T&E COMMITTEE #3
July 21, 2014

Discussion

MEMORANDUM

July 17, 2014

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM: Keith Levchenko, Senior Legislative Analyst

SUBJECT: **Discussion:** Commercial Property Assessed Clean Energy (PACE) Program Implementation Plan

Attachments to this memorandum include:

- Presentation Slides from Public Financial Management, Inc. (The PFM Group) on the Montgomery County Implementation Plan: Commercial Property Assessed Clean Energy Program (©1-9)
- Memorandum from Public Financial Management, Inc. (The PFM Group) to the Department of Finance (©10-12)
- County Executive Transmittal Memorandum of May 19 (©13-14)
- Montgomery County Implementation Plan: Commercial Property Assessed Clean Energy Program (©15-33) and Summary (©34)

Background

As required in Bill 11-13, Commercial Property Assessed Clean Energy Program, on May 19, the County Executive transmitted an implementation plan for the creation of a commercial PACE program in Montgomery County. Laura Franke of Public Financial Management, Inc. (The PFM Group) will do a presentation on the Commercial PACE Implementation Plan. The following Executive officials and staff will also be available to participate in the Committee discussion:

- Joseph Beach, Director, Department of Finance
- Robert Hagedoorn, Chief, Treasury Division, Department of Finance
- Mary Casciotti, Management and Budget Specialist, Department of Finance
- Stan Edwards, Chief of Environmental Policy and Compliance, Department of Environmental Protection (DEP)
- Michelle Vigen, Senior Energy Planner, DEP
- Scott Foncannon, Associate County Attorney, Office of the County Attorney
- Eric Coffman, Chief - Energy and Sustainability, Department of General Services

Bill 11-13 does not require Council approval of the Implementation Plan. However, implementing legislation will be required to move forward with the program. If the T&E Committee is supportive of the Implementation Plan, then the Executive will draft and forward legislation to the Council for action.

PACE Program Concept

The concept of PACE (whether for residential or commercial application) is to make energy efficiency and renewable energy improvements (which can reduce energy costs and in some cases improve property values) more economically viable for property owners. A key element of a PACE program is that the loan payback is done via a property owner's property tax bill (with a transfer of ownership also transferring the loan obligation to the new owner) and secured via a lien on the property. Utilizing the property tax bill for loan repayment provides potential lenders with a very safe loan opportunity. For property owners, the fact that the loan stays with the property upon sale or transfer means that a property owner can consider improvements even where the payback scenario might exceed their ownership of the property.

In an ideal situation, the annual energy cost savings will be the same or greater than the annual loan obligation. However, even in situations where the annual savings may not offset the annual loan costs, the improvements may still be worthwhile if an increase in property value can be assumed as a result of the improvements.

Residential PACE

Because of concerns raised by the Federal Housing Finance Agency (FHFA) regarding the mortgage implications of a residential PACE program, the County's Home Energy Loan Program (i.e., Residential PACE program) legislation (enacted several years ago) has not been implemented.

Commercial PACE

Commercial PACE programs are not affected by the FHFA concerns noted above. Also, as noted later, one of the assumed terms for approval of a PACE loan is that the applicants with mortgages must get lender approval.

Commercial PACE loans tend to be quite large and, therefore, these programs typically utilize private loan funds with the governmental entity providing the collection process via the property tax bill. However, until recently, in the State of Maryland, counties and municipalities did not have the authority to use the property tax bill mechanism to collect private loan payments. Fortunately, enabling legislation was approved during this past legislative session (Senate Bill 186, signed by the Governor on May 15, 2014).

Councilmember Berliner introduced Commercial PACE legislation (Bill 11-13) on April 23, 2014. As originally drafted, Bill 11-13 established the program and defined many of the criteria for the program. However, after further deliberation, the bill was amended by the Council to require the Executive to develop an implementation plan, and the elements of the bill creating and defining the program were removed.

Commercial PACE Implementation Plan

The required elements of the Implementation Plan as noted in Bill 11-13 are shown below:

Sec. 18A-33. Commercial Property Assessed Clean Energy Program.

(a) Definition. In this Section, Commercial Property Assessed Clean Energy Program or Program means a program that facilitates energy improvements and requires repayment through a surcharge on the owner's property tax bill.

(b) The Executive must, by May 19, 2014, prepare a plan for implementing a Commercial Property Assessed Clean Energy Program that analyzes and provides recommendations on the following elements:

(1) standards for eligible energy and environmental improvements;
(2) energy audit or project design review requirements;
(3) procedures for monitoring project progress and post-installation inspections;
(4) program funding sources;
(5) lending standards and priorities;
(6) minimum and maximum loan amounts;
(7) interest rates, terms, and conditions;
(8) application procedures, including necessary supporting documentation;
(9) criteria for adequate security;
(10) procedures to refer applicants to other public and private sources of funds and incentives;
(11) procedures related to decisions on loan acceptance and denial, or loan terms and conditions;
(12) procedures for nonpayment or default;
(13) disclosure requirements for real estate transactions;
(14) criteria for loan disbursement; and
(15) any additional requirements necessary for program operation or security of loan funds identified by the Executive. (2013 L.M.C., ch. 33, § 1.)

Ms. Laura Franke of Public Financial Management, Inc. provided consultant support to Department of Finance and DEP staff in the development of the Implementation Plan. She also provided a memorandum to the Department of Finance (see ©10-12) which notes how the Implementation Plan addresses each of the items noted in the legislation.

Some key elements of the Implementation Plan are summarized below:

- The program is assumed to be "self-supporting" once operational, with the County's ongoing administrative costs to be recovered through program fees. County payment of start-up costs could be recovered as well. Alternatively, the County could choose to absorb the startup costs (presumably from the general fund) in order to avoid higher initial costs for applicants.
- The Plan includes a number of additional positions needed to develop and manage the ongoing program that could be filled with contract or in-house staff. Based on discussions with County staff, the assumption is that 3rd party administration will be pursued. **Given that the County does not have in-house expertise to manage this program and that the program scale is not certain at this time, contracting out the administration is a reasonable approach.**

- "Owner-arranged" financing is assumed: This is a key assumption, since a County-funded loan program would require an upfront County financial infusion plus ongoing management and oversight. **Given the uncertainty of the initial and ultimate demand for this program and the fact that the consultant asserts that outside funding is available for these types of loans, outside funding makes sense.**
- As required by SB186, property owners with existing mortgages would have to get lender consent before their project could proceed.
- The minimum loan amount would be $5,000 up to a maximum loan amount of 20 percent of the assessed value of the property. The maximum loan term would be limited to the useful life of the improvement.
- Eligible improvements are defined as "permanently affixed to existing structures, that provide energy efficiency, clean energy generation or water conservation benefits to the consumer."

One element not included in the Implementation Plan is the requirement for an energy audit or a renewable energy system feasibility analysis for the property. This requirement was included in the original County legislation as introduced. Instead, the Plan notes that the County will rely on the administration team to "define the specific thresholds of projects eligible for PACE funding." The intent is to make the program as flexible and streamlined as possible to keep costs for the property owner as low as possible, while still requiring a viable, lender approved project to go forward.

Council Staff Recommendation

Council Staff met with Ms. Franke and with Finance and DEP staff and suggested some minor revisions to the Implementation Plan which have been incorporated into the latest draft of the plan (attached).

Council Staff believes the Implementation Plan provides a sufficient framework for the County to move forward to create a Commercial PACE program. The next steps will include: enactment of County legislation establishing the program and the selection of a contractor to develop and administer the program.

