

FORM APPROVED COUNTY COUNSEL
 BY: Marshall Victor
 DATE: 6/18/13

833



**SUBMITTAL TO THE BOARD OF SUPERVISORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

FROM: Executive Office

SUBMITTAL DATE:
 May 23, 2013

SUBJECT: Resolution No. 2013-135, agreeing to participate in the Coachella Valley Association of Governments (CVAG) Clean Energy Program to finance Renewable Energy and Energy and Water Efficiency Improvements

RECOMMENDED MOTION: That the Board of Supervisors:

1. Adopt Resolution No. 2013-135;
2. Approve and authorize the Chairman of the Board to execute the attached Implementation Agreement to authorize CVAG to implement, manage, and administer a Clean Energy Program that includes the Eastern County of Riverside; and

(Continued)

Alex Gann

Alex Gann, Principal Management Analyst

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/13/14

COMPANION ITEM ON BOARD N/A AGENDA: No

SOURCE OF FUNDS: N/A	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

BY: *Christopher M. Hans*
 Christopher M. Hans

County Executive Office Signature

Dept't Recomm.: Consent Policy
 Per Exec. Ofc.: Consent Policy

2013 JUN 11 PM 3:07
 RECEIVED BY: [illegible]
 SECRETARY: [illegible]

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Prev. Agn. Ref.: 3.12 of 12/8/09 | District: 4,5 | Agenda Number:

RECOMMENDED MOTION (Continued)

3. Authorize the Chief Assistant County Executive Officer to execute documents necessary to facilitate the implementation of the program by CVAG.

In the fall of 2009, the Board of Supervisors directed staff to develop and coordinate the administration of an energy efficiency program to serve Eastern Riverside County. At that time the Western Riverside Council of Governments (WRCOG) had developed and was beginning to implement such a program in the western county area. At that time, the County and WRCOG entered into an Implementation Agreement outlining detailed provisions of the program to be offered in the unincorporated areas of western Riverside County.

Beginning in the fall of 2011, the CVAG Executive Committee directed CVAG staff to explore the creation of a regional program that would allow property owners in all member cities and the unincorporated areas of the eastern County of Riverside to take advantage of Property Assessed Clean Energy (PACE) financing. Staff from the Economic Development Agency worked cooperatively with CVAG staff on this effort.

Recent changes to state law (AB 811, SB 555) enable cities, counties, and a joint powers authority like CVAG to set up financing programs in which property owners may obtain financing for the acquisition, installation and improvement of energy efficiency, water conservation and renewable energy improvements to or on their real property, including homes and commercial buildings. (A list of eligible improvements is attached). Property owners who choose to obtain such financing can repay it through assessments or special taxes on their property tax bills over a set period of time.

PACE financing addresses two major financial hurdles to capital intensive energy efficiency and renewable energy projects: the high up-front cost and the potential that those costs will not be recovered upon sale of the property. With PACE financing, there is little or no up-front cost to the property owner, and if the property is sold before the investors are repaid, the new owner will, unless a prepayment is arranged, assume responsibility for the remaining assessments or special taxes as part of the property's annual tax bill. By overcoming these barriers, PACE financing presents an unparalleled opportunity to generate savings on utility bills for property owners, stimulate construction and building activity, reduce peak energy demand, and increase property values. At the recent CVAG Executive Committee meeting on April 29, 2013 local contractors, building industry and environmental advocacy representatives spoke in favor of PACE financing districts and a PACE program for the Coachella Valley.

To initiate the development of a PACE program, CVAG released a Request for Proposals (RFP) for a Regional PACE program with a deadline of December 20, 2012. Respondents were asked to describe how the program could be customized to include elements that the region, or an individual jurisdiction, might request. They were also asked to address potential flexibility for an individual member agency to customize the program to meet the needs of their residents and businesses, suit individual jurisdiction needs, and mesh with existing programs.

