

**Memorandum**  
**Office of Jenine Windeshausen**  
**Treasurer-Tax Collector**



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**To:** The Board of Supervisors

**From:** Jenine Windeshausen, Treasurer-Tax Collector

**Date:** July 27, 2010

**Subject:** mPOWER Placer Program Update and Actions Related to Recent the FHFA Statement of July 7, 2010

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**Action Requested:**

1. Adopt a resolution formally suspending mPOWER Placer residential application acceptance and processing as long as the July 6, 2010 FHFA (Federal Housing Finance Agency) Statement is in effect.
2. Adopt a resolution in support of PACE (Property Assessed Clean Energy) programs and requesting congressional action to bring a satisfactory resolution to the FHFA situation.
3. Approve a contract amendment with Randle Communications by increasing the contract amount by \$112,000 for public affairs, public relations and marketing services related to the FHFA Statement of July 7, 2010. Contract is dependent upon disposition of mPOWER Placer program.

**Background:**

On December 8, 2009 and January 26, 2010, the Board of Supervisors took actions related to the implementation Placer mPOWER a financing program under AB 811 and AB 474. The purpose of the program is to provide financing for energy efficiency, water conservation and distributed renewable energy generation improvements to be made on developed residential, commercial/industrial and agricultural parcels. The financing provided to property owners is secured by a voluntary contractual assessment and the amortized repayment is collected in twice yearly installments via the annual property tax bills, The Board actions to date include adoption of the Placer mPOWER Resolution of Intention and a resolution confirming the Program Report and Administrative Guidelines and authorizing other actions related to implementation of program administration.

On March 22, 2010, the mPOWER Placer Program was launched and began accepting applications. On May 5, 2010 Fannie Mae and Freddie Mac issued Lender Letters which potentially placed property owners at risk of defaulting on their mortgage if they entered into a voluntary contractual assessment as part of a PACE Program. As a result, mPOWER Placer took the administrative action to suspend the acceptance and processing of residential applications in late May until the Lender Letters could be resolved. During the first six weeks of operation, mPOWER Placer received 134 applications totaling \$5.27 million in requests for funding local energy efficiency retrofitting and solar installation jobs. The funding requests were for tankless water heaters, HVAC systems, solar systems and other energy efficiency measures.

Since May 5<sup>th</sup>, staff has been involved with the national PACE Working Group, to get clarification and address issues raised by FHFA associated with the May 5<sup>th</sup> Lender Letters. The emphasis of this effort included working with the Governor's Office, the Attorney General's Office, and Congressional Representatives from the Sacramento Region and across the state.

In spite of the efforts to address FHFAs issues, including loan loss guarantees offered by the White House Administration, the FHFA issued a statement on July 6<sup>th</sup>, which stated communities with active PACE programs would be red-lined for underwriting purposes. Specifically, the July 6<sup>th</sup>

FHFA Statement calls for lenders to assume that **all** properties within a PACE jurisdiction have been encumbered by a PACE lien in the maximum amount available and to adjust loan limits accordingly. It also advises lenders to adjust debt-to-income ratios to assume that the annual liability associated with a PACE lien in the maximum amount has been added to every property tax bill. To ensure that property owners in Placer County did not incur negative consequences related to the FHFA statement, mPOWER Placer took administrative action to indefinitely suspend the acceptance and processing of all applications pending future action by the Board of Supervisors.

Staff has earnestly engaged with other PACE stakeholders across the country to seek an administrative remedy through discussions and attempts to negotiate a solution with FHFA. Staff has also supported efforts to reach a solution through executive action of the President and to work toward a congressional legislative remedy. Utilizing the public affairs services of Randle Communications, we have actively engaged with congressional representatives throughout the Sacramento region and the California Congressional delegation. We have also responded to inquiries made by the Attorney General's Office both before and after the Attorney General brought suit against the FHFA. Additionally, we have worked with the Governor's Office to provide information and support in engaging members of the California Congressional delegation.

Congressman Dan Lungren and Congresswomen Doris Matsui and their staff have been particularly helpful in the effort to reach a satisfactory resolution to the FHFA matter.

