



***EcoMotion – Business Greening Solutions***

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# **PACE Perspectives**

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## **1. Background**

“PACE is dead,” has been an oft-uttered phrase.

Property Assessed Clean Energy is the best financing tool ever developed for efficiency and distributed renewable energy upgrades for property owners. PACE was recognized by Harvard Business Review as one of the top ten break-through ideas in 2010.

At best, it is widely available, is low cost and “low doc,” hassle-free, and the unpaid balance transfers in the event of a property sale.

### **PACE Benefits for Property Owners**

**100% financing for all with clear title  
The lien transfers with the property**

Did it come and go fast? A recent article stated, “PACE, we hardly knew ye.” How very sad, and how very untrue.

This perspectives paper is about PACE, what grew in national prominence thanks to a visionary effort in Berkeley. The concept was taken to scale thanks to California Assembly Bill AB 811 promoted by the City of Palm Desert. The law that opened the door for what is now known as PACE amended the “assessment acts” of the California Streets and Highways Code of the California Constitution. The law recognizes efficiency and renewable energy upgrades as public benefits, despite the fact that they are ostensibly for private gain on private property.

## **PACE Benefits for Local Jurisdictions**

**Jobs and economic development**  
**No-cost government and consumer energy savings**  
**No-cost climate protection**

The PACE opportunity is huge. All a property owner with clear title has to do is say, “Yes, I want to participate with no money down and positive cash flow!” Never before have property owners had a simple, cost-effective way to upgrade their homes. Historically, utility incentives in the form of rebates have paid a fraction of the costs of retrofits. Tax breaks, paying another portion of gross costs, help after the fact. Through a well-designed PACE program, any property owner with clear title can access 100% of the capital necessary to do an upgrade. And if the loan is structured right, the savings will be more than the payments. (This is called the Savings to Investment Ratio; in well designed programs its value is at least 1.)

## **PACE Benefits for the Nation**

**Jobs**  
**Energy independence**  
**No-cost climate protection**  
**National security**

## **2. The Pioneers**

I’m proud of Palm Desert. Conservative values indeed, Palm Desert has become one of California’s and the nation’s most progressive energy cities. I’ve been honored to work there since 2001, with the likes of Carlos Ortega, Buford Crites, Jim Ferguson, Pat Conlon, Lauri Aylaian, and others.

Palm Desert crafted AB 811 and made it real. The City’s lobbyist, Anthony Gonsalves, pushed AB 811 through the California legislature. On July 21<sup>st</sup>, 2008, when Arnold Schwarzenegger signed the bill as an “urgency measure,” the City of Palm Desert went into high gear. EcoMotion was retained to facilitate the process, to write the guidelines, and prepare the City for program launch.

For three weeks, we conferred, drafted, reviewed, conferred, and redrafted. EcoMotion worked daily with City officials, retained lawyers, and finance advisors. Nighttime editing pushed the process forward. Mayor Ferguson took a populist approach; Conlon was steadfast in advocating an engineering approach. The collaboration worked and a popular program was born.

We all wanted robust measures installed. We were committed to the taking care of the people of Palm Desert, to guide them through the new program. We designed a program to treat all participants with dignity, after all, “It is their money not ours,” Ferguson reminded us time again.

On August 28<sup>th</sup>, just five weeks later, the Palm Desert City Council unanimously voted for the City’s new Energy Independence Program, a name fashioned by EcoMotion and Jim Ferguson. Our utility partners were upset by the notion of independence, but logic prevailed and it

resonated with the public: This was independence from conventional sources of energy and conventional ways of doing business. Enter AB 811 assessments... and the 100% solution!

The first PACE assessment was funded on September 28, 2008 in Palm Desert, pre-dating the term PACE itself. Despite all its press, Berkeley's pioneering effort with a solar financing district using a Mello-Roos Community Financing District, funded its first project in January of 2009 before it fizzled. In Palm Desert and thanks to a few feature articles in the local Desert Sun newspaper, over three hundred property owners were on a waiting list at its inception. Most had aging air conditioning systems; some wanted solar to offset Tier 5 rates.

