

# **Create Renewable Energy Jobs and Economic Development in *Your* County or Municipality - A Manual for Establishing Renewable Energy Financing Districts**



  
New Mexico Energy, Minerals and Natural Resources Department

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## DEAR COUNTY AND MUNICIPAL OFFICIALS:

The Governor's Office, in collaboration with the Energy, Minerals and Natural Resources Department (EMNRD) and the New Mexico Association of Counties, is pleased to release a manual entitled *"PACE Programs In New Mexico: Creating Renewable Energy Financing Districts, A Manual For New Mexico Counties and Municipalities."*

The PACE (Property Assessed Clean Energy) manual serves as a guide to New Mexico's counties and municipalities to assist them with the formation of Renewable Energy Finance Districts and the implementation of PACE programs. Among other documents, it contains the necessary resolutions and ordinances to form a district, eliminating much of the up-front costs of district formation. It also serves as a toolkit to help officials and staff understand how programs operate and provides in-depth information about the financing mechanisms that make a PACE program possible.

PACE programs, enabled through the creation of Renewable Energy Finance Districts in 2009 Senate Bill 647, present an enormous opportunity for New Mexico to create jobs in the construction industry, produce energy savings for property owners, and improve our clean energy infrastructure. Most importantly, PACE accomplishes these goals without cost to taxpayers. PACE programs are perfect examples of the public sector working with private industry to produce results that will work for our state and advance our goals of economic growth and environmental mitigation.

PACE programs utilize land-secured financing districts that allow property owners to voluntarily sign up for financing and install renewable energy projects. Projects are financed through district bonds, referred to as "PACE Bonds." These bonds are secured only by liens against participating properties and not general taxpayer funds. Since the lien is secured against the land itself rather than an individual, the liability transfers from one property owner to the next upon the sale of the property – much like property taxes. Property owners then repay the obligation over the lifetime of the improvement, typically 20 years for renewable energy projects.

As we move forward with implementing PACE programs in counties around the state, EMNRD looks forward to working with local governments to help make PACE a success in New Mexico. For other questions, contact Ryan Helton, PACE Program Manager for EMNRD, at 505-476-3318 or [Ryan.Helton@state.nm.us](mailto:Ryan.Helton@state.nm.us).

Sincerely,

A handwritten signature in black ink that reads "Bill Richardson". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

## EXECUTIVE SUMMARY

This manual was created by the New Mexico Association of Counties in partnership with the New Mexico Energy, Minerals and Natural Resources Department in order to assist New Mexico counties and municipalities with the formation of Renewable Energy Financing Districts (REFDs). The formation of an REFD allows for the creation of a Property Assessed Clean Energy (PACE) program. The manual explains REFDs and PACE in detail, while providing local governments the step-by-step process to form an REFD. It also serves as a toolkit to help officials and staff understand how programs operate and provides in-depth information about the financing mechanisms that make PACE possible.

Most property owners can reduce long-term energy costs and their dependence on traditional fossil fuels by installing renewable energy improvements on their residential or commercial properties. While the positive benefits of utilizing renewable energy are evident, property owners often have concerns about the substantial upfront costs and the limited financing options available for renewable energy improvements. On average, it takes between five and twenty years to recoup the upfront costs of a renewable energy system. If a homeowner moves, which happens on average every five years in the US<sup>1</sup>, they are unable to fully recoup the upfront cost of a renewable energy system.

PACE programs utilize land-secured financing districts that allow property owners to voluntarily sign up for financing and installing energy projects. Although PACE is new, land-secured finance districts have commonly been used by counties and municipalities. In New Mexico, PACE programs are enabled by the creation of a REFD, which authorizes a district to issue bonds for the purpose of financing renewable energy projects. These bonds are secured only by liens against participating properties and not general taxpayer funds. The lien is secured against the property itself rather than an individual. The liability is transferable from one property owner to the next upon the sale of the property. Property owners repay the obligation through a special assessment over the lifetime of the improvement, typically 20 years for renewable energy projects. This manual will assist local governments in their efforts to form REFDs and PACE programs.

### **Specifically, this document:**

- **Outlines a step-by-step process for the formation of an REFD**

The manual first addresses the resources that should be identified before moving forward with district formation. It then describes the steps a county or municipality must take in order to form an REFD. It further outlines the basic legal steps of including property into the district and addresses the process of issuing bonds to

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<sup>1</sup> Restless Nation: Starting Over in America, James M. Jasper, 2000, University of Chicago Press

finance renewable energy improvements on included property. Lastly, it deals with the imposition of a special assessment on participating properties.

- **Addresses details of administrating a PACE program under an REFD**

Once the district is formed, property owners will apply to become part of the district. The next section of the manual details the process of including specific properties into the REFD while highlighting the responsibilities of the district within each step. It addresses property owner education, application, project installation, funding requests, the assessment contract and funding, and repayment. Financing options for the district are addressed in detail. It provides information about other important elements of program administration including anticipated costs, marketing, assessing program demand, and the use of program consultants.

- **Addresses possible PACE expansion in New Mexico**

The next section of the manual addresses some of the ongoing issues with PACE programs in New Mexico. The section includes a discussion about possible changes in statute that would expand the ability of districts to finance energy efficiency and water efficiency improvements.

- **Answers frequently asked questions**

The final section of the manual is in FAQ format, and addresses some of the commonly asked questions about REFDs and PACE programs in New Mexico.

- **Provides necessary documents for district formation**

The appendix provides necessary documents for district formation as well as example forms and agreements.

PACE programs, enabled through the creation of Renewable Energy Financing Districts (REFDs), present an enormous opportunity for New Mexico to create jobs in the construction industry, produce energy savings for property owners, and improve our clean energy infrastructure. PACE programs are perfect examples of the public sector working with private industry to produce results that will work for New Mexico and advance our goals of economic growth and environmental preservation. PACE creates a mechanism through which private capital can be leveraged for improvements that benefit both individual properties and the public at large, with program administrative fees paid by program participants.

Further information about REFD formation and PACE program implementation is available in the appendix as well as from EMNRD and Santa Fe County. Please use the contact information located on the third page of this document to reach parties that will be available to provide ongoing information.

## INTRODUCTION

### About This Manual

In the 2009 New Mexico Legislative Session, the state legislature passed two pieces of legislation that provide for the financing of renewable energy improvements. House Bill 572 (The Solar Energy Improvement Special Assessment Act, or "SEISAA") provides for the financing of distributed generation<sup>2</sup> solar photovoltaic (PV) and solar thermal systems. Senate Bill 647 (The Renewable Energy Financing District Act, or "REDFA," Chapter 180, Laws 2009 on April 7, 2009) provides for the financing of solar PV, solar thermal, wind, and geo-thermal projects.

This manual is designed to provide information to public officials of counties and municipalities about implementing renewable energy financing programs through land-secured districts authorized under New Mexico law. These programs are known nationally as Property Assessed Clean Energy programs or PACE. PACE refers to the method by which improvements to property are secured and financed. Both Senate Bill 647 and House Bill 572 allow for the creation of PACE programs. The manual focuses on the creation of Renewable Energy Financing Districts (REFDs) as allowed by SB 647. Further information about HB 572 can be found in the appendix to this document.

### Overview of Clean Energy Financing through PACE Programs

Most property owners can reduce energy costs and their dependence on traditional fossil fuels by installing renewable energy improvements on their residential or commercial properties. While the positive benefits of utilizing renewable energy are evident, property owners often have concerns about the substantial upfront costs and the limited financing options available for renewable energy improvements. On average, it takes between five and twenty years to recoup the upfront costs of a renewable energy system.

PACE programs were created, in part, to address those concerns. PACE program financing provides the ability to spread the costs of renewable energy improvements over the useful lifespan of the improvements.

In a PACE program, a land-secured finance district (a district in which property owners join voluntarily in order to obtain financing for renewable energy improvements to their property) is created. In New Mexico, the district is called a

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<sup>2</sup> Distributed generation is when the energy generator is located at the site where the energy is consumed.

Renewable Energy Financing District (REFD), pursuant to SB 647. The district allows property owners to voluntarily join and have their properties assessed over time for the cost of installing renewable energy improvements. The REFD issues bonds to finance the costs of installing the renewable energy improvements on the participating properties and to pay the administrative costs of the REFD. The repayment of the bonds is secured by a special assessment lien recorded against each participating property. The assessment lien is superior to all other liens except that of property taxes, resulting in a high repayment priority for the bonds in the event that a property owner becomes delinquent in paying the special assessment payments, tax payments and/or mortgage payments.

Bonds issued by an REFD are payable solely from special assessments levied against participating properties. No county or municipality general funds can be used for the repayment of such bonds. Only property owners who apply and consent to be included in the REFD will be subject to special assessments on their property. The special assessment must be sufficient in the case of each property to pay the costs of financing the renewable energy improvement, the shared costs of bond issuance, the scheduled debt service payments on the bonds and the administrative costs of the REFD. Those administrative costs may include reimbursement of costs incurred by the municipality or county in forming or administering the REFD. The special assessments may be transferable with the property when it is sold, rather than being subject to mandatory prepayment at the time the property is sold. This option allows each owner of the property to benefit from and to pay for the renewable energy improvements while occupying the property, and to transfer the obligation to pay for those benefits to the subsequent owner.

There have been a number of PACE programs implemented throughout the United States. Currently, 23 states have passed enabling legislation for programs similar to New Mexico's REFDA. Although PACE programs are relatively new, land-secured financing districts have been used for many decades by counties and municipalities to finance public infrastructure such as streets, roads, storm drainage improvements, sewer improvements, parks, and water and sewer systems. Similar to REFDA, these land-secured financing districts finance improvements by issuing bonds payable solely from special assessments levied against properties that receive a benefit from the financed improvement.

A key element of such special assessment arrangements is that they are levied by a local government to advance a public purpose. For example, a municipality may find that environmental laws require a portion of the city sewer pipeline to be replaced. The city carries out the improvement, and creates a land-secured finance district that includes only the properties served by the pipeline. Those properties now see a new line-item on the property tax due to the pipeline. REFDA work in a similar manner, but provide for the *voluntary* inclusion of properties by their owners. The owners then receive the capital to finance a renewable energy improvement.

## Benefits of PACE Programs through REFDs to Counties, Municipalities and Property Owners

PACE programs have a variety of benefits to governmental entities and property owners.

### **Benefits to Counties and Municipalities:**

- **Job creation:** Renewable energy financing programs provide an opportunity to create jobs in New Mexico. Analysis of the Sonoma County, California, program (January –September 2009) shows that, even during a downturn in the economy, construction-related jobs in Sonoma County increased 8.4% as a result of the PACE program. The collapse of the housing market has made the largest impact on construction trades. These displaced workers have the skill-sets needed to take advantage of job creation resulting from the REFDA.
- **Economic stimulus due to cash-positive property owners:** Many government plans have tried to stimulate the economy by providing extra cash to consumers. Properly structured PACE programs will provide savings to property owners which could result in additional input into the local economy.
- **No increase in taxes or government debt:** PACE programs provide a method of financing that is paid solely from special assessments on properties requesting and receiving eligible renewable energy improvements. No tax or county or municipality general fund revenues may be used to repay debt obligations of the participating properties.
- **Reduce pollution without increasing costs for constituents:** PACE programs allow New Mexico counties and municipalities to reduce pollution and promote energy independence without raising taxes or causing an increase in utility rates.

### **Benefits to Participating Property Owners**

- **Lower energy bills:** Renewable energy improvements financed by PACE programs can provide property owners with energy cost savings and can often protect them from increases in utility rates. As the cost of energy from utilities increases, so does the value of the renewable energy produced on site.
- **Remove barrier of upfront costs:** PACE programs substantially decrease the upfront costs to property owners seeking to finance renewable energy improvements by allowing property owners to pay for the renewable energy improvements over the lifetime of the improvement at fixed rates, typically 20 years for renewable energy projects.
- **Inclusion of non-traditional borrowers:** PACE provides new financing options to segments of society that are underserved by traditional sources of financing. Because the property and the project are the focus of the underwriting process,

property owners are included who might otherwise not have access to capital for energy improvements.

- **Does not affect a property owner's personal credit:** PACE programs do not affect an individual's credit, as the lien is attached to the property itself.
- **Lien goes with the property not the person:** The special assessment on an improved property may be transferred to a new owner when the property is sold. Property owners do not have to commit to owning the property for 10 to 15 years to realize the benefits of constructing a renewable energy system.
- **Energy improvements increase the value of the property:** A house with lower utility bills is intrinsically worth more than an inefficient house with high utility bills. This increases the value of a property owner's investment.

## Opportunities for Clean Energy in New Mexico

New Mexico has outstanding renewable energy resources. New Mexico ranks in the top percentiles for wind and solar resources in the United States, according to the Governor's Green Jobs Cabinet Report (released in 2010). The Western Governors' Association has defined a set of Western Renewable Energy Zones that take into account both quality of the renewable energy source and issues that would prevent development (such as land-costs in cities and exclusion of national parks). Among the 15 western states and provinces studied, New Mexico had the largest amount of developable renewable energy – a total of 27 gigawatts (GW) roughly split between wind and solar energy<sup>3</sup>. These resources provide New Mexico's property owners with opportunities to benefit from renewable energy improvements. Property owners who invest in renewable energy improvements are eligible to receive federal and state tax credits for a portion of the cost of renewable technologies and local utility incentives for solar PV systems.

### Solar Photovoltaic Technology

New Mexico ranks second in the United States for solar resources, receiving an average of 6.5 kilowatt-hours per square mile per day. Taxpayers who purchase a solar PV system are eligible to receive a 30% federal tax credit and a 10% state tax credit (through the New Mexico Solar Market Development Tax Credit, capped at \$9,000), measured as a percentage of the total installed costs.<sup>4</sup>

All investor-owned utilities in New Mexico provide for an additional production-based incentive for small PV systems. The incentive is provided through a "Renewable Energy Credit" purchase contract, pursuant to which the producer of renewable energy sells the Renewable Energy Credit to the utility. The utility then

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<sup>3</sup>[http://www.westgov.org/index.php?option=com\\_content&view=article&id=55&Itemid=41](http://www.westgov.org/index.php?option=com_content&view=article&id=55&Itemid=41)

<sup>4</sup> The Governors Green Cabinet Report

retires these credits as part of its New Mexico Renewable Portfolio Standard obligation. Currently, all investor-owned utilities and rural electric co-op<sup>5</sup> utilities provide net-metering programs in which any energy produced from a solar PV system offsets consumption of energy from the grid. Please see Page 32 for links to web pages with incentives for all REFID-eligible installations.