**Resolution Suspending mPOWER Placer:**

Attached is a resolution which provides for the formal suspension of the acceptance and processing of mPOWER Placer residential applications as long as the FHFA July 6, 2010 Statement is in effect. As stated above, the FHFA has directed their lenders to adjust underwriting criteria in jurisdictions where there is an active PACE program. In order to protect property owners and property purchasers who may enter into lending transactions to purchase or refinance property, from possible adverse action by lenders based on FHFA direction, the County should take action and document that the County has suspended its PACE Program. This resolution would serve as formal action and documentation that there is not an active PACE program in Placer County. Should the FHFA situation be resolved, further action by the Board of Supervisors would not be needed to resume acceptance and processing of residential applications.

**Resolution in Support of PACE:**

The attached resolution expresses the Board's support for PACE programs. It highlights the importance of PACE programs as a tool for job creation, energy independence, and reduction of green house gases. The resolution specifically calls on Senators Boxer and Feinstein and Representatives McClintock, Lungren and Matsui to work with the White House and other federal agencies to reverse the FHFA statement with the goal of moving PACE programs forward and establishing standardized underwriting criteria and safeguards to protect consumers and minimize financial risks to property owners and lenders.

**Contract for Marketing and Public Affairs Services:**

One of the keys to the mPOWER Placer program success is having a robust program for community and stakeholder outreach. Randle Communications was originally selected and awarded a contract in the amount of \$48,000 through a competitive process. The marketing and public affairs efforts of Randle Communications have been excellent. Randle Communications has additionally provided services on a pro bono basis consistent with their scope of work, but beyond the time requirements of the contract. The mPOWER Placer marketing and public affairs program has included the efforts associated with the successful program launch event at Home Depot on March 22<sup>nd</sup>, to the design and development of the program web site. It has also included various marketing materials and effective participation in community events such as Earth Day Celebrations and home and garden shows. There has also been substantial media coverage of mPOWER Placer. The Sacramento Bee and Sacramento Business Journal have each run a number articles and the Sacramento Bee has run several editorials on mPOWER Placer and PACE. Additionally, the Roseville Press Tribune, Placer Herald, Granite Bay Press Tribune, Auburn Journal and Loomis News have run stories on mPOWER Placer. KXTV-News 10 and KCRA/KQCA have also profiled mPOWER Placer during their morning news hours. Additionally, the program has been highlighted in numerous newsletters, including electric utility and water utility news letters to utility rate payers.

Since the May 5<sup>th</sup> Lender Letters were issued mPOWER Placer staff has worked closely with Randle Communications on the public affairs outreach related to attempts to bring a satisfactory resolution to the FHFA situation. Randle Communications has been instrumental in providing outreach and public affairs support for mPOWER Placer in its efforts with members of the California House Delegation. They have done a great job of keeping the PACE issue in front of House members and providing support to the mPOWER Placer program outreach efforts.

While the contract continues to be in force, the contract is being presented to the Board to amend the scope to more broadly include the public affairs efforts related to the FHFA situation, and to cover payment for services provided by Randle Communications from May 1, 2010 through December 31, 2010. The contract calls for a monthly not to exceed amount of \$14,000. This is an amendment to the contract resulting in a reduction of \$2,000 per month. The resulting contract is an extension to December 31, 2010 resulting in a contract amount of \$112,000 for the time period May 1, through December 31, 2010. The services provided by Randle are contingent on the status of the program and provides the flexibility to reduce expenses if services are not utilized due to a decline in public affairs outreach based on the level of federal activity on the FHFA situation and to shift back to an emphasis on program marketing if the program is allowed to proceed. A copy of the amended contract is available at the Clerk of the Board.

Placer County has played a key role in the national dialogue with congressional members, state officials and PACE stakeholders across the nation. It is recommended that Placer County continue to be proactive at the state and federal level to resolve the FHFA situation and that mPOWER Placer be in the position to resume marketing to actively pursue program participation that is critical to the cost recovery of the program.