The Palm Desert City Council initially put up \$2.5 million of the City's money to get the program started, ultimately raising that to \$15 million. To date, Palm Desert has served just over 250 customers through the Energy Independence Program. Their upgrades are split between HVAC and solar upgrades, for a total of \$6.5 million and an average loan size of \$28,000. Raising the current caps on individual assessment sizes tops the City's multivariate decision-making tool for its Sustainability Action Plan prepared by EcoMotion, the most effective of the 20 Phase 1 climate protection measures.

Sonoma County was hot on Palm Desert's tail and both visited Palm Desert to learn first-hand, and hired EcoMotion as its program design consultant. It mimicked Palm Desert's EIP, with the Sonoma County Energy Independence Program. SCEIP launched its own energy Center with a \$100 million war chest. At the time of this writing, Sonoma is lending \$1.5 million a week.

EcoMotion had encouraged Palm Desert and Sonoma to hold the debt for at least two years, using the spread between their opportunity cost of capital (about 1.6% at the time) and their program lending rates (7 – 7.5%) to run the program. For every ten million parsed out in assessments, a local government would have a half million in "spread revenue." This could be used to offset start-up costs, provide for staffing and outreach, and/or set up delinquency funds and loan loss reserves.

Before long, every major city and county in California was considering what was becoming known as PACE. This potentially zero net cost city program could have dramatic results. Even the small city of Yucaipa, California saw the leverage and logic and launched a program.

Meanwhile, something quite similar was happening in Boulder County, Colorado. The County was using its resources to aggregate property owners and help them make investments in efficiency. Boulder used a sign up and aggregation process, after which bonds were sold. Only when a requisite number of properties were committed did the finances get put in place. Boulder quickly led the pack with its first aggregations.

### **3. The First Wave of Scaled Programs**

Within months, huge momentum was building. Every large population center in California was considering PACE and many other states were taking note. Legislative processes began to replicate PACE. Cisco DeVries, the inspiration behind the Berkeley pilot, aka "the Godfather of

PACE,” joined a firm called Renewable Funding. It had deep pockets and a business plan to take PACE national.

- Renewable Funding spearheaded a statewide initiative with CSCDA, or “Cal Communities,” a statewide RDA. This program offered the great reach – alleviating individual county efforts – and the potential of major scale, allowing for large bond issuances and thus low-cost program capital.
- San Diego sought a no-cost program delivered by the private sector; the City wanted “no skin in the game,” but all the PACE benefits! I went to a bidder’s conference there that was packed, participants pasted to the wall of a non-descript conference room. What had Cisco and Jim created? One attendee asked if foreign sources of capital could finance the program.
- San Francisco announced a hugely appealing Green Finance program, reportedly with a \$100 million line of credit.
- Los Angeles County – with nearly a ten million residents -- took center stage with its announcement that it would use \$13 million of its EECBG formula funds to launch a massive residential program, targeted at the County’s 1.5 million owner-occupied single family homes in the 88-city county and its unincorporated areas.
- Orange County followed suit and put out an RFP for a no-cost/no exposure program. Santa Barbara County’s Board of Supervisors unanimously approved a county-wide Energy Efficiency Financing District on June 23, 2009. Ventura followed suit. Western Riverside COG took action, hoping for preferential D.C. treatment and funds.

Soon PACE was in Vermont, New Mexico, and many other states. Hawaii didn’t need enabling legislation for PACE. The movement was progressing fast. Vice President Joe Biden praised the mechanism; The U.S. Department of Energy allocated \$150 million of stimulus money to help local communities get pace programs up and running. DOE worked diligently to develop underwriting standards that banks and the bond markets could accept. Banks would need due diligence on measures installed, from professional audits to assure potential, to technologies approved, and underwriting standards.

The recession both helped and hurt PACE. With tight local government budgets, PACE was a savior. It was seen as the only way for cities and counties to meet their energy and climate protection goals. A well-designed program, if brought up to sufficient scale, could boost city or county revenues with an ongoing and secured revenue stream.

