



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: 14-424, **Version:** 1

Consider adopting a Resolution Authorizing the County of Monterey to Join the Figtree Property Assessed Clean Energy (PACE) Financing Program to allow property owners in unincorporated Monterey County to voluntarily place assessment liens on their property for the purpose of installing renewable energy, energy efficiency, and water conservation improvements; Authorizing the California Enterprise Development Authority (“CEDA”) to Conduct Contractual Assessment Proceedings and Levy Contractual Assessments within the Territory of the County of Monterey; and authorizing related actions.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

Adopt a Resolution Authorizing the County of Monterey to Join the Figtree Property Assessed Clean Energy (PACE) Program; Authorizing the California Enterprise Development Authority (“CEDA”) to Conduct Contractual Assessment Proceedings and Levy Contractual Assessments within the Territory of the County of Monterey; and Authorizing Related Actions.

SUMMARY:

The matter before the Board is to consider adopting the Figtree PACE Financing Program to allow property owners in unincorporated Monterey County to voluntarily place assessment liens on their property for the purpose of installing renewable energy, energy efficiency, and water conservation improvements. Currently this program is concentrating on commercial properties; however, the program adoption language enables the implementation of a residential program in the near future. This program has already conducted a statewide validation so that implementation can begin promptly.

DISCUSSION:

Assembly Bill 811 was signed into law in 2008 to enable property tax assessment financing for the installation of distributed generation renewable energy sources, energy efficiency, and/or water conservation improvements that are permanently fixed to real property. On July 6, 2010, the FHFA issued a statement that PACE participation violates mortgage contracts and would be considered an act of default by the mortgagee. Lawsuits were filed in California, Florida, and New York regarding the FHFA ruling. A 9th Circuit Judge ruled that FHFA had violated the Administrative Procedures Act and required a public rulemaking process on PACE.

FHFA proposed a rule on June 15, 2012 whereby it said it would consider a pace insurance or reserve fund as a “risk mitigation alternative” against losses to primary mortgage holders. On March 29, 2013, a 9th Circuit Court of Appeals overturned the judge’s ruling and said that FHFA had acted as a “conservator” and not as a “regulator” and dismissed the case. FHFA was specifically asked to comment on the California legislation, but did not respond. Therefore, these programs are proceeding with caution, with adequate disclosure to applicants as to the regulatory risk being undertaken.

In an effort to overcome regulatory concerns, Governor Brown and the Legislature set aside \$10 million to fund a PACE reserve program, which became operational in the second week of March, to thwart adversarial action by the Federal Housing Finance Agency (“FHFA”) regarding PACE borrowings. As a result, numerous firms have begun ramping up to provide PACE lending in Monterey County. Because commercial programs obtain

direct lender consent, the PACE reserve is not applicable to Commercial PACE. Upon implementation of the planned residential program, Figtree will make application for their program to be covered by the California Alternative Energy and Advanced Transportation Financing Authority (“CAEATFA”) PACE reserve.

Founded in 2011, the Figtree PACE Financing Program is sponsored by the California Economic Development Authority (CEDA), a statewide public joint powers authority. Although the Figtree PACE Financing Program currently concentrates on commercial, industrial, retail, and multi-family properties it plans to launch a statewide residential program in the near future. To date, Figtree has provided millions in PACE financing to California businesses.

Participation by property owners is 100% voluntary and the County incurs no liability or obligation by adopting this program. The County will receive its customary charges for placement and collection of assessments

OTHER AGENCY INVOLVEMENT:

The Alternative Energy and Efficiency Committee has approved this action.

FINANCING:

There is no negative fiscal impact to the County incurred as a result of this program.

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Approved by: Michael J. Miller, CPA, CISA, Auditor-Controller, x5303

Attachments:

Resolution with Exhibits A and B

Figtree Pace Program Report with attachments