



# USER GUIDE

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GOVERNOR'S OFFICE OF  
**ENERGY DEVELOPMENT**  
*Advancing Utah's Energy Future*

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*Disclaimer: The Governor's Office of Energy Development (OED) makes no representations as to whether a particular project will be financed or will generate the estimated energy savings. Throughout this guide, OED makes suggestions based on nationally recognized best practices for administering and completing C-PACE projects. Further terms and conditions detailing OED's responsibilities can be found at the end of this guide.*

# OVERVIEW

## HOW TO USE THIS GUIDE

Welcome to Utah commercial property assessed clean energy (C-PACE). This guide describes how the C-PACE District works and offers recommendations for implementing C-PACE projects. The guide is intended to inform all parties participating in C-PACE—including property owners, commercial real estate developers, energy efficiency and renewable energy contractors, mortgage holders, capital providers, and communities. The first section covers the C-PACE District and operations in detail; you can also refer to the Table of Contents to find the section that is most relevant to you.

**Note that this guide only applies to participants in the C-PACE District that is administered and operated by the Governor’s Office of Energy Development (Utah Code Ann. § 11-42a (2017)). Cities and counties seeking information about self-administering C-PACE may refer to [Utah Code Ann. § 11-42a-106 \(2017\)](#).**

## PROGRAM OVERVIEW

C-PACE helps property owners in Utah access private-sector financing for the installation of building improvements that can reduce energy consumption and can increase the value of their property. The [Governor’s Office of Energy Development \(OED\)](#) was named in the statute to direct and administer C-PACE projects through the C-PACE District, which can benefit the state’s economy through new investment, job opportunities, energy savings, and improved air quality.

More than 30 states have passed legislation enabling C-PACE, among them Utah, which first passed enabling legislation in 2013. The statute authorized local governments to offer commercial and industrial property owners a unique mechanism for financing energy efficiency, renewable energy, and water efficiency improvements to their buildings. [S.B. Bill 273](#), enacted in March 2017, amends the earlier legislation by expanding the scope of eligible projects, establishing a statewide C-PACE District, and more clearly defining the process of developing and financing projects. The complete statute can be found at [Utah Code Ann. § 11-42a \(2017\)](#) (the “C-PACE Act”).

C-PACE financing can be provided by capital providers in an open market that provides property owners with competitive, private financing. The financing is secured through a voluntary energy assessment lien levied against the owner’s property<sup>1</sup> and repaid to the capital provider. The financing term is typically based on the useful life of the improvements and can extend up to 30 years. Because the long-term financing can cover up to 100 percent of a building’s modernization project cost and often requires no money down, C-PACE may enable property

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<sup>1</sup> Utah Code 11-42a-301

owners to make substantial upgrades to their buildings. The project's energy savings may outweigh the C-PACE payments, which creates positive cash flow for the property owner, whose upgraded building may be more valuable after a C-PACE project.

In Utah, and many other states, C-PACE is also available to real estate developers who design and construct buildings that use equipment that is more energy efficient than what is required by building code. The financing may help developers fill gaps in their financing plan.

Note that per the statute, OED can administer projects statewide through the C-PACE District as long as the city or county (governing body) opts in.<sup>2</sup>

## PROGRAM BENEFITS

C-PACE offers multiple benefits to a broad range of stakeholders, including property owners and developers, contractors, capital providers, mortgage holders, and communities.

### Property Owners

C-PACE may help property owners reduce their operating costs, improve the value and market competitiveness of their asset, meet energy performance goals, and increase the cash flow from their building. C-PACE does this in several ways:

#### **Up to 100% Financing**

Many owners lack the capital they need to pay for beneficial improvements. C-PACE can solve this problem by providing up to 100 percent,<sup>3</sup> long-term (up to 30 years)<sup>4</sup> financing for eligible improvements. Actual or estimated overhead costs can be included in the financing.<sup>5</sup>

#### **Long-term Financing**

While commercial real estate lenders typically provide five to 10-year financing, the longer-term (up to 30 years), fully amortized nature of C-PACE financing can allow building owners to pursue more capital-intensive, comprehensive upgrades. The maximum term is typically set at the weighted average useful life of the improvements. The energy cost savings that result from the improvements may cover all or a portion of the C-PACE payments.

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<sup>2</sup> Utah Code 11-42a-106

<sup>3</sup> Utah Code 11-42a-102

<sup>4</sup> Utah Code 11-42a-205

<sup>5</sup> Utah Code 11-42a-102

**No Personal Guarantee**

C-PACE is property-based financing secured by an assessment (lien) on the property. As a result, C-PACE capital providers typically do not require the property owner to provide a personal guarantee.

**Transfers Upon Sale**

Property owners who sell their property before the assessment is repaid have the option to transfer the repayment obligation to the next owner.<sup>6</sup>

**Cost Recovery**

C-PACE may help solve the split incentive or misalignment of incentives that arises between owners and tenants. Owners may be less likely to undertake comprehensive improvements when their tenants receive the financial benefits, such as lower utility bills. Under some leases, the C-PACE structure may enable an owner to pass the benefit assessment on to the tenants, potentially solving the split incentive. Property owners are encouraged to consult with their attorney or accountant on this matter.