Attachments
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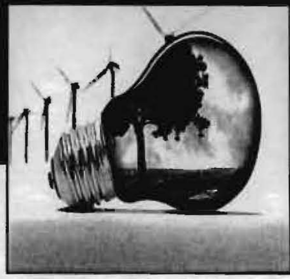
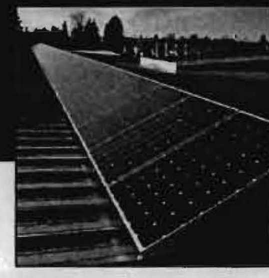




Montgomery County, Maryland

Property Assessed Clean Energy (PACE)

Commercial Implementation Plan Overview

July 21, 2014

The PFM Group
Public Financial Management, Inc.
PFM Asset Management LLC
PFM Advisors

Laura Franke, Director
213.489.4075

Property Assessed Clean Energy (PACE) – an Innovative Solution

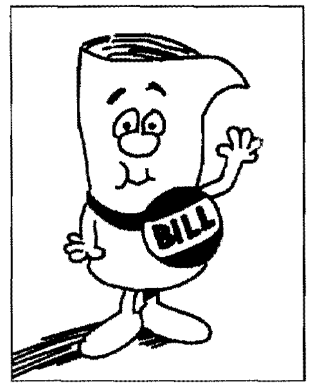
- Private property owners borrow to make energy efficiency, water efficiency and renewable generation improvements
- Payback is made via property tax bill surcharge and may transfer to new owner upon sale
- Significant opportunity for commercial, industrial, and multi-family properties countywide
- Immediate cash flow benefits, with little or no upfront capital commitment, motivates property-owners to undertake projects that provide local jobs and revenues
- Over 30 states and Wa DC have PACE authorization
- Nationally, commercial PACE financing exceeds $80 million

PACE Benefits Multiple Stakeholders

- Benefits all Parties:
  - Local job creation in construction sector
  - Removes property owner upfront cash outlay barrier
  - Assessments remain with property upon sale
  - Immediate cash flow benefit due to reduced energy consumption, resulting in lower utility bills, thereby offsetting tax payments
  - Prevents split of benefits and costs due to tax pass through provision on most tenant agreements (commercial properties triple net leases)
  - Property value increases
  - Available for commercial, industrial, multi-family and agricultural properties of all sizes
  - Leverages existing energy, water and environmental programs by providing capital to enhance improvement opportunities
  - Sponsoring agency can recover administrative fees for offering the program
  - Local jurisdiction risk is mitigated through third party administration and funding
  - Environmental benefit attribution to local and regional agencies

PACE Legislation

- Council Bill 11-13 required submission of plan to Council by May 19, 2014 to implement commercial PACE

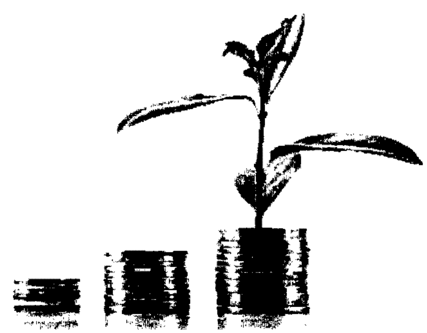


- SB 186 (2014 Session) enables counties to:
  - Pass local law to authorize Commercial PACE for private lenders' funding
  - Collect surcharge on property tax bill
  - Allow certain administrative fees to be charged to borrower
  - Requires mortgage lender consent

(4)

PFM Suggested PACE Program Guiding Principles

- PACE is a funding tool
- Consistent funding and administration is vital for Program success
- No obligation or risk to local government agencies
- Aggregation of operations provides economies of scale
- Simplicity of use is vital for broad acceptance
- Engagement with local contractors essential for Program success
- Program manager and/or financial advisor, legal counsel, and trustee provides local agency with trusted management team
- Administrative/Financing provider competitively selected based on funding capacity and qualifications for project origination



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PACE Financing Offers Attractive Alternative to Property Owners

Financing Option	Low Fixed Interest Rate	Payments Transfer to New Owner[1]	Tax Deductible Payments[2]	Minimum Contractor Standards	Minimum Product Standards	Permits Required
PACE Financing	✓	✓	✓	✓	✓	✓
Credit Card	-	-	-	-	-	-
Power Purchase Agreement / Lease	-	-	-	✓	✓	✓
Second Mortgage	✓	-	✓	-	-	-
Cash	-	-	-	-	-	-

(1) Subject to mortgage holder and underwriting standards.
(2) Interest component only.

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Sample PACE Transaction, 1 of 2

PROPERTY OWNER

1. Application for PACE loan submitted with relevant property and project information
4. Property Owner receives lender consent
7. Property owner ensures that all applicable permits are obtained and directs contractor installation

PROGRAM

2. Application underwritten for eligibility of owner, property, project and contractor
3. Package submitted to existing mortgage-lender requesting consent
5. Lender consent completes approval
6. Program grants conditional approval as Notice to Proceed

Sample PACE Transaction, 2 of 2

PROPERTY OWNER

PROGRAM

8. Certificate of Completion filed requesting funds disbursement

9. Program performs any necessary verifications

10. Lien recorded on Property Title

11. Funds disbursed to Property Owner

12. Funding Received

Sample Underwriting Criteria

- Aligned with locally approved energy, water, renewables and construction standards
- Applicant must be Property Owner
- Existing structures only; no new construction
- (Mortgage + PACE loan) < 90% of Market Value
- Minimum $5,000 – Maximum, up to 20% of Market Value
- Property Tax and Mortgage payments current during last 3 years
- No outstanding liens, except mortgage or existing surcharges, on the property
- Property not subject to bankruptcy
- Contractor is state licensed and Program registered
- Proposed improvements are qualified
- Existing mortgage lender consent

PFM
The PFM Group
Public Financial Management, Inc.
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PFM Advisors

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May 19, 2014

Memorandum

To: Joseph Beach
Robert Hagedoorn
Mary Casciotti
Montgomery County, MD

cc: Linda Ginty
Public Financial Management, Inc.

From: Laura Franke
Public Financial Management, Inc.

Re: Commercial Property Assessed Clean Energy Program

Public Financial Management, Inc. (PFM) has had the pleasure of working with Montgomery County staff in order to prepare the Implementation Plan (the Plan) for a Commercial Property Assessed Clean Energy Program. Analysis of other PACE programs, along with our working experience in the development and operations of existing programs provided the basis for the Plan. As directed by County Council Bill No. 11-13, this Plan is delivered to provide the Council with information related to practical steps to achieve an operating Program, along with identification of the following elements:

1) ***Standards for eligible energy and environmental improvements –***
Improvement standards are addressed on pages 13-14 of the Plan as being generally any improvement that is eligible for utility incentives, or otherwise provides measurable consumption savings or other environmental benefits. In addition to acknowledging the requirement of lender approval associated with improvements, a listing of sample project types is included.
2) ***Energy audit or project design review requirements –***
The Plan does not initially require completion of an energy audit; however, when the Program Administrator and Financing is selected, we anticipate that specific review of the improvements will be required as a part of the underwriting. Therefore, we recommend that additional detail for the energy baseline and improvement design requirements be provided in a Program Handbook that becomes a "living" document, with up-to-date operating standards of the Program that have been agreed to by the full implementation team. In many cases, permits will be necessary and therefore the County will provide guidance through existing policy and procedures for permitting.

