



INTERNAL OPERATIONS COMMITTEE

September 14, 2015

2:30 P.M.

651 Pine Street, Room 101, Martinez

Supervisor Karen Mitchoff, Chair

Supervisor John Gioia, Vice Chair

Agenda Items:

Items may be taken out of order based on the business of the day and preference of the Committee

1. Introductions
2. Public comment on any item under the jurisdiction of the Committee and not on this agenda (speakers may be limited to three minutes).
3. RECEIVE and APPROVE the Record of Action for the special July 27, 2015 IOC meeting. *(Julie DiMaggio Enea, IOC Staff)*
4. CONSIDER approving nomination to appoint Aaron Winer to the Business 1 Alternate seat on the Hazardous Materials Commission to complete the unexpired term ending on December 31, 2018. *(Julie DiMaggio Enea for Michael Kent)*
5. CONSIDER approving plan to transition the terms of office of the Public Member seats on the Integrated Pest Management Advisory Committee from two years to four years and to stagger term expirations, and modifications to the IPM Advisory Committee Bylaws to accord with the seat term transition and to update old references. *(Tanya Drlik, Health Services Department)*
6. CONSIDER accepting a report on the Animal Benefit Fund and providing direction to staff regarding next steps. *(Timothy Ewell, County Administrator's Office)*
7. ACCEPT report and CONSIDER providing direction to staff regarding next steps to further investigate potential Community Choice Aggregation (procurement of consumer energy) implementation. *(Jason Crapo, Conservation and Development Department)*
8. CONSIDER concerns raised by PACE (Property Assessed Clean Energy) providers regarding the form of the County's operating agreement and related PACE policies. *(Julie DiMaggio Enea, County Administrator's Office / Jason Crapo, Conservation & Development Department)*
9. The next meeting is currently scheduled for October 12, 2015.

10. Adjourn

The Internal Operations Committee will provide reasonable accommodations for persons with disabilities planning to attend Internal Operations Committee meetings. Contact the staff person listed below at least 72 hours before the meeting.

Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the County to a majority of members of the Internal Operations Committee less than 96 hours prior to that meeting are available for public inspection at 651 Pine Street, 10th floor, during normal business hours. Staff reports related to open session items on the agenda are also accessible on line at www.co.contra-costa.ca.us.

Public comment may be submitted via electronic mail on agenda items at least one full work day prior to the published meeting time.

For Additional Information Contact:

Julie DiMaggio Enea, Committee Staff
Phone (925) 335-1077, Fax (925) 646-1353
julie.enea@cao.cccounty.us



Contra Costa County Board of Supervisors

Subcommittee Report

INTERNAL OPERATIONS COMMITTEE

3.

Meeting Date: 09/14/2015

Subject: RECORD OF ACTION FOR THE SPECIAL JULY 27, 2015 IOC MEETING

Department: County Administrator

Referral No.: N/A

Referral Name: RECORD OF ACTION

Presenter: Julie DiMaggio Enea, IOC
Staff

Contact: Julie DiMaggio Enea (925)
335-1077

Referral History:

County Ordinance requires that each County body keep a record of its meetings. Though the record need not be verbatim, it must accurately reflect the agenda and the decisions made in the meeting.

Referral Update:

Attached is the Record of Action for the special July 27, 2015 IOC meeting.

Recommendation(s)/Next Step(s):

RECEIVE and APPROVE the Record of Action for the special July 27, 2015 IOC meeting.

Fiscal Impact (if any):

None.

Attachments

DRAFT Record of Action for July 27, 2015 IOC Meeting



INTERNAL OPERATIONS COMMITTEE

RECORD OF ACTION FOR SPECIAL MEETING OF
July 27, 2015

Supervisor Karen Mitchoff, Chair
Supervisor John Gioia, Vice Chair

Present: Karen Mitchoff, Chair
John Gioia, Vice Chair

Staff Present: Julie DiMaggio Enea, Staff

Attendees: Bob Campbell, Auditor-Controller; Elizabeth Verigin, Asst. Auditor-Controller; Joanne Bohren, Chief Auditor; Michael Manno, Internal Audit; Henriette Browne, Internal Audit; Cynthia Belon, Behavior Health Director; Warren Hayes, Health Services Dept.; Joe Doser, Environmental Health; Joe Yee, Deputy Public Works Director; Carlos Velasquez, Fleet Services Manager; Forrest Heiderick, Public Works Fleet Services; Belinda Zhu, Treasurer-Tax Collector; John Kopchik, Conservation & Development Director; Deidra Dingman, Solid Waste Manager, DCD; Linda Wilcox, Deputy County Counsel; Jill Ray, District II Supervisor's Office; Lindy Lavender, District IV Supervisor's Office; Douglas Dunn, NAMI; Barbara Serwin; Theresa Pasquini; David Brockbank, DCD; Scott Gordon; Keira Kennerly, PW Fleet Services; Janna Coverston, Richmond Sanitary Svc; Susan Hurl, Republic Services; Cliff Glickman; Agnes Vinluan; Jocelyn Habal

DRAFT

1. Introductions

Chair Mitchoff called the meeting to order at 1:35 p.m. and introductions were made by all meeting attendees.

2. Public comment on any item under the jurisdiction of the Committee and not on this agenda (speakers may be limited to three minutes).

No members of the public asked to speak during the Public Comment period.

3. RECEIVE and APPROVE the Record of Action for the May 11, 2015 IOC meeting.

The Record of Action for the May 11, 2015 IOC meeting was approved as presented.

AYE: Chair Karen Mitchoff, Vice Chair John Gioia
Passed

4. APPROVE nomination to appoint to the Scott Anderson to the County, School District, and Community College District seat on the Treasury Oversight Committee to complete the unexpired term ending on April 30, 2016.

The Committee approved the nomination to appoint Scott Anderson to the County, School District, and Community College District seat on the Treasury Oversight Committee to complete the unexpired term ending on April 30, 2016.

AYE: Chair Karen Mitchoff, Vice Chair John Gioia
Passed

5. ACCEPT report on the status of the development of a waste hauler ordinance and provide policy direction to staff.

Chair Mitchoff asked staff to present each of the ten key policy issues and asked for public comment issue by issue:

1. Ordinance Enforcement-Potential Role of the Sheriff's Office: Environmental Health clarified that this ordinance would be enforced only in the unincorporated area. However, cities may decide to follow suit and adopt similar ordinances to cover the incorporated areas. The Committee directed staff to change the proposed language to indicate that County Environmental Health and the Sheriff "shall" instead of "may" enforce the ordinance provisions, and directed Environmental Health to contact the Sheriff to determine the fiscal impact of that enforcement, if any, and to clarify the appropriate roles for each agency. Deidra Dingman suggested that the Committee could potentially use cost information for the existing mitigation fee-funded resident deputy position that is dedicated to working in North Richmond. The Committee asked for that information to be included in the next report back to the IOC.

Scott Gordon commented that if the refuse boxes were labeled or decaled, then enforcement would be easier. He also expressed the importance of eradicating illegal transfer stations which, in his opinion, are the key driver of illegal hauling and dumping. He said that the convenience of a small transfer station promotes illegal activity and that the ordinance and the enforcement should be designed primarily to cut the "head off of the hydra". Gordon also observed that some of the illegal transfer stations were sophisticated operations and had direct relationships with the haulers. Supervisor Gioia agreed that while both are valid strategies, eradicating the illegal transfer stations should receive priority over ramping up a process to permit haulers. Supervisor Mitchoff felt that both avenues should be pursued.

Supervisor Gioia added that some of the materials dumped at these illegal transfer stations were hazardous, so the need for enforcement is also a public safety issue. He stated that the County should make a concerted effort to eradicate illegal transfer stations, starting with west county due to the high concentration in that area, and use multiple strategies to eradicate them, including code, land use, and statutory enforcement.

2. Ordinance Requirement-Performance Bond (four options): Environmental Health said that the bond amount is a low amount and is supposed to cover losses from improper work.

The Committee preferred Option 2. They felt that the County should not want to permit a hauler who cannot obtain a bond. They also felt that the bond amount should be high given the price the community must pay for illegal dumping. The Committee directed EH staff to return with a recommendation for the amount of the performance bond.

Scott Gordon commented that the bond requirement should minimally be \$100,000 and that liability insurance should also be required.

3. Ordinance Scope-Building Contractors and Landscapers Self-Haul (four options): The Committee decided that landscapers were not really the problem and should be exempted from permitting (Option 3, but just pertaining to landscapers. EH staff indicated that EH has developed educational brochures listing legal transfer stations throughout the county.

4. Ordinance Enforcement-Role of the Building Permit & Inspection Process: Deidra Dingman explained the requirements under the CalGreen law. The Committee viewed construction debris as a serious problem and preferred Option 4, which would require building contractors, in addition to designating in the permit where debris will be dumped, to also designate how the debris will be disposed/hailed and who will haul it.

Dingman clarified that the CalGreen report, which is required for the final inspection, must include documentation showing how debris was disposed; and that the problem related more to unpermitted work or permitted work that didn't receive a final inspection. The Committee asked Conservation & Development staff to report back on the number of permits pulled vs. completed, and also directed that if debris boxes are present at the time of a building inspection, that the inspector note on the report whether or not the box was properly decayed.

5. Ordinance Scope-Conflicts with Existing Franchise Agreements: The Committee decided that the County's franchise agreements should be amended to be exclusive with regard to debris boxes but not exclusive with regard to self-haul contractors, consistent with the current franchise agreement covering west county.

6. Franchise C&D Waste: The Committee preferred franchise exclusivity on C&D waste collected in drop/debris boxes but non-exclusivity on C&D self-haul.

7. Ordinance Scope-Source-separated Recyclables/Poaching Issue (two options): The Committee preferred neither option 1 nor 2 and, instead, preferred that permitting be required for the transport of source-separated recyclable materials.

8. Ordinance Scope-Further Outreach: The Committee concurred with the staff recommendation.

9. Ordinance Scope-Industrial Waste: The Committee concurred with the staff recommendation except that it decided that "food processing" should be removed from the definition of "Industrial entity", and that size/scale and zoning should determine whether or not a food processing facility is an industrial entity. The Committee requested staff to develop final language.

10: Ordinance Requirement-In-County vs. Out-of-County Disposal/Recycling (two options): The Committee identified legal and policy issues with restricting disposal within Contra Costa boundaries. The Committee asked County Counsel for a legal opinion.

The Committee asked EH and DCD staff to report back in October.

6. **Role.** It is recommended that CPAW's primary role is to assist Contra Costa Behavioral Health Services in complying with statutory and regulatory requirements to, 1) advise and assist the CCBHS Director obtain inclusive and diverse stakeholder participation in the Community Program Planning Process, 2) provide input on priority needs that affect the entire public mental health system, and 3) recommend strategies to meet these needs (California Code of Regulations 9 CA ADC Sections 3300 and 3200.070). Issues for discussion will be coordinated with the Mental Health Commission and topical to CCBHS. Unlike stakeholder structures of some counties, such as Sacramento and Orange Counties, it is recommended that CPAW's role not include funding decisions or recommendations. CCR Sections 3300 and 3200.070 are implementations of Welfare and Institutions Code (WIC) 5848(a) that requires that the County shall provide for a Community Program Planning Process as the basis for developing the MHSA Three-Year Program and Expenditure Plan and Plan Updates.

Governance. It is recommended that CPAW meet on a monthly basis in order build an ongoing stakeholder body of expertise in the Mental Health Services Act (MHSA) and its components, values and provisions. Business is to be conducted under provisions of the Brown Act, with an emphasis on open and inviting forums for all stakeholders in the community to come and participate. **Attachment 2** represents a set of self-governance agreements that the current CPAW membership has developed and adopted for all CPAW sponsored meetings. This agreement addresses potential conflict of interest issues, and protocol for when group positions are taken. Minutes will be taken of each meeting and transmitted to the CCBHS Director, as well as posted online with accompanying handouts. These minutes will depict summaries of agenda items, discussions and any group positions taken. The results of Community Program Planning Processes will be included as part of the MHSA Three Year Program and Expenditure Plan and yearly Plan Updates.

Membership. All stakeholders are invited to attend and participate in CPAW sponsored meetings. In order to ensure compliance with WIC Section 5848(a) the BHS Director will seek and appoint individuals for three to five year terms who can constructively represent in a meaningful way stakeholders, as defined by statute and regulations, who participate in the public mental health system as either receivers of care, provide support to the provision of care, or providers of care. Special emphasis will be placed on appointment of individuals whose characteristics and affiliations are underrepresented. **Attachment 3** provides a roster of current active CPAW members, and an initial, suggested matrix depicting each member representing a single affiliation. As per CCR 3300 affiliations consist of consumer, family member, peer provider, family partner, County and contract service provider, representatives of underserved populations, and leadership from partner systems, such as criminal justice, education, veterans' services, alcohol and other drug programs, homeless programs, and faith based organizations. Currently CPAW has 23 members, with five additional appointments recommended to add underserved population representation of persons identifying as Latina/o, parents of young children, and a representative of

alcohol and other drug programs, homeless programs, and veterans' services. Applications for membership will be accepted on a continuous basis, and current CPAW members may be asked to assist in vetting an applicant for identification of all characteristics and affiliations that may influence their participation. **Attachment 4** provides a matrix of all of the self-reported characteristics and affiliations of individuals who were CPAW members as of May 2014.

Attendance. Appointed members who miss a third or more of meetings in a year's time will be considered for relinquishment of their appointment. This will enable an appointment of an individual who can more actively represent said affiliation. In addition, members will be expected to participate in at least one additional stakeholder body supported by CCBHS, whether CPAW sponsored or not, and will share information from these meetings with CPAW membership.

Structure. Until now, sub-committees and ongoing workgroups under the auspices of CPAW have included Membership, Steering, Innovation, Systems of Care, Children's, Transition Age Youth, Adults (not currently active), Older Adults, Housing and Social Inclusion. These bodies have been issue-specific, open to any and all interested stakeholders, and do not designate specific individuals for membership. Representatives from CPAW and the Mental Health Commission attend these meetings.

The following is recommended for each of the above sub-committees and workgroups:

Membership. Membership will be a CPAW workgroup, and will meet on an as needed basis to assist in, 1) vetting an applicant for CPAW membership for identification of all characteristics and affiliations that may influence their participation, and 2) making a recommendation to the CCBHS Director for membership to CPAW. Participation in this process is open to all CPAW members, with the public invited to attend and comment.

Steering. Steering will be a CPAW workgroup, and will normally meet two weeks before the monthly CPAW meeting to, 1) construct the CPAW meeting agenda, and 2) consider any issues delegated to them from CPAW meetings. Participation in this process is open to all CPAW members, with the public invited to attend and comment.

