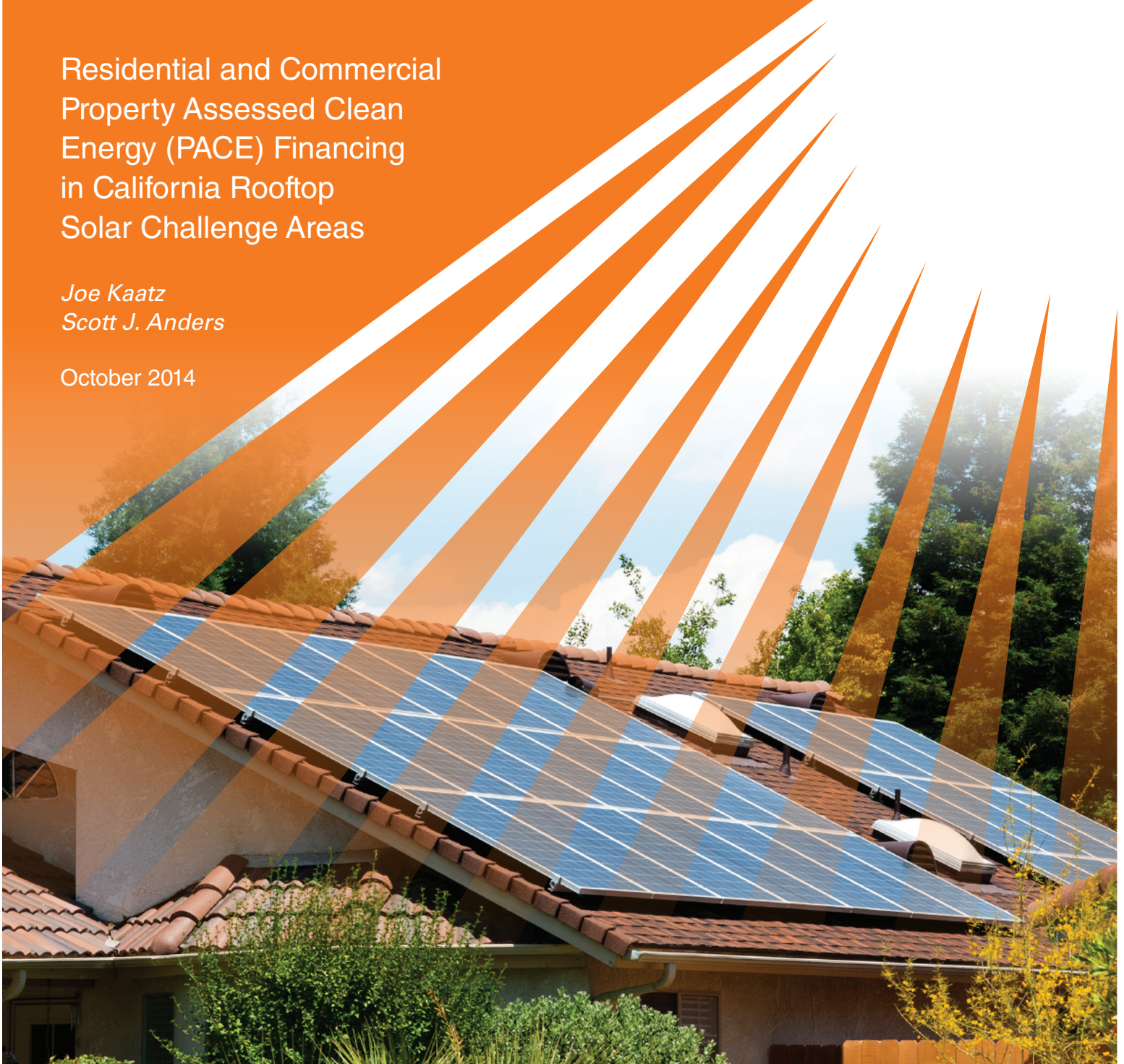


Residential and Commercial Property Assessed Clean Energy (PACE) Financing in California Rooftop Solar Challenge Areas

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Introduction

The Golden State Solar Impact project supports the goals of the Department of Energy (DOE) Solar Energy Technologies Program and the SunShot Initiative, which seek to make solar electricity cost competitive without subsidies by the end of the decade by seeking to address and lower system costs for photovoltaics (PV). The Center for Sustainable Energy (CSE) is working as part of a statewide team to encourage market transformation through expanding financing options for residential and commercial customers, streamlining permitting processes and standardizing net metering and interconnection standards across investor-owned and municipally owned utilities in the region. The project goals are supported by cross-jurisdictional collaboration and information sharing.

1.1 About this Report

This version of the report updates the original report published in March 2013. It identifies and describes the current state of residential and commercial property assessed clean energy (PACE) financing programs in California. The report discusses the Improvement Act of 1911, the Mello-Roos Act of 1982, the different philosophies cities have adopted in implementing PACE financing and various PACE program structures. It also discusses the first implementation of PACE by cities that used their charter authority to create programs under the Mello-Roos Act of 1982 before the enactment of AB 811 and SB 555.¹ This report focuses on PACE as a mechanism to increase the amount of rooftop solar systems installed, but also recognizes that these programs provide an effective means to finance energy and water efficiency projects. The updated report provides new information on California's Residential PACE Loss Reserve Program, the Federal Housing Finance Agency, program requirements and program performance. The report includes the following:

- Section 2 provides a brief background on PACE including how it supports California's energy and environmental policy goals as well as the two pieces of legislation that enable creation of PACE programs.

- Section 3 provides a discussion of the Improvement Act of 1911 as amended by AB 811 and several programs created under its provisions, including the Sonoma County Energy Independence Program, Western Riverside Council of Governments’ HERO Program and HERO California Program, CaliforniaFIRST, Los Angeles County Commercial PACE Financing Program and the Figtree OnDemand Program.
- Section 4 provides a discussion of the Mello-Roos Act of 1982, including the City of San Francisco’s GreenFinanceSF commercial PACE program created under its charter authority and YGRENE’s Clean Energy Sacramento Program, the only PACE program created using the SB 555 amendments to the Mello-Roos Act of 1982.
- Section 5 provides a summary of the actions of the Federal Housing Finance Agency (FHFA) that have affected implementation of residential PACE in California, as well as California’s Residential PACE Loss Reserve Program.
- Section 6 provides a brief conclusion and potential next steps.





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Background on PACE Financing

Property assessed clean energy (PACE) programs allow property owners to finance energy efficiency, water efficiency and renewable energy projects on existing and, in some cases, new residential and commercial structures through a voluntary special tax assessment on the property. PACE programs provide financing for these types of improvements without requiring a down payment or payment of the full or partial up-front capital cost of the improvement. By providing viable financing options to increase the number of rooftop solar systems and energy efficiency projects throughout California, PACE programs serve as an important mechanism to implement California's energy, environmental and greenhouse gas (GHG) policy goals. Rooftop solar and other distributed generation can play important roles in greenhouse gas reductions and have potential to create regulatory and market values.

At the local and regional level, cities and regional planning entities play an important role in implementing AB 32 through the adoption of climate action plans.² In 2007, California amended the California Environmental Quality Act (CEQA) to require new regulations addressing mitigation for GHG emissions and impacts (SB 97).³ In response, the California Natural Resources Agency issued new CEQA guidelines in 2009 establishing review criteria for GHG emission reductions plans that can streamline CEQA review for individual projects consistent with those plans. In response, local governments began adopting climate action plans to address GHG impacts at the programmatic level, where there is greater opportunity for flexibility in mitigation. Where the local government's objective is to stabilize or reduce total GHG emissions, PACE programs can be an effective financing measure to reduce or offset GHG emissions from buildings through efficiency and renewable energy improvements.

PACE programs serve as a market mechanism to supplement existing and former rooftop solar programs, such as the California Solar Initiative and the California Energy Commission's New Solar Homes Partnership. The California Solar Initiative set a goal of installing 3,000 megawatts of photovoltaic systems by 2016 by providing financial incentives to offset a portion of the installed cost of a qualified system. The New Solar Homes Partnership provides financial incentives and other support to homebuilders

that construct new, energy efficient solar homes.⁴ Financing programs, such as PACE, play an increasingly important role as incentives offered through these programs phase out over time.

The following sections summarize the two enabling statutes under which PACE programs can be created in California.

2.1 Enabling Legislation: The Improvement Act of 1911 as Amended by AB 811, City Charter Authority under the Mello-Roos Act of 1982 and the Mello-Roos Act of 1982 as Amended by SB 555

PACE financing programs for rooftop solar, and more broadly, the financing of any eligible renewable technology, energy efficiency or water efficiency investment, can be set up and administered under either of two different statutory frameworks: the Improvement Act of 1911 (Improvement Act) as amended by AB 811 or the Mello-Roos Act under a city’s charter authority or as amended under SB 555. Both the Improvement Act and Mello-Roos Act authorize creation of special tax districts, voluntary contractual agreements for financing between an authorized entity and the property owner, use of available funding from any source including existing bond issuing statutes and attachment of the assessment for payment of the assessment to the property (as opposed to the individual owner). Additionally, several programs were created by charter cities under their Mello-Roos Act authority before the passage of SB 555. The City of San Francisco’s GreenFinanceSF still operates under this structure.⁵ The city is currently reviewing the viability of this mechanism in light of an August 1, 2014, Fourth California Appellate District ruling invalidating a charter city’s authority under Mello-Roos to levy a special tax under Government Code Section 53326 (landowner election) as well as the city’s charter authority.⁶ It is unclear whether this decision affects the alternative mechanism to create a Mello-Roos PACE district under Government Code Section 53328.1 (a)-(f).

AB 811 sought to overcome barriers to investment by paralleling repayment of the improvement costs with the actual bill reductions from the improvement. In some cases, installing improvements can result in an immediate and ongoing positive cash flow to the property owner since the utility bill savings can exceed the PACE payment.⁷ However, the greatest innovation is that Improvement Act tax assessments (and Mello-Roos special taxes) differ from other types of finance because the assessment stays with the land and not attached to the individual owner. Theoretically, this means that an owner would not be required to pay off the lien if they sold the property (however, this has not always been true in practice for residential owners due to buyer uncertainty, as well as Federal Housing Finance Agency scrutiny – see Section 5).⁸ In addition, the tax assessment correlates with the useful life of the improvement and does not require an initial down payment like other types of financing.⁹

Several important statutory differences currently exist between Mello-Roos Act and the Improvement Act as well as differences in the structures of programs that operate under these statutes.

First, several Improvement Act programs operate under a joint powers authority (JPA) structure allowing cities and counties to join as a member with little or no cost or administrative burden. This alleviates the burden and cost that would normally be associated with creating an Improvement Act program. The Coachella Valley Association of Governments under Ygrene became the first SB 555 program to operate a PACE program as a JPA. However, under Mello-Roos, each city, county or JPA remains responsible for the cost and administrative burden of forming a Mello-Roos district, establishing program rules, judicially validating the

bond program and contracting directly with one or more PACE administrators. Ygrene Energy Fund California LLC has made agreements to reimburse jurisdictions for these costs to limit the financial burden faced by a local agency of forming a special tax district.¹⁰ Government Code Section 53314.9 authorizes this type of reimbursement by allowing the advancement of funds or work in kind of any authorized purpose including, but not limited to, the cost of creating a special tax district.

Second, Mello-Roos allows improvements on new constructions generally. However, SB 555 restricted PACE Mello-Roos improvements on new residential construction only to when “the initial construction is undertaken by the intended owner or occupant.”¹¹ Importantly, SB 555 did not restrict PACE improvements on new commercial construction.¹² The legislature has taken action to remove this difference between SB 555 programs and AB 811 programs for residential properties. AB 1883 (Chapter 599, Statutes 2014) will, among other things, allow AB 811 programs to finance improvements on new residential properties where the initial construction is undertaken by the intended owner or occupant on January 1, 2015.¹³ Currently, Ygrene’s Clean Energy programs operating under the SB 555 amendment to Mello-Roos do not offer PACE financing for new residential or commercial properties. It is unclear when or if AB 811 programs will open improvement financing to new residential properties.

Third, the SB 555 amendment to the Mello-Roos Act expressly allows financing of improvements on publicly owned buildings¹⁴ although these properties must be able to receive property tax bills under their assigned assessor parcel numbers (APNs). Currently, Ygrene’s SB 555 Clean Energy programs do not allow improvements on publicly owned buildings. AB 811 programs do allow PACE financing on nonprofit-owned buildings if they can receive a property tax bill.

Fourth, the Mello-Roos Act allows a leasehold interest to be used as collateral to secure the PACE financing.¹⁵ This means that in the event of foreclosure the leasehold interest (an entity or person with a lease interest in the property such as a commercial tenant), not the owner in fee simple, is liable for nonpayment. To date, a leasehold interest has been used in at least one case to finance a retrofit on a publicly owned building leased to a private company in the City of San Francisco (See Section 4.1), and there is a long history of leasehold interests serving in this capacity in Mello-Roos districts generally.

Fifth, Mello-Roos has avoided most of the constitutional restrictions placed by proposition on the Improvement Act over the last hundred years. These restrictions are largely the result of the different approval requirements of the two statutes prior to their amendments for PACE. Under the Improvement Act, formation of a district can only be stopped by a majority-written protest of property owners to be assessed by the district.¹⁶ By comparison, Mello-Roos district formation operates under a majority protest of eligible voters provision and requires an additional 2/3 affirmative vote by eligible voters to levy the tax in the district.¹⁷ The 2/3 eligible vote requirement for Mello-Roos provides a higher standard of approval and has not resulted in the same types of constitutional restrictions as the Improvement Act. While the 2/3 majority vote is not required for property owners to levy a PACE special tax on their property under the SB 555 amendments to Mello-Roos, PACE Mello-Roos districts still benefit from the lack of constitutional restrictions offering greater flexibility than Improvement Act districts.

Sixth, an Improvement Act special tax assessment is not senior in status to prior existing special tax assessments.

Seventh, Mello-Roos districts allow off-tax roll billing at the onset of the lien. This allows a property owner to pay the tax for the special tax lien by receiving a bill prior to the special tax appearing on their biannual tax documents. This avoids the need to finance an additional amount to cover this initial period in later tax payments, saving the property owner money. The Improvement Act does not provide the same flexibility to use off-tax roll billing.

Eighth, the Improvement Act only allows assessments on single-family residences of 1-3 units and multifamily residences of five or more omitting 4-unit residential buildings. Mello-Roos does not make the same omission for 4-unit residential buildings.

Finally, Mello-Roos allows any legislative body that sets up a PACE program using a Mello-Roos community facilities district (CFD) the flexibility to set the rate or rates of tax assessment in a resolution of intent, resolution of formation, by ordinance¹⁸ or to set the rate or rates of tax assessment at the point of time of each individual unanimous approval by an owner.¹⁹ In the latter case, the resolution of intent or resolution of formation must include statements that the rate will finance the improvement and pay the CFD's administrative expenses and that the maximum rate is specified in the unanimous approval by the property owner.²⁰

While these are not all of the differences between the Improvement Act and Mello-Roos, they are some of the more relevant statutory and program differences.

Additionally, the City of San Diego identified several nuanced advantages for Mello-Roos districts programs when compared to Improvement Act districts in its October 8, 2012, *Report to the City Council* Report No: 12-125.²¹ These include:

- Minimum waiting period between placement of lien and bond issuance is shortened from 30 to 15 days.
- Lien amount placed on property is only for annual repayment obligation, rather than all amortized future payments.
- Public agency liability limited to district creation and operation rather than program creation and operation.
- Payments may be billed off tax roll in all situations rather than only in some situations.²²

It is an open question as to whether these differences result in tangible benefits or advantages in real terms, and it is important to note that most operational PACE programs in the state were formed under the AB 811 amendment to the Improvement Act.

The following explanation and analysis of each enabling statute – as well as most of the programs in existence operating under each statute – provides additional understanding of the similarities and differences between these two enabling statutes and operational programs.

This paper also will briefly discuss the ongoing issue and litigation with the Federal Housing Financing Agency (FHFA) regarding residential PACE programs. This information is found in Section 5.



3 Improvement Act of 1911 as Amended by AB 811: Energy Tax Assessment Districts

Under the Improvement Act of 1911 as amended by AB 811, a property owner can access financing for permanent improvements (including solar panels, windows, insulation, etc.) attached to existing structures on residential, industrial, commercial, publicly owned and nonprofit property eligible to receive property tax bills as well as improvements on new residential structures where the initial construction is undertaken by the intended owner or occupant.²³ Under the Improvement Act, the property owner voluntarily enters into a contractual agreement with the authorized city, county or other special district to join the special tax district and access financing for the improvement to their property subject to limitations determined by the city, county or district. The funding is secured by a lien recorded on the property and repaid as a special tax assessment on the property. This means that the property owner pays the special tax at the same time and in the same manner as all other property taxes. The lien is valid and superior to all previously existing private liens, such as mortgages.²⁴ In other words, the PACE special tax assessment will be paid before all other private liens recorded on the property if the property owner defaults on other debt secured by the property.

AB 811 amended Chapter 29 of the Improvement Act authorizing cities, counties and other special districts to establish voluntary contractual tax assessment programs to finance individual energy efficiency and renewable energy projects fixed to residential, commercial, industrial or other real property.²⁵ Under the AB 811 amendment to Chapter 29, a city, county or other special district (such as a joint powers authority) may designate any area or portion of an area within the city or county as an area in which an authorized official (such as treasurer or program manager) and property owner may enter into a contractual assessment to finance the cost of energy efficiency upgrades, water efficiency upgrades and renewable energy systems on property located within the designated district.²⁶ In practice, this means that a city or county may create its own district or join another entity – such as a joint powers authority – to create a district and implement a PACE program.

