PROGRAM GUIDEBOOK: CPACE PROGRAM

Deschutes County, OREGON

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I. Introduction

ABOUT CPACE

Deschutes County (the "County") administers a Commercial Property Assessed Clean Energy ("CPACE") financing program (the "CPACE Program" or the "Program"). The CPACE Program allows owners of eligible commercial property to obtain long-term financing from private capital providers for certain qualified improvements. While the financing is repaid to the Capital Provider, the CPACE Act directs the County to impose a voluntary benefit assessment and record a lien (the "CPACE Lien") on the property. This approach to financing has been used by programs like CPACE on thousands of properties in more than 31 states and the District of Columbia.

The Oregon Statutes (ORS 223.680 and ORS 223.685) authorize local governments to establish property assessed financing programs that help property owners finance energy, water, renewable, and seismic improvements to qualifying real property. The financing is secured with a lien on the benefitted property (Benefit Assessment Lien) with the same priority as a lien for the assessment for local improvements. The local improvement lien is an established mechanism used by municipalities for decades to finance projects that provide a public benefit such as street improvements, water, sewer and street lighting.

Individual cities and counties may now take action to create their own CPACE programs and help buildings become more efficient and resilient. Creating a county CPACE program is simple: first, a city/county adopts a resolution and guidelines that govern how its CPACE program works. Second, since the repayment of the CPACE financing is between a private lender and a property owner, when the lender's lien against the property is filed, a county only has to review the lien application for compliance with the CPACE state law, and then record a unique agreement that includes the acknowledgment of a special property "benefit assessment" by the city/county.

In Oregon, CPACE financing is available in four categories: energy efficiency, renewable energy, water conservation, and seismic rehabilitation improvements. Improvements that reduce greenhouse gas emissions would qualify, provided that the improvements also conserve energy or result in renewable energy improvements. A voluntary CPACE loan is secured by a senior lien on the property and paid back over time; tax liens and other government assessments remain superior to the CPACE lien. Like other assessments, CPACE financing is non-accelerating, which means only current or past due payments can be collected, while future payments are the responsibility of whomever owns the property at the time. The CPACE repayment obligation transfers automatically to the next owner if the property is sold. In the event of default, only the payments in arrears are due. This arrangement spreads the cost of qualifying improvements – such as energy-efficient HVAC equipment, upgraded insulation, new windows, solar installations, or seismic upgrades – over the useful life of the measures.

The Program exists as a function of Oregon's CPACE legislation and the rules established by the County. No change in the Program or in Oregon's CPACE legislation will affect a property owner's obligations to pay CPACE assessments incurred under the Program prior to such changes.

OR-PACE Program Guidebook

This Guidebook was developed to help launch CPACE programs. A major benefit to using a ready-made and legally reviewed program is that it allows counties, property owners, contractors, and capital providers to follow a standard set of rules. This is critical in attracting the broadest capital investment to CPACE projects.

In this document you can find information about:

- Statutory and programmatic eligibility requirements for CPACE properties and projects in Deschutes County.

- Process for applying for CPACE project approval.

II. Benefits of CPACE

CPACE offers benefits to building owners, developers, municipalities, mortgage holders, and building professionals.

For Building Owners and Developers: One of the biggest barriers to converting potential projects to completed projects for efficiency and seismic upgrades are the up-front cost of the types of measures identified in the statute as qualifying improvements. CPACE financing typically requires little up-front investment, and qualifying improvements improve property value. Energy efficiency measures, in particular, also lower operating costs. In addition, CPACE financing has the following benefits:

- **Up to 100%, long-term financing**. Many owners lack the capital to complete efficiency and seismic improvements. All direct and indirect costs incidental to the qualified improvements can be wrapped into CPACE financing.

- **Transferrable upon sale**. Some owners may want to sell the building before the financing is repaid. The CPACE lien and assessment are attached to the property and transfers to the new owner.

- **Cash flow benefits**. CPACE financing may be repaid over the useful life of the improvements, which because of the long-term financing options can have positive effects on cash flow.

- **Triple-net and Full-net leases may allow pass-through of assessment installments to tenants**. Under triple/full net leases, CPACE payments can be passed along to tenants, who also typically derive benefit from any energy savings through reduced operating costs.

For Energy Auditors, Architects, Building Engineers, and Contractors: By allowing a property owner to access 100% up-front financing for longer terms than are typically available for conventional financing, more substantial efficiency and seismic improvements are now more affordable with CPACE. Energy auditors, architects, engineers, and contractors can suggest CPACE financing as a way for their clients to implement needed energy or seismic upgrades that might otherwise be unaffordable. Since the demand for building efficiency and seismic improvements will grow in a CPACE-enabled jurisdiction, CPACE is a powerful business growth catalyst for building professionals like energy auditors and contractors.