Innovation. Innovation will be a CPAW workgroup, and will meet monthly to, 1) receive, vet and recommend Innovative Concepts to the Behavioral Health Services Director for development into a proposal, 2) assist in developing an approved Innovative Concept to an Innovative Project proposal for Mental Health Services Oversight and Accountability Commission (MHSOAC) consideration and approval as per WIC Section 5830, and 3) provide oversight and input to MHSOAC approved Innovative Projects. Participation in this process is open to all CPAW members, with the public invited to attend and comment. It is recommended that CPAW members wishing to participate in the deliberations associated with Innovative Project concepts or proposals commit to participation in the entirety of each Innovative Project consideration process in order to enable this workgroup to develop efficient consistency and continuity of effort, from Innovative Concept consideration through Project approval and implementation.

Systems of Care. System of Care will be a CPAW workgroup, and will meet monthly to enable stakeholder input on MHSA funded programs and plan elements that are in development or change. Examples have included staffing the newly built Miller Wellness Center, implementation of the Electronic Mental Health Record System, and developing a common data reporting system for MHSA funded Innovation and Prevention and Intervention programs in response to pending new regulations. CPAW will delegate to this workgroup issues for stakeholder participation. Participation in this workgroup is open to all interested stakeholders, whether CPAW members or not.

County MHSA funded personnel will provide ongoing staff and administrative support to CPAW meetings, and the above four CPAW sponsored workgroups. This includes, 1) ongoing communication with CPAW members, 2) posting developed agendas and attachments, 3) reserving rooms, setting up and arranging for audio-visual support, 4) responding to reasonable accommodation requests, such as gift cards, 5) producing agreed upon documents, such as agenda readiness forms, minutes, staff analyses and position papers, and 6) facilitating communication and problem solving between stakeholders and the CCBHS Director, Deputy Director, chiefs and managers, as appropriate.

For the remaining stakeholder bodies it is recommended that respective Behavioral Health Services managers assume sponsorship by appointing personnel within their supervision to perform the staff support and administrative duties that are listed above. These stakeholder bodies will include Children's, Transition Age Youth, Adults and Older Adults, Housing, and Social Inclusion. Issues for participation will be mutually agreed upon and topical to the entire Behavioral Health Services System; not just issues where MHSA funding is involved.

This restructuring will enable the County to build stakeholder expertise in addressing statutory responsibilities under the Mental Health Services Act, while concurrently supporting wide stakeholder participation in an integrated Behavioral Health Service Division.

Chair Mitchoff gave an overview of the staff report and of the written public comment that had been submitted, including the difference in the roles and reporting relationships of the Mental Health Commission and the Consolidated Planning and Advisory Workgroup (CPAW). Environmental Health (EH) staff recommended increasing CPAW to 28 members. Cynthia Belon clarified that the Alcohol & Other Drug and Homeless Program seats are designated for recipients of those services. Warren Hayes clarified that the Veterans Services seat is designated for a person that has an interest in veterans' mental health services.

The Committee invited public comment. Douglas Dunn commented that too many of the CPAW members were County employees but the Committee disagreed, noting that only 25% of the membership were County staff. Dunn said that he and the NAMI Board believe that CPAW members should not have multiple stakeholder affiliations. He gave an example where certain Family seat members also work for a community-based organization. Theresa Pasquini commented that she wants to see a broad representation of affiliations on CPAW but she complained that concerns about double affiliations are not being heard or taken seriously. She observed a lack of representation of adult family partners. Pasquini said, in her opinion, that Belon had not made any new appointments to the CPAW and that the current membership was appointed by someone else.

Barbara Serwin commented that on other boards on which she has participated, multiple affiliations were not permitted and it was the responsibility of each appointee to be clear about which interest he/she was representing.

Supervisor Gioia responded that it is not unusual for stakeholders to have many affiliations with a cause or issue, and that being affiliated with more than one

stakeholder group should not make a person's viewpoint less valid or meaningful. He spoke of himself serving on regional boards and holding both regional and county viewpoints. He cautioned about making assumptions about what someone's bias or predisposition might be. He said that being a good contributing member has less to do with the stakeholder category and more to do with the capacity of each individual to communicate, to be open to hearing other viewpoints and respectful towards people who have differing viewpoints.

Barbara Serwin commented that the appointees change over time but the seat designations do not, so the configuration should be based on seat designations rather than appointees.

In reference to the staff report on the diversity of representation on CPAW, Supervisor Gioia said that it was unacceptable to not have a Hispanic person on CPAW. He acknowledged that appointees to the Underserved representatives will likely have dual or multiple affiliations and that was acceptable.

The Committee suggested that the CPAW should be configured as shown below. Supervisor Mitchoff said that, with the added MHC seats, Gina Swirsding should be allowed to decide whether she wants to serve in the Consumer seat or Mental Health Commission seat.

<u>Seat Designation</u>	<u>Current Configuration</u>	<u>Suggested Configuration</u>
Alcohol & Other Drug	0	1
CBO Service Provider	3	3
CCBHS Service Provider	1	1
Consumer	6	6
Criminal Justice	1	1
Education	1	1
Faith Based Leadership	1	1
Family Member	6	6
Family Partner - Juvenile	1	1
Family Partner-Adult	0	1
Homeless Programs	0	1
Mental Health Commission	0	2
Peer Provider - CCBHS	2	2
Underserved Population	3	3
Veterans Services	<u>0</u>	<u>1</u>
Total:	25	31

The Committee went on to determine that no further changes were needed to address conflict of interest procedures since CPAW does not make fiscal recommendations. Discussion ensued regarding the applicability of the Brown Act to the CPAW. Supervisor Gioia clarified that the CPAW is subject to the County's Better Government Ordinance, which is more stringent than the Brown Act with respect to open meetings, agendas, and public noticing. The Committee asked for additional training to be provided to CPAW on compliance with the Better Government Ordinance.

The Committee otherwise accepted the EH recommendations and directed staff to forward the Committee's recommendations to the Board of Supervisors.

AYE: Chair Karen Mitchoff, Vice Chair John Gioia
Passed

7. ACCEPT report prepared by the Office of the Auditor-Controller on analysis of the Public Works Department-Fleet Services Division's compliance with Administrative Bulletin #508.4, "County Vehicle and Equipment Acquisition and Replacement Policy, and Clean Air Vehicle Policy and Goals."

Joanne Bohren, Chief Auditor, presented the staff report, which showed that, as of February 28, 2015, 18% of the fleet were clean air vehicles, 36.2% were not clean air vehicles but were exempted by the policy or by the Fleet Manager, and 45.8% were not exempt and not in compliance with the clean air vehicle policy.

PW Fleet Manager Carlos Velasquez said he recognized that we are not where we need to be with clean air vehicles but that he is committed to downsizing and right-sizing County vehicles. PW has already purchased more than 25 electric and CNG vehicles since February. He reported that several of the PW utility vans have been retired and replaced with CNG vehicles and he has introduced electric vehicles to the PW fleet. Supervisor Gioia commented that the Bay Area Air Quality Management District just released a funding opportunity for clean air vehicles. Carlos reported that he tracks grant and rebate programs on a national level.

Supervisor Gioia asked the Fleet Manager to update the 2008 County Clean Air Vehicle Policy to also to reflect current technology such as electric and hydrogen fuel cell vehicles, and current funding incentives. Supervisor Mitchoff asked the Fleet Manager to break out large construction vehicles from regular trucks and sedans to make the statistical reporting more meaningful.

The Committee directed Committee staff to forward this report to the Board on Consent, and directed Public Works to report back to the IOC on September 14 with recommended policy revisions.

AYE: Chair Karen Mitchoff, Vice Chair John Gioia
Passed

8. The next meeting is currently scheduled for September 14, 2015.
9. Adjourn

Chair Mitchoff adjourned the meeting at 4:05 p.m.

For Additional Information Contact:

Julie DiMaggio Enea, Committee Staff
Phone (925) 335-1077, Fax (925) 646-1353
julie.enea@cao.cccounty.us



Contra Costa County Board of Supervisors

Subcommittee Report

INTERNAL OPERATIONS COMMITTEE

4.

Meeting Date: 09/14/2015
Subject: NOMINATION TO THE HAZARDOUS MATERIALS COMMISSION
Submitted For: William Walker, M.D., Health Services Director
Department: Health Services
Referral No.: IOC 15/5
Referral Name: Advisory Body Recruitment
Presenter: Julie DiMaggio Enea **Contact:** Michael Kent (925) 313-6712

Referral History:

In 2013, IOC reviewed Board Resolution Nos. 2011/497 and 2011/498, which stipulate that applicants for At Large/Non Agency-Specific seats on specified bodies are to be interviewed by a Board Committee. The IOC made a determination that it would conduct interviews for At Large seats on the following bodies: Retirement Board, Fire Advisory Commission, Integrated Pest Management Advisory Committee, Planning Commission, Treasury Oversight Board, Airport Land Use Commission, Aviation Advisory Committee and the Fish & Wildlife Committee; and that screening and nomination fill At Large seats on all other eligible bodies would be delegated each body or a subcommittee thereof.

Referral Update:

The Business 1 Alternate seat on the Hazardous Materials Commission was vacated by the Board of Supervisors on August 18, 2015 due to the resignation of Paul Seffrood. The Council of Industries has nominated Aaron Winer to replace Mr. Seffrood for the remainder of the seat term (see attached letter from the Council of Industries).

Attached is transmittal letter from the Commission along with Mr. Winer's application.

Recommendation(s)/Next Step(s):

APPROVE nomination to appoint Aaron Winer to the Business 1 Alternate seat on the Hazardous Materials Commission to complete the unexpired term ending on December 31, 2018.

Fiscal Impact (if any):

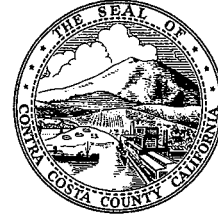
No fiscal impact.

Attachments

HMC Nomination Letter

Candidate Application Aaron Winer HMC

CONTRA COSTA COUNTY **HAZARDOUS MATERIALS COMMISSION**



September 3, 2015

MEMO

To: Internal Operations Committee

From: Michael Kent, Executive Assistant to the Hazardous Materials Commission *MK*

Re: Appointment Recommendation to the Hazardous Materials Commission

The Hazardous Materials Commission was established in 1986 to advise the Board, County Staff and the mayor's council members, and staffs of the cities within the County, on issues related to the development, approval and administration of the County Hazardous Waste Management Plan. Specifically, the Board charged the Commission with drafting a Hazardous Materials Storage and Transportation Plan and Ordinance, coordinating the implementation of the Hazardous Materials Release Response Plan and inventory program, and to analyze and develop recommendations regarding hazards materials issues with consideration to broad public input, and report back to the Board on Board referrals.

The bylaws of the Commission provide that the Business Seat #1 Alternate be nominated by the Council of Industries, screened by the Internal Operations Committee and appointed by the Board of Supervisors. This seat was vacated due to resignation on August 18, 2015 (Board Order Attached). The Council of Industries has nominated Aaron Winer to fill this seat. Their letter of nomination and Mr. Winer's application are attached. The term of this seat expires on December 31, 2018.

Members: George Smith, Chair, Rick Alcaraz, Don Bristol, Matthew Buell, Henry Clark, Lara DeLaney, Frank Gordon, Fred Glueck, Steven Linsley, Jim Payne, Ralph Sattler, Leslie Stewart, Don Tatzin

597 Center Ave., Suite 200 Martinez, CA 94553 (925) 313-6712



Contra
Costa
County

For Office Use Only
Date Received:

For Reviewers Use Only:
Accepted Rejected

BOARDS, COMMITTEES, AND COMMISSIONS APPLICATION

MAIL OR DELIVER TO:
Contra Costa County
CLERK OF THE BOARD
651 Pine Street, Rm. 106
Martinez, California 94553-1292
PLEASE TYPE OR PRINT IN INK
(Each Position Requires a Separate Application)

BOARD, COMMITTEE OR COMMISSION NAME AND SEAT TITLE YOU ARE APPLYING FOR:

County Hazardous Materials Commission

Alternate

PRINT EXACT NAME OF BOARD, COMMITTEE, OR COMMISSION

PRINT EXACT SEAT NAME (if applicable)

1. Name: Winer Aaron Joel
(Last Name) (First Name) (Middle Name)
2. Address: [REDACTED] Benicia CA 94510
(No.) (Street) (Apt.) (City) (State) (Zip Code)
3. Phones: [REDACTED]
(Home No.) (Work No.) (Cell No.)
4. Email Address: aaron.winer@veolia.com

5. EDUCATION: Check appropriate box if you possess one of the following:

High School Diploma ☐ G.E.D. Certificate ☐ California High School Proficiency Certificate ☐

Give Highest Grade or Educational Level Achieved: Master's Degree

Names of colleges / universities attended	Course of Study / Major	Degree Awarded	Units Completed		Degree Type	Date Degree Awarded
			Semester	Quarter		
A) Johnson State College	Environmental Studies	Yes No <input checked="" type="checkbox"/> <input type="checkbox"/>	128		BA	May 1984
B) University of Southern California	Master of Public Administration	Yes No <input checked="" type="checkbox"/> <input type="checkbox"/>		32	MPA	Aug 2006
C) [REDACTED]	[REDACTED]	Yes No <input type="checkbox"/> <input type="checkbox"/>				
D) Other schools / training completed:	Course Studied	Hours Completed	Certificate Awarded:			
UC Santa Cruz Extension	Environmental Safety and Health Management	All	Yes No <input checked="" type="checkbox"/> <input type="checkbox"/>			

THIS FORM IS A PUBLIC DOCUMENT

6. PLEASE FILL OUT THE FOLLOWING SECTION COMPLETELY. List experience that relates to the qualifications needed to serve on the local appointive body. Begin with your most recent experience. A resume or other supporting documentation may be attached but it may not be used as a substitute for completing this section.

<p>A) Dates (Month, Day, Year)</p> <p>From <u>June 2011</u> To <u>Present</u></p> <p>Total: Yrs. <u>4</u> Mos. <u>2</u></p> <p>Hrs. per week <u>40+</u> . Volunteer <input type="checkbox"/></p>	<p>Title</p> <p>Project Manager III</p> <p>Employer's Name and Address</p> <p>Veolia Water 601 Canal Blvd Richmond, CA 94804</p>	<p>Duties Performed</p> <p>Oversee all aspects of 16 MGD wastewater treatment plant operation and maintenance, collections system O&M and laboratory activities</p> <ul style="list-style-type: none"> • Responsible for all permit and regulatory compliance • Coordinate with Capital Projects division during construction • Develop and maintain client relations • Responsible for contract compliance
<p>B) Dates (Month, Day, Year)</p> <p>From <u>Jan 2010</u> To <u>June 2011</u></p> <p>Total: Yrs. <u>1</u> Mos. <u>5</u></p> <p>Hrs. per week <u>40+</u> . Volunteer <input type="checkbox"/></p>	<p>Title</p> <p>District Manager</p> <p>Employer's Name and Address</p> <p>Veolia Water 2300 Contra Costa Blvd, Suite 350 Pleasant Hill, CA 94523</p>	<p>Duties Performed</p> <p>First tier manager above project level responsible for client, corporate financial, compliance, safety aspects and technical support for 8 projects.</p>
<p>C) Dates (Month, Day, Year)</p> <p>From <u>May 2008</u> To <u>Jan 2010</u></p> <p>Total: Yrs. <u>1</u> Mos. <u>7</u></p> <p>Hrs. per week <u>40+</u> . Volunteer <input type="checkbox"/></p>	<p>Title</p> <p>Project Manager</p> <p>Employer's Name and Address</p> <p>Veolia Water 18800 Christopher Way Lathrop, CA 95330</p>	<p>Duties Performed</p> <p>Oversee operations, management and maintenance activities and process control to ensure completion of operational objectives at two small treatment plants and compliance with waste discharge requirements</p> <ul style="list-style-type: none"> • Develop and maintain client relations • Develop safety and operational SOPs, staff schedules, standby procedures • Perform employee evaluations
<p>D) Dates (Month, Day, Year)</p> <p>From <u>June 2007</u> To <u>May 2008</u></p> <p>Total: Yrs. <u></u> Mos. <u>11</u></p> <p>Hrs. per week <u>40+</u> . Volunteer <input type="checkbox"/></p>	<p>Title</p> <p>Assistant Plant Manager</p> <p>Employer's Name and Address</p> <p>Veolia Water 601 Canal Blvd Richmond, CA 94804</p>	<p>Duties Performed</p> <ul style="list-style-type: none"> • Oversee daily operations and process control, coordinate with maintenance and lab to ensure operational objectives complete • Develop safety and operational SOPs, staff schedules, standby procedures • Perform employee evaluations • Develop and implement on-site recycling programs • Review and provide training for opera

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7. How did you learn about this vacancy?