### **Solar Thermal Technology**

New Mexico's abundant solar resources can also be used directly to provide heating and cooling. Solar thermal systems can heat and chill household air and water. Solar thermal systems are approximately three times more efficient than solar PV systems. As opposed to solar PV and wind energy systems, which only offset electricity use, solar thermal systems offset the use of natural gas and propane, as well as electricity. Thermal systems are particularly beneficial when offsetting propane, which currently sells for a unit price that is three times the unit price of natural gas. Taxpayers who purchase a solar thermal system are eligible to receive a 30% federal tax credit and a 10% state tax credit. Furthermore, the sales of both solar PV and solar thermal systems and equipment are exempt from gross receipts tax.<sup>6</sup>

### **Wind Turbine Technology**

New Mexico is ranked twelfth in the United States for wind resources. Distributed generation wind systems can be particularly beneficial to rural property owners. Taxpayers who purchase a clean energy wind system are eligible to receive a 30% federal tax credit.

### **Geothermal Technology (Ground-Coupled Heat Pumps)**

Geothermal projects (ground-coupled heat pumps) use the constant temperature of the earth to pre-heat or pre-cool air or water. Ground-coupled heat pumps decrease the amount of electricity, natural gas, and propane used for heating and cooling purposes. Taxpayers who install a geothermal heat pump are eligible to receive a 30% federal tax credit and a 30% New Mexico tax credit, capped at \$9,000.<sup>7</sup>

## **FORMING A RENEWABLE ENERGY FINANCING DISTRICT (REFD)**

### **About REFIDs**

The Renewable Energy Financing District Act ("REFDA") was enacted as Chapter 180, Laws 2009 on April 7, 2009. The stated legislative purpose of REFDA is to alleviate the high front-end costs of renewable energy installations and to promote the installation of renewable energy improvements on real property. See Appendix

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<sup>5</sup> The City of Farmington also operates a utility that provides net metering.

<sup>6</sup> Section 7-9-112 NMSA 1978

<sup>7</sup> <http://www.emnrd.state.nm.us/ECMD/RenewableEnergy/geothermal.htm>

A of this manual for the complete text of REFD Senate Bill 647 (Chapter 180, Laws 2009 on April 7, 2009).

An REFD may be formed for the purpose of encouraging, accommodating and financing renewable energy improvements that include photovoltaic, solar thermal, geothermal or wind energy systems permanently installed on real property. Such improvements must be installed on property within the county or municipality. An REFD will include only property for which an owner (the person listed as the owner of real property on the current property tax assessment roll) executes an agreement consenting to the inclusion of property within the REFD and to the imposition of a special assessment. An REFD may include contiguous and noncontiguous property. The REFD is a political subdivision of the state, separate and apart from the municipality or county, which means that its obligations (bonds issued to finance renewable energy improvements) are not the obligations of the county or municipality that creates, or participates in, the REFD.

The process for forming an REFD is described in this document. Example form documents that are pertinent to each step can be found in the appendices to this manual.

## About the Appendices

The Appendices to this document contain the following items:

### **Appendix A: Renewable Energy Financing District Act**

This is the complete text of Senate Bill 647 2009, the Renewable Energy Financing District Act.

### **Appendix B: Example Form: REFD Application**

This is an example form of a property owner application to have their property included in a Renewable Energy Financing District.

### **Appendix C: Example Form: REFD Agreement**

This is an example form of the agreement between a property owner and a Renewable Energy Financing District that includes the property in the district and allows for the property to be assessed.

### **Appendix D: REFD Intent Resolution**

This is the Intent Resolution used by Santa Fe County to initiate the process of forming an REFD. Santa Fe's resolution can be used as an Intent Resolution template for other cities.

### **Appendix E: REFD Formation Ordinance**

This is the Formation Ordinance used by Santa Fe County to form an REFD.

### **Appendix F: REFD Consent Resolution**

This is the Consent Resolution passed by the City of Santa Fe in order to be included in the County's REFD.

### **Appendix G: Information about House Bill 572**

This document provides more information on House Bill 572 2009, The Solar Energy Improvement Special Assessment Act.

Please note that as Santa Fe County continues to form its REFD Program, other documents and updated forms will be available. Please contact Duncan Sill at Santa Fe County ([dsill@co.santa-fe.nm.us](mailto:dsill@co.santa-fe.nm.us)) for more information.

### **The Path to District Formation under Senate Bill 647**

The path to forming an REFD has been divided into four sections:

1. Preparing to Form an REFD: the resources that should be identified before moving forward with the formation of an REFD.
2. Forming an REFD: the actions that a county or municipality needs to take in order to form an REFD.
3. Including Property in an REFD: the basic steps to be taken by a district in order to include property in an REFD.
4. Issuing REFD Bonds and Imposing Special Assessments: the process of issuing REFD bonds to finance renewable energy improvements on property included in the REFD and addressing how property owners pay for their renewable energy improvements via special assessments.

The New Mexico Energy, Minerals and Natural Resources Department supported REFD legislation in New Mexico and staff is available to provide support for counties and municipalities as they implement the districts.

#### **1. Preparing to Form an REFD**

Before a county or municipality starts an REFD, it should identify the necessary resources required to form the district and manage the program. Building a team that is dedicated to the implementation of an REFD is essential to moving the process forward. Recommended steps in preparing to form an REFD include the following:



### **Step 1: Identify a champion**

An elected official is an important part of the program team. In forming an REFD, it will be necessary to pass an ordinance and gain the internal support of county or municipal departments. This leader could be a county commissioner, county manager, city councilor, or mayor.

### **Step 2: Determine staff resources**

Many departments within the municipality will have vital roles in the formation of an REFD. District-forming entities should look at the resources that are available to dedicate to the effort and determine what roles can be filled internally and what might be outsourced. Identifying an internal project manager to drive the process is critical.

### **Step 3: Coordinate effort with bond counsel**

Bond counsel should be engaged in the process early on in order to help evaluate the issues that need to be overcome to finance the district as well as to review resolutions and ordinances that will be used throughout the process. This document, along with the appendix, should greatly reduce the costs associated with district formation.

### **Step 4: Identify administrative and financial partners**

District-forming entities may wish to include administrative and financial partners as part of the team. This may include issuing a Request for Proposals for desired services.

### **Step 5: Form the REFD**

The next section is a step-by-step outline of how to form an REFD.

## **2. Forming the REFD**

This section outlines the actions that a county or municipality needs to take in order to form an REFD. The full text of the legislation to be followed is included in

Appendix A: REFDA Senate Bill 647 (The Renewable Energy Financing District Act, Chapter 180, Laws 2009 on April 7, 2009).



**Step 1: Determine which geographical regions the REFDA will include**

A municipality or county may form an REFDA (see Appendix C: Example Form: REFDA Agreement). If a county creates an REFDA, the county should determine whether the REFDA will include only the unincorporated area of the county or also include the incorporated portions of the county. If the county seeks to include incorporated areas within the REFDA, it will need to receive the consent of each incorporated municipality. Such consent may be provided in the form of an intergovernmental agreement or simply by resolution of the governing body of the participating municipality (see Appendix F: Consent Resolution). A municipality may form an REFDA encompassing the incorporated boundaries of the municipality.

**Step 2: Determine the composition of the REFDA Board**

The governing body of the REFDA (the “REFDA Board”) may be the county commission, the city council or a five-member board appointed by the county commission or city council. If the initial REFDA board is appointed by the county commission or city council, the directors shall serve a six-year term. If a vacancy occurs on the board due to death, resignation, or inability to discharge duties, the county commission or city council may appoint a director to fill such vacancy. The appointed director serves the remainder of the unexpired term until the appointed director’s successor is appointed or elected.

In the case where the county commission or city council appoints the five-member board, the initial REFDA Board must be replaced by elected directors six years after the date of enactment of the Formation Ordinance. Within 30 days after such election, the REFDA Board shall canvass returns and determine who is elected to the REFDA Board.

### **Step 3: Adopt a Resolution of Intent to form the REFD**

REFDA provides that a REFD is initiated by the adoption of a resolution declaring the intent of the county commission or city council to form an REFD (the “Intent Resolution”). The Intent Resolution must state:

- The purpose for which the REFD is formed (for instance, for the purpose of encouraging, accommodating and financing renewable energy improvements);
- That the REFD includes only property for which the owner has executed an agreement to be included in the REFD (such inclusion may occur subsequent to the formation of the REFD);
- The process by which a property owner can execute an agreement to include property in the REFD;
- A description of the specific renewable energy improvements eligible for financing pursuant to REFDA;
- That inclusion of property in the REFD will result in imposition of special assessments on the property to pay the costs of the approved renewable energy improvements, financing and administrative fees;
- The method of calculating the amount of the special assessment and the manner of collection;
- The standards and requirements will be set by the REFD Board for renewable energy improvements to be installed on property in the REFD; and
- The REFD will be governed by the REFD Board composed of members of the county commission or city council or by five directors appointed by the county commission or city council.

Per REFDA, the Intent Resolution directs that a formation hearing be scheduled, and that notice of the hearing be published as required for public hearings of the county commission or city council (generally counties must publish notice at least two weeks in advance of the hearing pursuant to Section 4-37-7 NMSA 1978, and municipalities must publish notice at least two weeks in advance of the hearing pursuant to Section 3-17-3 NMSA 1978). See Appendix D for a sample of the Intent Resolution.

### **Step 4: Conduct a formation hearing**

At the formation hearing, the county commission or city council may receive written and oral testimony and evidence presented in support of, or in opposition to, the formation of the REFD. The county commission or city council may then determine whether the REFD should be formed based on the interests, convenience or

necessity of the property owners in the proposed REFD and citizens of the municipality and county in which the proposed REFD would be located.

**Step 5: Adopt the Formation Ordinance**

If the county commission or city council determines the REFD should be formed, the county commission or city council will adopt an ordinance ordering the formation of the REFD and identifying the method by which property owners can execute agreements to have their properties included in the REFD (the “Formation Ordinance”). Presumably, the Formation Ordinance will ratify the form of agreement approved in the Intent Resolution and identify it as the method for being included in the REFD.

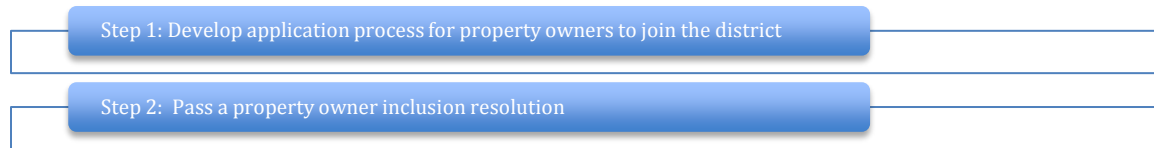
The Formation Ordinance must state that the REFD will be governed by a REFD Board consisting of members of the county commission or city council or upon determination by the county commission or city council, five directors appointed by the county commission or city council.

The Formation Ordinance must also state that one or more resolutions will be adopted by the REFD Board to identify the property to be included in the REFD and the special assessment to be imposed on such property. As noted above, the county commission or city council can adopt a resolution adding new property to the REFD on a monthly or other periodic basis.

A copy of the Formation Ordinance must be provided to the county assessor, county treasurer, New Mexico Taxation and Revenue Department and Local Government Division of the New Mexico Department of Finance and Administration. See Appendix E for a sample form of the Formation Ordinance.

**3. Including Property in the REFD**

After the REFD has been formed, the REFD Board may accept applications for financing and assessment from interested property owners. This section outlines the basic steps to be taken in order to include property in an REFD.



**Step 1: Develop application process for property owners to join the REFD**

REFDA requires that a property owner consent to inclusion of their property in the REFD and to the imposition of the special assessment to finance renewable energy improvements. To implement this process, the county or municipality should develop a standard form of application and agreement for inclusion in the REFD. See Appendices B and C for example forms of the Application and the Agreement.

The application will likely include the following information:

- 1) Real property information
  - a) Name(s) of record owners of the real property
  - b) Street address or other location information of the real property
  - c) Mortgage lender/other lien holders
- 2) Information regarding renewable energy improvements to be installed
  - a) Description
  - b) Estimated cost
  - c) Whether specific vendor or installer is requested
  - d) Copy of proposed installation contract (if any)
- 3) Form of agreement with the county or municipality
  - a) Including real property in the REFD
  - b) Imposing special assessment sufficient to pay for the renewable energy improvement and related costs
  - c) Acknowledgement of recording of special assessment
  - d) Waiver of claims against the county or municipality

Appendix B includes a sample form of an REFDA application to be used by the property owner.

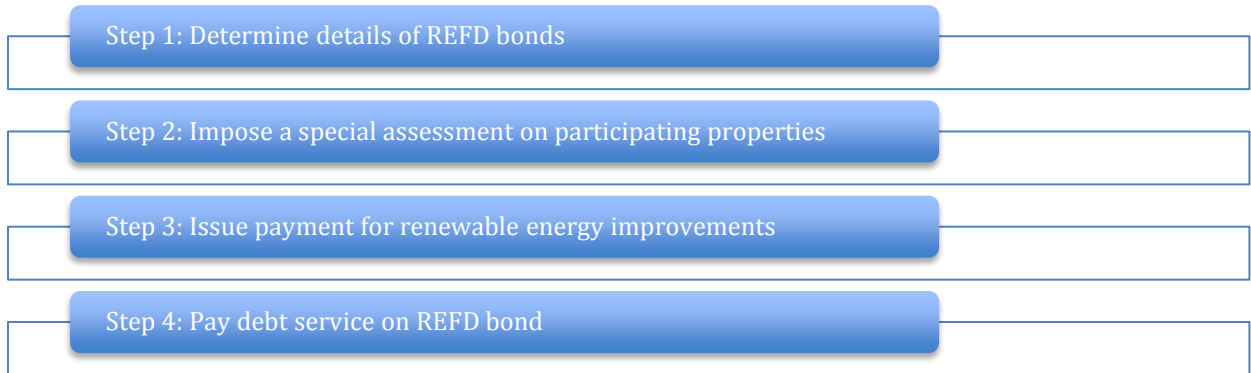
#### **Step 2: Pass a property owner inclusion resolution**

Following the adoption of the Formation Ordinance, a property may be included in the REFD by execution of an agreement between the property owner and the REFD Board to (1) include property in the REFD, and (2) the imposition of the special assessment on such property. The REFD Board must authorize the agreement by resolution, and deliver the resolution to the county assessor and the county treasurer. The resolution and a description of the property included in the REFD are then recorded in the real property records of the county. The resolution should also identify the expected cost of renewable energy improvements to such property.

Although property may be added to the REFD at the request of the property owner and upon adoption of the resolution of the REFD Board at any time, as a practical matter the REFD Board may choose to adopt resolutions adding property to the REFD on a monthly or other periodic basis. Property may be deleted from the REFD only upon request of a property owner and adoption of resolution by the REFD Board. However, property subject to a lien of special assessment cannot be removed from the REFD while any bonds issued by the REFD and secured by the assessment on that property are outstanding.

#### 4. Issuing REFD Bonds and Imposing Special Assessments

This section outlines the process of issuing REFD bonds to finance renewable energy improvements on property included in the REFD and addresses how property owners pay for their renewable energy improvements via special assessments.