Two proposals were received in response to the RFP: one from Ygrene Energy Fund and one from Public Financial Management, Inc./PFM Group/California Home Energy Retrofit Opportunity (HERO) Fund (with WRCOG participating in the HERO program as conduit issuer of bonds and program administrator). The proposals were reviewed by a selection committee that included CVAG member

agency staff (from Palm Desert, Palm Springs, and Riverside County) and an elected official (Councilman Scott Hines from the City of Rancho Mirage).

Following interviews, due diligence and reference checks, the selection committee's recommendation to develop a regional PACE program with Ygrene Energy Fund was announced at the February 14, 2013 meeting of the Energy & Environmental Resources Committee. The selection committee made their recommendation based on several factors, including the flexibility of the PACE program offered by Ygrene, the ability to customize the program for individual jurisdictions, plans for a local energy center, the possibility of financing public buildings including schools and municipal buildings, and the ability for CVAG participating jurisdictions to control and customize the program for our region. The Energy & Environmental Resources Committee unanimously approved the recommendation.

The recommendation for the selection of Ygrene Energy Fund to develop, administer, and finance the proposed regional PACE program was then discussed at the Executive Committee meetings on February 25, 2013 and April 29, 2013. After receiving public input at both meetings and considerable discussion of the program costs, features, local control, program benefits to CVAG member cities, local property owners and businesses, among other issues, the Executive Committee approved the recommended action to proceed with the development, administration, and financing of a Regional SB 555 PACE program in collaboration with Ygrene Energy Fund. The CVAG Executive Committee staff report containing a detailed summary of the programs is available on the CVAG web site:

http://www.cvag.org/downloads/admin/exec/EXEC_04_29_2013SR7A.pdf

As the selected PACE provider, Ygrene Energy Fund will provide financing, administration, marketing, legal and all services needed to launch a PACE program. Ygrene Energy Fund is a nationwide third-party PACE administrator providing program design, implementation, funding, contractor certification, marketing, administrative software, and support at no cost to participating jurisdictions. Ygrene's compensation for performing these services will be derived from the interest rate spread between the cost of funds and the interest rate they provide to property owners who voluntarily obtain financing through the program, as well as fees paid by applicants. **The Ygrene program requires participating contractors to pay a per project fee of three percent of the amount financed.** The City of Sacramento and the County of Sacramento among other local jurisdictions have established PACE programs in conjunction with Ygrene Energy Fund. Ygrene offers a turnkey PACE program to cities and counties funded with private capital and is the only administrator to do so utilizing an SB 555 based model. Through contracts with cities, counties, or joint powers authorities, Ygrene serves as the administrator of the Community Facilities District, and works with PACE applicants and local contractors to facilitate improvements. There is no fiscal impact to the participating agencies' General Fund. Costs associated with CVAG's formation and implementation of this program are funded by reimbursements from Ygrene Energy Fund.

Among the steps required to initiate a regional PACE program, the Executive Committee approved circulation to member jurisdictions of the attached Implementation Agreement (See Attachment 1). According to the CVAG Joint Powers Agreement, CVAG shall have the power in its own name "To exercise jointly the common powers of its members to manage and administer any Implementation Agreement program" and "to exercise any powers authorized by an Implementation Agreement in furtherance of said agreement's purpose." CVAG's general counsel advised an approved Implementation Agreement is required to form the community facilities district and implement a regional PACE program.

To become effective, the Implementation Agreement requires approval and execution by CVAG member agencies. Following this approval, execution, and delivery, the formal process required for PACE district formation can be initiated by CVAG. (A summary of the formation process and estimated timeline is described in Attachment 3). For CVAG member agencies, approving, executing, and delivering the Implementation Agreement are the only actions necessary to participate in the CVAG regional PACE program. CVAG staff is available to assist member jurisdictions as needed. CVAG will then take all other necessary steps to establish and implement the PACE program. The Implementation Agreement also provides the opportunity for the CVAG Executive Committee to consider other PACE programs. Individual CVAG member jurisdictions would have the discretion to participate in other PACE programs.

