Atascadero City Council  
Staff Report – Community Development Department

Update on AB 811 Property Assessed Clean Energy Programs  
CaliforniaFIRST (Statewide) & Atascadero SMART Energy

RECOMMENDATION:

No Council action required; update only.

REPORT-IN-BRIEF:

This report is provided to give the Council an update on the status of Property Assessed Clean Energy (PACE) financing programs also referred to as the AB 811 program. Atascadero has been involved in the development of two PACE programs: the Statewide CaliforniaFIRST program and the Atascadero SMART Energy Program. Consultants are currently working on these programs, however, PACE programs across the nation have been put on hold due to federal financing issues.

DISCUSSION:

Background: Assembly Bill 811, which was signed into law by Governor Arnold Schwarzenegger on July 21, 2008, allows municipal governments to provide long term financing to property owners for renewable energy installations and energy efficiency retrofits through a PACE financing program. The PACE program is meant to allow municipal governments to provide long term financing to property owners through financing districts. AB 811 is designed to eliminate the large upfront costs associated with solar and energy efficiency upgrades by creating an installment plan of regularly smaller payments.

On May 26, 2009, the Atascadero City Council authorized support for the creation of a funding assessment district consistent with AB 811. On November 25, 2009 the City Manager was authorized by Council to enter into a contract with Renovate America (then PowerHouse Services) to administer the Atascadero SMART Energy program specifically for residents of Atascadero. The pilot program is set up to provide $750,000
in municipal bonds, which can fund approximately 30 properties for solar or energy efficiency retrofits. A second phase of the program with additional funds may be available to fund additional residential and commercial properties if there is community interest.

On January 12, 2010, the Atascadero City Council authorized the City to join CaliforniaFIRST, the Statewide AB 811 program. The pilot counties and cities participating have been awarded $16.5 million in funds from the California Energy Commission’s State Energy Program to put together the program.

Analysis: Consultants for both programs (CaliforniaFIRST and the Atascadero Clean Energy Program) began work in early 2010 on formation of the financing districts and setting up funding sources for issuance of bonds for the program. The City of Atascadero intends to offer both programs to City residents as both programs can be created at no cost to the City of Atascadero.

Both programs are still in development. However, it appears that there will be a few key differences between the two programs, with the primary difference being the “loading order requirement.” The CaliforniaFIRST program requires that property owners do a percentage of energy efficiency improvements to the property prior to installing solar or other renewable energy power. The Atascadero SMART Energy program does not plan on including any loading order requirements, and therefore property owners may use the funds to install solar first if they chose to do so. The programs will likely differ in additional ways, such as the underwriting, loan qualifications requirements, and interest rates. A breakdown of some of the foreseeable differences can be seen below.

**CaliforniaFIRST v. Atascadero’s SMART Energy Program**

<table>
<thead>
<tr>
<th>Eligible Measures</th>
<th>CaliforniaFIRST</th>
<th>Atascadero SMART Energy</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Loading Order Requirement</strong></td>
<td>Must do energy efficiency upgrades to reduce energy consumption prior to installing solar</td>
<td>No loading order requirements</td>
</tr>
<tr>
<td><strong>Energy Audit Requirement</strong></td>
<td>Non-testing audit for “Prescriptive Path” Test-in audit for “Performance Path”</td>
<td>Audit recommended, but not required</td>
</tr>
<tr>
<td><strong>Solar Installation</strong></td>
<td>After 10% energy efficiency savings</td>
<td>Immediate eligibility for solar</td>
</tr>
<tr>
<td><strong>Max/Min</strong></td>
<td>$75,000/$5,000</td>
<td>TBD</td>
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<tr>
<td><strong>Homeowner Requirements</strong></td>
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<td></td>
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<tr>
<td>Property based debt criteria</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>Lien to value</td>
<td>1:10</td>
<td>TBD</td>
</tr>
<tr>
<td>Equity</td>
<td>20%</td>
<td>TBD</td>
</tr>
<tr>
<td>Property types</td>
<td>Residential/Commercial</td>
<td>Residential only for pilot program</td>
</tr>
</tbody>
</table>
FHFA Stop-work

PACE financing for energy efficiency improvements are designed to be repaid through special assessments added to property owner’s property tax bills. The assessments are senior liens, which take precedence over an existing mortgage in the case of a foreclosure.