On the other hand, there were serious downsides. The bond market “went into the toilet,” and taxable bonds – if available – bore interest rates well above the levels needed to effectively lend, much less to earn a spread on the interest rates with which to run a program.

The recession was catapulted into reality by the collapse of mortgage lending... with many homes under-water. Past zero equity, many homeowners now were experiencing *negative equity*

meaning that the owner owed more than its list price. Foreclosures became rampant. The perception of PACE liens as encumbrances was profound: While they were actually positive – meaning they could help property owners cut costs and pay their mortgages – the negative perception carried the day.

PACE and “PACE-like” programs were enabled in state after state. Renewable Funding – and Cisco DeVries in particular -- deserves great credit for its work seeding PACE in states across the nation, and in Canada and the United Kingdom and recently in Australia. The logic of the assessment concept has been compelling. Cisco has been at the forefront of national movement, logging countless miles and working diligently, state by state, legislator by legislator, with remarkable grace.

Hard work in this case has paid off. Fully 24 states plus the District of Columbia have enabling legislation PACE. Michigan adopted its legislation just three months ago.

## **4. The FHFA Roadblock**

Here’s where the story really gets interesting. PACE was dealt a major blow.

California has a 100+ year history with assessments. Cities and counties have all experienced assessments for many purposes, undergrounding power lines, sewer line extensions, sidewalks, local parks, police and fire stations, etc. Given the state’s limited ability to collect fees from property taxes (Property 13), assessments have been a key tool in the Golden State. These have never been questioned and are codified in state law. AB 811 amended the Streets and Highways code to explicitly include property owners’ energy-saving (and generating) measures as assessments. These assessments are secure and function because of their senior position to the primary mortgage.

### **The Paralyzing Blow**

By late spring and summer of 2010 – around PACE’s second birthday – and despite White House support for PACE – a relatively unknown, two-year old federal regulatory body dealt PACE a knock-out strength blow. It directed Fannie Mae and Freddie Mac not to underwrite mortgages with PACE liens attached.

The Federal Housing Finance Agency issued two letters to its constituents. Acting Director Ed DeMarco expressed his counsel’s concerns about Fannie Mae and Freddie Mac mortgages being “subordinated” by PACE liens. The first letter dated May 5, 2010 was unclear; the second on July 6, 2010 was the death knell.

### **Options for an FHFA Win-Win Solution**

- Underwriting standards
  - Positive Savings to Investment Ratio
  - Equity requirements
  - Cap all assessments at 5% of property value

- Pre-retrofit assessments
- Post-retrofit audits and measure checks
- Delinquency, loan loss reserve
- Acceleration of payment in the event of transfer

There were negotiations behind the scenes between PACE advocates and the FHFA. The U.S. DOE offered two years of loss reserves to resolve the issue. California passed Senate Bill 77 authored by State Senator Fran Pavley. It provided \$50 million in funding for a loss reserve fund. A conference call between Californians (led by the Attorney General's office) and Washington officials was unproductive: A list of concessions was presented without comment. Pilot programs to test the veracity and security of PACE were proposed in discussions with the FHFA. Even this concept went flat.

The White House was noticeably silent; perhaps embarrassed by its lack of power. Some say that Biden's announcement of the largely undefined and completely untested HUD Power Saver Program was offered up as political cover. Cynics said they'd predicted resistance from mortgage lenders all along; "At some point, the mortgage lending industry is going to wake up and shut this down," they said. No one likes to be subordinated. Hindsight is golden.

### **Speculation on FHFA Motivation**

Did Tim Geithner strike down PACE "in mortal fear of repeat of the subprime market?" If so, did he and his staff not understand that this is the first type of assessment that actually helps homeowners pay their mortgages? Was FHFA pressured by SunRun, a solar leasing company in partnership with PG&E, to kill this form of government intervention in financial markets? An attorney I interviewed doubts very much that SunRun had that kind of clout.

Back to the Treasury: Could this be the first attack on assessments? Is this indeed a Tenth Amendment debate over states' rights? PACE has 24 states lined up, many programs validated, and a head of steam, all to be shut down by a rogue Federal agency?

