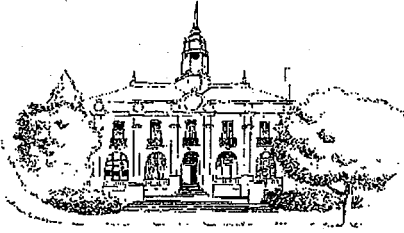


SEP 10 2013

OFFICE OF THE CITY CLERK
CITY OF BERKELEY



Kriss Worthington

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REVISED ITEM # 45b
CONSENT CALENDAR
September 10, 2013

To: Honorable Mayor and Members of the City Council
From: Kriss Worthington, District 7, Berkeley City Council
Subject: HERO Property Assessed Clean Energy Program

RECOMMENDATION

The City should proceed to act on the HERO and consider additional PACE programs in order to accomplish the goals laid out in Berkeley's Climate Action Plan. The City should not fall behind given new clarity on the direction of FHFA in terms of PACE as it will cause an immeasurable delay on providing clean, alternative energy for the city. The mission of the Climate Action Plan is to reduce the city's overall greenhouse gas emissions, and this can be accomplished through solar and energy retrofit in residential and commercial areas. Currently, there are 253 cities and counties that have implemented energy retrofitting and renewable energy projects by authorizing PACE financing. There are at least 72 cities that have followed through with the HERO Program and dozens of cities that have implemented multiple PACE programs opting for an open marketplace. Sonoma County has been successfully operating residential and commercial PACE for nearly 4 consecutive years while Placer County just restarted their residential program in July, 2013. These programs will provide additional benefits to the city as a whole through local businesses who participate in clean energy retrofits, and through community members by giving them more options to clean and affordable energy.

The Energy Commission has proposed a number of useful recommendations to the City. In addition, we too have come up with a few alternatives that can help us achieve our Climate Action goals more effectively. One recommendation is to adopt the HERO Program now and not wait for the federal government to alter its regulations further as this may take years. This will greatly delay the goals of our Climate Action Plan, and we do not want the City of Berkeley to be hindered in the path of promoting retrofit energy because many believe additional regulations are necessary. They are not. The HERO Program follows the existing rules.

An important development with FHFA and PACE was published in the Federal Register on July 31st. They announced that FHFA is withdrawing the proposed rule concerning underwriting standards for Fannie Mae and Freddie Mac (the "Enterprises") relating to mortgage assets affected by PACE programs. The proposed rule was withdrawn as of July

31, 2013. The notice is important in that it does not mention the other potential actions specified previously by the FHFA and goes on to state:

"FHFA does not contemplate altering its policy regarding certain lien-priming energy retrofit loan programs at this time, but will continue its policy review of lending programs that would support energy retrofit and might be appropriate for purchase by the regulated entities."

This clearly means that the draconian rules as first proposed by FHFA will not be formally adopted. If 72 other cities have proceeded to act on the HERO program, so should we.

In addition to the rulemaking withdrawal, the ongoing change in leadership of the FHFA shows that the proposed letter to the agency is not needed at this time. The current FHFA director Ed DeMarco has been seen as controversial, and the agency is currently being sued on the issue of affordable housing. President Obama has already nominated Congressman Mel Watt to replace DeMarco. Congressman Watt has been an ongoing supporter of affordable housing and environmental issues.

So far, the city has reduced community-wide emissions by 8% since 2000, and hopes to achieve an estimated additional 15% reduction by 2020. In order to achieve this goal, the City should proceed to act on the HERO Program and consider additional PACE programs.

BACKGROUND

HERO is a Property Assessed Clean Energy (PACE) program similar to the innovative Berkeley FIRST initiative that the City piloted in 2008. The HERO Program is a public-private partnership that provides low cost financing to residential and commercial property owners for energy efficiency and renewable energy improvements to their homes and businesses. There is no cost or risk to the City of Berkeley to offer the Program to their property owners. PACE programs intend to provide financing for solar installations and energy and water upgrades and enable the homeowner to repay the cost of the financing on their property tax bill. PACE financing is an innovative and effective tool for lowering the upfront cost of energy upgrades and amortizing the cost over time that until now has seen limited results. It is an important tool that can assist communities to achieve their energy and climate action goals and fortunately there is new clarity with FHFA making good public policy to act now.

FISCAL IMPACTS

None.

