

Kriss Worthington

Councilmember, City of Berkeley, District 7
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ACTION CALENDAR

May 7, 2013

(Continued from April 30, 2013)

To: Honorable Mayor and Members of the City Council

From: Councilmember Kriss Worthington

Subject: City Manager Referral: Solarizing & Energy Retrofitting Via a Joint Power

Agreement

RECOMMENDATION

Referral to City Manager to evaluate the feasibility of the City of Berkeley opting into a Joint Power Agreement (JPA) to add one more tool to increase solarizing and energy retrofitting.

BACKGROUND

Renovate America's HERO Financing Program is a private public partnership which was created to enable cities and counties to provide homeowners and businesses with financing to pay for energy efficiency, water efficiency, and renewable energy products and their installation. Property owners pay the amount financed over a 5 to 20 year period at a fixed low interest rate. If the property is sold, the balance remaining typically stays with the property.

The Program is fully funded and requires no cost outlays by the participating cities and counties. HERO is offered through a joint powers authority, Western Riverside Council of Governments, formed under State law. The HERO program is an already established and recognized program. By opting into the program the City would save a considerable amount of time, money and energy in lieu of creating a new energy program.

The HERO program is nonexclusive and would allow nonprofit and other businesses to continue working independently or potentially to partner with Renovate America. (ie. Doing inspections/assessments and installation of solar panels).

To date, the HERO project has approved over 4,000 projects and completed more than 1,500. This has given nearly 600 contractors the ability to create and support 3,000 jobs.

HERO has received a number of awards, including the Southern California Association of Governments (SCAG) President's Award for Excellence, the Urban Land Institute (ULI) Best of the Best, and the United States Green Building Council (USGBC) California Top 10 Green Building Policies for Municipalities.

FINANCIAL IMPLICATIONS

None.

CONTACT PERSON
Councilmember Kriss Worthington 510-981-7170

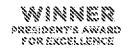
Attachment:

1. HERO Success















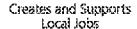






Join the HERO Program today and create a lasting economic stimulus that:







Lowers Utility Bills



Increases Property Values



Reduces Emissions

🔊 Success

The award winning HERO Program is the fastest growing residential and commercial Property Assessed Clean Energy (PACE) financing program in the country. To date, over 1,500 residential projects totaling more than \$29 million have been completed. Over 4,000 projects have been approved for a total of \$105 million. This has given nearly 600 contractors the ability to create and support 3,000 jobs in 18 municipalities.

"The HERO Program provides great value to the 18 municipalities currently participating in the program. It has spurred millions of dollars in new economic activity by helping property owners make needed improvements without laying out a lot of money all at once. These investments can help property values, reduce utility bills, create demand for jobs, and reduce regional energy use."

- Jim Fiyett, Calimesa Councilman

Contact

John Law Director of Municipal Development Dr. 209-602-8990

E: jlaw@herofinancing.com



SUPPLEMENTAL AGENDA MATERIAL

Meeting Date:

April 30, 2013

Item Number:

51

Item Description: Supplemental materials for referral to evaluate the feasibility of opting into a Joint Power Agreement with Renovate America's HERO Financing Program

On April 2nd Berkeley City Council discussed Councilmember Worthington's agenda item 18 (Referral to the City Manager regarding Solarizing and Energy Retrofitting Via a Joint Power Agreement with Renovate America's HERO Financing Program).

During the Council meeting, I mentioned that on March 19th 2013 the 9th Circuit Court of Appeals issued a decision in favor of the Federal Housing Finance Agency (FHFA). According to California FIRST (a joint power authority overseeing property-assessed financing programs in California), the court decision means that Fannie Mae and Freddie Mac can change underwriting standards to make it more difficult for homeowners to obtain a mortgage in any jurisdiction offering a property-assessed financing program (in these programs the loan is attached to the property and takes senior status to the property owner's mortgage).

