owners to match the life of the repayment obligation with the useful life of the financed improvements. Under the CaliforniaFIRST Program, the assessment obligation will transfer with the property upon sale.

- The property owner can choose to pay off the assessments at any time, subject to applicable prepayment penalties.
- Regional aggregation provided by the CaliforniaFIRST Program, provides the program scale and the investment sizing that attracts private capital providers.

The benefits to the Town include:

- The Town is not obligated to repay the bonds issued by California Communities or to pay the assessments levied on the participating properties.
- California Communities handles all assessment administration, bond issuance and bond administration functions. Fairfax would be able to provide financing of renewable energy, energy efficiency and water efficiency improvements to property owners through the CaliforniaFIRST Program, while committing virtually no staff time to administer the program. PACE would also assist the Town in meeting its Climate Action goals.

The attached resolution authorizes the following:

- California Communities to accept applications from owners of property within our jurisdiction for municipal financing of renewable energy, energy efficiency and water efficiency improvements through the CaliforniaFIRST Program.
- California Communities to conduct assessment proceedings and levy assessments against the property of participating owners within our boundaries.
- Designates MCE Clean Energy (MCE) as the Town of Fairfax's liaison to California Communities and the CaliforniaFIRST program. MCE will assume responsibility for coordination and oversight for all requirements for Fairfax's participation in the program. MCE will additionally assist in connecting potential project applicants with the CaliforniaFIRST program through its role as an energy efficiency services provider in the Marin County area. For those projects for which CaliforniaFIRST financing may not be a viable option, the MCE efficiency program will offer a complimentary on-bill repayment financing program for commercial and residential properties.

The Town can withdraw from the CaliforniaFIRST Program at any time by passing a resolution rescinding the authorization. Participating jurisdictions are also free to develop and operate other financing programs, including alternative PACE programs, independently of but concurrent to CaliforniaFIRST.

**FISCAL IMPACT:** None

## **ATTACHMENTS**

Resolution

PACE information

## RESOLUTION 14-\_\_

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AUTHORIZING THE TOWN OF FAIRFAX TO JOIN THE CALIFORNIAFIRST PROGRAM; AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE TERRITORY OF THE TOWN; AND AUTHORIZING RELATED ACTIONS**

**WHEREAS**, the California Statewide Communities Development Authority ("California Communities") is a joint exercise of powers authority the members of which include numerous cities and counties in the State of California, including the Town of Fairfax (the "Town"); and

**WHEREAS**, California Communities has established the CaliforniaFIRST program (the "CaliforniaFIRST Program") to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements (the "Improvements") through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29") and the issuance of improvement bonds (the "Bonds") under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 and following) (the "1915 Act") upon the security of the unpaid contractual assessments; and

**WHEREAS**, Chapter 29 provides that assessments may be levied under its provisions only with the free and willing consent of the owner of each lot or parcel on which an assessment is levied at the time the assessment is levied; and

**WHEREAS**, the Town desires to allow the owners of property within its jurisdiction ("Participating Property Owners") to participate in the CaliforniaFIRST Program and to allow California Communities to conduct assessment proceedings under Chapter 29 and to issue Bonds under the 1915 Act to finance the Improvements; and

**WHEREAS**, California Communities will conduct assessment proceedings under Chapter 29 and issue Bonds under the 1915 Act to finance Improvements; and

**WHEREAS**, there has been presented to this meeting a proposed form of Resolution of Intention to be adopted by California Communities in connection with such assessment proceedings (the "ROI"), a copy of which is attached hereto as Exhibit A, and the territory within which assessments may be levied for the CaliforniaFIRST Program shall include all of the territory within the Town's official boundaries of record (the "Proposed Boundaries"); and

**WHEREAS**, the Town will not be responsible for the conduct of any assessment proceedings; the levy or collection of assessments or any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of the Bonds or any other bonds issued in connection with the CaliforniaFIRST Program; and

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Fairfax as follows:

Section 1. On the date hereof, the Town Council held a public meeting and the Town Council hereby finds and declares that the issuance of bonds by California Communities in connection with the CaliforniaFIRST Program will provide significant public benefits, including

without limitation, savings in effective interest rate, bond preparation, bond underwriting and bond issuance costs and reductions in effective user charges levied by water and electricity providers within the boundaries of the Town.

Section 2. In connection with the CaliforniaFIRST Program, the Town hereby consents to the conduct of special assessment proceedings by California Communities pursuant to Chapter 29 on any property within the Proposed Boundaries and the issuance of Bonds under the 1915 Act; provided, that

(1) Such proceedings are conducted pursuant to one or more Resolutions of Intention in substantially the form of the ROI;

(2) The Participating Property Owners, who shall be the legal owners of such property, execute a contract pursuant to Chapter 29 and comply with other applicable provisions of California law in order to accomplish the valid levy of assessments; and

(3) The Town will not be responsible for the conduct of any assessment proceedings; the levy or collection of assessments or any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of the Bonds or any other bonds issued in connection with the CaliforniaFIRST Program.

(4) The issuance of Bonds will occur following receipt of a final judgment in a validation action filed by California Communities pursuant to Code of Civil Procedure Section 860 that the Bonds are legal obligations of California Communities.

Section 3. Pursuant to the requirements of Chapter 29, California Communities has prepared and will update from time to time the "Program Report" for the CaliforniaFIRST Program (the "Program Report"), and California Communities will undertake assessment proceedings and the financing of Improvements as set forth in the Program Report.

Section 4. The appropriate officials and staff of the Town are hereby authorized and directed to make applications for the CaliforniaFIRST program available to all property owners who wish to finance Improvements; provided, that California Communities shall be responsible for providing such applications and related materials at its own expense. The Town designates MCE Clean Energy as the primary point of contact for California Communities in connection with the CaliforniaFIRST Program.

Section 5. The appropriate officials and staff of the Town are hereby authorized and directed to execute and deliver such closing certificates, requisitions, agreements and related documents as are reasonably required by California Communities in accordance with the Program Report to implement the CaliforniaFIRST Program for Participating Property Owners.