Eligible projects within an established district must be proposed by a property owner and can only be proposed on already developed parcels.²⁷ The assessment may be levied only with the “free and willing consent of the owner of each lot or parcel on which an

assessment is levied at the time the assessment is levied.”²⁸ Additionally, the legislature further amended Chapter 29 under AB 474 by requiring additional record keeping duties and requiring specified notice to any entity that provides energy or water within the boundaries of the area within which contractual assessments may be entered into between a property owner and government agency.

Cities, counties or special districts that create a PACE program must follow statutory requirements to create the assessment by first issuing a resolution of intent. The resolution must state the city’s intent to, among other things:

- Make contractual assessment financing available to property owners
- Identify the public works, distributed generation renewable energy sources or energy efficiency improvements to be financed
- Describe the geographic boundary of the city
- Describe proposed arrangements for financing
- Set the maximum aggregate dollar amount of a voluntary contractual assessment²⁹

The legislation also directs city officials to prepare a report and consult with the county auditor’s office or county controller on fees to be charged to incorporate assessments into general taxes on real property.³⁰ In September 2010, the legislature again amended Chapter 29 through AB 44 to, among other things, require that the report created to comply with Streets and Highway Code Section 5898 contain a brief description of criteria for determining the underwriting requirements and include systems installed pursuant to power purchase agreements or lease as fixtures to property as well as safeguards to ensure that the total annual property tax and assessments not exceed 5% of the property’s market value.

The Improvement Act requires a plan for raising the capital required to pay for work performed pursuant to the contractual assessments.³¹ An entity may use funds available to it from any source including the sale of a bond or bonds or other financing relationship under Streets and Highway Code Section 5898.28.³² The plan must also:

- Include a statement of or method for determining the interest rate and period during which contracting property owners would pay any assessment
- Provide for any reserve fund or funds
- Provide for the apportionment of all or any portion of the cost incidental to financing, administration and collection of the contractual assessment program among the consenting property owners and the city³³

Cities and counties may use the SB 77 Municipal Bond measures as a source of financing for their program.³⁴ It is important to note that AB 44 placed certain limits on participation through amendments to Streets and Highway Code Section 5898. Participation in these types of bond programs is limited by a cap on the total annual property tax amount. Specifically, a property owner may not participate if it would result in the total amount of any annual property taxes and assessments exceeding 5% of the property’s market value as determined at the time of the owner’s contractual assessment.³⁵ However, the property owner is not released or is the contractual obligation voided if the annual property taxes and assessments exceed 5% of the market value after its creation.³⁶ This makes the special assessment final regardless of whether

or not the property value decreases. The full effect of this should be evaluated and scrutinized to better understand the risk to property owners. There are indications that retrofits increase property values and provide other benefits, however, property values may immediately decrease by the amount of the assessment in some cases.

A public hearing is required to present the report to the governing body of the city, county or special district to vet public comment or objection. The governing body may then adopt the report, adopt it after modification or abandon its proceedings. Additionally, the process by which a property owner joins the district is decided by the implementing city or county and not by statute. Cities, counties and special districts may also use judicial validation to affirm the soundness of their PACE program. Under this process, a lawsuit is filed in superior court asking the court to evaluate and rule on the constitutionality and legality of the program and its district. A successful judicial validation provides both a higher level of protection from legal challenges and certainty to government entities, program administrators and potential or actual capital investors.

3.1 Improvement Act of 1911 PACE Programs

While similar in general framework, Improvement Act programs can be distinguished by the funding source used and how the program is administered – that is, whether the city or county administers the program or contracts with a private entity to administer the program.

Programs may be funded publicly, privately or through a combination of both. Early programs – such as Palm Desert’s Energy Independence Program and the Sonoma County Energy Independence Program (SCEIP) – used public funding to facilitate their PACE programs. Sonoma County has been the most successful publicly funded PACE program with over \$60 million in projects funded to date.

Privately funded programs have also become operational over the last couple of years including the Western Riverside Council of Governments’ HERO Program. These programs build upon the early successes of Sonoma County and made large investments in software to simplify and streamline the PACE application and funding process. This has allowed the HERO programs (WRCOG HERO, California HERO and SANBAG HERO) to fund over \$260 million in improvements on approximately 14,000 properties.

Finally, programs that rely solely on matching individual projects with private financial institutions have seen smaller but increasing market penetration and are largely restricted to the commercial market. These include the Los Angeles County and City of San Francisco programs. These models are picking up steam as property owners and banks become comfortable with the process and economic. The Los Angeles County Commercial PACE program has closed \$14.1 million in deals to date – including a \$7 million deal for Hilton Los Angeles/Universal City³⁷ – with approximately another \$176 million in the pipeline. Notably, the various types of PACE programs have seen positive results across the state regardless of the funding type with the major distinction being the number of projects funded.

In California, several models exist to administer a PACE program. A city, county or special district may administer their programs themselves, contract with a private third party or join a public entity such as a JPA that may contract with a private third

party. Each option offers advantages and disadvantages in the form of costs to a city or property owners, software, program funding limits, access to financing or capital providers, minimum project amounts, mortgage lender consent requirements and varying degrees of transparency regarding fees charged by program administrators and their partners. While program costs to the city and its citizens are an important factor when evaluating different approaches to administer a PACE program, cities and counties should also evaluate the customer service, ease of use, marketing and property owner participation when comparing program administrators.

The following sections provide detailed information about several PACE programs created under the Improvement Act as amended by AB 811:

- Sonoma County Energy Independence Program (SCEIP)
- Western Riverside Council of Governments' HERO Program
- California HERO Program
- CaliforniaFIRST
- Los Angeles County PACE Financing Program
- Figtree's OnDemandPACE Financing

3.1.1 Sonoma County Energy Independence Program (SCEIP)

The Sonoma County Energy Independence Program (SCEIP) was the first multijurisdictional PACE program under AB 811. To date, SCEIP has funded 2,029 residential and 61 commercial projects across all eligible project categories (including solar), disbursing \$67,655,869 through its internal county financing measures. Approximately \$9 million of this has been paid back to the county through early payoffs and is being used to fund new projects. Sonoma County is seeking long-term financing to make its PACE program sustainable. The program does not have additional funding for future PACE assessments beyond the \$60 million authorized from the treasury pool. As such, the county seeks to pool existing assessments for sale as revenue bond(s) on the open market to replenish their initial funding supply to ensure continuous funding of the program.³⁸

SCEIP has approved, financed and seen the completion of 46 commercial solar projects totaling \$5,036,838 and 1,255 residential solar projects totaling \$40,759,091 as of June 2014.³⁹ The solar projects average \$32,477 for residential properties and \$111,930 for commercial properties.⁴⁰ The projects total 2.2 megawatts (MW) for commercial and 7.1 MW for residential in generation capacity, saving an estimated 16,770,508 kilowatt hours (kWh) of electricity and 126,085 therms of gas.⁴¹

Originally intended to be a statewide example and resource for PACE implementation, SCEIP was sidelined by then unresolved FHFA residential mortgage issues.⁴² SCEIP persevered through these challenges, creating exceptional resources and information for local governments, contractors and property owners to understand PACE through its [website](#) and knowledgeable staff.

The County of Sonoma administers SCEIP. The auditor-controller treasurer-tax collector serves as the designated program administrator.

3.1.1.1 Eligible Property

Eligible properties are residential (subject to FHFA risks) and commercial (subject to lender acknowledgment).

3.1.1.2 Identification of Involved Parties

Government Entity	County of Sonoma
Program Administrator	Auditor-Controller Treasurer-Tax Collector

3.1.1.3 Funding

Funding has come from bonds issued by Sonoma County Joint Powers Authority and held by the Sonoma County Treasury or Water Agency Reserve Fund. Sonoma’s JPA issues bonds once a month that are then purchased by Sonoma’s treasury pool. The JPA uses these funds to finance the improvements completed during the previous month. Bonds are not issued under this mechanism until projects are completed (or partially completed subject to restrictions) and ready to fund, thereby minimizing interest payments on unused capital.⁴³ Specifically, the county makes disbursements from either proceeds of bonds issued on a specified day or from a revolving fund that allows disbursement weekly. Bonds are issued on the first business day of each month in the principal amount equal to the aggregate amount to be disbursed that day directly to property owners and in the amount that the county disbursed from its revolving fund during the prior month.⁴⁴ The county issues bonds with a term of either 10 or 20 years to match the term years that the property owner agreed to pay back the assessment.⁴⁵

SCEIP can also utilize an open-market or third-party owner-arranged financing approach for commercial properties on a case-by-case basis. The open-market approach uses a more traditional form of commercial financing through which a property owner independently negotiates with their existing lender or other third-party capital provider to secure financing for their PACE project. The existing lender or third-party capital provider then purchases a bond from the government or district secured by the tax assessment on the property to finance the project. In the SCEIP, the county approves the third-party investor to purchase a SCEIP bond for a designated project. The county has successfully used this approach to approve a \$1.6 million commercial project funded by Clean Fund.⁴⁶

SCEIP also received America Reinvestment and Recovery Act (ARRA) funding allocated to the California Energy Commission for the State Energy Program (SEP) to fund activities related to its PACE program, such as creating a program replication guidance package for other local agencies. This funding was not used to fund the PACE program or its administration. Additional information on the use of this funding is included in Section 3.1.1.12.



Funding Source	Municipal Bonds: County Treasury Pooled Investment Fund, Sonoma County Water Agency or third-party investments in SCEIP municipal bonds under special circumstances using an open-market approach.
Program Funding Limit	\$60 Million (\$45 Million from Sonoma Treasury and \$15 Million from Sonoma Water Agency reserve fund)

3.1.1.4 Underwriting Criteria for Program Participation

- Property title is vested in the applicant(s), without federal or state income tax liens, judgment liens or similar involuntary liens on the property.
- Property owner is current on property taxes for all properties owned within the county.
- Property owner is not in bankruptcy and the property is not an asset in a bankruptcy proceeding.
- Property owner is current on all mortgage(s). For commercial property, lender has signed a Lender Acknowledgement of Owner Participation form regarding SCEIP financing.
- Improvement costs are reasonable to property value. Proposed improvements shall not exceed 10% of market value (10:1 value-to-lien ratio).
- In accordance with the preceding item, if a commercial property is unencumbered by a lien (property is owned free and clear), the applicant may submit for a project up to 50% of the property’s market or appraised value, whichever is higher (i.e., the project to value ratio may be greater than 10% but cannot exceed 50%). These projects will be evaluated on a case-by-case basis.
- Home and condominium owners must conform to homeowner association (HOA) policies.
- Total annual property taxes and assessments due on the property cannot exceed 5% of the property’s market value, as determined at the time of approval of the contractual assessment.

3.1.1.5 Restrictions on Contractors

A contractor cannot participate in SCEIP (the project will not be funded) unless licensed under state law to perform the project’s improvements, the business principal has signed the contractor standards and the required documentation is on file at SCEIP. The following documents are required to be a SCEIP Participating Contractor.

- Signed Contractor Standards
- Liability Insurance (\$1,000,000)
- Workers’ Compensation (for all persons the contractor employs; not necessary for self-employed contractors with no employees)
- Local Business License (if applicable)
- Information Sheet

Additionally, applicants are required to get a minimum of two bids, one of which needs to be from a local contractor. A local contractor is defined as having a business address

within Sonoma County and employing at least one full-time employee. Contractors who are self-employed with no employees are considered local if they meet the business address criterion.

If the applicant has initially selected a local contractor(s), only one bid is necessary.

3.1.1.6 Energy Audit Requirement

With respect to residential, SCEIP encourages property owners to have an audit performed but does not require an energy audit. The program does require an energy audit for all commercial applications.

3.1.1.7 Eligible Financeable Costs

Eligible costs include building energy analysis, water audit, equipment and installation (including but not limited to labor, drafting, engineering, permit fees and inspection charges). In each case, the program manager will determine the reasonableness of the eligible costs. Additionally bids are required to assist in determining reasonableness.

3.1.1.8 Assessment Finance Amount

- Minimum: \$2,500
- Maximum: No fixed cap, but if between \$60,000 and \$500,000, must be approved by program administrator. If over \$500,000, must be approved by the board of supervisors.

3.1.1.9 Financing Term

The financing term is up to 20 years. If improvements are under \$5,000, then they are subject to 10-year assessment repayment period. If \$5,000 or greater, then there may be a 10- or 20-year repayment period as agreed upon by contracting parties and useful life of the improvement.

3.1.1.10 Interest Rate

Rate set at 7%: 3% for bond repayment, 4% for administrative costs (See Section 3.1.1.13).

3.1.1.11 Fees Assessed on Property Owner

- Title cost: \$50 for projects under \$5,000; \$125 for \$5,000-\$500,000. Title insurance is required if over \$500,000.
- Recording fee: \$66
- County tax collector fee: Maximum annual administrative fee of \$40 per year with annual adjustments based on the Consumer Price Index for cost-of-living increases.
- Desktop appraisals (residential only): \$12.
- Escrow: Generally if over \$500,000. Actual cost.
- Site inspection cost: \$150. Required if project is \$40,000 or greater and property owner requests an interim disbursement prior to completion of improvement.

3.1.1.12 Lender Policy

For residential properties, Sonoma County gives notice to each applicant on the first and second page of its application regarding its FHFA’s position and the potential implications of this position to a property owner. This provides a basic understanding of risk to the residential property owner and requires that all property owners initial that they have read the statement. To date, the FHFA’s directive states that if a residential property owner with a PACE assessment on their property sells or refinances their property with a conforming mortgage (underwritten by Fannie Mae or Freddie Mac), they are required to pay off the remaining amount of the PACE lien.

For commercial properties, Sonoma County requires a signed affirmative acknowledgment from all existing lien holders of trusts. This document provides notice to the lien holder stating both the amount and term of the assessment. The document requires the lien holder to affirmatively acknowledge that it received notice of the property owner’s participation in the PACE program and that it agrees that the execution of the assessment contract will not constitute a default under the lien holder’s deed of trust.

3.1.1.13 Costs and Liability to City

The County of Sonoma has borne all monetary and labor costs associated with the program including litigation costs against the Federal Housing Finance Administration, the legal and transactional costs of issuing monthly bonds and complying with federal flow-down accounting and reporting requirements from the ARRA funding.⁴⁷ Several intradepartmental and intrafund loans were used to cover start-up costs and the first year of administrative costs. The board of supervisors authorized SCEIP to borrow funds and use labor from other county departments. These advances are currently being paid back by SCEIP from the 4% spread it receives to recover these administrative costs when participants repay their PACE assessments. SCEIP expects to pay back nearly all of these start-up loans by 2016. The County of Sonoma also used ARRA funding allocated to the California Energy Commission for the State Energy Program (SEP) and Energy Commission grant money to fund associated program activities.⁴⁸ Additionally, the county remains liable for all unpaid or delinquent PACE tax assessments, having adopted the Alternative Method of Distribution of Tax Levies and Collections of Tax Sale Proceeds (“Teeter Plan”).⁴⁹

3.1.1.14 CAEAFTA Residential PACE Loss Reserve Program

SCEIP is enrolled in the CAEAFTA Residential PACE Loss Reserve Program.

3.1.2 The HERO PACE Programs: WRCOG HERO, SANBAG HERO and California HERO

The Western Riverside Council of Governments (WRCOG) administers the WRCOG and California HERO Programs and the San Bernardino Associated Governments (SANBAG) administers the SANBAG HERO Program. All three programs utilize services provided by Renovate America (residential) and Samas Capital (commercial).

As of August 8, 2014, the WRCOG residential HERO program is approved and accepting applications in its 18 member jurisdictions within Western Riverside County. As of August 7, 2014, the SANBAG residential HERO program is approved in all 25 SANBAG jurisdictions with all 25 accepting applications.⁵⁰ As of September 9, 2014, the residential California HERO program is approved in 139 jurisdictions statewide.⁵¹ The program is currently accepting applications in 96 of these jurisdictions and expects the other 43 to launch in November 2014.

Renovate America has successfully securitized \$103 million in HERO bonds at a AA rating as well as securing \$50 million in private equity investment capital and a \$300 million credit facility.⁵² The residential HERO programs combined have funded over 14,000 projects⁵³ totaling more than \$260 million in all eligible improvement categories.⁵⁴ The programs have approved 29,610 applications for a total of approximately \$1,199,969,278 in improvements as of July 31, 2014.⁵⁵ HERO program administrators report that there have been no defaults to date.⁵⁶

The programs total approximately 7,200 in approved solar projects since inception with approximately 3,600 of these projects financed and construction completed. Approximately 26% of all improvements funded through the HERO program are solar projects, accounting for approximately 35% of the total financed amount.⁵⁷ The average amount financed for solar projects is approximately \$25,000.⁵⁸ These systems have an estimated capacity of 22 MW equating to an estimated electric efficiency savings of 5,300 kWh and gas efficiency savings of 50 therms per project.⁵⁹

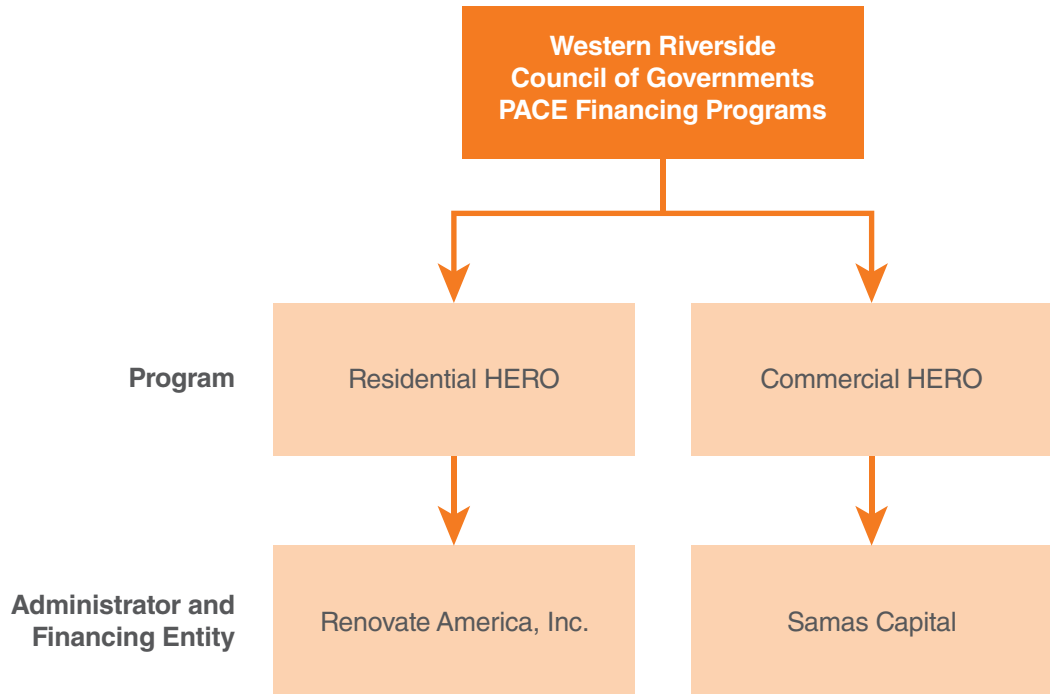
The following sections describe the WRCOG HERO and California HERO programs. The SANBAG HERO program is not discussed as it is essentially identical to the WRCOG HERO Program.

