Responses to Local Government Committee Questions:
Jenine Windeshausen, Placer County Treasurer-Tax Collector, -mPOWER Placer

1) Why did Placer decide to administer their own program instead of contracting with a third party administrator?

   In 2009, when Placer took the initial implementation actions, we were not aware that third-party administrators existed. At the time, third-party administrators had focused their marketing on the more urban areas of the State. Placer established its own program because it wanted to provide PACE financing to property owners during the downturn in the economy to help business and residential property owners reduce utility costs, to leverage local taxpayer dollars back into the economy, to provide financing to businesses seeking to comply with AB32, and to improve the environment.

2) How does the PACE program differ from other PACE programs? Please include any differences in consumer protections.

   - The Placer County Board of Supervisors made consumer protection a priority when they initially authorized the mPOWER program in 2009. The Board directed that all property owners applicants participate in an information seminar before executing an assessment contract. They directed that the seminar include:
     - a statement that property owners should consider all types of financing available to them before deciding if mPOWER financing is right for them,
     - information on selecting a contractor, such as checking references, Contractor's State License Board, obtaining multiple bids,
     - information on the mPOWER application, approval and funding process,
     - disclosures related to FHFA statements,
     - information on installing energy efficiency measures before generation measures.
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   - mPOWER is administered by the Placer County Treasurer-Tax Collector with experience in local government finance, municipal land-based financing, municipal bonds and property taxes.
   - mPOWER utilizes staff with building trades experience and specifically former County building inspectors to process applications.
   - Placer leverages local tax dollars back into the local economy, then remarkets the assessments to third-party municipal bond investors.
   - Placer believes the Legislature intended the environmental benefits derived from PACE financing to be utilized for the benefit of the California environment. Like all PACE programs, Placer requires the property owner to assign any environmental benefits (carbon credits, renewable energy credits or carbon offsets) to the PACE program administrator, mPOWER. While California currently does not recognize these benefits, Placer collects the data for these benefits and ensures that the public benefits of PACE financing declared in AB811 are maintained by assigning these environmental benefits back to the jurisdiction where the property is located. We do not sell these environmental benefits in out-of-state markets in places that monetize and trade them.

- The Placer County Board of Supervisors took action to affirm that PACE financing be exclusively provided by the County to ensure consumer protection, and economic and environmental benefits derived from PACE financing accrue back to the local jurisdiction.

3) What is the structure of your residential PACE program? Please provide specifics regarding your contractual relationships with local governments, any private capital partners, solar or energy efficiency companies, and contractors and the flow of money within that structure including the cost of third-party administration.

    - Through the mPOWER program, Placer County provides PACE financing to jurisdictions outside of Placer County through a shared services model. The County provides each jurisdiction with an agreement which outlines performance requirements and indemnifications.
    - mPOWER provides initial financing through bond proceeds derived from a line-of-credit bond purchased by the Placer County Treasury. This line of credit is used to "aggregate" assessments which are later remarketed to municipal bond investors.
    - Placer County and the mPOWER program do not maintain any type of contractual or financially beneficial relationships with participating jurisdictions, contractors or third-party administrators. Placer does outsource certain specialized tasks related to the mPOWER program such as title searches, appraisals, and levy preparation.

4) When did your program begin? How has your PACE program changed since inception?

    - mPOWER was launched in March of 2010.
    - In July of 2010, Placer suspended its residential program due to the FHFA statements and in particular response to the statements' direction for lenders to red-line all properties in PACE jurisdictions.
    - Placer lifted the residential suspension in July of 2013, due to a determination that jurisdictions with PACE programs were not being red-lined by lenders.
    - The mPOWER program has changed little since 2013, until the Fall of 2015 when lender response to PACE liens made a dramatic shift. Up to this time, only 9% of mPOWER liens were paid off during a refinancing, and only 31% of mPOWER liens were paid-off during a real estate transfer. Since the Fall of 2015, almost all lenders require a PACE lien to be paid-off as a condition of financing. Since that time, we have changed our property owner disclosures to indicate that subsequent lenders are highly likely to require a PACE lien to be paid off. We have also identified several non-Government Sponsored Enterprise lenders who will allow the PACE lien to be paid-off.
    - Placer has also been able to negotiate with its take-out bond buyers the elimination of prepayment premiums that were passed on to property owners. As a result, mPOWER does not require prepayment premiums and has refunded premiums that were previously collected.