For Cities/Counties: CPACE is an economic development tool. By making it more affordable for building owners to make major improvements to their buildings, local building stock value is enhanced, and more jobs are created. Energy, water, and seismic upgrades create a more competitive environment for retaining and attracting new businesses by lowering energy costs and improving the structural soundness of buildings. Upgraded buildings can generate higher property tax payments for the city/county. Energy upgrades also typically reduce greenhouse gases and other pollutants, which facilitates adherence to city, county, or state climate action plans or goals.

For Existing Lien Holders: CPACE improvements can enhance property value and typically improve a building's longevity, thereby reducing the risk of property value decline over time. In addition, CPACE financing is non-accelerating, meaning only current or past due annual payments can be collected each year while future payments stay with the property. As such, existing mortgage holders see their collateral improved without substantial increase in credit risk and with only a modest impact on lien priority. CPACE financing is not permitted without the consent of all existing lien holders and, under certain circumstances, the holders of certain other obligations encumbering commercial residential property.

III. CPACE Financing Program Rules

The purpose of this Program Guidebook is to provide standard guidelines to use in establishing efficient and effective CPACE programs that are consistent from across Oregon State.

This Program Guidebook (the "Guidebook") is prepared as required by the CPACE Act, at the direction of the Deschutes County Board of County Commissioners, and is approved in connection with, and as an attachment to, the CPACE Resolution, Resolution No 2022 – 023. Capitalized terms used herein, but not defined herein, have the meaning given to such terms in the CPACE Ordinance, Ordinance 2022 - 005.

The Guidebook establishes guidelines, eligibility, approval criteria, and an application form for the administration of the CPACE Program for the County. The CPACE Program enables financing for commercial property owners ("Property Owners") to make certain energy efficiency, renewable energy, water conservation, and seismic rehabilitation improvements (each, a "Qualified Improvement") as described in the CPACE Act and further clarified in this Guidebook.

Qualified Improvements, including all eligible costs that are to be financed as described in a project application (the "Project Application") approved by the Program, constitute a "Qualified Project." Property Owners may receive funding for their Qualified Improvements only from qualified private investors ("Capital Providers") pursuant to a separate Financing Agreement negotiated between the Property Owner and Capital Provider (a "Financing Agreement").

In the following numbered subsections, a reader can find information about:

- Statutory and programmatic eligibility requirements for CPACE project financing in Oregon State; and,
- The appropriate steps and forms needed for Deschutes County to receive and process a CPACE project lien application.

1. Establishment of CPACE Program Boundaries

Deschutes County adopted Resolution No 2022-023 on April 20, 2022 and Ordinance 2022-005 on May 4, 2022, establishing the CPACE Program for all eligible commercial properties within the boundaries of the Deschutes County, including both incorporated and unincorporated territory (the "Region").

2. Administration of Program; Authorized Officials

The County Administrator's Office is designated and authorized to review each Project Application to confirm that it is complete and contains no errors on its face. The County Administrator's Office will then execute the Benefit Assessment Agreement and CPACE Lien documents on behalf of the County and record them with the real property records.

As part of Program operation, the County Administrator's Office will:

- Accept Project Applications (see Attachment A, Application) from Property Owners and Capital Providers for prospective CPACE projects.
- Review the Project Application to determine conformance with the Application Checklist (See Attachment B).
- Approve/conditionally approve/disapprove the Project Application and communicate to applicant.
- Execute the CPACE Notice of Benefit Assessment and CPACE Lien.
- Record the Notice of Assessment Interest and Assignment.

3. Eligibility Requirements

Eligible Property means any privately-owned commercial, industrial, agricultural, or multi-family real property of five (5) or more dwelling units located within the boundaries of the Region (including properties owned by a not-for-profit organization).

Ground leases on Eligible Property are permitted, so long as all requirements of the CPACE Ordinance are met, including requiring the Property Owner to enter into a Benefit Assessment Agreement. On ground-leased property, therefore, the assessment and CPACE Lien encumber the fee interest in the property, not the ground leasehold.

Property Owner means an owner of qualifying eligible property, which is the record owner of title to the Eligible Property. The Property Owner may be any type of business, corporation, individual, or non-profit organization.