The bell rang loud and strong, strong enough for most everyone to abandon ship. California's statewide initiative was put on hold; San Diego and San Francisco's programs were stalled. DOE instructed its formula block grant recipients to redirect funds that had been set aside to establish PACE programs. L.A. County dropped its golden program like a rock. Placer discontinued its residential mPower Placer. All new programs were abandoned in California. The overwhelming view was that PACE was killed by the feds, that PACE is dead. "PACE, we hardly knew ye."

Sonoma and Palm Desert were both chagrined by FHFA's proclamation and temporarily suspended their programs. They were later opened with disclosures about the ramifications of liens subordinating mortgages, both current ramifications and later in the event that a homeowner elects to refinance a property with a conforming FHFA loan. Massive turn-out in Sonoma caused a Board of Supervisors to direct staff to press on, to keep the program alive. Palm Desert tightened its guidelines, added a disclosure, and pressed forward too.

Sonoma and Palm Desert also geared up for a fight. After investing significant time and resources in their Energy Independence Programs, and witnessing great consumer interest and

uptake, they were not easily going to roll over and abandon them. It was time for legal action to assure the validity of PACE. Attorney General Jerry Brown (now Governor Brown) was first to file suit. Palm Desert's suit found FHFA's position arbitrary and capricious, essentially a taking. Sonoma County filed suit, so did Placer County which directly sued the directors of Fannie Mae and Freddie Mac. Both Sierra Club and NRDC sued the FHFA, so did the Town of Babylon, New York and Leon County, Florida.

These suits were combined by the United States District Court of Northern California, and in December 2010 Judge Wilken ruled that the suits would not be summarily dismissed as FHFA had requested, and that they would indeed go to trial in 2012. Furthermore, FHFA was instructed to begin a proper administrative procedure for the advice letters that it issued without appropriate federal public review and comment periods. There was no official notice or comment period.

Most recently, California Public Utilities Commission President Mike Peevey promoted and passed a resolution of the National Association of Regulatory Utility Commissioners (NARUC), exhorting FHFA to reverse its position.

## **5. PACE News from the Nation**

Within two and a half years of the first PACE assessment in Palm Desert, "the PACE industry" has legs. Two organizations developed to support PACE. Led by Merrian Fuller at Lawrence Berkeley National Laboratory RAEL group, a PACE Google Group was formed and has served as a national forum. The group exchanges information and strategies – from elementary to inspired -- and has now grown to more than 600 advocates. Across the country, PACE Now was formed in New York to galvanize and advocate federal legislation to secure the PACE financing mechanism.

Here's a perspective many share: In 2008 a movement was born, sprung to life, and then temporarily defeated. Some have moved on. But we understand full well the PACE potential for potentially no-net cost and significantly scaled local government action on energy, the environment, and climate protection.

My research for PACE Solutions has made it clear that the PACE Commercial space is where the action is. PACE Commercial is unimpeded by the FHFA. I've thought about how cities and counties could have shifted their focus to commercial instead of abandoning PACE. The PACE Solutions conference features two tracks, one for current commercial and industrial progress, the other for resuscitating PACE Residential.

Palm Desert's municipal finance advisor Ken Dieker informed me that commercial lenders have caught on. PACE is a secure means of investing: Barclay's Bank "gets it." So does Citigroup and Wells Fargo, the latter officially maintaining an "agnostic posture," favorable to property value increases while cautious about subordination.

## **The Golden State and Private Placement**

Enter the Clinton Climate Initiative. I wasn't surprised to learn a year ago that CCI had taken up PACE, developing a new private placement model for commercial properties. I was told that David Hodgins was "the guy," and thus I was pleased that we were both panelists at a conference in Downey last year. David is bright and clear and enthusiastic. He and CCI get the big picture; they've added a new dimension to PACE.

Imagine two mature businesses. One seeks a PACE assessment to upgrade its facilities with no money down; the other has cash to invest at a reasonable return. CCI connects them. With PACE used as the collection mechanism, the loan is secured and private placement capital takes place.