CONTACT PERSON

Kriss Worthington, Councilmember, 981-7171

Savana Manglona, Intern for Councilmember Kriss Worthington, 981-7171

Attachments:

1. Federal Register Notice
2. List of cities that have adopted the HERO and PACE programs

Proposed Rules

Federal Register

Vol. 78, No. 147

Wednesday, July 31, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1254

RIN 2590-AA53

Enterprise Underwriting Standards

AGENCY: Federal Housing Finance Agency.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Federal Housing Finance Agency (FHFA) is withdrawing the proposed rule published in the *Federal Register* on June 15, 2012, concerning underwriting standards for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), (together, the Enterprises) relating to mortgage assets affected by Property Assessed Clean Energy (PACE) programs.

DATES: The proposed rule published June 15, 2012, at 77 FR 3958, is withdrawn as of July 31, 2013.

FOR FURTHER INFORMATION CONTACT: Alfred M. Pollard, General Counsel, (202) 649-3050 (not a toll-free number), Federal Housing Finance Agency, Constitution Center, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

This rulemaking was initiated in response to a preliminary injunction issued by the U.S. District Court for the Northern District of California in 2011. The case challenged actions by FHFA to address certain energy retrofit lending programs administered by state or county governments. The District Court injunction made clear that, during pendency of court review and the ordered rulemaking, the determination of the Agency remained in place, specifically that Fannie Mae and Freddie Mac should take appropriate action to avoid purchasing new or

refinanced loans that were encumbered by this retrofit lending program that created a priority ahead of the Enterprise lien priority.

As required by the preliminary injunction, FHFA published an Advanced Notice of Proposed Rulemaking at 77 FR 3958 (January 26, 2012) and received comments from individuals, government entities, businesses and scientific groups. Subsequently, FHFA published a Notice of Proposed Rulemaking at 77 FR 36086 (June 15, 2012) that proposed maintaining the current Agency directive or guidance as well as considering alternatives that might permit some alteration of those Agency actions. On August 9, 2012, the District Court, which had not acted to direct publication of a Final Rule, ordered that the Agency should complete the rulemaking, moving to a Final Rule under a set timeframe; *California ex. Rel. Harris v. Federal Housing Finance Agency*, 894 F.Supp.2d 1205 (N.D.Ca. 2012).

FHFA appealed the District Court rulings to the Ninth Circuit Court of Appeals. FHFA objected to the District Court's orders because they interfered with the exercise of Agency powers and authorities as provided by Congress in the Housing and Economic Recovery Act of 2008. Two other circuit courts had ruled in FHFA's favor in similar cases; see *Town of Babylon v. FHFA*, 699 F.3d 221 (2nd Cir. 2012) and *Leon County, Florida v. FHFA*, 700 F.3d 1273 (11th Cir. 2012). Specifically, in the case of Fannie Mae and Freddie Mac, a bar on judicial review of conservator decisions contained in the Act limited court review. Also, the Agency asserted and the Ninth Circuit agreed that the challenged Agency actions involved the exercise of core conservatorship powers. Therefore, the District Court orders were invalid pursuant to the broad congressional bar against judicial action, such as those taken by the District Court, that would affect the exercise of the Conservator's powers and functions. On March 19, 2013, the Ninth Circuit overturned the District Court, vacated its direction to the Agency and dismissed the case against FHFA; *County of Sonoma v. FHFA*, 710 F.3d 987 (9th Cir. 2013). The Ninth Circuit ruling was a final disposition of this case.

II. Withdrawal of Proposed Rule

FHFA is withdrawing the court-ordered rulemaking on this subject. FHFA does not contemplate altering its policy regarding certain lien-priming energy retrofit loan programs at this time, but will continue its policy review of lending programs that would support energy retrofits and might be appropriate for purchase by the regulated entities.

III. Regulatory Classification

Since this notice withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rulemaking and therefore is not within the scope of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735 or the Regulatory Flexibility Act, 5 U.S.C. 601-612.

Dated: July 24, 2013.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2013-18425 Filed 7-30-13; 8:45 am]

BILLING CODE 8070-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA-2013-0650; Notice No. 23-13-01-SC]

Special Conditions: Eclipse, EA500, Certification of Autothrottle Functions Under Part 23

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Eclipse EA500 airplane. This airplane as modified by Innovative Solutions and Support (IS&S) will have a novel or unusual design feature(s) associated with the autothrottle system (ATS). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