5) What is your application process?

- Our application is available on-line and can be submitted electronically, by mail or in-person. A contractor's bid is required to be attached, unless the property owner is self-installing.
- Based on the information provided by the property owner, mPOWER independently verifies the underwriting criteria including the review of title reports, property tax records, bankruptcy court records and other data. mPOWER does not rely on property owner certifications to meet underwriting criteria.
- Each applicant is assigned an mPOWER Program Specialist who reviews the application and contractor's bid, and performs the independent verifications noted above. The Program Specialist may question cost or system design if they are outside of market norms.
- Evidence of all required permits must be provided.
- The mPOWER Program Specialist is a resource to the property owner and provides a one-on-one explanation of the assessment contract at the time of signing.
- The Program Specialist ensures that all permits are finaled or that inspections are performed, if a permit is not required. The property owner must also approve of contractor payment prior to disbursement.

6) After you contract with a city or county (either directly or via a JPA) how do you work with the local governments on issues raised by homeowners? Do you provide homeowners with information on where they can go to lodge complaints or ask questions?

    - Property owners know that their Program Specialist is always available to them, even after installation and disbursement. mPOWER has had very few complaints due to the level of communication provided to property owners throughout the process.

7) Do you require homeowners to use specific contractors? Do you provide any training to contractors regarding their interaction with customers?

    - Property owners may select a contractor of their choice. mPOWER provides information and resources for choosing a contractor, but does not endorse or select contractors. All contractors must adhere to the mPOWER program requirements and are checked for proper licensing, bonding and insurance on each application, regardless of prior program participation. Contractors are required to participate in an in-person training.

8) How do you market your program to local governments and homeowners. Do you allow contractors to produce their own marketing?

    - Most marketing is through word of mouth. Contractor's may produce their own marketing, but are limited in the way that they can use the mPOWER logo/brand.

9) How do you address the issues raised by FHFA and challenges homeowners face in selling or refinancing their home? Do you offer contractual lien subordination agreements to homeowners? How to do you notify a homeowner that this option exists? How many have been requested and how many entered into, to date?

- mPOWER has addressed the FHFA issues and challenges by providing a number of disclosures to property owners throughout the financing process. This includes the disclosure that most lenders will require the lien to be paid-off.
- Placer has identified a number of lenders who have provided statements in writing that they do not require lien pay-off. We provide this lender information to property owners.
- mPOWER does not offer contractual subordination. Placer believes that contractual subordination is bad public policy. Please see the attached information regarding contractual subordination.

Why *"Limited or Contractual Subordination"* is NOT Really Subordination

Why it is BAD Public Policy, Bad for Property Owners, Bad for Lenders, Bad for Realtors, and Bad for Tax Collectors and Local Governments

Some PACE (Property Assessed Clean Energy) providers offer a contractual arrangement they call "limited subordination" or "contractual subordination" in response to a lenders' refusal to offer financing on properties with PACE liens due to the July 2010 Federal Housing Finance Authority (FHFA) Bulletin and.

Fact: FHFA has not approved "limited subordination" or "contractual subordination" agreements as a remedy to their refusal to allow financing on properties with PACE liens.

PACE programs use proceeds from the sale of PACE bonds to provide financing to property owners. A PACE lien is placed on the property for the amount of the financing. Only a local government agency (the PACE lien holder (PLH)) can record a PACE lien. However, the assessment can be conveyed by a local government agency to a third party who becomes the PLH. An annual assessment is placed on the property tax bill to collect the annual repayment of the assessment financing.

If a property owner fails to pay the annual assessment amount by July 1, it constitutes a property tax default. Bond covenants, including PACE bonds, contain provisions regarding obligations of the PLH to exercise foreclosure in order to collect amounts necessary to pay debt service on bonds. In most circumstances, a PLH would exercise its rights of foreclosure on a timely basis, usually occurring within six months of the July 1st Revenue and Taxation Code default date to avoid any delay or deficiency in making a bond payment and to avoid significant accumulation of delinquent amounts.