Section 6. The Town Council hereby finds that adoption of this Resolution is not a "project" under the California Environmental Quality Act, because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4)).

Section 7. This Resolution shall take effect immediately upon its adoption. The Town Clerk is hereby authorized and directed to transmit a certified copy of this resolution to the Secretary of California Communities.

The foregoing Resolution was duly passed and adopted at a Regular Meeting of the Town Council of the Town of Fairfax held in said Town on the 3rd day of September 2014, by the following vote, to wit:

AYES:  
NOES:  
ABSENT:

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DAVID WEINSOFF, Mayor

Attest:

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Michele Gardner, Town Clerk

**EXHIBIT A**

**FORM OF RESOLUTION DECLARING INTENTION  
TO FINANCE INSTALLATION OF  
DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES,  
ENERGY EFFICIENCY AND WATER EFFICIENCY IMPROVEMENTS**

**RESOLUTION NO. 13R-21**

**RESOLUTION DECLARING INTENTION TO FINANCE INSTALLATION OF  
DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES, ENERGY  
EFFICIENCY AND WATER EFFICIENCY IMPROVEMENTS**

**COUNTY OF MARIN**

**WHEREAS**, the California Statewide Communities Development Authority ("California Communities") is authorized under the authority granted California Communities pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California in accordance with Chapter 29 of Part 3 of Division 7 of the Streets & Highways Code of the State of California ("Chapter 29") to authorize assessments to finance the installation of distributed generation renewable energy sources, and energy efficiency and water efficiency improvements that are permanently fixed to real property ("Authorized Improvements"); and

**WHEREAS**, Chapter 29 authorizes California Communities to enter into contractual assessments to finance the installation of Authorized Improvements in the County of Marin (the "County"); and

**WHEREAS**, California Communities wishes to declare its intention to establish a CaliforniaFIRST program (the "CaliforniaFIRST Program") in the County, pursuant to which California Communities, subject to certain conditions set forth below, would enter into contractual assessments to finance the installation of Authorized Improvements in the County;

**NOW, THEREFORE, BE IT RESOLVED** by the California Statewide Communities Development Authority, as follows:

**Section 1. Findings.** California Communities hereby finds and declares the following:

- (a) The above recitals are true and correct.
- (b) Energy conservation efforts, including the promotion of energy-related Authorized Improvements to residential, commercial, industrial, or other real property, are necessary to address the issue of global climate change and the reduction of greenhouse gas emissions in the County.
- (c) Water conservation efforts, including the promotion of water-related Authorized Improvements to residential, commercial, industrial, or other real property, are necessary to address the issue of chronic water shortages in California.
- (d) The upfront cost of making residential, commercial, industrial, or other real property more energy and water efficient, along with the fact that most commercial loans for that purpose are due on the sale of the property, prevents many property owners from installing Authorized Improvements.
- (e) A public purpose will be served by establishing a contractual assessment program, to be known as the CaliforniaFIRST Program, pursuant to which California Communities will finance the installation of Authorized Improvements to residential, commercial, industrial, or other real property in the County.

**Section 2. Determination of Public Interest.** California Communities hereby determines that (a) it would be convenient, advantageous, and in the public interest to designate an area, which shall encompass the entire geographic territory within the boundaries of the County, within which California Communities and property owners within the County may enter into contractual assessments to finance the installation of Authorized Improvements pursuant to Chapter 29 and (b) it is in the public interest for California Communities to finance the installation of Authorized Improvements in the County pursuant to Chapter 29.

**Section 3. Identification of Authorized Improvements.** California Communities hereby declares that it proposes to make contractual assessment financing available to property owners to finance installation of Authorized Improvements, including but not limited to those improvements detailed in the Report described in Section 7 below, as that Report may be amended from time to time.

**Section 4. Identification of Boundaries.** Contractual assessments may be entered into by property owners located within the entire geographic territory of the County; provided, however, that California Communities shall not enter into contractual assessments to finance the installation of Authorized Improvements with the owner of any property in the County unless requested to do so first by the County if the property is located in unincorporated territory or a city if the property is located in incorporated territory and after such city or the County, as applicable, has held a public hearing pursuant to Section 6586.5 of the Government Code of the State of California. The form of resolution pursuant to which the County or cities may request California Communities to enter into contractual assessments to finance the installation of Authorized Improvements is attached as Exhibit A.

**Section 5. Proposed Financing Arrangements.** Under Chapter 29, California Communities may issue bonds pursuant to Chapter 29 that are payable by contractual assessments and California Communities may advance its own funds to finance work to be repaid through contractual assessments, and may from time to time sell bonds to reimburse itself for such advances. Division 10 (commencing with Section 8500) of the Streets & Highways Code of the State (the "Improvement Bond Act of 1915") shall apply to any bonds issued pursuant to Chapter 29, insofar as the Improvement Bond Act of 1915 is not in conflict with Chapter 29.

California Communities shall determine the creditworthiness of a property owner to participate in the financing of Authorized Improvements based on the criteria developed by the Program Manager in consultation with the CaliforniaFIRST Program financing team.

In connection with bonds issued under the Improvement Bond Act of 1915 that are payable from contractual assessments, serial and/or term improvement bonds shall be issued in such series and shall mature in such principal amounts and at such times (not to exceed 20 years from the second day of September next following their date) and at such rate or rates of interest (not to exceed the maximum rate permitted by applicable law) as shall be determined by California Communities at the time of the issuance and sale of the bonds. The provisions of Part 11.1 of the Improvement Bond Act of 1915 shall apply to the calling of the bonds. It is the intention of California Communities to create a special reserve fund for the bonds under Part 16 of the Improvement Bond Act of 1915. California Communities will not advance available surplus funds from its treasury to cure any deficiency in the redemption fund to be created with respect to the bonds; provided, however, that this determination shall not prevent California Communities from, in its sole discretion, so advancing funds. The bonds may be refunded under Division 11.5 of the California Streets and Highways Code or other applicable



laws permitting refunding of the bonds, upon the conditions specified by and at the determination of California Communities.