Qualified Improvements means a permanent improvement affixed to the real property that must meet at least one of these criteria:

- Decrease energy consumption or demand through the use of efficiency technologies, products, or activities that reduce or support the reduction of energy consumption or allow for the reduction in demand or reduce greenhouse gas emissions ("Energy Efficiency Improvement");

- Support the production of clean, renewable energy, including but not limited to a product, device, or interacting group of products or devices on the customer's side of the meter that generates electricity, provides thermal energy, or regulates temperature ("Renewable Energy Improvement");

- Decrease water consumption or demand and address safe drinking water through the use of efficiency technologies, products, or activities that reduce or support the reduction of water consumption, allow for the reduction in demand, or reduce or eliminate lead from water which may be used for drinking or cooking ("Water Conservation Improvement"); or

- Increase seismic safety through rehabilitation improvements ("Seismic Improvement").

Qualified Projects include the following:

- The acquisition, construction (including new construction), lease, installation, or modification of a Qualified Improvement permanently affixed to an Eligible Property.

- For Renewable Energy Improvements, "permanently affixed" includes Qualified Projects that are subject to a power purchase agreement or lease between the Property Owner/applicant and the owner of the subject renewable energy system, if the power purchase agreement or lease contains all of the following provisions:

a) The Renewable Energy Improvement relates to a Renewable Resource, which includes: (a) water; (b) wind; (c) solar energy; (d) geothermal energy; (e) bioenergy from biomass (like manure or wood products) or biogas (like methane); (f) renewable hydrogen; (g) wave, ocean, or tidal power; (h) Alternative fuels such as ethanol, biodiesel, renewable diesel.
b) The term of the power purchase agreement or lease is at least as long as the term of the related Benefit Assessment Agreement.
c) The owner of the Renewable Energy Improvement agrees to install, maintain, and monitor the system for the entire term of the Benefit Assessment Agreement.
d) Neither the owner of the Renewable Energy Improvement, nor the Property Owner, nor any successors in interest are permitted to remove the system prior to completion of the full repayment of the CPACE Lien.
e) After installation, the power purchase agreement or lease is paid, either partially or in full, using the funds from the CPACE financing.
f) The power purchase agreement or lease specifies the holder of the CPACE Lien is a third-party beneficiary of the power purchase agreement or lease until the CPACE Lien has been fully repaid.

- Qualified Projects include the refinancing of existing properties that have had Qualified Improvements installed and completed for no more than three (3) years prior to the date of Project Application.

Qualifying Capital Provider may be any of the following:
- a corporation, partnership, or other legal entity that provides proof that it is currently registered as a CPACE Capital Provider in two different states with CPACE programs;
- a federal or state-chartered bank or credit union; or
- a private entity, whose principal place of business is located in the state of Oregon, provided it is licensed or permitted to do business within the state and can produce its most recent audited financial statement or regulatory business filing.

Qualifying costs that can be CPACE financed include:
- Materials and labor necessary for installation or modification of a Qualified Improvement;
- Permit fees;
- Inspection fees;
- Financing or origination fees;
- Program application and administrative fees;
- Project development, architectural, and engineering fees;
- Third-party review fees, including verification review fees;
- Capitalized interest;
- Interest reserves;
- Escrow for prepaid property taxes and insurance;
- Any other fees or costs that may be incurred by the Property Owner incident to the installation, modification, or improvement on a specific or pro rata basis.
- See also the definition of Total Eligible Construction Costs in Section 5(5)(D).

4. Application Process

The Program Guide reduces the administrative burden on participating cities and counties as much as possible. Thus, the County Administrator's Office will review the Project Application Checklist for proof of compliance with the requirements of the statute that are necessary for the County to approve the application and execute the applicable documents for the proposed CPACE transaction. All applicants are encouraged to review the Project Application Checklist accompanying the Application to ensure that the types of information that the County will rely upon to verify compliance with the statute are present in the completed Application.

The process of obtaining financing under the Program starts when a Property Owner approaches a Capital Provider. The Capital Provider will work with the Property Owner to collect a number of diligence items. Once all the items have been received, reviewed, and approved by the Capital Provider, the parties should settle on the loan terms.

The general flow of the CPACE application process will be as follows:

(1) The Property Owner and the Capital Provider prepare the Project Application, consisting of Project Application, Project Application Checklist, and all supporting documents (described below). Applicants are encouraged to review the Project Application Checklist accompanying the Project Application to ensure that the types of information that the County will rely upon to verify compliance with the CPACE Act and CPACE Ordinance are present in the completed Project Application.

(2) The County Administrator's Office will have 10 business days (not including the day the application was submitted) to review and approve, conditionally approval, or disapprove of the Project Application. If the office has received an unusually high number of applications, or if review is delayed because of some force majeure event, the office may notify the applicant that the application review and approval will be delayed by no more than 10 additional business days.