CCI, led by David Hodgins, has addressed the bond market by avoiding it, linking high net worth individuals and funds with specific commercial sector projects, then using PACE to secure the money and to arrange for payments. The City of Los Angeles has been a focus and is showing great signs of promise though apparently no deals have been signed thus far. LA's program has now been extended to the entire County.

## **The Buckeye State and PACE Industrial**

Ohio's PACE initiatives are enabled by Special Improvement Districts, or "SIDs," enabled by Ohio HB 1 and expanded in scope by SB 232. In Ohio, PACE is also known as "Advanced Energy Financing."

Alan Strachan of Ygrene Energy Group was introduced to me. When I called Alan in December to tell him about PACE Solutions, he was heading off to COP 16 in Cancun on behalf of Florida cities. But he gave me a few moments of his time and opinion: "PACE is not dead at all. The strongest part—commercial and industrial -- is gearing up now!"

Ygrene Energy is Sonoma based and involved with PACE both in Ohio and Florida. A steel plant in Ohio owned by Worthington Industries is part of a PACE pilot program there. It is based on the same PACE collection mechanism. The industrial pilot program also includes Sikorsky, Carrier AC, Pratt & Whitney, cement and chemical plants, etc. This pilot is promoted by the U.S. Business Council for Sustainable Development, a division of the World Business Council for same.

Strachan believes the commercial and industrial sectors will realize PACE and run with it further and faster than anyone envisioned. "It's business to business," he explains. "There's an \$800 billion bond market there sitting by the side line and earning a roaring 1 - 2%." The financial markets are looking for a place to responsibly invest. Enter PACE Commercial and Industrial.

In other Ohio news, the wind was taken out of the sails of City of Athens' PACE program. Planner Paul Logue lamented with their residential predominance – Athens is home to Ohio University – the FHFA decision brought the PACE part of the Athens Energy Initiative to a stop. Meanwhile, the Northeast Ohio Advanced Energy District is made up of Cleveland and 15 surrounding cities. Led by new director Athan Barkoukis its PACE commercial program is gearing up.

## **The Empire State: From Babylon with Love**

“Wait a second,” said the infamous Dorian Dale, “I wonder if I know someone on your staff.” Turns out he does, and much more. The innovator for Babylon, New York’s PACE program is Dorian Dale, a clever and driven soul, and by chance, one who knew my grandfather well. He quickly supported our conference. I subsequently went to visit his town and met him in person.

His “PACE-like” program features highly cost-effective efficiency upgrades – weatherization and windows -- without placing a lien on the home unless is it necessary to do so. The program is up and running, 678 participants have received the benefit of an average savings to investment ratio of 2, that is, monthly savings are twice the monthly bill. Dale boasts the most cost-effective PACE program in the country.

Babylon, New York has many assets, and three key ones are relevant here. First, it has a garbage incineration plant that has provide the Town with significant revenues. Its reserve is now used to fund its PACE-like program. Second, it has Dorian Dale, an outspoken and witty program advocate with the full support of Councilman Steve Bellone. Third, the Town has political support which aligns its lawyers in support of the program.

The Long Island Green Homes program was initiated in Babylon with a plan to spread to many other island communities. It focuses on highly cost-effective retrofits – largely insulation – caps loans, and only places liens on delinquent properties - which has never happened. So far, the program has served 1% of the housing stock. The program lends money at 3% and bills monthly through the solid waste service.

Babylon’s program is largely unaffected by FHFA since it does not in fact (or at least does not routinely) subordinate primary mortgages. Nevertheless, the Town has filed suit with FHFA to assure its position; its formal inquiries to FHFA to get a ruling on its program are unanswered.

New York is also home to a number of key PACE players. Legal teams in the New York offices for both Natural Resources Defense Council and the Sierra Club were instrumental in the suits filed against FHFA. In 2009, Jeffrey Tannenbaum of Fir Tree Partners formed PACE Now with NRDC to serve as a national advocacy group. It has the mission of driving national legislation that will secure PACE and was given a grant to do so by the Doris Duke Foundation.