On May 5, 2010, mortgage lenders Fannie Mae and Freddie Mac issued a letter stating that Fannie Mae/Freddie Mac mortgage loans shall retain their first lien status. On July 6, the Federal Housing Finance Agency (FHFA) codified this assertion with a follow-up letter expressing that PACE loans are in violation of FHFA standard mortgage contracts. The FHFA said that PACE loans presented "unusual and difficult risk management challenges" for lenders, servicers and mortgage securities investors in a "fragile housing finance market." Fannie Mae and Freddie Mac either own or guarantee about half of all U.S. mortgages, and therefore, this decision effectively suspended many PACE efforts across the country. FHFA’s position has effectively made it impossible for residential PACE financing to move forward at this time.

There has been a large response to FHFA’s hold on PACE programs. In July, Attorney General Jerry Brown filed a lawsuit against the FHFA, claiming the agency’s actions are severely holding back California's green economy. He also asserts that the FHFA needs to recognize PACE assessments as tax increments rather than liens. Senator Barbara Boxer and Congressman Mike Thompson have introduced legislation that would require lenders to adopt new underwriting standards that support PACE financing programs by respecting states’ authority to secure assessments with a first lien.

The CaliforniaFIRST program had been expected to launch in fall 2010, and the Atascadero SMART Energy program had planned to begin accepting applications by February 2010. However, due to the lending complications that have emerged in recent months, launch dates will be delayed until the issues are worked out at the Federal level. Both programs will be highly publicized throughout the City once the issues have been resolved, and the public will receive notification when the programs are ready to accept applications.

Conclusion: The City of Atascadero has been working with AB 811 consultants in the creation of two PACE programs to offer to property owners within the City limits. There will be a few key differences between the two programs, including the “loading order requirement,” underwriting, loan qualifications requirements, and interest rates.

PACE programs across the nation have been put on hold due to Federal financing issues. Mortgage lenders Fannie Mae and Freddie Mac have issued a letters stating PACE loans are not allowed to be senior liens, and the Federal Housing Finance Agency (FHFA) followed-up by affirming that PACE loans are in violation of FHFA standard mortgage contracts. The FHFA’s position has effectively made it impossible for residential PACE financing to move forward at this time. Numerous efforts are being made throughout the State and Country to move the PACE program forward. The two
programs which the City of Atascadero had planned to participate in are currently on hold, but plan to restart once the issues at the Federal level have been resolved.

Resources

For more information regarding the CaliforniaFIRST and its implementation in San Luis Obispo County, contact:

- Trevor Keith, SLO County Energy Program Coordinator: (805) 781-1431
- www.californiafirst.org

For more information regarding Atascadero SMART Energy Program, contact:

- Callie Taylor, City of Atascadero Associate Planner: (805) 470-3448
- www.renovateamerica.com

FISCAL IMPACT:

There is no cost to the City for either program. Minimal staff time is required to maintain contact with consultants and work with the public on the programs.

ATTACHMENTS:

Attachment 1 – Fannie Mae & Freddie Mac Letters
Attachment 2 – LA Times article
Attachment 3 – CaliforniaFIRST informational handout
Attachment 4 – SMART Energy Program handout
Lender Letter LL-2010-06

TO: All Fannie Mae Single-Family Sellers and Servicers

Property Assessed Clean Energy Loans

Fannie Mae has received a number of questions from seller-servicers regarding government-sponsored energy loans, sometimes referred to as Property Assessed Clean Energy (PACE) loans. PACE loans generally have automatic first lien priority over previously recorded mortgages. The terms of the Fannie Mae/Freddie Mac Uniform Security Instruments prohibit loans that have senior lien status to a mortgage. As PACE programs progress through the experimental phase and beyond, Fannie Mae will issue additional guidance to lenders as may be needed from time to time.

Fannie Mae supports energy-efficiency initiatives, and is willing to engage with federal and state agencies as they consider sustainable programs to facilitate lending for energy-efficiency home retrofits, while preserving the status of mortgage loans originated as first liens.

Questions should be directed to Resource.Center@fanniemae.com with the subject line “PACE.” Lenders may also wish to consult with their federal regulators, who share concerns about PACE programs.

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Marianne E. Sullivan
Senior Vice President
Single-Family Chief Risk Officer
Industry Letter

TO: Freddie Mac Seller/Servicers

SUBJECT: First Lien Mortgages and Energy Efficient Loans

Several states have recently enacted laws that authorize localities to create new energy efficient loan programs that generally rely on the placement of a first priority lien to secure energy efficient home improvements. Programs under these laws are sometimes referred to as Energy Loan Tax Assessment Programs or Property Assessed Clean Energy programs. Freddie Mac has begun to receive questions about these new energy loan programs.