**Developers**

Developers or owners planning new construction projects can use C-PACE financing to fill gaps in their financing plan, provided they design their building to exceed the current international energy conservation code (2015 IECC, ASHRAE 90.1-2013) by at least 5 percent.

**Contractors**

C-PACE enables a property owner to access up to 100 percent financing<sup>7</sup> for existing buildings to cover the costs related to the financed eligible improvements. Finance terms (up to 30 years)<sup>8</sup> are typically based on the weighted average useful life of the improvements, thereby making eligible energy efficiency, water conservation, renewable energy projects and seismic upgrades affordable. This means contractors may be able to close more projects and expand their business.

**Capital Providers**

C-PACE projects administered through the C-PACE District are secured by a benefit assessment (known as an “energy assessment lien” in Utah). Like all public benefit assessments, the energy assessment lien sits in a senior position to other encumbrances on the property, and has the same priority as, but is separate and distinct from, a lien for general property taxes.<sup>9</sup> As a result,

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<sup>6</sup> Utah Code 11-42a-301

<sup>7</sup> Utah Code 11-42a-102

<sup>8</sup> Utah Code 11-42a-205

<sup>9</sup> Utah Code 11-42a-301

capital providers who work with OED through its C-PACE District may receive secure financing opportunities.

### **Mortgage Holders**

OED strongly encourages the development of projects that generate energy cost savings that exceed the repayment obligation of the project. While this is not mandatory, such projects can result in increased net operating income, increased debt coverage ratio, increased value, and a greater return on investment.

In the event of a default, the assessment does not accelerate, only the amount in arrears is due.<sup>10</sup>

In Utah, energy assessments can only be placed with the consent of the person or institution holding a lien on the property.<sup>11</sup> [View a list of financial institutions that have granted consent to C-PACE projects nationwide.](#)

### **Communities**

C-PACE projects may benefit cities and counties in multiple ways. Thanks to C-PACE, the state may enjoy new investment, and our citizens may enjoy more job opportunities, greater energy savings, and improved air quality—all financed with private capital, and not taxpayer dollars.

## **KEY PARTIES TO A C-PACE TRANSACTION**

There are multiple parties to a C-PACE transaction; each plays a distinct role in the process. They include:

<b>Property Owner</b>	The legal owner of the participating property upon which the eligible improvements will be installed.
<b>Program Administrator</b>	OED is the program administrator of the C-PACE District. The program administrator may retain a third party to assist in administering and directing the operation of the C-PACE district. <sup>12</sup>
<b>Capital Provider</b>	Capital providers, i.e., third-party lenders, include trust companies, savings banks, savings and loan associations, banks, credit unions, and any other entities that provide financing to property owners for eligible improvements under C-PACE.

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<sup>10</sup> Utah Code 11-42a-303

<sup>11</sup> Utah Code 11-42a-202

<sup>12</sup> Utah Code 11-42a-106

Capital providers are responsible for underwriting each C-PACE financing transaction to determine whether to invest in the project. If they choose to invest, the capital provider will enter into a financing agreement with the property owner. The program administrator will maintain a list of capital providers that have completed C-PACE program training.

**Contractor**

The licensed contractor that performs the work required for the design and installation/construction of the eligible improvements. The program administrator will maintain a list of contractors that have completed C-PACE program training.

**Mortgage Holder**

The holder of any existing mortgage on the property under consideration for C-PACE. Written consent must be obtained from each person or institution holding a lien, e.g., mortgage, on the property prior to C-PACE finance closing.<sup>13</sup>

**Governing Body**

A local entity that may voluntarily adopt a resolution to participate in the C-PACE District, authorizing OED to administer C-PACE projects in their jurisdiction.

## KEY STEPS TO A C-PACE TRANSACTION

### 1. Application/Eligibility Determination

An interested property owner or a representative of the property owner may submit an application to the program administrator. Prior to submitting an application, the applicant should ensure that the property is located in a [jurisdiction that has opted in](#) to the C-PACE District.

The program administrator will review the material and determine whether the property owner and project are eligible for C-PACE financing.

### 2. Project Scoping

It is strongly recommended that an energy audit/renewable energy feasibility study, consistent with the best practices outlined in the Technical Standards section of this User Guide, be prepared for each project.

### 3. Mortgage Holder Consent

Written consent must be obtained from each person or institution holding a lien, e.g.,

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<sup>13</sup> Utah Code 11-42a-202



mortgage/deed of trust, on the property. Such consent must be submitted to the program administrator to facilitate the levy of the energy assessment lien with the governing body clerk and recorder, and the assignment of such lien to the capital provider.

#### 4. Underwriting/Approval

Within the parameters of the C-PACE District guidelines, capital providers establish the financing terms and conditions, financial underwriting standards, and make their own determination about whether to invest in a specific project. Once the underwriting process is complete, the capital provider may issue a conditional approval or financing commitment letter outlining the terms of the financing, including any conditions of closing. **Note that a one-time program administration fee, equal to 3 percent of the project finance amount, not to exceed \$90,000 per project, is applied to each financed project. The program administrator will provide an invoice for the fee to the capital provider.**

#### 5. Closing

Once all statutory requirements have been met, the capital provider will prepare documents for closing the transaction. The property owner and the capital provider will enter into a financing agreement that contains the financing terms and conditions that will govern the transaction.