☐ CCC Homepage ☐ Walk-In ☐ Newspaper Advertisement ☐ District Supervisor ☒ Other Council of Industries

8. Do you have a Familial or Financial Relationship with a member of the Board of Supervisors? (Please see Board Resolution no. 2011/55, attached): No ☒ Yes ☐

If Yes, please identify the nature of the relationship:

9. Do you have any financial relationships with the County such as grants, contracts, or other economic relations? No ☒ Yes ☐

If Yes, please identify the nature of the relationship:

I CERTIFY that the statements made by me in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge and understand that all information in this application is publically accessible. I understand and agree that misstatements / omissions of material fact may cause forfeiture of my rights to serve on a Board, Committee, or Commission in Contra Costa County.

Sig



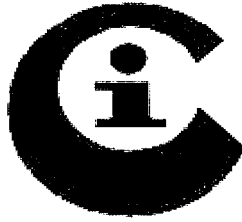
Date:

8/3/15

Important Information

1. This application is a public document and is subject to the California Public Records Act (CA Gov. Code §6250-6270).
2. Send the completed paper application to the Office of the Clerk of the Board at **651 Pine Street, Room 106, Martinez, CA 94553**.
3. A résumé or other relevant information may be submitted with this application.
4. All members are required to take the following training: 1) The Brown Act, 2) The Better Government Ordinance, and 3) Ethics Training.
5. Members of boards, commissions, and committees may be required to: 1) file a Statement of Economic Interest Form also known as a Form 700, and 2) complete the State Ethics Training Course as required by AB 1234.
6. Advisory body meetings may be held in various locations and some locations may not be accessible by public transportation.
7. Meeting dates and times are subject to change and may occur up to two days per month.
8. Some boards, committees, or commissions may assign members to subcommittees or work groups which may require an additional commitment of time.

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THE COUNCIL OF INDUSTRIES

P.O. BOX 70088

Pt. Richmond, CA 94807

(510)215-9325 office (510)260-4820 cell (510)215-9029 fax

www.councilofindustries.org

July 30, 2015

Michael Kent
Contra Costa Health Services
Hazardous Materials Ombudsman
597 Center Ave., Suite 100
Martinez, CA 94553

RE: Nomination of MR. AARON WINER to the Hazardous Materials
Commission, Business Seat #1, as Alternate to Mr. Fred Glueck

On behalf of the Council of Industries I would like to request that Mr. Aaron Winer of Veolia Water be nominated to the Contra Costa County Hazardous Materials Commission Business Seat #1 as an Alternate to Mr. Fred Glueck, in representation of the business membership at the Council of Industries.

Please consider our request for Mr. Winer's nomination for the Alternate position..

Should you have any questions, contact the undersigned

Regards,

Katrinka Ruk
Executive Director
kpruk@sbcglobal.net



Contra Costa County Board of Supervisors

Subcommittee Report

INTERNAL OPERATIONS COMMITTEE

5.

Meeting Date: 09/14/2015

Subject: CHANGES TO SEAT TERMS AND BYLAWS OF THE INTEGRATED PEST MANAGEMENT ADVISORY COMMITTEE

Submitted For: William Walker, M.D., Health Services Director

Department: Health Services

Referral No.: IOC 15/5

Referral Name: Advisory Body Recruitment

Presenter: Tanya Drlik, Health Services
Department

Contact: Tanya Drlik (925)
335-3214

Referral History:

At the December 1, 2014 IOC meeting, the Committee interviewed a candidate for a seat on the Integrated Pest Management (IPM) Advisory Committee and also directed IPM staff to return to the IOC with a plan to convert the terms of office for IPM seats from two to four years and to stagger the new term expiration dates.

Referral Update:

Attached is a plan proposed by the IPM Advisory Committee to convert the current IPM Advisory Committee Public Member two-year term appointments to four-year term appointments with staggered term expiration dates. Also attached are the necessary changes to the IPM Bylaws to accord with the transition of seat terms and also to update references to the Public Works Department.

Recommendation(s)/Next Step(s):

APPROVE plan to transition the terms of office of the Public Member seats on the Integrated Pest Management Advisory Committee from two years to four years and to stagger term expirations, and modifications to the IPM Advisory Committee Bylaws to accord with the seat term transition and to update old references.

Fiscal Impact (if any):

None.

Attachments

Memo IPM Adv Cte re Transition and Stagger Seat Terms

Memo IPM Adv Cte Modify Bylaws

Proposed IPM Bylaws Redline



Memorandum

To: Internal Operations Committee
Supervisor Karen Mitchoff, Chair
Supervisor John Gioia, Vice Chair

From: The IPM Advisory Committee
Cece Sellgren, Chair
Tanya Drlik, Staff

Date: September 4, 2015

Subject: Plan to convert the current IPM Advisory Committee Public Member two-year terms to four-year terms with staggered expiration dates

Background:

On December 1, 2014 the Internal Operations Committee directed the IPM Coordinator to develop a plan to convert the current IPM Advisory Committee Public Member two-year term appointments to four-year term appointments with staggered term expiration dates.

Proposal:

In order to achieve this goal, staff proposes that effective with the current term expirations:

- The At-large 1 and At-large 2 seat appointments convert to four-year terms upon the expiration of their current terms (December 31, 2015).
- The At-large 3 and Public Member – Alternate seat appointments have one-time three-year terms from December 31, 2015 through December 31, 2018, and thereafter four-year terms.
- The Environmental Organization seat appointment has one more two-year term from December 31, 2016 to December 31, 2018, then converts to a four-year term.
- The Fish and Wildlife Committee seat and the PEHAB seat convert to four-year terms upon the expiration of their current terms (December 31, 2015)

Please note that at this time the IPM Committee does not differentiate the At-large seats by numbers. This would have to be done when individuals are appointed to those seats later this year.

If the Internal Operations Committee agrees to increase the terms of public members to four (4) years, we propose the following changes in the IPM Committee bylaws:

III. Terms/Elections

A. Committee:

1. The terms for the Department Representatives do not expire. All other members shall serve for a term of ~~two (2)~~ four (4) calendar years. Any vacancies during the term of the member shall be filled for the remainder of that ~~two (2)~~ four (4) calendar year term. Members may serve more than one (1) ~~two-year~~ four-year term if reappointed.

Please see the chart on the next page for an example of how four-year terms with staggered expiration dates could be phased in.



Example of Possible Phase-in of Four-Year Terms for Public Members of the IPM Advisory Committee

	<u>Current Term Expiration Date</u>	<u>Example of Possible Phase-in of Four-Year Terms</u>	<u>Subsequent 4-Year Terms</u>
At-Large 1	December 31, 2015	12/31/15 – 12/31/19	12/31/19 – 12/31/23
At-Large 2	December 31, 2015	12/31/15 – 12/31/19	12/31/19 – 12/31/23
At-Large 3	December 31, 2015	12/31/15 – 12/ 31/18 (one-time three-year term)	12/31/18 – 12/31/22
At-Large Alternate	December 31, 2015	12/31/15 – 12/ 31/18 (one-time three-year term)	12/31/18 – 12/31/22
Environmental Org.	December 31, 2016	12/31/16 – 12/31/18	12/31/18 – 12/31/22
PEHAB	December 31, 2015	12/31/15 – 12/31/19	12/31/19 – 12/31/23
Fish and Wildlife	December 31, 2015	12/31/15 – 12/31/19	12/31/19 – 12/31/23



Memorandum

To: Internal Operations Committee
Supervisor Karen Mitchoff, Chair
Supervisor John Gioia, Vice Chair

From: The IPM Advisory Committee
Cece Sellgren, Chair
Tanya Drlik, Staff

Date: September 4, 2015

Subject: IPM Advisory Committee bylaws changes

Please find attached a marked copy of the IPM Advisory Committee bylaws. Only minor changes have been made, as follows:

III. Membership

A. The membership of the Committee shall be composed of the following:

1. Four (4) ex-officio, non-voting members as follows:
 - a. Agricultural Commissioner, or designee
 - b. Public Works Facilities Maintenance Manager, or designee
 - c. Public Works Deputy Director, or designee
 - d. A current Structural Pest Management contractor with the Public Works Facilities Maintenance Division

B. Membership Requirements

2. Contractors who provide pest management services to the County may not serve on the Committee. The exception is A.1.d., above, the Current Structural Pest Management Contractor with the Public Works Facilities Maintenance Division.

IV. Staff to the Committee

The County IPM Coordinator shall serve as staff to the Committee. Staff shall issue and distribute agendas in accordance with the Brown Act and Better Government Ordinance. Staff shall finalize minutes and distribute to members in the agenda packet.



**CONTRA COSTA COUNTY
INTEGRATED PEST MANAGEMENT ADVISORY COMMITTEE
BYLAWS**

I. Name and Definition

- A. The name of this advisory body to the Contra Costa Board of Supervisors shall be the “Contra Costa County Integrated Pest Management Advisory Committee,” hereafter referred to as the “Committee.”
- B. “Integrated Pest Management” (hereinafter, “IPM”) is defined as “an ecosystem-based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices, and use of resistant varieties. Pesticides are used only after monitoring indicates that they are needed according to established guidelines, and treatments are made with the goal of removing only the target organisms. Pest control materials are selected and applied in a manner that minimizes risks to human health, to beneficial and non-target organisms, and to the environment.”

II. Purpose (Mission Statement)

The general purposes of the Committee shall be as follows:

- A. Protect and enhance public health, County resources, and the environment;
- B. Minimize risks and maximize benefits to the general public, staff and the environment as a result of pest control activities conducted by County staff and contractors;
- C. Promote a coordinated County-wide effort to implement IPM in the County in a manner that is consistent with the Board-adopted IPM Policy;
- D. Serve as a resource to help Department Heads and the Board of Supervisors review and improve existing pest management programs and the processes for making pest management decisions;
- E. Make policy recommendations upon assessment of current pest issues and evaluation of possible IPM solutions; and
- F. Provide a forum for communication and information exchange among members in an effort to identify, encourage, and stimulate the use of best or promising pest management practices.

III. Membership

- A. The membership of the Committee shall be composed of the following:
 - 1. Four (4) ex-officio, non-voting members as follows:
 - a. Agricultural Commissioner, or designee
 - b. Public Works Facilities Maintenance Manager, or designee
 - c. Public Works Deputy Director, or designee
 - d. A current Structural Pest Management contractor with the Public Works Facilities Maintenance Division
 - 2. Eight (8) voting members as follows:
 - a. Two (2) ex-officio members:
 - i. Health Services Department representative
 - ii. County/Unincorporated County Storm Water Program representative
 - b. Six (6) public members:
 - i. Public and Environmental Health Advisory Board representative
 - ii. County Fish and Wildlife Committee representative
 - iii. Three (3) Type 2, “At Large Appointments,”

- iv. One (1) Type 3, “At Large Appointment,” for an environmental organization with either 501(c)(3) or 501(c)(4) status
3. One (1) Type 3, “At Large Appointment” for a Public Member – Alternate.

B. Membership Requirements

1. Members must reside or work in Contra Costa County and should reflect the ethnic, racial, and geographical diversity of the County.
2. Contractors who provide pest management services to the County may not serve on the Committee. The exception is A.1.d., above, the Current Structural Pest Management Contractor with the Public Works Facilities Maintenance Division.
3. If a member’s work status or residence changes, he/she must notify the Committee in writing, within thirty (30) days of their change in status. The Chair will review the change of status and determine if the member is still eligible for membership according to these by-laws. If they are found to be ineligible, the member will be asked to resign his/her position.
4. Current employees of Contra Costa County are not eligible to serve on the Committee as “At Large Appointments” under A.2.iii, A.2.iv, and A.2.v above

C. Responsibilities of Membership

Each member must:

1. Have an interest in and commitment to the Purpose (Mission Statement) of the Committee;
2. Demonstrate knowledge of, interest in, and commitment to improvement of IPM practices in Contra Costa County;
3. Attend Committee meetings;
4. Notify the IPM Coordinator, in advance, of any unavoidable absence from a meeting; and
5. Must comply with the Contra Costa County Policy for Board Appointees concerning Conflict of Interest and Open Meetings, Resolution No. 2002/376.

D. Resignation

Any member who desires to resign his or her position with the Committee must do so in writing and file it with the Chair and Secretary of the Committee.

IV. Staff to the Committee

The County IPM Coordinator shall serve as staff to the Committee. Staff shall issue and distribute agendas in accordance with the Brown Act and Better Government Ordinance. Staff shall finalize minutes and distribute to members in the agenda packet.

V. Organization of the Committee

A. *Officers*: The officers of the Committee shall be the Chair, Vice-Chair, and Secretary.

B. *Duties of Officers*:

1. It shall be the duty of the Chair to preside at all meetings.
2. In the absence of the Chair, the Vice-Chair shall assume the duties of the Chair. Should both senior officers be unavailable, the Secretary shall preside.
3. The Secretary, or a designee of the Chair, shall take notes at all meetings

C. *Subcommittees*:

1. The purpose of a Subcommittee is to research and explore specific issues in-depth that come before the Committee.
2. The goal of a Subcommittee is to provide a working forum for interaction and information exchange among experts and staff focusing on issues needing in-depth consideration.

3. The Committee Chair shall designate Subcommittee members from the Committee with advice from the Committee.
4. For those issues that are technical in nature, the Subcommittee Chair, with a majority vote from the Subcommittee members, may invite experts from other agencies or institutions, such as East Bay Regional Park District, Contra Costa Mosquito & Vector Control District, Contra Costa Water District, the University of California Cooperative Extension, Pesticide Applicators Professional Association, Association of Applied IPM Ecologists, and/or Pest Control Operators of California and other appropriate representatives with technical expertise in a specific field to attend Subcommittee meetings to provide input and/or report to the Subcommittee.
5. Only the Subcommittee members will have voting rights to make final decisions regarding recommendations to send to the full Committee.

