



To the Clerk of the Board of Supervisors:

The following letter to each of the members of the Contra Costa County Board of Supervisors is submitted as testimony provided during Public Comment at the Board of Supervisors July 7, 2015 meeting.

A previous version of this letter was sent by email to the Supervisors on July 2, 2015. The version submitted today is near identical, except for a few minor language insertions provided to clarify a few items, and a few items that provide some new content. To facilitate the Supervisors' review of this new version, all of the additions made since the July 2 version are shown in red text.

Thank you very much,

Jonathan Kevles
Senior Director, PACE
Renew Financial
1221 Broadway, Suite 400
Oakland, CA 94612
jkevles@renewfund.com
510-350-3709 (w)
213-610-6805 (m)



July 7, 2015

Dear Supervisors Gioia, Andersen, Glover, Mitchoff and Piepho:

Thank you for your approval of the PACE agenda item at your June 16 Board meeting. On behalf of my firm, our network of certified contractors, and our prospective customers in Contra Costa County's unincorporated neighborhoods, I sincerely appreciate the interest and thoughtful deliberations you and County staff have invested in PACE financing.

As I communicated to the Board at its June 16 meeting, Renew Financial has some serious concerns about the rules under which PACE programs must operate in the County's unincorporated areas. This communication identifies in detail these concerns, provides suggestions for amendments to the PACE Providers Agreement ("Agreement"), and provides justifications and explanations for the requested changes.

All of the requests made here would bring the County's Agreement in alignment with either or both the California State Treasurer's PACE Reserve Fund regulations and all of the territories where we offer CaliforniaFIRST PACE financing.

The seven areas of concern:

1. The use of "assessed value" as the sole means of determining a property's value in checking a) the eligibility of a property for PACE financing, and b) defining the maximum amount of a PACE lien that the property may carry;
2. The limit of 10% of value for the PACE lien amount for properties whose value is over \$700,000;
3. The lack of a clear definition of the difference – in the context of PACE financing – between residential and non-residential properties;
4. The requirement to obtain consent "from any lender that has outstanding loans to the Program Participant" for non-residential properties;
5. The PACE assessment contract financing maximum of no more than 20% of a non-residential property's value;
6. The requirement that contractors indemnify the County;
7. The requirement that PACE Providers' liability insurance include \$2 million per occurrence coverage.

1. Assessed Value

Because of Proposition 13, assessed property values in California rarely have any connection to the realities of the real estate market. Because of this disconnect, requiring the use of assessed value instead of fair market value in PACE program underwriting procedures will severely limit the number of homeowners who may take advantage of PACE financing. We request that the language be changed to be, "the greater of Assessed Value or Fair Market Value."

I conducted an analysis of 19 zip codes in the County comprising over 200,000 1-3 unit residential parcels (i.e. those parcels that could apply for Residential PACE financing). The area covers both



incorporated cities and unincorporated communities. **In the unincorporated communities**, I found that only 55% of homeowners would qualify to use PACE financing under the County's Assessed Value rule regarding maximum indebtedness allowed to be eligible for PACE financing. Using Fair Market Value instead, 81% of homeowners would qualify, meaning that under the County's rule, 9,600 properties **in the unincorporated communities** would be kept out of the PACE opportunity entirely.

In addition, only 60% of homeowners **in the unincorporated communities** would qualify for a \$25,000 project using the County's Assessed Value rule regarding maximum assessment amount; \$25,000 is about the average amount of a CaliforniaFIRST PACE assessment contract. Using Fair Market Value, 93% would qualify. Under the county's rule, over 12,100 properties **in the unincorporated communities** would not be able to finance the average PACE assessment amount – meaning they would have to downsize their project or abandon it altogether.

These results are not a surprise when we looked at the difference **in the unincorporated communities** between the Assessed versus Fair Market Values of these parcels. For over 30% of the parcels (or 60,000+ properties), the assessed value is not more than 50% of their Fair Market Value. This result is in large part a function of many families that have not sold their home for a decade or two or more. We have learned that homes with such long-term occupants are more likely to benefit from energy efficiency and water conservation upgrades than homes that have been built or sold more recently. Many such long-held homes are also inhabited by residents on a fixed income, where reducing utility bills can mean a big improvement in quality of life. In effect, the County's rules penalize the households who have the deepest roots in the community.

The County's intent to limit the possibility of homeowners over-leveraging themselves by using assessed value instead of fair market value actually backfires when a parcel's assessed value is actually greater than the estimated fair market value. Such is the case for a couple of hundred parcels in the unincorporated communities. This unintended consequence occurs because of Proposition 13; as stated above, assessed values in California rarely have any connection to a property's fair market value.