PACE financing is completely voluntary and the decision to participate in such a program is up to the property owner. Once the formation process is complete, financing for energy retrofits can be made available to consumers and businesses in our community. The funding source is private financing made available through Ygrene. Participating property owners pay for the retrofits, typically over a 15 to 20 year term, via an annual special tax on their property tax bill. Under the SB 555 framework, only property owners who choose to seek financing through the community facilities district (CFD) for energy- and water-related improvements to their property *and* unanimously vote to annex their property into the CFD will be subject to this program. They "vote" into the district by participating in the program. No property will be annexed into the CFD or subject to any part of this program without the express willing unanimous consent of the property owner(s).

The Federal Housing Finance Agency (FHFA) has issued a directive to the Federal National Housing Association (Fannie Mae) and Federal Loan Mortgage Corporation (Freddie Mac) to discontinue purchasing mortgages on properties encumbered by liens made under property-assessed PACE programs. This directive was upheld in *County of Sonoma v. Federal Housing Finance Agency* (9th Cir. 2013) 710 F.3d 987. Accordingly, the ability to obtain Federal loans or refinancing under Fannie Mae or Freddie Mac may be impaired on properties containing PACE program assessments and the PACE program assessment may need to be paid in full in order to obtain such Federal financing.

Please note that the firm of Orrick, Herrington & Sutcliffe LLP (the "Orrick firm") is jointly representing CVAG and Ygrene in connection with the establishment of the SB 555 Clean Energy Program. If an AB 811 Clean Energy Program is established, however, the Orrick firm would not represent CVAG and has not reviewed, and is not passing on the adequacy of, any of the provisions in the Implementation Agreement or form resolution relating to the AB 811 Clean Energy Program. Additionally, the Orrick firm has asked the CVAG members be advised the firm is not representing any of the CVAG member jurisdictions with respect to the SB 555 Clean Energy Program.

In preparation for launch of the PACE program, Ygrene will provide an introductory workshop about PACE financing as well as contractor training workshops to help local contractors use PACE financing to help their customers with energy efficiency, renewable energy, and water conservation projects. PACE programs have become powerful tools for municipal governments to stimulate local jobs while providing a competitive financing program for property owners. Residential and commercial property owners can fund energy efficiency, solar/renewable energy and water conservation projects through PACE, with significant benefits for energy savings and greenhouse gas reduction. A regional program offers benefits in terms of economies of scale for funding and implementation.

FINANCIAL DATA:

The financing and administration of the proposed regional PACE program are funded by the program implementer (Ygrene Energy Fund) and supported by private funding and administrative fees. Ygrene will provide reimbursement of administrative and other costs.

Attachments:

1. Implementation Agreement Approved by CVAG Executive Committee (4/29/13)
2. List of Eligible Improvements Available to County of Riverside Property Owners (Residential and Commercial) Pursuant to Regional Clean Energy (PACE) Program
3. Summary of Process and Timeline for Formation of Regional Clean Energy (PACE) District

2
3 RESOLUTION NO. 2013-135

4 RESOLUTION OF THE BOARD OF SUPERVISORS OF THE
5 COUNTY OF RIVERSIDE APPROVING THE FORM OF AND AUTHORIZING
6 THE EXECUTION AND DELIVERY OF AN IMPLEMENTATION
7 AGREEMENT AUTHORIZING THE COACHELLA VALLEY ASSOCIATION
8 OF GOVERNMENTS TO IMPLEMENT, MANAGE AND ADMINISTER ONE
9 OR MORE CLEAN ENERGY PROGRAMS AND DIRECTING AND AUTHORIZING
10 CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

11
12 WHEREAS, The County of Riverside (the "County") is a party to the Coachella Valley
13 Association of Governments Joint Powers Agreement dated on or about November, 1973, as amended
14 and restated on June 26, 1989, and as further amended and restated on June 16, 1998 (collectively, the
15 "Joint Powers Agreement") pursuant to which coordinating and improving the planning and delivery of
16 governmental responsibilities common to all member entities within the local region;