VI. Terms/Elections

A. *Committee:*

1. The terms for the Department Representatives do not expire. All other members shall serve for a term of two (2) calendar years. Any vacancies during the term of the member shall be filled for the remainder of that two (2) calendar year term. Members may serve more than one (1) two-year term if reappointed.
2. The Committee shall elect its officers every two (2) years, at the last meeting of each even numbered calendar year. Officers shall be elected by a simple majority of those present.
3. New officers shall assume their duties at the first meeting of the calendar year following their election.
4. Officers shall serve for a term of two (2) years. Any vacancies during the term of the officer shall be filled for the remainder of that two (2) calendar year term. Officers may serve more than one (1) two-year term if re-elected.
5. Should an officer resign, the vacancy will be filled by election at the next regular meeting.
6. Members with two (2) absences in a calendar year may be recommended by the Committee for removal from membership to the Board of Supervisors.
7. Committee vacancies will be filled per the Maddy Local Appointive List Act of 1975.

B. *Subcommittees:*

1. The Committee Chair selects Subcommittee members.
2. Subcommittee members recommend a Subcommittee chair to the Committee Chair, if needed.

VII. Duties of the Committee and Subcommittees

A. The general duties of the Committee shall include:

1. Working with County Departments to create, promote, implement, and periodically evaluate IPM programs, strategies, and policies specific to their operational needs and consistent with the County IPM Policy;
2. Recommending policies;
3. Prioritizing work of the IPM Coordinator;
4. Coordinating pest management among all areas of the County;
5. Forming Subcommittees to assist in the work of the Committee as deemed necessary by the Committee;
6. Promoting ongoing and expanded cross training among departments on IPM issues;
7. Promoting availability, public awareness, and public input into written county pest management programs, protocols, and records;
8. Helping create public awareness of IPM and promote public education on IPM techniques; and
9. Providing an ongoing forum for consensus and resolution of IPM issues.

- B. The general duties of the Subcommittees shall include:
 - 1. Researching and discussing matters requiring in depth consideration; and
 - 2. Making specific recommendations to the Committee as appropriate.

VIII. Meetings/Voting

- A. The Committee shall meet every other month on the first Wednesday of the month from 10:00 a.m. to 12:00 p.m.
- B. All meetings of the Committee shall be open to the public and all interested persons shall be permitted to attend meetings. Time shall be set aside for limited public comment on items not on the posted agenda.
- C. A notice of the regular meeting, with an attached agenda, shall be posted in a public notice area not less than ninety-six (96) hours prior to the meeting, pursuant to the Brown Act and the Better Government Ordinance.
- D. “Quorum” is defined as fifty percent plus one.
- E. A quorum of the total membership (at least 7 members) must be present in order to hold a meeting. In the absence of a quorum, no formal action shall be taken except to adjourn the meeting to a subsequent date.
- F. Voting at Meetings
 - 1. A quorum of voting members (at least 5 members) must be present before any vote on matters before the Committee can take place. Passage of a matter requires approval by a simple majority of the voting members present, except on matters involving policy recommendations to the Board of Supervisors.
 - 2. Passage of matters involving policy recommendations to the Board of Supervisors requires approval by a simple majority of the total number of voting members (at least 5 members).
 - 3. The Public Member – Alternate may vote only if a member listed in III. Membership A.2.b, above, is absent. Otherwise, the Public Member – Alternate may not vote on matters before the Committee.

IX. Bylaws/Amendments

These bylaws will govern the membership, organization, and meetings of the Committee. These bylaws may be amended by majority vote at any regular Committee meeting, a quorum being present, with prior notice to the membership.

X. Annual Objectives

The Committee shall review and adopt annual objectives at the first meeting of the calendar year.

XI. Reports to the Board of Supervisors

The Committee shall submit a status report on the activities of the Committee as directed, but no less frequently than annually, to the Transportation, Water & Infrastructure Committee of the Board of Supervisors. In addition, the Committee shall submit an annual report to the County Board of Supervisors in accordance with Section IV of Resolution No. 2002/377 (6/18/02).

XII. Committee Records

Records of the Committee shall be housed at the office of the IPM Coordinator.



Contra Costa County Board of Supervisors

Subcommittee Report

INTERNAL OPERATIONS COMMITTEE

6.

Meeting Date: 09/14/2015
Subject: Animal Welfare Benefit Fund
Submitted For: David Twa, County Administrator
Department: County Administrator
Referral No.: IOC 15/14
Referral Name: Animal Benefit Fund Review
Presenter: Timothy Ewell **Contact:** Timothy Ewell (925) 335-1036

Referral History:

On April 21, 2015, the Board of Supervisors received several comments regarding the Animal Benefit Fund from members of the public during fiscal year 2015/16 budget hearings. As part of budget deliberations, the Board directed staff to include a review of the Animal Benefit Fund to a Board Standing Committee for further review.

On May 12, 2015, the Board of Supervisors adopted the fiscal year 2015/16 budget. Included in the Board's action was the formal referral of this issue to the Internal Operations Committee.

Referral Update:

Staff has included information to assist the Committee discussion, including a copy of a board order from 1988 seeking to make the Animal Benefit Fund (Fund No. 133200) interest bearing, a ten-year revenue and expenditure history, current fund balance and detailed expenditures from fiscal year 2014/15.

The Resolution establishing the Fund could not be located; however, staff has included a Board Order that clarifies in its background:

"...to avoid disputes as to the disbursement of money in the fund, the Animal Services Director is authorized to make disbursements which, in his or her judgment, are in the best interest of the animals in the custody of the County."

This has been a continued practice of the department and applies to both one-time capital expenditures and reimbursement for various services and supplies that benefit animals being housed by the County. It is important to note that this practice does not supersede County procurement requirements, which among other things, require purchase orders or contracts exceeding \$100,000 to be approved by the Board of Supervisors. In addition, expenditures between \$25,000 and \$100,000 must be approved by the County Administrator's Office following recommendation by a department head.

In the most recent fiscal year, the Animal Services Department recommended and the Board approved one-time expenditures totaling \$309,925: \$170,000 for a Mobile Adoption Van and \$139,925 for stainless steel rolling cat cages. Both Board Orders are included in this agenda packet for reference.

The current fund balance in the Animal Benefit Fund for the fiscal year ending June 30, 2015 is \$645,555; however, it is important to note that the Fund has not yet been charged for the Mobile Van or the full costs of the acquisition of stainless steel cat cages.

Senior Deputy County Administrator Timothy Ewell will be present to provide a verbal report introducing the issue to the Committee. Interim Animal Services Director Glenn Howell has been invited to the Committee meeting to assist in answering any questions that the Committee may have.

Recommendation(s)/Next Step(s):

1. ACCEPT report on the Animal Benefit Fund; and,
2. PROVIDE direction to staff regarding next steps.

Attachments

Board Order Animal Benefit Fund Interest Accrual 7-12-88

Animal Benefit Fund 10 Year Expenditure History

Animal Benefit Fund Balance as of 8-30-15

Board Order Mobile Van Purchase 2-3-15

Board Order Cat Cages Purchase 2-3-15

TO: BOARD OF SUPERVISORS
FROM: Diane Iwasa, Director
Animal Services Department

DATE: June 15, 1988

SUBJECT: Authorization for Interest Accrual to the Animal Benefit Fund.



Contra
Costa
County

1.800

SPECIFIC REQUEST(S) OR RECOMMENDATION(S) & BACKGROUND AND JUSTIFICATION

RECOMMENDATION

The Animal Services Department is currently depositing donations to the Department in the Animal Benefit Fund.

The Board acknowledges and approves this practice and also authorizes the present amount in the Animal Benefit Fund and future additions to the fund to be invested for maximum return with interest to be credited to the fund with quarterly reviews to add interest to principal.

BACKGROUND

The Animal Services Department receives donations from individuals, animal welfare organizations and businesses, to support animal health and welfare projects that are not funded by departmental or general County revenue. Since the monies received are donated for a specific purpose, the interest accruing from monies deposited in this account should be credited to the benefit fund. In order to avoid disputes as to the disbursement of money in the fund, the Animal Services Director is authorized to make disbursements which, in his or her judgment, are in the best interest of the animals in the custody of the County.

CONTINUED ON ATTACHMENT: ☐ YES

SIGNATURE: Diane Iwasa

☐ RECOMMENDATION OF COUNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

☐ APPROVE ☐ OTHER

SIGNATURE(S):

ACTION OF BOARD ON July 12, 1988

APPROVED AS RECOMMENDED ☒ OTHER ☐

VOTE OF SUPERVISORS

☒ UNANIMOUS (ABSENT ---)

AYES: NOES:

ABSENT: ABSTAIN:

cc: County Administrator
Auditor-Controller
Animal Services

I HEREBY CERTIFY THAT THIS IS A TRUE
AND CORRECT COPY OF AN ACTION TAKEN
AND ENTERED ON THE MINUTES OF THE BOARD
OF SUPERVISORS ON THE DATE SHOWN.

ATTESTED July 12, 1988

PHIL BATCHELOR, CLERK OF THE BOARD OF
SUPERVISORS AND COUNTY ADMINISTRATOR

BY C. Matthews

DEPUTY

0369	ANIMAL BENEFIT FUND	10 Year Total	2014/15 Actual	2013/14 Actual	2012/13 Actual	2011/12 Actual	2010/11 Actual	2009/10 Actual	2008/09 Actual	2007/08 Actual	2006/07 Actual	2005/06 Actual
	<u>SUMMARY</u>											
E2000	Services and Supplies	60,384	1,000	0	0	0	0	0	0	59,384	0	0
E3000	Other Charges	22,454	0	0	0	0	0	0	0	22,454	0	0
E5000	Expenditure Transfers	691,818	162,440	66,022	100,029	178,627	0	0	184,700	0	0	0
TOTEXP	TOTAL EXPENDITURES	774,657	163,440	66,022	100,029	178,627	0	0	184,700	81,839	0	0
TOTREV	GROSS REVENUE	1,074,480	136,838	171,539	161,727	152,507	73,032	70,248	135,945	78,104	48,454	46,086
NETCOST	NET FUND COST (NFC)	(299,823)	26,602	(105,517)	(61,698)	26,120	(73,032)	(70,248)	48,755	3,735	(48,454)	(46,086)
	<u>EXPENDITURES</u>											
2352	Witness Fees & Expenses	1,000	1,000	0	0	0	0	0	0	0	0	0
2479	Other Special Departmental Exp	59,384	0	0	0	0	0	0	0	59,384	0	0
3611	Interfund Exp - Gov/Gov	22,454	0	0	0	0	0	0	0	22,454	0	0
5011	Reimbursements-Gov/Gov	513,191	162,440	66,022	100,029	0	0	0	184,700	0	0	0
5016	Intrafund-Trans-Gov/Gov	178,627	0	0	0	178,627	0	0	0	0	0	0
	<u>REVENUE</u>											
9070	Animal Licenses	27	27	0	0	0	0	0	0	0	0	0
9181	Earnings on Investment	73,664	2,464	1,793	2,135	2,520	1,964	1,435	5,499	17,905	21,557	16,392
9721	Spay Clinic Fees	770	0	0	0	0	0	0	0	0	0	770
9725	Misc Humane Services	788	0	0	0	0	0	96	642	0	0	50
9874	Autopsies & Medical Reports	52	0	0	0	52	0	0	0	0	0	0
9945	Sundry Taxable Sale	2,403	0	0	0	0	0	0	2,958	0	0	(555)
9965	Restricted Donations	996,277	134,347	169,746	159,592	149,935	71,068	68,718	126,846	59,699	26,897	29,429
9966	Misc Grants & Donations	500	0	0	0	0	0	0	0	500	0	0

Lookup Expenditures

Lookup Revenues

Lookup G/L Balances

Calc Fund Balance

FUND BALANCE CALCULATION		
FUND #	133200	ANIMAL BENEFIT
ASSETS	\$645,554.97	Account #'s 0010 - 0490
- LIABILITIES	\$0.00	Account #'s 0500 - 0690
= FUND BALANCE	\$645,554.97	Account #'s 0700 - 0990 Fund Balance listed is Total Fund Balance and may include restricted monies such as encumbrances
As-Of Date	8/31/2015	(FISCAL YEAR PY)
Two ways to determine Fund Balance:		
Assets minus Liabilities	\$645,554.97	Total of ending balances for all accounts 0010 - 0690
Fund Balance	-\$645,554.97	Total of all accounts in the 0700 - 0990 range EXCLUDING the six Budgetary accounts: 0710 Reserve for Encumbrances 0760 Budget Control - PY Encumbrances 0780 Budgetary Control - Current Year 0910 Estimated Revenue 0930 Appropriations PY & CY 0940 Encumbrances These six accounts should always be ignored when calculating Fund Balance. Normally, the accounts remaining after exclusion will be: 0750 Fund Balance Available 0810 (0800) Revenue (or Receipts) 0820 (0830) Expenditures (or Disbursements) 0860 Fund Transfers

You can calculate the FUND BALANCE as of the latest daily or period-end **General Ledger**. Please enter the Fund Number to calculate:

Fund #:

As of the latest...

DAILY run for:

Current Year *

Prior Year

PERIOD-END for:

FY 2015-16 *

FY 2010-11

FY 2005-06

FY 2014-15

FY 2009-10

FY 2004-05



Contra
Costa
County

To: Board of Supervisors
From: Glenn E. Howell, Animal Services Director
Date: February 3, 2015

Subject: Mobile Adoption Vehicle Resolution

RECOMMENDATION(S):

APPROVE and AUTHORIZE the Purchasing Agent, or designee, on behalf of the Animal Services Department, to execute a purchase order with La Boit Specialty Vehicles in an amount not to exceed \$170,000.00, to procure a mobile adoption vehicle, per Bid No. 1411-110.

FISCAL IMPACT:

Cost is to be charged directly to the Animal Services Department and will be 100% funded by donations to the Animal Services Department. No additional County costs are anticipated under this Resolution.

BACKGROUND:

A modern mobile adoption vehicle is long overdue. It will enhance our exposure at our weekly mobile adoption events, make for a great marketing tool, and most importantly improve our efforts to place animals into loving homes. The old adoption van is noisy and uncomfortable for animals and very unsettling for many dogs during transport. A new adoption van will be quiet and comfortable for the animals during transport. It will afford us the opportunity for the first time to bring cats to mobile adoption events. It has viewing areas that are comfortable not just for the animals, but for the public as well.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: 02/03/2015

☒ APPROVED AS
RECOMMENDED

☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Mary N. Piepho, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: February 3, 2015

David J. Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Kathy O'Connell
925-335-8370

cc:

CONSEQUENCE OF NEGATIVE ACTION:

Failure to allow procurement of the Mobile Adoption Van impedes Animal Services' ability to increase and expand our mobile adoption events and increase public access to adoptable animals.