#### 6. Levying an Assessment and Assignment

Once the program administrator has received the executed documents from the capital provider and has confirmed that all closing conditions have been met, it will delegate to the capital provider its ability to facilitate the levying of the energy assessment in the land records of the governing body, as well as the assignment of the assessment lien to the capital provider.

#### 7. Construction/Disbursement

The capital provider is responsible for managing disbursements of C-PACE financing during construction per the terms of the financing agreement. The property owner should refer to that agreement to determine the capital provider's requirements for periodic inspections, progress payments, and change orders.

#### 8. Construction Closeout

The property owner should review the financing agreement to determine the process the capital provider will require to close out the construction phase of the project and move it to the permanent financing stage. This process may include an amendment to the energy assessment to account for any adjustments to the principal amount of the energy assessment associated with capitalization of construction interest or any other cost adjustments incurred during construction of the project. If so, the capital provider will prepare an amendment and restatement of assessment payment schedule for

execution and recording with the county recorder.

## **9. Servicing/Repayment**

Upon assignment of the energy assessment lien to the capital provider, the property owner will make the C-PACE assessment payments directly to the capital provider pursuant to the financing agreement. The capital provider shall be responsible, subject to and in accordance with the terms of the financing agreement, for all billing, collection, enforcement, and administrative duties in respect of the loan, the assessment payments, and the lien.

## **10. Release and Discharge of the Energy Assessment**

Upon the full payment of the energy assessment lien, the capital provider shall file a release and discharge of the energy assessment lien on the property with the county recorder's office.

## **Who to Contact**

### **For administrative questions, contact:**

Shawna Cuan  
Program Administrator  
Managing Director of Energy Efficiency and Renewable Energy  
Utah Governor's Office of Energy Development  
(385) 235-4580  
scuan@utah.gov

### **For project development questions, contact:**

Theddi W. Chappell, CRE, MAI FRICS, AAPI and LEED AP  
Program Director  
(435) 901-1394  
TChappell@PACEworx.com

### **To initiate project pre-qualification and submit project applications, contact:**

Heather Lee  
Program Manager  
(203) 220-6952  
HLee@PACEworx.com

# PROGRAM ADMINISTRATION

## PROGRAM ADMINISTRATION

The Governor’s Office of Energy Development (OED) is the program administrator of the C-PACE District. As program administrator, OED is subject to all requirements and limitations of a state agency. As a program of OED, all direct and oversight responsibilities of the program belong to OED.

## PROGRAM REQUIREMENTS

This section outlines the guidelines that govern all participants in OED’s C-PACE District. All participants agree to adhere to the terms and conditions of the C-PACE District requirements.

<b>Service Area</b>	State of Utah, subject to local governing body participation in the C-PACE District
<b>Eligible Property</b>	Qualified commercial or industrial real property
<b>Eligible Applicant</b>	An owner of eligible commercial or industrial real property
<b>Security</b>	The financing is evidenced by a financing agreement and is secured by an energy assessment and energy assessment lien that is recorded in the county land records against the qualified real property. The energy assessment lien has priority over all other liens recorded against the property, and has the same priority as, but is separate and distinct from, property taxes.
<b>Credit Standards</b>	The property owner must be current and in good standing on all debt owed to Utah; current on all real property taxes, special assessments, and water sewer charges on the property; have no recorded notice of default, foreclosure, or delinquency on any trust deed or other lien on the property that has not been cured, and have no outstanding involuntary liens, including a lien on real property, or on the proceeds of a contract relating to real property, for services, labor, or materials furnished in connection with the construction or improvement of the property. <sup>14</sup>
<b>Eligible Improvements</b>	Eligible improvements include upgrades that are permanently affixed to commercial or industrial real property. Energy efficiency improvements must be designed to reduce energy or water consumption, and can include improvements to building envelope, insulation, heating, ventilation and air conditioning systems, lighting, energy recovery

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<sup>14</sup> Utah Code 11-42a-202

systems, water conservation and rain catchment systems, and hot water systems. Parking automation, vertical transport devices, seismic upgrades, and renewable energy systems (e.g., solar photovoltaic systems, solar thermal, wind, geothermal, micro hydro, biofuel systems) are also eligible.<sup>15</sup>

- Eligible Costs** Eligible costs include the actual or estimated costs to be incurred in connection with an energy assessment, including appraisals, legal, filing and facilitation fees, underwriting fees, placement and recording fees, escrow fees, and other incidental costs.
- Maximum Term** The maximum finance term is typically based on the weighted average useful life of eligible improvements, not to exceed 30 years.
- Payment and Servicing** The property owner remits the C-PACE assessment payments to the capital provider according to the terms of the financing agreement.
- Evidence of Ownership** A current title report is required prior to closing to show evidence of ownership and all encumbrances recorded against the property.
- Mortgage Holder Consent** Where there is an existing mortgage or deed of trust recorded against the property, the mortgage holder must be given written notification that the property owner intends to enter into a C-PACE financing agreement, which cannot proceed without the written consent of the mortgage holder.