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3) ***Procedures for monitoring project progress and post-installation inspections –***
Projects will not be eligible to receive funding until they are completed. Therefore, the County will not be obligated to monitor project installations. Upon completion, the property owner will sign a Certificate of Completion acknowledging acceptance of the completed project and requesting payment. The Administrator will complete any necessary verification in order to record the lien document which allows for release of funds. The funding process is detailed on page 15 of the Plan.
4) ***Program funding sources –***
Based on discussions with staff, and as provided within the State-approved legislation, the Plan anticipates selection of third-party administration and financing; details of the financing plan begin on page 8 of the Plan.
5) ***Lending standards and priorities –***
Program financing criteria and standards are provided beginning on page 11 of the Plan. Lending standards identified in the plan are based on sound underwriting criteria utilized in other PACE programs; final decisions on these criteria will be made with the Financing Provider's input and detailed in the Program Handbook. The Plan is silent on prioritization of projects, this is because third party financing is expected to be consistently available at competitive rates without limit.
6) ***Minimum and maximum loan amounts –***
Page 11 of the Plan, under "Program Financing Criteria and Standards," anticipates a minimum loan amount of $5,000 and a maximum loan amount of 20% of the appraised value of the property. These amounts are subject to Lender confirmation.
7) ***Interest rates, terms and conditions –***
The Plan addresses interest rates, terms and conditions on page 11, "Request for Proposal." The solicitation of a plan funding partner will be competitive with evaluation made on both interest rates, and terms and conditions. Based on the County's demographic profile, we anticipate multiple bids for participation by funding providers.
8) ***Application procedures, including necessary supporting documentation –***
Application information is provided on pages 12 through 15 of the Plan. The detail anticipates comprehensive underwriting of the property, the business/owner, the improvements and the contractor. Upon selection of the Administrator/Funding partner, additional detail will be documented in the Program Handbook.
9) ***Criteria for adequate security –***
Adequate security will be determined through the underwriting process. Page 12-13 of the Plan identifies standard PACE Program parameters; these are subject to financing partner approval.
10) ***Procedures to refer applicants to other public and private sources of funds and incentives –***
Program outreach and education will provide information to contractors and property owners related to PACE financing and other available sources of funds and incentives. "Energy Program Outreach," page 7 of the Plan, identifies the anticipated collaboration of

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the third party Administrator with participating County departments. The Plan anticipates that loans will be made net of expected cash rebates, and that notification of such rebates, as well as expected tax incentives will be disclosed to any mortgage-holder from which consent is being requested.

11) ***Procedures related to decisions on loan acceptance and denial, or loan terms and conditions –***
The Plan is currently silent related to these items in anticipation of detail being provided through negotiation with the Financing partner and Legal Counsel. Our recommendation is that the Program Handbook be inclusive of additional detail related to loan acceptance, denial, and terms and conditions.
12) ***Procedures for nonpayment or default –***
The Plan addresses procedures for nonpayment or default on page 12. This process is specific to the County's existing tax certificate sale, and includes the right of a lender to additionally record a note evidencing their loan.
13) ***Disclosure requirements for real estate transactions –***
The Plan anticipates recordation of a lien on the property related to the loan. The form of this document is subject to Legal and Financing partner confirmation, page 8 of the Plan, under "Type of obligation assigned to property owner," addresses this item.
14) ***Criteria for loan disbursement; and***
Loan fund disbursement will only be made upon (i) acceptance of the improvements by the property owner, acknowledged by the Certificate of Completion, (ii) recordation of the lien on the title of the property. Pages 15 of the Plan provide this information.
15) ***Any additional requirements necessary for program operation or security of loan funds identified by the Executive –***
The Executive, staff and consultant recommend an RFP for additional partners in order to complete a successful launch with the operating team in place. The County will benefit from the specific expertise of the partners that will be operating the program in development of the final criteria to offer financing to County property owners.

Subject to County Council acceptance of the Implementation Plan and direction to proceed; staff and PFM, as consultant, will finalize a Request for Proposal (RFP) for Program administrative and funding services. However, such RFP release and any additional formation steps will be contingent upon passage of Local Law authorizing the establishment of a PACE Program.

ENV & ENERGY

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

RECEIVED
MONTGOMERY COUNTY
2014 MAY 19 PM 3:31

May 19, 2014

TO: Craig Rice, President, Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Commercial Property Assessed Clean Energy Program (PACE) Implementation Plan

Attached for your review is the proposed Implementation Plan for the Montgomery County PACE program (Plan) as required under Council Bill 11-13, Commercial Property Assessed Clean Energy Program. PACE is designed to assist qualifying commercial properties with financing energy improvements. The PACE loan from a private lender is paid back through annual surcharges on the property tax bill. This loan stays with the property and a subsequent owner continues to pay the surcharge until the loan is fully paid. Having the PACE surcharge included on the tax bill provides greater security in the loan repayment as it allows the charge to be part of the tax bill and therefore part of the tax lien process if the PACE surcharge goes unpaid.

The Department of Finance worked closely with the Department of Environmental Protection, Department of General Services, County Attorney, and Public Financial Management (PFM), the County's consultant, to develop this Plan. This Plan conforms to Senate Bill 186, Clean Energy Loan Programs, adopted by the Maryland General Assembly during the 2014 session. SB 186 enables counties to pass a local law to authorize Commercial PACE for private lenders; collect a surcharge on the property tax bill; and allow certain administrative fees to be charged to borrowers. Mortgage lender consent is required for all Commercial PACE loans.

Following the Council's approval of the Plan, the County will proceed with development of the local law and Executive Regulations as well as solicit private entities to provide program financing and administration, and to serve in a trustee capacity for the remittance of PACE surcharge funds to the lenders. The Plan allows for, but does not envision, the County sale of limited obligation bonds for this program. Private sources of funding are available in the marketplace for this purpose and is the recommended financing option as this will increase the flexibility of the program and reduce the risk to the County. It is estimated that full implementation of a Commercial PACE program will take approximately 12 to 18 months as outlined in the Implementation Plan timeline. Also attached is a preliminary outline for a Program Handbook that will be developed as one of several tools to explain and promote the program to commercial property owners and PACE lenders.

IL:rh

Attachments

cc: Timothy L. Firestine, Chief Administrative Officer
Joseph F. Beach, Director, Department of Finance
Robert Hoyt, Director, Department of Environmental Protection
Bonnie Kirkland, Assistant Chief Administrative Officer

Montgomery County, Maryland

Implementation Plan

Commercial Property Assessed

Clean Energy Program (PACE)

Dated: May 19, 2014

Contents

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Executive Summary

Since 2008, 31 states and the District of Columbia have authorized Property Assessed Clean Energy (PACE) under state law, and state and local governments initially allocated over $150 million in federal grant funds to help launch programs. However, directives from the Federal Housing Finance Agency (FHFA), and the agencies that they regulate, Federal National Mortgage Association and Federal Home Loan Mortgage Corporation (Fannie Mae and Freddie Mac, respectively) in mid-2010 slowed the development of many residential PACE programs. Commercial PACE programs were not affected by these actions and are moving forward in a number of jurisdictions around the country. This Implementation Plan has been developed to assist Montgomery County, MD in its determination of appropriate steps for implementation of a Commercial PACE program.

PACE allows an eligible property owner to finance a range of energy efficiency or renewable energy improvements and allows the County to collect payments by the property owner to repay loans and costs over time via a surcharge on the County property tax bill.