##### Step 1: Determine details of REFD bonds

The REFD may issue one or more special assessment bonds to finance renewable energy improvements on property in the REFD. The bond or bonds will be payable solely from special assessments levied pursuant to the assessment resolutions.

Depending on the number of properties included in the REFD and the total cost of the renewable energy improvements to be financed, it may be more practicable for a bank to purchase a single bond relating to a single assessed parcel than to place single bonds with investors. If a large number of properties are included in the REFD to finance renewable energy improvements at a cost of several million dollars, it may be more feasible to issue a single series of bonds to finance that cost. If, instead, a relatively small number of property owners participate in the REFD, it may be more feasible to place an individual bond corresponding to each participating owner with a lender. Both approaches are legally permissible under the REFDA. Santa Fe County is working with a financial partner, which will purchase bonds secured by individual parcels. Once a sufficient number of bonds have been purchased, the assets will be placed with a bank or another qualified investor.

Counties and municipalities may be able to cover administrative costs and reduce interest rates by simultaneously coordinating with federal instruments such as Qualified Energy Conservation Bonds.

##### Step 2: Impose a special assessment on participating properties

Either following or as part of a resolution including property within the REFD, the REFD Board may impose a special assessment on such property sufficient to pay for the renewable energy improvements, costs of bond issuance, debt service and administrative costs of the REFD of the municipality or county in which the REFD is located.

The special assessment may be collected at the same time and manner as property taxes and included as a separate line item on the property tax bill. Otherwise, pursuant to procedures approved by the REFD Board, the assessment may be billed separately. The REFD Board may specify the conditions under which pre-payments of the assessments may be made, such as a cash pay period. Money derived from the special assessments shall be kept separately from all other county or municipality funds.

The special assessment constitutes a lien on the property and has priority over all other liens except liens for ad valorem property taxes.

### **Step 3: Issue payment for renewable energy improvements**

If the REFD issues a series of bonds that will finance renewable energy improvements to several properties, it would be advisable to enter into an agreement with a bank to act as disbursement agent for the deposit and disbursement of bond proceeds for the payment of eligible renewable energy improvements. The agreement would include requirements for adequate documentation of installation costs for each participant prior to releasing funds (similar to documentation for draws under a construction loan). If, instead, an individual bond for each participating property owner is placed with a bank, it is likely that each lender will have its own procedures for releasing funds to, or on behalf of, the property owner. Santa Fe County will be working with a financial partner and fiscal agent to handle the documentation and disbursement of funds.

### **Step 4: Pay debt service on REFD bonds**

If the REFD issues a series of bonds that will finance renewable energy improvements to several properties, it would be advisable to enter into a trust indenture with a bank to act as trustee for the deposit and disbursement of special assessment revenues for the payment of debt service on the bonds. If, instead, an individual bond for each participating property owner is placed with a bank, it is likely that the REFD will enter into an agreement with each lender for the remittance of special assessment revenue necessary to pay debt service to the bank. In the case of Santa Fe, the district will be selling individual bonds to one financial partner.

## **REFD PROGRAM SETUP**

### **Step-By-Step Process for Property Owners and REFD**

This section outlines the process of including specific properties into the district and addresses district responsibilities in each of those steps. Steps may vary depending on the financing methodology used by individual districts. However, this outlines the most likely process under SB 647. The basic steps for including property are as follows:



#### **Step 1: Property owner education**

Before requesting REFD financing, interested property owners should become familiar with the costs of the financing and the benefits that a renewable energy system will produce, as well as the features of the special assessment lien.

*REFD Responsibilities in Step 1:* The REFD should provide information to property owners so that they may weigh the costs of the special assessment with the benefits of a renewable energy system. Santa Fe County is utilizing a program consultant to develop program outreach, including web-based information, a benefits calculator and application support.

#### **Step 2: Application for REFD financing by property owner**

After property owners have established that PACE financing is right for them, they will apply to the REFD for financing. The property owner at this time must consent to having their property included in the district and agree to have a special assessment levied on their property. The REFD will review the application and approve or deny the inclusion of property in the REFD.

*REFD Responsibilities in Step 2:* The REFD should establish a standard application process. The application process should include verification of property ownership and project eligibility; establish guidelines regarding the maximum amount of financing available for each project; eligible contractors; and underwriting standards such as minimum loan-to-value standards, non-delinquency in payment of property taxes, assessments and mortgage payments.

### **Step 3: Project installation**

After a parcel is approved for inclusion into the REFD, the property owner installs the approved renewable energy improvement.

*REFD Responsibilities in Step 3:* The REFD should coordinate with local entities to ensure timely responses for permitting, inspecting, and interconnecting (if the system is being tied to the utility grid) renewable energy systems. Although it is not the REFD's responsibility to coordinate these processes, it should be cognizant of the timeliness of these events.

### **Step 4: Funding request**

After the property owner has completed the approved renewable energy improvement, they submit a funding request to the REFD Board. This includes all documents necessary for the REFD Board to verify that the renewable energy improvements have been installed and are operating as intended.

*REFD Responsibilities in Step 4:* The REFD should verify that the renewable energy improvements have been completed in compliance with standards set by the district.

### **Step 5: Assessment contract and funding**

After the complete installation of renewable energy improvements is verified by the REFD, the property owner must execute an assessment contract providing for the special assessment lien to be placed on the property. After this document has been executed and the lien is recorded, the property owner receives funding.

*REFD Responsibilities in Step 5:* The REFD reviews the assessment contract, records the lien and authorizes disbursement of bond proceeds. The REFD provides funding by selling REFD bonds, which are described in detail in the next section. The REFD executes bond documentation prepared by bond counsel.

### **Step 6: Repayment**

After the renewable energy improvements have been installed and the assessment lien recorded, the property owner will pay the costs through a special assessment on the property.

*REFD Responsibilities in Step 6:* The county treasurer or the REFD must bill and collect the special assessments that have been levied against participating properties. The REFD will collect the special assessment and remit the revenues (less administrative expenses) to a trustee for the bonds.

### **Explanation of REFD Bonds**

The REFD may issue bonds to provide financing for renewable energy improvements. The REFD (or a trustee on behalf of the REFD) will hold special assessment revenues for each series of bonds separate and apart from other REFD

funds and will remit special assessment revenues to the bond holders as provided in the bond financing transaction documents.

Any bonds issued pursuant to REFD will be payable only from those revenues generated by special assessments on the property which is improved by the installation of renewable energy improvements. The special assessment will include the cost of the renewable energy improvement, the costs of bond issuance, debt service and administrative costs of the REFD. The financed amount is payable only by the owner of the property. No other property owner in the county, city or REFD is responsible for paying the special assessment.

### **Bond Financing Options for REFDs**

The REFD will have two general options in structuring the financing. The first option addresses the financing of each renewable energy improvement through an individual bond that funds an individual property's renewable energy improvement. The second option pools several projects and issues a bond to fund the costs of the pool of projects.

#### **Micro-bond Financing**

In the micro-bonding approach (termed “micro” because each bond will correspond to a single parcel and improvement financing), the REFD would enter into a bond purchase agreement with a lender to sell micro-bonds to finance renewable energy improvements on each individual parcel that is included in the REFD, following completion of the project for that parcel. The bond purchase agreement will specify a maximum interest rate that will be applicable to the micro-bonds. The actual rate for each micro-bond will be established at the time that the owner's project is complete, the assessment is imposed and the funding is provided.

#### **Pooled Bond Structure**

In the pooled bond approach, the REFD would issue one series of bonds to fund the aggregate cost of the renewable energy improvements for several parcels to be financed at a particular time. For example, the district could start with an initial phase in which it will finance improvements for 100 parcels for a total cost of \$2,000,000. When all 100 properties are ready to receive financing, the REFD will issue a series of bonds to provide the \$2,000,000 in financing for the 100 projects. The advantage of this approach is that the costs of the transaction should be somewhat lower for each parcel than in the micro-bonding approach. The disadvantage is that commencement of installation in most cases could not begin until all 100 projects are at that point in the process.

If the REFD uses a pooled structure, the property owners would find out the interest rate that they would receive on the day that the bonds are sold. Boulder, Colorado, used the pooled bond approach to finance participating properties in its program.

## **Anticipated Program Costs to Counties and Municipalities**

Under REFDA, the costs of REFID formation and program implementation can be recovered through fees paid by participating property owners. Fees can be included as an application fee, capitalized as expenses added to the bonded indebtedness, or through a spread on the interest rate.

The expenses that are recovered through the program will impact the final costs of the program to property owners. Counties and municipalities should be cognizant of the impact of expenses on program participation and feasibility. The primary way to minimize the impact of overhead is to expand program participation.

Program expenses can be broken into three categories: district formation, program development, and program administration:

### **District Formation**

Costs associated with REFID formation include preparing an “Intent Resolution” and a “Formation Ordinance” (Appendices D and E). Additional costs include guidance from bond counsel and staff time. Costs for REFID formation may be paid by the forming entity and included as fees to property owners to the extent that is feasible. This document should help to alleviate many of the costs associated with district formation.

### **Program Development**

The REFID should develop guidelines and standards, analyze market conditions and potential demand, finalize the application process, and analyze the total costs of the financing to the property owner. If the REFID chooses to work with a program consultant, it would typically issue a Request for Proposals for professional services. Additional costs will include guidance from bond counsel, staff time, and payments to program consultants. Those costs should be included in determining application fees, loan origination fees and other costs to be included in the special assessment.

### **Program Administration**

Ongoing administrative costs include staff time dedicated to customer service, application review and approval, assessment recordation, and the collection and remittance of special assessment funds. These expenses can be recovered through application fees, loan origination fees and an administrative fee component included in the special assessment on participating parcels.

## **Marketing the REFID Program**

The local government will want to collaborate with the local electric utility and renewable energy installers to provide accurate information to property owners. Engaging licensed contractors, banks, non-profit organizations, and other skilled tradespersons required for installations early in the process will help to ensure that the program is successful and well understood.

Local governments interested in establishing and promoting REFD financing should consider holding workshops for both interested property owners and improvement contractors to explain the application process, necessary paperwork, program requirements and details of the program.

Similar programs in California and Colorado have used websites to provide current and updated information to all stakeholders, as well as to facilitate the application process. Santa Fe County's program website should be complete by the time this manual is published. Typical program websites contain an on-line application process and tools to help property owners evaluate the costs and benefits of a renewable energy improvement. Program websites can also direct property owners to eligible contractors from whom to receive bids.

### **Examples of Program Websites**

Santa Fe County, RenewSantaFe Program

<http://www.renewsantafe.org/>

Boulder County, Climate Smart Loan Program

<http://www.bouldercounty.org/bocc/cslp/>

City of San Francisco, GreenFinanceSF Program

<http://www.greenfinancesf.org/>

Sonoma County Website, Sonoma County's Energy Independence Program

<http://www.sonomacountyenergy.org/>

### **Assessing Program Demand**

Program demand has a direct effect on the costs of the program to both the participating property owners and the REFD itself. The more property owners who participate, the lower the overhead costs of administering the program for each participant will be. The number of property owners who participate in the program will vary, based on the demographics of the population, the economic benefits that can be expected, the available financing options, and the effectiveness of the program's outreach and marketing efforts.

### **Demographic Information**

Important demographic information includes the number, age, condition, and assessed value of single- and multi-family homes. Statistical information about the value of properties within the REFD, when viewed through the perspective of specific underwriting criteria, will also help to estimate potential participation. The amount of existing knowledge within the REFD about energy options is important in deciding the level of outreach that may be needed.

### **Property Owner Cost/Benefit Analysis**

The anticipated value of eligible renewable energy improvements will contribute to the level of program demand. Property owners will be eligible for a variety of

incentives after they have installed systems. Counties and municipalities should be aware of the specific incentives and renewable energy resources available in their areas when looking at program demand.

### **Financing Options Other Than REFD Financing for Renewable Energy Improvements**

Demand for the use of REFD financing will also depend on the other long-term financing options that a property owner may have available to them. REFD financing offers lending terms up to 20 years and gives the owner the ability to transfer the special assessment to the next property owner in the case of a sale. Currently, the most common source of financing for renewable energy systems over a long period are second mortgages and home-equity lines of credit. The advantages of a REFD program should be examined by property owners in light of the availability and terms of other financing options.

#### **Using the Services of a Program Consultant**

Many REFD programs have contracted the services of program consultants to assist in the development of policies and standards, the coordination of marketing efforts, and the administration of the application process. Program consultants can be useful for identifying bank partners in order to provide financing for the REFD, or to provide short-term financing for projects that are then refinanced with REFD bonds. Santa Fe County issued a Request for Proposals for program development, administration, and financing. This Request for Proposals can be obtained from Santa Fe County or the Energy, Minerals and Natural Resources Department.

## **FURTHER CONSIDERATIONS**

### **Energy Efficiency**

Currently, New Mexico statute only enables for the financing of renewable energy-generation systems through the formation of an REFD and a PACE program. Nationally, energy and water efficiency improvements are also eligible to be financed through PACE. The New Mexico Legislature may consider amending Senate Bill 647 2009 in the 2011 legislative session so that other improvements can be financed. If this occurs, counties and municipalities that have formed REFDS will not need to form new programs in order to accommodate other eligible measures. The financing mechanism is the same, and new types of improvements can be incorporated easily into existing programs.

### **Economies of Scale**

Successful programs will need to be able to develop the economies of scale necessary to attract financing. As mentioned earlier, programs are funded through the sale of bonds that are secured by liens against participating properties. Successful bond placements are largely affected by the total amount being issued. Furthermore, program administration is less costly when spread across a larger pool of property owners. As PACE moves forward in New Mexico, it will be

necessary to combine projects from smaller counties in order to achieve the necessary scale. EMNRD is evaluating whether it would be feasible to provide counties that may have less demand an avenue to combine resources and issue bonds together. EMNRD is also working with the New Mexico Finance Authority in evaluating resources to issue bonds for individual and combined counties. Please contact EMNRD for further information.

## FREQUENTLY ASKED QUESTIONS

### **How will our county or city benefit from REFD Financing?**

REFD programs provide a new source of financing for property owners and small businesses. New sources of project financing create local jobs in the growing green economy.

### **Are tax funds used to secure the bonds issued to finance an REFD?**

No. REFD bonds, commonly referred to as PACE bonds, are secured solely from the special assessments levied against the improved properties within the REFD.

### **Who is a stakeholder in organizing an REFD program?**

Besides the municipality or county, programs will involve engagement by property owners who wish to participate in the REFD, renewable energy contractors who will build the systems and install the renewable energy improvements, and utility companies that will facilitate renewable energy system interconnection. Other stakeholders include nonprofits, environmental groups and green jobs advocates. Program consultants may be engaged to help develop the program and market the bonds. Finally, financial institutions will ultimately hold the bonds issued to finance an REFD.