However, before foreclosure can be pursued, the governing body of the PLH must take action to authorize and direct the County Auditor to remove the defaulted assessment from the parcel on the property tax roll. After the assessment is removed from the parcel, the PLH pursues collection independent of the tax collector and the tax collection process. Removal of the assessment from the parcel also creates an opportunity for the property owner or mortgage lender to pay the PACE assessment without having to pay off the entire amount of defaulted taxes and assessments on the parcel. Often the property owner is able to pay the smaller assessment amount. The tax collector can only accept payment for the total tax default amount on the property tax roll and cannot accept partial payments or payments for certain taxes or assessments.

Unpaid assessments are first subject to a 10% penalty for each delinquent installment after December 10th and April 10. If assessments go into default on July 1, they are subject to the statutory accrual of penalties at the rate of 1.5% on the first of every month (18% per year). Taxes, assessments, special taxes and other charges become subject to tax-defaulted land-sale after five years of default. Proceeds from the sale are used to pay the taxes, penalties and costs associated with the land sale.

Below is language used in a "Contractual Subordination" or "Limited Subordination" Agreement. The terms dictate that the PLH leave defaulted assessments on the property tax roll since the PLH has given up the right to foreclose without the consent of the mortgage lender. Leaving the defaulted assessment on the property tax roll is the only way that the assessment can remain subject to "tax sale of the Property as authorized and permitted pursuant to the laws of California" (see underlined section below). Representatives from PACE programs offering these agreements have confirmed their intention to leave defaulted properties that are subject to these agreements on the tax rolls for collection.

PACE projects are financed through proceeds from the sale of bonds. Bond holders expect to receive timely debt service payments through the timely collection of assessments. If the debt service cannot be made timely, bond holders will demand something in exchange for their willingness to wait

out the collection process. With PACE liens, that "something" is likely all or a share of the 18% interest penalty that accrues during the default period. In California, it is unprecedented for the bond holder to be incentivized by receiving a share of tax penalties. The 18% penalty has been in place for decades in order to induce property owners to pay timely since current property tax revenues are used to pay for current services such as police, fire, schools, and public health,.

The subordination terminology in these agreements is a misnomer. The actual effect of the agreement is to defer foreclosure of the property for collection purposes to the county tax collector while accruing significant penalties.

Limited/Contractual subordination is an abuse of local taxing and bonding authority.

The primary term in a Limited or Contractual Subordination Agreement is as follows:

Giveth

Taketh Away

[The Parties] agree to the subordination of the Assessment Lien, on the terms specified below, to the lien under the Deed of Trust upon the recordation thereof as follows: the PACE Lien Holder (PLH) shall not (i) commence an action in Superior Court to foreclose ("Judicial Foreclosure Action") upon the Assessment Lien if any installment of the Assessment, or of any interest thereon, together with any penalties, costs, fees, and other charges accruing thereon, are not paid when due, unless and until (A) ALH has obtain written authorization, consent or a letter of non-objection from the Lender regarding such action, or (B) the Deed of trust has been reconveyed; and (ii) have the right to receive proceeds from any foreclosure sale under the Deed of Trust, but only to the extent necessary to enable Lender to recover full payment of all amounts expressly owed and due under the obligation secured by the Deed of Trust; provided, however, that such subordination shall not in any other way affect (A) the foreclosure rights ALH or other owner of the right to receive all payments and economic benefit of such Assessment Lien, (B) the right of ALH or other owner of the right to receive all payments and economic benefit of such Assessment Lien thereafter to receive payments of Assessment installments of such Assessment Lien as the same become due and payable, or (C) reduce the amount of any such Assessment installments. ALH do not otherwise waive or subordinate the priority of the Assessment Lien to the Deed of Trust nor do ALH waive any other right or remedy to the enforcement of such Assessment Lien, including but not limited to the right of collection as to delinquent installments of the Assessment, or of any interest thereon, together with any penalties, costs, fees, and other charges accruing thereon, through the tax sale of the Property as authorized and permitted pursuant to the laws of the State of California.