3.1.2.1 Western Riverside Council of Governments HERO PACE Programs

The Western Riverside Council of Governments (WRCOG) is a joint power authority (JPA) that represents its 17 cities, the unincorporated parts of Riverside County, two regional water districts, the Riverside County Superintendent of Schools and the Morongo Band of Mission Indians in Western Riverside County. WRCOG was formed to assist its members with examining issues that extend beyond jurisdictional borders and develop programs on a regional scale that will save jurisdictional resources and staff time. WRCOG's HERO Program is administered through public-private partnerships with the entities that they partner with to sell improvement bonds.

WRCOG has developed a PACE program that provides financing for both the residential and commercial markets (Figure 1). The residential sector of HERO is funded by Renovate America, Inc. The commercial sector of HERO is funded by Samas Capital.

Figure 1 Structure of WRCOG PACE Financing Programs



3.1.2.1.1 Identification of Involved Parties

Government Entity	Western Riverside Council of Governments (WRCOG)
Overall Program Administrator	WRCOG Executive Director or Designee
Program Administrator	WRCOG

3.1.2.1.2 Funding

Funding Source	Renovate America for Residential Samas Capital for Commercial
Program Funding Limit	Aggregated programs will not exceed \$900 million under current resolution

WRCOG’s program has changed over time and is currently composed of a six-part financing strategy.⁶⁰ WRCOG uses a cooperative financing arrangement whereby the WRCOG issues a bond or a series of bonds in an aggregate principal amount not to exceed \$900 million to Renovate America or Samas Capital that in turn provide a revolving credit line to finance projects. WRCOG may issue either microbonds for specific projects or pooled bonds for multiple projects. Renovate America and

Samas Capital intend to aggregate these bonds for rating and sale to the open market. WRCOG's financing strategy is provided in its current operational form. The strategies are as follows:

Strategy One: WRCOG will establish the WRCOG Energy Efficiency and Water Conservation Program for Western Riverside County Fund (the WRCOG Fund) and may accept funds from any available source. Repayments will be made pursuant to assessment contracts between the property owners and WRCOG and will be collected through the property assessment mechanism in the Riverside County property tax system, and, if approved by the County of Riverside, included in the Riverside County Teeter Program.⁶¹ WRCOG will manage or cause the County of Riverside to manage the WRCOG Fund in one enterprise fund with multiple subfunds.

Strategy Two: The program may require that inclusion of a 10% reserve fund be paid by the property owner and captured through the assessment charges, financing proceeds, grant resources or other sources as necessary and available to support the financing process.

Strategy Three: The program may modify its eligibility criteria as needed to participate in the state's pooled reserve funding program.

Strategy Four: The program, at launch, will utilize the Renovate America HERO Financing Plan to fund installations of eligible products for residential properties. Pursuant to such financing plan, Renovate America will provide a revolving credit line to finance the installation of eligible products to residential properties. Property and other eligibility requirements will be determined pursuant to the criteria set forth in Section II (of the WRCOG Administrative Guidelines and Status Report). In consideration for funding the installation of such eligible products WRCOG shall issue and deliver to Renovate America one or more municipal bonds secured by the contractual assessments payable by the properties to be improved.

Strategy Five: The program, at launch, will utilize the Samas Capital CERA Financing Plan to fund installations of eligible products for commercial properties. Pursuant to such financing plan, Samas Capital will provide a revolving credit line to finance the installation of eligible products to commercial properties. Property and other eligibility requirements will be determined pursuant to the criteria set forth in Section III (of the WRCOG Administrative Guidelines and Status Report). In consideration for funding the installation of such eligible products WRCOG shall issue and deliver to Samas Capital one or more municipal bonds secured by the contractual assessments payable by the properties to be improved.

Strategy Six: For long-term and additional financing, WRCOG will continue to explore funding opportunities from a number of other potential funding sources and combinations of sources, which may include, but are not limited to additional funding from any funds under the control of the WRCOG Executive Committee, the issuance of notes, bonds or agreements with utilities or public or private lenders, other governmental entities and quasigovernmental entities such as SCERA, CALPERS, Nationwide Retirement Solutions, funding from private entities or any financing structure allowed by law.⁶²

WRCOG's finance strategy provides flexibility to its program and allows WRCOG to change the program financing source as needed to pursue other financing options.

3.1.2.1.3 Underwriting Criteria for Program Participation by Program

HERO for Residential

- Property owner(s) must be the property owner(s) of record upon which the eligible products are to be installed.
- Property owner(s) must be current on their property taxes and the property owner(s) certify(ies) that such owner(s) have not had a late payment on their property taxes more than once during the prior three years or since the purchase of the property, if owned by such property owner(s) less than three years.
- Property owners must be current on all property debt of the subject property at the time of the application and cannot have had more than one 30-day mortgage late payment over the prior 12 months.
- Property must not have any liens other than lender debt or liens recorded by community facilities districts or similar financing districts.
- Property owner(s) have not declared bankruptcy in the past seven years, and the property is not currently an asset in a bankruptcy proceeding provided, however, that if the bankruptcy was discharged between two to seven years prior and the property owner has had no additional late payments more than 60 days past due in the last 24 months, the property owner may be approved.
- Mortgage-related debt on the property plus the principal amount of the contractual assessment must not exceed 90% of the value of the property.
- Eligible product costs are reasonable in relation to property value. Proposed eligible products must be less than 10% of the market value of the property (10:1 value to lien ratio). The combined amount to be financed under the program plus the mortgage-related debt must not exceed 100% of the value of the property.
- Manufactured and mobile homes must be attached to the property and the owner of the underlying property must be the applicant and subject to real property taxes, not personal property taxes or Department of Motor Vehicle fees.
- Condominiums are eligible, but may be restricted as to the eligible products that may be installed depending on the rules of the condominium association as well as the physical design of the unit. It is the responsibility of condominium owners to obtain authorization by the condominium association's management stating that the property owner is allowed to install the requested eligible products.
- For properties subject to HOA restrictions, it is the responsibility of the property owner to obtain authorization that the requested eligible products meet all the HOA guidelines or requirements, as applicable.
- The total annual property tax and assessments, including the contractual assessment, on the property will not exceed 5% of the property's market value, as determined at the time of approval of the contractual assessment.

Commercial HERO

- Applicant property owner(s) must be the property owner(s) of record.
- Mortgage debt lender(s) have given consent to program financing.
- Property owner(s) must be current on property taxes and the property owner(s) certify(ies) that such owner(s) have not had a late payment on their property tax more than once during the prior three years or since the purchase of the property, if owned by such property owner(s) less than three years.
- Property owners must be current on all property debt for a period of six months prior to the application, including no payment defaults or technical defaults, or since purchase if the current owner(s) have owned the property less than six months. This requirement must be maintained through funding.
- Property owner(s) or their affiliated companies have not been involved in a bankruptcy proceeding during the past seven years, and the property proposed to be subject to the contractual assessment is not currently an asset in a bankruptcy proceeding.
- All individual property owner(s) must sign the application, assessment contract and all required notices. For properties owned by corporations, LLCs or LLPs, signatures by authorized representatives and/or corporate resolutions are required.
- Property must not have any liens other than lender debt or liens recorded by community facility districts or similar financing districts.
- Eligible product costs are reasonable in relation to property value. Proposed eligible products must not exceed 15% of the market value of the property (15:1 value to lien ratio).
- Property has a debt service coverage ratio of 105% or higher.
- Mortgage-related debt on the property plus the principal amount of the contractual assessment does not exceed 80% of the market value of the property.
- The total annual property tax and assessments, including the contractual assessment, on the property will not exceed 5% of the property's market value, as determined at the time of approval of the contractual assessment.
- Nonprofit organizations must stipulate that they have not claimed an exemption from taxes.

3.1.2.1.4 Restrictions on Contractors

The costs of installation are eligible for financing only if completed by a contractor registered with the program or, subject to certain program restrictions, if the property owner is self-installing. A list of contractors registered with the program is located on the program's website; however, WRCOG will not make recommendations for contracting assistance. Eligible costs do not include labor costs for property owners that elect to do the work themselves.

3.1.2.1.5 Eligible Financeable Costs

Eligible costs include equipment and installation (includes but not limited to labor, energy/water audits, design, drafting, engineering, permit fees and inspection charges.) In addition, the program administrator determines whether the estimated equipment and installation costs are reasonable. The administrator may require additional bids to

determine whether costs are reasonable. Financing may be limited to the amount deemed reasonable by the administrator.

3.1.2.1.6 Assessment Finance Amount:

- Minimum: \$5,000
- Maximum: This amount is determined by the underwriting criteria of each individual program. This amount must be less than 10% of the market value of the property.

3.1.2.1.7 Financing Term

Term is not to exceed useful life of the improvement, up to 20 years.

- Residential: Assessment contracts are subject to 5-, 10-, 15- or 20-year repayment periods.
- Commercial: Assessment contracts are subject to 5-, 10-, 15-, 20- or 25-year repayment periods.

A 25-year financing term is also being developed to parallel 25-year warranties on solar panels.

3.1.2.1.8 Interest Rate

Program interest rates are set to create a competitively priced self-sustaining program with the ability to remarket the securities to ensure liquidity. The interest rate is broken down by program.

- The HERO program administrator sets interest rate when the assessment contract is signed. The interest rate can fluctuate with market conditions and an estimate is available on the HERO website. Interest rates are currently set between 5-9%. Interest rates have not changed since the launch of the program. They are as follows:
 - 5-year term 5.95%
 - 10-year term 7.95%
 - 15-year term 8.75%
 - 20-year term 8.95%
- Commercial HERO: Program administrator sets the interest rate at time of funding. Samas Capital will provide ongoing pricing feedback from the capital markets to aid in adjusting product pricing. Interest rates are currently set between 5-8%. The 8% rate would apply to a 25-year financing term.

3.1.2.1.9 Reserve Fund

A reserve fund was added to the program in January 2013. The reserve fund is 0.15% of the face value of the bond.

3.1.2.1.10 Fees Assessed on Property Owner

HERO (Residential)

- Program cost: Expense component added to amount of financing requested, not to exceed 7%. Currently set as a one-time administration fee of 6.95% of the principal amount of the assessment.
- Application fee: None
- Title and recording costs: \$95.00
- Permit costs: This amount may be included with the financing request.
- Annual administration and collection costs: Added to annual assessment adjusted for increase in living costs in subsequent years.
- On-site validation fees: Validation to confirm installation. Not to exceed actual costs.

HERO (Commercial)

- Program cost: Expense component added to amount of financing requested, not to exceed 5%.
- Application fee: Not to exceed \$250 or 1% of financing per application for commercial properties. Fees shall not exceed actual costs.
- Title and recording costs: Actual costs.
- Permit costs: This amount may be included with the financing request.
- Annual administration and collection costs: added to annual assessment adjusted for increase in living costs in subsequent years
- On-site validation fees: Validation to confirm installation. Not to exceed actual costs.
- Fee for multiple disbursement: Assessments in excess of \$50,000 may be subject to processing fees not to exceed \$150 and inspection fee not to exceed \$300. For partial disbursement, not to exceed actual costs of service.

3.1.2.1.11 Lender Policy

WRCOG's HERO Program provides the following disclosure but does not require lender consent. Property owners may be required to pay off the special assessment at sale or refinance. The disclosure follows.

Before completing a program application, you should carefully review any mortgage agreement(s) or other security instrument(s) which affect the property or to which you as the property owner are a party. Entering into a program assessment contract without the consent of your existing lender(s) could constitute an event of default under such agreements or security instruments. Defaulting under an existing mortgage agreement or security instrument could have serious consequences to you, which could include the acceleration of the repayment obligations due under such agreement or security instrument. In addition, Fannie Mae and Freddie Mac, the owner of a significant portion of all home mortgages, stated that they would not purchase home loans with assessments such as those offered by the authority. This may mean that property owners who sell or refinance their property may be required to prepay such assessments at the time they close their sale or refinancing.

It is unknown what type of risk, if any, this approach creates for residential property owners in light of the uncertainty created over residential PACE by the Ninth Circuit's March 19, 2013, dismissal of litigation against the FHFA.

3.1.2.1.12 Treatment of Federal/State Rebate, Tax Credit and Incentives

All available public utility, federal and state rebates will be deducted from the assessment amount at the time of financing. State or federal tax credits and performance-based incentives, such as the California Solar Initiative Performance-Based Incentive, will not be deducted from the assessment amount, but property owners may wish to consider these additional benefits in determining the amount of their financing request.

3.1.2.1.13 Costs and Liability to City

WRCOG has borne most of the startup costs for the creation of these programs. Additionally, all assessment contracts release WRCOG from liability or warranties for each project and require that property owners indemnify WRCOG.

3.1.2.1.14 CAEAFTA Residential PACE Loss Reserve Program

WRCOG HERO is enrolled in the CAEAFTA Residential PACE Loss Reserve Program.

3.1.2.2 California HERO Program

The California HERO Program is a statewide residential and commercial PACE program that encourages an open-market approach. This means that cities and counties may make multiple programs available to their constituents, including California HERO.

WRCOG and its partners developed the California HERO Program to make HERO available to the constituents of jurisdictions across the state. WRCOG is a joint powers authority that enables any city and county in California to become associate members under the California HERO PACE program. Associate members authorize the California HERO Program to operate within the member's boundaries. The California HERO Program contracts with Renovate America and Samas Capital to provide financing for the residential and commercial markets, respectively.

3.1.2.2.1 Eligible Property

The California HERO Program only funds projects on residential and commercial properties in jurisdictions that have joined its program. The property must be improved, and financing cannot be used for a new construction on a previously vacant parcel. Mobile homes and manufactured homes are eligible if attached to the real property, the owner owns the underlying land and the owner pays real property taxes. Condominium properties are eligible to participate subject to association rules and obtaining written approval from their condominium association. Single-family homes are required to provide written document that the improvement meets HOA guidelines or requirements.

3.1.2.2.2 Identification of Involved Parties

Government Entity	Western Riverside Council of Governments (WRCOG)
Program Administrator	<p>Renovate America, Inc. – Residential program administration and funding</p> <p>Samas Capital – Commercial program administration and funding</p> <p>David Taussig & Associates – Assessment engineer and special tax consultant</p> <p>Best, Best & Krieger – Legal/bond counsel</p> <p>Westhoff, Cone & Holmstedt – Placement agent</p> <p>Public Finance Management – Financial advisor and program manager</p>

3.1.2.2.3 Funding

The HERO Program is authorized to issue up to \$2 billion in bonds to finance eligible improvements.

3.1.2.2.4 Underwriting Criteria for Program Participation by program

Residential HERO

- Property owner(s) must be the property owner(s) of record.
- Property owner(s) must be current on their property taxes, and there must not be more than one late payment in the last three years.
- Property owners must be current on all property debt at the time of application and cannot have had more than one 30-day mortgage late payment over the previous 12 months.
- Property must not have any material liens other than lender debt or liens recorded by community facilities districts or similar financing districts.
- Property owner(s) have not declared bankruptcy in the past seven years and the property is not currently an asset in a bankruptcy proceeding; provided, however, that if the bankruptcy was discharge between two to seven years prior and the property owner has had no additional late payments more than 60 days past due in the last 24 months, the property owner may be approved.
- Mortgage-related debt on the property must not exceed 90% of the value of the property.
- Improvement costs are reasonable in relation to property value. Proposed improvements must be less than 10% of the market value of the property; provided, however, that the combined mortgage-related debt and amount of PACE assessment must not exceed 100%.

- The total annual property tax and assessments, including the contractual assessment, on the subject property will not exceed 5% of the property’s market value, as determined at the time of approval of the contractual assessment.
- All property owners (including trustees if subject property is owned by a trust or authorized officer/agent if business entity) must sign all required documentation, including but not limited to the application, the completion certificate and the assessment contract with all other required financing documents.

