

TO: TOWN COUNCIL

FROM: TOWN MANAGER 

RE: CONSENT ITEM
PLACER COUNTY mPOWER PROGRAM FINANCING PROBLEMS

ISSUE

Mayor Liss asks that Council authorize a letter be sent on an issue affecting the Placer County mPower program, and similar programs in California, concerning where mPower loans stand in the hierarchy of loans that may encumber a property.

RECOMMENDATION

Approve sending draft letter and authorize Mayor to sign.

CEQA

There are no CEQA issues in a purely fiscal matter.

MONEY

Cost to the Town is presently unknown. The Town could forego or delay some building permit revenue depending on how many property owners may not be able to proceed with a mPower qualifying project.

DISCUSSION

At the end of May County Treasurer Windeshausen sent around the following email. Council received copies as information.

From: Jenine Windeshausen [mailto:JWindesh@placer.ca.gov]
Sent: Monday, May 24, 2010 4:37 PM
Subject: mPOWER Placer Impacts from Federal Regulators
Importance: High

To: Key Stakeholders mPOWER Placer

You are receiving this email because of your ongoing interest and support of the mPOWER Placer program.

I regret to inform you that recent actions by several federal housing agencies have caused an obstacle in the effective administration of our mPOWER Placer (AB811/PACE) Program.

Lender advisory letters sent out on May 5th by Fannie Mae and Freddie Mac under the jurisdiction of the Federal Housing Finance Authority have created a disruptive and difficult situation. Since that time, we have worked in earnest with public officials at all levels of the State and federal governments to clarify the intent of these letters, address issues and resolve the situation. In spite of the efforts of the White House, the Governor, the Attorney General and other high level officials, we along with

administrators and stakeholders from PACE Programs across the nation have been unable to resolve the situation created by these letters in a timely and effective matter.

Effective immediately mPOWER Placer will suspend processing any application where there is a Fannie Mae or Freddie Mac loan against the property. While we are optimistic that the situation created by the Freddie Mac and Fannie Mae letters will be resolved in a favorable manner for mPOWER Placer and our program participants, it is unclear when that will be and therefore important to inform our program participants, stakeholders and the public of this situation.

The decision to discontinue processing applications with Fannie Mae and Freddie Mac loans is not taken lightly. However, we cannot proceed with processing applications at the risk of jeopardizing the status of a property owner's outstanding loans. We recognize the considerable financial cost and economic detriment to Placer County created by the Fannie Mae and Freddie Mac's letters. The County has made a considerable upfront investment in this program and the ability to recover those costs may be impaired. The financial impact to program vendors, building trade contractors and others providing services as a result of this program is significant. In the past 12 weeks, we have received an overwhelming response to the mPOWER Placer Program with over 120 applications totaling \$4.2 million in financing requests.

We are committed to administering the mPOWER Program responsibly, efficiently and effectively. We have established the mPOWER Placer Program in compliance with the taxing authority of the State, the federal Department of Energy's Program Guidelines and we relied prior communications from Fannie Mae's PACE programs. It is extremely unfortunate that we have been unable to achieve the cooperation of Fannie Mae, Freddie Mac and the Federal Housing Finance Authority that could have avoided this situation.

Commercial and non-conforming residential applications are not affected. We will hold any affected application at its current stage in the approval process. We will work with those property owners who are in the approval process to determine the best way to proceed under the circumstances and resume processing their application at such time that the situation is resolved.

All AB811 and PACE programs across the country are affected by these developments and each program will have to consider how best to proceed given the characteristics of their program.

In short there is a dispute with Federal mortgage entities concerning who stands first in line on liens that may encumber a property. The County Treasurer has taken action to meet with Federal officials, write letters to various elected and appointed officials, join with other State entities facing this same problem, and do the things needed to resolve the matter.

Mayor Liss, in an email to Staff, indicated that he understands that what the County is saying is that a "Tax lien" always goes ahead of mortgages. Suffice to say that legal issues are in question and it will take some Federal action to resolve the matter. Since the last

meeting the County Treasurer has sent around the following letter and asks that entities send it, or a version of it, if they wish to help in the efforts to get the law changed or clarified to make mPower financing available to qualified homeowners.

The Vice President
The White House
Washington, DC 20501

Dear Mr. Vice President,

We write you today asking for your assistance in protecting the Property Assessed Clean Energy (PACE) programs that you have played such an important role in helping to get off the ground in our communities. These PACE programs represent an important economic development tool that we expect to create tens of thousands of jobs that will help drive our economic recovery. Like any other assessment authorized by a local government, a PACE assessment has a senior lien status to the first mortgage. In a lender letter issued September 18, 2009, Fannie Mae acknowledged this senior status, saying that,

“Servicers should treat (PACE assessments) as any tax or assessment that may take priority over Fannie Mae’s lien.”

With this understanding, local governments around the country starting working to design PACE programs in accordance with the Policy Framework for PACE Financing Programs released by your office to ensure that homeowners, lenders and investors were protected as much as possible while still gaining robust participation.

Fannie Mae and Freddie Mac’s Lender Letters

It was with great surprise that we read Fannie Mae and Freddie Mac’s May 5, 2010 Lender Letters that categorized PACE financings as loans. As I am sure you know, PACE financings are legally authorized property tax assessments. The letters stated that these PACE “loans” violate the terms of Fannie Mae/Freddie Mac’s Uniform Security Instruments.

“PACE loans generally have automatic first lien priority over previously recorded mortgages. The terms of the Fannie Mae/Freddie Mac Uniform Security Instruments prohibit loans that have senior lien status to a mortgage.”