## PARTICIPATION IN REBATE/INCENTIVE PROGRAMS

Although not required, OED strongly encourages property owners to pursue all available federal investment tax credits, utility rebates, and incentive programs in conjunction with C-PACE financing. Rebates and incentive programs may provide participants with cash payments or tax credits for implementing eligible energy and water improvements, thereby reducing overall project costs and the total amount the owner will need to finance.

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<sup>15</sup> Renewable energy systems are limited to 2 megawatts for existing customers in the public electrical utility service area.

## Program Participation Fees

Under Utah's statute<sup>16</sup>, OED's administration of the C-PACE District is designed to be self-sustaining. The project fees charged to participants are intended to cover the startup and operating costs associated with designing and administering the program. This fee is contingent on legislative approval, in accordance with Title 63J, Chapter 1 of the Utah State Code.

A one-time program administration fee, equal to 3 percent of the project finance amount, not to exceed \$90,000 per project, is applied to each financed project. This fee is typically included in the total financed amount and is due only if a project is successfully financed.

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<sup>16</sup> Utah Code 11-42a-106

# ELIGIBILITY (PROPERTY AND PROJECT)

## ELIGIBLE PROPERTIES

Properties eligible for C-PACE financing must meet two requirements. They must:

- Be located in a governing body that has opted in to the C-PACE District
- Have one of the following uses:
  - Commercial
  - Mining
  - Agricultural
  - Industrial
  - Manufacturing
  - Trade
  - Professional
  - Private or public club
  - Lodge
  - Business
  - A similar purpose
  - Dwelling purposes; and contains more than four rental units.<sup>17</sup>

New construction is also eligible. See requirements on the next page.

## ELIGIBLE IMPROVEMENTS

Improvements that are eligible for C-PACE financing must be permanently affixed to the commercial or industrial property. Examples include, but are not limited to:

- Automated building controls (such as BMS and EMS)
- Automated parking systems or parking that reduces land use
- Battery storage
- Boilers, chillers, and furnaces
- Building envelope (such as insulation, glazing, windows)
- Combined heat and power (CHP) systems
- EV chargers
- Geothermal systems
- High-efficiency lighting
- Hot water systems
- HVAC upgrades
- Hydroelectric systems
- Roof replacement that improves energy efficiency (such as reflective/cool roof, enhanced insulation)

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<sup>17</sup> Utah State Code 11-42a-102

- Seismic resiliency upgrades
- Small wind systems
- Solar PV (roof upgrade/replacement for rooftop systems is also eligible)
- Solar thermal
- Variable speed drives on motors, pumps, and fans
- Vertical transport devices (such as energy efficient elevators and escalators)
- Water efficient fixtures (such as low-flow faucets and toilets)

In addition, the cost of improvements that are directly related to the installation of eligible improvements may be eligible, e.g., roof upgrades to support a roof-mounted solar PV installation.

This list is not all-inclusive and may change over time. For a complete list of improvements, see Utah Code 11-42a-102.

## NEW CONSTRUCTION

In addition to existing building retrofits, C-PACE can be applied to new construction projects in Utah. The C-PACE financing structure can unlock capital to enable a property owner or developer to achieve higher building performance—improvements that are often “value engineered” out of a project—and may also help the developer fill gaps in their financing plan.

Applicants are required to provide total project construction costs by trade component, so the C-PACE District program administrator can evaluate the total eligible construction cost (TECC). Applicants are also required to confirm that the building will be designed to exceed the current international energy conservation code for commercial buildings in Utah (2015 IECC, ASHRAE 90.1-2013).

The C-PACE financed amount will depend on whether the current energy code is exceeded by at least 5 percent. The intent of this approach is to encourage new construction projects that consume less energy and water. As long as the project exceeds the current energy code by at least 5%, a developer may select an amount of C-PACE financing no less than 10% of the TECC and no more than 20% of the TECC.<sup>18</sup> The maximum C-PACE finance amount will not exceed 20 percent of the TECC. See the table displayed below for case examples of C-PACE eligible financing amounts.