FHFA has also indicated residents participating in property-assessed financing programs risk default of their home mortgage. Renovate America's HERO Financing Program is an example of this type of property-assessed financing program and would be vulnerable to such risks. HERO's disclosure form is attached.

California FIRST's review of the implications of this court decision is attached. Detailed information from the court decision can be found here: http://votesolar.org/wp-content/uploads/2013/03/property-assessed financing program-Decision-9th-Circuit.pdf

CONTACT PERSON

Mayor Tom Bates

510-981-7100

ATTACHMENTS

California FIRST Memorandum –April 4, 2013 HERO disclosure statement

California FIRST - a program of





MEMORANDUM

TO:

CaliforniaFIRST Participating Local Governments

FR:

Simón Bryce (simon@renewfund.com)

DATE:

April 4, 2013

RE:

Residential PACE Update: 9th Circuit Court Decision

On March 19, 2013, the 9th Circuit Court of Appeals issued a decision in favor of the Federal Housing Finance Agency (FHFA) affecting Property Assessed Clean Energy (PACE) residential programs. By a 3-0 vote, the Appeals Court vacated the earlier ruling by 9th Circuit Judge Claudia Wilken that had required FHFA to undertake a public rulemaking process regarding PACE.

This decision means that FHFA does not have to complete the final rule on PACE in September, as had been previously ordered by Judge Wilken. It also means that Fannie Mae and Freddie Mac can continue to require PACE liens be paid off when a home is refinanced or sold as well as other, more severe actions, at their discretion. Fannie Mae and Freddie Mac have not indicated which additional actions, if any, they may take, but those include those authorized in FHFA July 6, 2010 statement. As a reminder, those actions include:

- "Adjusting the loan-to-value ratios to reflect the maximum permissible 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;
- 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."

In short, the Court decision means that Fannie and Freddie can change the underwriting standards to make it more difficult and expensive for ALL homeowners to get mortgages in any jurisdiction that has a residential PACE program. This would affect those homeowners who have no PACE lien as well as those who do have a PACE lien.

The FHFA has also indicated that participation in PACE programs can be considered an act of default under the terms of the mortgage.

The August 2010 CSCDA Board of Directors decision to pause residential PACE remains in effect while we await information or clarity regarding the viability of residential PACE.

The State of CA and other plaintiffs have 45 days (until May 3) to decide whether to appeal this decision.

Decision available at http://cdn.ca9.uscourts.gov/datastore/opinions/2013/03/19/12-16986%20web_revised.pdf





WRCOG HERO Financing 15th Application

Phone: Fax: Email: (877) 747-4889

(858) 385-0379

wrcog@herofinancing.com

Address:

4080 Lemon Street, 3rd Floor, MS1032

Riverside, CA 92501

Disclosures

The following describes some (but not all) characteristics and risks of participation in the Program as well as laws to which the Program is subject. A full understanding of any item listed below can be gained only by reviewing the relevant laws, policy statements, and/or the contractual documents related to the Program. The Program Administrator is committed to your understanding each of the items listed below, and invites you to ask Program representatives any questions regarding these items or if you need copies of any document related to the Program.

- Program Disclosures and Disclaimers.
 - a Existing Mortgage. The Program establishes the manner by which WRCOG may finance pursuant to Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (commencing with Section 5898, 19), the installation of Eligible Products. Eligible Products will be financed pursuant to an Assessment Centract between you and WRCOG.