PACE has been widely promoted as offering the following benefits depending on the program design:

- Local job creation
- Removes barrier of large upfront cash outlay by property owner
- Allows repayment over a longer period of time, commensurate with savings and useful life
- Repayment obligation stays with the property upon sale
- Reduced utility bills offset PACE surcharge
- Improved properties have documented history of increased value
- Available for commercial, industrial, and multi-family projects
- Sponsoring agency can facilitate program with little or no direct debt obligation

Another advantage of commercial PACE is that it addresses the "split incentive" problem that exists in some commercial leases. The split incentive arises when a building owner pays for energy efficiency improvements, but it is the tenants that reap the benefits of those improvements through reduced energy costs. Under most leases, property taxes and other surcharges on the property tax bill are passed through to the tenants, therefore the PACE surcharge that repays the cost of improvements financed by a PACE loan can be passed through to tenants as well.

Similar to other programs that provide financing or incentives for building energy performance improvements, PACE enables a range of job creation, economic development, building valuation, and environmental benefits.

Montgomery County originally passed legislation in 2006 creating the Home Energy Loan Program which would have offered PACE benefits to County homeowners. The program was indefinitely suspended due to directives by the FHFA to lenders regulated by the agency prohibiting mortgages for properties encumbered with PACE surcharges. County Bill 11-13, effective March 3, 2014, requires the Executive to develop a plan to implement a Commercial PACE Program; thus the initiation of this Plan. Senate Bill 186 (SB 186) was adopted by the General Assembly in the 2014 session, which is the State enabling legislation that provides state authorization to the County to pass a local law that allows for PACE surcharge collection on property tax bills and disbursement of those payments to private lenders offering PACE financing through locally authorized Commercial PACE Programs. SB 186 further affirms that the obligation to pay the surcharge is a lien on the real property until paid in full, that the surcharge remains the obligation of any party that acquires the property subject to this surcharge until paid in full, and that mortgage lender consent for a PACE loan is required.

Program Team

In order to achieve comprehensive Program delivery, the County will need to either provide staff, or contract out for the following roles:

- **Program Sponsor – Montgomery County:** As Program sponsor, the County will maintain oversight of the delivery team to ensure compliance and alignment with overall Program goals. The County will be the collector of PACE surcharges with responsibility for distribution to the Program Trustee or directly to investors/lenders, depending on the structure of the obligations. If bonds are issued, the County, either directly or through a separate conduit, will be the issuer of such LIMITED REVENUE obligations that are secured solely by the PACE surcharges from participating property owners. Appropriate structuring of any obligations secured by PACE surcharges will assure no County revenue or credit pledge. Direct loan obligations between the financing provider (lender) and the property owner are allowable for collection pursuant to SB 186. However, surcharge disbursement from the County and payment to lenders through a Trustee is recommended to ensure consistency with existing County collection and distribution of surcharges.

  Montgomery County's Program sponsorship will establish the program requirements related to minimum property, project, and contractor eligibility. It is the County's intention to utilize the services of a third party to provide the origination and underwriting platform that is consistent with these minimum requirements and any that are additionally required by the funding party(ies). This delivery of origination, underwriting and funding will necessitate a County request for proposal (RFP) that encompasses delivery of these services and capital. In order to motivate delivery of services and capital at the lowest cost to the County, the Consultant recommends that a period of exclusivity (e.g., three years) is granted to the selected proposer. However, this recommendation also acknowledges that large, directly-financed projects should be allowed to participate in the Program, upon confirmation of eligibility compliance. Therefore, single property "one off" projects are allowed for instances in which a property owner has a relationship with a lender that agrees to make a loan with the PACE surcharge lien as the security. While allowing these "one off" projects to participate, the County should expect that a properly motivated implementation team will be able to identify, underwrite and fund the majority of projects during the provider exclusive period.

  The RFP for origination, underwriting and funding should incorporate the County's anticipated minimum requirements with acknowledgement that funding providers may have additional requirements; however, acknowledging that the goal is inclusion of property based underwriting consistent with the public benefit intent of PACE. Additionally, the RFP will need to set forth Program delivery expectations that include documentation for project applications, approvals, notices, lender consent, processing, lien recording and annual surcharge reporting; in addition to the delivery of capital to the program.

❖ **Financial Advisor / Program Manager**

The Financial Advisor / Program Manager will be available to provide the County with overall Program management to maintain the delivery of this financing tool. Delivery of this Implementation Plan can be the first step in the approval for delivery of a complete program. Program launch and ongoing management roles may include but not be limited to:

- Assistance with the selection of additional outside parties as directed by the County.
- Advise the County on financing alternatives, cash flow analysis, and market conditions.
- Develop solicitation to secure funding source(s), review and evaluate financing sources and related criteria for the provision of funding for the Program.
- Review and comment on all Program financing documents.
- Develop work plan for team Program deliverables and maintain regular status call schedule to ensure launch, and ongoing operational consistency.
- Develop a fee structure to compensate team members and the County for all launch and operational duties.
- Confirm sizing and proceeds distribution for each property-owner loan.
- Perform functions to facilitate the marketing, placement and sale of Program bonds, including review of all funding agent and/or bond purchase or placement agreements for compliance and conformity with Program goals and guidelines; if bond issuance is directed by the County.
- Advise the County as to the timing and terms of the bond sale including interest rate, if bond issuance is directed by the County.
- Attend finance team and Council meetings as needed.
- Make recommendations as to changes to the Program.
- Ongoing Program delivery and oversight to ensure consistent delivery for the benefit of eligible County property owners.

❖ **Bond Counsel / Program Counsel**

Appropriate legal counsel is vital to Program implementation success. Counsel must be familiar with State and County law authorizing the program, as well as the structuring of obligations secured by PACE surcharges. Typical documentation duties include, but are not limited to:

- Formation and Noticing Documents – ensure compliance of County PACE program with applicable State and Federal regulations.
- Financing Agreement / PACE Surcharge Contract – document detailing the obligation of the property owner to repay the loan through an annual PACE surcharge, with tax lien enforcement rights in the event of delinquency or default. Statement of PACE surcharge being *pari passu* with property taxes and other surcharges on a property tax bill.

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- Master Indenture – defines all terms and conditions of payment from County to bondholder. Detailed description of Trustee obligations in the event of delinquency or default.
- Supplemental Indenture and Bond (or other obligation) documents – for each obligation, secured by single or multiple PACE surcharges, documentation will be drafted specific to that series. Detail includes proceeds distribution and obligations per property.
- Purchase Agreement – document obligating the financing provider to purchase either individual or multiple series of obligations secured by PACE surcharge(s).
- Opinions – as may be determined through the documentation and securing of financing from outside sources.

❖ **Trustee**

Trustee maintains records of all obligations and acts on behalf of the County for proceeds and PACE surcharge payments distributions.

- Maintain records of payees for all outstanding obligations
- Standardizes payment terms for all Program payments
- Separately engaged third party
- Maintains administrative account(s) for fees distribution at the direction of the County

❖ **Administrative & Financing Services Provider**

This may be provided by a single party, or by a team of multiple parties. This party will be responsible for providing capital to fund the loans and perform all administrative duties required to originate, underwrite, record lien documents, report annual surcharge collection requirements, and timely report program statistics to the County. Administrative and financing services include, but are not limited to the following:

- Documentation necessary for Program delivery: applications, approval notices, process and eligibility information, FAQ.
- Underwriting of PACE loan, and ensuring property, project and contractor Program eligibility.
  - Confirmed data for underwriting compliance
  - Record-keeping of compliance
- Lender consent package and processing.
- Website distribution and advertisement of Program information.
- Lien Administration (for PACE loan) – either directly or with additional partner responsible for tracking per parcel surcharge obligation, lien recordation, annual submission of amounts for collection, calculation of prepayments, reconciliation of surcharge remittance with Trustee.
- Outreach to contractors, property owners and other project originators.
- Provide funding with verifiable commitment.

- Participation with County and other implementation and operational team members for Program improvements, new opportunities, and necessary changes.