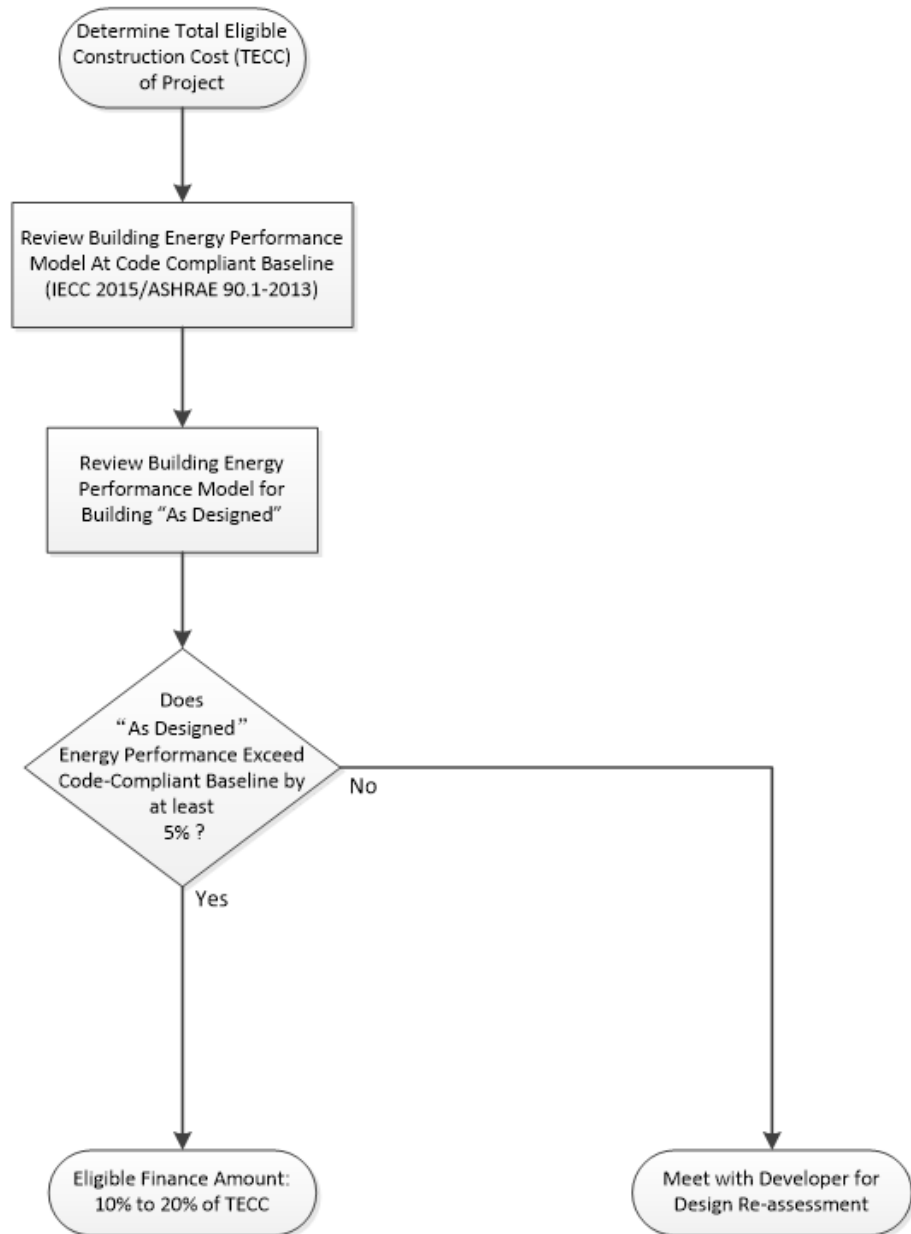
If the design is to include a renewable energy system such as solar PV, the solar PV system’s impact on building energy performance is excluded from the energy savings analysis. Such systems will be provided separately for independent evaluation by the capital provider to determine the total installed cost added to the eligible C-PACE financing amount, which is determined solely by reviewing performance against the current energy code. Based on this analysis, the capital provider will determine the maximum C-PACE financed amount for each project. If needed, the program administrator can advise and provide guidance to the capital provider and building owner.

Example: Assume Total Eligible Construction Cost (TECC) is \$10 million				
	Case 1	Case 2	Case 3	Case 4
% exceeding current energy code	5%	12%	18%	3%
% TECC selected (min. 10%, max. 20%)	10%	20%	20%	N/A
C-PACE Eligible Finance Amount	\$1 million	\$2 million	\$2 million	\$0

<sup>18</sup> Based on the modeled performance of a project built to code compared to the modeled performance of the same project built to exceed code.



## NEW CONSTRUCTION METHODOLOGY



TECC = Total Eligible Construction Cost

# PROJECT TECHNICAL RECOMMENDATIONS

## AUDIT RECOMMENDATIONS

OED strongly encourages the performance of an energy audit, water audit, or other analysis that assesses the expected energy and/or water cost savings of the improvements over their useful life. An ASHRAE Level II audit or comparable analysis is recommended. Individual capital providers may require a specific audit as part of their underwriting criteria. For renewable energy improvements, OED encourages the performance of a Renewable Energy Feasibility Study (REFS).

Failure to obtain an energy audit, water audit, or other analysis and implement the findings imposes multiple risks to the building owner. First, the building owner may face lower cash flows due to smaller energy savings. This lowered cash flow reduces the building owner's ability to repay the C-PACE assessment. Best practices nationally show that C-PACE projects should maximize energy savings in order to repay the C-PACE assessment and even generate positive cash flow.

Project applicants are responsible for all costs and fees incurred to complete the C-PACE project application, including costs associated with an audit and/or a REFS. While such costs are typically included in the project financing, in cases where the project does not move forward, the applicant will be responsible for any payments due to contractors or other third parties engaged by the owner, where applicable.

It is recommended that the REFS be performed by an experienced renewable energy professional with detailed knowledge of the renewable energy system under consideration, including technical and design issues, resource assessment, relevant policies and incentives, utility tariffs and interconnections issues, other evaluations (where necessary), and project funding mechanisms.