PACE Now recently hired a new Executive Director, David Gabrielson, a City Council member in Bedford, New York. Bedford’s Energy Advisory Panel has been driving the city to PACE and now its advocacy, causing the Town to seek and receive home rule status in 2009. Gabrielson has a 20-year track record in public and municipal finance and is now focused on PACE messaging and networking to drive the legislative solution for PACE Residential.

## **Insubordination in the Old Line State**

Timothy McWhirther Ph.D. of the World Languages and Philosophy Department of Montgomery College in Rockville, Maryland sent me a humble note with quite a concept paper

He's championing PACE as part of this work at the Broward County Green Workforce Innovation Project.

McWhirther suggests that the mortgage lending industry essentially, "wake up and smell the coffee!" In fact, assessments are a more lucrative form debt than mortgages. For all the reasons that PACE makes sense – its secured position, transferability, positive cash flow, increased property values, etc. – the PACE assessment is worth more – dollar for dollar – than the mortgage.

His idea, thus, is elegant in its simplicity: He suggests that subordinated mortgage lenders take action by buying the assessments. In this way, they will not be subordinated at all. He calls this activity, "Hedged, PACE-Backed Mortgage Securities." In this instance, mortgage lenders will be better off, not worse off.

His idea is to work with financial institutions without losing the fundamental benefit of PACE lien transferability. He believes this can be done in logical steps, beginning with making the assessment as technologically and financially secure as possible. He advocates the White House guidelines. They focus on a savings to investment ratio of at least one.

Risk with PACE lien can be hedged, regardless of its size, by buying it. In matter of case, if a home with a PACE lien becomes delinquent in its property taxes, the mortgage holder will pay any delinquency to protect the home against foreclosure. This is how, in practice, all foreclosed PACE properties and delinquent PACE assessments have been handled to date to protect the primary mortgage.

The idea of private lenders protecting their mortgages can be taken a step further. Instead of waiting for a problem to arise, the lenders can purchase the liens up front to a) protect their mortgage, and b) profit from the reduced risk of foreclosure. In fact, a Fannie Mae letter in August 31, 2010 allowed for this to happen on a limited basis: For all PACE assessments placed prior to July 6, 2010, Fannie Mae would allow the mortgage holders to purchase the PACE liens. This allowed them to avoid the risk and profit from the value of the lien.

Here's where the concept is really interesting. Instead of the mortgage holder rolling the PACE assessment into the mortgage, McWhirther suggests that this is not the optimal route because PACE assessments are more profitable than mortgages. By rolling together mortgage and assessment, investors would lose the more secure form of paper, the PACE assessment.

### **The Sunshine State's Home Rule**

Florida House Bill 7179 created Florida's PACE program. There are several initiatives underway in Florida, a state with a strong home rule history. Alan Strachan says that the state "did not take kindly" to the FHFA advice letters. Leon County, Florida filed suit with the FHFA, one of the eight suits nationwide.

St Lucie County moved forward with a validation of its proposed program after the FHFA advice letters. The validation was completed without Fannie Mae or Freddie Mac complaint. FHFA did

not show up to the validation. Most recently, in early January 2011, the County released a RFP for its residential PACE program.

According to a Florida PACE attorney and advocate, “In Florida we are employing the use of Community Development Financing Institutions and a commercial multi-jurisdictional property based model to get our programs moving as an ‘interim measure’ until the legal issues are resolved.”

Now a PACE validation process is about to get way in Leon County, the seat of the State Government. By Florida law, a validation in this county will serve the entire state. Meanwhile, PACE advocates continue to press for programs in the Green Corridor, stretching from Miami south to the Keys.

### **Green Mountain Strategy**

Vermont Energy Investment Corporation – known as VEIC – is a non-profit energy management agency with a long track record of energy efficiency in Vermont. It is now a major proponent of Vermont’s Clean Energy Assessment Districts that enable PACE activity. Peter Adamczyk recently joined VEIC to head up the CEAD effort. His 23-year career in public finance, based in San Francisco’s financial district, gives him a depth of understanding.