California Communities hereby authorizes the Program Manager, upon consultation with bond counsel and the CaliforniaFIRST Program underwriter, to provide for the issuance of bonds payable from contractual assessments.

In connection with the issuance of bonds payable from contractual assessments, California Communities expects to obligate itself, through a covenant with the owners of the bonds, to exercise its foreclosure rights with respect to delinquent contractual assessment installments under specified circumstances.

**Section 6. Public Hearing.** Pursuant to the Act, California Communities hereby orders that a public hearing be held before this Commission, at 1400 K Street, 3rd Floor, Sacramento, CA 95814, on October 24, 2013, at 10:00 a.m., for the purposes of allowing interested persons to object to or inquire about the proposed program or any of its particulars. The public hearing may be continued from time to time as determined by the Commission for a time not exceeding a total of 180 days.

At the time of the hearing, the Report described in Section 7 below shall be summarized and the Commission shall afford all persons who are present an opportunity to comment upon, object to, or present evidence with regard to the proposed contractual assessment program, the extent of the area proposed to be included within the program, the terms and conditions of the draft Contract described in Section 7 below, or the proposed financing provisions. Following the public hearing, California Communities may adopt a resolution confirming the Report (the "Resolution Confirming Report") or may direct the Report's modification in any respect, or may abandon the proceedings.

The Commission hereby orders the Secretary to publish a notice of public hearing once a week for two successive weeks. Two publications in a newspaper published once a week or more often, with at least five days intervening between the respective publication dates not counting such publication dates, are sufficient. The period of notice will commence upon the first day of publication and terminate at the end of the fourteenth day. The first publication shall occur not later than 20 days before the date of the public hearing.

**Section 7. Report.** The Commission hereby directs the Program Manager for the CaliforniaFIRST Program to prepare and file with the Commission a report (the "Report") at or before the time of the public hearing described in Section 6 above containing all of the following:

(a) A map showing the boundaries of the territory within which contractual assessments are proposed to be offered, as set forth in Section 4 above.

(b) A draft contract (the "Contract") specifying the terms and conditions that would be agreed to by California Communities and a property owner within the County. The Contract may allow property owners to purchase directly the related equipment and materials for the installation of the Authorized Improvements and to contract directly for the installation of such Authorized Improvements.

(c) A statement of California Communities' policies concerning contractual assessments including all of the following:

(1) Identification of types of Authorized Improvements that may be financed through the use of contractual assessments.

(2) Identification of the California Communities official authorized to enter into contractual assessments on behalf of California Communities.

(3) A maximum aggregate dollar amount of contractual assessments in the County.

(4) A method for setting requests from property owners for financing through contractual assessments in priority order in the event that requests appear likely to exceed the authorization amount.

(d) A plan for raising a capital amount required to pay for work performed pursuant to contractual assessments. The plan may include amounts to be advanced by California Communities through funds available to it from any source. The plan may include the sale of a bond or bonds or other financing relationship pursuant to Section 5898.28 of Chapter 29. The plan shall include a statement of or method for determining the interest rate and time period during which contracting property owners would pay any assessment. The plan shall provide for any reserve fund or funds. The plan shall provide for the apportionment of all or any portion of the costs incidental to financing, administration, and collection of the contractual assessment program among the consenting property owners and California Communities.

(e) A report on the results of the consultations with the County Auditor-Controller described in Section 9 below concerning the additional fees, if any, that will be charged to California Communities for incorporating the proposed contractual assessments into the assessments of the general taxes of the County on real property, and a plan for financing the payment of those fees.

**Section 8. Nature of Assessments.** Assessments levied pursuant to Chapter 29, and the interest and any penalties thereon, will constitute a lien against the lots and parcels of land on which they are made, until they are paid. Unless otherwise directed by California Communities, the assessments shall be collected in the same manner and at the same time as the general taxes of the County on real property are payable, and subject to the same penalties and remedies and lien priorities in the event of delinquency and default.

**Section 9. Consultations with County Auditor-Controller.** California Communities hereby directs the Program Manager to enter into consultations with the County Auditor-Controller in order to reach agreement on what additional fees, if any, will be charged to California Communities for incorporating the proposed contractual assessments into the assessments of the general taxes of the County on real property.

**Section 10. Preparation of Current Roll of Assessment.** Pursuant to Section 5898.24(c), California Communities hereby designates the Program Manager (or his/her designee) as the responsible official for annually preparing the current roll of assessment obligations by assessor's parcel number on property subject to a voluntary contractual assessment.

**Section 11. Procedures for Responding to Inquiries.** The Program Manager shall establish procedures to promptly respond to inquiries concerning current and future estimated liability for a voluntary contractual assessment.

**Section 12. Professionals Appointed.** California Communities hereby appoints Jones Hall, A Professional Law Corporation, San Francisco, California, as bond counsel to California Communities in connection with the CaliforniaFIRST Program. The Commission hereby authorizes and directs an Authorized Signatory of California Communities (as determined from time to time by the Commission by separate resolution) to enter into appropriate agreements with such firm for its services to California Communities in connection with the matters addressed in this Resolution.

**Section 13. Effective Date.** This resolution shall take effect immediately upon its adoption.

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PASSED AND ADOPTED by the California Statewide Communities Development Authority this September 26, 2013.

I, the undersigned, the duly appointed, and qualified member of the Commission of the California Statewide Communities Development Authority, DO HEREBY CERTIFY that the foregoing resolution was duly adopted by the Commission of said Authority at a duly called meeting of the Commission of said Authority held in accordance with law on September 26, 2013.