### **Why was REFD financing developed?**

Many property owners can reduce their utility bills by investing in renewable energy systems for their homes and businesses. The central problem is that, while buying power from a utility is a simple, pay-as-you-go service, installing renewable energy systems requires a significant upfront investment. Many property owners do not have the available cash to make an investment that will repay itself over a long time period. REFD financing programs use land-secured finance districts that allow property owners to pay for renewable energy improvements over a 20-year period through a special assessment on their property.

### **Where else in the United States are these programs currently operating?**

Twenty-three states have now passed legislation similar to New Mexico's enabling legislation, and programs are being implemented at the municipal, county, and state level across the United States. Programs have been fully implemented in Berkeley, California (completed); Sonoma County, California; Boulder, Colorado; Palm Desert, California; San Francisco, California, Yucaipa, California; and Babylon, New York.

### **Why is PACE being implemented in New Mexico with Senate Bill 647 (The Renewable Energy Financing District Act, or "REDFA," Chapter 180) rather than House Bill 572 (The Solar Energy Improvement Special Assessment Act, or "SEISAA")?**

Because House Bill 572 2009 requires further work by the Financial Institutions Division, this manual focuses on Senate Bill 647 2009. Santa Fe County chose to move forward under Senate Bill 647 2009.

### **How have other locations dealt with the administrative aspect of the program?**

Other municipalities, counties and districts have handled program administration in-house or outsourced responsibilities to a program consultant. Sonoma County, for example, formed the Sonoma County Energy Independence Program and has organized administrative elements within the County. The City of San Francisco chose to work with a program consultant. Third-party administrators can provide a variety of services, including program development, technology integration, administration, and financing. Governments can choose from these services in order to meet their specific needs.

### **What kind of screening is involved in approving projects for the REFD program?**

Projects financed under REFD will first need to be screened in order to ensure that such projects comply with statute (Senate Bill 647 2009). For example, passive solar projects are not listed at this time as an eligible improvement under Senate Bill 647. PACE programs formed under REFD will set additional screening requirements in order to meet local policies and goals. This could include setting eligibility measures for contractors, requiring property owner and contractor education, and setting quality assurance and control measures. Finally, participating properties will be subject to underwriting criteria necessary to market the bonds used to finance the program. Such criteria will include financial metrics like a value-to-lien ratio and total debt-to-value.

### **How does PACE financing differ from a home equity loan?**

There are three main ways in which PACE differs from obtaining a home equity loan. First PACE is a special assessment, so, unlike a home equity loan, it can be passed (along with the property and the clean energy improvement) to a new owner when the property is sold. Second, PACE underwriting is primarily concerned with the specific improvement and the property, where traditional underwriting may depend heavily on income and credit ratings. Finally the term of PACE financing (20 years) is deliberately matched to the expected lifetime of the clean energy improvement.

### **How has Santa Fe County proceeded with the administration of its program?**

Santa Fe County issued a Request for Proposals for administrative and financial services and hired a program consultant. Santa Fe County has reached an agreement to transfer program design, implementation, and administrative responsibilities to the program consultant. The program consultant is also expected to provide interim financing to the program by purchasing the micro-bonds issued for each project.

### **How will contractors receive payment for completed work?**

Payment of contractors may occur a number of different ways, but generally contractors are paid either from payments by the property owners (after they receive disbursements of bond proceeds from REFD) or via direct payments from REFD following the closing of the bond transaction providing financing for the renewable energy improvements. Direct payment will require authorization by the property owner.

### **How can counties and municipalities ensure the timely payment of district debt obligations?**

The financing documents (bond ordinances, assessing resolutions, etc.) of an REFD will provide timing requirements for the payment of the special assessments and the payment of principal and interest on REFD's debt obligations. Generally, the special assessment payments will be due in advance of the dates on which the REFD is required to pay principal and/or interest payments on its debt obligations. Additionally, a reserve fund can be established to pay debt service in the event that current collections of the special assessments will not cover the requisite principal and/or interest payments.

### **Can REFD programs be used to finance passive solar energy improvements?**

No, under REFDA, financing is limited to solar PV, solar thermal, geothermal or wind energy systems.

### **What city or county staff should be involved in REFD financing implementation?**

Counties or municipalities should work closely with finance directors, treasurers, assessors, and clerks to determine the best way to implement the REFD program. Santa Fe County has directed the process mostly from its planning department and has worked with other county departments to implement aspects of the program that cannot be outsourced. The County will play a role in billing and collection as well as lien recordation.

### **What happens if a property owner does not pay the special assessment?**

REFD financing is secured by a lien on the property being improved. In the event a property owner fails to pay the special assessment, the REFD would have the option (or potentially, the obligation) to foreclose on a property delinquent in payment of the special assessment. The REFD may delegate authority to a trustee or bank to foreclose on delinquent properties or it may foreclose on such properties itself.

### **Will improving a property with a clean energy installation increase the valuation and therefore the property tax?**

House Bill 233, passed in 2010, specifically prevents property valuation from increasing due to the installation of "solar energy system installations" which include solar PV, solar hot water, and certain passive solar features.

### **What other incentives exist for clean energy installations?**

Please see a full list of incentives at:

[www.dsireusa.org](http://www.dsireusa.org) (Federal, State, and Utility Incentives)

[www.cleanenergynm.org](http://www.cleanenergynm.org) (State of New Mexico Clean Energy Incentives)

### **How are REFDS dissolved?**

An REFD may be dissolved by the REFD Board by resolution of the REFD Board upon determination that the REFD has no outstanding bond obligations. In the event that any bonds remain outstanding, an REFD shall not be dissolved, unless money to pay all payments on any bonds is deposited with the trustee or an escrow agent and

pledged to the payment and redemption of such bonds. An REFD may continue to operate after dissolution only as needed to collect money and make payments on any outstanding bonds.

**What are the basic steps of a PACE program implanted under Senate Bill 647?**

1	Project Bid	Property owner receives bid from contractor for project costs.
2	Application	Property owner completes an application for REFD financing.
3	Property Screen	The applicant's legal ownership of the property is verified and screened for other underwriting criteria.
4	Project Screen	The property owner provides specific information regarding the renewable energy improvements and the proposed renewable energy improvements are verified to ensure they meet program terms.
5	REFD Vote	The REFD Board adopts a resolution to include the property in the REFD. This can be done at regular intervals with votes that include multiple properties.
6	Funding Reservation and Notice to Proceed	When the application is approved, the property owner receives a funding reservation and a notice to proceed with the installation.
7	Installation	Contractor installs renewable energy improvements in compliance with state and local standards.
8	Verification/Funding Request	Renewable energy improvements are verified for compliance with program terms, applicable state/county/municipal permits, and legal documents.
9	Consent to Special Assessment, Lien Recorded	The property owner consents to the special assessment, a special assessment lien is placed on the property for the approved amount, and the special assessment lien is recorded.
10	Bond(s) Authorized and Issued	Depending on the financing structure, a bond is authorized by the district and issued for an individual project or a pool of projects.
11	Property Owner/ Contractor Funded	Proceeds from the bond sale are promptly remitted to pay the contractor.

## GLOSSARY

**ad valorem property taxes:** A tax based on the assessed value of real estate.

**clean energy:** Energy which does not damage or has minimal impact on the environment. In addition to the categories included in “renewable energy,” “clean energy” is sometimes used to include building systems (including weather proofing and insulation) and enhancements to fossil fuel power. In this document the terms “clean energy” and “renewable energy” are used interchangeably.

**distributed generation:** An energy generator that is located at the site where the energy is consumed.

**Formation Ordinance:** Under Senate Bill 647 2009, a document developed by the County Commission identifying the method by which property owners can execute agreements to have their property included in a renewable energy financing district. The Formation Ordinance can be a ratification of the Intent Resolution.

**geothermal:** Geothermal means “heat from the earth” but the most common form of geothermal energy is the geothermal heat pump that uses the stable temperature of the ground to assist in heating and cooling.

**Intent Resolution:** Under Senate Bill 647 2009, the process developed by the County Commission by which a property owner can execute an agreement to include property in a renewable energy financing district.

**land-secured financing districts:** A district created by a local government for the purposes of financing improvements. Bonds issued to finance such improvements are secured by real property within the district. In this document “land-secured financing district” and “special assessment district” are used interchangeably with “renewable energy financing district.”

**micro-bond/micro-loan financing:** Micro-bond refers to the process of issuing an REFD bond, commonly referred to as a PACE bond, for each individual project that is constructed within an REFD.

**net metering:** An electricity policy for consumers who own small renewable energy facilities, for example, a solar panel. In net metering, the electricity meter records both energy usage flowing into the home and energy production flowing back into the utility grid. The consumers only pay for the difference between the electricity they use and the electricity they generate.

**PACE:** Property Accessed Clean Energy is a method of financing clean energy property improvements by using a property lien to extend secure financing over the life of a clean energy improvement.

**phased/pooled bond structure:** Refers to the method of financing a pool of energy projects with the issuance of one bond.

**program consultant:** (Sometimes called a third-party vendor.) A company that offers services that are related to the development, administration, and financing of a PACE program.

**PV:** Photovoltaic, converting photons from the sun into electricity.

**renewable energy:** Energy generated from natural resources such as sunlight, wind, rain, tides, and geothermal heat, which are renewable (naturally replenished). This is in contrast to the finite amount of fossil fuels. In this document the term "clean energy" is used interchangeably with "renewable energy."

**solar thermal:** Using photons from the sun (instead of gas or electricity) to heat water for household use.

**New Mexico Renewable Portfolio Standard:** A state policy that requires New Mexico utilities to obtain a minimum percentage of their power from renewable energy resources.

**REFDA:** The Renewable Energy Financing District Act, Senate Bill 647, passed in 2009. This bill enables PACE financing in New Mexico.

**Renewable Energy Credit:** Under 2009 rules, utility customers with renewable energy facilities (primarily solar panels) are paid by the utility for the energy they generate and use themselves. This payment is for a Renewable Energy Credit the utility buys from the consumer, which assists the utility in reaching its goal under the New Mexico Renewable Portfolio Standard. In 2009, PNM, the utility serving Albuquerque, paid 13 cents per kilowatt-hour for residential Renewable Energy Credits.

**Renewable Energy Financing District:** A district which property owners join voluntarily in order to obtain financing for renewable energy improvements to their property. In this document "land-secured finance district" and "special assessment district" are used interchangeably with "renewable energy financing district."

**Renewable Energy Financing District Act:** Senate Bill 647, Chapter 180, Laws 2009 on April 7, 2009. This law allows New Mexico counties and municipalities to set up districts which property owners may join in order to obtain financing for renewable energy improvements to their property.

**SEISAA:** Solar Energy Improvement Special Assessment, House Bill 572, passed in 2009.

**special assessment:** An addition to the property tax bill that is levied by a local government to advance a public purpose. Special assessments are tools commonly used to pave streets or upgrade sewer systems.

**trust indenture:** An agreement in the bond contract made between a bond issuer and a trustee that highlights the rules and responsibilities for each party.

## **APPENDICES**

### **Appendix A: Renewable Energy Financing District Act**

This is the complete text of Senate Bill 647 2009, the Renewable Energy Financing District Act.

### **Appendix B: Example Form: REFD Application**

This is an example form of a property owner application to have their property included in a Renewable Energy Financing District.

### **Appendix C: Example form: REFD Agreement**

This is an example form of the agreement between a property owner and a Renewable Energy Financing District that includes the property in the district and allows for the property to be assessed.

### **Appendix D: REFD Intent Resolution**

This is the Intent Resolution used by Santa Fe County to initiate the process of forming a Renewable Energy Financing District. Santa Fe's resolution can be used as an Intent Resolution template for other cities.

### **Appendix E: REFD Formation Ordinance**

This is the Formation Ordinance use by Santa Fe County to form a Renewable Energy Financing District.

### **Appendix F: REFD Consent Resolution**

This is the Consent Resolution passed by the City of Santa Fe in order to be included in the County's Renewable Energy Financing District.

### **Appendix G: Information about SEISAA House Bill 572**

This document focuses on the creation of a Renewable Energy Financing District using House Bill 572 2009, The Solar Energy Improvement Special Assessment Act.

## **Appendix A Renewable Energy Finance District Act**

This is the complete text of SB 647 2009, the  
Renewable Energy Finance District Act

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AN ACT

RELATING TO LOCAL GOVERNMENT; ENACTING THE RENEWABLE ENERGY FINANCING DISTRICT ACT; AUTHORIZING MUNICIPALITIES AND COUNTIES TO CREATE RENEWABLE ENERGY FINANCING DISTRICTS; AUTHORIZING THE IMPOSITION OF SPECIAL ASSESSMENTS ON REAL PROPERTY; AUTHORIZING ISSUANCE OF SPECIAL ASSESSMENT BONDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Renewable Energy Financing District Act".

Section 2. LEGISLATIVE FINDINGS.--The legislature finds that:

A. the development of renewable energy sources will advance the security, economic well-being and public and environmental health of the state, as well as contributing to the energy independence of the nation and addressing the issue of global climate change;

B. it is in the best interests of the state, municipalities and counties to encourage the development of distributed generation renewable energy sources and the installation by property owners of such energy sources;

C. the high front-end costs of renewable energy installations to real property prevents many property owners from making these improvements, and therefore it is desirable and necessary to authorize alternative financing procedures to

1 promote the installation of the improvements; and

2 D. the creation and administration of renewable  
3 energy financing districts to facilitate the development of  
4 renewable energy improvements on property in the district  
5 will serve a valid public purpose and is expressly declared  
6 to be in the public interest.

7 Section 3. DEFINITIONS.--As used in the Renewable  
8 Energy Financing District Act:

9 A. "county" means any county, including an H class  
10 county;

11 B. "debt service" means the principal of, interest  
12 on and premium, if any, on the bonds, when due, whether at  
13 maturity or prior redemption and fees and costs of agents  
14 necessary to handle the bonds and the costs of credit  
15 enhancement or liquidity support;

16 C. "district" means a renewable energy financing  
17 district formed pursuant to the Renewable Energy Financing  
18 District Act by a municipality or by a county in an  
19 unincorporated area or in an incorporated area with the  
20 municipality's consent;

21 D. "district board" means the board of directors  
22 of the district, which shall be composed of the members of  
23 the governing body of the municipality or county in which the  
24 district is located, or at the option of the governing body,  
25 five directors appointed by the governing body, as provided

1 in Section 9 of the Renewable Energy Financing District Act.  
2 The board shall serve until replaced by elected directors,  
3 which shall occur not later than six years after the date on  
4 which the resolution establishing the district is enacted;

5 E. "election" means an election held in compliance  
6 with the provisions of the Renewable Energy Financing  
7 District Act;

8 F. "governing body" means the body or board that  
9 by law is constituted as the governing body of the  
10 municipality or county in which the district is located;

11 G. "municipality" means an incorporated city,  
12 village or town;

13 H. "owner" means the person who is listed as the  
14 owner of real property in the district on the current  
15 property tax assessment roll;

16 I. "renewable energy improvement" means a  
17 photovoltaic, solar thermal, geothermal or wind energy system  
18 permanently installed on real property; and

19 J. "special assessment" means a levy imposed  
20 against real property within a district.

21 Section 4. RENEWABLE ENERGY FINANCING DISTRICTS

22 AUTHORIZED.--

23 A. A governing body of a municipality or county  
24 may form a district for the purpose of encouraging,  
25 accommodating and financing renewable energy improvements on

1 property within the municipality or county. A district shall  
2 include only property for which an owner executes an  
3 agreement consenting to the inclusion of the property within  
4 the district and to the imposition of a special assessment on  
5 the property for the purpose of financing renewable energy  
6 improvements.