While no explicit guidance was given directing mortgage providers to take adverse action against homeowners who participate in PACE assessment districts, the impact of these letters has been significant. The implication that PACE financing violates the terms of Fannie Mae/Freddie Mac’s Uniform Security Instruments has suspended active and planned residential PACE programs across the country.

Endangering Local Governments Ability to Levy Property Taxes and Create Jobs

Fannie Mae and Freddie Mac’s actions have endangered PACE programs in our communities, and the economic development these programs will create. Governor Schwarzenegger recently sent you a letter where he estimated that California’s PACE programs would create over 4,000 new construction jobs. And as PACE grows across the country, tens of thousands of new jobs will be created from New York State, to New Mexico to California. All these jobs are in danger if Fannie Mae and Freddie Mac’s actions are not

addressed.

Fannie Mae and Freddie Mac's actions have also called into question the ability of State and Local Governments to levy property assessments to fund public purposes. In changing their definition of PACE financing districts from taxes and assessments to loans and then threatening adverse action against communities or homeowners who participate in these districts, Fannie Mae and Freddie Mac have set a dangerous precedent. Our concern is that Fannie Mae and Freddie Mac's actions could severely impinge upon the ability of local governments to finance many different critical public purposes, whether they be energy efficiency measures financed through PACE, the building of a new elementary school or the installation of a sewer system.

Your Action Needed

We appreciate the work that your office has done to support PACE and your recent engagement on this issue. In the more than fifty days since Fannie Mae/Freddie Mac issued their "Lender Letters", no action has been taken to remedy this problem, and with thousands of jobs and over a hundred million dollars in Recovery Act funds at stake, time is of the essence. In order to remedy the significant problems caused by Fannie Mae and Freddie Mac's May 5, 2010 Lender Letter's, we request that your offices:

Engage with Fannie Mae, Freddie Mac, the Federal Housing Finance Agency (FHFA), other relevant regulatory agencies, and Congress to ensure an immediate clarification of the May 5, 2010 Lender Letters, with clarification that states that retrofit financing obtained through PACE programs that meet the DOE's PACE Program Guidelines will not constitute a violation of the terms of the Fannie Mae or Freddie Mac uniform mortgage instruments, or otherwise subject the applicable property owners to adverse action by the GSEs

We stand ready to support your efforts on this important issue, and are more than willing to participate in any stakeholder meetings that may be necessary to come to a resolution that ensures the future viability of PACE.

Sincerely,

Since the foregoing information was circulated the County Treasurer sent an update on July 6 indicating the following:

mPOWER Placer Stakeholders,

Yesterday, the Federal Housing Finance Authority issued the attached statement. This statement effectively ends residential most PACE programs. The FHFA statement indicates that they are directing Fannie Mae and Freddie Mac to increase the underwriting standards in communities where a PACE program is operated. FHFA has directed Fannie Mae, Freddie Mac and the Federal Home Loan Banks to begin "adjusting loan-to-value ratios to reflect the maximum permissible PACE loan amount available to borrowers in PACE jurisdictions" and to begin "tightening debt-to-income ratios to account for additional obligations associated with possible future PACE loans." This effectively subjects all residential property owners

within a PACE jurisdiction to higher value and income thresholds. At this time, we have no choice but to end the residential program. Effective immediately mPOWER Placer can no longer accept or process applications on residential properties. It is unlikely that we will be able to resume a residential program unless there is judicial or federal legislative relief at some point in the future.

We will continue to accept and process non-residential applications as they are not affected by the FHFA action.

I deeply regret that we have not been successful with an administrative solution. Thank you to all of you who have supported the administrative effort by contacting your congressional representatives and other state and local officials in support of California's AB811 programs. There is likely to be an effort for a federal legislative remedy. I will keep you posted. I have also attached a related article from the New York Times for your reference. If you have any questions, please do not hesitate to contact me directly. Thank you again for your support of mPOWER Placer.

If you do not wish to receive updates in the future, please respond to this email requesting to be removed from the mailing list.

Sincerely,



Jenine Windeshausen
Placer County Treasurer-Tax Collector

7/8/2010 1:56 PM

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From: Jenine Windeshausen
Sent: Thursday, July 08, 2010 10:20 AM
To: Kirk Uhler; Brian Jagger; Jim Holmes; Ruth Alves; Jennifer Montgomery; Pat Malberg; Rocky Rockholm; Linda Oakman; Robert Weygandt; Jennifer Pereira
Cc: Tom Miller; Holly Heinzen; Allison Carlos; Anthony La Bouff; Gerald Carden; Valerie Flood
Subject: Suspension of Commerical mPOWER Applications

All,

Yesterday we learned that the Comptroller of the Currency had also issued a Bulletin to banks across the nation regarding PACE programs. The Bulletin directs that additional collateral be secured where commercial loans are outstanding. This development means that the non-residential portion of the program is now also affected by actions of the federal regulatory agencies.

The bulletin additionally directs that loan-to-value limits and equity lines of credit be adjusted for existing mortgages and equity loans.

As a result, late yesterday I directed mPOWER Placer staff to no longer accept and to suspend processing of non-residential applications.

I am currently compiling a comprehensive report regarding the status of the program to report to the Board and CEO. I plan to include information about disposition of staffing, expenditures-to-date, potential for cost recovery, winding down operations, program statistics, recommended Board actions and efforts for federal legislative relief. In addition, I will provide information on the primary issue identified by the federal housing regarding the priority lien status of AB811 financing and our inability to take a subordinate position.

Attached is a copy of the OCC bulletin for you reference.

Please do not hesitate to contact me should you have any questions, comments or need further information.

Sincerely,

Jenine Windeshausen
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Auburn, CA 95603
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