Economic Innovation and Sustainability Committee
MEETING AGENDA
August 19, 2021
Upon Adjournment of Regular CSCDA Meeting

Pursuant to Governor Newsom's Executive Order, Commissioners of the California Statewide Communities Development Authority or staff may participate in this meeting via a teleconference. In the interest of maintaining appropriate social distancing, members of the public may participate in the meeting telephonically. Members of the public may observe and offer comment at this meeting telephonically by dialing 623-404-9000, Meeting ID 240 338 9861 Passcode 747188. If you are an individual with a disability and need a reasonable modification or accommodation pursuant to the Americans with Disabilities Act ("ADA") please contact info@cscda.org or 1-800-531-7476 prior to the meeting for assistance.

A. OPENING AND PROCEDURAL ITEMS

1. Roll Call.

   ____ Brian Stiger, Member
   ____ Tim Snellings, Member
   ____ Brian Moura, Member

2. Consideration of the Minutes from the July 15, 2021 Meeting.

3. Public Comment.

B. ITEMS FOR CONSIDERATION AND ACTION

4. Consideration and discussion of C-PACE structure for condominium project.

C. STAFF ANNOUNCEMENTS, REPORTS ON ACTIVITIES OR REQUESTS

5. Staff Updates.

6. Adjourn.

NEXT MEETING: Thursday, September 16, 2021 upon adjournment of CSCDA Regular Meeting.

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MINUTES

MEETING OF THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY
ECONOMIC INNOVATION & SUSTAINABILITY COMMITEE

July 15, 2021

1. Roll Call.

   Committee members participating via teleconference: Tim Snellings, Brian Moura and Brian Stiger.

   Others participating via teleconference: Cathy Bando, CSCDA Executive Director; James Hamill, Bridge Strategic Partners.

2. Consideration of the June 17, 2021 Minutes

   The Committee unanimously approved the minutes.

3. Public Comment.

   There were no public comments.

4. Consideration of Urban Ingenuity as a commercial PACE administrator.

   The Committee unanimously approved the recommendation of Urban Ingenuity to the CSCDA Commission as a commercial PACE provider.

5. Staff Updates.

   None.

The meeting was adjourned at 2:58 p.m.

Submitted by: James Hamill, Managing Director

NEXT MEETING: Thursday, August 19, 2021 after the regular CSCDA meeting.

Agenda Item No. 4

Agenda Report

DATE: August 19, 2021

TO: Committee Members

FROM: James Hamill, Managing Director

PURPOSE: Consideration and discussion of C-PACE structure for condominium project.

Background

CCG PACE Funding, LLC ("CCG PACE Funding") has asked for feedback from this Committee as to whether the Authority would provide C-PACE financing for a project in the City of Napa (the "City") that would involve the following features:

1. The Property Owner will acquire a single 8.6 acre parcel from the County of Napa (the "County").

2. Approximately 12 months after purchasing the property from the County, the Property Owner will enter into a development agreement with the City and record a parcel map creating parcels. The development agreement will change the zoning from non-residential to residential (40 units/acre). The parcel map would provide for construction of more than 4 residential units per parcel.

3. One parcel (Parcel B) will be sold to an affordable housing developer and will not be a part of the C-PACE financing.

4. Three other parcels (Parcel A, Parcel C and Parcel D) will be developed as follows:

    a. Three historic buildings will be rehabilitated, one of which will be used for retail and community purposes and two of which will be used as residential duplexes (and may be rented or sold depending upon market conditions).

    b. Other existing buildings will be razed and replaced with new residential duplexes and single-family residences.

5. The C-PACE financing will close concurrently with commencement of construction and the closing of a private construction loan. As of the closing date of the PACE financing, there will be no residential units on the property, the existing parcels will be zoned for more than four units per parcel and the value of each parcel will be in excess of $1 million.

6. The C-PACE transaction will finance energy efficiency improvements on new and existing buildings, rooftop solar on new and existing buildings and parking structures, and seismic strengthening improvements to existing buildings.

7. Three to six months after the C-PACE closing, the Property Owner will ask the City to approve a tentative tract map, which would lay out (but not create) air space parcels for the new residential units. A final map creating the air space parcels will be recorded three or more months after the tentative tract map.

8. The C-PACE financing will have a 30-year term. The Property Owner will represent to the Authority at closing that it will decide whether to own/lease the residential units or sell them based on market conditions.