- **Energy Program Outreach**
  In coordination with the Administrative and Financing Services delivery, County departments will be requested to provide initial set up and ongoing support related to energy-related Program requirements. County participating departments include, but are not limited to, Finance (DOF), Economic Development (DED), Environmental Protection (DEP), and the Office of Public Information (PIO).

Purpose of Implementation Plan

To develop a plan to implement a Commercial PACE program designed to meet the Program structural, environmental and financing goals of Montgomery County. This Plan takes into account the County's commercial property inventory, market for retrofits, state law, and other important considerations. If acceptable to the Montgomery County Council, this Plan will serve as a guide for Program launch and operational direction by the County.

Commercial PACE Financing

Property Assessed Clean Energy (PACE) is an innovative municipal finance mechanism that allows property owners to finance energy efficiency and renewable energy projects - such as HVAC system upgrades, cool roofs, and solar photovoltaic systems – paid through an annual surcharge on the property tax bill over the life of the PACE loan.

Legislation and Background

Montgomery County Bill 11-13 sponsored by Councilmember Roger Berliner, D-District 1, requires the development of an Implementation Plan for a Commercial PACE Program. Subsequent implementation would establish a Commercial PACE program to assist qualifying commercial property owners to make energy improvements for projects authorized under the Program. Additional County legislation is required through a local law to establish the PACE Program as authorized by State enabling legislation.

Recently introduced Federal legislation, HR 4285, may provide a path to expand the Program, in the future, to include residential PACE. County staff will monitor this bill's progress and report to Council if, and when, the capacity to offer unrestricted residential PACE is restored, either congressionally or through other actions.

PACE surcharge

Bonds or other obligations will be issued to evidence the payment obligation by the property owner to the investor/lender, through collection of a PACE surcharge by the County for payment distribution by the Trustee. PACE surcharges will provide the only security for payment of the obligation. If necessary for project funding, reserve funding can be capitalized into the loans to fund amounts required for credit enhancement. The PACE surcharge is an annual obligation of the property owner; non-payment of the surcharge results in an enforceable tax lien, possible tax sale and foreclosure rights to the tax sale certificate holder. The PACE surcharge obligation transfers upon sale to the new owner with the same lien and foreclosure rights. The same is true in the case of a tax sale. The tax sale deed would deliver the property free and clear of the deed of trust or other liens and encumbrances. The underlying obligation with the investor/lender would still be collectible by surcharge with the same enforceability.

Intended Financing Structure

Obligations are to be secured by the PACE surcharges. Based on development of this Implementation Plan, the recommended structure is utilization of a committed third party funding group that either has the capacity to directly provide the related administrative services, or that can partner with another firm to provide those services. A competitive process will be used to select the administrative and financing services provider. Upon selection of the administrative and financing services provider, the financing structure can be finalized. The goal of the Financial Advisor will be to maintain the consistent delivery of capital at the lowest possible cost, while safeguarding the County from risk through the establishment of reasonable underwriting criteria and Program oversight.

Items that will be defined within the financing structure include:

Type of obligation assigned to property owner. The property owner obligation to repay the full amount is anticipated to be documented by a loan agreement, Note, deed of trust or other similar evidence of the debt and lien, that is recorded among the land records. The annual surcharge payment obligation will be documented in these loan documents in order to provide disclosure available during title search for consideration by prospective buyers. These loan documents will also evidence the authorization and obligation of the County to annually bill, collect and disburse to the Trustee the PACE surcharge amount due on the property tax bill. Surcharge revenue can either be pledged toward the payment of Limited Obligation Revenue Bonds issued by the County; or, potentially the Notes can be direct obligations of the property owner without bundling multiple obligations into Bonds. This level of detail will be determined upon selection of the financing services provider and additional discussion with County legal counsel.

Fees and ongoing administrative costs. All costs associated with Program management, operations and financing will be paid through fees charged to the participating property owners. It is anticipated that most of the Program delivery team will be able to establish Program launch with fees recovered over time from property owners. However, if the County provides its own financing (instead of relying on a private lender), legal documentation is likely to require at least partial, and potentially full, upfront payment from the County. The County will need to determine how much it needs to recover of these upfront payments. Additionally, the County will want to estimate ongoing administrative fees to cover its role as sponsor, oversight agent, and tax collection authority. Furthermore, if DEP, or other non-finance departments, take active roles in Program promotion and outreach, the County will need to determine whether fees are appropriate for these services, and if so, at what level. The Financial Advisor will work closely with the delivery team to identify fee components attributable to the delivery and operational functions, in order to structure closing fees and ongoing administrative fees at levels that will provide fair compensation to participating team members while maintaining reasonableness for the paying property owner. Additionally, flexibility will be structured into the administrative fee disclosure to provide for reasonable increases over the term of the loan commensurate to cost increases of the Program.

The County may elect to absorb some of the implementation and administrative costs associated with Program launch and operations, respectively. As described above, the Program intends to be self-supporting, once operational, such that annual administrative fees from property owners are adequate for payment of ongoing Program costs. The following list of Program Operating Costs is provided as a sampling of the costs that Program team members and/or the County are likely to incur, and seek recovery for, in order to provide sound Program operations:

Underwriting verifications – one time at loan origination

- property owner confirmation
- property value / existing debt
- project(s) eligibility
- contractor(s) eligibility
- engineering verification (likely to be required by lenders/investors)

Legal – startup drafting of agreements and recording documents, ongoing participation with financing team

- Mortgage holder disclosure documentation and preparation
- Document origination
- Ongoing oversight of contracts signed (recommended for each signed contract)

Administration – initial set up and ongoing administrative tracking

- Lien (PACE loan) Recording (actual cost of recording + cost of third party/internal person that handles it)
- Annual billing, collection, and remittance of PACE Surcharges by jurisdiction (assumes collection on property tax bill, what is the cost for that service)
- Lien (PACE loan) Release (when paid off, either prepay or at final term)
- Administration of Payment Tracking (what's been paid and what hasn't)

Trustee / County – ongoing servicing of surcharge installment payments

- County makes collection of PACE surcharges and distributes to Trustee
- Trustee makes payments of proceeds to property owners at closing
- Trustee pays obligation holders from PACE surcharges collected by the County
- County follows State Law related to PACE surcharge Delinquency and Tax Sale

Marketing & Outreach – initial and ongoing to maintain robust deal flow and understanding amongst contractors and property owners

- Contractor / property owner outreach and training
- Web-based materials – and ongoing updates and operations
- Online applications
- Information and promotional materials
- Case studies

- Results postings
- Property / project / owner eligibility criteria
- Participation by area – if multi jurisdiction program, which ones and how to do others opt in

Financing – may receive closing costs in addition to interest payments over term of the loan

- Capital acquisition
- Interest cost

In order to cover these costs, the Program will need to recover adequate amounts to pay team members and County staff, to the extent that reimbursement is needed. There are several ways that fees can be collected, many of which are identified below:

- Application Fee – May be paid by property owner upon application submission, intended to cover (at least partially) the underlying cost of underwriting the property, property owner, improvements and contractor.
- Vendor / Contractor Fee – May be paid by the contractors and vendors that are providing work and / or products to the property owner.
- Upfront Costs – Optional or mandatory costs that are reimbursable from loan proceeds (energy auditor, appraiser, engineering).
- Closing Costs - Analogous to mortgage closing costs that cover all the work done to create the obligation and potentially to prefund ongoing administrative charges.
- Admin Fee – Annual fee charged, either as percentage or as a set amount to cover ongoing program administration (primarily collection and payment of obligations).
- Prepayment Fee – In addition to any prepayment penalty charged by the lender, the Program may need to recover processing costs.