7 B. A district formed by a municipality shall be  
8 wholly within the boundaries of the municipality. A district  
9 formed by a county shall be wholly within the boundaries of  
10 the county and shall be in the unincorporated area of the  
11 county, or may include an incorporated area with the  
12 municipality's consent. A district may include contiguous  
13 and noncontiguous property.

14 C. Except as otherwise provided in this section, a  
15 district shall be a political subdivision of the state,  
16 separate and apart from the municipality or county.

17 Section 5. RESOLUTION DECLARING INTENTION TO FORM  
18 DISTRICT.--

19 A. A governing body may adopt a resolution  
20 declaring its intention to form a district. The resolution  
21 shall state the following:

22 (1) the purposes for which the district is  
23 to be formed;

24 (2) that the district shall include only  
25 property for which the owner has agreed to the inclusion of

1 the property within the district, and that inclusion of  
2 property may occur subsequent to the adoption of the  
3 resolution forming the district;

4 (3) the process by which a property owner  
5 can execute an agreement to include property in the district;

6 (4) a description of the specific types of  
7 renewable energy improvements that will be eligible for the  
8 financing provided pursuant to the Renewable Energy Financing  
9 District Act;

10 (5) that inclusion of property in the  
11 district will result in the imposition of special assessments  
12 on the property to pay the costs of the approved renewable  
13 energy improvements, financing and administrative fees;

14 (6) the method of calculating the amount of  
15 the special assessment and the manner of collection of the  
16 special assessment;

17 (7) that standards and requirements will be  
18 set by the district board for renewable energy improvements  
19 to be installed on property in the district;

20 (8) a reference to the Renewable Energy  
21 Financing District Act; and

22 (9) that the district will be governed by a  
23 district board composed of the members of the governing body  
24 or by five directors to be appointed by the governing body.

25 B. The resolution shall direct that a hearing on

1 formation of the district be scheduled and notice be  
2 published as required for public hearings of the governing  
3 body.

4 Section 6. HEARING--FORMATION OF A DISTRICT.--

5 A. At the hearing on formation of a district, the  
6 governing body shall accept and pass on written and oral  
7 testimony and evidence presented in support of or in  
8 opposition to the formation of the district. After hearing  
9 the written and oral testimony, the governing body shall  
10 determine whether the district should be formed based on the  
11 interests, convenience or necessity of the owners of property  
12 in the proposed district and the citizens of the municipality  
13 or county in which the proposed district would be located.

14 B. If the governing body determines that the  
15 district should be formed, it shall adopt an ordinance  
16 ordering that the district be formed and identifying the  
17 method by which property owners can execute agreements to  
18 have their property included in the district. The ordinance  
19 shall state that the district will be governed by a district  
20 board consisting of members of the governing body, or upon  
21 determination of the governing body, five directors appointed  
22 by the governing body. The ordinance shall state that one or  
23 more resolutions shall be adopted by the district board to  
24 identify the property to be included in the district and the  
25 special assessment to be imposed on that property.

1           C. The governing body shall cause a copy of the  
2 ordinance ordering formation of the district to be delivered  
3 to the county assessor and county treasurer of the county in  
4 which the district is located, the taxation and revenue  
5 department and the local government division of the  
6 department of finance and administration.

7           D. Subsequent to the formation of the district,  
8 property may be included in the district by execution of an  
9 agreement by the owner of the property and the district  
10 board, agreeing to the inclusion of the property and the  
11 imposition of a special assessment on the property, and the  
12 district board shall adopt a resolution to this effect. The  
13 district shall deliver a copy of the resolution to the county  
14 assessor and county treasurer of the county in which the  
15 district is located. A copy of the resolution and a  
16 description of the property included in the district shall be  
17 recorded with the county clerk of the county in which the  
18 district is located.

19           Section 7. SPECIAL ASSESSMENT--LIEN CREATED.--

20           A. The district board may impose a special  
21 assessment on property within the district to facilitate the  
22 financing of renewable energy improvements to the property.  
23 The special assessment shall be sufficient in the case of  
24 each property to pay the costs of the financing of the  
25 renewable energy improvements, including the costs of bond

1 issuance, debt service and administrative costs of the  
2 district and the municipality or county in which the district  
3 is located.

4 B. The special assessment shall be levied and  
5 collected at the same time and in the same manner as property  
6 taxes are levied and collected, except to the extent that the  
7 district board has provided for other imposition and  
8 collection procedures. Money derived from the imposition of  
9 the special assessment shall be kept separately from other  
10 funds of the governing body.

11 C. A special assessment shall constitute a lien on  
12 the property, which shall be effective during the period in  
13 which the assessment is imposed and shall have priority over  
14 all other liens except liens for ad valorem property taxes.

15 D. The obligation to pay the special assessment  
16 may be prepaid and permanently satisfied, and the district  
17 board shall specify the conditions under which this may be  
18 achieved.

19 Section 8. SPECIAL ASSESSMENT BONDS.--

20 A. A district may issue one or more series of  
21 bonds to provide money for renewable energy improvements to  
22 property in the district, and the bonds may be payable from  
23 the special assessments levied pursuant to one or more  
24 assessment resolutions.

25 B. For any bonds issued pursuant to the Renewable

1 Energy Financing District Act, the district board shall  
2 prescribe the denominations of the bonds, the principal  
3 amount of each issue and the form of the bonds and shall  
4 establish the maturities, which shall not exceed twenty  
5 years, interest payment dates and interest rates, whether  
6 fixed or variable, not exceeding the maximum rate stated in  
7 the resolution of the district board. The bonds may be sold  
8 by competitive bid or negotiated sale for public or private  
9 offering at, below or above par. The proceeds of the bonds  
10 shall be deposited with the treasurer, or with a trustee or  
11 agent designated by the district board, to the credit of the  
12 district to be withdrawn for the purposes provided by the  
13 Renewable Energy Financing District Act. Pending that use,  
14 the proceeds may be invested as determined by the district.  
15 The bonds shall be made payable as to both principal and  
16 interest solely from revenues of the district, and shall  
17 specify the revenues pledged for such purposes, and shall  
18 contain such other terms, conditions, covenants and  
19 agreements as the district board deems proper.

20 C. No holder of special assessment bonds issued  
21 pursuant to the Renewable Energy Financing District Act may  
22 compel any exercise of the taxing power of the district,  
23 municipality or county to pay the bonds or the interest on  
24 the bonds. Special assessment bonds issued pursuant to that  
25 act are not a debt or general obligation of the county or the

1 municipality in which the district is located, nor is the  
2 payment of special assessment bonds enforceable out of any  
3 money other than the revenue pledged to the payment of the  
4 bonds.

5 D. Pursuant to this section, the district may  
6 issue and sell refunding bonds to refund any special  
7 assessment bonds of the district authorized by the Renewable  
8 Energy Financing District Act. Refunding bonds issued  
9 pursuant to this section shall have a final maturity date no  
10 later than the final maturity date of the bonds being  
11 refunded.

12 Section 9. APPOINTMENT OF DIRECTORS--QUALIFICATIONS--  
13 TERMS--RESUMPTION OF GOVERNANCE BY GOVERNING BODY.--

14 A. The governing body, at its option, may  
15 authorize the appointment of a separate district board. In  
16 the case of an appointed district board, the directors shall  
17 serve an initial term of six years. If a vacancy occurs on  
18 the district board because of death, resignation or inability  
19 of a director to discharge the duties of director, the  
20 governing body shall appoint a director to fill the vacancy,  
21 who shall hold office for the remainder of the unexpired term  
22 until the appointed director's successor is appointed or  
23 elected.

24 B. At the end of the appointed director's initial  
25 term, the governing body shall resume governance of the

1 district as its board, or, at its option, shall hold an  
2 election of directors by majority vote of the property owners  
3 in the district, pursuant to Section 10 of the Renewable  
4 Energy Financing District Act.

5 Section 10. NOTICE AND CONDUCT OF ELECTION FOR DISTRICT  
6 BOARD.--

7 A. An election pursuant to the Renewable Energy  
8 Financing District Act for the purpose of election of  
9 directors of a district board shall be called by mailing  
10 notices to the owners of property included in the district  
11 not less than twenty days before the election. The property  
12 tax assessment rolls shall be used to determine the owners of  
13 property included in the district. Notice shall also be  
14 published one time in a newspaper of general circulation in  
15 the municipality or county. The notice shall state the  
16 purpose of the election, the date of the election, the place  
17 of holding the election, the hours during the day in which  
18 the polls will be open and provisions for voting by mail.

19 B. Within thirty days after an election, the  
20 district board shall meet and canvass the returns,  
21 determining the number of votes properly cast. A majority of  
22 the votes cast at the election shall be required for election  
23 of a member to the district board.

24 Section 11. POWERS AND DUTIES OF A DISTRICT.--

25 A. The district board shall:

1 (1) establish guidelines and standards for  
2 renewable energy improvements to be made to property included  
3 in the district;

4 (2) establish guidelines and procedures for  
5 a property owner to enter into an agreement with the district  
6 board to include property in the district;

7 (3) establish guidelines for the  
8 documentation required from a property owner prior to  
9 property being included in the district of the owner's  
10 contracts or agreements for purchase and installation of  
11 renewable energy improvements;

12 (4) establish the amount of and impose  
13 special assessments for the financing of the renewable energy  
14 improvements, including the costs of bond issuance, debt  
15 service and administrative costs of the district and the  
16 municipality or county in which the district is located; and

17 (5) enter into contracts, agreements and  
18 trust indentures to obtain credit enhancement or liquidity  
19 support for its bonds and process the issuance, registration,  
20 transfer and payment of its bonds and the disbursement and  
21 investment of proceeds of the bonds.

22 B. The district board may enter into contracts to  
23 carry out the purposes of the district on such terms and with  
24 such persons as the board determines to be appropriate.

25 Section 12. CHANGE IN DISTRICT.--



## **Appendix B Example Form: REFD Application**

This is an example form of a property owner application to have their property included in a Renewable Energy Finance District.

**APPLICATION TO INCLUDE REAL PROPERTY IN SANTA FE COUNTY  
RENEWABLE ENERGY FINANCING DISTRICT**

To apply for inclusion of your real property in the Santa Fe County Renewable Energy Financing District (the "District"), please provide the following information. You must submit one application for each parcel of real property you wish to have considered for inclusion in the District.

**PART I: REAL PROPERTY INFORMATION**

- a. Name(s) of Recorded Owner(s) of the Real Property: \_\_\_\_\_  
\_\_\_\_\_
  
- b. Phone/Email: \_\_\_\_\_  
\_\_\_\_\_
  
- c. Street Address/ location of the Real Property: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
- d. Legal Description of Real Property: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
- e. Mortgage lender/other lien holders (please contact information for each): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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**PART II: INFORMATION REGARDING RENEWABLE ENERGY EQUIPMENT TO BE INSTALLED**

- a. Description of renewable energy equipment to be installed: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- b. Estimated cost of renewable energy equipment to be installed: \_\_\_\_\_  
\_\_\_\_\_
- c. Vendor or installer requested, if any: \_\_\_\_\_  
\_\_\_\_\_
- d. Please Attach a Copy of the Proposed Installation Contract (if any) to this Application.

**PART III: CERTIFICATION OF ACCURATE INFORMATION AND ACKNOWLEDGEMENT OF AGREEMENT WITH THE COUNTY**

**Certification.** The undersigned does hereby represent, warrant and certify to the County as follows:

- a. The information set forth above is true and correct.
- b. The undersigned, as the Recorded Owner of Real Property, is authorized to submit this application and enter into any agreements in connection herewith.

**Acknowledgement.** The undersigned does hereby acknowledge that, if this application is approved, the undersigned hereby agrees to the following:

- a. Inclusion of my real property in the District;
- b. Imposition of a special assessment on my real property sufficient to pay for the renewable energy improvement(s) and related costs;
- c. Recording of the lien of the special assessment upon the real property to be included in the District.
- d. Waiver of any claims against the County arising from inclusion in the District.

\_\_\_\_\_  
Signature of Recorded Owner of Real Property

\_\_\_\_\_  
Date

**For County Use Only:**

Date Application Received: \_\_\_\_\_

Application Processed By: \_\_\_\_\_

Application Approved/Not Approved: \_\_\_\_\_

Date Lien Recorded: \_\_\_\_\_

## **Appendix C Example form: REFD Agreement**

This is an example form of the agreement between a property owner and a Renewable Energy Finance District that includes the property in the district and allows for the property to be assessed.

AGREEMENT REGARDING CONSENT TO INCLUSION OF REAL PROPERTY IN  
SANTA FE COUNTY RENEWABLE ENERGY FINANCING DISTRICT

Pursuant to the Renewable Energy Financing District Act, Chapter 180, Laws of New Mexico 2009 (the "Act"), the undersigned hereby consents to the inclusion of the real property located at \_\_\_\_\_ in Santa Fe County, New Mexico (the "Real Property") in the Santa Fe County Renewable Energy Financing District ("District").

1. Area of District. The District is described in Exhibit 1 attached hereto.
2. Real Property Ownership. The undersigned is the record owner of the Real Property described in Exhibit 2 attached hereto.
3. Purpose. The District has been formed for the purpose encouraging, accommodating and financing renewable energy improvements, as described in Santa Fe County, New Mexico Ordinance No. \_\_\_\_ (the "Formation Ordinance").
4. Recording of Real Property as Included in the District. The undersigned agrees to the recording of the Real Property as being included in the District.
5. Imposition of Special Assessment. The undersigned agrees to the imposition of a special assessment on the Real Property sufficient to pay for the renewable energy improvement(s) and related costs.
6. Waiver and Consent. The undersigned, with full knowledge of its rights being waived hereunder, hereby:
  - (a) expressly consents to the inclusion of the Real Property in the District;
  - (b) acknowledged the recording of the lien of the special assessment upon the real property to be included in the District; and
  - (c) waives all protest rights whatsoever under Section \_\_\_\_ of the Act, provided that the maximum amount of the special assessment imposed by the District do not exceed the amounts set forth in the table attached as Exhibit 3 hereto.