By:   
Authorized Signatory

**EXHIBIT A**

**FORM OF RESOLUTION AUTHORIZING CALIFORNIA COMMUNITIES TO CONDUCT  
CONTRACTUAL ASSESSMENT PROCEEDINGS AND  
LEVY CONTRACTUAL ASSESSMENTS**

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION AUTHORIZING THE [CITY OF \_\_\_\_/COUNTY OF \_\_\_\_] TO JOIN THE  
CALIFORNIAFIRST PROGRAM; AUTHORIZING THE CALIFORNIA STATEWIDE  
COMMUNITIES DEVELOPMENT AUTHORITY TO ACCEPT APPLICATIONS FROM  
PROPERTY OWNERS, CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND  
LEVY CONTRACTUAL ASSESSMENTS WITHIN THE TERRITORY OF THE  
[CITY/COUNTY]; AND AUTHORIZING RELATED ACTIONS**

**WHEREAS**, the California Statewide Communities Development Authority ("California Communities") is a joint exercise of powers authority the members of which include numerous cities and counties in the State of California, including the [City of \_\_\_\_/County of \_\_\_\_] ([the "City"/"County"]); and

**WHEREAS**, California Communities has established the CaliforniaFIRST program (the "CaliforniaFIRST Program") to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements (the "Improvements") through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29") and the issuance of improvement bonds (the "Bonds") under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 and following) (the "1915 Act") upon the security of the unpaid contractual assessments; and

**WHEREAS**, Chapter 29 provides that assessments may be levied under its provisions only with the free and willing consent of the owner of each lot or parcel on which an assessment is levied at the time the assessment is levied; and

**WHEREAS**, the [City/County] desires to allow the owners of property within its jurisdiction ("Participating Property Owners") to participate in the CaliforniaFIRST Program and to allow California Communities to conduct assessment proceedings under Chapter 29 and to issue Bonds under the 1915 Act to finance the Improvements; and

**WHEREAS**, California Communities will conduct assessment proceedings under Chapter 29 and issue Bonds under the 1915 Act to finance Improvements;

**WHEREAS**, there has been presented to this meeting a proposed form of Resolution of Intention to be adopted by California Communities in connection with such assessment proceedings (the "ROI"), a copy of which is attached hereto as Exhibit A, and the territory within which assessments may be levied for the CaliforniaFIRST Program shall [if a County: be coterminous with the County's official boundaries of record at the time of adoption of the ROI] [if a City: include all of the territory within the City's official boundaries of record] (the "Proposed Boundaries"); and

**WHEREAS**, [if a City: the City will not be responsible for the conduct of any assessment proceedings; the levy or collection of assessments or any required remedial action in the case

of delinquencies in such assessment payments; or the issuance, sale or administration of the Bonds or any other bonds issued in connection with the CaliforniaFIRST Program] [if a County: the County will not be responsible for the conduct of any assessment proceedings; the levy of assessments or any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of the Bonds or any other bonds issued in connection with the CaliforniaFIRST Program]; and

**WHEREAS**, pursuant to Government Code Section 6586.5, a notice of public hearing has been published once at least five days prior to the date hereof in a newspaper of general circulation in the [City/County] and a public hearing has been duly conducted by this [City Council/Board of Supervisors] concerning the significant public benefits of the CaliforniaFIRST Program and the financing of the Improvements;

**NOW, THEREFORE, BE IT RESOLVED** by the [City Council/Board of Supervisors] of the [County of \_\_\_\_/City of \_\_\_\_] as follows:

Section 1. On the date hereof, the [City Council/Board of Supervisors] held a public hearing and the [City Council/Board of Supervisors] hereby finds and declares that the issuance of bonds by California Communities in connection with the CaliforniaFIRST Program will provide significant public benefits, including without limitation, savings in effective interest rate, bond preparation, bond underwriting and bond issuance costs and reductions in effective user charges levied by water and electricity providers within the boundaries of the [City/County].

Section 2. In connection with the CaliforniaFIRST Program, the [City/County] hereby consents to the conduct of special assessment proceedings by California Communities pursuant to Chapter 29 on any property within the Proposed Boundaries and the issuance of Bonds under the 1915 Act; provided, that

(1) Such proceedings are conducted pursuant to one or more Resolutions of Intention in substantially the form of the ROI;

(2) The Participating Property Owners, who shall be the legal owners of such property, execute a contract pursuant to Chapter 29 and comply with other applicable provisions of California law in order to accomplish the valid levy of assessments; and

(3) [If a city: The City will not be responsible for the conduct of any assessment proceedings; the levy or collection of assessments or any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of the Bonds or any other bonds issued in connection with the CaliforniaFIRST Program.] [If a county: The County will not be responsible for the conduct of any assessment proceedings; the levy of assessments or any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of the Bonds or any other bonds issued in connection with the CaliforniaFIRST Program.]

(4) The issuance of Bonds will occur following receipt of a final judgment in a validation action filed by California Communities pursuant to Code of Civil Procedure Section 860 that the Bonds are legal obligations of California Communities.

Section 3. Pursuant to the requirements of Chapter 29, California Communities has prepared and will update from time to time the "Program Report" for the CaliforniaFIRST

Program (the "Program Report"), and California Communities will undertake assessment proceedings and the financing of Improvements as set forth in the Program Report.

Section 4. The appropriate officials and staff of the [City/County] are hereby authorized and directed to make applications for the CaliforniaFIRST program available to all property owners who wish to finance Improvements; provided, that California Communities shall be responsible for providing such applications and related materials at its own expense. The following staff persons, together with any other staff persons chosen by the [City Manager/County Administrator] from time to time, are hereby designated as the contact persons for California Communities in connection with the CaliforniaFIRST Program: \_\_\_\_\_[specify name of individual or position].

Section 5. The appropriate officials and staff of the [City/County] are hereby authorized and directed to execute and deliver such closing certificates, requisitions, agreements and related documents as are reasonably required by California Communities in accordance with the Program Report to implement the CaliforniaFIRST Program for Participating Property Owners.