CHILDREN'S IMPACT STATEMENT:

No impact.



Contra
Costa
County

To: Board of Supervisors
From: Glenn E. Howell, Animal Services Director
Date: February 3, 2015

Subject: Animal Services Rolling Cat Cages

RECOMMENDATION(S):

APPROVE AND AUTHORIZE the Purchasing Agent, or designee, to execute on behalf of the Animal Services Department, a purchase order with Tri Star Vet in an amount not to exceed \$139,928.08 to procure specialized stainless steel stackable rolling cat cages.

FISCAL IMPACT:

The purchase is 100% funded by donations to the Animal Services Department. No additional County costs are anticipated.

BACKGROUND:

The standards of care for animal housing within the Animal Shelter industry have dramatically increased and have been redefined over the last 10 years. One standard that was changed was the required space necessary for feline housing to prevent stress related diseases. The need for improved housing was also due to the animals' length of stay in a Shelter which has tripled over time. Severe confinement over an extended period of time has been shown to be the main cause of diseases in a shelter environment. The old feline housing at the Animal Services Department was outdated and considered, by current standards, to be inhumane. Presently we have a portion of the feline housing that has been here since the 1960s. It must be changed. In addition, the new, larger cages are mobile and easier to handle making the care of the animals more easily facilitated by Shelter staff.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **02/03/2015** ☒ APPROVED AS
RECOMMENDED

☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Mary N. Piepho, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: February 3, 2015

David J. Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Kathy O'Connell
925-335-8370

cc:

CONSEQUENCE OF NEGATIVE ACTION:

The Contra Costa County Animal Services Department will be operating the shelter with below-standard feline cages, causing stress related diseases within the Shelter.

CHILDREN'S IMPACT STATEMENT:

No impact.



Contra Costa County Board of Supervisors

Subcommittee Report

INTERNAL OPERATIONS COMMITTEE

7.

Meeting Date: 09/14/2015
Subject: Community Choice Aggregation
Submitted For: Jason Crapo, County Building Official
Department: Conservation & Development
Referral No.: IOC 15/15
Referral Name: Community Choice Aggregation
Presenter: Jason Crapo (925) 674-7722 **Contact:** Jason Crapo, (925) 674-7722

Referral History:

On August 18, 2015, the Board of Supervisors referred to the IOC the topic of Community Choice Aggregation. Community Choice Aggregation (CCA) is the practice of aggregating consumer electricity demand for purposes of procuring energy.

Referral Update:

The purpose of this report is to introduce the topic of Community Choice Aggregation (CCA) and to begin discussion and study of the County's potential interest in implementing CCA. This report provides general background concerning CCA, summarizes some of the potential benefits, costs and risks associated with CCA, and describes potential next steps to consider if the Committee and the Board of Supervisors decide to further pursue CCA within the County.

Background

Community Choice Aggregation (CCA) is the practice of aggregating consumer electricity demand within a jurisdiction or region for purposes of procuring energy. The existing energy utility remains responsible for transmission and distribution. The most common reason for jurisdictions pursuing CCA is to promote electricity generation from renewable energy sources.

CCA agencies exist in several states, including Illinois, Massachusetts, Ohio and California. CCA in California was authorized by AB 117 in 2002, which allows cities and counties to become electricity providers, or form a Joint Powers Authority (JPA) for this purpose.

CCA agencies are subject to regulation by the California Public Utilities Commission (CPUC), and require certification by the CPUC.

In 2010, Marin Clean Energy became the first CCA agency certified in California. Sonoma Clean Power was the second, in 2014. Both Marin Clean Energy (MCE) and Sonoma Clean Power are JPAs comprised of the host county and various cities. During 2013 and 2014, the cities of Richmond, San Pablo and El Cerrito took actions to join MCE and residents of those cities are

now served by MCE. The cities of Walnut Creek and Lafayette have submitted letters of intent to join MCE in recent months, and MCE intends to consider granting membership to these cities this fall. Others members of MCE outside Marin County include the City of Benicia and unincorporated Napa County.

A number of cities and counties in California are currently in the process of implementing or studying the formation of CCA agencies, including the counties of Alameda, Santa Clara, San Mateo, Santa Barbara, San Diego, Los Angeles and the City and County of San Francisco. San Francisco has obtained certification of its CCA Implementation Plan from the CPUC.

Formation of a CCA agency in Contra Costa County could involve the creation of a JPA between the County and cities within the County that are interested in participating. Under such a scenario, the CCA agency would be a separate entity from the County, with an independent governing Board.

It is also possible for a CCA agency to span multiple counties. MCE already includes jurisdictions in Marin, Napa, Solano and Contra Costa counties, and Contra Costa County could investigate the possibility of including the unincorporated area of the County in MCE's service area (as stated above, Richmond, El Cerrito and San Pablo have joined MCE, and Walnut Creek and Lafayette have petitioned to do so). Another alternative is that Contra Costa County could investigate the possibility of partnering with Alameda County to form a CCA agency serving the two-county East Bay region.

There are tradeoffs associated with a multi-county organizational structure. A larger service area and customer base can achieve economies of scale in operating a CCA agency and purchasing power. However, increasing the number of jurisdictions participating in such an agency adds complexity to decision-making and governance.

Benefits of CCA

There are numerous potential benefits associated with local government participation in CCA. The following is a partial list of such benefits:

- *Increased Energy Production from Renewable Sources:* The main benefit typically associated with CCA in California is increasing the supply of electricity derived from renewable sources, such as wind and solar. The investor-owned utilities (IOUs), such as Pacific Gas and Electric (PG&E), are required to supply a portion of their electricity from renewable sources. CCA can increase the amount of energy generated from renewable sources by offering customers electricity that is derived from 100% renewable sources, or is derived from a supply portfolio that contains a greater proportion of renewable energy than required of the IOUs.
- *Local Control:* Nearly all residents and businesses in Contra Costa County receive electricity from PG&E, which is a large privately-owned company with a service area covering over half of California. CCA would give residents of the County the option of receiving electricity from a local public agency governed by officials who would be responsive to the interests of the local community.
- *Increased Competition and Consumer Choice:* PG&E is a regulated monopoly. CCA would introduce competition into the electricity market in Contra Costa County, creating additional consumer choices and creating market pressure for improved service by all electricity providers.

- *Local Economic Benefits:* A CCA agency may choose to procure power from local renewable energy sources, such as local wind and solar energy generation facilities. The CCA agency could do so by constructing and owning such facilities, or by purchasing renewable energy from privately owned local facilities. Procurement of renewable energy from local sources would create construction jobs and ongoing revenue streams to the local economy.

Costs and Risks of CCA

There are costs and risks associated with CCA. The main risk is that the CCA agency will not compete effectively with the incumbent IOU (PG&E) and will therefore not be financially sustainable. This scenario could occur if the CCA agency does not offer electricity to consumers at a price that is competitive with the price offered by the IOU. The price of electricity that could be offered through CCA in Contra Costa County would depend on a number of variables, including the mix of energy sources included in the CCA agency's electricity supply portfolio and the size of the CCA agency's estimated customer base. These considerations would need to be evaluated in greater detail by consultants with expertise in energy markets prior to a decision to form a CCA agency within the County.

The formation of a CCA agency in Contra Costa County would also involve significant start-up costs. Prior to the formation of a CCA agency, start-up costs would be incurred by the County and potentially shared by partnering cities. Additional start-up costs would be required after CCA agency formation and prior to any revenues being generated from power sold to customers. Should Contra Costa County seek to implement a new CCA agency, preliminary estimates suggest total CCA start-up costs would be approximately \$3 million. These costs are described in greater detail below:

Pre-Agency Formation Start-Up Costs

CCA start-up costs prior to the formation of a new CCA agency would include the following categories of expenses:

- Community outreach and public meetings to determine the level of public interest and preferences associated with CCA;
- Collection of billing and electricity load data from PG&E;
- Hiring consultants to study the feasibility of forming a CCA agency within the County;
- Legal expenses associated with negotiating contracts and a joint powers agreement between the County and cities that are interested in jointly forming a CCA JPA;
- County and city staff time associated with managing these activities.

Based on preliminary research and the experience of other jurisdictions, staff estimates the cost of start-up activities prior to the CCA agency formation to be approximately \$1 million. Much of these costs could eventually be reimbursed to the County and partnering cities from the CCA agency, once it is formed and operating. The extent of cost recovery and the period of time required for cost recovery remains to be determined and would be based on the projected ability of the CCA agency to generate revenues that exceed operating expenses over time.

Post-Agency Formation Start-Up Costs

Following the formation of Joint Powers Authority or designation of other CCA agency,

additional start-up costs would be necessary before the CCA agency could begin to provide electricity and receive associated revenues from customers. Start-up costs following CCA agency formation would include the following:

- Hiring CCA staff;
- Preparation of an Implementation Plan and other required filings to the CPUC;
- Payment of fixed costs to PG&E as may be mandated by the CPUC;
- Negotiation and execution of a contract with PG&E for necessary services not provided by the CCA agency, such as customer billing, transmission and distribution;
- Negotiation and execution of energy purchase contracts with energy suppliers;
- Potential capital expenses associated with constructing renewable energy generation facilities.

Initial indications are that these post-CCA formation costs would be in the range of \$2 million. The source of funding for these expenses is yet to be determined, and could include revenues from the sponsoring entities, such as the County and partnering cities, or from borrowing. Repayment of such expenses to the funding sources would be contingent on the successful and sustained operations of the CCA agency.

Topics of Additional Study and Potential Next Steps

Implementation of a new CCA agency in Contra Costa County would include public outreach and consultation with cities to determine the level of interest in CCA within the County. Assessment of public interest and identification of partnering cities would be essential to proceeding with CCA implementation. Next steps, should the Committee and the Board of Supervisors decide to proceed, could include the development of an outreach plan and associated staffing and budget.

Assuming public outreach identifies a sufficient level of interest within the County and among cities, a technical feasibility study would need to be conducted by qualified consultants to analyze the projected customer base for a CCA agency, and the projected electricity rates for CCA customers.

Following a feasibility study, interested jurisdictions would need to evaluate the findings of the study and decide whether or not to proceed in forming a CCA agency, or potentially a JPA if two or more jurisdictions are interested in participating.

Another area of possible investigation would be to further explore the potential for the County to join Marin Clean Energy, or for the County to partner with Alameda County in forming a new CCA agency. Such partnerships could reduce the cost to the County of participating in CCA, but would be require negotiation of agreements with partnering agencies concerning cost sharing and governance.

Recommendation(s)/Next Step(s):

ACCEPT this report and CONSIDER providing direction to staff regarding next steps to further investigate potential Community Choice Aggregation (procurement of consumer energy) implementation.

Fiscal Impact (if any):

None. This is an informational report only.

Attachments

No file(s) attached.



Contra Costa County Board of Supervisors

Subcommittee Report

INTERNAL OPERATIONS COMMITTEE

8.

Meeting Date: 09/14/2015

Subject: REVIEW OF PACE OPERATING AGREEMENT

Submitted For: David Twa, County Administrator

Department: County Administrator

Referral No.: IOC 15/10

Referral Name: Property Assessed Clean Energy Financing/Assessment Districts

Presenter: Julie DiMaggio Enea/Jason
Crapo

Contact: Julie DiMaggio Enea
925.335.1077

Referral History:

On June 16, 2015, the Board of Supervisors approved the County's participation in PACE (property assessed clean energy) financing programs and directed the Department of Conservation and Development to implement an application process to enable PACE financing providers to apply to operate PACE programs in Contra Costa County. PACE providers have subsequently raised concerns about the form of the County's operating agreement and related PACE policies. On August 25, the Board referred the PACE operating agreement back to the Internal Operations Committee in order to provide an opportunity for these concerns to be re-examined in the context of the Board's goals for this program.

Referral Update:

Attached is the PACE operating agreement template and application form approved by the Board of Supervisors on June 16, 2015, and also correspondence from PACE providers describing their concerns, which are summarized below:

1. Assessed vs. Fair Market Value

Issue: The Operating Agreement proposes that property value be based on assessed value only.

Provider Comment: PACE financing in the State of California is based on market value. To qualify for PACE financing, a property owner must have no more than a 90% loan to value (LTV) on their property before the PACE assessment. Assessed value is normally lower than market value so property owners who otherwise would have qualified based on market value, wouldn't qualify with assessed value. For example, if the market value of a property is \$500,000 and the assessed value is \$300,000, if the loan amount exceeds \$270,000 the property owner wouldn't qualify for PACE financing. Using assessed value would also exclude many of the property's under Proposition 13 from participation because these properties haven't been reassessed in decades. Please see the attached letter from Sonoma County which addresses why they transitioned from assessed value to market value for their own local government run program. As you know, Sonoma County created the first successful PACE program in the nation and set the gold standard for PACE underwriting, and every PACE program to date has been modeled after Sonoma County's SCEIP program. Below is a section from the Governor's Loan Loss Reserve Program that refers to property value. The type of

property value isn't specified because the State of California allows the value of the property for PACE financing to be based on market or assessed value, which can be confirmed by CAEATFA, administrator for the program. Like Sonoma County, Hero uses an Automated Valuation Model ("AVM"), which is used throughout the mortgage industry to provide real estate property valuations for purposes of lending against the valuations.

§10081. Application by PACE Program to the PACE Loss Reserve. A PACE Program seeking to participate in the PACE loss Reserve Program shall complete an application that shall include the following information: (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)). (10) The total mortgage-related debt and PACE Financing on the underlying property does not exceed the value of the property.

Provider Proposed Solutions: (1) Allow for market value to be used. Until this change is implemented, we request that property owners who don't qualify for financing based on the assessed value be allowed to use a BPO (Broker's Price Opinion), drive by appraisal, or full appraisal to demonstrate they meet the 90% loan to value (LTV) requirement. (2) Allow "the greater of Assessed Value or Fair Market Value" to be used.

Staff Comment: Property value is used to determine the eligibility of a property for PACE financing and defining the maximum amount of a PACE lien that the property may carry. Staff has previously recommended using assessed value rather than market value. Should the Committee and the Board wish to use fair market value as the basis for PACE financing, staff recommends that fair market value be established with a qualified independent appraisal or, in the absence of such an appraisal, that assessed value be used. In order to avoid actual or perceived conflicts of interest, property value should be determined independently. As to methods, AVM valuation can vary significantly from a qualified independent appraisal (see attached article on problems with relying on AVM). BPOs are generally cheaper than full appraisals but may not be as complete or accurate. Establishing fair market value through appraisal by an independent licensed appraiser is standard for the mortgage industry because it is the most accurate method and eliminates the potential for a conflict of interest.

Consider also that many properties that have not been reassessed due to Proposition 13 will have a low LTV ratio because the long-term owners have built up equity over time. A low LTV means higher equity and capacity for PACE financing. Using the provider's example, if the market value of a property is \$500,000 but due to Proposition 13, the assessed value is only \$300,000, the owner still may be able to qualify for a PACE loan depending on his/her equity, which can be high in this situation.