(Remainder of page intentionally left blank)

**In witness whereof** the undersigned has executed this agreement the \_\_\_\_ day  
of \_\_\_\_\_ 20\_\_.

RECORDED OWNER OF REAL PROPERTY

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

BOARD OF THE SANTA FE COUNTY  
RENEWABLE ENERGY FINANCING DISTRICT

By: \_\_\_\_\_

Its: \_\_\_\_\_

## **Appendix D REFD Intent Resolution**

This is the Intent Resolution used by the County of Santa Fe to initiate the process of forming a Renewable Energy Finance District. Santa Fe's resolution can be used as an intent resolution template for other cities.

SANTA FE COUNTY, NEW MEXICO  
RESOLUTION NO. \_\_\_\_

DECLARING THE INTENT OF THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY, NEW MEXICO, TO HOLD A HEARING TO CONSIDER THE FORMATION OF THE SANTA FE COUNTY RENEWABLE ENERGY FINANCING DISTRICT FOR THE PURPOSE OF ENCOURAGING, ACCOMMODATING AND FINANCING RENEWABLE ENERGY IMPROVEMENTS WITHIN THE DISTRICT, AND TO CONSIDER FOR ADOPTION AN ORDINANCE APPROVING SUCH FORMATION; AND DIRECTING THE PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE COUNTY OF A NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF AN ORDINANCE APPROVING THE FORMATION OF THE DISTRICT.

WHEREAS, the Renewable Energy Financing District Act, Chapter 108, Laws of New Mexico 2009 (the "Act"), authorizes New Mexico counties to form renewable energy financing districts; and

WHEREAS, pursuant to the Act, a district will be considered a political subdivision of the state of New Mexico, separate and apart from a county; and

WHEREAS, the Act requires that the Board of County Commissioners (the "Commission") of Santa Fe County, New Mexico (the "County") to hold a public hearing to determine whether a renewable energy financing district shall be formed; and

WHEREAS, the Act provides that, following such a hearing, the Board adopt an ordinance ordering the formation of a district; and

WHEREAS, the Commission, desires to hold a public hearing to consider the formation of the Santa Fe County Renewable Energy Financing District (the "District") for the purpose of encouraging, accommodating and financing renewable energy improvements within the District, and an ordinance ordering the formation of the District; and

WHEREAS, Section 4-37-7 NMSA 1978, requires that publication of the title and general summary of the subject matter of any proposed ordinance be made in a newspaper of general circulation within the County at least two weeks prior to the meeting of the Commission at which the ordinance is proposed for final passage.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, THE GOVERNING BODY OF SANTA FE COUNTY, NEW MEXICO:

Section 1. Purpose of Act. As proposed, the District shall serve the purpose of encouraging, accommodating and financing renewable energy improvements pursuant to the Act.

Section 2. Inclusion of Property within District. No real property shall be included in the District unless the record owner of real property within the District (the "owner") thereof has submitted an application to the County and has agreed to the inclusion of such real property in the District. Owners may apply for and enter into agreements for the inclusion of real property subsequent to the adoption of this Resolution, as provided in Section 3 of this Resolution. Real property shall be included in and assessed by the District as described in Section 5 of this Resolution.

Section 3. Application and Agreement to Include Real Property within District. Pursuant to the Act, an owner wishing to have real property included in the District shall submit an application and agreement for the inclusion of real property in the District to the County.

- A. Application. The County shall accept applications for inclusion of real property in the District in the form attached hereto as Exhibit "A". Copies of the application and related agreement to include real property within the District may be obtained at the office of the County Clerk, 102 Grant Avenue, Santa Fe, New Mexico, 87501 or via the internet at <http://www.co.santa-fe.nm.us/>.
- B. Agreement. To include real property within the District, each owner must enter an agreement in the form attached hereto as Exhibit "B" whereby such owner shall agree to the following:
  - (1) Inclusion of real property within the District.
  - (2) Imposition of a special assessment on real property to pay for the renewable energy improvements and related costs.
  - (3) Recording of the lien of the special assessment upon the real property to be included in the District.
  - (4) Waiver of any claims against the County arising from inclusion of real property within the District.

Section 4. Eligible Renewable Energy Improvements. The following types of renewable energy improvements are eligible for financing under the Act when permanently installed on real property within the District:

- A. Photovoltaic Systems;
- B. Solar Thermal Systems;
- C. Geothermal Systems; and
- D. Wind Energy Systems.

Section 5. Special Assessments; Assessment Resolution.

A. Inclusion of real property in the District will result in the imposition of special assessments on such real property in amounts necessary to pay the costs of permanently installing the approved renewable energy improvements and the costs of financing such improvements including the related administrative fees to the District. The costs of such improvements will be amortized over a period of time as determined by the District, or its Financial Advisor.

B. Each owner of real property shall acknowledge and consent to the assessment amount and amortization schedule as a condition of inclusion of the real property in the District.

C. Following acknowledgement and consent by the owner of the real property to be included in the District and satisfaction of the other requirements of the Act, this Resolution and as may from time to time be made applicable by the Commission, the District Board shall adopt a resolution that includes the real property in the District and imposes the special assessment (the "Assessment Resolution"). An Assessment Resolution may include one or multiple parcels with separate ownership interests.

Section 6. Collection of Special Assessments. District special assessments shall be collected by the County at the same time and in the same manner as property taxes are levied and collected; provided, that the District Board may, in its discretion, establish alternative collection procedures. Special assessments may be prepaid pursuant to procedures established by the District Board and identified in the Assessment Resolutions.

Section 7. District Governance. If formed, the governing body of the District shall be the Commission until the Commission appoints a separate District Board, or holds an election of board members pursuant to Section 10 of the Act.

Section 8. Standards for Renewable Energy Improvements. Following formation of the District, the Commission, acting as the District Board, shall set standards and

requirements for the permanent installation of renewable energy improvements on real property within the District. Such standards and requirements shall be identified in a subsequent resolution of the District Board.

Section 9. Formation Hearing. Pursuant to Section 6 of the Act, the Commission will meet on or about \_\_\_\_ \_\_, 2009 to hold a public hearing concerning the formation of the District. At such hearing, the Commission shall hear written and oral testimony and evidence presented in support of or in opposition to the formation of the District. The Commission hereby directs that a notice of the meeting and public hearing to consider formation of the District and the adoption of an ordinance ordering formation of the District, in substantially the form attached to this Resolution as Exhibit "C", be published in a newspaper of general circulation within the County, one time at least two weeks prior to the meeting and public hearing, as provided in Section 5(B) of the Act.

Section 10. Formation Ordinance and Related Matters. At or following the meeting held on or about \_\_\_\_\_, 2009, the Commission will consider for adoption an ordinance authorizing the creation of the District, identifying the method by which owners can execute agreements to have their real property included in the District and identifying other details related to the formation of the District pursuant to the Act.

Section 11. Other Action Necessary. The County Manager, Finance Director, Attorney and Clerk are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Resolution.

Section 12. Repealer. All by-laws, orders, resolutions and ordinances or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any by-law, order, resolution or ordinance, or part thereof heretofore repealed.

Section 13. Severability. If any section, paragraph, clause, or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2009.

SANTA FE COUNTY, NEW MEXICO

By: \_\_\_\_\_  
Mike D. Anaya, Chairperson  
Board of County Commissioners

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Valerie Espinoza, Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Peter Franklin, as Bond Counsel

## **Appendix E REFD Formation Ordinance**

This is the Formation Ordinance use by the County of Santa Fe to form a Renewable Energy Finance District.

SANTA FE COUNTY, NEW MEXICO  
ORDINANCE NO. 2009-12

APPROVING THE FORMATION OF THE SANTA FE COUNTY RENEWABLE ENERGY FINANCING DISTRICT PURSUANT TO THE RENEWABLE ENERGY FINANCING DISTRICT ACT, CHAPTER 180, LAWS OF NEW MEXICO 2009; MAKING FINDINGS IN CONNECTION WITH THE FORMATION OF THE DISTRICT; DETERMINING THE PURPOSES FOR WHICH THE DISTRICT IS BEING FORMED; APPROVING THE MANNER OF COLLECTION OF A RENEWABLE ENERGY IMPROVEMENT ASSESSMENT TO BE IMPOSED UPON REAL PROPERTY INCLUDED IN THE DISTRICT; APPROVING A FORM OF APPLICATION AND AGREEMENT BETWEEN THE COUNTY AND THE OWNERS OF REAL PROPERTY FOR INCLUSION OF REAL PROPERTY IN THE DISTRICT; PROVIDING FOR GOVERNANCE OF THE DISTRICT; PROVIDING FOR THE INCLUSION OF REAL PROPERTY WITHIN THE DISTRICT BY SUBSEQUENT RESOLUTIONS; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE

Capitalized terms in the following preambles shall have the meanings assigned in Section 1 of this Ordinance, unless the context clearly requires otherwise.

WHEREAS, the Renewable Energy Financing District Act (the "Act") provides in part that the governing body of a county may adopt an ordinance for the formation of a renewable energy financing district for the purpose of encouraging, accommodating and financing renewable energy improvements; and, upon determination that a district should be formed based on the interests, convenience or necessity of owners of property in the proposed district and the citizens of the municipality or county in which the proposed district would be located, the governing body of the county shall adopt an ordinance ordering that the renewable energy financing district be formed and identifying the method by which property owners can execute agreements to have their property included in the district; and

WHEREAS, the Act authorizes counties to enter into agreements to establish the obligations of the owners of real property included in the District and the County concerning the improvements and other matters relating to the use of the improvements within the District; and

WHEREAS, the Board of County Commissioners (the "Commission") of Santa Fe County (the "County") adopted County Resolution No. 2009-126 on [July 28], 2009 (the "Intent Resolution").

WHEREAS, the Intent Resolution sets forth application procedures for the inclusion of real property within the District, subject to enactment pursuant to this Ordinance approving the formation of the District; and

WHEREAS, the Commission has held a public hearing to consider formation of the District; and

SFC CLERK RECORDED 10/28/2009

WHEREAS, the Renewable Energy Improvements are to be permanently installed in accordance with applicable State and County standards including, without limitation, building permit requirements, which standards may be supplemented by Assessment Resolution; and

WHEREAS, the Renewable Energy Improvements will be financed by the Renewable Energy Improvement Assessment on the real property included in the District; and

WHEREAS, the Commission shall cause a copy of this Ordinance ordering formation of the District to be delivered to the County Assessor, the County Treasurer, the Taxation and Revenue Department of the State and the Local Government Division of the Department of Finance and Administration as required by the Act.

BE IT ORDAINED BY THE GOVERNING BODY OF SANTA FE COUNTY, NEW MEXICO:

Section 1. Defined Terms. As used in this Ordinance, the following terms shall have the meanings specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

"Act" means the Renewable Energy Financing District Act, Chapter 180, Laws of New Mexico 2009.

"Assessment Resolution" means a resolution of the District Board that includes real property in the District and imposes a Renewable Energy Improvement Assessment, which Assessment Resolution may include one or multiple parcels with separate ownership interests.

"Commission" means the Board of County Commissioners of the County.

"County" means Santa Fe County, New Mexico.

["Contractor" means the contractor hired by the County to perform duties related to the formation and operation of the District.]

"District" means the Santa Fe County Renewable Energy Financing District.

"District Board" means the governing body of the District.

"District Boundary Map" means the map attached as Exhibit "A" to the Ordinance.

"Intent Resolution" means County Resolution No. ~~2009-126~~ adopted on 7/28, 2009.

"Ordinance" means this ordinance adopted by the County in connection with its approval of the formation of the District.

"Renewable Energy Improvement Assessment" means a special assessment imposed as authorized by the Act and this Ordinance.

SFC CLERK RECORDED 10/28/2009

"Renewable Energy Improvements" means the renewable energy improvements, as provided in the Act, to be financed with the proceeds of the Renewable Energy Improvement Assessment imposed on each parcel of real property included in the District.

"State" means the State of New Mexico.

Section 2. Findings. The County hereby declares that it has considered all relevant information and data, and hereby makes the following findings:

A. The owners of the real property to be included in the District shall own 100% of the real property to be included in the District.

B. The Renewable Energy Improvements will be constructed to County specifications, and will be subject to inspection, approval and acceptance by the County.

C. The District will serve the interests, convenience and necessity of the owners of real property included in the District, future owners of parcels located within the District and the citizens of the County.

D. The cost of permanently installing the Renewable Energy Improvements will be allocated to the owners of real property included in the District via a Renewable Energy Improvement Assessment, and will not be passed on to the citizens of the County or the County itself.

E. The financing of the Renewable Energy Improvements is feasible and will not impose an undue burden on the future owners of real property located within the District.

F. The financing of the Renewable Energy Improvements will enable the District to construct those improvements in a cost-effective manner.

G. As planned, the Renewable Energy Improvements promote the County's goals and policies relating to the incorporation of renewable energy and energy efficient technologies.

H. The Commission has determined that proceeding with the formation of the District is consistent with the Intent Resolution and promotes the interests, convenience or necessity of the owners of real property to be included in the District; and

I. The Commission has determined that is in the best interests of the County and its citizens to form the District for the purpose of encouraging, accommodating and financing Renewable Energy Improvements; and

Section 3. Approval of Formation of District.

A. Formation of the District is hereby approved.

B. The District shall encompass the boundaries of the County subject to the addition of specific parcels pursuant to Assessment Resolutions.

SFC CLERK RECORDED 10/28/2009

C. [By Resolution, the incorporated municipalities of the City of Santa Fe and the Town of Edgewood have consented to inclusion within the District.]

D. The District is hereby ordered approved and formed to carry out the purposes set forth in, and according to the provisions of, this Ordinance and the Intent Resolution.

E. The purpose of the District shall be to encourage, accommodate and finance the Renewable Energy Improvements pursuant to the Act.

F. The District shall be self-supporting.

G. The District shall comply with existing County policies for development, growth management and conservation.

H. The officers, agents and employees of the County are hereby authorized and empowered to take all actions necessary and to execute and deliver all documents relating to or requested by the District to carry out and comply with the provisions of this Ordinance and the Intent Resolution.

Section 4. Determining Real Property to be Included in the District.

A. In order for real property to be considered for inclusion in the District, the recorded owner(s) of the real property shall complete one application for each parcel of real property to be considered for inclusion as described in the Intent Resolution. Following determination by County staff [or the Contractor] that the application is complete, the recorded owner(s) of the real property to be included in the District shall sign an agreement with the District Board agreeing to the terms of inclusion of the real property in the District and the imposition of the Renewable Energy Improvement Assessment in amounts necessary to pay the costs of permanently installing the approved renewable energy improvements and the costs of financing such improvements including the related administrative fees to the District. The costs of such improvements will be amortized over a period of time as determined by the District, or its Financial Advisor, which amortization schedule and Renewable Energy Improvement Assessment amount shall be acknowledged and approved by the owner prior to inclusion of the property. The District Board will approve the inclusion of each parcel of real property in the District pursuant to an Assessment Resolution or Assessment Resolutions.