Section 6. The appropriate officials and staff of the [City/County] are hereby authorized and directed to pay California Communities a fee in an amount not to exceed \$\_\_\_\_, which California Communities will use to pay for the costs of implementing the CaliforniaFIRST Program in the [City/County], including the payment of legal costs incurred in connection with judicial validation of the CaliforniaFIRST Program.

Section 7. The [City Council/Board of Supervisors] hereby finds that adoption of this Resolution is not a "project" under the California Environmental Quality Act, because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4)).

Section 8. This Resolution shall take effect immediately upon its adoption. The [City Clerk/Clerk of the Board] is hereby authorized and directed to transmit a certified copy of this resolution to the Secretary of California Communities.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by the following vote, to wit:

**AYES:** Council/Board Members \_\_\_\_\_

**NOES:** Council/Board Members \_\_\_\_\_

**ABSENT:** Council/Board Members \_\_\_\_\_

**ABSTAIN:** Council/Board Members \_\_\_\_\_

## **CaliforniaFIRST Overview**

### **Overview:**

CaliforniaFIRST is a statewide Property Assessed Clean Energy (PACE) financing program sponsored by the California Statewide Communities Development Authority (CSCDA), a joint powers authority co-sponsored by the California State Association of Counties and the League of California Cities. The Program provides financing for renewable energy, energy efficiency and water efficiency measures for both commercial and residential properties.

CSCDA put the Residential Program on hold due to FHFA concerns but with the establishment of the Governor's loss reserve fund for lenders in spring 2014, the Residential Program is now available. CaliforniaFIRST had the full launch of the Residential Program in Northern California on August 4, 2014 and the launch in Southern California is scheduled for September 2, 2014. The Commercial Program has been active since 2012 and currently has 108 applications statewide for a project total of over \$75,000,000.

### **CaliforniaFIRST Residential:**

#### **Eligible Properties:**

Single family residential and multifamily up to 3 units

#### **Underwriting Criteria:**

1. Applicant(s) must be the property owner(s) of record.
2. Property owner(s) must be current on their property taxes for the prior 12 months.
3. Property owner(s) must certify that the property taxes have not been paid late more than once during the prior three years (or since the purchase if owned by them for less than three years).
4. Property owners must be current on all property debt of the subject property at the time of application and cannot have had more than one 30-day mortgage late payment over the prior 12 months.
5. There must be no notices of default or foreclosure filed against the subject property by current property owner within the last two years.
6. Property owner(s) have not been involved in a bankruptcy proceeding during the past two years. If the property owner(s) has a bankruptcy older than two years, and no late payments over 60 days past due in the last 24 months, then the

property owner may be approved. Additionally, the property may not currently be an asset in a bankruptcy proceeding

7. All property owners must sign all required documentation.

**Eligible Products:**

CaliforniaFIRST finances renewable energy, energy efficiency and water efficiency measures that are permanently affixed to the property

**Assessment Amount:**

1. Minimum amount of \$5,000
2. Maximum amount up to \$200,000 or 10% of property value

**Financing Term:**

Not to exceed useful life of the improvement, up to 20 years

**Funding:**

Renewable Funding has a dedicated \$300,000,000 facility to finance projects. Portfolios of PACE financings will be sold to the private capital markets with sales proceeds returning to Renewable Funding to continue additional financings.

**Contractor Requirements:**

Any contractor who is licensed by the State of California and is in good standing with the Contractors State License Board ("CSLB"), including meeting all applicable bonding and insurance requirements, and who meets any fraud check requirements, is eligible to be a Participating Contractor with the Program. All Participating Contractors must also sign a Program Participation Agreement.

**FHFA and Lender Notice:**

All participating homeowners are provided written information on their risks associated with FHFA's stance on PACE financing. Homeowners are also encouraged to inform their mortgage lender about the PACE lien.

**CaliforniaFIRST Commercial:**

The Commercial Program uses an open-market approach to finance projects. Under the open-market approach the commercial property owner may use a list of capital providers from CaliforniaFIRST to compare terms or may use their own capital provider.



The financing transaction is run through CaliforniaFIRST in order to secure the PACE lien and corresponding benefits.

Once an agreement is reached, CSCDA issues a revenue bond that is then purchased by the capital provider and secured by the tax assessment lien on the property. CaliforniaFIRST uses third-party capital providers that it has pre-approved as well as capital providers with whom property owners have negotiated to fund their project. This creates internal competition and allows for property owner choice. CaliforniaFIRST also uses a method of pooling bonds for projects under \$250,000 for sale to a single investor while bonds over \$250,000 are generally sold individually to investors.

### **Eligible Properties:**

All non-residential properties, including multifamily buildings with 5 or more units, industrial, retail, agricultural and office space properties.

### **Underwriting Criteria:**

Underwriting criteria is determined on a case-by-case basis as lenders and property owners negotiate the terms of the financing. General underwriting criteria for the Program is listed below:

1. Applicant must be legal owner.
2. For the past three years, or since ownership if less than three years, property owner must be current on payment of:
  - a. Mortgages
  - b. Property taxes
  - c. Assessments and Liens
3. Property owner cannot have any notices of default or foreclosure, whether currently in effect or released, filed against property within the last five years (or since ownership by current property owner if less than five years) due to non-payment of property taxes or loan payments.
4. Certification that the Property owner is solvent and has no pending bankruptcy proceedings.
5. Current property owner cannot have record of bankruptcy in the past three years.
6. No involuntary liens, defaults or judgments applicable to the subject property.
7. The assessed value plus the value of the project is equal to or greater than the amount of private debt plus the PACE financed amount, assessment liens and/or special taxes.
8. Property taxes, special taxes and assessment, including the PACE assessment, may not exceed 5% of the property's assessed value.
9. Lenders may make additional information requests and subject property owner to additional requirements.

**Energy Audit Requirement:**

An American Society of Heating, Refrigerating and Air-Conditioning Engineers Level 2 Audit must be performed by a licensed engineer.