The purpose of this Industry Letter is to remind Seller/Servicers that an energy-related lien may not be senior to any Mortgage delivered to Freddie Mac. Seller/Servicers should determine whether a state or locality in which they originate mortgages has an energy loan program, and whether a first priority lien is permitted. Freddie Mac will provide additional guidance in the event that these energy loan programs move beyond the experimental stage.

Freddie Mac supports the goal of encouraging responsible financing of energy efficient and renewable energy home improvements. We continue to work with federal and state agencies and with Seller/Servicers on initiatives for developing workable energy retrofit programs.

CONCLUSION

Please contact your Freddie Mac representative or call (800) FREDDIE if you have any questions. Seller/Servicers may also wish to contact their federal regulators, who share concerns about energy liens.

Sincerely,

Patricia J. McChung
Vice President
Offerings Management
California seeks to lift federal block on energy-saver program

Atty. Gen. Jerry Brown sue mortgage agencies and their regulator that shut down access to funds that allow state homeowners to pay for solar panels and other efficiency upgrades in installments.

July 14, 2010  |  By Tiffany Hsu, Los Angeles Times

California is suing the federal government to stop it from derailing a program that allows homeowners to finance solar panels and other energy-saving improvements through their property tax bills.

Atty. Gen. Jerry Brown on Wednesday filed suit in federal court in Oakland against Fannie Mae, Freddie Mac and their regulatory agency, the Federal Housing Finance Agency, which have effectively shut down the financing vehicle in California.

The Property Assessed Clean Energy program, known as PACE, was pioneered in Berkeley. The program makes it affordable for homeowners to invest in energy efficiency by allowing them to pay in installments over a decade or more. Local governments raise money through bonds, then lend it to homeowners who use it to purchase equipment such as solar panels, which can cost tens of thousands of dollars. The homeowners then repay the funds through special assessments added to their property bills. The assessment are senior liens, which take precedence over an existing mortgage in the case of a foreclosure.

PACE has been hailed by clean-energy advocates and community leaders as a way to speed the adoption of solar and other technologies to help fight global warming. Homeowners have lauded it for making solar energy systems affordable and helping them slash their energy bills. The Obama administration has devoted more than $150 million in stimulus money to the effort nationwide.

But on July 6, the Federal Housing Finance Agency said that PACE loans presented "unusual and difficult risk management challenges" for lenders, servicers and mortgage securities investors in a "fragile housing finance market."

The decision effectively suspended many PACE efforts across the country. That's because Fannie Mae and Freddie Mac either own or guarantee about half of all U.S. mortgages.

Calling the move a "regulatory strangulation of the state's grass-roots program," Brown alleged in the suit that the federal government had mischaracterized PACE funds as "loans" instead of "assessments" and improperly portrayed the program as violating Fannie Mae and Freddie Mac's standard lending procedures.

The stakes are high, said Brown, who is the Democratic gubernatorial nominee for the fall election.

California could stand to lose more than $100 million in federal stimulus money, he said. He said San Diego's idle PACE program, for example, has left more than 100 newly trained workers without jobs while clean-energy companies around the state are facing layoffs.

Michael R. Peevey, president of the California Public Utilities Commission, and Commissioner Dian M. Grueneich sent letters to top Obama administration officials, including Treasury Secretary Timothy F. Geithner, lamenting that more than $450 million in retrofit projects were in limbo in more than 200 communities across the state.

Thousands of local construction jobs and other positions are now at risk, as are other state energy efficiency and low-income programs that had been molded to work with PACE, the officials said.
SAVING YOU MONEY & ENERGY

CaliforniaFIRST is a financing program of California Communities, a joint powers authority sponsored by the California State Association of Counties and the League of California Cities. The Program allows property owners to finance energy efficiency and renewable energy projects on homes and businesses. For participating property owners, the cost of the project is repaid on your property tax bill over up to 20 years. Financing eligibility is based on the value of your property and the current status of property tax payments, not on personal credit.

The CaliforniaFIRST Program is scheduled to roll out as a pilot in a limited number of counties and cities and will begin accepting applications in summer 2010.

Here’s How it Works

STEP 1: Get Energy Audit & Choose Projects
Get a home audit to learn how you can make your home more energy efficient. Decide on the energy efficiency and renewable energy projects that are right for you. Once the Program is available, choose a qualified contractor from the Program website and get an estimate for the projects you choose.

STEP 2: Apply for Financing
The CaliforniaFIRST Program is not yet accepting applications. Once the Program is launched, you can apply online for financing. The application doesn’t affect your credit rating. If you have paid your property taxes on time for the last three years, you are likely eligible for financing. You can finance projects worth up to 10% of the value of your property.