Why "Limited Subordination" or "Contractual Subordination" is not really subordination:

- Tax defaulted property accrues penalties at the rate of 1.5% per month or 18% per year. (CA Revenue & Taxation Code 4103)
- Tax defaulted properties must be offered for sale by the County Tax Collector between the 5th and 9th year of default. (CA Revenue & Taxation Code 3692)
- Property subject to tax defaulted land sale can only be removed from the sale by becoming subject to an automatic bankruptcy stay (11 U.S.C. 362), by payment of the taxes and assessments in full, prior to the right of redemption terminating (CA Revenue & Taxation Code 3707), if it is deemed in the best interest of the County (CA R&T 3698.8) or has been approved for sale to a public agency or qualified nonprofit corporation through agreement proceedings (CA Revenue & Taxation Code Chapter 8).
- The priority of the assessment lien is the same as the ad valorum taxes (CA Streets & Highway Code 5898.30); therefore,proceeds from the sale of the property will be used to pay assessments including interest penalties and costs.

- The sale wipes out all other liens or encumbrances on the property. (CA Revenue & Taxation Code 3712)
- If the proceeds are insufficient to pay all taxes in full, the unpaid balance of the assessment remains a lien on the property continuing to accrue a penalty at a rate of 18% annually. (CA Streets & Highway Code 5898.30)
- If a bank forecloses on the mortgage any unpaid balance of the assessment remains a lien on the property. (CA Streets & Highway Code 5898.30) Delinquent amounts continue to accrue at the penalty rate of 18% annually. (CA Streets & Highway Code 5898.30)

Defaulted amounts must be paid in full, unless a payment plan is initiated by the taxpayer before the fifth year of default. Payment plan = 20% down and 20% by April 10th of each subsequent fiscal year.

Why is “Limited” or “Contractual“ Subordination Bad

Why is Limited or Contractual Subordination bad public policy?
The property tax penalty rate of 18% is intended to induce property owners to pay their property taxes on time. Property taxes are used to pay for Sheriff’s deputies, police officers, school teachers, public health nurses, fire fighters and other local government services. It is unprecedented for municipal bond investors to benefit from defaulted property tax payments. The 18% penalty rate is not intended to incentivize investors to purchase municipal bonds in hopes of earning high returns on defaults with high certainty of collection at tax-defaulted land-sale.

Why is Limited or Contractual Subordination bad for Property Owners?
Each year of defaulted property taxes becomes consolidated into prior years’ defaults. Defaulted taxes can only be redeemed in full. Defaulted taxes can be made subject to a payment plan which requires 20% down, and 20% payment each subsequent fiscal year on or before April 10th. The unpaid payment plan balance continues to accrue penalties at 18%.

It is common practice, if not the standard, for defaulted assessments to be stripped from the property tax roll to allow for separate collection and payment of the assessment, while leaving the remaining property taxes for later payment. “Subordination” agreements preclude the separate payment of the assessment because removing the assessment from the property tax roll eliminates the only remaining means for collection since the right to foreclosure, rests with the express permission of the mortgage lender. And, the mortgage lender is not likely to consent to a foreclosure that would wipe out their lien.

Why is Limited or Contractual Subordination bad for Lenders?
On one hand, what incentive does a lender have to approve of a foreclosure of the assessment if it will wipe out their lien? On the other hand, if the property remains in default, the lender may ultimately need to pay the taxes in order to avoid the tax-defaulted land-sale that will also wipe out their lien. The longer the property remains in default, the greater the accrual of penalties at 18% and the greater the amount necessary to redeem the defaulted property taxes. In addition, as with the property owner, the mortgage lender will not be able to pay only the assessment portion (which they could do if the assessment was stripped from the property tax roll), but will be required to pay the total amount of defaulted taxes in full.

Why is Limited or Contractual Subordination bad for Realtors?
It is unlikely that a subsequent lender in a transfer of ownership will allow the lien to remain in a defaulted state. Since the defaulted taxes will accrue penalties, the due on sale amount that must be paid to redeem all taxes will be greater, possibly significantly greater.

Why is Limited or Contractual Subordination bad for Tax Collectors and Local Government?
Increased property tax amounts and related penalties make it more difficult for tax collectors to fully recover the total amount owed in a tax defaulted land sale. Even properties subject to Teeter Plan apportionment (apportioned before actually received) can be “un-Teetered”. If the amount collected at the tax-defaulted-land sale are insufficient to pay all taxes and assessments the loss is shared on a pro-rata basis by all local taxing entities, including schools. The catch is any unpaid balance of the base property taxes wiped-off as a loss, but assessment lien balances remain a lien on the property.