Additionally, depending on the structure and lender/investor, there may be a requirement to fund a debt service reserve fund through an additional amount added to the original obligation; and, depending on payment cycle for the obligation, the borrower may have to capitalize interest in order to make payments prior to the annual or semi-annual payment schedule for property taxes.

Reserve funding or other credit enhancement. Depending on the final structure of the financing and the participating financing services provider, there may be some capitalization of reserve funding required. It is equally probable that no such requirement will be necessary. The Financial Advisor/Program Manager will work with the County to recommend the appropriate reserve structure in consideration of the financing structure. Instances that may require property-owner capitalization of reserves into the loan would be a structure in which multiple properties are securing a single bond or similar security, and therefore such enhancement would be available to cover debt service in the event of individual property owner delinquencies that create a shortfall of funds available for debt service. Other structuring choices to alleviate the additional amounts charged to property owners for reserves would be to have bond payments obligated at levels that are lower than the anticipated collection amounts.

Treatment of rebates and incentives. Final program financing documents will define the treatment of cash rebates and other non-cash incentives. Generally, if a cash rebate is available, the PACE loan amount is net of such cash rebate. In the case of non-cash incentives, such as tax credits or deductions, PACE loans may not require netting of this benefit since it is subject to eligibility circumstances that may or may not provide the benefit. Expected rebates and incentives should be disclosed to the existing mortgage lender when seeking consent.

Lender consent. Properties with an existing mortgage (or mortgages) must receive existing mortgage holder(s) consent prior to being issued a Notice to Proceed by the Program.

Available funding sources. The Consultant has current engagements with several PACE programs around the country and, as such, has participated in a variety of structuring and funding solicitations and selections. The Consultant anticipates that there are between 10 and 25 qualified financing providers that would be interested in financing the Montgomery County Commercial PACE Program. This provider list continues to grow and the recommended solicitation for funding and administrative services may identify even more interested parties. The range of parties includes those that have established origination platforms with underwriting (administrative) capacity already in place, to those that can provide capital but do not have a built-out administrative delivery capacity.

Request for Proposal (RFP). If the County Council approves the plan, staff will move forward with a solicitation for Administrative and Financing Services, Trustee and Legal Counsel, the Consultant will provide technical assistance to County staff for drafting a RFP. Alternatively, the County may elect to negotiate a relationship with a State or regional agency that has the State's authority to issue bonds for the purpose of engaging the financing team that will operate and fund the Program on the County's behalf. Additionally, in order to get the best possible response from eligible providers of financing and administrative services, the Consultant recommends preparation of a ***Credit Presentation*** that can be used to present the specific details of Montgomery County PACE to the potential bidders. Because of the evolving nature of the PACE market and the variations in legislative and taxing provisions in the various PACE programs, the disclosure of specific credit considerations is an important part of the solicitation process.

Analysis of Proposals. Evaluation of proposals should be thorough to include proof of both financial viability as well as administrative capacity of the bidders. Though demonstrated ability to deliver services is important; the evolving nature of PACE service providers may provide opportunities to utilize less-established firms in combination with a strong capital backing.

Program Financing Criteria and Standards

In order to qualify for funding from PACE-secured lenders, property owners will need to meet specific underwriting criteria. Because PACE funding is secured by the property and the obligation remains with the property upon transfer, the preferred criteria involves acceptance based on the property and not the individual credit. Additionally, consideration of the property owner's(s') ability to repay a loan will be required for approval.

In order to assist property owners in obtaining funding, the County will seek third party capital sources. Moreover, the County will require that the minimum loan amount is set at $5,000, subject to lender confirmation; and the maximum loan amount is limited to 20% of the appraised or assessed value of the property, also subject to lender confirmation. Loan terms may range from 5 to 20 years, with the maximum term limited to the improvement's(s') useful life.

Interest rates, and lender terms and conditions will be defined in the Agreement with the committed funding and administrative partner. Within the Agreement, interest rate setting, methodology and time of committed rates will be defined.

Procedures for nonpayment or default. Since a critical component of the PACE Program is that annual PACE surcharges are collected on a property tax bill, the entire billing and collection process is conducted pursuant to State Law (Annotated Code of Maryland – Tax Property Article). In the case of either a full or partial payment default of the tax bill, the County is required to sell the tax lien representing the default amount (including late fees) through a public tax sale auction. The winning bidder pays the tax sale amount to the County and receives a tax sale certificate that provides for specific redemption interest and the ability to file for foreclosure of the property. However, in Maryland, only the annual PACE surcharge would be collected through a tax lien sale – not the PACE loan amount. The lender of the PACE loan may have filed a separate lien for the loan - similar to liens recorded by mortgage lenders. Pursuant to applicable loan documents, that lender may enforce collection of the PACE loan through a separate (loan) lien enforcement process. One important item to note is that a tax lien will take priority over the lender's security documents.

Property Owner Eligibility Requirements

The following are typically included underwriting criteria. The selected funding partner may require additional criteria.

- Property is within the jurisdictional boundary.
- Property owner(s) making application for a PACE loan is the owner of record.
- Property owner(s) must be current on property taxes and the property owner(s) certify(ies) that such owner(s) have not had a late payment on their property tax more than once during the prior three (3) years (or since the purchase of the property, if owned by such property owner(s) less than three (3) years.).
- Property owner must be current on all property debt for a period of six (6) months prior to the application, including no payment defaults or technical defaults (or since purchase if the property has been owned less than six (6) months by the current owner(s)).
- Property owner(s) or their affiliated companies have not been involved in a bankruptcy proceeding during the past seven (7) years and the property proposed to be subject to the surcharge must not currently be an asset in a bankruptcy proceeding.
- All individual property owners must sign the application, and any Note or other obligation to be recorded to the title of the property. For properties owned by corporations, LLCs or LLPs, signatures by authorized representatives and/or corporate resolutions are required.
- Property must not have any liens other than lender debt.

- Eligible product costs are reasonable in relation to property value. Proposed Eligible Products must not exceed 20% of the market or assessed value of the property.
- Mortgage-related debt on the property plus the principal amount of the loan secured by the PACE surcharge must not exceed 90% of the assessed value of the property.
- Debt service coverage ratio is 1.05 (or 105%) or greater, calculated by dividing net operating income by total lender debt on the property.
- The total annual property tax (including applicable fees or charges listed on the annual property tax bill) plus PACE surcharge on the property must not exceed 5% of the property's assessed value, as determined at the time of approval of the loan.
- Lender consent for each mortgage on the property is required.

The County should anticipate that the application and supporting documentation will be adequate to determine eligibility based on the defined underwriting criteria. Supporting documentation is likely to include:

- Complete rent rolls form
- Signed lender consent
- 12 month payment history for each mortgage on the property (account history or statements)
- Profit and Loss Statements and Tax Returns for the past two years
- Proposed energy improvements documentation – Contractor Bid(s) or Consultant/Engineer Proposal

Improvement Eligibility Requirements

The County intends for its PACE Program to be a financing tool that is administered and funded by a competitively bid and selected team. Recognizing that many energy improvements may qualify for PACE funding, and that technologies change over time, the County will rely upon the funding and administration team to define the specific thresholds of projects eligible for PACE funding. The County intends, at a minimum, for any project eligible for utility incentives to be included as eligible for the PACE Program. The County, through the Department of Environmental Protection, is meeting with building owners/operators and other stakeholders to seek additional feedback on project eligibility requirements.