2. Municipalities with the HERO Program

Adelanto	Colton	Jurupa Valley	Needles	San Bernardino	Upland
Apple Valley	Corona	La Canada Flintridge	Newport Beach	San Bernardino County	Victorville
Azusa	Covina	La Verne	Norco	San Dimas	Vista
Baldwin Park	Diamond Bar	Lake Elsinore	Oceanside	San Gabriel	West Covina
Banning	Eastvale	Loma Linda	Ontario	San Jacinto	Wildomar
Big Bear Lake	El Segundo	Lomita	Perris	San Marcos	Yucaipa
Bradbury	Fontana	Menifee	Pomona	San Marino	Yucca Valley
Brea	Grand Terrace	Monrovia	Rancho Cucamonga	South El Monte	
Calimesa	Hemet	Montclair	Redlands	South Pasadena	
Canyon Lake	Hermosa Beach	Montebello	Rialto	Temecula	
Chino	Hesperia	Monterey Park	Riverside	Temple City	
Chino Hills	Highland	Moreno Valley	Riverside County	Turlock	
Citrus Heights	Industry	Murrieta	Rosemead	Twentynine Palms	

3. Municipalities with PACE

Adelanto	Commerce	Hayward	Moorpark	Rocklin	Selma
Alameda	Contra Costa County	Healdsburg	Moreno Valley	Rohnert Park	Shafter
Alameda County	Corona	Hemet	Morgan Hill	Rosemead	Simi Valley
Albany	Coronado	Hermosa Beach	Morro Bay	Roseville	Solano Beach
Apple Valley	Cotati	Hesperia	Mountain View	Sacramento	Solano County
Arroyo Grande	Covina	Highland	Murrieta	Sacramento County	Stockton
Arvin	Cupertino	Hillsborough	Napa County	Salinas	Sonoma
Atascadero	Daly City	Hollister	Needles	San Benito County	Sonoma County
Atherton	Davis	Huron	Newark	San Bernardino	South El Monte
Auburn	Del Mar	Industry	Newport Beach	San Bernardino County	South Pasadena
Azusa	Del Rey Oaks	Jurupa Valley	Norco	San Bruno	South San Francisco
Bakersfield	Diamond Bar	Kerman	Oakland	San Buenaventura (aka Ventura)	Stockton
Baldwin Park	Dixon	Kern County	Oceanside	San Carlos	Sunnyvale
Banning	Dublin	King City	Ojai	San Diego	Taft
Belmont	East Palo Alto	Kingsburg	Ontario	San Diego County	Temecula
Benicia	Eastvale	La Canada Flintridge	Orange Cove	San Dimas	Temple City
Berkeley	El Paso De Robles	La Mesa	Oroville	San Francisco	Thousand Oaks
Big Bear Lake	El Segundo	La Verne	Oxnard	San Gabriel	Tulare
Bradbury	Elk Grove	Lake County	Pacific Grove	San Jacinto	Turlock
Brea	Emeryville	Lake Elsinore	Pacifica	San Joaquin	Twentynine Palms
Brisbane	Encinitas	Lemon Grove	Palm Springs	San Jose	Union City
Burlingame	Escondido	Lincoln	Paló Alto	San Juan Bautista	Upland
Butte County	Exeter	Livermore	Paradise	San Leandro	Vacaville
Calimesa	Fairfield	Loma Linda	Perris	San Luis Obispo	Vallejo
Calipatria	Farmersville	Lomita	Petaluma	San Luis Obispo County	Ventura County
Camarillo	Fillmore	Loomis	Piedmont	San Marcos	Victorville
Campbell	Firebaugh	Los Altos	Pittsburg	San Marino	Vista
Canyon Lake	Folsom	Los Altos Hills	Placer County	San Mateo	Wasco
Capitola	Fontana	Los Gatos	Pleasanton	San Mateo County	Watsonville
Carlsbad	Foster City	Marin County	Pomona	Sand City	West Covina
Carmel-By-The-Sea	Fowler	Marina	Port Hueneme	Sanger	West Sacramento
Chico	Fremont	Menifee	Portola Valley	Santa Clara	Wildomar
Chino	Fresno	Menlo Park	Poway	Santa Clara County	Windsor
Chino Hills	Fresno County	Millbrae	Rancho Cordova	Santa Cruz	Winters
Chula Vista	Galt	Milpitas	Rancho Cucamonga	SANTA CRUZ COUNTY	Woodlake
Citrus Heights	Gilroy	Monrovia	Redlands	Santa Paula	Woodland
Clearlake	Gonzales	Montclair	Redwood City	Santa Rosa	Woodside
Cloverdale	Grand Terrace	Monte Sereno	Reedley	Santee	Yolo County
Clovis	Greenfield	Montebello	Rialto	Saratoga	Yuba City
Colfax	Grover Beach	Monterey	Ridgecrest	Scotts Valley	Yucaipa
Colma	Half Moon Bay	Monterey County	Riverside	Seaside	Yucca Valley
Colton	Hawthorne	Monterey Park	Riverside County	Sebastopol	