**Fiscal Impact:**

The most significant fiscal impact of suspending the program due to the FHFA situation is the inability of the County to achieve cost recovery through the interest assessed on program participants. To date the County has incurred \$388,815 in hard costs. This includes \$350,828 paid to outside consultants for software development, legal services, marketing and program supports services. Expenditures for equipment and supplies have totaled \$37,987. The contract amendment requested above would result in an additional expenditure, not to exceed \$112,000 which is included in the mPOWER Placer 2010/11 budget, but would also not be a recoverable expense if the FHFA situation is not resolved in a way that would allow mPOWER Placer to proceed.

# Before the Board of Supervisors County of Placer, State of California

In the matter of:

Reso. No: \_\_\_\_\_

Declaring Certain Actions with Respect to the  
mPOWER Placer Program

The following Resolution was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held on July 27, 2010 .

by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

\_\_\_\_\_  
Chairman, Board of Supervisors

Attest:  
Clerk of said Board

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**WHEREAS**, the County of Placer (the "County") is authorized under Chapter 29 of Part 3 of Division 7 of the Streets & Highways Code of the State of California ("Chapter 29") to authorize assessments to finance the installation of distributed generation renewable energy sources and energy efficiency and water efficiency improvements that are permanently fixed to real property ("Authorized Improvements"); and

**WHEREAS**, Chapter 29 authorizes the County to enter into contractual assessments to finance the installation of Authorized Improvements in the County; and

**WHEREAS**, on January 26, 2010, pursuant to Resolution No. 2010-22, the Board of Supervisors established the "money for Property Owner Water & Energy Efficiency Retrofitting" program (the "mPOWER Placer Program") within the boundaries of the County and ordered its implementation; and

**WHEREAS**, on July 6, 2010, the Federal Housing Finance Agency issued the Statement attached hereto as Exhibit A (the "Statement"); and

**WHEREAS**, as a result of the Statement and in order to avoid any adverse impact on property owners in the County as a result of the mPOWER Placer Program, the Board of Supervisors wishes to declare that, as long as the Statement is in effect, it will no longer accept applications for the mPOWER Placer Program from residential properties or provide financing through the mPOWER Placer Program to residential property owners in the County who executed a contractual assessment with the County on or after July 6, 2010;

**NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of the County of Placer takes the following actions:**

**Section 1.** **Recitals.** The above recitals are true and correct.

**Section 2.** **Termination of Certain Program-Related Activities.** The Board of Supervisors hereby orders that, as long as the Statement is in effect, the County shall not accept applications for the mPOWER Placer Program from residential properties or provide financing through the mPOWER Placer Program to residential property owners in the County who executed a contractual assessment with the County on or after July 6, 2010.

The Board of Supervisors hereby orders that, except as provided in the previous sentence, the mPOWER Placer Program shall remain in full force and effect.

**EXHIBIT A**  
**FHFA STATEMENT**

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# FEDERAL HOUSING FINANCE AGENCY



## STATEMENT

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For Immediate Release  
July 6, 2010

**Contact:** Corinne Russell (202) 414-6921  
Stefanie Mullin (202) 414-6376

### **FHFA Statement on Certain Energy Retrofit Loan Programs**

After careful review and over a year of working with federal and state government agencies, the Federal Housing Finance Agency (FHFA) has determined that certain energy retrofit lending programs present significant safety and soundness concerns that must be addressed by Fannie Mae, Freddie Mac and the Federal Home Loan Banks. Specifically, programs denominated as Property Assessed Clean Energy (PACE) seek to foster lending for retrofits of residential or commercial properties through a county or city's tax assessment regime. Under most of these programs, such loans acquire a priority lien over existing mortgages, though certain states have chosen not to adopt such priority positions for their loans.

First liens established by PACE loans are unlike routine tax assessments and pose unusual and difficult risk management challenges for lenders, servicers and mortgage securities investors. The size and duration of PACE loans exceed typical local tax programs and do not have the traditional community benefits associated with taxing initiatives.

FHFA urged state and local governments to reconsider these programs and continues to call for a pause in such programs so concerns can be addressed. First liens for such loans represent a key alteration of traditional mortgage lending practice. They present significant risk to lenders and secondary market entities, may alter valuations for mortgage-backed securities and are not essential for successful programs to spur energy conservation.