2. Contractors Indemnifying the County

Issue: The Operating Agreement proposes that contractors release, defend, indemnify, protect, save and hold harmless the County of Contra Costa to the same extent as the indemnity and release provided by the PACE Provider to the County.

Provider Comment: Contractors are required to sign a Participation Agreement (see attached) whereby they agree to indemnify the participating jurisdiction as it relates to their work performed under the program. Requiring participating contractors to provide the same level of indemnification as the PACE provider would add undue risk and liability to the contractors. 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.

Provider Proposed Solution: We request that the County remove the requirement that contractors indemnify the County, and that the County instead adopt the contractor indemnification language in the Contractor Participation Agreement, to which all participating contractors have agreed.

3. Contractor General Liability Insurance & Additional Insured Requirements

Issue: The Operating Agreement proposes that contractors maintain commercial general liability insurance,

including contractual liability (or blanket contractual) coverage, owners' and contractors' protective coverage, and broad form property damage coverage, with a minimum of \$2M per occurrence; maintain builders' risk insurance in an amount equal to the construction contract amount, with a waiver of subrogation for the County, and naming the County as additional insured. The Operating Agreement also proposes that Contractors add the County as additional insured on the contractor's general liability and auto liability policies.

Provider Comment: The standard coverage amount for commercial general liability insurance is \$1M per occurrence. Any amount over \$1M would require the purchase of an excess policy at an additional premium. Additionally, Builder's Risk, aka Course of Construction, policies are designed for new construction and structural remodels to provide protection for the structure and the contractor's materials. These types of projects cannot be financed with PACE. And, contractors would incur an annual cost of \$250 to add the County as an additional insured, which will greatly hinder contractor participation as contractors will utilize other forms of financing over PACE to avoid this annual cost.

Provider Proposed Solution: We're requesting the County to require contractors to carry the industry standard amount of \$1M per occurrence for commercial general liability insurance, strike the requirement for a Builder's Risk policy as this coverage is not applicable, and strike the requirement for contractors to add the County as an additional insured as it would greatly hinder contractor participation and therefore greatly hinder the program's overall success.

Staff Comment: Risk Management has reconsidered the matter and has indicated that coverage of \$1 million per occurrence will be sufficient. County Counsel will clarify the indemnification language used in the program documents. It is not necessary that the program documents be revised for this purpose, although this could be done if that is the Board's preference.

4. Lender Consent

Issue: Both the Sonoma and Sacramento agreements require "lender consent" or "lender acknowledgement" for non-residential properties, but only for the primary mortgage lender. The Contra Costa agreement requires lender consent from "any lender that has outstanding loans to the Program Participant."

Provider Comment: 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.

Provider Proposed Solution: (1) Require lender consent/acknowledgment from only the primary mortgage lender. (2) We request that the lender consent requirement for non-residential properties be modified to read: "Require Program Participants who own non-residential properties to obtain written consent to participate in the PACE Program from lenders who have made loans to the Program Participant where the property in question serves as security for the loan."

Staff Comment: Staff concurs with the second proposed solution.

5. Loan Limits for Residential Properties over \$700,000 and for Non-Residential Properties

Issue: The limit of 10% of value for the PACE lien amount for residential properties whose value is over \$700,000. The PACE assessment contract financing maximum of no more than 20% of a non-residential property's value.

Provider Comment: 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.

Provider Proposed Solution: Modify the County's operating agreement to mirror the PACE Reserve Fund Regulatory Language with respect to properties valued at over \$700,000, and eliminate the 20% cap on non-residential PACE financings.

Staff Comment: Regarding residential properties valued at more than \$700,000, this was a drafting error in the County's operating agreement. Staff concurs with the proposed solution, and that the County's operating agreement should be modified to mirror the PACE Reserve Fund Regulatory Language which states, "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).

Regarding the 20% of value cap on non-residential PACE loans, staff can agree to eliminate this limitation, given that we keep the limitation in our Operating Agreement that a PACE assessment cannot result in property taxes exceeding 5% of assessed value (paragraph 4.g. in our Operating Agreement). This provision provides a limit on annual loan payments, which has the effect of limiting loan size.

6. Definition of Residential vs. Non-Residential Properties

Issue: The operating agreement lacks a clear definition of the difference – in the context of PACE financing – between residential and non-residential properties.

Provider Comment: We suggest the following definition: "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.

Staff Comment: Staff concurs with the suggestion except that we propose that non-residential property be defined as multi-family properties of 4 or more units (not 5, as proposed), which corresponds to the State's definition of residential property as 3 or fewer units..

7. Tax Deductibility Disclaimer

Issue: Some PACE providers may be representing to customers that the full PACE assessment payment is tax deductible.

Provider Comment: No PACE provider nor a PACE provider's contractors operating in Contra Costa County's unincorporated areas should be permitted to claim that the full amount of the PACE assessment is deductible from one's income taxes.

Provider Proposed Solution: Provide in the County's operating agreement that PACE providers may recommend that property owners consult with a tax professional prior to claiming any tax deductions associated with the project, and shall not recommend or indicate that homeowners take any particular filing position regarding their annual or semi-annual PACE assessment payments, and shall imply, through discussions or calculations, that the full assessment payment amount may be tax deductible but rather only the interest."

Staff Comment: Staff concurs.

8. Processing Fee

Issue: Neither Sonoma nor Sacramento require a \$5,000 fee from the Program Provider.

Staff Comment: PACE providers are commercial businesses and the County has chosen to regulate the

manner in which PACE loans are made in the unincorporated area. Each PACE provider's application and program will be reviewed by staff of the Conservation and Development Department as the lead County department for PACE, County Counsel with respect to the operating agreement, and the Auditor and Treasurer-Tax Collector with respect to the administration of property tax. Depending upon the particulars of each provider submittal, we anticipate that each review may require 20-40 hours of staff time. The \$5,000 administrative fee is a deposit to defray the County's actual cost of processing a PACE provider application. Any portion of the deposit that is not required by the County will be refunded to the provider. The County does not intend to earn a profit in the administration of the PACE program.

Recommendation(s)/Next Step(s):

CONSIDER concerns raised by PACE (Property Assessed Clean Energy) providers regarding the form of the County's operating agreement and related PACE policies.

Attachments

CCC PACE Application Form

CCC PACE Operating Agreement

Comments Cliff Statton Renewable Funding 6-12-15

Comments Jonathan Kevles Renewable Funding 7-22-15

Correspondence Eve Perez-HERO Sharon Andersen 7-17-15

HERO Home Value Calculation 7-14-15

Comments Jonathan Kevles Renewable Funding 7-7-15

Article: Top 5 Problems with Automated Valuation Models

Contra Costa County
Department of
Conservation and Development
 30 Muir Road, Martinez, CA 94553
 PHONE: 925-674-
 FAX: 925-674-



**PROPERTY ASSESSED CLEAN
 ENERGY (PACE)
 PROGRAM APPLICATION
 FORM**

APPLICANT INFORMATION

Applicant (PACE Financing Joint Powers Authority):
 Program Name:

Statutory Authority for PACE Financing and Contractual Assessments (check one):

- ☐ The Improvement Act of 1911 (Streets and Highways Code section 5898.10 et seq. AB 811)
☐ The Mello-Roos Community Facilities Act (Government Code section 53311 et seq. SB 555)

Mailing Address:

Program Site (if different):

Primary Contact:

Title:

Phone:

Email:

REQUIRED INFORMATION

1. Contra Costa County requires PACE programs to participate in the State of California's PACE Loss Reserve Program, administered by CAEATFA. Please provide evidence of your current participation in this program, and a copy of all application materials submitted to CAEATFA. Please update this information if changes have been made since your application materials were submitted to CAEATFA. Information should be submitted to the County in the same sequence as listed on the CAEATFA PACE Program Application form.
2. In addition to the PACE Loss Reserve Program application materials in 1. above, please describe how your program addresses the following topics: Program Eligibility; Underwriting Criteria; Contractor Restrictions; Energy Audit Requirements; Treatment of State or Federal Rebate or Incentive Programs; Eligible Costs to be Financed; Minimum and Maximum Assessment Amounts; Financing Term (time duration of financing); Current Interest Rates; Fees Assessed to Property Owners; Program Reserve Fund.
3. Contra Costa County requires PACE programs to disclose all financial risks to potential program participants, including risks associated with Federal Housing Finance Agency (FHFA) regulation of mortgage financing. Please describe how disclosure information is provided to program participants and provide copies of supporting materials.
4. Provide the following: the form of Resolution and any other documents requiring approval by the County to initiate the County's participation in the proposed PACE program; the form of the contractual assessment required of participating property owners; executed agreements between the public agency sponsoring the PACE financing district and parties responsible for administering the PACE program on behalf of the sponsoring agency; and any relevant Joint Powers Authority agreement.

ADDITIONAL PROGRAM REQUIREMENTS

- ☐ PACE Providers operating PACE programs in Contra Costa County are required to enter into an Operating Agreement with the County. A copy of the form Operating Agreement is attached to this application form. Initial here to indicate your acknowledgment of this requirement _____.
- ☐ PACE program applicants are required to provide an initial deposit of \$5,000 to process the application. Please initial here to acknowledge that your deposit payment is attached to this form _____.

Signature (PACE Financing Joint Powers Authority):_____ Title:_____ Date:_____

**OPERATING AGREEMENT BETWEEN
CONTRA COSTA COUNTY AND PACE PROVIDER FOR
PROPERTY ASSESSED CLEAN ENERGY (PACE) FINANCING**

This agreement ("Agreement"), dated as of _____, 2015 ("Effective Date"), is by and between Contra Costa County, a political subdivision of the State of California (the "County"), and _____, a California limited joint powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California (Section 6500 and following (the "PACE Provider").

RECITALS

A. Property Assessed Clean Energy (PACE) financing is a method of providing loans to property owners to finance permanent energy efficiency improvements on real property. A property owner who obtains a PACE loan repays the loan by entering into an agreement that allows an assessment to be levied on the property. These assessments are known as voluntary contractual assessments.

B. Voluntary contractual assessments that are utilized to finance the installation of energy efficiency improvements on real property are authorized by (1) the Improvement Act of 1911, as amended by AB 811 (Streets and Highways Code Section 5898.10 et seq.) ("Improvement Act") and (2) the Mello-Roos Community Facilities Act of 1982, as amended by SB 555 (Government Code Section 53311 et seq. ("Mello-Roos Act").

C. The PACE Provider is a joint exercise of powers authority that was created to establish a PACE financing program. The PACE Provider has established the _____ Program ("PACE Program") to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements that are permanently affixed to real property through the levy of assessments voluntarily agreed to by property owners participating in the PACE Program. Under the PACE Program, the PACE Provider accepts applications from eligible property owners, conducts assessment proceedings, and levies assessments.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

1. **Definitions.** As used in this Agreement, the following terms have the following meanings:

- a. "PACE Administrator" means an independent contractor of the PACE Provider that markets, administers and carries out the PACE Program on behalf of the PACE Provider.

- b. “Eligible Improvement” is a renewable energy improvement, energy efficiency improvement or other improvement authorized by the Improvement Act, the Mello-Roos Act or other state law pertaining to voluntary contractual assessments.
- c. “Participating Contractor” is any contractor that installs Eligible Improvements that are funded by a PACE Provider.
- d. “Program Participant” is a property owner who enters into a voluntary contractual assessment with the PACE Provider.
- e. “Property Assessed Clean Energy (PACE) Financing” is a means of financing Eligible Improvements as authorized by the Improvement Act, the Mello-Roos Act, or other state law pertaining to voluntary contractual assessments.

2. General Requirements.

- a. PACE Provider's Specified Services. The PACE Provider may offer and provide Property Assessed Clean Energy Financing to property owners in the unincorporated areas of the County. The PACE Provider is solely responsible for the formation, operation and administration of the PACE Program, including the conduct of assessment proceedings, the levy and collection of assessments, and the offer, sale and administration of any bonds issued by the PACE Provider on behalf of the PACE Program.
- b. Cooperation with County. The PACE Provider shall independently operate its program and cooperate with the County and County staff as described in this Agreement.
- c. Performance Standard. The PACE Provider shall provide PACE Financing in a manner consistent with the level of competency and standard of care normally observed by an organization providing PACE Financing pursuant to the Improvement Act or Mello-Roos Act.

3. Disclosure Requirements.

The PACE Provider shall do all of the following:

- a. Disclose in writing to potential Program Participants the financial risks associated with PACE Financing, including the risks associated with federal regulation and administration of mortgage financing and the position of the Federal Housing Finance Agency (FHFA) on PACE lending. The disclosure materials must include a copy of the August 20, 2014 FHFA letter to Santa Clara County regarding PACE lending, which is attached and incorporated herein as Attachment A.

- b. Require potential Program Participants to sign a written acknowledgment of the Federal Housing Finance Agency (FHFA) position on PACE liens.
- c. Require Program Participants who own non-residential properties to obtain written consent to participate in the PACE Program from any lender that has outstanding loans to the Program Participant.
- d. Provide federal Truth in Lending Act disclosure details to the applicant specific to the requested amount of the financing.
- e. Advise potential Program Participants of available state or federal rebate or incentive programs.
- f. Require each Program Participant to obtain from the County all building permits for improvements.

4. Financial Requirements.

- a. The PACE Provider shall administer and review Program Participant eligibility and determine the Eligible Improvement costs to be financed.
- b. The PACE Provider shall establish its own interest rates, payback terms and fees.
- c. The PACE Provider shall participate in the State of California's PACE Loss Reserve Program, administered by the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA), and provide evidence of current participation and copies of all application materials submitted to CAEATFA. If the State discontinues the PACE Loss Reserve Program, or if the County determines that the State's PACE Loss Reserve Program does not provide adequate coverage, then the County may terminate this Agreement unless the County is satisfied with coverage by an alternative loan loss reserve program.
- d. 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.
- e. For non-residential properties, the PACE Provider will ensure that the loan amount does not exceed 20% of the assessed value of the property.
- f. The PACE Provider shall ensure that any loans existing prior to the proposed PACE lien have an aggregate amount of no more than 90% of the

assessed value of the property, including all mortgage-related debt as determined as of the date the assessment contract is executed.

- g. The PACE Provider shall ensure that the total property taxes and assessments for each property that will have PACE Financing will not exceed 5% of the assessed value of the property as determined as of the date the assessment contract is executed.
- h. The PACE Provider shall verify that each Program Participant is current on all property taxes and has not made late payments in the past three years, and verify that each Program Participant has not filed for bankruptcy in the past three years.
- i. It is the PACE Provider's obligation to coordinate with the Auditor-Controller's Office each year regarding delinquent assessments.

5. Reports.

For each property that has entered into a voluntary contractual assessment through the PACE Provider, the PACE Provider shall provide project information and data in an accessible electronic format to the County on a monthly and annual basis and upon request, including but not limited to the following:

- a. The Assessor's Parcel Number (APN) and property type (residential or non-residential) of the property.
- b. The amount of the contractual assessment.
- c. All installed Eligible Improvements financed through PACE Financing.
- d. The solar STC-DC rating in watts or kilowatts of each Eligible Improvement.
- e. The expected financial and energy savings associated with each Eligible Improvement.