**Eligible Financeable Costs:**

Eligible costs include equipment and installation (labor, design, engineering, permit fees, and audits).

**Assessment Finance Amount:**

1. Minimum amount of \$50,000
2. The maximum financing amount is 20% property market value.

**Financing Term:**

Not to exceed useful life of the improvement, up to 20 years.

**Affirmative Acknowledgment From Mortgage Lender:**

The property owner's mortgage lender (the first lien holder in trust) needs to provide written affirmative acknowledgment for the property to participate in the Program. This means that the first lien holder in trust must consent and agree to the recording of the contractual PACE assessment as a superior lien to its lien on the property. This includes an acknowledgment that the PACE lien will not trigger a default or exercise of remedies under the mortgage on the respective property.

**Reserve Fund:**

A reserve fund is not required by the program, although CaliforniaFIRST may accommodate one should it be required by the capital provider or the mortgage lender. A property owner would then allocate a percentage of their total assessed financing amount to establish the reserve fund for their share of the bonds. During the final years of the outstanding bonds, the reserve allocation would be returned to the property owner as a credit on their annual levy assuming no delinquencies or late payments.

**Fees Assessed on Property Owner:**

- Application Fee: There is no initial application fee.
- County Tax Collector Fee: \$.10/parcel.
- Closing Fees: The total amount of closing fees is determined by the size of the project, and typically range between 3-6%. The types of closing fees charged include:

- Program administration
- Bond Counsel
- Project validation
- Program Sponsor
- Issuer Counsel
- Fiscal Agent

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**TO:** Marin City/Town Managers and Administrators

**FROM:** Dana Armanino, County of Marin Sustainability Team  
Beckie Menten, MCE Clean Energy

**SUBJECT:** Residential PACE (Property Assessed Clean Energy) Programs Update

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Over the past several years, Marin Clean Energy (MCE) and Marin local governments, including the County of Marin, have been approached by a number of residential Property Assessed Clean Energy (PACE) administrators interested in launching their programs in Marin. MCE and County Sustainability staff have met with some of the administrators and have conducted an initial review of their offerings and the latest developments with regard to the Federal Housing Finance Agency's (FHFA) concerns with residential PACE. This memorandum is intended to update all of the City/Town Managers and Administrators on latest developments of the programs but is not intended to serve as a proxy for a more thorough legal review by your City Counsel.

### **BACKGROUND**

#### **What is PACE?**

The Property Assessed Clean Energy (PACE) financing structure was developed in late 2008 as a way for property owners (both residential and commercial) to finance energy efficiency and related retrofits to homes and commercial buildings, through loans that would be paid back over a period of years as an "assessment" on property tax bills.

Importantly, assessments are considered superior to all other encumbrances on the property, and, in the event of a foreclosure, the months of property tax (including PACE assessments) in arrears would be repaid before all other debts and liens on the property, including the mortgage. Local governments, like the County of Marin (County), could issue bonds in the amount of the assessments. The concept was that banks would readily enter into assessments bonded by government agencies. In addition, for commercial property owners, the "assessment" may be reflected on their books as an operational expense, not as additional debt.

#### **Why PACE was waylaid**

In early 2010, as the country strained to recover from a subprime melt-down and collapse of the housing market, Fannie Mae and Freddie Mac (who collectively hold a significant portion of the market for secondary mortgages) reversed their earlier support for PACE and filed protests against residential PACE with the FHFA, claiming that PACE assessments were, in fact, regular loans and debts, should not hold a first payback position (in particular, over the mortgage), and were likely to exacerbate the housing crisis.

On July 6, 2010, the FHFA issued an official statement, taking the position that PACE-backed assessments represented a significant alteration to mortgage practices, posed a significant risk to lenders and secondary market entities, and may alter valuations of mortgage-backed securities. FHFA determined that properties with PACE assessments could be declared in default of their mortgages, and opened the door for banks to adjust loan-to-value ratios to reflect the maximum permissible PACE



amount available to borrowers in PACE jurisdictions even if those borrowers were not planning to take on a PACE assessment, (i.e., redlining PACE communities).<sup>1</sup>

In July 2010, the State of California and the County of Sonoma each filed federal lawsuits against the FHFA requesting that they follow established federal rulemaking procedures in connection with the prohibition of PACE. A number of other local county, city and township agencies joined the suit because across the country, local governments had launched or were prepared to launch residential and commercial PACE Programs, using funds provided under the American Recovery and Reinvestment Act (ARRA). As a result of the litigation, in 2010 many jurisdictions, including the County, suspended their efforts to implement residential PACE Programs pending the outcome of the federal litigation.

While litigation proceeded at the federal level, a small group of local governments defied the FHFA and deployed successful residential PACE programs.<sup>2</sup> These programs all borrowed from the Sonoma County PACE model, which bonded and backed the program with its own full faith and credit. In Sonoma's case, \$60 million from the County of Sonoma Treasury is dedicated to guarantee the program. After more than five years, Sonoma's program has a 0% default rate, less than 1% tax delinquency rate, has generated nearly 2,000 residential energy efficiency retrofit projects, and over 60 commercial upgrade projects. Through its own success, however, Sonoma has financed over \$66 million in projects with approximately \$46 million currently extended and it does not expect to be in a position to further dedicate Treasury or other funding for this purpose. In order to continue the program, Sonoma is considering additional PACE financing product options.

In addition, the Home Energy Renovation Opportunity (HERO) Program was launched in February 2012, as a partnership between Renovate America (RA) and the Western Riverside Council of Governments (WRCOG). HERO is backed by private equity investors (including banks), and enrollment is through application to become of an associate member of the WRCOG JPA and judicial validation under the program.