Vermont’s PACE legislation was passed in the spring of 2009 in the depths of the banking crisis. It is considered by some to be the worst PACE legislation in the country. Its proponents explain that gross compromises were needed to get something on the books for amendment. Far worse than a junior lien, and as written, Vermont’s PACE program “releases” the lien in the event of a foreclosure. The lien vanishes, leaving the creditor holding useless paper. Worthless, “there until you need it,” and then totally unsecured.

VEIC’s efforts are now aimed at capitalizing on the new legislature and favorable new governor to amend the law. The amendments would remove the foreclosure clause, maintaining the lien in all transfer situations. It would, however, put the PACE lien in second position and would set up a loan loss reserve requirement of 5 – 10%. Participating property owners would be required to pay into the reserve until the reserve reaches a cap.

Peter is coming to PACE Solutions and I visit him at his Burlington, Vermont offices in early February. Peter and I discuss the junior position. Sure, it’s less secure for lenders and thus has commensurately higher interest rates. Loan loss reserves can serve to keep interest rates low. Other credit enhancements include buying down interest rates. VEIC has discussed pooled lending with Vermont’s banking association, thereby spreading risk and providing additional credit protections for lenders.

### **The Pine Tree State’s FHFA-Approved Design**

Efficiency Maine is proud of a recent memo from FHFA that endorses the Maine PACE program and its junior lien position. In a November 12, 2010 letter to Dana Fischer at Efficiency Maine, Alfred Pollard positions Maine’s “ability-to-pay” model as superior to the “collateral-based programs” that is giving him and his colleagues heartburn. Clearly, the FHFA is not interested in

subordinated liens and the fundamental benefit of PACE that its assessments are transferable to the next purchaser, alleviating the borrower the proof of ability-to-pay.

The State of Maine has structured PACE so that it is not threatening to mortgage holders. (Yes this drew the ire of PACE purists who began to treat Maine advocates as the “red-haired stepchild” of the movement.) In Maine, PACE liens are in a junior or second position to primary mortgages. This design matches FHFA’s pilot program concept that has since been scuttled. Maine Energy Trust applied for use of ARRA funds for PACE program, agreed to only fund with stimulus funds and liens junior, and got \$30 million to start the program.

Maine and Vermont’s efforts beg the question of what is a PACE program? When does a PACE program become “PACE-like?” Does it necessarily subordinate the primary mortgage? Must it be transferable? Can PACE funding be used for building “hardening” as proposed in Florida to protect from earthquakes? Could it be used for seismic reinforcement here in California?

### **The Mountain State’s Waves**

Ann Livingston is Boulder County, Colorado’s Sustainability Coordinator. She defines mild mannered, yet her tale is dynamic!

Boulder was a PACE pioneer, leaping into the game with in 2009. Its model was intriguing: It aggregated participants into a requisite sized block before going to the bond market.

Since Boulder County, Colorado’s first aggregated PACE funding and the FHFA’s advice letters, Climate Smart PACE has gone all commercial. Hang on: The latest round of commercial financing was done at interest rates ranging from 1.04 - 2.92%. The \$1.5 million financing provided capital for 29 projects, the lower rate for 5-year notes; the higher for 10-year paper. Livingston reports that this extremely favorable bonding authority no longer exists.

## **6. PACE Solutions: Rallying the Troops in Palm Desert**

Bringing it Home... a theme for the Palm Desert conference on March 3 – 4, 2011.

Palm Desert has a lot committed: The City that pushed AB 811 through the California legislature; a \$15 million city commitment (about \$10 million lent); operating residential and commercial programs; and now a lawsuit. Why not do something positive? If 24 states all believe they have the right to run PACE, how can a “rogue agency” in D.C. keep this potential from being realized? Steve Bellone calls it a David and Goliath issue.

In December, Palm Desert hired EcoMotion to put on the PACE Solutions conference. Adequate time and resources were in the budget for research and contacting key stakeholders coast to coast. I had some history with PACE – 25 months to be exact – but did not know the “new guard.” They too see the logic of PACE, the arbitrary and erroneous nature of FHFA’s position, and lots of upside.