6. Participating Contractor Obligations. The PACE Provider shall ensure that each Participating Contractor agrees to and abides by the following terms and conditions:

- a. Each Participating Contractor shall have all required California State License Board licenses and all other required State and County licenses.
- b. Each Participating Contractor's bonding must be in good standing.
- c. Each Participating Contractor shall hold harmless, indemnify and defend the County as set forth in Section 9 (c).
- d. Each Participating Contractor shall have insurance as required in Section 12 (b).

- e. Participating Contractors and their representatives, employees, and agents shall not represent themselves as agents, representatives, contractors, subcontractors, or employees of the County or the Department of Conservation and Development or claim association or affiliation with the County or Department of Conservation and Development.
7. Agreement with County Auditor-Controller. The PACE Provider will enter into a separate agreement with the Contra Costa County Auditor-Controller for the administration of property tax assessments placed on properties through the PACE Financing program.
8. Agreement with Program Participant. Each voluntary contractual assessment between the PACE Provider and a Program Participant shall require the Program Participant to hold harmless, indemnify and defend the County in accordance with the terms set forth in Attachment B, attached hereto. The terms set forth in Attachment B shall be incorporated into the PACE Provider's voluntary contractual assessment with each Program Participant for PACE Financing.
9. Indemnification and Release.
 - a. Indemnification Obligation of the PACE Provider. To the fullest extent not prohibited by applicable law, the PACE Provider shall defend, indemnify, protect, save, and hold harmless the County, the County Auditor-Controller, the County Treasurer-Tax Collector, their respective employees, agents, attorneys, officers, divisions, related agencies and entities, affiliates, successors and assigns (collectively and individually the "Indemnitees"), from any and all claims, cost, loss, liability, expense, damage (including consequential damages), or other injury, claim, action or proceeding (collectively "Liability") arising out of or connected with this Agreement or activities taken by the parties pursuant to this Agreement, including: (i) any claim, action or proceeding to attack, set aside, void, abrogate, rescind or annul this Agreement or the actions of either party under this Agreement; (ii) the placement or collection of assessments on participating properties; or (iii) the acts, errors or omissions of the PACE Provider, its officers, employees, agents, contractors, subcontractors, or any person under its direction or control in connection with this Agreement; and will make good to and reimburse Indemnitees for any expenditures, including reasonable attorney's fees, the Indemnitees may make by reason of such matters. If requested by any of the Indemnitees, the PACE Provider will defend any such suits at the sole cost and expense of the PACE Provider with counsel selected or approved by the Contra Costa County Counsel.

The PACE Provider's obligations under this section will exist regardless of concurrent negligence or willful misconduct on the part of any Indemnatee or any other person; provided, however, that the PACE Provider will not be required to indemnify Indemnitees for the proportion of Liability a court determines is attributable to the sole negligence or willful misconduct of the County, its

governing body, officers or employees. This indemnification clause shall survive the termination or expiration of this Agreement.

b. PACE Provider's Release. To the fullest extent not prohibited by applicable law, the PACE Provider hereby releases and forever discharges the County, the County Auditor-Controller, the County Treasurer-Tax Collector, their respective employees, agents, attorneys, officers, divisions, related agencies and entities, affiliates, successors and assigns (collectively "Released Parties"), from any and all claims, cost, loss, liability, expense, damage (including consequential damages), or other injury, claim, action or proceeding (including without limitation, attorneys fees and expenses), which the PACE Provider now has or could assert in any manner arising out of or connected with this Agreement, the subject matter of this Agreement, or activities taken by the parties pursuant to this Agreement, including any claim, action or proceeding to attack, set aside, void, abrogate, rescind or annul this Agreement or the actions of either party under this Agreement. The PACE Provider knowingly waives the right to make any claim against the Released Parties for such damages and expressly waives all rights provided by section 1542 of the California Civil Code, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

The rights and obligations contained in this paragraph will survive termination of this Agreement.

c. Indemnification and Release Obligations of Participating Contractors and PACE Administrator. The PACE Provider must require each Participating Contractor and PACE Administrator to release, defend, indemnify, protect, save, and hold harmless the County, the County Auditor-Controller, the County Treasurer-Tax Collector, their respective employees, agents, attorneys, officers, divisions, related agencies and entities, affiliates, successors and assigns, to the same extent as the indemnity and release provided by the PACE Provider to the County in sections 9(a) and 9(b) of this Agreement.

10. Term of Agreement. The term of this Agreement shall be from the Effective Date until termination in accordance with the provisions of Section 11, Termination.

11. Termination.

a. Termination without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, the County or PACE Provider shall have the right, in its sole discretion, to terminate this Agreement by

giving 30 days' written notice to the other Party of this Agreement. This Agreement may be cancelled immediately by written mutual consent.

- b. Termination for Cause. Notwithstanding any other provision of this Agreement, if the PACE Provider fails to uphold any of its obligations under this Agreement, or otherwise violates any of the terms of this Agreement, the County may immediately terminate this Agreement by giving the PACE Provider written notice of such termination, stating the reason for termination.
- c. Discontinuation of PACE Program. Upon 24 hours' notice from the County, the PACE Provider shall immediately discontinue its residential PACE Program in the County's unincorporated area if the Federal Housing Finance Authority (FHFA) takes any action in California pertaining to PACE Financing, as it relates to Fannie Mae and Freddie Mac mortgages, that the County determines will create an undue liability to the County or Program Participants.
- d. Delivery of Data and Information upon Termination. In the event of termination and within 14 days following the date of termination, the PACE Provider must deliver to County all data and information for all properties with contractual assessments, as specified in Section 5, Reports.
- e. Effect of Termination. If the Board of Supervisors terminates this agreement pursuant to this Section 11, the PACE Provider may not solicit new assessment contracts within the unincorporated areas of the County.
- f. Upon termination of this Agreement or the discontinuance of the PACE Program, the PACE Provider shall continue to administer all voluntary assessment contracts that exist at the time of the termination.

12. Insurance.

- a. The PACE Provider is self-insured, and shall provide the County with a letter of self-insurance within 30 days after the effective date of this Agreement.
- b. The PACE Provider will ensure that the following insurance requirements are incorporated into all contracts entered into by the PACE Provider with each PACE Administrator and Participating Contractor, or their respective contractors, subcontractors or assigns, in connection with this Agreement: (1) each PACE Administrator and Participating Contractor must maintain workers' compensation insurance pursuant to state law; (2) each PACE Administrator and Participating Contractor must maintain commercial general liability insurance, including contractual liability (or blanket contractual) coverage, owners' and contractors' protective coverage, and

broad form property damage coverage, with a minimum of \$2 million per occurrence; (3) each Participating Contractor must maintain builders' risk insurance in an amount equal to the construction contract amount, with a waiver of subrogation for the County, and naming the County as additional insured; (4) each PACE Administrator and Participating Contractor must maintain vehicle liability insurance with a minimum combined single-limit coverage of \$500,000 per occurrence; and (5) each PACE Administrator shall maintain Professional Liability Errors and Omissions Insurance coverage at \$1,000,000 per occurrence or aggregate limit. Each PACE Administrator and Participating Contractor shall provide certificates of insurance to the County, copies of policies, or endorsements evidencing the above insurance coverage and requiring at least 30 days' written notice to the County of policy lapse, cancellation, or material change in coverage. The commercial general liability insurance and vehicle liability insurance shall include endorsements naming the County, and its governing body, officers, agents and employees, as additional insured. The aforementioned insurance policies shall contain a provision that the insurance afforded thereby to the additional insureds shall be primary insurance to the full limits of the policy and that, if any of the additional insureds has other insurance or self-insurance against a loss covered by such policy, such insurance or self-insurance shall be excess insurance only.

13. Miscellaneous Provisions.

- a. Independent Contractor Status. The parties intend that the PACE Provider, in implementing and operating the PACE Program, is an independent contractor, and that the PACE Provider will control the work and the manner in which it is performed. This Agreement is not to be construed to create a relationship between the parties of agent, servant, employee, partnership, joint venture, or association. The PACE Provider is not a County employee. This Agreement does not give the PACE Provider any right to participate in any pension plan, workers' compensation plan, insurance, bonus, or similar benefits County provides to its employees.
- b. Compliance with the Law. The PACE Provider is subject to and must comply with all applicable federal, state, and local laws and regulations with respect to its performance under this Agreement, including but not limited to, licensing, employment, and purchasing practices; and wages, hours, and conditions of employment, including nondiscrimination.
- c. Authorization. The PACE Provider represents and warrants that it has full power and authority to enter into this Agreement and to perform the obligations set forth herein.
- d. Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the

e. Method and Place of Giving Notice. All notices shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices shall be addressed as follows:

TO PACE PROVIDER:

- f. Inspection. Upon the County's request, the County or its designee shall have the right at reasonable times and intervals to inspect the PACE Provider's financial and program records at the premises of the PACE Provider and the PACE Administrator. The PACE Provider or the PACE Administrator shall maintain all PACE Program records for a period of four years following termination of the Agreement, and shall make them available for copying upon the County's request at the County's expense.
- g. No Waiver of Breach. The waiver by the County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.
- h. Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any

violation of statute, ordinance, regulation, or law. The parties agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. The PACE Provider and the County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other.

- i. Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
- j. No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create, any rights in third parties.
- k. Choice of Law. This Agreement is made in Contra Costa County and is governed by, and must be construed in accordance with, the laws of the State of California.
- l. Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- m. Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion, expiration or termination for any reason.
- n. Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.
- o. Entire Agreement. This Agreement contains all the terms and conditions agreed upon by the parties. Except as expressly provided herein, no other understanding, oral or otherwise, regarding the subject matter of this Agreement will be deemed to exist or to bind any of the parties hereto.
- p. Duplicate Counterparts. This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

PACE PROVIDER

CONTRA COSTA COUNTY

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

ATTACHMENT B

WAIVER, RELEASE OF LIABILITY AND INDEMNIFICATION PROVISIONS

ASSESSMENT CONTRACT BETWEEN PACE PROVIDER AND PROGRAM PARTICIPANT

1. Waiver of Assessment Proceedings.

Because this Agreement between the PACE Provider and Program Participant reflects the Program Participant's free and willing consent to pay the Assessment, the Program Participant hereby waives any otherwise applicable requirements of Article XIII D of the California Constitution or any other provision of California law for an engineer's report, notice, public hearing, protest or ballot. The Program Participant hereby waives the right to repeal the Assessment by initiative or any other action, or to file any lawsuit or other proceeding to challenge the Assessment or any aspect of the proceedings of the PACE Provider undertaken in connection with the PACE Program.

2. Responsibility for Eligible Improvements.

The Program Participant hereby agrees that the Program Participant and its successors in interest to fee title in the property shall be solely responsible for the installation, operation and maintenance of the Eligible Improvements. The Program Participant hereby acknowledges that the Program Participant and its successors in interest to fee title in the property will be responsible for payment of the Assessment regardless of whether the Eligible Improvements are properly installed, operated or maintained as expected.

The Program Participant hereby agrees that the PACE Provider is entering into this Agreement solely for the purpose of assisting the Program Participant with the financing of the installation of the Eligible Improvements, and that the PACE Provider, PACE Administrator and the County shall have no responsibility of any kind for, and shall have no liability arising out of, the installation, operation, financing, refinancing or maintenance of the Eligible Improvements.

3. Indemnification Obligation of Program Participant.

To the fullest extent not prohibited by applicable law, the Program Participant shall defend, indemnify, protect, save, and hold harmless the PACE Provider, PACE Administrator, Contra Costa County, the County Auditor-Controller, the County Treasurer-Tax Collector, their respective employees, agents, attorneys, officers, divisions, related agencies and entities, affiliates, successors and assigns (collectively and individually the "Indemnitees") from any and all claims, cost, loss, liability, expense, damage (including consequential damages), or other injury, claim, action or proceeding (collectively "Liability") arising out of or connected with this Agreement or activities taken by the parties pursuant to this Agreement, the Operating Agreement between the

PACE Provider and Contra Costa County, or the agreement between the PACE Provider and the PACE Administrator, including: (i) any claim, action or proceeding to attack, set aside, void, abrogate, rescind or annul said Agreements or the actions of either party under said Agreements; (ii) the placement or collection of assessments on participating properties; or (iii) the acts, errors or omissions of the Program Participant, its officers, employees, agents, contractors, subcontractors, or any person under its direction or control in connection with this Agreement or the PACE Program; and will make good to and reimburse Indemnitees for any expenditures, including reasonable attorney's fees, the Indemnitees may make by reason of such matters. If requested by any of the Indemnitees, the Program Participant will defend any such suits at the sole cost and expense of Program Participant with counsel selected or approved by the affected Indemnitees.

The Program Participant's obligations under this section will exist regardless of concurrent negligence or willful misconduct on the part of any Indemnatee or any other person; provided, however, that the Program Participant will not be required to indemnify any Indemnatee for the proportion of Liability a court determines is attributable to the sole negligence or willful misconduct of that Indemnatee. This indemnification clause shall survive the termination or expiration of this Agreement.

4. Release.

To the fullest extent not prohibited by law, the Program Participant hereby releases and forever discharges the PACE Provider, PACE Administrator, Contra Costa County, the County Auditor-Controller, the County Treasurer-Tax Collector, their respective employees, agents, attorneys, officers, divisions, related agencies and entities, affiliates, successors and assigns (collectively "Released Parties") from any and all claims, cost, loss, liability, expense, damage (including consequential damages), or other injury, claim, action or proceeding (including without limitation, attorneys' fees and expenses), which the Program Participant now has or could assert in any manner arising out of or connected with the subject matter of this Agreement, the Operating Agreement between the PACE Provider and Contra Costa County, or the agreement between the PACE Provider and the PACE Administrator, or activities taken by the Released Parties pursuant to said Agreements, including any claim, action or proceeding to attack, set aside, void, abrogate, rescind or annul said Agreements or the placement or collection of assessments on participating properties. The Program Participant knowingly waives the right to make any claim against the Released Parties for such damages and expressly waives all rights provided by section 1542 of the California Civil Code, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

The waivers, releases and agreements set forth in this document shall survive termination of the Agreement.

Julie Enea

From: John Gioia
Sent: Friday, June 12, 2015 2:20 PM
To: Jason Crapo; Julie Enea
Subject: Fwd: PACE Staff Report and June 16 Agenda item

Here are some comments

Sent from my iPad

Begin forwarded message:

From: Cliff Staton <cliff@renewfund.com>
Date: June 12, 2015 at 1:51:22 PM PDT
To: John Gioia <John.Gioia@bos.cccounty.us>
Cc: Jonathan Kevles <jkevles@renewfund.com>
Subject: Re: PACE Staff Report and June 16 Agenda item

While I can see that many elements were taken from the Sonoma and Sacramento agreements, there are important differences.