2. 10% Limit of Value for Homes Valued Greater Than \$700,000

It seems that staff may have made an error in writing a portion of Section 4.d. We request replacement of this language with that found in the PACE Loss Reserve Fund's regulations, as set forth by the California State Treasurer:

Current language (this change request focuses on the highlighted section immediately below):

For residential properties with an assessed value of less than \$700,000, the PACE Provider will ensure that the loan amount to a Program Participant does not exceed 15% of the assessed value of the property. For residential properties with an assessed value greater than \$700,000, **the PACE Provider will ensure that the loan amount does not exceed 10% of the assessed value of the property.**

PACE Reserve Fund Regulatory Language (Section 10081 b.9):

The Financing is for less than fifteen percent (15%) of the value of the property, up to the first seven hundred thousand dollars (\$700,000) of the



value of the property, and is for less than ten percent (10%) of the remaining value of the property above seven hundred thousand dollars (\$700,000).

The language in the County's current Agreement would mean that a property with a value of \$660,000 would qualify for a PACE assessment contract up to an amount of \$99,000; and a property with a value of \$900,000 would only qualify for a PACE assessment contract up to an amount of \$90,000. This scenario makes no sense and therefore staff must have made a simply-explained error, which can be easily fixed by aligning the Agreement's terms with the State Treasurer's regulations for PACE underwriting.

3. Distinguishing Residential and Non-residential Properties

The definitions section of the Agreement should have an entry that defines non-residential property. We suggest the following new entry:

f. "Non-residential property" is any property that is a multi-family property containing five or more units of housing, or any commercial, agricultural, or industrial property that would otherwise be eligible for PACE financing.

This definition is consistent with the PACE Reserve Fund's regulations, which state that eligibility for a residential project includes the following test: "The Financing is for a residential property of three units or fewer" (Section 10081 b.9).

We make this request to ensure that the Agreement does not apply residential rules to non-residential properties and vice versa. This definition will be particularly helpful in ensuring there is no confusion as to which of the Agreement's terms apply to multi-family properties.

4. Non-Residential Lender Consent Requirement

We request that the lender consent requirement for non-residential properties be modified, as edited here (new text in blue):

Require Program Participants who own non-residential properties to obtain written consent to participate in the PACE Program from any lenders who have made loans to the Program Participant where the property in question serves as security for the loan. ~~that has outstanding loans to the Program Participant~~

As written, the Agreement's terms are far too broad in this instance. The consent should not have to come from any lender, as the Program Participant may have many non-property-related lenders.

5. Non-Residential Financing Maximum

We request that the maximum financing amount of 20% of non-residential PACE financings be eliminated.

It is unnecessarily intrusive of the County to impose this limit on a transaction that is purely among private parties. Given that the first mortgage lender must already provide consent to a PACE project in order for the deal to be able to move forward, and given that the first mortgage lender will be



providing that consent after a review of the PACE project's economics and its impacts on the overall economics and finances of both the property and the property ownership's ability to meet all of their financial obligations related to the property going forward, the Agreement's 20% limit is arbitrary.

The markets will regulate themselves. The higher the Loan-to-Value (LTV), the greater risk the existing lenders would be taking on. In our experience with commercial property PACE transactions, we have seen that once 15% LTV is reached or surpassed, all the capital providers we work with also require three years of the property's financial statements for further underwriting.

The risk of default lies squarely with the lenders on the property, not with the County, and thus only those lenders should have a say in how large the PACE assessment contract should be.

6. Contractors' Insurance Requirements and Requirement to Indemnify the County

We request that the County remove the requirement that contractors indemnify the County.

The county has no contractual relationship with the contractor nor with the property owner in the context of any individual PACE transaction. Thus the county has no liability and thus no financial exposure should anything lead to a lawsuit.

The nature of the County's relationship with CSCDA – the JPA that issues the bonds that fund CaliforniaFIRST-financed projects – insulates the County from any liability arising out of bond issuances and related matters. In fact, CSCDA anticipates this question from local governments, and includes a response on their web site's FAQ page:

“Does a public agency incur any liability by being a Program Participant of CSCDA?”

No. The bonds issued by CSCDA are limited obligations of the borrower, not CSCDA or the Program Participant. The CSCDA joint powers agreement expressly provides that CSCDA is a public entity separate and apart from the Program Participants, and "its debts, liabilities and obligations do not constitute debts, liabilities or obligations of any party to the joint powers agreement." The Program Participants are not responsible for any repayment of debt by borrowers, nor are they named in any of the bond documents."