The PACE lawsuits were initially successful in the Federal District Court, but in March 2013, the Ninth Circuit Court of Appeals ruled that the courts have no jurisdiction to review any action taken by the Federal Housing Finance Agency (FHFA) when acting as conservator for Fannie Mae or Freddie Mac. The court dismissed the case against FHFA. Thereafter, on July 24, 2013, the FHFA withdrew its proposed rule on PACE but indicated it was not altering its policy set out in its previous statements. FHFA indicated it would continue to review programs that would support energy retrofits and might be appropriate for purchase by Fannie Mae and Freddie Mac. Ongoing oversight by FHFA is at the core of any risk assessment regarding residential PACE Programs.<sup>3</sup> To date, FHFA has not exercised this right in any community with a residential PACE Program.<sup>4</sup>

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<sup>1</sup> "Redlining" has additional potential implications, e.g., Fannie, Freddie and all other federal lending banks could refuse to issue mortgages on PACE-assessed properties in a sale transaction, and/or impose different interest rates and lending criteria in marked communities.

<sup>2</sup> Including Sonoma County (considered the key program nationally), Placer County, the City of Palm Springs, and the Township of Babylon (New York).

<sup>3</sup> Staff is not aware of any redlining actions to date, although residential properties that participate in existing residential PACE Programs may be required to pay off their PACE assessments at sale or refinancing.

<sup>4</sup> Although FHFA has not yet exercised red-lining action anywhere in the United States, this does not equate to a waiver of that power, and the decision by FHFA to act upon this power could result in properties with PACE assessments being declared in default of their mortgages and in banks adjusting loan-to-value ratios to reflect the maximum permissible PACE amount available to borrowers in PACE jurisdictions.



### **Governor Brown's Loan Loss Reserve Program**

On September 23, 2013, Governor Brown reached out to incoming Acting Director of FHFA, Edward DeMarco, to propose a direct agreement between that agency and the State to allow residential PACE Programs to proceed under a written agreement that would remove any and all risk of redlining. As support for this proposition, the Governor and legislature has set aside an initial \$10 million PACE reserve in the 2013-14 budget to be held as a "loan loss reserve" or security against project loan defaults.<sup>5</sup> First mortgage lenders will be reimbursed for specified losses resulting from the existence of a PACE lien on a property during a foreclosure or forced sale for unpaid property taxes. Additionally, by tracking the performance of PACE portfolios over the next several years, the Program should provide more detailed information on the actual credit risk associated with PACE financing than is currently available. This information will be useful for potential investors in PACE bonds and securities and may allow them to accept lower returns on these investments. On February 18, 2014, the California Alternative Energy and Advanced Transportation Authority (CAEATFA), a unit of the California Treasury, unanimously voted to approve PACE reserve regulations and the reserve became operational in early March. Several PACE programs operating in the state are applying for the reserve fund.

On May 1, 2014, the FHFA issued a formal response to the Governor's offer. In the letter, FHFA Director Melvin Watt thanked the Governor for the offer of the loan loss reserve fund but stated that the FHFA was "not prepared to change its position on California's first-lien PACE program and will continue to prohibit the Enterprises [Freddie Mac and Fannie Mae] from purchasing or refinancing mortgages that are encumbered with first-lien PACE loans." The letter went on to state that the director was concerned that the \$10 million reserve fund was not sufficient to offer full protection to the Enterprises and was not an adequate substitution for the Enterprises giving up their first-lien position. (See Attachment 1)

While this news is disappointing, it does not in effect change anything about the FHFA's current position or the status quo. The major PACE financing providers are still planning to move forward with their residential offerings. The providers are confident that given the extremely low default rate exemplified by the Sonoma County program and the availability of the loan loss reserve funds, the risk of the Freddie/Fannie taking action on a PACE program is very low. However, given this explicit statement by the FHFA, individual cities are encouraged to consider the notifications provided to homeowners and the policies of respective PACE providers in regards to lender consent.

### **Federal Legislation – HR 4285**

New PACE legislation was introduced to Congress with bipartisan support on March 24, 2014. The PACE (Property Assessed Clean Energy) Assessment Protection Act of 2014 or H.R. 4285 would direct the FHFA to rescind its 2010 policy guidance to Fannie Mae and Freddie Mac regarding PACE assessments. To address FHFA's concerns, the bill establishes minimum underwriting standards to ensure that homeowners are able to afford the PACE assessments, thereby protecting Fannie Mae and Freddie Mac from financial risk.

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<sup>5</sup> In addition, the Governor has indicated a willingness to increase this fund as uptake in the program encumbered the full \$10 million (loan loss reserve margins are generally at 10%, so the initial fund would presumably cover \$100 million projects). The initial fund (and likely, any future increases) is being pledged from the State's revenue under the Cap and Trade Protocol.



#### **CaliforniaFIRST - Commercial Program available now**

Since the threat of redlining was not an issue for commercial properties, some PACE programs moved forward with commercial only offerings. One of the original PACE programs, the CaliforniaFIRST Program<sup>6</sup> chose to scale back their offerings in light of the FHFA redlining issue and focused exclusively on the commercial market.

To launch or participate in a PACE program, local governments seek certification through a Resolution adoption and judicial validation process. In late 2013 and early 2014, the County and several cities (San Rafael, Novato and Larkspur) passed resolutions to participate in the CaliforniaFIRST Program. The validation process and certification was completed in early April 2014.

#### **CaliforniaFIRST - Residential Program expected to launch Summer 2014**

At this time, given the implementation of the CAETFA reserve fund, CaliforniaFIRST believes the risks are minimized sufficiently to encourage them to re-launch their residential program offering. The certification process completed in April 2014 for the commercial program includes the ability to launch both residential and commercial PACE programs via CaliforniaFIRST. As a result, jurisdictions that have already passed resolutions to participate in CaliforniaFIRST are eligible to participate in the residential program when it launches this summer.

The program management will mirror their commercial program in that CaliforniaFIRST will manage all aspects of the offering – contractor management, application processing, project validation, bond issuance and repayment. CaliforniaFIRST will also manage all aspects of customer service which means the County, MCE and cities/towns will not be required to interface with property owners or contractors (see Attachment 2 for program details).