While the first lien position offered in most PACE programs minimizes credit risk for investors funding the programs, it alters traditional lending priorities. Underwriting for PACE programs results in collateral-based lending rather than lending based upon ability-to-pay, the absence of Truth-in-Lending Act and other consumer protections, and uncertainty as to whether the home improvements actually produce meaningful reductions in energy consumption.

Efforts are just underway to develop underwriting and consumer protection standards as well as energy retrofit standards that are critical for homeowners and lenders to understand the risks and rewards of any energy retrofit lending program. However, first liens that disrupt a fragile housing finance market and long-standing lending priorities, the absence of robust underwriting standards to protect homeowners and the lack of energy retrofit standards to assist homeowners, appraisers, inspectors and lenders determine the value of retrofit products combine to raise safety and soundness concerns.

On May 5, 2010, Fannie Mae and Freddie Mac alerted their seller-servicers to gain an understanding of whether there are existing or prospective PACE or PACE-like programs in jurisdictions where they do business, to be aware that programs with first liens run contrary to the Fannie Mae-Freddie Mac Uniform Security Instrument and that the Enterprises would provide additional guidance should the programs move beyond the experimental stage. Those lender letters remain in effect.

Today, FHFA is directing Fannie Mae, Freddie Mac and the Federal Home Loan Banks to undertake the following prudential actions:

1. For any homeowner who obtained a PACE or PACE-like loan with a priority first lien prior to this date, FHFA is directing Fannie Mae and Freddie Mac to waive their Uniform Security Instrument prohibitions against such senior liens.
2. In addressing PACE programs with first liens, Fannie Mae and Freddie Mac should undertake actions that protect their safe and sound operations. These include, but are not limited to:
  - Adjusting loan-to-value ratios to reflect the maximum permissible PACE loan amount available to borrowers in PACE jurisdictions;
  - Ensuring that loan covenants require approval/consent for any PACE loan;
  - Tightening borrower debt-to-income ratios to account for additional obligations associated with possible future PACE loans;
  - Ensuring that mortgages on properties in a jurisdiction offering PACE-like programs satisfy all applicable federal and state lending regulations and guidance.

Fannie Mae and Freddie Mac should issue additional guidance as needed.

3. The Federal Home Loan Banks are directed to review their collateral policies in order to assure that pledged collateral is not adversely affected by energy retrofit programs that include first liens.

Nothing in this Statement affects the normal underwriting programs of the regulated entities or their dealings with PACE programs that do not have a senior lien priority. Further, nothing in these directions to the regulated entities affects in any way underwriting related to traditional tax programs, but is focused solely on senior lien PACE lending initiatives.

FHFA recognizes that PACE and PACE-like programs pose additional lending challenges, but also represent serious efforts to reduce energy consumption. FHFA remains committed to working with federal, state, and local government agencies to develop and implement energy retrofit lending programs with appropriate underwriting guidelines and consumer protection standards. FHFA will also continue to encourage the establishment of energy efficiency standards to support such programs.

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*The Federal Housing Finance Agency regulates Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks. These government-sponsored enterprises provide more than \$5.9 trillion in funding for the U.S. mortgage markets and financial institutions.*

# Before the Board of Supervisors County of Placer, State of California

In the matter of:  
**A RESOLUTION IN SUPPORT OF PROPERTY  
ASSESSED CLEAN ENERGY PROGRAMS**

Resol. No: \_\_\_\_\_

The following Resolution was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held on July 28, 2010,

by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

\_\_\_\_\_  
Chairman, Board of Supervisors

Attest:  
Clerk of said Board

\_\_\_\_\_  
**WHEREAS**, the California Legislature has found that (i) energy and water conservation efforts, including the promotion of energy efficiency improvements to residential, commercial, industrial, agricultural, or other real property are necessary to address the issue of global climate change and (ii) a public purpose will be served by a voluntary contractual assessment program that provides the legislative body of any public agency with the authority to finance the installation of distributed generation renewable energy sources and energy or water efficiency improvements that are permanently fixed to residential, commercial, industrial, agricultural, or other real property (Streets & Highways Code §5898.14); and