(3) The County application review process is confined to confirming that the Project Application is complete and all attachments conform to these guidelines. ***County approval does not constitute endorsement of any representations that may be made with regard to the operation and any savings associated with the Qualified Improvements. All risk and liability is borne by the property owner and capital provider.*** The County Administrator's Office will review the Project Application for proof of compliance with the requirements of the CPACE Act and CPACE Ordinance that are necessary for the County to approve the Project Application and execute the applicable documents for the proposed CPACE transaction. Incomplete Project Applications will be returned to the applicant, and the County Administrator's Office will notify the applicant about which items from the Project Application Checklist were not provided or are insufficient or inaccurate on their face. If the Project Application and supporting documents comply with the Project Application Checklist, the Project Application will be approved, and the approval communicated in writing to the applicant.

(4) The Project Application may be conditionally approved if the application is complete but the attachment regarding lender consent is not yet available. Conditional approval will be treated the same as an approval, with exceptions noted below.

(5) Upon receipt of approval, the Capital Provider will pay the CPACE program fee equal to 1% of the amount financed by the Property Owner, or a minimum of $2,500 and capped at a total of no more than $15,000 to the County Administrative Services department.

(6) Upon receipt of payment the County will draft the following "Closing Document": The Notice of Benefit Assessment and CPACE Lien document. At or before closing, at the request of the applicant, the designated and authorized official will execute closing documents.

(7) If the Project Application received conditional approval, the Closing Documents executed by the County may not be released from escrow unless and until all contingencies (including lender consents) have been received and executed in accordance with the Program Guide.

(8) At closing, the County will record the Notice of Benefit and CPACE Lien document in the Office of the Recorder for the County. At the election of the applicant, the County may delegate the recording of the closing documents to the applicant or their designee(s).

(9) Upon confirmation of recordation, the Capital Provider will disburse funds in accordance with the Financing Agreement.

5. Application Documents

The Project Application must be submitted with the following documents appended:

- Project Application Checklist (form attached)
- Certificate of Capital Provider Qualification
- Certificate of Qualified Improvements
- Notice of Benefit Assessment and CPACE Lien

(1) For Renewable Energy Improvements or Energy Efficiency Improvements on an existing building: A certification stating that (a) the proposed Qualified Improvements will either result in more efficient use or conservation of energy or water, the reduction of greenhouse gas emissions, or the addition of renewable sources of energy or water; or (b) the subject property as a whole prior to the installation of the Qualified Improvements does not conform to the meeting the current building energy or water code for the City/county, but will do so after the Qualified Improvements are installed.

The certification must be performed by a licensed professional engineer or accredited individual or firm from the following list:

- American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE)
  - Building Energy Assessment Professional (BEAP)
  - Building Energy Modeling Professional (BEMP)
  - Operations & Performance Management Professional Certification (OPMP)
  - High-Performance Building Design Professional Certification (HBDP)
- Association of Energy Engineers (AEE)
  - Certified Energy Manager (CEM)
  - Certified Measurement and Verification Professional (CMVP)
  - Certified Energy Auditor (CEA)
- Building Performance Institute
  - Energy Auditor
- Investor Confidence Project
  - ICP Quality Assurance Assessor

Other professional entities may be accepted by the County Administrator's Office at its discretion.

(2) For Renewable Energy Improvements that are solar photovoltaics, a North American Board of Certified Energy Practitioners (NABCEP) PV design specialist certification is acceptable, or a licensed Electrical Engineer, Building Energy Assessment Professional (BEAP), Building Energy Modeling Professional (BEMP), Certified Energy Manager (CEM), Certified Measurement and Verification Professional (CMVP), or Certified Energy Auditor (CEA). Other professional entities may be accepted by the County Administrator's Office at its discretion.

(3) For Seismic Improvements on an existing building: A Tier 1 and Tier 2 building performance report that conforms to American Society of Civil Engineers and the Structural Engineering Institute 41 - Basic Performance Objectives for Existing Buildings (unless a Tier 3 evaluation is required by ASCE 41) is required on all Seismic Rehabilitation Improvement projects. All ASCE 41 evaluation must be performed by a State licensed structural engineer. The evaluation must justify the cost measures included in the Application as cost-effective.

(4) For New Construction:

(A) Relating to energy or water efficiency, certification by a licensed professional engineer stating that each proposed Qualified Improvement will enable the subject property to exceed the applicable energy efficiency, water efficiency, or renewable energy code requirements. If the building as a whole performs above code, all energy and water-related improvements are eligible for financing; or, alternatively, 30% of the Total Eligible Construction Costs qualify for CPACE financing.