## ENERGY SAVINGS RECOMMENDATIONS

Under the C-PACE Act, there is no statutory requirement that the projects generate positive cash flow based on energy savings. While the statute does not require any demonstration of the savings-to-investment ratio (SIR), OED strongly encourages property owners to bring forward projects with SIRs greater than 1.0 because:

- Capital providers look favorably on projects that show positive cash flow over their lifetime,
- Mortgage holders are more likely to consent to the imposition of an energy assessment for the projects that show positive cash flow, and
- In general, the higher the SIR, the greater the demonstrated environmental benefits, e.g. CO<sub>2</sub> emissions reduction, of the project, which helps to promote the goals of C-PACE.

The SIR is calculated as the ratio of the total projected energy and water utility cost savings over the effective useful life of each improvement, divided by the total cost of those improvements, including all fees and interest charges.

For new construction, the energy savings is calculated as the incremental energy savings gained above the determined minimum requirement (energy consumption at current building energy code) as specified in the new construction (developer) section of this document.

## POST-CONSTRUCTION COMMISSIONING RECOMMENDATIONS

OED strongly encourages that a post-construction commissioning report be provided by the contractor upon project completion. The post-construction commissioning report can be performed by either a third party or the party performing the original installation of funded improvements. The report is recommended to contain, at a minimum:

- A statement that systems have been completed in accordance with the contract documents, and that the systems are performing as expected,
- Identification and discussion of any substitutions, compromises, or variances between the final design intent, contract documents, and as-built conditions,
- A description of the components and systems that exceed the owner's project requirements and those which do not meet the requirements and why, and
- A summary of all issues resolved and unresolved and any recommendations for resolution.

# BUILDING OWNER PARTICIPATION AND PROCESS

C-PACE is an innovative financing approach that provides owners of eligible properties with financing for the installation of eligible improvements. By providing up to 100 percent, long-term financing for qualified upgrades, the program may help building owners lower their operating costs and improve the value of their asset.

## BENEFITS

Many building owners can lack capital to pay for eligible improvements, which means many beneficial projects never get off the ground. C-PACE may enable building owners' access to affordable, long-term capital at competitive rates. C-PACE financing:

- Requires no upfront, out-of-pocket costs,
- Provides long-term financing (up to 30 years),
- Typically requires no personal guarantees,
- Typically lowers energy costs,
- May generate positive cash flow, and
- Can transfer to the next owner if the building is sold.

## ELIGIBILITY

Commercial or industrial real property, located within a governing body that has entered into a C-PACE District Participation Agreement with OED, may be eligible under the program, whether such buildings are existing, under construction or to be constructed, if used directly or indirectly or held for one of the following purposes or activities, regardless of whether the purpose or activity is for profit:

- Commercial
- Mining
- Agricultural
- Industrial
- Manufacturing
- Trade
- Professional
- Private or public club
- Lodge
- Business
- A similar purpose
- Dwelling purposes; and contains more than four rental units.

[View a map](#) of cities and counties that have opted in to the C-PACE District.

## PROCESS

To get started, property owners can work with a contractor or project developer of their choosing to discuss the eligible improvements that would be beneficial. Building owners who do not have a contractor in mind can [view a list of contractors](#) on the program website who have completed C-PACE training.

Next, the contractor and property owner work together to determine the optimal project that meets the property and owner needs.

Upon confirmation of the final project scenario, the program administrator will collaborate with the building owner and the contractor on next steps, which include obtaining mortgage holder consent and selecting a capital provider.

Once that is done, the capital provider will facilitate the finance closing. The program administrator will then delegate to the capital provider the ability to levy and assign the energy assessment lien to the capital provider. The capital provider, according to the terms of the financing agreement, will then commence funds disbursement and construction begins.

# NEW CONSTRUCTION DEVELOPER PARTICIPATION AND PROCESS

New construction projects present another opportunity for C-PACE financing. The C-PACE new construction financing structure can unlock capital to enable a property owner or developer to achieve higher building performance—improvements that are often value-engineered out of a project.

## BENEFITS

Property owners and developers can use C-PACE new construction financing to fill gaps in their financing plan. Developers may qualify for up to 20 percent of the total eligible construction cost provided the new building is designed to exceed the 2015 international energy conservation code (IECC) by at least 5 percent.

## ELIGIBILITY

Owners planning new eligible building construction projects can take advantage of C-PACE financing. Such new construction projects must be designed to exceed the current energy code by at least 5 percent.

## PROCESS

Applicants are encouraged to itemize total project construction costs by trade component to evaluate the total eligible construction cost (TECC). TECC includes 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 financing costs. Examples of excluded costs include land acquisition costs, off-site improvements, site permitting, environmental testing and remediation, and equipment not permanently installed on the property.

The applications that confirm that the building will be designed to exceed the current energy code for commercial buildings in Utah, IECC 2015, ASHRAE 90.1-2013, by at least 5 percent, will be eligible for up to 20 percent of the TECC.

# CONTRACTOR PARTICIPATION AND PROCESS

## Benefits

Many building owners lack the capital they need to pay for beneficial improvements, which means many of the projects that contractors propose never get off the ground. C-PACE financing can benefit contractors by helping them close more deals, including multi-measure projects that, without C-PACE, the owner may not be able to fund.

## ELIGIBILITY

Contractors who complete C-PACE training provided by OED can have their firm listed on the program website.

Note that by providing a list of contractors that have attended C-PACE training on its website, OED is not recommending or endorsing any specific contractor or warranting the reliability of any such installer.

