

If you have any questions about this Advisory or the C-PACE program, please contact:

CHRISTINE OWENS
MORGAN
203.498.4494
cmorgan@wiggin.com

ELLIOT KAIMAN
203.498.4309
ekaiman@wiggin.com

ANIKA SINGH LEMAR
203.498.4325
alemar@wiggin.com

MICHAEL MILLER
203.498.4496
mmiller@wiggin.com

This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

Property Assessed Clean Energy Financing Available to Connecticut Commercial Property Owners

Connecticut's commercial and industrial property owners and developers may now take advantage of property assessed clean energy financing ("PACE"), a tax assessment financing tool for energy efficiency and clean energy projects. This special financing is also available to owners and developers of multi-family properties with five or more units. According to a national survey conducted by Johnson Controls, PACENow and the Urban Land Institute, Connecticut joins fifteen other states that are currently accepting PACE financing applications. Connecticut enacted PACE legislation in 2012, which signaled a new municipal approach to supporting clean energy building upgrades.^[1] The legislature authorized the Clean Energy Finance and Investment Authority ("CEFIA"), commonly referred to as Connecticut's "green bank," to administer the program, subject to certain legislative requirements. CEFIA accordingly developed and published program eligibility guidelines, as well as a list of pre-qualified PACE lenders and participating energy auditors and contractors. Owners and developers may find CEFIA's program information by visiting <http://www.c-pace.com/>.

CONNECTICUT PACE

Connecticut's Commercial Property Assessed Clean Energy ("C-PACE") is a mechanism that provides commercial, industrial and multi-family property owners with the financing for up-front costs of energy efficiency and green upgrades to

their buildings. For many building owners, this capital investment often makes the cost of implementing green building upgrades prohibitive. Under C-PACE, the property tax assessment of the improved property is increased based on the amount borrowed and the financing obligation repaid as part of the property tax bill. This voluntary assessment on the property assumes the same lien priority as municipal property taxes, and the repayment obligation automatically transfers to the next property owner in the event the property is sold.

To repay the loan, the property owner pays taxes to the appropriate municipal tax authority. The authority then remits the portion associated with the C-PACE benefit assessment to the investor. This benefit assessment financing structure is not new to Connecticut's municipalities. For years, local municipalities have similarly structured financing for projects that serve a public purpose, such as sewer and water systems, parks, street lighting and sidewalks. Program supporters cite the following public purposes as associated with C-PACE: reducing greenhouse gas emissions, reducing energy costs, creating Connecticut jobs and improving air and water quality.

C-PACE financing is non-accelerating, which means that only the obligations in arrears—a relatively small portion of the total financed amount—are due in the event of default. Moreover, the energy efficiencies gained through the upgrade should serve

CONTINUED ON NEXT PAGE

Property Assessed Clean Energy Financing Available to Connecticut Commercial Property Owners CONTINUED

to increase net operating income for the building and, in turn, the property's value.

Because of the reduced risk associated with a tax-secured payment stream, owners should benefit from lower-than-prevailing market rates for similar loans. Building owners can arrange C-PACE financing with any capital provider; however, CEFIA publishes a list of pre-qualified lenders (visit <http://www.c-pace.com/site/page/view/resources#content-participating-lenders> for full list) to facilitate the process.

C-PACE ELIGIBILITY

Participating Municipality. C-PACE financing is limited to properties located within a participating municipality. To opt in, a municipality must enter into an agreement with CEFIA to assess, collect, remit and assign the benefit assessments to CEFIA in exchange for the energy improvements within the municipality. Participating municipalities include:

- Beacon Falls
- Bridgeport
- Durham
- East Hartford
- Hartford
- Middletown
- Norwalk
- Old Saybrook
- Putnam
- Simsbury
- Southbury
- Stamford
- Stratford
- West Hartford
- Westport
- Wilton
- Windham

Owners and developers with qualifying properties located in non-participating municipalities are encouraged to contact CEFIA. CEFIA will then explore the possibility of a C-PACE affiliation with the municipality.

Owner Requirements. Owners seeking C-PACE funds must be current on property tax and assessment payments. All legal owners of the property must agree to participate, and the property owner must receive the consent of any mortgage holder on the property, if applicable.

Project Requirements. Although there is no mandated minimum, due to transaction costs, CEFIA deems capital improvements above \$150,000 to be best suited for C-PACE financing. Further, only projects resulting in an energy savings-to-investment ratio greater than one—measured during the entire assessment term—are eligible. These energy savings result from either energy efficiency or clean energy upgrades. Simply stated, C-PACE is interested in projects where savings are greater than the cost to repay the loan. Finally, CEFIA requires that C-PACE improvements be permanently affixed to the building or property.

CEFIA publishes a detailed inventory of completed clean energy projects in Connecticut, illustrative of the types of projects to which C-PACE financing might apply. More specifically, CEFIA's website cites the following as "typical eligible measures":

- High efficiency lighting;
- conditioning upgrades and controls;
- High efficiency chillers, boilers, furnaces and water heating systems;
- Building enclosure / envelope improvements;

- Building automation (energy management) systems; and
- Renewable energy systems.

CONCLUSION

The C-PACE program is an innovative and adaptive use of a traditional public financing tool to fund clean energy initiatives and promote Connecticut's environmental and energy policies. Through C-PACE, owners defer up-front costs that often prevent the implementation of clean energy building upgrades. C-PACE's focus on energy efficiency is in line with the state's interest in reducing energy costs, lowering consumption and, of course, reducing state greenhouse gas emissions.

CEFIA is a client of Wiggin and Dana LLP.

[1] Public Act No. 12-2.