To my surprise, PACE Residential is forging ahead despite the FHFA. PACE programs and PACE-like programs are being developed, and legislative processes continue. There has been recent action in Florida, Michigan, and Missouri where programs are being developed in both the City of St. Louis, the surrounding St. Louis County, and in the state capital of Jefferson County. I've been stunned by PACE Industrial; deeply inspired by PACE Commercial.

There's a lot going on. PACE is not dead; and it's certainly far less dead than I thought.

### **Misunderstandings**

There are three key misunderstandings that have held back PACE:

- First, most local governments think that PACE is dead.
- Second, mortgage lenders think that PACE weakens their position.
- Third, the federal government has lost sight of how important this is to local communities

Let's address these sequentially:

PACE is still kicking! To many local government officials, PACE landed, came on strong, and then hit the wall. Many if not most PACE advocates have been stunned and disheartened. But PACE is not dead. Commercial sector activity is very promising, residential programs continue. PACE is on the ropes, in battle, but is neither comatose nor dead.

The second issue pertains to lenders, the lending community, and certainly the FHFA. Unlike all other forms of assessments – and at the time of this writing there are 37,000 land secured assessment districts in America -- PACE assessments can be structured so that property owners realize positive cash flow. By extending the term of the loan as necessary, annual savings can exceed assessment payments. Far from “encumbrances,” the upgrades make a home a sounder investment. Homes with solar system and other efficiency upgrades are also commanding higher market prices.

“Jobs, costs and carbon” is how my friend Paul Polizotto defines the benefits of energy upgrades. For local communities, creating jobs in town is key. Lowering the costs that residents and businesses pay for energy keeps money in town with economic multipliers. And how else will communities reach their climate protection commitments? PACE cuts carbon dramatically by tightening the building stock.

### **Residential Solutions**

There are at least three fixes for PACE Residential: Legal, Legislative, and Executive.

The first is legal. Eight jurisdictions are taking on FHFA in court; their suits were combined and not thrown out. It appears that FHFA did not follow administrative procedures. A full legal process may take a year and a half. A court date is set for April 2012.

A second solution is potentially much faster, a legislative solution. Sonoma's Mike Thompson carried a bill in the House; Barbara Boxer did so in the Senate. These bills would force FHFA to promote rather than block PACE assessments. New legislation will be introduced in this Congress.

The third solution is executive, either through a new appointment or through a White House order to direct FHFA to withdraw its position letters and clarify its stance in favor of assessments that meet the DOE underwriting standards. Discussion of abolishing Fannie Mae and Freddie Mac would have the same effect!

President Obama nominated Joseph Smith in the last Congress, but reportedly his name has been withdrawn. Perhaps additional pressure needs to be put on the White House to take executive action and to open immediately this financing mechanism for local government action. This route, naturally, could be fastest.

### **Bringing AB 811 Home**

On March 3 and 4, 2011, the City of Palm Desert will be hosting "PACE Solutions: Bringing AB 811 Home." The conference is being managed by EcoMotion with direction provided by the Palm Desert Energy Committee. Its purpose is to convene the key stakeholders and advocates of property assessment financing, to "rally the troops."

In Palm Desert, the birthplace of PACE,, we will consider and collectively support solutions to make PACE a bold, viable, and "revolutionary" energy efficiency and renewable energy financing tool. Our Steering Committee has been hugely influential in guiding the conference to support solutions.

PACE Solutions is about just that. What programs make sense now? We'll be discussing and debating the challenges at hand, especially in the residential sector, with the goal of supporting a myriad of solutions – from legislative actions to lawsuits and "work-around" opportunities.

One output of the conference will be the Palm Desert Accord. Participants will edit and enhance the draft Accord and sign in solidarity. Participants will come to Palm Desert educated and experienced, and will leave with greater perspective. They will leave with direction on how to plug in and fully resuscitate PACE to its full potential and its AB 811 roots.