Moreover, property owners can select the contractor of their choice. OED strongly advises property owners to use contractors who hold all applicable state and local licenses.

## PROCESS

Contractors are encouraged to engage property owners to:

- Discuss the benefits of a C-PACE project,
- Perform preliminary project scoping,
- Prepare proposals and review them with the building owner,
- Develop and optimize project scenarios, and
- Install eligible improvements.

[View a list](#) of contractors that have completed C-PACE training.

# Capital Provider Participation and Process

C-PACE is an innovative, voluntary financing program that can enable property owners to modernize eligible buildings by installing eligible improvements. Funding is provided by third-party capital providers (CP).

## BENEFITS

C-PACE is a secure investment secured by an energy assessment lien, which like all public benefit assessments, sits in a senior position to other encumbrances on the property, and has the same priority as a property tax lien. As a result, capital providers who work with the C-PACE program may receive attractive project financing opportunities.

## ELIGIBILITY

OED seeks to use C-PACE to stimulate the market through an open-market project financing model. For this reason, OED's C-PACE District is open to all capital providers. CPs who complete C-PACE training provided by OED can have their firm listed on the program website.

Note that by providing a listing of CPs that have attended C-PACE training on its website, OED is not recommending or endorsing any specific CP. Moreover, property owners can select the CP of their choice to fund their project.

## PROCESS

Capital providers interested in financing eligible projects in the C-PACE District are encouraged to download, complete, and return the [Capital Provider Application](#), found on the C-PACE District website, to OED.



# MORTGAGE HOLDER PARTICIPATION AND PROCESS

C-PACE is an innovative, voluntary financing program that can enable borrowers to modernize their building by installing eligible improvements funded with affordable, long-term financing.

## BENEFITS

Well-designed C-PACE projects may generate cost savings that may, over the finance term, equal or exceed the total finance cost. Owners of such buildings may experience improved net operating income, increased value, and a positive return on their investment.

In such scenarios the building owner's increased cash flow may result in the mortgage holder's loan being more secure, and the property may be more attractive to current and potential tenants and buyers. In addition, the assessment does not accelerate. In the event of a default, only the amount of the assessment in arrears is due.

## PARTICIPATION

C-PACE can provide up to 100 percent financing to owners of new and existing buildings, located in governing bodies participating in OED's C-PACE District, who are looking to modernize and improve the value of their eligible building. The financing, which is based on the estimated useful life of the improvements—up to 30 years—is secured by a special assessment lien, known in Utah as an energy assessment lien that is levied against the property.

The energy assessment lien is senior to all commercial mortgages and deeds of trust and is equal (*pari passu*) in priority to a property tax lien and senior to other special assessments or mortgages on the property. Because of this, any C-PACE project requires property owners to obtain the written consent of all holders of mortgages or deeds of trust on the property prior to securing C-PACE financing.

## PROCESS

A property owner who wishes to pursue C-PACE financing may seek a meeting with the mortgage holder. At the meeting, the owner will describe the program's requirements and answer the mortgage holder's questions. Assuming all parties agree that a particular project is worth pursuing, the project will proceed to development and underwriting. As part of the underwriting process, the owner will provide a summary of the project's key assumptions, e.g., financial metrics and projected cash flows to facilitate the mortgage holder's due diligence.

## GOVERNING BODY PARTICIPATION AND PROCESS

C-PACE is a voluntary financing program that can enable property owners to modernize their building by installing eligible improvements funded with affordable, long-term financing.

### BENEFITS

C-PACE may benefit the state's economy by stimulating new investment, creating job opportunities, enabling energy savings, and improving air quality.

Nationwide, more than 30 states have PACE-enabling legislation, and several others are considering it.

### PARTICIPATION

To work with OED on C-PACE projects, interested governing bodies must opt in to the C-PACE District via the C-PACE District Participation Agreement.

### PROCESS

Governing bodies who wish to authorize OED to administer projects through the C-PACE District must complete and submit the [C-PACE District Participation Agreement](#).

# General Terms and Provisions

## TAXES

Property owners are solely responsible for any local, state, or federal tax consequences of their participation in the OED-administered C-PACE District.

## CHANGES IN THE PROGRAM TERMS; SEVERABILITY

OED reserves the right to change this User Guide and the terms and provisions set forth within at any time without notice. The financing agreement executed between the property owner and the capital provider establishes the property owner's rights. This guide is only a reference document.

## DISCLOSURE OF PROPERTY OWNER INFORMATION

OED reserves the right to collect, use, and reuse data or information gathered from the C-PACE program for any purpose including but not limited to use in print, on the internet, and all other forms of media. Owner also hereby releases OED and its agents and employees from all claims, demands, and liabilities whatsoever in connection with the above.

OED is a governmental entity subject to the Government Records Access and Management Act, Utah Code §§ 63G-2-101 to 901 (GRAMA) Accordingly, certain records within possession or control, including without limitation, these standard terms and conditions, may be subject to public disclosure. Pursuant to section 63G-2-309 of GRAMA, any confidential information provided by the property owner to OED that the owner believes should be protected from public disclosure, must be accompanied by a written claim of confidentiality and a concise statement of reasons supporting such a claim.