(B) "Total Eligible Construction Costs" or "TECC" means all direct and indirect costs of materials, labor, and soft costs related to the design, installation, and construction of the new structure. Soft costs may include, for example, architecture and engineering fees, energy modeling costs, surveys, and development fees and financing costs. Costs that are excluded from TECC include the costs of land acquisition, off-site improvements, site permitting, environmental testing and remediation, and equipment not permanently installed on the property.

(5) Term of Benefit Assessment:

For all Qualified Improvements, the licensed engineer, individual or firm providing the certification of eligibility of the Qualified Improvements must attest that the proposed term of the financing does not exceed the weighted average effective useful life of the proposed Qualified Improvements and that the Qualified Improvements are permanently affixed, as described in this Guidebook.

6. Closing Document

The following document requires the signature of the County and shall be part of the closing of any CPACE transaction.

- Notice of Benefit Assessment and CPACE Lien (Form attached)

7. Interest Rates

Interest rates are negotiated in a Financing Agreement between the Property Owner and the Capital Provider. The County has no role in reviewing, setting, or opining on such interest rates or other aspects of the Financing Agreement. Market forces – such as competition, the intended use of the property, potential risk –will affect the terms negotiated by the Property Owners and Capital Providers.

8. Billing and Collection of Assessments

Billing, collection and enforcement of delinquent CPACE Liens or CPACE financing installment payments, including foreclosure, remain the responsibility of the Capital Provider, and the terms are negotiated within the Financing Agreement.

9. Enforcement of CPACE Lien

At the Capital Provider's discretion, a delinquent account can be referred to the County for enforcement through the Local Improvement District collection process outlined in ORS 223.505 to 223.650. The County is entitled to recover its costs during the enforcement proceeding. Further details are in the Capital Provider agreement in the Program Documents.

10. Program Fee

The County, as compensation for time and costs incurred in the establishment of the CPACE Program, including the CPACE Ordinance, this Guidebook, the draft documents, as well as for reviewing a Project Application for completeness and executing the Benefit Assessment Agreement, CPACE Lien, and Assignment, is entitled to a fee equal to 1% of the amount financed by the Property Owner, or a minimum of $2,500 and capped at a total of no more than $15,000. The Property Owner must pay this fee to the County at the closing of the transaction between the Property Owner and the Capital Provider, and such payment is a condition precedent to recording.

11. Term of a Benefit Assessment; Calculation of Useful Life of Qualified Improvements

The maximum term of a Benefit Assessment may not exceed the useful life of the Qualified Improvement, or weighted average life if more than one Qualified Improvement is included in the Qualified Project.

12. Form of Closing Documents

The Program has adopted form Closing Document: Notice of Benefit Assessment and CPACE Lien. A Property Owner and Capital Provider may adapt the form to the needs of their particular transaction but must not modify or omit any material substantive terms contained in the form.

13. Written Consent from Lienholder(s) Required

Before entering into a Benefit Assessment Agreement with the County, and pursuant to Oregon Statutes 223.680(6)(a) and (b) and 223.685(5)(a) and (b), the Capital Provider must obtain, and the Project Applications must show proof of notice and written consent for the placement of the assessment and CPACE Lien from any holder of a lien, mortgage, or security interest in the real property.

If the consents are executed at closing, the signatures of the County to the Closing Documents will be held in escrow and will not be released until the consents are obtained. After closing, at the election of the County Administrator's Office, an amended Project Application with the consents attached must be sent to the County Administrator's Office. Capital Providers are responsible for providing their own form of consent that conforms to the CPACE Ordinance and CPACE Act.

14. Provisions for Marketing and Participant Education

This Guidebook will be made available to the public on the County's website. It is determined that there is no need for marketing and participant education at this time. It is presumed that Property Owners and Capital Providers understand the principles and processes associated with CPACE financing and will look to the Guidebook for understanding and clarification of the County CPACE program.

15. County Has No Liability or Financial Responsibility

As detailed in the Benefit Assessment and Assignment Agreements, neither the County, its governing body, executives, nor employees are personally liable as a result of exercising any rights or responsibilities granted under this program. The County shall not pledge, offer, or encumber its full faith and credit for any lien amount under the CPACE program. No public funds may be used to repay any CPACE financing obligation.

PROGRAM DOCUMENTS

- CPACE Application
- CPACE Application Checklist
- Certificate of Capital Provider Qualification
- Certificate of Qualified Improvement
- CPACE Notice of Benefit Assessment and CPACE Lien