Generally, any equipment, device, or material that is permanently affixed to the existing structure and intended to reduce utility consumption, through either efficiency or renewable generation, is envisioned to be eligible for a PACE loan, including but not limited to:

1) insulation in any wall, roof, floor, foundation, or heating and cooling distribution system;
2) replacement roofing;
3) cool roof;
4) storm windows or door, multi-glazed window or door, heat-absorbing or heat-reflective glazed and coated window and door system; and additional glazing, reduction in glass area, and other window and door system modification that reduces energy consumption;
5) automated energy control system;

6) heating, ventilating, or air-conditioning and distribution system modification or replacement;
7) caulking, weather-stripping, and air sealing;
8) replacement or modification of a lighting fixture to reduce the energy use of the lighting system;
9) energy recovery system;
10) day lighting system;
11) installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity;
12) any measures that reduce water usage or increase the efficiency of water usage;
13) renewable energy generation equipment such as solar photovoltaic, wind turbines or other proven generating technologies; or
14) any other installation or modification of an equipment, device, or material approved as a utility cost-savings measure.

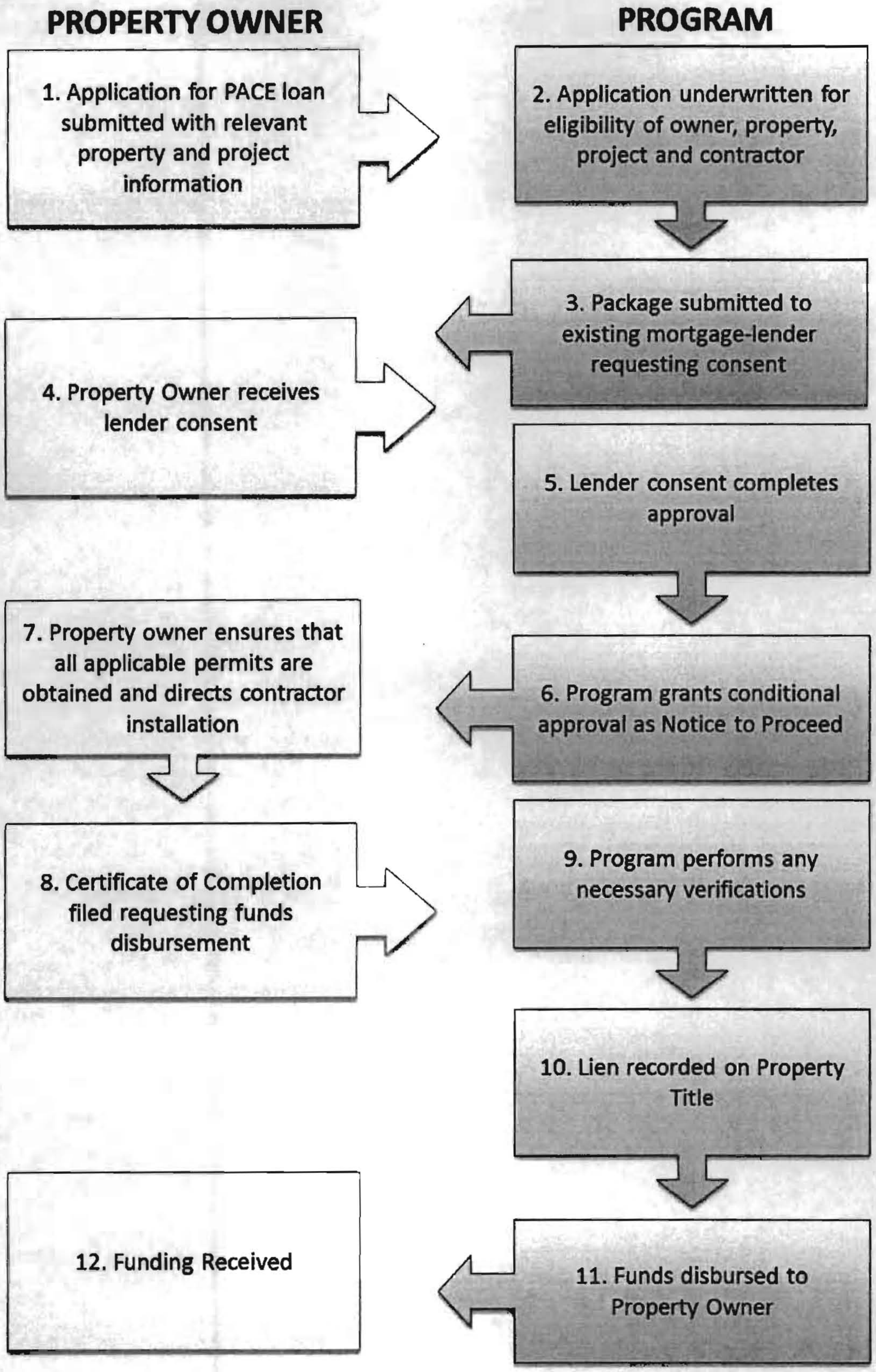
Contractor Eligibility Requirements

The participating property owner will have the responsibility of contractor evaluation and engagement. However, the Program will establish a set of minimum requirements to be met by contractors that install eligible improvements to eligible properties, and these requirements must be met by parties completing installations in order to have loan proceeds disbursed upon completion. Explicit requirements will be detailed in a Program Handbook. At a minimum, these will include having an appropriate business license and all necessary permits/licenses/registrations to perform the work being undertaken.

PACE Program Participation Process

The Montgomery County Commercial PACE Program will provide property owners with a standardized financing structure in order to facilitate ease of use. This standardization will be based on the access to financing through the steps defined below. Despite the standardization of process, each project will be different with regard to property type, ownership/tenant arrangements, improvement type(s) and associated savings, approval by existing mortgage-holder and construction time. Therefore, specific time constraints for the associated steps cannot reasonably be identified.

Throughout the process, from application to funds disbursement, the administrator will provide verification of compliance with the underwriting criteria, confirmation of required documentation receipt, and authorization of lien recordation and funding release pursuant to receipt of completion certificate with any necessary permits and acknowledgements of products installation. The anticipated steps are outlined in the following chart:


PROPERTY OWNER
PROGRAM
1. Application for PACE loan submitted with relevant property and project information
2. Application underwritten for eligibility of owner, property, project and contractor
3. Package submitted to existing mortgage-lender requesting consent
4. Property Owner receives lender consent
5. Lender consent completes approval
6. Program grants conditional approval as Notice to Proceed
7. Property owner ensures that all applicable permits are obtained and directs contractor installation
8. Certificate of Completion filed requesting funds disbursement
9. Program performs any necessary verifications
10. Lien recorded on Property Title
11. Funds disbursed to Property Owner
12. Funding Received

The Program expects to only provide funding for fully completed projects. While, the County and Consultant recognize the challenges in obtaining funding for an extended period of construction for larger projects, construction or bridge funding will be strictly between the property owner and lender.

Definitions

Eligible Property Owner – Property owner of record, for an existing structure to which energy improvements will be affixed.

Eligible Property – Property located within the County meeting underwriting criteria for a PACE loan based on property and property owner information.

Eligible Contractor – Contractor with the appropriate license(s) for work to be performed. At the Program's discretion, specific additional requirements may be incorporated and detailed in a Program Handbook.

Eligible Improvements -- Generally any improvement, permanently affixed to existing structures, that provide energy efficiency, clean energy generation or water conservation benefits to the consumer.

Surcharge – PACE surcharge is the collection method for repayment of principal, interest and administrative fees by the Property Owner. The PACE surcharge will be payable along with the property taxes according to the existing timeline and legal due dates.