Source: <http://www.cacommunities.org/about-us/faqs/#c100>

Requiring that contractors indemnify the County – and thus meet any insurance and other requirements that the County has related to this indemnification – is wholly unnecessary. Worse, the costs it will impose will make it harder for small, local businesses to compete with the larger, regional and statewide businesses which all seek to offer PACE financing to their prospective customers in unincorporated Contra Costa County.

In addition, we also request the following changes in the insurance requirements for contractors:

- Reduce the per occurrence coverage from \$2 million to \$1 million.
- Remove the requirement for the Builder's Risk policy; as a condition of becoming CaliforniaFIRST certified contractor, each contractor must meet the California Contractors State License Board's (CSLB) bonding and workers compensation insurance requirements and carry General Liability coverage with limits no less than \$1,000,000 per occurrence.



7. Requirement that PACE Providers' Carry \$2 Million per Occurrence Coverage

We request that the County change the per occurrence coverage on the PACE Provider's liability insurance from \$2 million to \$1 million.

It is standard practice in the liability insurance industry for policy holders to carry coverage of \$1 million per occurrence.

In addition to these change requests, we also respectfully request that the County move in haste to make these changes. With another drought-stricken summer, the time is now to make PACE available as broadly as prudently possible to help homeowners reduce their water consumption – through lawn removal and other proven measures. Utilizing the PACE Loss Reserve Fund's underwriting guidelines will be more than sufficient to assure prudence in the provision of PACE financing to homeowners.

In addition, the economics of solar may change drastically – and negatively – for the consumer at the end of 2016. At that time, the 30% federal income tax credit for solar energy installations will expire with no expectation that Congress will renew or extend it. In addition, net metering rules in California – which are beneficial to homeowners who generate more solar energy than the home consumes – are set to expire as well. Homeowners who install solar before the end of next year will be grandfathered in for the next 20 years. Those who do not do so before 2016 will lose out – such as those thousands of homeowners in the County's unincorporated communities who may have no other way to obtain a solar system than through PACE, yet who will not be able to use PACE because of the County's use of assessed value as discussed above.

I would also like to take this opportunity to make sure that you are aware of the extensive consumer protections that are built in to the CaliforniaFIRST program. Please note that these protections are often non-existent for homeowners who finance home upgrades on their own (i.e. through cash, a home equity line of credit or home equity loan, credit card, or through an unsecured personal loan). For instance, we require that:

- Only approved products may be installed, which helps ensure that the homeowners will enjoy lower utility bills for years to come;
- All locally required permits must be pulled;
- A contractor only gets paid once both the contractor and the homeowner have signed a "Certificate of Completion"
- A third party quality assurance firm conducts an inspection of a sample of contractors' projects, with newer contractors and any contractors on probation receiving more frequent checks.

In regards to a contractor being on probation – this occurs when a contractor does not abide by these and other CaliforniaFIRST program rules. Failure to improve or repeated bad behavior can ultimately lead to expulsion of a contractor from the CaliforniaFIRST program. I have provided an addendum to this letter which is a summary of our consumer protections compared to those a homeowner will typically find through other financing options.

In bringing Contra Costa County's Agreement terms in alignment with the State's and the 350 cities and counties across California that have active programs in their jurisdictions – including all of those within Contra Costa County – the County will help bring about a healthy, consumer-friendly,



contractor-considerate, and robust marketplace for PACE financing. And your constituents who reside in the County's unincorporated communities will be able to avail themselves of PACE financing at the same rate as their neighbors across the street in the 15 incorporated cities in the County that have active PACE programs.

Thank you very much for your consideration of these requests.

Sincerely,

Jonathan Kevles
Senior Director, PACE
Renew Financial


RENEW
FINANCIAL™

Comparison of Consumer Protections Across Financing Options for Home Upgrade Projects

Type of financing	CaliforniaFIRST	Home equity line of credit	Home equity loan	Personal unsecured loan	Credit card
Contractor quality verified	Yes	Verified by homeowner	Verified by homeowner	Verified by homeowner	Verified by homeowner
Only high-performing products	Yes	Verified by homeowner	Verified by homeowner	Verified by homeowner	Verified by homeowner
Third-party verification of workmanship	Yes	No	No	No	No
Contractor consequences for bad work	Yes	No	No	No	No
Dispute resolution process	Yes	No	No	No	Depends on specific credit card used