17 WHEREAS, the Joint Powers Agreement provides that six or more members of CVAG, or
18 if approved by the CVAG Executive Committee, two or more members of CVAG, may execute an
19 implementation agreement for the purpose of authorizing CVAG to implement, manage and administer
20 area-wide and regional programs in the interest of the local public welfare;

21 WHEREAS, the County has determined that it is in the best interests of the County and is
22 beneficial to its residents to execute and deliver an implementation agreement (the "Implementation
23 Agreement") authorizing CVAG to implement, manage and administer one or more clean energy
24 programs (each, a "Clean Energy Program")

25 (1) by forming a community facilities district within the jurisdictional boundaries of
26 the parties to the Implementation Agreement and levying special taxes therein to finance the acquisition,
27 installation, and improvement of energy efficiency, water conservation, and renewable energy
28 improvements permanently affixed to or on a real property and in buildings, whether the real property or

FORM APPROVED COUNTY COUNSEL
BY: *[Signature]*
DATE: 6/10/13

1 buildings are privately or publicly owned, all in accordance with the Mello-Roos Community Facilities
2 Act of 1982 as amended, including as amended by Senate Bill No. 555 (Statutes 2011, chapter 493) (“SB
3 555”) and other state laws, and/or

4 (2) by forming an assessment district within the jurisdictional boundaries of the parties
5 to the Implementation Agreement and levying special assessments therein to finance certain energy
6 efficiency improvements as provided by AB 811, enacted by the State Legislature on June 30, 2008, and
7 codified at Streets and Highways Code sections 5898.10 et. seq. (“AB 811”);

8 WHEREAS, the Implementation Agreement authorizes the CVAG Executive Committee,
9 in its sole discretion, to determine whether to establish a Clean Energy Program under SB 555 or a Clean
10 Energy Program under AB 811 on behalf of the parties to the Implementation Agreement. Now,
11 therefore,

12 BE IT RESOLVED by the Board of Supervisors of the County of Riverside assembled in
13 regular session on June 18, 2013 that:

14 1. The Board of Supervisors (the “Board”) finds and determines that the foregoing
15 recitals are true and correct.

16 2. The form of the Implementation Agreement as presented to the Board is hereby
17 approved. The Chair of the Board (or his or her designee) is hereby authorized and directed to execute
18 and deliver the Implementation Agreement on behalf of the County, which shall be in substantially the
19 form presented to this meeting, with such changes therein, deletions therefrom and additions thereto as the
20 Chief Executive Officer of the County (or his or her designee) and the County Counsel of the County
21 shall approve, which approval shall be conclusively evidenced by the execution and delivery of the
22 Implementation Agreement.

23 3. The Chief Executive Officer of the County (or his or her designee) is hereby
24 authorized and directed to do any and all things, and to execute and deliver any and all documents, which
25 he or she may deem necessary or desirable in order to implement the Implementation Agreement and
26 otherwise to carry out, give effect to and comply with the terms and intent of this Resolution; and all such
27 actions heretofore taken by such officers are hereby ratified, confirmed and approved.

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1 4. All consents, approvals, notices, orders, requests and other actions permitted or
2 required by the County in connection with the implementation, management or administration of any
3 Clean Energy Program under the Implementation Agreement after the execution and delivery of the
4 Implementation Agreement may be given or taken by the Chief Executive Officer of the County (or his or
5 her designee) and the County Counsel without further authorization by the Board, and the Chief Executive
6 Officer of the County (or his or her designee) and the County Counsel are hereby authorized and directed
7 to give any such consent, approval, notice, order or request and to take any such action which such
8 officers may deem necessary or desirable to further the purposes of this Resolution.

9 5. This Resolution shall take effect from and after its adoption.