PAMELA J. WALLS
County Counsel

KATHERINE A. LIND
Assistant County Counsel

OFFICE OF COUNTY COUNSEL
COUNTY OF RIVERSIDE

3960 ORANGE STREET, SUITE 500
RIVERSIDE, CA 92501-3674
TELEPHONE: 951/955-6300
FAX: 951/955-6322 & 951/955-6363

March 26, 2012

Alfred M. Pollard, General Counsel
Federal Housing Finance Agency
400 Seventh Street SW, Eighth Floor
Washington, DC 20024

Attention: Comments/RIN 2590-AA53

Re: Property Assessed Clean Energy ("PACE") Programs

Dear Mr. Pollard:

On behalf of the County of Riverside, we are providing the following comments on the Advance Notice of Proposed Rulemaking published by the Federal Housing Finance Agency ("FHFA") on January 26, 2012 (77 Fed.Reg. 3958) which addresses whether and under what condition the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively, the "Enterprises") may purchase mortgages for properties participating in the Property Assessed Clean Energy ("PACE") programs.

Following the adoption of Assembly Bill 811 (Cal. Streets and Highways Code Sec. 5898.12 et seq.; the "PACE Law") by the California legislature, the Riverside County Board of Supervisors directed staff to develop and coordinate the administration of a regional PACE program in both the western portion of the County with the Western Riverside Council of Governments and in the eastern portion of the County with the Coachella Valley Association of Governments. Consistent with the critical public purpose of addressing global climate change expressed in section 5898.14 of the California Streets and Highways Code, the County began implementation of these joint regional PACE programs to provide energy-efficiency and renewable energy financing through property tax assessments for both residential and commercial property owners.

The PACE Law authorizes local governments to use their traditional assessment power to finance renewable energy, and energy and water efficiency improvements on private property. Residential energy improvements financed with PACE funding achieve important economic and environmental benefits which are critical to the County of Riverside. California legislation (AB 32 & SB 375) currently requires the reduction of greenhouse gas emissions to 1990 levels by 2020. As a result of this, the County of Riverside and cities within the County have been actively developing their Greenhouse Gas Inventories and accompanying Climate Action Plans. Achieving the reductions required by this legislation will be very costly at a time when local governments are struggling financially. Residential PACE programs can achieve the required greenhouse gas reductions without federal, state or local government taxes and subsidies.

PACE programs provide a particular public benefit in Riverside County where the majority of housing stock is old and energy-inefficient, in a climate with high summer temperatures. Installation of energy and water efficient and renewable energy improvements provides a safer and higher quality of life for County residents and benefits the property by reducing utility costs and increasing the value of property.

The real estate market implosion, caused by poor lending and regulatory practices, has also been felt acutely in Riverside County where banks are refusing to lend anything to either residential or commercial property owners. PACE programs provide a voluntary financing mechanism allowing the cost of retrofitting for energy and water efficiency improvements as an assessment, similar to other specific property improvements financed through public credit. (E.g. *Isaac v. City of Los Angeles* (1998) 66 Cal.App.4th 586, 596 ["[A] special assessment is...a benefit to specific property that is financed through the public credit."] See also assessments for geologic and seismic retrofitting improvements in Cal. Public Resources Code section 26650; Cal. Streets and Highways Code section 5108.3 and assessments for costs of abatement of nuisance conditions on private property in Cal. Government Code sec. 25845(d).) Such assessments also have priority liens on the property until paid. (See Cal. Public Resources Code sec. 26654 and Cal. Government Code sec. 53935.)

In addition to making energy and water efficiency improvements affordable, PACE programs create jobs and further economic development. The local construction industry has been hard hit by the collapse of the housing market and new green retrofitting jobs made possible by PACE funding will mitigate job losses. Riverside County currently has an unemployment rate of 12.6%, compared to an 11.4% unemployment rate for California and a rate of 8.7% for the entire country. Riverside County has a dire need for jobs, as well as increased property values—both of which PACE programs provide.

FHFA's proposed rule to instruct the Enterprises not to purchase any mortgage in a jurisdiction with a PACE program would severely hamper the current and future residential PACE programs offered by the County of Riverside. In developing a rule that serves the public interest, the FHFA must weigh perceived risks against economic and environmental benefits.

The risks associated with PACE assessments are minimal. Energy and water efficiency, and renewable energy improvements reduce energy bills and increase property values, strengthening a property owner's financial position and increasing the value of the lender's collateral. Such improvements provide a hedge against fuel price spikes and rising fuel costs over time. Additionally, lenders concerned about tax delinquencies can protect themselves from tax defaults by requiring taxes and assessments to be paid monthly with the mortgage, and placed in an escrow account, as they routinely do.

Moreover, guidelines recommended by the White House (October 18, 2009) and Department of Energy (May 7, 2010) and HR 2599 (Hayworth, R-NY19) establish consumer protections and underwriting standards to protect homeowners and lenders. Under HR 2599 as well as California law, local governments may not accelerate the amount due on an assessment in the event of a delinquency. Only the unpaid, overdue amount would be due. Future unpaid PACE assessments remain with a property upon sale or other transfer to a new owner, protecting lenders from total extinguishment of unsecured debt or home equity lines in default when a home is worth less than its outstanding mortgage balance. In order to qualify for PACE financing, homeowners must have fifteen percent equity in their home and PACE financed projects cannot exceed ten percent home value. Such projects must be cost effective by having a savings to investment ratio greater than one (SIR>1) and is only available to property owners having a history of on-time mortgage and tax payments and no recent bankruptcies. A required energy audit must be performed by an accredited and qualified professional and consistent with California law, the work must be performed by a licensed contractor.

The perceived risks identified, but not supported by the FHFA, are minimal. These risks can be addressed by program restrictions imposed by local jurisdictions implementing PACE programs pursuant to State legislation. Should FHFA believe a national standard is required, the County of Riverside requests the FHFA adopt the above-guidelines, which have been sponsored and endorsed by many members of Congress, and was developed with some input from existing PACE programs. The economic and environmental benefits of PACE programs far outweigh these perceived risks. Accordingly, if a national standard is required, we urge that the FHFA adopt a rule stipulating that the Enterprises and any other mortgage lenders regulated by the FHFA be allowed to buy residential mortgages with PACE assessments originated by programs that conform to standards and guidelines established in HR 2599.

Sincerely,

PAMELA J. WALLS
County Counsel

PJW:ay
cc: Joseph Pradetto, District 4
Janet Purchase, EDA