Commercial HERO

- Applicant property owner(s) must be the property owner(s) of record.
- Mortgage debt lender(s) have given consent to program financing.
- Property owner(s) must be current on property taxes and the property owner(s) certify(ies) that such owner(s) have not had a late payment on their property tax more than once during the prior three years or since the purchase of the property, if owned by such property owner(s) less than three years.
- Property owners must be current on all property debt for a period of six months prior to the application, including no payment defaults or technical defaults, or since purchase if the current owner(s) have owned the property less than six months. This requirement must be maintained through funding.
- Property owner(s) or their affiliated companies have not been involved in a bankruptcy proceeding during the past seven years, and the property proposed to be subject to the contractual assessment is not currently an asset in a bankruptcy proceeding.
- All individual property owners must sign the application, assessment contract and all required notices. For properties owned by corporations, LLCs or LLPs, signatures by authorized representatives and/or corporate resolutions are required.
- Nonprofit organizations must stipulate that they have not claimed an exemption from taxes.
- Property must not have any liens other than lender debt or liens recorded by community facility districts or similar financing districts.
- Eligible product costs are reasonable in relation to property value. Proposed eligible products must not exceed 20% of the market value of the property.
- Property has a debt service coverage ratio of 105% or higher.
- Mortgage-related debt on the property plus the principal amount of the contractual assessment does not exceed 90% of the market value of the property.
- The total annual property tax and assessments, including the contractual assessment, on the property will not exceed 5% of the property’s market value, as determined at the time of approval of the contractual assessment.

3.1.2.2.5 Restrictions on Contractors

The HERO Program requires that contractors register with the program. In order to qualify, the contractor must have the proper license and bonding requirements with the California Contractors State License Board (CSLB) and maintain a good standing with the board in order to continue participating in HERO.

The costs of installation are eligible for financing only if completed by a contractor registered with the program or the property owner self-installs. A list of contractors

registered with the program is located on the program's website; however, the program will not make recommendations for contracting assistance.

3.1.2.2.6 Eligible Financeable Costs

Eligible costs include equipment and installation (including but not limited to labor, energy/water audits, design, drafting, engineering, permit fees and inspection charges.) Additionally, the program administrator determines whether the estimated equipment and installation costs are reasonable. The administrator may require additional bids to determine whether costs are reasonable. Financing may be limited to the amount deemed reasonable by the administrator. Eligible costs do not include labor costs for property owners that elect to do the work themselves.

3.1.2.2.7 Assessment Finance Amount

- Minimum: \$5,000
- Maximum: This amount is determined by the underwriting criteria of each individual program. For residential properties, this amount must be less than 10% of the value of the property and a combined mortgage and assessment contract amount of 100% of the value of the property. For commercial properties, the maximum amount is 20% of the value of the property not to exceed a combined mortgage and assessment contract amount of 90% of the value of the property.

3.1.2.2.8 Financing Duration

Duration is not to exceed useful life of the improvement, up to 20 years.

- Residential: Assessment contracts are subject to 5-, 10-, 15- or 20-year repayment periods.
- Commercial: Assessment contracts are subject to 5-, 10-, 15-, 20- or 25-year repayment periods.

3.1.2.2.9 Interest Rate

Program interest rates are set to create a competitively priced self-sustaining program with the ability to remarket the securities to ensure liquidity. The interest rate is broken down by program.

- The HERO program administrator sets interest rate when assessment contract is signed. The interest rate can fluctuate with market conditions and an estimate is available on the HERO website. The current rates are as follows:
 - 5-year term 5.95%
 - 10-year term 7.95%
 - 15-year term 8.75%
 - 20-year term 8.95%

- Commercial HERO: Program administrator sets the interest rate at time of funding. Samas Capital will provide ongoing pricing feedback from the capital markets to aid in adjusting product pricing.

3.1.2.2.10 Reserve Fund

There is a reserve fund of 0.15% of the total assessment agreed to by the property owner.

3.1.2.2.11 Fees Assessed on Property Owner

HERO (Residential & Commercial)

- Program cost: Determined by city, county or district where property is located.
- Application fee: None
- Annual administration and collection costs: Determined by city, county or district where property is located.

3.1.2.2.12 Lender Policy

The California HERO Program provides the following disclosure but does not require lender consent for residential projects. Property owners may be required to pay off the special assessment at sale or refinance. The disclosure is provided.

Before completing a program application, you should carefully review any mortgage agreement(s) or other security instrument(s) which affect the property or to which you as the property owner are a party. Entering into a program assessment contract without the consent of your existing lender(s) could constitute an event of default under such agreements or security instruments. Defaulting under an existing mortgage agreement or security instrument could have serious consequences to you, which could include the acceleration of the repayment obligations due under such agreement or security instrument. In addition, Fannie Mae and Freddie Mac, the owner of a significant portion of all home mortgages, stated that they would not purchase home loans with assessments such as those offered by the authority. This may mean that property owners who sell or refinance their property may be required to prepay such assessments at the time they close their sale or refinancing.

It is unknown what type of risk this approach creates for residential property owners in light of the uncertainty created over residential PACE by the Ninth Circuit's March 19, 2013, dismissal of litigation against the FHFA.

3.1.2.2.13 Treatment of Federal/State Rebate, Tax Credit and Incentives

All available public utility, federal and state rebates can be deducted from the assessment amount at the time of financing. State or federal tax credits and performance-based incentives, such as the California Solar Initiative rebate, do not need to be deducted from the assessment amount, but property owners may wish to consider these additional benefits in determining the amount of their financing request.

3.1.2.2.14 Costs and Liability to City

There are no costs to the city or county to participate in the California HERO Program. The program appears to have limited costs to a city or county beyond staff times to review the program, produce staff reports, pass resolutions and reach agreement on indemnification and release of liability.

3.1.2.2.15 CAEAFTA Residential PACE Loss Reserve Program

California HERO is enrolled in the CAEAFTA Residential PACE Loss Reserve Program.

3.1.3 California Communities — CaliforniaFIRST

The CaliforniaFIRST Program is part of the California Statewide Communities Development Authority (CSCDA), known as California Communities, a joint powers authority co-sponsored by the California State Association of Counties and the League of California Cities. CSCDA contracts with Renewable Funding to administer the CaliforniaFIRST program. The CaliforniaFIRST Program is structured for use statewide by all interested eligible government agencies.

CaliforniaFIRST has operated as a statewide commercial PACE program that uses an open-market approach to finance projects. Under the open-market approach, the commercial property owner may use a list of capital providers from CaliforniaFIRST to compare terms or may use their own capital provider. The financing transaction is run through CaliforniaFIRST in order to secure the PACE lien and corresponding benefits. Currently, the program operates its commercial program in 17 counties and more than 150 cities in California.⁶³ CaliforniaFIRST's commercial program is also pending approval in additional jurisdictions.⁶⁴

CSCDA elected to suspend CaliforniaFIRST's residential PACE program due to FHFA issues but reversed its decision after the establishment of the CAEAFTA Residential PACE Loss Reserve Program. CaliforniaFIRST launched a full residential PACE program in September 2014. The residential PACE program is operating or pending approval in 138 jurisdictions.⁶⁵

To date, CaliforniaFIRST has approved financing on 55 commercial projects totaling \$38,179,828.⁶⁶ The solar project cost averages is approximately \$67,663.⁶⁷ Financing for these projects has not yet been secured to date.⁶⁸

3.1.3.1 Eligible Property

CaliforniaFIRST funds projects on residential and commercial properties in jurisdictions that have joined its program. This includes the following types of properties: residential up to three units, office, retail, hotel/restaurant, multifamily properties of five units or more, data centers, warehouse/industrial, agriculture, healthcare, education and nonprofit.

3.1.3.2 Identification of Involved Parties

Government Entity	California Statewide Communities Development Authority (CSCDA)
Program Administrator	Renewable Funding

3.1.3.3 Funding

The program is authorized to issue up to \$17 billion in bonds to finance clean energy upgrades.⁶⁹

Residential: Renewable Funding has prearranged \$300 million in private capital to fund residential PACE transactions and structure them for take out in the capital markets.

Commercial: CaliforniaFIRST uses an open-market financing model under which a property owner may use one of the program’s sources of capital or bring in their own capital provider, whichever option offers the property owner the greatest benefit. CSCDA issues a revenue bond that is then purchased by the capital source and secured by the tax assessment lien on the property. CaliforniaFIRST also uses a method of pooling bonds for projects under \$400,000 for sale to a single investor while bonds over \$400,000 are generally sold individually to investors.

Funding Source	Residential: Program arranged capital. Commercial: Individual financing arranged between a capital provider and a property owner. CSCDA issues revenue bond, which is then sold to lender.
Program Funding Limit	Up to \$17 billion

3.1.3.4 Underwriting Criteria for Program Participation

Residential

- Applicant(s) must be the owner of record on the property.
- Property must be residential up to three units.
- Property must be in a participating community.
- No new construction (only existing properties).
- Manufactured homes approved if permanently attached to property.
- Property owner must be current on their property taxes for the prior 12 months.
- Property owner must certify that property taxes have not been paid late more than once during the prior three years (or since the purchase if owned for less than three years).
- Property owner must be current on all subject property-secured debt at the time of the application and cannot have had more than one 30-day mortgage-related late payment over the previous 12 months.
- There must be no notices of default or foreclosure filed against the property within the last two years.

- No bankruptcies (business or personal) in the past two years and the property must not be an asset in a bankruptcy proceeding.
- Property title cannot be subject to a power of attorney, easement or subordination agreements restricting authority of the property owner(s) to a PACE lien.
- Property owner must have at least 10% equity in the property (mortgage-related debt is no more than 90% of the value of the property).
- No current involuntary liens and/or judgments totaling more than \$1,000 for all property owners.
- Products must be energy efficiency, renewable energy and water efficiency products; permanently fixed, new products; and meet minimum efficiency and/or other requirements for eligible products.
- A participating contractor must install all products.
- Financing term cannot exceed the useful life of the product.
- All-in tax rate on the property (including the assessment) cannot exceed 5% of the property value.

Commercial: Underwriting criteria is determined on a case-by-case basis as lenders and property owners negotiate the terms of the financing. Following are the general underwriting criteria for the program.

- Legal owner must sign assessment contract.
- Property owner must be current for the past three years (or since ownership if less than three years) on payment of property taxes.
- Property owner cannot have any notices of default or foreclosure, whether currently in effect or released, filed against property within the last five years (or since ownership by current property owner if less than five years) due to nonpayment of property taxes or loan payments.
- Certification that the property owner is solvent and has no pending bankruptcy proceedings.
- Current property owner(s) cannot have record of bankruptcy in the past three years.
- No involuntary liens, defaults or judgments applicable to the subject property.
- The value of the PACE lien cannot generally exceed 20% of the property value (LTV ratio).
- The property value plus the value of the project is equal to or greater than the amount of private debt and the PACE financed amount, assessment liens and/or special taxes.
- Property taxes, special taxes and assessments, including the PACE assessment, may not exceed 5% of the property's value.
- Lenders may make additional information requests and subject property owner to additional requirements.⁷⁰

3.1.3.5 Restrictions on Contractors

Contractors must have the appropriate CSLB license for the work they are performing. For the residential program, contractors must also complete program training and submit enrollment forms.

3.1.3.6 Energy Audit Requirement

Residential: An energy audit is recommended but not required

Commercial: An ASHRAE (American Society of Heating, Refrigerating and Air-Conditioning Engineers) level 2 audit *or comparable energy analysis* must be performed by an energy professional.

3.1.3.7 Eligible Financeable Costs

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

3.1.3.8 Assessment Finance Amount

Residential

- Minimum: \$5,000
- Maximum: 10% of the property value or \$200,000, whichever is less. In addition, the finance amount plus the existing property debt must be less than 100% of the value of the property.

Commercial

- Minimum: \$50,000
- Maximum: The maximum financing amount is dependent on the property value. There is a 20% LTV cap. In addition, current outstanding debt plus CaliforniaFIRST financing amount plus other special assessment liens and special tax debt must be less than the property value plus the value of the financed projects.

3.1.3.9 Financing Term

Not to exceed useful life of the improvement, up to 20 years in 5-, 10-, 15- and 20-year increments

3.1.3.10 Interest Rate

Commercial: Annual interest rate is determined by market condition at time of issuing bonds. Current rates are approximately 6.5% fixed for 20 years.

Residential: Interest rates fluctuate due to market conditions and are currently fixed at the following rates:

- 5-year term 6.75%
- 10-year term 7.9%
- 15-year term 8.5%
- 20-year term 8.75%

3.1.3.11 Reserve Fund

Residential: The program supports three reserve funds: Reserve fund to cover delinquent payments to bond investor, CAEATFA reserve fund to cover losses to mortgage holder due to PACE lien and a foreclosure reserve to cover the sponsor's expense in initiating foreclosure proceedings. These funds are further detailed in the following subsection.

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

3.1.3.12 Fees Assessed on Property Owner

Residential

- One-time fees
 - Program-related fees: One-time fees added to the assessment at the time of funding. The fees include costs of program administration and origination, bond counsel, program sponsor fee (CSCDA) and tax administration.
 - Lien recording fee: The fees a county charges to record the assessment lien documents on the property.
 - Reserve fees: One-time fees or deposits incurred at funding to pay for reserves that support bondholders' and mortgage holders' interests. These include the following.
 - Reserve fund: A deposit to pay debt service on the bonds in the event of delinquencies in payments of assessments.
 - CAEATFA PACE Loss Reserve Program fee: A deposit from each assessment will be made to the loss reserve to support the administration of the reserve.
 - Foreclosure expense reserve account: A deposit to cover CSCDA's costs to initiate judicial foreclosure for properties of property owners that are delinquent on payment of their annual assessment obligations.
- Annual fees
 - County tax collector fee: Fee ranges from \$0.10 a parcel to 2% per payment depending on the county.
 - Tax administrator fee for managing the annual assessment.

Commercial

- Annual administrative fee: Annual fees based on assessment amount to support special tax district administration and bond servicing.
- County tax collector fee: Fee ranges from \$0.10 a parcel to 1% per payment depending on the county.
- Closing fees: The total amount of closing fees is determined by the size of the project. The types of closing fees charged include the following.
 - Program administration
 - Bond counsel

- Project validation
- Program sponsor
- Issuer counsel
- Fiscal agent

3.1.3.13 Lender Policy: Affirmative Acknowledgment from Mortgage Lender

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

The program is prepared to expand financing to include residential properties upon approval of its program in jurisdictions where it is under review. CaliforniaFIRST recommends lender notification for residential properties.

3.1.3.14 Costs and Liability to City

This program appears to have limited cost to a city or county beyond staff and council time to research and write reports and to pass a resolution or a hearing report. To date there have been no costs to cities or counties to participate in CaliforniaFIRST. Cities have no liability because cities do not establish the program, administer programs or issue the bonds under CaliforniaFIRST.

3.1.3.15 CAEAFTA Residential PACE Loss Reserve Program

CaliforniaFIRST is enrolled in the CAEAFTA Residential PACE Loss Reserve Program.

3.1.4 Los Angeles County — Commercial PACE Financing Program

In May 2010, the Los Angeles County Board of Supervisors approved the formation of an AB811 Improvement Act PACE assessment district and the launch of both commercial and residential PACE programs. Cities within the county had to pass a resolution to opt into the county program in order to participate. To date, 80 of the 88 cities in Los Angeles have opted into the program. In July 2010, however, the residential PACE program was placed on hold due to FHFA statements that PACE programs present safety and soundness concerns to the mortgage portfolios held by Fannie Mae, Freddie Mac and the federal mortgage agencies.

Despite the residential program being put on hold, Los Angeles County’s Commercial PACE Program was launched in 2012 and began initiating loans for commercial properties in 2013. Thus far, it has funded \$14.1 million in commercial energy upgrade projects with an additional \$176 million in projects in the pipeline. For more information on LA County’s Commercial PACE Financing Program, visit www.lapace.com.

LA County’s Commercial PACE Program uses a similar open-market financing model as GreenFinanceSF and CaliforniaFIRST by which a property owner chooses an investor, negotiates financing rates and terms and the county issues a bond that is purchased by a lender or third-party capital investor to fund the project. Notably, the primary difference between LA County and GreenFinanceSF is the statutory requirements and flexibilities set out by each program’s enabling statute, the Improvement Act as amended by AB 811 and the Mello-Roos Act, respectively. These two programs may demonstrate the strengths, weaknesses and viability of commercial open-market funding under both the Improvement Act and Mello-Roos.

LA County plans to launch a countywide residential PACE program in early 2015. On August 12, 2014, the Los Angeles County Board of Supervisors directed staff to prepare and release a request for proposals (RFP) for an administrator(s) to launch and manage their residential PACE financing program. The board of supervisors also directed staff to initiate a judicial validation compliant for the residential PACE program within 90 days. On August 26, 2014, Los Angeles County released an RFP to begin the open and competitive process for hiring an administrator(s) to launch and manage the county’s residential PACE financing program.

3.1.4.1 Eligible Property

Los Angeles County’s Commercial PACE Financing Program funds projects on nonresidential properties located in the county in jurisdictions that have passed resolutions to opt into its program; to date, 80 of 88 cities have opted into the program. This includes the following types of properties: office, retail, hotel/restaurant, hospitality, multifamily properties of five units or more, data centers, warehouse/industrial, agriculture, healthcare, education, municipal buildings and nonprofit properties eligible to receive a property tax bill.

3.1.4.2 Identification of Involved Parties

Government Entity	County of Los Angeles
Program Administrator	County of Los Angeles

3.1.4.3 Funding

Los Angeles County Commercial PACE uses an open-market or third-party owner-arranged financing approach for commercial properties. The open-market approach uses a more traditional form of commercial financing through which a property owner independently negotiates with their existing lender or other third-party investor to secure financing for their PACE project. The project financier then purchases a bond from the government or district secured by the tax assessment on the property to finance the project.