**WHEREAS**, based on these findings, the California Legislature amended Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29") to allow the financing of renewable energy, energy efficiency and water efficiency improvements through the levy of contractual assessments 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; and

**WHEREAS**, programs in which taxes and assessments are levied to finance renewable energy, energy efficiency and water efficiency improvements on private property have been established throughout California and the rest of the country, and have come to be known as “Property Assessed Clean Energy” (“PACE”) programs; and

**WHEREAS**, the County of Placer and each of the six cities located within the boundaries of the County have consented to the conduct of contractual assessment proceedings within the boundaries of the County under Chapter 29 by the County of Placer pursuant to its mPOWER Placer Program; and

**WHEREAS**, in “Recovery Through Retrofit” (October 2009), the White House’s Middle Class Task Force, Council on Environmental Quality recognized the “exciting potential of PACE programs” and stated that “Federal Agencies will work in partnership with state and local governments to establish standardized underwriting criteria and safeguards to protect consumers and minimize financial risks to homeowners and mortgage lenders”; and

**WHEREAS**, on October 18, 2009, the White House released its “Policy Framework for PACE Financing Programs,” which had “been developed by the White House and the relevant agencies as a policy framework for Property Assessed Clean Energy (PACE) financing programs” and Vice President Joseph Biden announced support “for the use of federal funds for pilot programs of PACE financing to overcome barriers for families who wish to invest in energy efficiency and renewable energy improvements”; and

**WHEREAS**, on May 7, 2010, the United States Department of Energy, after consultation within the federal government and with other stakeholders, issued its “Guidelines for Pilot PACE Financing Programs” to “help ensure prudent financing practices during the current pilot PACE programs”; and

**WHEREAS**, on July 6, 2010, only two months after release of the Department of Energy’s Guidelines, the Federal Housing Finance Agency released a Statement in which it declared: “After careful review and over a year of working with federal and state government agencies, the Federal Housing Finance Agency (FHFA) has determined that certain energy retrofit lending programs present significant safety and soundness concerns that must be addressed by Fannie Mae, Freddie Mac and the Federal Home Loan Banks;”

**WHEREAS**, in the Statement, the FHFA directed Fannie Mae, Freddie Mac and the Federal Home Loan Banks to undertake certain actions, including, among others, “(a)djusting loan-to-value ratios to reflect the maximum permissible PACE loan amount available to borrowers in PACE jurisdictions”; in other words, the FHFA directed that Fannie Mae, Freddie Mac and the Federal Home Loan Banks treat all properties within a jurisdiction with a PACE program as if they were subject to a PACE tax or assessment, not just those that had actually agreed to a PACE tax or assessment; and

**WHEREAS**, as a result of the FHFA Statement, and in order to avoid an adverse impact on residential property owners in their jurisdiction, local agencies in California that are operating PACE programs have halted residential financing; and

**WHEREAS**, for the reasons declared by the California Legislature in Chapter 29 and also because of the importance of PACE to job creation, energy independence and decreased utility costs to property owners within the County, the County wishes to declare its support for PACE

programs and to ask Congressional representatives to work with the FHFA, the Department of Energy, the White House and other relevant federal agencies to reverse the FHFA Statement;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors of the County of Placer as follows:

Section 1. Because of the important public policies advanced by PACE, including those identified by the California Legislature as well as the ability of PACE to generate new jobs within the County, the Board of Supervisors hereby declares its support for PACE.

Section 2. The Board of Supervisors hereby requests members of the California Congressional Delegation including Senators Boxer and Feinstein and Representatives McClintock, Lungren, Matsui, and others to work with the FHFA, the Department of Energy, the White House and other relevant federal agencies to reverse the FHFA Statement with the goal of achieving the exciting potential of PACE and establishing standardized underwriting criteria and safeguards to protect consumers and minimize financial risks to property owners and mortgage lenders.

Section 3. This Resolution shall take effect immediately upon its adoption. The Clerk of the Board is hereby authorized and directed to transmit a certified copy of this resolution to the FHFA and to the offices of Senators Boxer and Feinstein and Representative McClintock, Lungren and Matsui.