B. The District shall deliver a copy of each Assessment Resolution to the County Assessor and the County Treasurer. A copy of each Assessment Resolution and a description of the real property included within the District shall be recorded with the County Clerk.

Section 5. Imposition of Renewable Energy Improvement Assessment.

A. Following the approval of inclusion of real property in the District, the District Board may impose a Renewable Energy Improvement Assessment on such real property sufficient to pay for the Renewable Energy Improvements, costs of bond issuance, if any, debt

SFC CLERK RECORDED 10/28/2009

service, if any, and administrative costs of the District and the County as provided in the Intent Resolution.

B. Each owner of real property shall acknowledge and consent to the Renewable Energy Improvement Assessments amount and amortization schedule as a condition of inclusion of the real property in the District.

C. Following acknowledgement and consent by the owner of the real property to be included in the District and satisfaction of the other requirements of the Act, this Resolution and as may from time to time be made applicable by the Commission, the Board shall adopt an Assessment Resolution. An Assessment Resolution may include one or multiple parcels with separate ownership interests.

D. Renewable Energy Improvement Assessments shall be collected at the same time and in the same manner as property taxes are levied and collected; provided that the District Board may, in its discretion, establish alternative collection procedures. Renewable Energy Improvement Assessments may be prepaid pursuant to procedures established by the District Board and identified in Assessment Resolutions.

Section 6. Special Assessment Bonds. The District may issue one or more series of special assessment bonds [or enter into loan agreements] to provide funds for Renewable Energy Improvements by subsequent Ordinance or Resolution. Bonds shall be payable from Renewable Energy Improvement Assessments levied pursuant to the Assessment Resolutions adopted by the District Board. In the discretion of the District Board, the District may issue bonds secured by the Renewable Energy Improvement Assessments on multiple parcels within the District, or secured by the Renewable Energy Improvement Assessment on a single parcel within the District.

Section 7. District Governance.

A. The District Board shall initially be composed of the five members of the Commission.

B. The initial members of the District Board shall serve six-year terms.

C. Once the initial six-year terms expire, the initial members of the District Board must be replaced by elected directors.

D. The District Board shall hold a public meeting following the date of adoption of this Ordinance. At that meeting, the District Board shall adopt an open meetings policy and by-laws for the District.

Section 8. Amendments. This Ordinance may be amended or supplemented by ordinance or resolution adopted by the Commission in accordance with the laws of the County and the State.

Section 9. Repealer. All ordinances or resolutions, or parts thereof in conflict with the provisions of this Ordinance, are hereby repealed to the extent only of such inconsistency.

SFC CLERK RECORDED 10/28/2009

This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

Section 10. Severability. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall in no manner affect any remaining provisions of this Ordinance.

Section 11. Publication of Notice of Adoption of Ordinance. The County Clerk is hereby directed to publish a notice of this Ordinance, in substantially the following form:

Notice is hereby given of the title and general summary of the subject matter contained in an ordinance duly adopted and approved by the Board of County Commissioners of Santa Fe County, New Mexico relating to the approval of the Santa Fe County Renewable Energy Financing District. Complete copies of the ordinance are available for public inspection during the regular business hours of the County Clerk, Santa Fe County, New Mexico.

The title of the Ordinance is as follows:

ORDINANCE

APPROVING THE FORMATION OF THE SANTA FE COUNTY RENEWABLE ENERGY FINANCING DISTRICT PURSUANT TO THE RENEWABLE ENERGY FINANCING DISTRICT ACT, CHAPTER 180, LAWS OF NEW MEXICO 2009; MAKING FINDINGS IN CONNECTION WITH THE FORMATION OF THE DISTRICT; DETERMINING THE PURPOSES FOR WHICH THE DISTRICT IS BEING FORMED; APPROVING THE MANNER OF COLLECTION OF A RENEWABLE ENERGY IMPROVEMENT ASSESSMENT TO BE IMPOSED UPON REAL PROPERTY INCLUDED IN THE DISTRICT; APPROVING A FORM OF APPLICATION AND AGREEMENT BETWEEN THE COUNTY AND THE OWNERS OF REAL PROPERTY FOR INCLUSION OF REAL PROPERTY IN THE DISTRICT; PROVIDING FOR GOVERNANCE OF THE DISTRICT; PROVIDING FOR THE INCLUSION OF REAL PROPERTY WITHIN THE DISTRICT BY SUBSEQUENT RESOLUTIONS; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE

(End of Form of Summary of Ordinance for Publication)  
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SFC CLERK RECORDED 10/28/2009

PASSED, ADOPTED AND APPROVED this 27 day of October, 2009.

BOARD OF COUNTY COMMISSIONERS  
SANTA FE COUNTY, NEW MEXICO

By: [Signature]  
Mike D. Anaya, Chairperson

ATTEST:

By: [Signature]  
Valerie Espinoza, County Clerk



APPROVED AS TO FORM:

BY: [Signature]  
Peter Franklin, as Bond Counsel



COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss BCC ORDINANCE  
PAGES: 12

I Hereby Certify That This Instrument Was Filed for  
Record On The 28TH Day Of October, 2009 at 02:04:05 PM  
And Was Duly Recorded as Instrument # 1581412  
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office  
Deputy [Signature] Valerie Espinoza  
County Clerk, Santa Fe, NM

SFC CLERK RECORDED 10/28/2009

Board Member Harry Montoya then seconded the adoption of the foregoing ordinance introduced by Board Member Kathy Holian.

The motion to adopt the ordinance upon being put to a vote was passed and adopted on the following recorded vote:

Those Voting Aye: Harry Montoya  
Kathy Holian  
Liz Stefanics  
Virginia Vigil

Those Voting Nay: \_\_\_\_\_  
\_\_\_\_\_

Four (4) members of the Board having voted in favor of the motion, the presiding officer declared the motion carried and the ordinance adopted, whereupon the Chairperson of the Board and County Clerk signed the foregoing proceedings and ordinance upon the records of the minutes of the Board.

SFC CLERK RECORDED 10/28/2009

Board Member Harry Montoya then seconded the adoption of the foregoing ordinance introduced by Board Member Kathy Holian.

The motion to adopt the ordinance upon being put to a vote was passed and adopted on the following recorded vote:

Those Voting Aye:

Harry Montoya  
Kathy Holian  
Liz Stefanics  
Virginia Vigil

Those Voting Nay:

\_\_\_\_\_  
\_\_\_\_\_

Four (4) members of the Board having voted in favor of the motion, the presiding officer declared the motion carried and the ordinance adopted, whereupon the Chairperson of the Board and County Clerk signed the foregoing proceedings and ordinance upon the records of the minutes of the Board.

SFC CLERK RECORDED 10/28/2009

**EXHIBIT "A"**

District Boundary Map




SFC CLERK RECORDED 10/28/2009

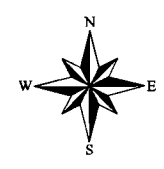
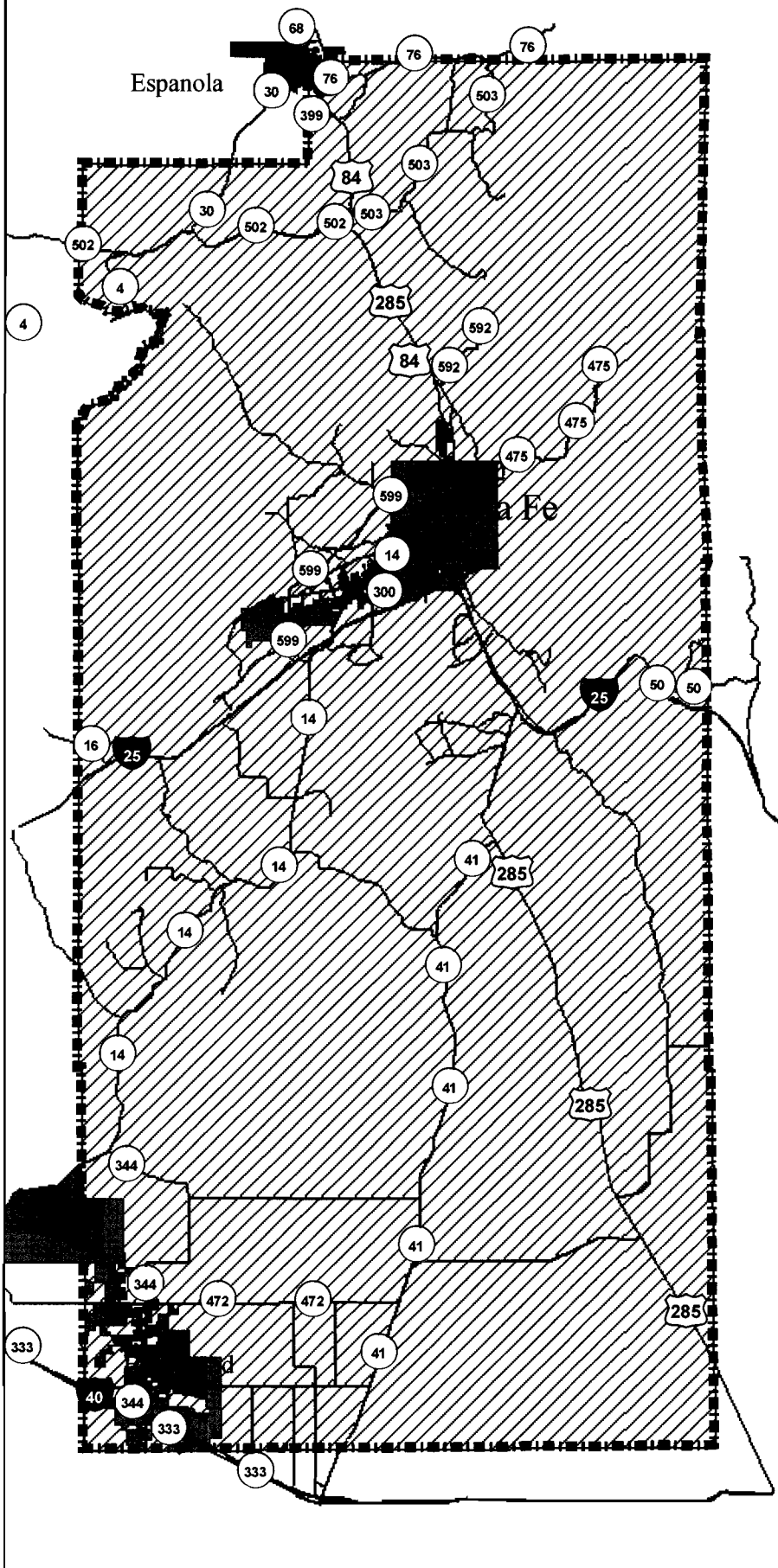
Santa Fe County  
Renewable Energy  
Financing District

District Boundary Map

EXHIBIT "A" to  
Ordinance No. 2009 - 12

Legend

-  Exterior District Boundary
-  Renewable Energy Financing District
- Municipalities (Not Included in District and Can Opt into District)**
-  Major Roads



This information is for reference only.  
Santa Fe County assumes no liability for  
errors associated with the use of these data.  
Users are solely responsible for confirming  
data accuracy when necessary.



Santa Fe County  
Growth Management  
Department  
Planning Division

Oct. 27, 2009  
renewable\_energy\_financing\_district

SFC CLERK RECORDED 10/28/2009

## **Appendix F REFD Consent Resolution**

This is the Consent Resolution passed by the City of Santa Fe in order to be included in the County's Renewable Energy Finance District.

1 **CITY OF SANTA FE, NEW MEXICO**

2 **RESOLUTION NO. 2009-121**

3 **INTRODUCED BY:**

4  
5 Councilor Calvert  
6 Councilor Wurzbarger  
7 Councilor Romero  
8 Councilor Bushee  
9

10 **A RESOLUTION**

11 **CONSENTING TO THE INCLUSION OF THE MUNICIPALITY OF THE CITY OF**  
12 **SANTA FE WITHIN THE SANTA FE COUNTY RENEWABLE ENERGY FINANCING**  
13 **DISTRICT.**

14  
15 **WHEREAS**, on October 27, 2009, the Santa Fe County Board of County Commissioners  
16 adopted Santa Fe County Ordinance No. 2009-12 approving the formation of the Santa Fe County  
17 Renewable Energy Financing District pursuant to the Renewable Energy Financing District Act  
18 [§§5-18-1 through 5-18-13 NMSA 1978] wherein individual property owners may voluntarily  
19 agree to the imposition of a special property assessment on their property that the owner uses to  
20 finance eligible renewable energy improvements on their property; and

21 **WHEREAS**, the Santa Fe County Renewable Energy Financing District encompasses  
22 the boundaries of the County (subject to the addition of specific parcels pursuant to individual  
23 assessment resolutions) including the area within the boundaries of the City of Santa Fe provided  
24 that the City of Santa Fe adopts a resolution consenting to inclusion within the district; and

25 **WHEREAS**, the Governing Body supported the adoption of the Renewable Energy

1 Financing District Act by the New Mexico Legislature (Resolution No. 2009-40) and indicated its  
2 support of such renewable energy financing districts (Resolutions No. 2009-58 and 2009-59)  
3 prior to adoption of Santa Fe County Ordinance No. 2009-12; and

4 **WHEREAS**, the Santa Fe County Renewable Energy Financing District, as established  
5 by County Ordinance No. 2009-12, will be governed by the Board of County Commissioners for  
6 the first six years after which a specially elected board will govern the district; and

7 **WHEREAS**, the Renewable Energy Financing District Act allows the Board of County  
8 Commissioners the option to appoint a board of directors for the first six years; and

9 **WHEREAS**, representation on the board of directors for the Santa Fe County Renewable  
10 Energy Financing District should also include members of the Governing Body of the City of  
11 Santa Fe, since it could be assumed many of those participating in the district will be property  
12 owners within the city boundaries.

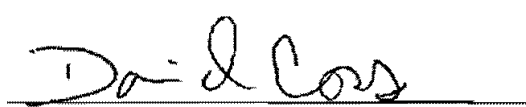
13 **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**  
14 **CITY OF SANTA FE** that the Governing Body consents to the inclusion of the municipality of  
15 the City of Santa Fe within the Santa Fe County Renewable Energy Financing District upon the  
16 condition that the County agrees to the following (and makes such changes to County Ordinance  
17 No. 2009-12 as is necessary):

18 1. The initial board of directors for the Santa Fe County Renewable Energy  
19 Financing District shall include three County Commissioners and two members of the Governing  
20 Body of the City of Santa Fe.

21 2. Property owners within the City of Santa Fe participating in the district shall be  
22 required to comply with City codes and be inspected and approved by the City. This requirement  
23 is in addition to any guidelines and standards established by the district.