Implementation Plan -- This document is intended to provide detail to the County for implementation of a fully functional PACE Program.

Timeline of Implementation Steps

Program Team

MC – Montgomery County, MD, Program Sponsor
FA/PM – Financial Advisor/Program Manager
PC(BC) – Program Counsel (and/or, Bond Counsel)
AFP – Administrative & Funding Partner(s)
TRUSTEE—Trustee
DEP – Montgomery County Department of Environmental Protection

STEP	DESCRIPTION	TEAM MEMBERS	WORK PRODUCT	TIMING ESTIMATE
1	PACE Implementation Plan	MC	County Executive submits PACE Implementation Plan to County council consistent with Bill 11-13	No later than May 19, 2014

STEP	DESCRIPTION	TEAM MEMBERS	WORK PRODUCT	TIMING ESTIMATE
2	County Council approves PACE Implementation Plan	MC	Council action directing next steps for Program establishment	Single County Council meeting
3	County Council introduces and adopts local law authorizing PACE Program	MC	Local law that authorizes a Commercial PACE loan program, including the billing and collection of a PACE Surcharge on a property tax bill, and remittance of the Surcharge to a Trustee.	1 – 2 months
4	Program Establishment and approval of Executive Regulations	MC	Implementation of local law that authorizes a Commercial PACE loan program and implements the program consistent with Executive Regulations that describe in detail how the PACE program must be administered and what the responsibilities are for Montgomery County Government and the roles of the various parties involved in the PACE loan process. 1. Recruit staff to engage outside Program Operations Team 2. Prepare and submit Executive Regulations to include: (a) Program eligibility requirements (b) Loan terms and conditions (c) Alignment with all statutory requirements, SB 186.	3 – 6 months
5	Engage Management and Legal Team for Program Launch and Operations	MC, FA/PM, PC(BC)	Contract for services with PM and PC(BC)	3 – 6 months

STEP	DESCRIPTION	TEAM MEMBERS	WORK PRODUCT	TIMING ESTIMATE
6	Basic Program Documentation Drafts and Prepare County Billing System	FA/PM, PC(BC)	Prepare documents: 1. Implement Changes to County Property Tax Billing and Remittance systems to accommodate new PACE Surcharge. 2. Property Owner lien document (Note or other form of agreement). 3. Admin & Financing Partner(s) contract(s), Bond Purchase Agreement. 4. Program Report 5. Master Indenture	2 - 5 months
7	Solicit Administrative & Financing Partner(s), and Trustee	MC, FA/PM	Separate RFP for MC solicitation of Administrative & Financing Partner(s) and Trustee 1. Prepare solicitation for AFP, and Trustee 2. Prepare credit overview for solicitation	3 – 8 months
8	Contract with Admin & Financing Partner(s), and Trustee	MC, PC(BC)	Contracts acknowledging roles of Administrative and Financing Partner(s) and Trustee 1. Administrative Services Agreement 2. (Bond/Note) Purchase Agreement	2 – 3 months
9	Develop Marketing and Educational Materials	MC, DEP, AFP, FA/PM, PC(BC)	Marketing plan, program promotional material, press release(s), news conference, website links and resources. Ongoing efforts by all participants as detailed through marketing plan.	2 – 3 months

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STEP	DESCRIPTION	TEAM MEMBERS	WORK PRODUCT	TIMING ESTIMATE
10	Finalize Program Documents with all parties	MC, PC(BC), AFP, FA/PM, Trustee	Finalize Program Documentation 1. Property Owner Lien Document/Note 2. Master Indenture	2 – 4 months
11	Educate Constituents (local agencies, contractors, vendors, citizens)	MC, DEP, AFP	Meetings and webinars held to educate participating cities' staff, interested vendors, contractors and citizens. Outreach to local community groups (Local Chambers of Commerce, Neighborhood Councils, service organizations, etc.)	Ongoing
12	Launch Program to receive applications from property owners	ALL	Funding applications accepted and processed by parties according to documented procedures.	Upon completion of prior steps
13	Project Funding	ALL	Projects funded upon completion and recordation of lien document by administrator, and confirmation of final PACE sucharge, fees and distribution amounts by all team members.	Ongoing
14	Project Administration	ALL	Annual PACE surcharges filed for collection. Payment receipts confirmed for Trustee distribution to FP. Reporting provided to MC.	Ongoing

MONTGOMERY COUNTY, MARYLAND
COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM
May 19, 2014

BACKGROUND

Pursuant to Montgomery County Bill No. 11-13, the County Executive was directed to develop a plan to implement a Commercial PACE Program for delivery by May 19, 2014. Subsequently, the State of Maryland General Assembly adopted Senate Bill 186 in the 2014 session, providing additional clarity on the PACE-secured obligations. The County contracted with Public Financial Management, Inc. (PFM), as Consultant, in order to have the Implementation Plan developed in accordance with County practices and goals. This Plan, dated May 19, 2014 has been delivered in final form to the County, and is provided to the County Executive herewith.

OVERVIEW

The Implementation Plan provides a comprehensive plan for the County to follow for establishment of a Commercial PACE Program. The Plan development included Finance and Environmental Services staff who guided the Consultants' work to incorporate the desired third party program operations. The Plan anticipates engagement of third parties to provide comprehensive Program delivery in order to minimize staff obligations and liability.

Prior to initiating requests for proposals (RFPs), the County will need to draft and approve local law to establish the Program, and create any necessary steps for inclusion of properties eligible for participation. Upon passage of the local law, the County will be able to begin its procurement process for the necessary implementation, launch and operations team. The Consultant is available, under its current contract, to provide technical assistance with the RFP development. The Plan calls for the engagement of an operations team that may include some or all of the following: County as Sponsor, Program Manager/Financial Advisor, Legal (and/or Bond) Counsel, Administrative & Financial Services Provider (may be single or multiple parties), Trustee, and Energy Outreach Provider(s).

The Plan proposes engagement of a single primary Administrative and Financing Services Provider to assure complete Program documentation alignment with committed capital, and administrative conformity between the capital source and the origination administrators. Because of the cost and commitment required by capital providers to approve the Program credit as a whole, and establish underwriting procedures for properties/projects that come through the Program, this commitment to a primary single provider is recommended to assure project delivery. Program establishment that lacks a single process associated with committed capital requires a much larger administrative cost and burden to the sponsoring agency, i.e. the County.

DOCUMENTS AND RESPONSIBILITIES

As with any financing program, the County will need to direct internal and external legal counsel on the appropriate documents. Documentation will need to at a minimum (1) create the payment obligation from the property owner to the County; (2) transfer the PACE surcharge payment stream from the County to the obligation-holder who either provided the financing initially, or purchased the obligation from the original provider; (3) record the lien on the property; (4) document the cash flow between the County as recipient of the PACE surcharge, to the Trustee as payment agent to the obligation holder, plus (5) all contractual obligations between the operating team and the County. Program operating team responsibilities are provided in greater detail within the Plan and additional documents may be required for Program establishment. The County may be able to engage administrative and financing services for no up-front cost, but it is likely that legal costs will be incurred for the drafting of Program legal documents.

CONCLUSION

Upon direction of County Council to proceed with Program implementation, the Plan can be followed to pursue the next steps. PFM is grateful to County staff for their professional guidance in the development of this Plan. While not directly discussed in this overview, the eligibility criteria for property owners, energy-related improvements, and contractors/vendors are more fully addressed in the Plan. In addition to this document and the Implementation Plan, PFM has delivered a memo outlining alignment of the Plan to the requirements within Bill 11-13, and a Draft Template for the Program Handbook that will provide detailed Program operating guidelines.