Funding Source	Individual financing arranged between a lender and a property owner. LA County’s Treasurer and Tax Collector issues revenue bond, which is then sold to investor.
Program Funding Limit	Limited by investor

3.1.4.4 Underwriting Criteria for Program Participation: Property and Owner Eligibility

- All nonresidential owners of improved real property within participating areas are eligible to submit an application to the program. Qualifying property owners may be individuals, associations, business entities, cooperatives and any owner who is eligible to pay real property taxes or is eligible to receive a property tax bill.
- The property is located within Los Angeles County, and if within the boundaries of a city, the city has adopted a resolution to join the program.
- The property owner must be eligible to pay real property taxes or is eligible to receive a property tax bill.⁷¹
- The subject property must be a nonresidential property, defined as a property in which the primary use is not residential or a property used for multifamily attached housing with five or more units.
- The property owner must obtain written consent from the property's existing mortgage lenders as a requirement for further encumbrance. The program will provide templates for this purpose but it is the owner's responsibility to obtain consent from the mortgage lender(s). The owner must submit a copy of the signed Mortgage Lender Consent Form with the final application.
- Applicant is the legal owner(s) of the property and all legal owners of the property agree to participate in the program on the terms set forth in this handbook. Owner(s) of the fee simple title to the subject property, or their legally authorized representative(s), must sign the program documents, including the final application.
- The property is not subject to involuntary liens, defaults or judgments as set forth in the assessment contract or any other program document. The program administrator may review public records to verify compliance with this requirement.⁷²
- Property taxes and assessments must be current on the property and have not been delinquent for a period up to five years (or since the date of the most recent transfer if less than five years). The program administrator may review public records to verify compliance with this requirement.⁷³
- Property owner certifies that he/she is not in bankruptcy and the property is not an asset in a bankruptcy proceeding. Property owner certifies that he/she has not declared bankruptcy within the last 10 years.
- Property owner certifies and demonstrates that he/she is current on the mortgage, has not defaulted on the deed(s) of trust and can legally enter into the program.
- Property must meet a positive equity test.
- The property owner must agree to provide the county with access to utility usage information to enable the program to monitor energy savings and to participate in surveys and program evaluations.
- Property is subject to the appropriate jurisdiction's (county, city or town) permitting and inspections and all other applicable federal, state and local codes and regulations.

The program involves the issuance of bonds by the County of Los Angeles secured by a contractual assessment. Therefore, it is important that property owners pay their contractual assessment and other property-related obligations in full on a timely basis or risk property foreclosure. Consequently, the program reserves the right to request additional information in its sole discretion and to deny applications based on any information that reflects on the likelihood that a property owner may not pay its contractual assessment.

3.1.4.5 Restrictions on Contractors

- Licensing: Contractors must demonstrate compliance with all applicable state and local licensing laws, be in good standing with the Contractors State License Board and possess the license or licenses required by the state for the specific improvements they install and the work performed.
 - For solar PV and solar water heating projects, contractors must be listed on the California Solar Initiative list of [approved participating contractors](#).
- Insurance: Contractors must be sufficiently insured and bonded.
- Permits: Contractors shall obtain all required building permits, including MECH. LTG forms for Title 24 compliance, and the improvements must successfully pass the final building inspection.
- Rebate programs: Contractors are encouraged to participate in state, local and utility rebate programs and must meet the requirements of such programs.
- Terms and conditions: Contractors must sign the program's contractor cover letter and agree to the program's terms and conditions.

3.1.4.6 Energy Audit Requirement

Los Angeles County Commercial PACE requires an ASHRAE level 2 or equivalent audit for energy efficiency projects. However, if only solar panels are installed in the project, then a solar audit performed by a licensed engineer is required and an ASHRAE audit is not. For projects installing water measures, a water audit is required that calculates the baseline building water use compared to the expected savings after the improvements have been installed. LA County's Commercial PACE Program Handbook further describes the audit requirements.

3.1.4.7 Assessment Finance Amount

- Minimum: Currently no minimum. The project must be financially viable when factoring in finance fees and closing costs.
- Maximum: Currently no maximum.

3.1.4.8 Financing term

The financing term is not to exceed useful life of the improvement, up to 20 years.

3.1.4.9 Interest Rate

Interest rates are anticipated to be between 6%-8% but are negotiated between the property owner and their chosen investor.

3.1.4.10 Fees Assessed on Property Owner

Description	Timing	Cost	Notes
One-Time Fees			
Application Fee	At final application	\$250	
Technical Project Review	At final application	Varies	May be required for certain projects or measures
County Closing Fees	At closing	\$5,000 – \$10,000	Most projects will incur only \$5,000
County Recording Fee	At closing	\$100	
County Bond Counsel	At closing	TBD	Not to exceed \$25,000 per PACE bond
County Assessor Fee	At closing	\$300	
Trustee Fee	At closing	\$500 – \$1,000	\$500. If the lender requires a legal opinion, then an additional \$500
CDIAC Fee	At closing	.00015 x par amount of bonds	Fee is capped at \$3,000. Fee to the investor on projects > \$1 million
Annual Fees			
Annual Administrative Assessment	Annually	NTE \$100	Not a fixed fee; adjusted annually
Trustee Annual Fee	Annually	\$1,000	

For a limited time, LA County will subsidize closing costs for the first few PACE projects.

3.1.4.11 Lender Policy

Los Angeles County Commercial PACE requires the property owner(s) to obtain lender consent.

3.1.4.12 Debt Service Reserve Fund

Los Angeles County has created a Commercial PACE Reserve Fund of \$150,000 to cover any missed assessment payments.

3.1.4.13 Costs and Liability to Participating Cities

There is no cost to the participating cities. LA County's PACE Financing Program is self-funded with a combination of application fees, grant funds and ratepayer funds. If cities choose to market the program, they may receive support from LA County.

3.1.5 California Enterprise Development Authority – Figtree PACE Financing Program

The California Enterprise Development Authority (CEDA) is a joint powers authority established by the California Association for Local Economic Development (CALED). CEDA currently has 40 city members and 21 county members. CEDA is the agency that forms assessment districts for the Figtree PACE financing program under the Improvement Act of 1911.⁷⁴

Figtree operates in 75 jurisdictions across the state. The program has financed and completed 23 projects. Of these projects, 10 were solar projects totaling approximately \$1 million in funding.⁷⁵ The average amount financed per solar project is approximately \$150,000. To date, Figtree has not seen any defaults.⁷⁶

Figtree’s residential PACE program will launch in 2015 and will feature many of the same elements found in its commercial PACE program. The program will utilize the same legal structure and management team. Figtree’s residential PACE program is authorized in more than 70 California cities. Cities and counties joining the Figtree program authorize CEDA to enroll both residential and commercial properties.

3.1.5.1 Eligible Property

Residential (with no mortgage or nonconforming loan) properties are eligible including single-family detached homes, duplexes and multifamily structures with three or fewer units. Commercial properties include office, retail, hotel/restaurant, multifamily properties of five units or more, data centers, warehouse/industrial, agriculture, healthcare, education and nonprofit.

3.1.5.2 Identification of Involved Parties

Government Entity	California Enterprise Development Authority (CEDA)
Program Administrator	Figtree Financing
Bond Advisor	Wildan Financial Services

3.1.5.3 Funding

CEDA acts as the issuer of the municipal bonds that finance Figtree PACE projects. CEDA uses the Improvement Bond Act of 1915 (California Streets & Highways Code § 8500 et seq.) to issue limited obligation bonds, notes or other forms of indebtedness secured by the contractual assessments revenue to finance improvements in the district created under AB 811.⁷⁷ These bonds are structured as either a microbond for a specific project or a pooled bond for multiple projects before being sold to investors on the open market. CEDA also may create a special reserve fund for the bonds under Part 16 of the Improvement Bond Act of 1915 if required by investors.⁷⁸ CEDA has authorized up to \$500 million for the Figtree PACE program at this time.

Figtree also secured a \$60 million warehouse facility that enables the program to finance a wide range of project sizes, from \$5,000 to several million dollars, as soon as projects have qualified. Figtree’s residential PACE offering is being developed using the same framework as its commercial program.

Figtree successfully completed the first and only multicity pooled PACE bond to date in addition to completing multiple bond offerings to the capital markets.

Funding Source	CEDA under the Improvement Bond Act of 1915
Program Funding Limit	Set by CEDA: Approximately \$500 million

3.1.5.4 Underwriting Criteria for Program Participation

The underwriting criteria for qualifying commercial program participants include:

- Applicant(s) is the legal owner(s) of the property described in the application.
- Property owner is current on property taxes for the property and has not been delinquent in the past three years or since owning the property, if less than three years.
- Property owner is current on private property debt and has not been delinquent in the past three years or since owning the property, if less than three years.
- Mortgage lender(s) has been provided the Notice of Request for Lender Consent and Acknowledgement.
- Property owner has not declared bankruptcy in the past five years.
- Property is not listed as an asset in a bankruptcy.
- Lien-to-value ratio (excluding assessed financing amount) does not exceed 100% (i.e., no negative equity). The outstanding mortgage must not be an amount greater than the property’s assessed total value (owner must not be underwater). In certain cases, an appraised value can be used if the assessed total value is deemed inaccurate (e.g., the assessment value is not commensurate with current market value).
- Property is developed and located within the jurisdiction of a participating agency.
- Property is classified as commercial (including industrial, agricultural, multifamily, etc.).

The underwriting criteria for qualifying residential program participants include:

- Applicant(s) is the legal owner(s) of the property described in the application.
- The amount of financing requested under the program shall not exceed 10% of the value of the property.
- All existing private debt recorded against the property does not exceed 85% of the value of the property.
- There are no involuntary liens, defaults or judgments on the property in excess of \$1,000.
- Property owner has not declared bankruptcy in the past seven years.
- Property owner is current on property taxes for the property and has not been delinquent in the past three years or since owning the property, if less than three years.

- Property owner is current on private property debt and has not been delinquent in the past three years or since owning the property, if less than three years.
- The property title is not subject to power of attorney, easements or subordination agreements restricting the property owner from subjecting the property to a PACE lien.
- Property is classified as single-family residential or multifamily residential (up to three units).

3.1.5.5 Restrictions on Contractors

The Figtree program requires that contractors apply to participate in the Figtree program through an online application. Once approved, the contractor is added to an online directory of contractors eligible to contract for projects. Figtree requires that contractors:

- Hold a business license in the jurisdiction where work is being performed.
- Have a minimum of three year's work experience as a licensed contractor in California or demonstrate sufficient experience in a relevant field of work.
- Hold a minimum of \$1,000,000 in general liability insurance.
- Bonding and Worker's Compensation must be in accordance with California Contractors State License Board requirements.

Figtree requires the signing of a contractor agreement that makes contractors responsible for installing equipment on the property once CEDA approves the project. Contractors are reimbursed upon satisfactory completion of a project within 14 business days.

3.1.5.6 Audit Requirement

An energy audit is not required.

3.1.5.7 Eligible Financeable Costs

Eligible costs include equipment and installation (labor, drafting, engineering, application fees, permit fees, processing fees and inspection charges). Additionally, CEDA determines whether the estimated equipment and installation costs are reasonable. CEDA may require additional bids to determine whether costs are reasonable. Financing may be limited to the amount deemed reasonable by CEDA.

3.1.5.8 Assessment Finance Amount

Minimum

- Residential: \$2,500
- Commercial: \$5,000

Maximum: Determined based on most recent county-assigned assessment value of property.

3.1.5.9 Financing Duration

Financing is not to exceed useful life of the improvement, up to 20 years.

3.1.5.10 Interest Rate

Annual interest rate is determined by market condition at time of issuing bonds but may not exceed 12% as required by California law. Current interest rates for finance projects range between 4.50% and 6.99% depending on the duration of the financing.

3.1.5.11 Reserve Fund

Figtree's commercial PACE program does not operate with a reserve fund. Figtree's residential PACE program will participate in California's loan loss reserve fund.

3.1.5.12 Fees Assessed on Property Owner

Residential fees

- Fees associated with Figtree's residential PACE program are still being developed.

Commercial fees

- Processing fee (commercial): \$495 per application and an additional \$100 per parcel on multiple contiguous parcels. Includes title verification.
- Progress draws: For large projects, progress draws or multiple disbursements may be available to alleviate the burden of carrying costs. Progress draws are subject to a fee of \$495 each. These are payable by the contractor.
- Annual administrative fee: A charge of up to 3% of the total annual assessment amount will be added to the annual assessment amount. Such administrative charges include ongoing expenses related to the annual assessment levy.
- Closing fees: For commercial properties, a closing fee of 4% is assessed on the financed amount up to \$1 million. For financed amounts over \$1 million a scaled-down closing fee is assessed.
- Prepayment fee: If the assessment is paid off early, the property owner will incur a fee based on the following schedule.
 - 5% if paid off in years 1-5
 - 3% if paid off in years 6-10
 - 0% if paid off thereafter

3.1.5.13 Lender Issue - Lender Consent

Figtree requires that commercial property owners obtain lender consent. Specifically, Figtree requires notice and request of written consent from holders of any private lien on the participating property. The lien holder must agree the assessment lien will have the same priority as real property taxes. The property owner may not participate if the lender returns the notice and request for lender consent and specifically states it does not consent.

3.1.5.14 Costs and Liability to City

A city or county will bear no costs to join the program beyond staff time and a legal analysis to review program. A city or county will not bear costs to setup the program, the assessment district or implement the program. Cities and counties are not liable for bonds as bonds are the obligation of CEDA. Additionally, Figtree indemnifies the city or county's limited legal liability.

Figtree's standard indemnification agreement with municipalities offers to defend and indemnify municipalities against legal liability and other damages. In addition, municipalities participating in the Figtree program do not bear the costs or burden of any assessment proceedings, the levy or collection of assessments or any required remedial action in the case of delinquencies in such assessment payments, or the offer, issuance, sale or administration of the bonds or any other bonds issued in connection with the PACE program.



4

The Mello-Roos Community Facilities Districts Act of 1982: City Charter Authority and SB 555

The Mello-Roos Community Facilities Act of 1982 (Government Code §53311-53368.3) allows any county, city, special district, school district or joint powers authority to establish a community facilities district (CFD) to finance public improvements and services such as streets, sewers or police services. By law, the CFD can recover expenses from forming the district and administering the annual special tax. General formation of the CFD requires the sponsoring government entity to propose a district that includes all property that will benefit from the improvement. An affirmative vote of a two-thirds majority of all residents or current landowners in the proposed district is then required to place a tax lien against each property in the CFD.

Several charter cities, including the cities of San Francisco and Berkeley, created Mello-Roos CFDs under their charter authority to facilitate PACE programs before the passage of SB 555. However, there is uncertainty regarding using this type of charter authority to fund PACE projects after an August 1, 2014, 4th California Appellate District ruling invalidated a charter city's Mello-Roos authority to levy a special tax under both Government Code Section 53326 (a) & (c) (landowner election) as well as the city's own charter authority.⁷⁹ San Francisco is currently evaluating the viability of its PACE program as authorized by its charter authority and may seek an alternative mechanism for its PACE program.

SB 555 amended Mello-Roos by expressly authorizing the CFD to finance and refinance the acquisition, installation and improvement of energy efficiency, water conservation and renewable energy improvements to or on real property.⁸⁰ SB 555 created a separate procedure for establishing a CFD for PACE improvements.⁸¹ SB 555 also created an alternative procedure for incurring bond indebtedness under which an individual property owner annexes their property into the CFD through a voluntary unanimous deemed vote at the time of financing.⁸² Thus, an energy efficient, water conservation and renewable energy improvement CFD becomes an active tax district only after a property owners voluntarily joins the district. This differs from how all other previous types of Mello-Roos CFDs operate. It is unclear how, if at all, the 4th California Appellate ruling from August 1, 2014,⁸³ affects the alternative mechanism to create a PACE CFD under Government Code Section 53328.1 (a)-(f).

SB 555 also eliminated the mechanism that governs non-PACE Mello-Roos CFDs by which refusal to join a district by a majority of eligible voters stops the creation of a district. Instead, under SB 555, disapproval by written protest of a majority of eligible voters within the proposed district delays the creation of district for one year.⁸⁴ Finally, SB 555 includes a bond secured by a special property tax levied by the specific CFD within the definition of a property assessed clean energy bond.⁸⁵

Mello-Roos-based programs benefit from the fact that Mello-Roos districts have existed for approximately 30 years and many local agencies adopted Mello-Roos policies that allow the agency to create and finance these types of districts. Generally, these districts are created through a similar public process as AB 811 Improvement Act programs by which the local legislative body of a local agency – after a public hearing – creates the district and authorizes the use of special tax assessments on properties that voluntarily and unanimously join the district. Specifically, the legislative body of the government entity adopts a resolution of intent to form the district that contains a map of the proposed district and types of improvements eligible for financing. A notice of public hearing seeking public comment on the formation of the district is filed 30-60 days after the resolution of intent. The local agency generally authorizes a committee to study the issue and draft a report and/or resolution regarding formation of a PACE CFD. The local agency may then adopt a resolution of formation as well as a hearing report at the second public hearing that acts as the guiding document for the program. The hearing report includes a sample authorization for special tax levy, describes the source of funding, establishes approved implementation measures and defines eligible property types, among other things.

Once a resolution passes, the agency may file a civil action in state court to validate any bonds issued pursuant to the related code sections for the PACE CFD to secure judicial confirmation of the constitutionality of the program and the validity of the special tax levy.⁸⁶ The local agency then may issue bonds and sell the bond into the private market secured by the tax assessment.

The following sections provide detailed information about several PACE programs created under the Mello-Roos Act.

- City of San Francisco GreenFinanceSF (Charter Authority)
- Ygrene Clean Energy Sacramento Program (SB 555)

4.1 PACE under Mello-Roos Operating under a Jurisdiction’s Charter Authority: The City and County of San Francisco – GreenFinanceSF

GreenFinanceSF established a program using its charter authority to create a Mello-Roos community facilities district (CFD) prior to the passage of SB 555. San Francisco shut down its residential PACE program during the FHFA controversies but has since restarted its commercial PACE program. It should be noted that San Francisco is currently moving forward with a new multivendor residential PACE program at the time of this writing, and it is expected that financing will to be available in early 2015.