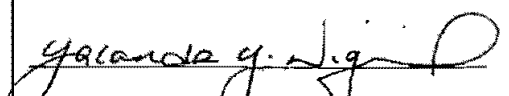
24 **PASSED, APPROVED, and ADOPTED** this 9th day of December, 2009.  
25

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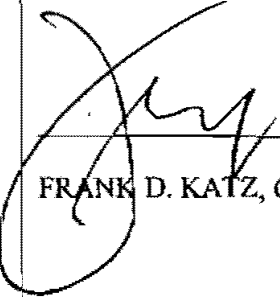


DAVID COSS, MAYOR

ATTEST:

  
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

  
FRANK D. KATZ, CITY ATTORNEY

## **Appendix G Information about 2009 HB 572**

This document focuses on the creation of a REFD using HB 572 2009, The Solar Energy Improvement Special Assessment Act.

AN ACT

RELATING TO LOCAL GOVERNMENT; ENACTING THE SOLAR ENERGY IMPROVEMENT SPECIAL ASSESSMENT ACT; AUTHORIZING COUNTIES TO IMPOSE, ADMINISTER AND DISBURSE SOLAR ENERGY IMPROVEMENT SPECIAL ASSESSMENTS TO ENCOURAGE THE DEVELOPMENT OF SOLAR ENERGY IMPROVEMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Solar Energy Improvement Special Assessment Act".

Section 2. DEFINITIONS.--As used in the Solar Energy Improvement Special Assessment Act:

A. "county" means a county, including an H class county;

B. "eligible solar energy improvement" means a photovoltaic or solar thermal system installed on residential or commercial property;

C. "photovoltaic system" means an energy system that collects or absorbs sunlight for conversion into electricity; and

D. "solar thermal system" means an energy system that collects or absorbs solar energy for conversion into heat for the purposes of space heating, space cooling or water heating.

Section 3. ORDINANCE IMPOSING SOLAR ENERGY SPECIAL

ASSESSMENT.--The board of county commissioners of a county may provide by ordinance for a solar energy improvement special assessment to be imposed on a residential or commercial property within the boundaries of the county if the owner of the property requests the assessment. The purpose of the solar energy improvement special assessment shall be to increase access to the benefits of solar technology improvements by participation in a voluntary special assessment on property, which can be used to facilitate financing arrangements for the eligible solar energy improvements.

Section 4. IMPLEMENTATION OF SOLAR ENERGY IMPROVEMENT SPECIAL ASSESSMENT.--A board of county commissioners enacting an ordinance providing for a solar energy improvement special assessment shall direct the county treasurer to include the solar energy improvement special assessment in the property tax bill for property subject to the assessment and to collect the assessment at the same time and in the same manner as property taxes are levied and collected if:

A. the property owner has submitted a written application, in a format approved by the county treasurer, requesting that the solar energy improvement special assessment be applied to the owner's property for the purpose of financing an eligible solar energy improvement on the property;

B. the county assessor has verified that the property owner requesting the solar energy improvement special assessment is the owner of record of the property with respect to which the solar energy improvement special assessment will be levied and that there are no delinquent taxes on the property;

C. the property owner has submitted certification, in a format approved by the county treasurer, that the improvements to the property:

(1) are eligible solar energy improvements;

(2) comply with guidelines for photovoltaic or solar thermal systems established by the energy, minerals and natural resources department; and

(3) will be installed in compliance with the guidelines established by the energy, minerals and natural resources department for installation of photovoltaic or solar thermal systems;

D. the property owner has submitted documentation, in a format approved by the county treasurer, of the proposed financing agreement for the solar energy improvements to the property to establish:

(1) that the financing will be provided by an entity that has been certified by the financial institutions division of the regulation and licensing department as a solar energy improvement financing

institution, pursuant to the provisions of Section 7 of the Solar Energy Improvement Special Assessment Act;

(2) that the financing is for an amount, including principal, interest and administrative fees to the county, that is no more than forty percent of the assessed value of the property according to current county property tax records and that the administrative fees to the county constitute no more than ten percent of the total financing amount;

(3) the annual amount of the solar energy improvement special assessment necessary to satisfy the financing agreement and the number of years the assessment shall be imposed on the property; and

(4) the conditions by which the property owner may prepay and permanently satisfy the debt owed pursuant to the financing agreement and remove the solar improvement special assessment and lien from the property.

Section 5. SOLAR ENERGY IMPROVEMENT SPECIAL ASSESSMENT--AMOUNT--COLLECTION--LIEN CREATED.--

A. The amount of the solar energy improvement special assessment on a property shall be the amount necessary to finance the eligible solar energy improvements, including payment of principal, interest and administrative fees collected by the county; provided that the administrative fees shall not exceed ten percent of the total financing amount.

Agreements entered into by the owner of the property with the solar energy improvement financing institution and submitted pursuant to this section shall be conclusive regarding the amount that may be assessed against the property; provided that, when the underlying debt has been satisfied, the solar energy improvement special assessment shall be removed from the property.

B. The solar energy improvement special assessment shall be levied and collected at the same time and in the same manner as property taxes are levied and collected. Money derived from the imposition and collection of the solar energy improvement special assessment shall be kept separately from other county funds.

C. A solar energy improvement special assessment shall constitute a lien on the property, which shall be effective during the period in which the assessment is imposed and shall have priority co-equal with other property tax liens. The amount of the lien shall not exceed the annual amount of the solar energy improvement special assessment imposed on the property. The lien shall be removed immediately upon satisfaction of the underlying debt giving rise to the assessment and lien.

Section 6. SOLAR ENERGY IMPROVEMENT SPECIAL ASSESSMENT--DISBURSEMENT OF PROCEEDS.--

A. Proceeds from a solar energy improvement

special assessment on a property shall be disbursed by the county treasurer solely for the purpose of financing the solar energy improvements to that property and paying the applicable administrative fees to the county.

B. The county treasurer shall enter into an agreement with the solar energy improvement financing institution providing financing to the property owner specifying the procedures by which the treasurer shall transfer the revenue from the assessment to the institution. The agreement with the solar energy improvement financing institution shall specify that the county is not liable in any way for the debt of the property owner, is not a third party obligor and is not pledging or lending its credit to the property owner or the financing institution.

Section 7. SOLAR ENERGY IMPROVEMENT FINANCING INSTITUTIONS--CERTIFICATION OF QUALIFIED ENTITIES.--The financial institutions division of the regulation and licensing department shall promulgate rules for the certification of financial institutions or other entities as solar energy improvement financing institutions. The rules shall ensure that a solar energy improvement financing institution is a member institution of the federal deposit insurance corporation or the national credit union administration or is an entity that the financial institutions division finds meets generally accepted criteria for financial

stability and soundness.

Section 8. ADDITIONAL CRITERIA PROHIBITED.--A county shall not establish additional criteria for participation by property owners in the solar energy improvement special assessment beyond those set forth in the Solar Energy Improvement Special Assessment Act. A county shall not require, as a condition of being subject to a solar energy improvement special assessment, that a property comply with energy efficiency standards such as energy audits, appliance replacement or energy efficiency improvements.

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.\_\_\_\_\_

**PART II**  
**SOLAR ENERGY IMPROVEMENT SPECIAL ASSESSMENT ACT**  
**(House Bill 572)**

The New Mexico legislature passed House Bill 572, the Solar Energy Improvement Special Assessment Act (“SEISAA”). The stated legislative purpose of SEISAA is to increase access to benefits of solar technology improvements by participation in a voluntary special assessment on property which can be used to facilitate financing arrangement for eligible solar energy improvements. Pursuant to SEISAA, an eligible solar energy improvement is a photovoltaic or solar thermal system installed on residential or commercial property located within a county. SEISSA, §2(B). Attached hereto as Attachment 6 is the SEISAA Legislation.

The Commission may enact an ordinance imposing a special assessment on residential or commercial real property within the County if the owner of property requests the assessment (the “Assessing Ordinance”). §3. The Assessing Ordinance directs the County Treasurer to include the assessment in the property tax bill for the real property subject to the assessment and authorizes the County Treasurer to collect the assessment at same time and in the same manner as property taxes.

**Step 1- Develop forms of Necessary Documentation**

**A. Property Owner Application Requesting Assessment of her Property and related certifications that must be approved by the County Treasurer and County Assessor.**

1. SEISSA requires that the County Treasurer approve the following:

-- a written application by a property owner for a solar energy improvement assessment

--a written certification by the property owner that the improvements are eligible solar improvements, comply with guidelines for solar systems established by the energy, minerals and natural resources department (“EMNRD”) and will be installed in compliance with guidelines established by EMNRD

--written documentation of the proposed financing agreement for solar energy improvements to the property, establishing the following:

--that the financing will be provided by an entity that has been certified by the financial institutions division of the regulation and licensing department as a solar energy improvement financing institution, pursuant to the provisions of § 7 of SEISAA

--that financing (Principal and Interest and administrative fees) is for an amount not more than 40% of assessed value of property according to the current County property tax records

--that the annual amount of assessment necessary to satisfy the financing agreement and the number of years the assessment will be imposed

-- conditions by which the property owner may prepay and remove the assessment lien from the property.

2. County Assessor Verification of Ownership and Nondelinquency.

The County Assessor must verify that the person requesting the solar energy improvement special assessment is the owner of record of the property which the solar energy improvement special assessment will be levied, and that there are no delinquent taxes on such property.

### 3. Agreement Between the County Treasurer and the Solar Energy Improvement Financing Institution.

Financing under SEISAA is accomplished through an agreement between the County Treasurer and the lender providing financing to the property owner which specifies the procedures by which the County Treasurer shall transfer revenue from the assessment to the institution. §6(B). The agreement with the solar financing institution must specify that the County is not liable in any way for the debt of the property owners, is not a 3<sup>rd</sup> party obligor and is not lending or pledging its credit to the property owner or the financing institution. §6(B). The County should develop a form of agreement to propose to lenders. See Step 2.

### **Step 2- Solar Financing Institutions**

At least one qualifying solar financing institution must be identified. The Financial Institutions Division of the Regulation and Licensing Department is charged with promulgating rules for certification of lenders as solar energy improvement financing institutions or other entities as solar energy improvement financing institutions. §7. The promulgated rules are to ensure that a solar energy financing institution is a member of FDIC or the national credit union administration or is an entity that the financial institutions division finds meets general accepted criteria for financial stability and soundness. *Id.* ***This is a legal step that must be completed by the Financial Institutions Division before the County or any other county in the State can move forward with this program.***

### **Step 3- Determine amount of the Solar Energy Improvement Special Assessment for Individual Property Owners**

The County may impose a special assessment in the amount necessary to finance the solar energy improvements and to pay principal and interest and administrative fees. §5(A). Such amount will be based upon the agreement between the property owner and the solar energy improvement financing institution. *Id.*

The solar energy improvement special assessment shall constitute a lien on the property co-equal with property tax liens. §5(c). The lien will be removed upon payment of the underlying debt. *Id.*

### **Step 4- Disbursement of Proceeds**

Proceeds received from a solar energy improvement special assessment shall be disbursed by the County Treasurer to finance solar energy improvements and to pay the applicable administrative fee to the County. §6(A).

**Step 5- Collect and remit assessments.** The solar energy improvement special assessment will be levied and collected in the same manner and at the same time as property taxes. Amounts derived from such assessment must be kept separately from other County funds. §5(B).

## **Maximum County Administration Fee**

The County may charge an administration fee of not more than 10% of total financing amount for a particular project.

## **No Additional Requirements**

The County cannot establish additional criteria for participation of property owners under the Act. §8.

### **Part III Potential Benefits to Property Owners**

Property owners financing solar improvements pursuant to either REFDA or SEISAA will be eligible for federal and state tax credits under, respectively, 26 USC § 25D and Section 7-2-18.14 NMSA 1978, as amended.

#### **RESIDENTIAL ENERGY EFFICIENT PROPERTY TAX CREDIT**

26 USC § 25D provides a tax credit of 30% of the purchase and installation costs of renewable solar electric, solar water heating, small wind energy and geothermal heat pump systems. There is no cap on the 30% credit. The credit is a non-refundable but may be carried forward to future tax years. 26 USC § 25D(c). To receive the credit, expenditures must be for a property which is used as a residence by the taxpayer. 26 USC § 25D(d).

#### **SOLAR MARKET DEVELOPMENT TAX CREDIT**

Section 7-2-18.14 NMSA 1978, as amended, provides a tax credit of 10% of the purchase and installation costs of solar thermal and photovoltaic systems in addition to those tax credits available pursuant to 26 USC § 25D. To receive the credit, a taxpayer must file an individual New Mexico income tax return and apply for the credit. Section 7-2-18.14(A) NMSA 1978. The total credit shall not exceed \$9,000, is non-refundable and may be carried forward for a maximum of 10 tax years. *See* Sections 7-2-18.14(B) and (E) NMSA 1978. There is a total of \$2 million dollars in tax credits available for solar thermal systems and \$3 million dollars for photovoltaic systems. Section 7-2-18.14(D) NMSA 1978. The Energy, Minerals and Natural Resources Department (EMNRD) has adopted rules establishing procedures to provide certification of solar thermal systems and photovoltaic systems for purposes of obtaining a solar market development tax credit. *See* NMAC 3.3.28.1 *et seq.* Additionally, EMNRD has developed an application for certification of installed solar systems which can be viewed at: <http://www.emnrd.state.nm.us/ECMD/CleanEnergyTaxIncentives/solartaxcredit.htm>.

In the event that renewable energy improvements other than solar improvements are financed pursuant to REFDA, such improvements may be eligible for federal tax credits under §25D, but will not be eligible for the additional 10% credit under Section 7-2-18.14 NMSA 1978.

#### **QUALIFIED ENERGY CONSERVATION BONDS (QECBs)**

QECBs were originally authorized in 2008 and were extended by the American Recovery and Reinvestment Act (“ARRA”) with an available allocation of \$3.2 billion. The County may issue QECBs, to finance a renewable energy district under SB 647 or to finance solar energy improvements pursuant to

HB 572. QECCBs are tax credit bonds which are designed to provide the issuer (i.e. the County) with a 70% interest subsidy by paying tax credits to purchasers of the QECCBs. The balance of interest (i.e. the additional 30% of the set interest rate) is paid by the issuer (normally with issuance of additional coupon bond). The interest rates on QECCBs are set by Treasury. Federal Davis-Bacon prevailing wage rules apply to projects financed with proceeds of QECCBs.

The State of New Mexico received a QECCB allocation of \$20,587,000. *See* IRS Notice 2009-29. At least 70% of this volume cap allocation must be used for governmental purpose bonds. Up to 30% may be used for private activity bonds (proceeds may be loaned to private companies and/or for privately owned or operated projects). The County may apply for an allocation once the State determines the allocation method.

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