9. The Property Owner will agree to include the following covenant in the Assessment Contract: "The Property Owner hereby covenants that prior to the sale of all or any portion of the Property that is intended for residential development, it will prepay the related Assessment. For the avoidance of doubt, (i) upon recordation of a final map creating air space parcels, the Assessment will be allocated to such air space parcels as set forth herein and (ii) the allocated Assessment for an air space parcel that contains or is entitled to contain residential units will be prepaid by the Property Owner prior to the sale of such residential air space parcel." This covenant is referred to as the "Prepayment Covenant."

10. If the Property Owner were to sell the residential units following project build-out, it would sell the units (and concurrently pay off the C-PACE assessment) within 36-48 months after closing.

<u>STATUTORY BACKGROUND:</u>

The proposed financing raises questions under certain provisions of California law, including Chapter 29 of Part 3 of the Improvement Act of 1911 (Streets & Highways Code §5000 et seq.):

1. Section 5898.12(e) provides: "This chapter shall not be used to finance facilities for parcels in connection with the initial construction of a residential building, unless the initial construction is undertaken by the intended owner or occupant."

2. Financings for residential properties with four or fewer units are subject to regulation under Assembly Bill 2693 (2016), Assembly Bill 1284 (2017) and Senate Bill 242 (2017).[1] Most importantly, those bills introduced consumer protections for owners of residential property with 4 or fewer units and provided for regulation of "program administrators". "Program administrators" are persons administering

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[1] AB 2693, which adopted the PACE Preservation and Consumer Protections Act, declared that "passage of this act is essential to promote standardized disclosures and protections for consumers to ensure that the Property Assessed Clean Energy program can continue to be widely used to offset the adverse impacts of years of climate change." AB 1284 added Section 22001 to the Financial Code, which directed that the law should be liberally construed and applied to promote its underlying purposes and policies, including to "protect property owners from deceptive and misleading practices that threaten the efficacy and viability of property assessed clean energy financing programs."

a PACE program on behalf of, and with the written consent of, a public agency. Public agencies are not program administrators, and the definition of "program administrator" expressly excludes a person who meets both of the following conditions:

(a) The person does not administer a PACE program that provides financing for the installation of PACE improvements on residential property with four or fewer units.

(b) The person does not administer a PACE program that provides financing for the installation of PACE improvements on real property with a market value of less than one million dollars ($1,000,000).

Violations of AB 1284, SB 242 and AB 2693 do not affect the validity and enforceability of assessment contracts entered into or bonds issued and secured by such contracts.

ANALYSIS:

Liberal Interpretation and purposes of Chapter 29. Streets & Highways Code Section 5003 provides that the Improvement Act of 1911 shall be liberally construed in order to effectuate its purposes. The purposes of Chapter 29 include (i) addressing the issue of global climate change by financing water and energy improvements, (ii) improving seismic safety of homes and buildings by financing seismic strengthening improvements and (3) protecting consumers that own property with four or fewer residential units.

The proposed financing would advance Chapter 29's purposes by providing attractive financing for PACE improvements and, as explained below, it would do so without running afoul of restrictions on residential PACE financing.

AB 1284, SB 242, AB 2693. The proposed financing would not run afoul of AB 1284, SB 242 or AB 2693 for two reasons. First, the consumer protection provisions should not apply to the financing because the PACE assessment will be made to a sophisticated real estate developer at a time when there are no residential units on the Property and the then-existing parcels will be entitled for more than four residential units per parcel. Second, CCG PACE Funding should not be subject to regulation as a "program administrator" because CSCDA has only approved CCG PACE Funding as a capital provider, and not as a program administrator.

Section 5898.12(e). The proposed financing would comply with Section 5898.12(e) because, as a result of the Property Owner's representations on the closing date that it has not decided whether to sell or own/lease the units and the Prepayment Covenant, the Property Owner is the intended owner of the residential units, at least as long as the PACE financing is outstanding.

RECOMMENDATION:

Jones Hall has indicated that it is prepared to issue an unqualified bond counsel opinion for the proposed transaction but that it would like to wait 60 days between the Commission's approval of the financing and the closing in order to accomplish "passive validation" under Code of Civil Procedure Section 863. Staff recommends that the EIS Committee authorize staff to proceed with the financing on that basis.