On October 15, 2012, the City of San Francisco issued its first \$1.4 million PACE bond to Clean Fund to finance a retrofit project of the Pier 1 property, which is owned by the Port of San Francisco. This project is unique in California because it financed the retrofit of a publicly owned building using the leasehold interest of the master tenant, Prologis, as collateral. Specifically, the Port of San Francisco created an agreement with Prologis under which the port agreed to annex the property into the community facilities district (CFD) and for the lien securing the special taxes to be issued against Prologis' 50-year master leasehold interest on the property. This agreement eliminates the Port's liability. Additionally, the port and Prologis agreed that should the leasehold interest be terminated the port will identify a replacement leasehold interest that terminates no earlier than the final maturity of the bond. Prologis will also pass on the costs of the PACE financing to the other tenants of the property, which includes the offices of the Port of San Francisco, on a pro rata basis per square footage occupied.

The City of San Francisco used a qualified energy conservation bond (QECCB) to support this financing. The city found that while this type of bond added additional complexity, it offered a significantly lower interest rate of less than 4% and helped to accelerate the close of the financing arrangement and project approval because of hard deadlines that must be met under these types of tax-favored bonds. The interest rate for the bond was 6.93%.

GreenFinanceSF may demonstrate the advantages of using Mello-Roos and SB 555 for municipally operated open-market commercial PACE programs as compared to open-market models under AB 811, such as the Los Angeles County commercial PACE financing program.

4.1.1.1 Eligible Property

GreenFinanceSF uses PACE to financing commercial, industrial and multifamily properties.

4.1.1.2 Identification of Involved Parties

Government Entity	City and County of San Francisco
Program Administrator	City and County of San Francisco (Department of the Environment, and Controller's Office of Public Finance)

4.1.1.3 Funding

When a project is approved, the city sells a bond to the project lender and the sales from proceeds fund the project. The special tax assessment is levied on the property to pay back the lender. The program is authorized for up to \$100 million in special tax bonds to be purchased by private investors.

Funding Source	Individual financing arranged between a PACE lender and a property owner. The City of San Francisco issues revenue (special tax) bond that is then sold to the lender.
Program Funding Limit	Authorized up to \$100 million

4.1.1.4 Underwriting Criteria for Program Participation

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

- The property must be located within the city and county of San Francisco.
- The property must not be in default, or have a history of default on the mortgage or nonpayment of property taxes. It also must not have filed for bankruptcy recently, have significant pending legal action or any involuntary liens or judgments.
- The combined debt, including new project financing, cannot exceed the current value of the property plus the value of the installed improvements; value is determined by using the current assessed value or a recent appraisal by a city-approved appraiser.
- If the property has a mortgage or other private liens on the property, then these debt holders must consent in writing to the priority lien.

Complete underwriting criteria can be found in the GreenFinanceSF Program Handbook.

4.1.1.5 Restrictions on Contractors

Contractors must be licensed by the state.

4.1.1.6 Energy Audit Requirement

An ASHRAE (American Society of Heating, Refrigerating and Air-Conditioning Engineers) level 2 audit or equivalent must be performed by a qualified professional to identify energy projects.

4.1.1.7 Eligible Financeable Costs

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

4.1.1.8 Assessment Finance Amount

- Minimum: \$50,000
- Maximum: The maximum financing amount is determined by the value of the property (based on current assessed value, appraised value determined by a city-approved appraiser within 90 days of program application or market value calculated according to a method identified by the city) plus the value of the authorized improvements financed by the program must be equal to or greater than the sum of (1) the total private property debt including mortgages and equity lines of credit secured by the property, (2) the principal amount of any program indebtedness attributable to the property and (3) the aggregate principal amount of any fixed assessment liens or other special tax debt on the property.

4.1.1.9 Financing Term

Generally matches the useful life of the improvements, not to exceed 20 years.

4.1.1.10 Interest Rate

Annual interest rate is determined by market condition and PACE lender at time of issuing bonds.

4.1.1.11 Reserve Fund

The city is providing a credit enhancement option through a debt service reserve fund (DSRF) that will help cover project lenders in the event of late payments. The city is utilizing grant funds provided under the American Recovery and Reinvestment Act (ARRA) for the DSRF, so this credit enhancement option is limited.

Once the DSRF is fully allocated, and other grant funds that cover program operational costs are exhausted, applicants will have to cover such costs through fees or by adding them to their total financed amount.

4.1.1.12 Fees Assessed on Property Owner

The following are mandatory fees.

- Application Fee: Fee waived during pilot.
- Energy audit: Variable depending on the audit level and size of the building.
- Technical project review: Waived during pilot. Qualified city technical staff perform review as needed to ensure project validity and energy savings.
- Title search: \$250-\$1,000
- Special tax administration: \$1,000 assessed at closing to pay for program establishment and administration.
- Recording fee: \$72
- Bond counsel: Up to 2% of project financed amount. Fee is 2% on first \$1 million bond issuance (with a minimum of \$15,000); 1% on the next \$4 million; 0.5% of next \$10 million; and 0.125% of any greater amount.
- Special tax administration fee: Annually assessed at \$15 for administration and maintenance of special tax district
- Tax roll inclusion fee: annually assessed at \$21.55 for the cost of annual tax roll.

The following are conditional one-time expenses for specific projects with unique circumstances.

- Technical review for custom measures: \$540 for review of measure not currently on eligible measures list.
- Appraisal: \$5,000 to 10,000 if desired by property owner.
- Preinstall site inspection: \$540 incurred if applicant chooses not to use eligible utility incentives (currently waived).
- Postinstall site inspection: \$675 incurred if applicant chooses not to use eligible utility incentives (currently waived).

- Debt service reserve fund: If required by lender. May be subsidized by program for limited time.
- Progress payment request processing: TBD

4.1.1.13 Lender Issue: Affirmative Acknowledgment from Mortgage Lender

All properties with a mortgage must obtain an affirmative acknowledgment and consent from the mortgage lender. This means that the first lien holder in trust must consent to the levy of special taxes and the creation of the special lien and agree that the proposed special tax lien will not constitute an event of default or trigger the exercise of any remedies under the property owner's existing loan document.

4.1.1.14 Costs and Liability to City

This program was developed by the city and partially funded with ARRA and California Energy Commission funding for its debt service reserve fund and a portion of ongoing administrative costs to the city.

4.2 SB 555 Programs: The City of Sacramento — Ygrene Clean Energy Sacramento Program

Currently, Ygrene operates commercial and residential programs under the SB 555 amendment to Mello-Roos in Butte County (commercial only), the City of Sacramento, Sacramento County, Yolo County, Coachella Valley and City of Chula Vista. To date, these programs have financed four commercial and 128 solar projects for a total of approximately \$300,000 financed for commercial and \$2.5 million financed for residential.⁸⁷ Three additional commercial solar projects are approved but not financed and 24 residential solar projects are approved but not financed.⁸⁸ Of the 128 approved residential projects, 20 are pending completion.⁸⁹ Average costs per solar project equates to \$400,000 per project for commercial and \$20,000 per project for residential.⁹⁰

This section focuses on Ygrene Clean Energy Sacramento because it is the SB 555 program with the longest operational track record. Ygrene Energy Fund Inc. administers Sacramento's program. Ygrene's Clean Energy Sacramento is a privately funded and administered program and the only operational program of this type in California, though Clean Energy San Diego is in the review process but faces additional steps before it becomes operational. Ygrene funding comes exclusively from private capital markets, which offers the potential to provide access to large amounts of financing for PACE programs.

PACE in Sacramento has undergone several transitions. The city originally authorized an AB 811 Improvement Act program under CaliforniaFIRST on January 12, 2010. However, CSCDA later suspended its CaliforniaFIRST program because of then unresolved FHFA issues. In light of the suspension, the city decided to examine alternatives and solicited proposals through its RFP process from private companies interested in administering a similar program.⁹¹

The City of Sacramento selected Ygrene Energy Fund California, LLC to administer its PACE program under the Improvement Act of 1911. The city then rescinded its CaliforniaFIRST program over its concerns with having two authorized Improvement Act programs in its jurisdiction. The city determined that its participation in the CaliforniaFIRST program was “no longer needed.”⁹² Specifically, Sacramento adopted Resolution No. 2012-205 on June 19, 2012, rescinding Resolution No. 2010-023 relating to the CaliforniaFIRST PACE program.⁹³ Resolution No. 2012-205 acknowledged the uncertainty over residential PACE that led to CSCDA suspending its CaliforniaFIRST program for residential until issues raised by the FHFA, the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae) could be resolved (see Section 5 for a discussion of the FHFA issue).

After the passage of SB 555, Sacramento halted the creation of its Ygrene-administered AB 811 Improvement Act program and instead authorized the creation of a Ygrene-administered SB 555 Mello-Roos program. Sacramento originally sought a program administrator for a commercial-only program but chose to establish a SB 555 program out of the desire to include residential. To this end, Ygrene recently expanded eligibility for its program financing in July 2012 to include residential, commercial, new construction and publicly owned buildings. This provides PACE financing to a greater number of properties than Improvement Act programs because of the Improvement Act restriction on financing only developed residential properties. The City of Sacramento also filed a lawsuit for judicial validation of its Mello-Roos program. The city completed the validation process and received a final court judgment validating the program.

The City of Sacramento has authorized Ygrene to finance up to \$100 million in projects for its Clean Energy Sacramento PACE program. While Mello-Roos expressly allows for PACE financing on publicly owned buildings, the mechanisms by which to opt into paying a special tax assessment on a tax-exempt property (properties that are not part of existing tax rolls) remains an issue to be resolved. Because government and other nonprofit properties are not part of existing tax rolls, there is no established process for recording and administering the assessment.

4.2.1.1 Eligible Property

The Clean Energy Sacramento program allows residential (single-family home, multifamily structures of four or fewer units and some condominiums) and commercial (multifamily structures of five or greater, small commercial, large commercial and industrial). Generally, Clean Energy Sacramento applies to residential, commercial, agricultural and industrial properties. However, individual cities may restrict the eligibility of certain properties. For example, the City of San Diego’s pending Clean Energy San Diego program is currently restricted to commercial and industrial properties as a consequent of FHFA action.

4.2.1.2 Identification of Involved Parties

Issuing Entity	Ygrene Energy Fund California, LLC
Program Administrator	Ygrene Energy Fund California, LLC

4.2.1.3 Funding

Ygrene is entirely financed through private investment as described in Section 4.1. Ygrene has secured funding commitments for the Sacramento PACE CFD. Ygrene operates the program by securing up-front funding for approved projects. The City of Sacramento assigns the special tax assessment revenue to Ygrene.⁹⁴ Ygrene utilizes its agreements with local banks, regional banks and other funding sources to provide both interim and long-term financing.⁹⁵ Ygrene also represented to the City of Sacramento that its agreements will allow it “to purchase, hold, repackage and remarket (or any combination thereof) the revenue stream of special-tax payments in a such as a way as to provide all necessary resources to fund the authorized improvements contemplated by the city program.”⁹⁶

Funding Source	Local and regional banks; long-term securitization via capital markets
Program Funding Limit	As authorized by the City of Sacramento with no effective total program limit

4.2.1.4 Underwriting Criteria for Program Participation

- The property is located within the city.
- Property taxes and other special taxes on the tax bill are current and have not been delinquent for the preceding three years or the entire term of ownership of the current owner, whichever is shorter.
- There are no involuntary liens on the property, including construction liens.
- No notices of default or other evidence of debt delinquency have been recorded during the preceding three years or the entire term of ownership of the current owner, whichever is shorter.
- Payments on all mortgage debt secured by the property are current.
- The total of all existing secured indebtedness on the property does not exceed 85% of the value of the property (value-to-loan ratio) as determined using assessed or appraised value or an estimate of value based upon data supplied by CoStar Group, Inc.
- The proposed principal amount to be financed does not exceed 10% of the value of the property as determined using assessed or appraised value or an estimate of value based upon data supplied by CoStar Group, Inc. unless the city approves a higher percentage.
- Each holder of a fee-simple interest in the property has signed the unanimous approval agreement and any other documents required by the city program.
- The total annual property taxes and assessments on the property, including the city program special taxes, will not exceed the following percentages of the property’s market value as determined using assessed or appraised value or an estimate of value based upon data supplied by CoStar Group, Inc.
- Each lender with a lien on the property has been sent a lender notification letter.

Table 1 Ygrene Residential Property

Financing Term	Maximum Program Special Tax	Maximum for Other Taxes & Assessments	Total Annual Aggregate
20 years	1.1%	2.0%	3.1%
10 years	1.5%	2.0%	3.5%
5 years	2.5%	2.0%	4.5%

Table 2 Commercial, Industrial and Other Property (Including Public)

All terms	3.0%	2.0%	5.0%
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4.2.1.5 Restrictions on Contractors

Ygrene certifies and oversees eligible contractors through a process that requires each contractor to have proper bonding, appropriate state contracting licenses, complete applicable training for the program and meets other specified requirements, such as submitting a valid, signed-off final building permit to release financing and invoices reflecting costs less rebates.

4.2.1.6 Energy Audit

Audits are required under the Clean Energy Sacramento Program. The cost depends on the size of the project. Small projects incur limited costs that may be performed by a licensed contractor or the local utility. Large projects require a more formal audit process. Some of these costs have been covered by the City of Sacramento for commercial properties as described in Section 4.2.1.14. Water efficiency projects do not require an energy audit.

4.2.1.7 Eligible Financeable Costs

Eligible costs include, but are not limited to, equipment, installation, energy and water audits, engineering fees, architecture fees, capitalized interest, fee for recording the lien, origination costs and closing costs.

4.2.1.8 Assessment Finance Amount

- Minimum: \$2,500
- Maximum: Determined using assessed or appraised value or an estimate of value based upon data supplied by a reputable real estate information service. The principal is not to exceed 10% of the assessed property value and the maximum project size cannot exceed the 85% value-to-loan ratio as required by Ygrene’s underwriting criteria.

4.2.1.9 Financing Duration

Financing is not to exceed useful life of the improvement. Property owners may choose a payback period from five to 20 years. If the useful life of the improvements exceeds 20 years, the payback period may be extended.

4.2.1.10 Interest Rate

Interest rates are fixed for the duration of the repayment term and are determined at the time of executing the financing agreement. Rates are determined based on market factors, cost of capital and other elements and are posted on local program websites and updated daily.

Currently, this is calculated starting at 6.5% for commercial and 7.625% for residential (prime rate + 3.2% [program costs] + 0.5% [profit]) for a 10-year term.

4.2.1.11 Reserve Fund

A reserve fund may be used as credit enhancement if required by the initial capital provider.

4.2.1.12 Fees Assessed on Property Owner

- Application Fee: \$50
- County tax collector fee: Maximum is \$40 per year with a 2% adder per year for increases in county fees.
- Additional costs that may be included in the principal amount financed: The following charges will apply to the city program. The program administrator, with the consent of the city, may include these charges from time to time in response to increases or decreases in the cost of providing city program services.
 - Processing and underwriting: Not to exceed \$250.
- City program cost recovery: Not to exceed \$100.
- Recording and disbursement: Not to exceed \$250.
- Escrow: \$100-\$700 based on project size.
- Title insurance: \$400-\$5,000 based on project size.
- Energy audit: These costs may be paid by property owner or subsidized by the city. Actual costs depend on the size of the project and availability of city funding (See Sections 4.2.1.6 and 4.2.1.15.).

4.2.1.13 Lender Policy: Lender Notice

An applicant must send to each secured lender on the property a “Notice to Lender of Proposed Special Tax.” The purpose of this document is to provide notice of the annexation of the property into the tax district, that the tax assessment will be collected in the same manner as ad valorem real-property taxes and declare the property owner’s agreement to pay on a timely manner both the existing obligation secured on the property and the propose special tax. Lender consent is not required. If the lender does not respond within 30-days, then the property owner assumes that the lender does not object to the annexation or special tax. However, Ygrene will support obtaining lender consent at a property owner’s request.

The applicant must also sign a “Property Owner’s Acknowledgment of Sole Responsibility to Deal with Lenders.” This warns the property owner of the possibility of violating an existing loan agreement or deed of trust. This document also discloses the fact that a loan holder may require the property owner to pay off the tax lien at the sale or refinancing of the property.

It is not clear what type of risk, if any, this approach creates for residential property owners in light of the uncertainty created over residential PACE by the Ninth Circuit’s March 19, 2013, dismissal of litigation against the FHFA.

4.2.1.14 Performance Guarantee

Ygrene offers performance guarantees for market penetration. The current market penetration estimates made are for 3.5% of every 100 properties. Ygrene guarantees a percentage of this estimate in each market. Under Ygrene’s contract with the City of Sacramento, Ygrene is required to fund \$7.5 million per year in projects. It remains unclear what repercussion exist for failure to meet these targets beyond the nonrenewal of the contractual agreement between the city and Ygrene.

4.2.1.15 Costs and Liability to City

Ygrene reimbursed or funded the City of Sacramento program costs including the creation of the district, the program and judicial validation. Additionally, the City of Sacramento used an Energy Efficiency and Conservation Block Grant not to exceed \$321,000 (actual amount was approximately \$150,000) to create an energy savings opportunity program (ESOP) to offset the costs of energy audits for commercial buildings. More than \$22 million in energy efficiency and renewable energy projects were identified by this program for PACE financing. In addition, the contractual agreement indemnifies and releases the City of Sacramento from liability regarding this program.



5 The Federal Housing Finance Agency and Residential PACE

There is an additional hurdle for PACE programs that pertains only to residential properties because PACE assessments create liens that have priority over home mortgages. Importantly, the March 19, 2013, ruling in the Ninth Circuit Court of Appeals, which found for the Federal Housing Finance Agency (FHFA), dismissed litigation brought by Sonoma County, the State of California and other parties and vacated a lower court injunction and order requiring the FHFA to create rules regarding residential PACE. This opinion has created additional uncertainty in California regarding residential PACE and its full implications remain to be seen.