STEP 3: Complete Projects & Get Funding
Once your financing has been approved, you have 180 days to complete your projects. Upon completion, get all necessary building permits, contractor invoices, copies of relevant rebates and a copy of the post-installation energy project verification. Submit this paperwork online to receive funding and pay your contractor(s).

STEP 4: Make Payments
An assessment will be added to your property tax bill for up to 20 years to cover the cost of your project(s) and any associated costs. If you sell your home, the new owner will generally assume these property tax payments.

Examples of Eligible Projects

Energy Audit
Start here with a detailed summary of your energy use to identify the highest impact areas of improvement for your property.

Air Sealing & Insulation
Seal cracks and openings to prevent air leakage and properly insulate the walls, floors, and attic.

Solar Electric
Meet up to 100% of your electricity needs with solar energy. Reduce the cost and size of your solar electric system by installing energy efficiency projects first.

Visit CaliforniaFIRST.org
Frequently Asked Questions

What types of buildings qualify? Residential and commercial buildings qualify for the program.

What projects are funded? Eligible projects include energy efficiency and renewable energy projects, such as air sealing, heating systems, insulation, solar electric panels and solar water heaters.

How much will a participant’s property taxes increase? The size of your property tax increase depends on the amount you borrow. For an average energy efficiency retrofit of $9,000, you could pay about $75/month.

For how many years will the participant have to pay the added assessment? The assessment payment period matches the useful life of the projects—for up to 20 years. Most furnaces, for example, have a 20-year warranty. Warranties for water heaters might be 10 years or less.

What happens if the property is sold prior to repayment of the assessment? If the property is sold or transferred, the tax payment obligation will generally be assumed by the new owner.

How much can a participant save on their gas and electric bills? Each home is different and homeowners will need to calculate their energy use and potential savings. With basic efficiency measures, most homes can reduce energy use by at least 25%—which could save homeowners money immediately.

Can the property owner use any contractor? Property owners can choose eligible contractors that have met the Program’s qualifications. A list of eligible contractors will be available on the website prior to Program launch.

How can I apply? The CaliforniaFIRST Program is not yet accepting applications. Visit the website at CaliforniaFIRST.org for more information and to sign up for Program updates.

Visit CaliforniaFIRST.org
City of Atascadero SMART Energy Program

ATTACHMENT 4: Atascadero Clean Energy Program description

ITEM NUMBER: C-1
DATE: 09/28/10

How Do I Apply?

Getting a SMART Loan is easy! You will be required to complete an application and submit a loan application, which must include an offer in writing for your home or a property you own. Loan applications will be provided when the program is launched. The Program is anticipated to be available to property owners in fall 2010.

WHAT IS DIFFERENT ABOUT THIS LOAN?

If you are not sure how long you are going to stay in your home or own your business, but you would like to lower your energy costs, the SMART Loan may be the best option. Additionally, qualifying for a SMART Loan may be easier than qualifying for a traditional home equity loan or commercial loan.

APPLICATION CRITERIA

If you are not sure how long you are going to stay in your home or own your business, but you would like to lower your energy costs, the SMART Loan may be the best option. Additionally, qualifying for a SMART Loan may be easier than qualifying for a traditional home equity loan or commercial loan.

What is the City of Atascadero SMART Energy Program?

The program provides you with an opportunity to save money on your utility bills, drop even further.

INCREASING YOUR PROPERTY VALUE

The U.S. Department of Energy has stated that most homeowners can save money on their utility bills by improving their energy efficiency. Add value to your home and save money by installing energy efficient products.

LOWERING YOUR UTILITY BILLS

The City of Atascadero SMART Energy Program has been finalized.

How Can I Lower My Energy Costs?

The energy efficiency products will lower your energy costs by 10% to 25%.

LOWERING YOUR CARBON FOOTPRINT

An energy efficient property is also a property that emits lower greenhouse gases.

How It Works:

1. The City of Atascadero SMART Energy Program might be for you.
2. Property Owner applies for a loan.
3. Loan is approved.
4. Property Owner signs loan documents.
5. Property Owner receives notice to proceed.
6. Work is completed and contractor(s) paid.
7. Property Owner receives notice of completion.

GET A SMART LOAN

Finance 100% of eligible product costs. Repayment terms range from 15-20 years. In some cases, the home equity loan may be paid semi-annually in equal installments.

REPAYMENT OF LOAN

Home equity loans and commercial loans require you to pay off any loan balances if and when you sell your property.

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Fixed interest rate (6.50% to 7.50%) is determined at closing. This range is based on Treasury Rates as of 3/19/2009.

The City will provide a complete listing of eligible products, the cost of eligible products, and requirements for eligibility. For more information, contact your local city or visit the website.

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