# APPENDIX

## KEY DEFINITIONS

<b>Energy Assessment Lien</b>	The lien that is recorded against the property and establishes the voluntary benefit assessment and secures repayment of the C-PACE financing.
<b>Capital Provider</b>	The entity that will finance the eligible improvements.
<b>C-PACE Project</b>	Eligible improvements made to qualified commercial or industrial real property, whether financed entirely by C-PACE or through incentives or other sources in combination with C-PACE financing.
<b>Building Improvements</b>	Energy and/or water efficiency, parking automation, electric vehicle charging, seismic upgrades, vertical transport devices, or renewable energy improvements made to qualified commercial or industrial real property. <a href="#">View a list on the C-PACE district website.</a>
<b>Qualified Real Property</b>	Commercial, mining, agricultural, industrial, manufacturing, trade, professional, public/private club, lodge, business, similar purpose properties, and multifamily properties with five or more dwelling units located in the C-PACE District that can benefit from eligible improvements.
<b>Program Administrator</b>	OED is the program administrator of the C-PACE District.
<b>Property Owner</b>	The legal owner(s) of the qualified commercial or industrial real property (including nonprofit owners).
<b>Contractor</b>	The contractor that performs the work required for the installation/construction of the eligible improvements.

## APPLICATION FORMS

SEE [RESOURCES SECTION](#) OF THE C-PACE DISTRICT WEBSITE.

C-PACE STATE CODE [[THE "C-PACE ACT"](#)]

C-PACE LEGISLATION [[S.B. 273 ENERGY DEVELOPMENT AMENDMENTS](#)]

# TERMS AND CONDITIONS

The State of Utah, Governor's Office of Energy Development (OED), will administer a statewide commercial property assessed clean energy (C-PACE) District. OED will offer certain administrative services to allow commercial property owners to use C-PACE financing for eligible building improvements. The following standard terms and conditions apply to OED's C-PACE District.

## 1. CONFIDENTIALITY

OED is a governmental entity subject to the Government Records Access and Management Act, Utah Code §§ 63G-2-101 to 901 (GRAMA). Accordingly, certain records within possession or control, including without limitation, these standard terms and conditions, may be subject to public disclosure. Pursuant to section 63G-2-309 of GRAMA, any confidential information provided by a C-PACE stakeholder to OED that the C-PACE stakeholder believes should be protected from public disclosure must be accompanied by a written claim of confidentiality and a concise statement of reasons supporting such a claim.

## 2. NO ENDORSEMENT

Reference herein to any specific commercial products, process, or service by trade name, trademark, manufacturer, or otherwise, does not necessarily constitute or imply its endorsement, recommendation, or favoring by the State of Utah. The views and opinions of authors expressed herein do not necessarily state or reflect those of the State of Utah and shall not be used for advertising or product endorsement purposes.

## 3. DISCLAIMER OF LIABILITY

OED is a governmental entity defined by the Utah Governmental Immunity Act, Utah Code §63G-7-101, et seq. and does not waive any defenses contained therein. With respect to documents and information available under OED's C-PACE District, neither the State of Utah nor any of its employees makes any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. OED will not be responsible for any damages suffered by a C-PACE stakeholder.

## 4. NO WARRANTIES AND REPRESENTATIONS

OED makes no representations, covenants, or warranties under this agreement, other than the duties of program administrator, as outlined in Utah Code 11-42a-106. OED does not guarantee that a project will be financed, or a building owner will realize the estimated energy savings. This program is voluntary and no guarantee of work or government contract or funding is made by

OED to building owners or capital providers. OED is not responsible for any construction defects or negligence by contractors executing the C-PACE project.

## 5. ASSUMPTION OF RISK

All C-PACE stakeholders, knowing the risks described above, and in consideration of being permitted to participate in the C-PACE District, the C-PACE stakeholder agrees to, and on behalf of its successors or assigns, to assume all the risks and responsibilities surrounding its participation in the C-PACE District. To the maximum extent permitted by law, C-PACE stakeholders release, indemnify, and covenant not to sue OED from and against any present or future claim, loss or liability for injury/damages to person or property which a C-PACE stakeholder may suffer, or for which owner may be liable to any other person, during the C-PACE stakeholder's participation in the C-PACE District.

## 6. CONSENT TO COLLECT AND USE DATA

C-PACE stakeholders hereby consent to OED's collection, use, and reuse of data or information gathered from the C-PACE District for any purpose including but not limited to use in print, on the internet, and in all other forms of media. C-PACE stakeholders also hereby release OED and its agents and employees from all claims, demands, and liabilities whatsoever in connection with the above.

## 7. NO AGENCY

Nothing contained in these standard terms and conditions shall be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship. C-PACE stakeholders have no authority to act as agent for, or on behalf of, OED, or to represent OED, or bind OED in any manner.

## 8. AMENDMENTS

These standard terms and conditions may only be amended by the written agreement of OED, which amendment will be attached to these standard terms and conditions. Automatic renewals will not apply to these standard terms and conditions.

## 9. CONFLICT OF INTEREST

C-PACE stakeholders represent that none of its officers or employees are officers or employees of OED or of the State of Utah, unless disclosure has been made to OED.