Two government-sponsored enterprises (GSEs), Fannie Mae and Freddie Mac, own or guarantee more than half of the residential mortgages in the U.S. As early as 2009, the FHFA, which regulates Fannie Mae and Freddie Mac, began to express concerns about the risks presented by PACE. On July 6, 2010, the FHFA issued a determination that PACE programs presented significant safety and soundness concerns to existing mortgages and therefore the entities that underwrite or insure those mortgages.⁹⁷ This statement was made during the aftermath of the residential housing finance bubble when the FHFA became the conservator of Fannie Mae and Freddie Mac.

Opposition to PACE has been focused on residential PACE because the FHFA's actions and statements do not affect commercial mortgages, which are overseen by the Office of the Comptroller of the Currency (OCC). On July 6, 2010, the OCC issued Supervisory Guidance echoing the FHFA safety and soundness concerns and calling national banks to "mitigate exposure and protect collateral positions."⁹⁸ The OCC has taken no other actions regarding PACE. Commercial PACE programs that require the affirmative acknowledgement or consent of the mortgage holder are considered to adequately mitigate risks to lenders.

As noted, the FHFA's greatest concern about residential PACE programs stemmed from the fact that PACE assessments had a lien status superior to that of existing mortgages underwritten by Fannie Mae and Freddie Mac. That is, in the event of a default and forced sale, any outstanding PACE assessment (though not necessarily the entire amount

financed) would be paid before other liens such as a first deed of trust. The FHFA stated that the superior lien status of PACE assessments added, among other things, risk to lenders and secondary markets and altered valuation of mortgage-backed securities because of the uncertainty surrounding potential foreclosures, diminution in value at sale, increased risk of delinquency and lack of uniform underwriting standards such as loan-to-value ratios, standard credit worthiness requirements (FICO) and total debt-to-income ratios. In addition, according to the FHFA, residential PACE assessments may violate the terms of a property owner's mortgage because they can be characterized as loans rather than assessments. Specifically, the FHFA distinguished PACE programs from standard tax assessments because, in the FHFA's view, they are voluntary, opt-in contractual arrangements with cities or counties and because owners control the use of funds, hire contractors, own the fixtures and bear the cost of repairs. As such, the FHFA ordered Fannie Mae and Freddie Mac in its July 6, 2010, letter to do the following.

- Adjust loan-to-value ratios to reflect the maximum permissible PACE loan amount available to borrowers in PACE jurisdictions.
- Ensure that loan covenants require approval/consent from a bank or mortgage holder for any PACE loan.
- Tighten borrower debt-to-income ratios to account for additional obligations associated with future PACE loans.
- Ensure that mortgages on properties in PACE jurisdictions satisfy all applicable federal and state lending regulations and guidance.⁹⁹

On August 31, 2010, Fannie Mae and Freddie Mac issued guidance letters to lenders stating that they would no longer purchase mortgage loans secured by a property with an outstanding PACE assessments originated after July 6, 2010, and a first lien priority. The letters also stated that PACE assessments would be treated like home equity loans for properties with PACE loans originated before July 6, 2010. To the extent a bank wishes to offer a conforming loan to a property owner, the bank must force the property owner to pay off the PACE assessment balance in full before selling or refinancing a conforming loan. Thus, a property owner with a Fannie Mae or Freddie Mac loan would not be able to transfer the PACE assessment to a new property owner.

The FHFA also issued a directive on February 28, 2011, affirming that Freddie Mac and Fannie Mae will no longer buy mortgage loans secured by properties with outstanding residential PACE obligations originating after July 6, 2010, and its authority to order such action under 12 U.S.C. § 4617. This effectively stopped residential PACE finance programs in California and across the nation.

On July 14, 2010, then California Attorney General Edmund G. Brown filed a complaint in federal court joining several other cities and counties including Palm Desert, Sonoma County and Placer County separately challenging the FHFA's loan purchase restrictions. These cases were eventually consolidated into a single complaint in the U.S. District Court of the Northern District of California. This court issued a preliminary injunction finding that the FHFA was acting as a regulator and not a conservator requiring the FHFA to publish advance notice of proposed rulemaking on PACE. The district court order kept in effect the guidance letters issued by FHFA and Freddie Mac and Fannie Mae. This ruling follows two dismissals of similar lawsuits in the Second and Eleventh

Circuits. They each held that the FHFA acted under its authority as a conservator and not as a regulator. The FHFA was complying with the Northern District of California ruling and extended its comment period in light of the large number of public comments to September 13, 2012.

The FHFA was expected to issue a final rule in September 2013. However, the FHFA successfully appealed the lower district court injunction in the Ninth Circuit on March 19, 2013. The Ninth Circuit ruled that the “FHFA’s decision to cease purchasing mortgages on PACE-encumbered properties [was] a lawful exercise of its statutory authority as conservator of the enterprises.”¹⁰⁰ This follows the opinions of the Second and Eleventh Circuits. The case was then dismissed and the district court’s order vacated because federal courts lack jurisdiction over actions by the FHFA when it acts as a conservator, subject to still undefined limitations.¹⁰¹ The FHFA previously stated that its rulemaking would be withdrawn if it won its appeal. On July 31, 2013, the FHFA published the withdrawal of its June 12, 2012, proposed rule.¹⁰² This placed some uncertainty for residential PACE in California. It appears unlikely that the plaintiffs will attempt to appeal this ruling to the U.S. Supreme Court.

Despite uncertainty created by the FHFA, some entities continued their residential PACE programs and other entities created new residential programs during the then pending litigation. Each of these entities has chosen to approach the FHFA issue differently (explanations follow). The full implication of these approaches remains unclear and, as such, the risk of a property owner violating the terms of a mortgage by having a PACE assessments still exists. It is also important to make a distinction between the entities that are parties to the litigation – Palm Desert, Sonoma County and Placer County – and entities that were not parties to the litigation that have created programs during this window of uncertainty. It is unclear what additional risks are posed to nonparty entities and the applicable property owners in their programs. It is for these reasons, among others, that CaliforniaFIRST has only recently restarted its residential PACE program after joining California’s loss reserve program (discussed below in Section 5.1).

On August 26, 2010, the City of Palm Desert restarted its Energy Independence Program after it briefly stopped taking new applications (Note: Palm Desert shut down its program and joined the Coachella Valley Association of Government’s program administered by Ygrene.). Palm Desert’s decision to continue its PACE program appeared to take account of FHFA’s concerns while also recognizing there are many residential properties that do not have mortgages or do not have mortgages underwritten by Freddie Mac or Fannie Mae. Palm Desert’s approach required that property owners sign a disclosure statement as part of their application that explains in detail the FHFA’s concerns and potential risks to the property owner. It also required that the owner, under penalty of perjury, declare that “executing the loan agreement, receiving the loan proceeds and consenting to the assessment levied against owner’s property will not constitute a default under any other agreement or security instrument which affects the property ... or to which the property owner is a party.”¹⁰³ The language of the disclosure statement placed an affirmative duty on the property owner to consult with their first deed holder and research any implication that a PACE lien might have on their mortgage. It remains unclear whether property owners understood all risks associated with residential PACE under Palm Desert’s original program. Palm Desert also required

that a property owner obtain consent from any recorded existing lien holder on the owner's property before the city approves a PACE loan for projects that are \$30,000 or greater.¹⁰⁴ It should be emphasized that the Ninth Circuit opinion may pose additional risks for property owners in Palm Desert with mortgages subject to FHFA jurisdiction issued under both its original Energy Independence Program and Ygrene's program.

Sonoma County also restarted its PACE program. Sonoma County's approach does not require acknowledgement or consent to first lien holders on the owner's property. Instead, Sonoma County provides information regarding the FHFA issue, risks and its position. The county requires that an applicant initial that they have read and understood this information. To date, program participants with PACE assessments that refinance or sell their home with mortgages underwritten by Fannie Mae and Freddie Mac are required to pay off their PACE assessment.¹⁰⁵ It should be emphasized that the Ninth Circuit opinion may pose additional risks for property owners in Sonoma County with mortgages subject to FHFA jurisdiction.

Other entities, such as WRCOG's California HERO programs, Ygrene's Clean Energy Sacramento and Figtree OnDemandPACE, have created new residential PACE programs. These entities take the approach of using affirmative acknowledgements from first lien holders, conservative underwriting requirements and/or signed disclosures regarding FHFA concerns and risks.

In light of these approaches, a pattern has emerged in which residential property owners with equity who intend to remain in their home for the duration of the assessment and do not plan to refinance during this time move forward with PACE assessments despite the FHFA issues. Additionally, residential property owners who acquired PACE liens after July 6, 2010, also appear comfortable paying off the assessment for energy efficiency improvements at sale or refinance. However, the true risks to these property owners remain unknown in light of the regulatory uncertainty caused by the Ninth Circuit's opinion issued on March 19, 2013, dismissing and vacating the injunction against the FHFA. It is unknown what additional actions FHFA will take as conservator of Fannie Mae and Freddie Mac and what effects these actions might have on California and residential property owners with mortgages underwritten by Fannie Mae and Freddie Mac. It is also unclear whether California's new PACE loss reserve program can mitigate these risks and eliminate the FHFA's concerns. What is clear is that the FHFA's treatment provides consistency across all state markets with PACE programs and decreases the need for additional FHFA action by eliminating the risk PACE liens may pose to existing first mortgage holders and their underwriters.

5.1 California's Residential PACE Loss Reserve Program

Governor Brown signed Senate Bill 96 (Senate Committee on Budget and Fiscal Review) on September 26, 2013, authorizing the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) to create a residential PACE Loss Reserve Program to assist in addressing the FHFA's concerns over the direct and

systemic risk posed to first mortgage lien holders and their underwriters by PACE liens during foreclosure or forced sale. The legislature designed the loss reserve program to increase the availability of PACE financing and mitigate risk to PACE lien holders in California.

The CAEATFA introduced its proposed regulations on January 16, 2014, and followed up with a January 24, 2014, stakeholder workshop. The CAEATFA issued revised proposed regulations on February 4, 2014, after feedback from the workshop and comment letters were received. The California Office of Administrative Law approved and filed the proposed regulations on March 10, 2014. The program is currently funded at \$10 million. As of July 1, 2014, there are eight approved program participants: mPower Placer, mPower Folsom, Berkeley FIRST, SCEIP, CaliforniaFIRST, WRCOG HERO, SANBAG HERO and California HERO.¹⁰⁶

5.1.1 Loss Reserve Program Function

The CAEATFA designed the program to address a targeted risk to first mortgage lenders, that is to make them whole for any losses caused by a PACE lien during a foreclosure or forced sale.¹⁰⁷ It is important to remember that PACE liens are assessed annually on tax rolls. The loss reserve program covers losses for the residential PACE assessment on the tax roll and not the full PACE lien amount. The PACE lien remains on the property and will transfer with the property at sale if not paid off in full.

The program provides payment for losses in two instances:

- Foreclosure by first mortgage holder: Losses resulting from the first mortgage lender's payment of a PACE assessment while in possession of the property subject to the PACE assessment. Losses may also include penalties and interest where they have accrued through no fault of the first mortgage lender.
- Forced sale by county or city: In any forced sale for unpaid taxes or special assessment, losses incurred by the first mortgage lender resulting from overdue PACE assessments being paid first where the sale price is less than combined value of outstanding taxes and the first mortgage.¹⁰⁸

PACE programs submit claims directly to CAEATFA under CAEATFA Regulation Section 10083 & 10084. Programs must submit evidence of the eligible loss including, but not limited to, the assessor's parcel number, the loss amount, the origination date, the first mortgage lender, the date of the loss or losses and the certification described in Section 10087.¹⁰⁹ The PACE program will receive payment within 20 days of receipt of the completed claim.¹¹⁰

5.1.2 Loss Reserve Program PACE Loan Portfolio Coverage

All financings issued by enrolled PACE programs are covered by the reserve for their full terms or until the reserve is exhausted. To minimize risk and uncertainty in the market and maximize the program's impact, the regulations allowed pre-existing

PACE programs that applied by June 9, 2014, to receive coverage for their existing portfolios.¹¹¹ The regulations also allow new PACE programs to receive coverage for financings issued within 30 days of enrollment to ensure that enrolling in the reserve does not delay program development.¹¹²

5.1.3 Loss Reserve Underwriting Criteria

The loss reserve program requires minimum underwriting criteria to both standardize the market and ensure consistent risk management in participant program portfolios. These requirements are generally included in existing PACE program documents and in many cases existing programs exceed these requirements or only required minor amendments to participate. The underwriting requirements include documentation of the following:

- The property is within the geographical boundaries of the PACE Program.
- All property taxes for the assessed property are current for the previous three years or since the current owner acquired the property, whichever period is shorter.
- The property is not subject to any involuntary lien in excess of \$1,000.
- The property is not subject to any notices of default.
- The property owner is not in bankruptcy proceedings.
- The property owner is current on all mortgage debt.
- The party seeking financing is the holder of record on the property.
- The loan is for less than 10% of the value of the property.¹¹³
- The loan is for a residential property of three units or fewer.
- The transactional activities associated with the loan issuance, including all transactional costs.
- Requirements for quality assurance and consumer protection, as related to achieving efficiency and clean energy production.
- Any credit enhancement or loan insurance associated with the PACE program.¹¹⁴

Please Note: AB 2597 (Chapter 614, Statutes 2014) now requires the CAEATFA to consider whether a PACE financing program provides financial assistance that is less than 15% of the value of the property, for up to the first \$700,000, and less than 10% of the remaining value of the property above \$700,000 and whether the PACE financing program limits the total mortgage-related debt and PACE financing from exceeding the value of the property.

5.1.4 Loss Reserve Compliance Requirements and Administrative Fee

At the time of application, PACE programs demonstrate their compliance with the CAEATFA's requirements through their policies and procedures. The loss reserve program also requires submission of compliance reports twice a year, on March 1 and October 1.¹¹⁵ The CAEATFA does not evaluate each loan but instead requires that the participating program provide information on its entire loan portfolio in its initial application to the loss reserve program and on new loans or defaults in each subsequent compliance report.¹¹⁶ Compliance is borne by the program participant and not the PACE

lien applicant. The CAEATFA also assesses a 0.25% administrative fee on the principal value of each loan issued by a participating PACE program to oversee the loss reserve program.¹¹⁷ This fee may be passed on to the applicant.¹¹⁸


The CAEATFA drafted its regulations with the intent of not increasing dramatically the regulatory or compliance burden on programs seeking to participate. The program balances the need for data and standardized requirements while limiting its impact on program operations by leveraging existing formation documents and reports.

5.1.5 FHFA’s Response to the Loss Reserve Program

On April 28, 2014, Governor Brown sent a letter to the FHFA regarding the creation and implementation of the CAEATFA Loss Reserve Program. FHFA Director Melvin L. Watt responded on May 1, 2014, with a letter reiterating the FHFA’s position on first-lien, residential PACE financing that PACE liens increase the risk of losses to the GSEs as well as creates additional burden on subsequent property owners because the assessment runs with the land even after foreclosure or other distressed sale.¹¹⁹ Watt stated that the FHFA would not change its guidance regarding California’s first-lien PACE programs that prevent the GSEs from purchasing or refinancing mortgages that are encumbered with first-lien PACE loans.¹²⁰ Specifically, he stated:

“In making this determination, FHFA has carefully reviewed the reserve fund created by the State of California and, while I appreciate that it is intended to mitigate these increased losses, it fails to offer full loss protection to the enterprises. The reserve fund is not an adequate substitute for enterprise mortgages maintaining a first lien position and FHFA also has concerns about the reserve fund’s ongoing sustainability.”¹²¹

Director Watt invited further discussion from the governor with an emphasis on discussing alternatives to first-lien PACE programs.¹²² Consequently, all residential properties with PACE liens that have mortgages underwritten by the GSEs must pay off the PACE lien at sale or when the mortgage is refinanced.



6 Conclusion

This document has provided a summary of existing PACE financing programs across California. It is designed to provide a general understanding of the Improvement Act of 1911 and Mello-Roos-based programs. The report also seeks to provide a snapshot of existing city, county and JPA implementation of these programs in light of current FHFA guidance and other issues regarding PACE programs.

For updates and more information on the Southern California Rooftop Solar Challenge, visit www.energycenter.org/sunshot.

¹ The charter cities of Berkeley and San Francisco created PACE programs under their Mello-Roos authority. These cities shut down their residential programs in light of FHFA actions. Only commercial PACE programs operate in their jurisdictions.

² See the AB 32 Climate Change Scoping Plan, California Air Resources Board, p. 26-27, http://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf.

³ For background information, see <http://ceres.ca.gov/ceqa/guidelines/>.

⁴ About New Solar Home Partnership, <http://www.gosolarcalifornia.org/about/nshp.php>.

⁵ The City of Berkeley also created a Mello-Roos CFD for its program but shut down its residential program after the FHFA issued its guidance on PACE in 2010. The City of San Francisco also shut down its program but recently restarted its commercial PACE program.

⁶ *City of San Diego v. Shapiro*, 228 Cal.App.4th 756-793 (4th Dist. 2014).

⁷ California Energy Commission Residential PACE Pilot Program: Sonoma, p. 7, http://www.energy.ca.gov/ab758/documents/ARRA-Programs/Res_PACE_Pilot/400-10-004_Exhibit%20A_Attachment%202_Residential_PACE_SOW.pdf.

⁸ Ibid.

⁹ Ibid.

¹⁰ Report to City Council No. 12-125, City of San Diego, p. 4-5, <http://dockets.sandiego.gov/sirepub/cache/2/5yurbq555f2xrujwkmjege45/46709812172012115847464.PDF>.

¹¹ California Government Code § 53313.5 (l).

¹² California Government Code § 53313.5 (l): "... This Chapter shall not be used to finance installations of energy efficiency, water conservation, and renewable energy improvements on a privately owned building or on privately owned real property in connection with the initial construction of a residential building unless the initial construction is undertaken by the intended owner or occupant."