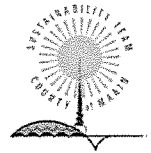
#### **Other PACE Program Offerings**

CaliforniaFIRST is not the only PACE program offering availability to California jurisdictions and a jurisdiction is not restricted from allowing multiple programs to operate in their areas. Each program requires a separate resolution to participate and each requires a separate court validation to proceed. Additional residential and commercial PACE financing programs, each with their own challenges and opportunities, include:

- A. HERO PACE Program -- While presented as both a commercial and residential PACE Program, the emphasis of the program has been residential. Under the HERO Model, jurisdictions enroll as “associate members” under the Western Riverside Council of Governments (WRCOG) JPA, and take advantage of a program that provides all necessary services (including bonding and equity funding) to members. Similar to CaliforniaFIRST, the HERO program offers a “one-stop” shop program – they provide all of the operational, legal, bonding, tracking, technical, contractor, customer support, and enforcement apparatus necessary to run a PACE Program. More than 100 cities and counties are registered in the program, and Renovate America (the program manager) has approached most local governments in the San Francisco Bay Region to recruit local governments as new members.
- B. Ygrene – Unlike most other PACE programs, the Ygrene program prefers exclusivity within a jurisdiction. However, there have been signs that they are revisiting this position as they expand

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<sup>6</sup> CaliforniaFIRST is administered by California Statewide Communities Development Authority (CSCDA) through its exclusive agent, Renewable Funding.



to new areas. Ygrene initially launched a program with the Sacramento Municipal Utility District (SMUD), which shows present signs of gradual uptake. Like HERO, Ygrene offers a “one-stop” shop program, with large lending institutions furnishing equity financing.

- C. Figtree – The Figtree program offers a commercial PACE program via the the California Enterprise Development Authority (CEDA) a statewide Joint Powers Authority (JPA) chartered by the California Association for Local Economic Development (CALED). Figtree does not require exclusivity and in fact, encourages jurisdictions to offer an open market for PACE programs. The program has also received a statewide judicial validation so this step would not be required if a city/town joined the program.

### **Scale of Risk**

The level of risk (e.g., redlining) associated with enrollment under residential PACE programs requires a more tangible response from FHFA than just the attached letter and, in the absence of a rulemaking process, is difficult if not impossible to predict with certainty. Thus far, the Enterprises have not defaulted any mortgages nor have they adjusted their loan valuation criteria in communities with PACE programs but they have refused to finance a home with a PACE assessment.

In contrast to jurisdictions that have already enrolled in residential PACE programs, a number of jurisdictions have elected a more cautious approach – to postpone a decision regarding participation in a residential program until federal regulations on residential PACE assessments are clarified, and to send a letter to the FHFA urging the Agency to establish federal rulemaking procedures in connection with residential PACE financing and to rescind directives to Fannie Mae and Freddie Mac that threaten the viability of residential PACE programs throughout the nation.

Also, whatever may be estimated as a risk factor attributed to a residential PACE program may be mitigated through an alternative approach – such as making the program eligible only to no-mortgage properties, or homes with non-conforming mortgages that are not purchased by Fannie or Freddie (approximately 46% of the homes in Marin are either owned outright or have non-conforming mortgages), or by requiring consent from the existing mortgage holder prior to subordination of the mortgage.

### **Municipal Coordination and Local Marketing**

MCE Clean Energy has offered to act as the liaison to the CaliforniaFIRST Program for participating jurisdictions. While the CaliforniaFIRST program has a robust customer service and quality assurance program, MCE will be the next point of contact in the County should a participant or jurisdiction have issues or questions.

MCE and County staff will assist in connecting potential project applicants with the CaliforniaFIRST program through their energy efficiency and renewable energy programs. Cities are also encouraged to promote the program offerings to their constituents and marketing resources will be made available when the program is fully launched. For projects for which CaliforniaFIRST financing might not be a viable option, MCE also offers complimentary on-bill repayment financing for residents and small businesses.

### **Attachments:**

1. FHFA Response Letter to Governor Brown’s Loan Loss Offer
2. CaliforniaFIRST Program Summary





**FEDERAL HOUSING FINANCE AGENCY**  
**Office of the Director**

May 1, 2014

The Honorable Edmund G. Brown Jr.  
Governor, State of California  
State Capitol  
Sacramento, CA 95814

**RE: California Property Assessed Clean Energy Program**

Dear Governor Brown:

Thank you for your letter of April 28, 2014 about California's Property Assessed Clean Energy (PACE) program. The Federal Housing Finance Agency's (FHFA) General Counsel has been in touch with your staff, and I appreciate the time and materials they have provided concerning California's PACE program and intentions in creating the Reserve Fund.

I am writing to inform you that FHFA is not prepared to change its position on California's first-lien PACE program and will continue to prohibit the Enterprises from purchasing or refinancing mortgages that are encumbered with first-lien PACE loans. California's PACE program would allow local governments to finance energy-related home improvement projects by placing an assessment on a homeowner's property in a first lien position, resulting in the subordination of an existing Enterprise-backed mortgage to a second lien position. The effect of this is to increase the risks and possibility of losses to the Enterprises. Additionally, because these loans run with the land, the ongoing monthly assessments for PACE loans are passed on to any subsequent property owners – including after a foreclosure or other distressed sale – unless fully paid off beforehand.

In making this determination, FHFA has carefully reviewed the Reserve Fund created by the State of California and, while I appreciate that it is intended to mitigate these increased losses, it fails to offer full loss protection to the Enterprises. The Reserve Fund is not an adequate substitute for Enterprise mortgages maintaining a first lien position and FHFA also has concerns about the Reserve Fund's ongoing sustainability.

Should you wish to discuss this matter further, I would be happy to discuss alternatives to first-lien PACE programs with you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Melvin L. Watt", is written over a light blue horizontal line.

Melvin L. Watt

xc: The Honorable Barbara Boxer  
The Honorable Zoe Lofgren