BEFORE COMPLETING A PROGRAM APPLICATION, YOU SHOULD CAREFULLY REVIEW ANY MORTGAGE AGREEMENT(S) OR OTHER SECURITY INSTRUMENT(S) WHICH AFFECT THE PROPERTY OR TO WHICH YOU AS THE PROPERTY OWNER ARE A PARTY. ENTERING INTO A PROGRAM ASSESSMENT CONTRACT WITHOUT THE CONSENT OF YOUR EXISTING LENDER(S) COULD CONSTITUTE AN EVENT OF DEFAULT UNDER SUCH AGREEMENTS OR SECURITY INSTRUMENTS. DEFAULTING UNDER AN EXISTING MORTGAGE AGREEMENT OR SECURITY INSTRUMENT COULD HAVE SERIOUS CONSEQUENCES TO YOU, WHICH COULD INCLUDE THE ACCELERATION OF THE REPAYMENT OBLIGATIONS DUE UNDER SUCH AGREEMENT OR SECURITY INSTRUMENT. IN ADDITION, ON AUGUST 31, 2010, FANNIE MAE AND FREDDIE MAC STATED THAT THEY WOULD NOT PURCHASE HOME LOANS WITH ASSESSMENTS SUCH AS THOSE OFFERED BY WRCOG. THIS MAY MEAN THAT PROPERTY OWNERS WHO SELL OR REFINANCE THEIR PROPERTY MAY BE REQUIRED TO PREPAY SUCHASSESSMENTS AT THE TIME THEY CLOSE THEIR SALE OR REFINANCING.

If your lender requires an impound for your property taxes, please consider notifying them of the annual assessment payment amount so they can adjust your impound amount.

- b. Interest Rate. You will be charged a fixed interest rate on your total financed amount. Your interest rate will be set at the time your Financing Documents are issued.
- c. Program Administration Fee. At the time of closing, WRCOG will charge you a one-time administration fee of 5.35% of the principal amount of the assessment on the Property to cover the costs of administering the Program. This fee will be added to the assessment amount.
- d. Recording Fee. At the time of closing, WRCOG will pass-through the assessment recording fee of approximately \$87 to you to cover the costs of recording the assessment. This fee will be added to the assessment amount.
- e. Assessment Administration Fee. Each year, an annual assessment administrative fee will be added to the assessment lien amount on your property tax bill. These costs will be \$25 at the time the WRCOG HERO Program is launched, will not exceed \$95, and will be adjusted in subsequent years for cost of living increases.
- f. Interest Before First Payment: Based on the date an assessment is recorded on your property, payments may not begin until the following year's tax statement. This is the amount of interest that is added to the assessment amount for the period between your closing date and the date of your first assessment payment. The maximum amount of interest will be listed on your Assessment Cost and Payment Summary, which will be provided with your Financing Documents.
- g. Automated Valuation Model Disclosure. You have the right and obligation to a copy of the automated valuation model (AVM) report used in connection with your application for credit. If you want to obtain a copy, please write to us at the mailing address we have provided. We must hear from you no later than 90 days after we provide you with a notice of the action taken on your application or a notice of incompleteness, or in the case of a withdrawn application, 90 days after the withdrawal. An AVM is not an appraisal. It is a computerized property valuation system that is used to derive a real property value.
- h. Foreclosure. Not later than October 1 each year, WRCOG shall determine whether any annual assessment is not paid when due and shall have the right and obligation to order that any such delinquent payment and its associated costs be collected by an action brought in Superior Court to foreclose the lien of the delinquent assessment installment in the manner provided and to the extent permitted by applicable law.
- i. Mandatory Prepayment Redemption. You have the option to pay o_your assessment lien amount in full, or in increments of \$5,000, at any time. However, if you do so, you will have to pay (i) the principal amount of the assessment to be prepaid (the "Assessment Prepayment Amount"), (ii) a prepayment premium computed as set forth below, (iii) interest on the Assessment Prepayment Amount to the earlier of March 2 or September 2 occurring at least 90 days following the date the prepayment is made, and (iv) a processing fee (not to exceed \$500).

The prepayment premium is determined as follows:

Year 1:

5% of Prepaid Assessment Amount

Year 2:

4% of Prepaid Assessment Amount

Year 3: Year 4: 3% of Prepaid Assessment Amount 3% of Prepaid Assessment Amount

Year 5:

3% of Prepaid Assessment Amount

Years 6-20:

No penalty.