¹³ AB 1883 amended Streets and Highway Code Section 5898.12(e) to authorize the financing of facilities in connection with the initial construction of a residential building undertaken by the intended owner or occupant.

¹⁴ Ibid.

¹⁵ AB 1883 (enrolled August 21, 2014) authorizes a public agency owning property to levy a contractual assessment under the act against a leasehold or possessory interest in that property, as prescribed. The bill is currently waiting the governor's signature or veto as of September 15, 2014.

¹⁶ California Streets and Highways Code § 5223.

¹⁷ California Government Code § 533328 requires a 2/3 vote by eligible voters. However, California Government Code § 53328.1 (a)(2) excludes PACE special tax liens from the 2/3 vote because each property owner unanimous approval to annex their property into the tax district.

¹⁸ California Government Code § 53328.1 (a)(1); Government Code §53328.1(b).

¹⁹ California Government Code § 53328.1 (a)(1) (A) & (B).

²⁰ Ibid.

²¹ The City of San Diego also stated that publicly owned property can be included under SB 555 as an advantage between AB 811 and SB 555 programs. This statement was excluded in light of the fact that several AB 811 programs also provide financing for PACE improvements on nonprofit-owned and/or publicly owned properties that can receive a tax bill.

²² Report to City Council No. 12-125, City of San Diego, p. 3, <http://dockets.sandiego.gov/sirepub/cache/2/5yurbq555f2xrujwkmjege45/46709812172012115847464.PDF>.

²³ AB 1883 (Chapter 599, Statutes 2014), among other things, makes various changes to the Improvement Act to achieve cost reductions and achieve consistency with similar provisions of the Mello-Roos Act, including changes in recordation requirements and authorizing the financing of facilities in connection with the initial construction of a residential building undertaken by the intended owner or occupant.

²⁴ AB 474 was signed into law in 2009 and provides that all voluntary participation by a property owner in an AB 811 contractual assessment for financing produces a tax lien that is valid and superior to all private liens.

- ²⁵ California Streets and Highways Code §5898.12 (a) & (b); California Streets and Highways Code §5898.20 (a)(1).
- ²⁶ California Streets and Highways Code §5898.20 (a) (1); See also AB 474 that authorized the legislative body of any public agency, as defined, to determine that it would be in the public interest to designate an areas to authorize a PACE tax assessment district.
- ²⁷ California Streets and Highways Code §5898.12 (a) & (b).
- ²⁸ California Streets and Highways Code §5898.12 (e).
- ²⁹ California Streets and Highways Code §5898.22 (a) - (c).
- ³⁰ Ibid.
- ³¹ California Streets and Highways Code §5898.22 (d).
- ³² Ibid.
- ³³ Ibid.
- ³⁴ California Streets and Highways Code §5899.10 et seq.
- ³⁵ California Streets and Highways Code §5898.15 (a).
- ³⁶ Ibid.
- ³⁷ http://www.lapace.org/pdf/Hilton_Universal_City_Launches_Largest_PACE_Project_in_the_US.pdf.
- ³⁸ Sonoma County Energy Independence Program, Frequently Asked Questions: How might the long-term financing strategy of the program impact my assessment contract?, <http://www.sonomacountyenergy.org/lower.php?url=faqs-75>.
- ³⁹ Sonoma County PACE Update Survey, August 2014.
- ⁴⁰ Sonoma County PACE Update Survey, August 2014.
- ⁴¹ Sonoma County PACE Update Survey, August 2014.
- ⁴² California Energy Commission Residential PACE Pilot Program: Sonoma, p. 8, http://www.energy.ca.gov/ab758/documents/ARRA-Programs/Res_PACE_Pilot/400-10-004_Exhibit%20A_Attachment%202_Residential_PACE_SOW.pdf.
- ⁴³ *Property Assessed Clean Energy (PACE) Replication Guidance Package for Local Governments*, March 30, 2012, p. 37, <http://www.drivecms.com/uploads/sonomacountyenergy.org/Municipal%20Resources/PACE%20Manual.pdf>.
- ⁴⁴ Ibid., p. 51.
- ⁴⁵ Ibid.
- ⁴⁶ Ibid., p. 52-53.
- ⁴⁷ Ibid., p. 112.
- ⁴⁸ This includes creating an energy analysis rebate program; performing marketing, education and outreach for Energy Upgrade California; creating a replication guidance package for other local governments and interested parties; expanding SCEIP's website to become a resource hub for all Sonoma County energy efficiency and renewable

resource programs; performing a feasibility study on open market financing of PACE bonds; and establish a revolving loan fund, including an energy analysis rebate, for projects going through the Whole House EUC program that were funded by SCEIP and less than 45 years old (this has never been used as it may trigger across-program loading order requirements).

⁴⁹ See California Revenue and Taxation Code Sections 4701 through 4717.

⁵⁰ WRCOG HERO, SANBAG HERO, and California HERO Residential PACE Update, August 2014.

⁵¹ WRCOG HERO, SANBAG HERO, and California HERO Residential PACE Update, August 2014.

⁵² WRCOG HERO, SANBAG HERO, and California HERO Residential PACE Update, August 2014.

⁵³ Note: HERO considers a project to be either energy efficiency or renewable energy; therefore, a single assessment may contain two project types. The total number of assessments is smaller than the total number of projects reported.

⁵⁴ WRCOG HERO, SANBAG HERO, and California HERO Residential PACE Update, August 2014.

⁵⁵ WRCOG HERO, SANBAG HERO, and California HERO Residential PACE Update, August 2014.

⁵⁶ WRCOG HERO, SANBAG HERO, and California HERO Residential PACE Update, August 2014.

⁵⁷ WRCOG HERO, SANBAG HERO, and California HERO Residential PACE Update, August 2014.

⁵⁸ WRCOG HERO, SANBAG HERO, and California HERO Residential PACE Update, August 2014.

⁵⁹ WRCOG HERO, SANBAG HERO, and California HERO Residential PACE Update, August 2014.

⁶⁰ WRCOG's original strategy was based on a seven-part funding strategy that included a partnership with Structured Finance Associates LLC for large commercial renewable energy projects. This strategy has changed since its inception into its present form excluding Structured Finance as a financing partner.

⁶¹ The Riverside County Teeter Program allows participating entities to receive an advance of uncollected taxes in exchange for transferring the collection risk, penalty amounts and interest payments to the County of Riverside.

⁶² *Energy Efficiency and Water Conservation Program for Western Riverside County: Administrative Guidelines and Status Report*, revised October 11, 2011, p. 31-32. Note: This language changed from a seven-part strategy to a six-part strategy as a result of WRCOG not proceeding with Structured Finance as a program participant. WRCOG provided this amended language for this report as the basis for their operating finance strategy. WRCOG reserves the right to amend their program at any time as needed.

⁶³ Alameda, Alameda County, Albany, American Canyon, Arroyo Grande, Arvin, Atascadero, Atherton, Bakersfield, Belmont, Benicia, Berkeley, Brisbane, Burlingame, Calistoga, Camarillo, Campbell, Capitola, Carlsbad, Carmel-By-The-Sea, Chula Vista, Citrus Heights, Clovis, Colma, Coronado, Cupertino, Daly City, Davis, Del Rey Oaks, Dixon, Dublin, East Palo Alto, El Cajon, El Paso De Robles, Elk Grove, Emeryville, Encinitas, Escondido, Fairfield, Fillmore, Firebaugh, Foster City, Fowler, Fremont, Fresno, Galt, Gilroy, Gonzales, Greenfield, Grover Beach, Half Moon Bay, Hayward, Hillsborough, Hollister, Huron, Kerman, Kern County, King City, Kingsburg, La Mesa, Larkspur, Lemon Grove, Livermore, Los Altos, Los Altos Hills, Los Gatos, Marin County, Marina, Menlo Park, Millbrae, Milpitas, Monte Sereno, Monterey, Monterey County, Moorpark, Morgan Hill, Morro Bay, Mountain View, Napa, Napa County, Newark, Novato, Oakland, Oceanside, Ojai, Orange Cove, Oxnard, Pacific Grove, Pacifica, Palo Alto, Piedmont, Pleasanton, Port Hueneme, Portola Valley, Rancho Cordova, Redwood City, Reedley, Ridgecrest Sacramento County, Salinas, San Benito County, San Bruno, San Carlos, San Diego County, San Joaquin, San Jose, San Juan Bautista, San Leandro San Luis Obispo, San Mateo, San Mateo County, San Rafael, Sand City, Sanger, Santa Clara, Santa Cruz, Santa Cruz County, Santa Paula, Santee, Saratoga, Scotts Valley, Seaside, Selma, Shafter, Simi Valley, Solana Beach, Solano County, Soledad, South San Francisco, St. Helena, Suisun Valley, Sunnyvale, Taft, Thousand Oaks, Tulare County, Union City, Vallejo, Ventura, Ventura County, Visalia, Wasco, Watsonville, West Sacramento, Winters, Woodland, Woodside, Yolo County, Yountville.

⁶⁴ See: https://content.renewfund.com/production/california_first/participating_cities_counties.en.pdf.

⁶⁵ Alameda, Alameda County, Albany, American Canyon, Arroyo Grande, Arvin, Atascadero, Atherton, Bakersfield, Belmont, Benicia, Berkeley, Brisbane, Burlingame, Calistoga, Camarillo, Campbell, Capitola, Carlsbad, Carmel-By-The-Sea, Chula Vista, Citrus Heights, Clovis, Colma, Coronado, Cupertino, Daly City, Davis, Del Rey Oaks, Dixon, Dublin, East Palo Alto, El Cajon, El Paso De Robles, Elk Grove, Emeryville, Encinitas, Escondido, Fairfield, Fillmore, Firebaugh, Foster City, Fowler, Fremont, Fresno, Galt, Gilroy, Gonzales, Greenfield, Grover Beach, Half Moon Bay, Hayward, Hillsborough, Hollister, Huron, Kerman, Kern County, King City, Kingsburg, La Mesa, Larkspur, Lemon Grove, Livermore, Los Altos, Los Altos Hills, Los Gatos, Marin County, Marina, Menlo Park, Millbrae, Milpitas, Monte Sereno, Monterey, Monterey County, Moorpark, Morgan Hill, Morro Bay, Mountain View, Napa, Napa County, Newark, Novato, Oakland, Oceanside, Ojai, Orange Cove, Oxnard, Pacific Grove, Pacifica, Palo Alto, Piedmont, Pleasanton, Port Hueneme, Portola Valley, Rancho Cordova, Redwood City, Reedley, Ridgecrest, Sacramento County, Salinas, San Benito County, San Bruno, San Carlos, San Diego County, San Joaquin, San Jose, San Juan Bautista, San Leandro, San Luis Obispo, San Mateo, San Mateo County, San Rafael, Sand City, Sanger, Santa Clara, Santa Cruz, Santa Cruz County, Santa Paula, Santee, Saratoga, Scotts Valley, Seaside, Selma, Shafter, Simi Valley, Solana Beach, Solano County, Soledad, South San Francisco, St. Helena, Suisun Valley, Sunnyvale, Taft, Thousand Oaks, Tulare County, Union City, Vallejo, Ventura, Ventura County, Visalia, Wasco, Watsonville, West Sacramento, Winters, Woodland, Woodside, Yolo County, Yountville, Folsom, Poway, Del Mar, Fresno County, Beaumont, National City, Santa Clara County, San Luis Obispo County, San Diego.

⁶⁶ CaliforniaFIRST PACE Update Survey, August 2014.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Renewable Funding, CaliforniaFIRST Program, https://renewfund.com/ca_first.

⁷⁰ IREC: CaliforniaFIRST, http://www.dsireusa.org/incentives/incentive.cfm?Incentive_Code=CA256F&re=0&ee=0.

⁷¹ Some nonprofits may qualify.

⁷² A property owner with an involuntary lien(s), default or judgment may be allowed to participate in the program if he/she can demonstrate an acceptable reason for the lien, default or judgment, a path for resolution and any requested supporting documents.

⁷³ The program administrator reserves the right to make allowances for certain property tax payment delays that do not reflect financial distress or that are currently under appeal. Program eligibility will be determined on a case-by-case basis.

⁷⁴ As of October 2012, the following jurisdictions have passed resolutions for CEDA to establish AB 811 PACE districts: City of Fresno, City of South San Francisco, City of Pittsburg, County of Kern, City of Dublin, City of Redlands, City of Rancho Cordova, County of Alameda, City of Elk Grove, Yuba City and City of Kingsburg. Note that not all of these programs are operational.

⁷⁵ Figtree OnDemandPACE Update Survey, August 2014.

⁷⁶ Figtree OnDemandPACE Update Survey, August 2014.

⁷⁷ *California Property Tax Information, What is an Assessment District?*, <http://www.californiataxdata.com/pdf/AssessmentDistrict.pdf>.

⁷⁸ RESOLUTION OF THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY DECLARING INTENTION TO FINANCE INSTALLATION OF DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES, ENERGY EFFICIENCY AND WATER EFFICIENCY IMPROVEMENTS IN THE CITY OF ELK GROVE, Exhibit A, p. 2, http://www.elkgrovecity.org/documents/agendas/attachments/attachments/2012/06-27-12_10.3.pdf.

⁷⁹ *City of San Diego v. Shapiro*, 228 Cal.App.4th 756-793 (4th Dist. 2014).

⁸⁰ California Government Code § 53313.5(l).

⁸¹ California Government Code § 53328.1 (e); California Government Code § 53355.5 (a).

⁸² California Government Code § 53328.1 (a)(2).

⁸³ *City of San Diego v. Shapiro*, 228 Cal.App.4th 756-793 (4th Dist. 2014).

⁸⁴ California Government Code § 53328.1 (a)(3).

⁸⁵ Public Resources Code § 26104.

⁸⁶ California Government Code § 53328.1 (c); California Government Code § 53355.5 (b).

⁸⁷ Ygrene PACE Update Survey, August 2014.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ California Government Code § 53328.1 (c); California Government Code § 53355.5 (b).

⁹² Ibid.

⁹³ City of Sacramento City Council Resolution No. 2012-205, Adopted June 19, 2012, p. 1.

⁹⁴ Community Facilities District No.2012-01 (Clean Energy) City of Sacramento, County of Sacramento, State of California, Hearing Report, June 19, 2012, P. 10.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ FHFA Statement on Certain Energy Retrofit Loan Programs, July 6, 2010, p. 1, http://www.drivecms.com/uploads/sonomacountyenergy.org/FHFA_Stmt_on_Energy_Retrofit_Loan_Programs_070610.pdf; See also 12 U.S.C. 4513 (a) & 12 U.S.C. 4617 (b)(2)(d).

⁹⁸ Office of the Comptroller of the Currency, Department of the Treasury, Supervisory Guidance: Property Assessed Clean Energy (PACE) Programs, July 6, 2010, <http://www.occ.gov/news-issuances/bulletins/2010/bulletin-2010-25.html>.

⁹⁹ FHFA Statement on Certain Energy Retrofit Loan Programs, July 6, 2010, p. 2, http://www.drivecms.com/uploads/sonomacountyenergy.org/FHFA_Stmt_on_Energy_Retrofit_Loan_Programs_070610.pdf.

¹⁰⁰ County of Sonoma, et al. v. Federal Housing Finance Agency, Case No. 12-16986, p. 3, Ninth Circuit, Opinion issued March 19, 2013.

¹⁰¹ 12 U.S.C. § 4617(f).

¹⁰² 78 FR 46295.

¹⁰³ City of Palm Desert Energy Independence Program Application: Supplemental Disclosure Regarding Assessment Financing- FHFA Statement, p. 1-2.

¹⁰⁴ See City of Palm Desert's Consent Letter and Consent Agreement Form, <http://www.cityofpalmdesert.org/Index.aspx?page=484>.

¹⁰⁵ City of Sacramento City Council Public Hearing Report, 2012-00418, p. 2.

¹⁰⁶ CAEATFA PACE Loss Reserve Program – List of Approved PACE Programs, Updated July 1, 2014, <http://www.treasurer.ca.gov/CAEATFA/pace/participants.pdf>.

¹⁰⁷ CAEATFA: PACE Loss Reserve Program Summary March 19, 2014, p. 1, <http://www.treasurer.ca.gov/CAEATFA/pace/summary.pdf>.

¹⁰⁸ CAEATFA Regulation Section 10083 (a) & (b).

¹⁰⁹ CAEATFA Regulation Section 10084 (a).

¹¹⁰ CAEATFA Regulation Section 10084 (b).

¹¹¹ CAEATFA Regulation Section 10082 (a).

¹¹² CAEATFA Regulation Section 10082 (b).

¹¹³ AB 2597 (Chapter 614, Statutes 2014) requires the CAEATFA to consider whether a PACE financing program provides financial assistance that is less than 15% of the value of the property, for up to the first \$700,000, and less than 10% of the remaining value of the property above \$700,000 and whether the PACE financing program limits the total mortgage-related debt and PACE financing from exceeding the value of the property.

¹¹⁴ CAEATFA Regulation Section 10081 (a.)-(c).

¹¹⁵ CAEATFA Regulation Section 10085 (a) (1) & (2).

¹¹⁶ CAEATFA Regulation Section 10081 (d).

¹¹⁷ CAEATFA Regulation Section 10085 (b).

¹¹⁸ Some programs have absorbed the fee into existing administrative set-asides.

¹¹⁹ FHFA Office of Director Letter to Governor Edmund G. Brown, FHFA Director Melvin L Watt, May 1, 2014.

¹²⁰ FHFA Office of Director Letter to Governor Edmund G. Brown, FHFA Director Melvin L Watt, May 1, 2014.

¹²¹ FHFA Office of Director Letter to Governor Edmund G. Brown, FHFA Director Melvin L Watt, May 1, 2014.

¹²² FHFA Office of Director Letter to Governor Edmund G. Brown, FHFA Director Melvin L Watt, May 1, 2014