- 1) The Sonoma agreement makes no mention of "assessed value". The Sacramento agreement specifically defines "Value" as the "greater of assessed value or fair market value." As I noted earlier, the use of "assessed value" is likely to significantly reduce the number of properties in the County that will qualify for financing.
- 2) Both Sonoma and Sacramento agreements have fairly standard indemnification clauses, but neither require that contractors indemnify the County. I would note that we already require that contractors sign an indemnification agreement for CSCDA, which is the Program Sponsor and bond issuer.
- 3) Both Sonoma and Sacramento agreements require "lender consent" or "lender acknowledgement" for non-residential properties, but only for the primary mortgage lender. The Contra Costa agreement requires lender consent from "any lender that has outstanding loans to the Program Participant." This is onerous and unnecessary.
- 4) Neither Sonoma nor Sacramento require a \$5,000 fee from the Program Provider.

Julie Enea

From: Jonathan Kevles <jkevles@renewfund.com>
Sent: Wednesday, July 22, 2015 1:14 PM
To: Jason Crapo
Cc: Julie Enea; Cliff Staton
Subject: Request for additional term in the Contra Costa County PACE Provider Agreement
Attachments: CA FTB Letter to IRS - Real Property Tax Deduction Inquiry - 2011.pdf; Letter 12-0018 from IRS on 03-30-2012.pdf; CA FTB - Deduction of Mello-Roos Taxes.pdf; CA FTB FAQ -- Understanding the Real Estate Tax Deduction.pdf

Jason - As mentioned to you briefly in the cover letter I just emailed to you with our application materials, I request that the Contra Costa PACE Provider Agreement include an additional term in it.

The additional term we request is related to consumer protection. Specifically, we request that no PACE provider nor a PACE provider's contractors operating in Contra Costa County's unincorporated areas be permitted to claim that the full amount of the PACE assessment is deductible from one's income taxes.

Both the IRS and the California Franchise Tax Board are clear on this matter - only the interest portion of the payment is deductible. Yet there is at least one PACE provider (Ygrene) that is publicly claiming that the full amount is deductible - which places property owners who believe the claim in jeopardy.

As for suggested language, Sonoma County is considering the following language for an update to their PACE Provider Agreement, which they will be updating sometime in the next few months:

"Recommend that property owners consult with a tax professional prior to claiming any tax deductions associated with the project, and not recommend or indicate that homeowners take any particular filing position regarding their annual or semi-annual PACE assessment payments."

And

"NOT imply through discussions or calculations that the full assessment payment amount may be tax deductible but rather only the interest."

At CaliforniaFIRST we have always adhered to these practices. In the interest of building a PACE marketplace in Contra Costa County and beyond that is built on integrity and protecting consumers, we are supporting jurisdictions around the state who are considering this approach to ensuring that all PACE consumers - regardless of the Provider - are not mislead about the tax treatment of their PACE assessment payments. We encourage Contra Costa County to adopt the same approach.

For your reference, I have attached some documentation from the IRS and the CA FTB that speaks to this issue. Please do not hesitate to contact me to discuss or if you have any questions.

Thank you very much,

Jonathan Kevles

Jonathan Kevles

Senior Director
Renew Financial
510-350-3709 (w)
213-610-6805 (c)
jkevles@renewfund.com

renewfinancial.com

Follow us on [Twitter](#) | [Facebook](#) | [LinkedIn](#)



Julie Enea

From: Sharon L. Anderson
Sent: Friday, July 17, 2015 4:33 PM
To: Eve Perez (eperez@heroprogram.com)
Cc: John Gioia; Mark Rodgers (mrodgers@renovateamerica.com); Julie Enea; David Twa; Jason Crapo
Subject: FW: Hero AVM and Consumer Protections & Compliance Programs
Attachments: AVM Letter for CCC.pdf; HERO Consumer Protections and Compliance Programs.pdf; hero.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Eve:

I meant to include you in this email too.

Have a nice weekend.

Sharon

SHARON L. ANDERSON | County Counsel
Office of the County Counsel
651 Pine Street, 9th Floor | Martinez, CA 94553
☎925-335-1815 | sharon.anderson@cc.cccounty.us

From: Sharon L. Anderson
Sent: Friday, July 17, 2015 4:22 PM
To: John Gioia
Cc: Mark Rodgers (mrodgers@renovateamerica.com); David Twa; Julie Enea; Jason Crapo; Thomas Geiger
Subject: FW: Hero AVM and Consumer Protections & Compliance Programs

Hi John:

This confirms my understanding of this issues raised at our meeting on July 9, 2015, in your office with Eve Perez from HERO, and HERO's attorney Warren Diven. HERO has several concerns about the PACE program adopted by the County on June 16, 2015. I advised Ms. Perez that I would pass their concerns on to the involved County staff members. These issues are likely to arise when the first PACE provider agreement is presented to the Board for approval, and/or at a future meeting of the Internal Operations Committee.

1. **FMV v. Assessed Value.** Ms. Perez advised that basing eligibility on assessed value rather than fair market value poses a significant problem for the PACE providers. The way HERO described this process to us is that the contractor who installs the solar panels is the "boots on the ground" financing representative. When a homeowner decides that he or she wants to install solar equipment, the contractor will explain financing options to them right at the kitchen table. The contractor has the ability to immediately contact various financing agencies, for

example, Wells Fargo or a PACE provider, to see if the homeowner qualifies for financing. For a commercial loan, Wells Fargo would consider the homeowner's FICO credit score and determine if a personal loan was an option. For PACE financing, HERO has an app that can be used to immediately calculate fair market value of the residence. There is no need for a separate appraisal. Information regarding the HERO Home Value Calculation is described in the attached July 14, 2015, letter from RenovateAmerica. HERO said that it is very important to them that contractors be allowed to use this tool as part of the County's PACE program.

2. **Insurance.** Attached is a July 9, 2015, email from Christine Payne to Eve Perez describing contractor concerns with the County insurance requirements. The industry standard is \$1 million per occurrence and a \$2 million aggregate loss payout. HERO believes that contractors will not be able to meet the insurance limits set by the County's program (\$2 million per occurrence) and will not want to name the County as an "additional insured" on their policies because of the additional cost. Since the contractors are not constructing a County facility, HERO does not believe that the County actually receives any benefit from being named as an "additional insured" and views it as a requirement that is detrimental to the program for no good reason. This is an issue staff that may want to review with Risk Management.
3. **Indemnity.** There was a discussion about the contractors' indemnity obligation. HERO wanted to know whether the County would require contractors to indemnify the County for anything other than their own negligence or wrongful conduct. I said that this was not the intent of the indemnification language in the form operating agreement approved by the Board. The participating contractor is only required to indemnify, defend, protect, save and hold harmless, the County (and named officers and employees) from claims, cost, liability, expense and damages arising out of or connected with the contractor's actions. The intent was not to make the participating contractor responsible for the actions of the PACE Provider or PACE Administrator.

Sharon

SHARON L. ANDERSON | County Counsel
Office of the County Counsel
651 Pine Street, 9th Floor | Martinez, CA 94553
☎ 925-335-1815 | sharon.anderson@cc.cccounty.us

From: Eve Perez [<mailto:eperez@heroprogram.com>]
Sent: Friday, July 17, 2015 9:32 AM
To: Sharon L. Anderson
Cc: Thomas Geiger; Warren Diven; John Gioia; Mark Rodgers
Subject: Hero AVM and Consumer Protections & Compliance Programs

Good Morning Sharon,

Per your request during our meeting last week, attached is detailed information on Hero's Automated Valuation Model. In addition, I've attached a summary of how our Consumer Protections and Contractor Compliance Programs come into play during the lifecycle of a project. We strive to ensure property owners have the best customer experience while ensuring they're well informed with proper protections in place. Please note that no other form of financing provides these consumer protections.

Warren Diven and I look forward to hearing from your team regarding the contractor indemnification language, contractor's general liability per occurrence limit, builders risk, and contractor's adding the County as an additional insured.

Please let me know if you have questions or need any additional information. Many thanks to you and Thomas for meeting with us. We appreciate all your efforts.

Best,
Eve

Eve Perez, Director of Municipal Development | Direct: 831-419-6741 |



Renovate America, Inc. | 15073 Avenue of Science | Ste 200 | San Diego, CA 92128

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15073 Ave. of Science
Suite 200
San Diego, CA 92128

July 14, 2015

Sharon Anderson, County Counsel
Contra Costa County
651 Pine Street, 9th Floor
Martinez, CA 94553

Re: HERO Home Value Calculation

Dear Sharon,

In response to your inquiry, we are providing additional information that you may find helpful regarding the integrity of the HERO Home Value calculation.

In every case, an automated system passes an APN (Assessor's Parcel Number) and an address to a small set of industry accepted Automated Value Models (AVMs). These AVMs electronically return home value estimates directly to the Automated Underwriting System (AUS), which, without human interaction, determines the home value from these inputs. Electronic copies of the AVM source files are stored with the homeowner's assessment record held by Renovate America and are subject to audit by Renovate America's investors and the bond rating agencies.

The only mechanism for user input in the home value process is upon homeowner submission of a valid appraisal from a qualified California appraiser. In this case, an underwriter can key in an appraised value from the appraisal which is reviewed by Underwriting Quality Control and approved by the Underwriting Manager. The AUS then uses this as the new home value. Also in this case, the appraisal is stored with the homeowner's assessment record held by Renovate America and subject to audit by Renovate America's investors and bond rating agencies. To date, nearly ten thousand (10,000) such files have been audited by such third parties without incident.

Sincerely,



Nick Fergis
Chief Operating Officer



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
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510-350-3709 (w)
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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

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

Top 5 Problems With Automated Valuation Models (AVMs)

[Home](#) » [Appraiser Tips](#) » Top 5 Problems With Automated Valuation Models (AVMs)

Posted By [Danielle](#) on Mar 1, 2012 | [9 comments](#)

Automated valuation models, most commonly referred to as AVMs, are computer-generated property valuations that use mathematical algorithms to determine a home's worth. The algorithms typically analyze [comparable sales](#), property characteristics, tax assessments, and price. The data is drawn from public record, so typically the only information needed to order/receive an AVM is the subject (home) address.

AVMs are often used by lenders because they are a cheap and quick way to get an estimated valuation, but publicly available AVMs (like those found at [Zillow.com](#)) are often used by potential borrowers and homeowners to aid lending and selling decisions. The problem is, in all forms, AVMs can have some major limitations.

Error Rate

In a recent online chat with Bill King, the Director of Valuation Services at [Veros](#), he told WCCI that the average variation between Veros AVMs and actual appraisal values tends to be about eight percent. I had the opportunity to also ask the Chief Technology Officer of Zillow, Dave Beitel, about their margins and he too stated that, on average, their "[Zestimates](#)" tend to have an average of an eight percent margin of difference from full appraisal values.

Now eight percent may not sound like much, but when you're talking about hundreds of thousands of dollars, it can be significant. We also have to keep in mind that these are *averages*, meaning some properties may have a lower error rate, (we had some comparisons that were dead-on) whereas other automated valuations have shown us a difference of up to 53% in value. I'm not saying that AVMs are evil, but users should be aware of these types of statistics prior to weighing major decisions on these valuations. Sure, they are a good starting point for those who lack other resources and are looking for an "idea" of their value, but even Mr. King and Mr. Beitel emphasized that in no way should an AVM ever replace an official appraisal report.

During our chat, Mr. King also stated "We need to inform the public about the limitations of AVMs and the importance of the elements of market value." So that is the goal of this article. The following is a list of the top AVM issues everyone should be aware of before using automated valuations as a means for decision-making.

1. They Draw from County Data.

And the county could be wrong. In an AVM audit of recently appraised properties I found multiple cases where the AVM had recorded the wrong amount of livable square footage for its model, drawing that information from county records. The records can be off for a number of reasons – the most common (especially in the Northwest) is a case where the homeowner(s) finished basement space without reporting the update to the assessor. Similar results can also occur with remodels. Without completing a physical interior inspection, there is often no way for the county assessor's office to know that the gross living area (GLA) has increased, therefore the records can be off, bringing in inappropriate comparables for the AVM. In other instances, it appears to be a simple case of human error. I recently saw a \$1.2 million home compared with a home appraised at \$255,000 simply because its square-footage was incorrectly recorded at 1,940 SF instead of its actual size which was 3,339 SF.

2. Computers Can't Inspect Your Home.

In many cases, an AVM's comparable properties can differ greatly from the subject in quality of construction, updates, and marketability of the home. I have noticed in some reports that AVM comps may have similar square footage, but lack any other common features with the subject. For example, in one particular instance we had an appraisal come in at the mid \$200s. The AVM said the home's worth was in the mid- \$500s. Needless to say, that's a significant difference. The subject was a dilapidated home, obviously suffering from poor upkeep and lack of updates to maintain a recent effective age. The AVM comps, however, were beautifully updated homes with brand new stainless & granite kitchens, new floors, the works. They may have been within a mile of the subject, but in no way were they even remotely comparable in overall quality and marketability.

3. They Don't Know Your Neighborhood.

Everyone knows the most important factor in real estate is 'location, location, location.' It's cliché, but it's the truth. AVMs typically try to keep their comparables within a mile radius, but sometimes multiple neighborhoods can exist within that mile. This means the AVM runs a risk of drawing comps from a superior or inferior neighborhood to the subject's simply because it's following a predetermined, automated algorithm, without any familiarity of the actual market.

4. Comps May Be Outdated.

In a particular AVM order in February 2012, two of the five comparable sales were from 2010. Don't get me wrong, we understand this market can be rough, and sometimes, especially in rural markets, it can be extremely difficult to find recent comps. Nonetheless, in this particular order our appraiser was able to find completely legitimate comparables within a six month time frame, whereas the AVM apparently could not. In today's market, trends change dramatically over a two-year span, so using old comps can be extremely problematic.

5. Some Results Aren't Bracketed.

The Appraisal Institute's Dictionary of Real Estate Appraisal (4th Edition), defines bracketing as "a process in which an appraiser determines a probable range of values for a property by applying qualitative techniques of comparative analysis to a group of comparable sales. The array of comparable sales may be divided into two groups – those superior to the subject and those inferior to the subject." Bracketing is a Fannie Mae requirement as well as a requirement by many mortgage lenders.

In one example of AVM vs. Appraisal, our appraisal valued the subject at \$350,000. The AVM said \$285,000, yet its comps ranged from \$308,000 to \$428,000. In other words, all properties were superior to the subject, and none were deemed inferior. While even WCCI's appraised amount was bracketed by the AVM comps; the AVM itself was not. In some cases bracketing may not be possible, but the appraiser is supposed to explain why the subject is basically the most inferior in the entire neighborhood. Unfortunately AVMs cannot provide commentary, so we still have no way of knowing how the AVM came up with such a low number, when the higher-valued properties appeared perfectly comparable.

Conclusion

This article isn't intended to bash AVM creators, as they are simply providing the best information they can based on publicly available data. Nonetheless, it is important to educate borrowers, lenders, and homeowners that the results of their automated valuation models should be taken with a *bag* of salt, and should never replace a full appraisal report.