CPACE Program Guidebook

Washington County, Oregon

Version 1.1 – November 2022

Contents

I. Introduction

Washington County ("County") administers a Commercial Property Assessed Clean Energy ("CPACE") financing program (the "CPACE Program" or the "Program"). The CPACE Program allows owners of eligible commercial property to obtain long-term financing from private capital providers for certain qualified improvements. While the financing is repaid to the Capital Provider, the Oregon Revised Statutes authorizing the CPACE Program ("CPACE Act") directs the County to impose a voluntary benefit assessment and record a lien (the "CPACE Lien") against the property receiving the financing in the County real property record. This approach to financing has been used by programs like CPACE on thousands of properties in more than 24 states and the District of Columbia.

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

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

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

II. Benefits of CPACE

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

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

- Up to 100%, long-term financing. Many owners lack the capital to complete efficiency and seismic improvements. All direct and indirect costs incidental to the qualified improvements can be wrapped into CPACE financing.
- Transferrable upon sale. Some owners may want to sell the building before the financing is repaid. The Benefit Assessment Lien recorded as part of CPACE and assessments due are attached to the property and transfers to the new owner.
- Cash flow benefits. CPACE financing may be repaid over the useful life of the improvements, which because of the long-term financing options can have positive effects on cash flow.
- Passed through costs. Triple-net and Full-net leases may allow pass-through of assessment installments to tenants. Under triple/full net leases, CPACE payments can be passed along to tenants, who also typically derive benefit from any energy savings through reduced operating costs.

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

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

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

III. CPACE Financing Program Rules

This Program Guidebook (the “Guidebook") is prepared consistent with the CPACE Act, at the direction of the Washington County Board of County Commissioners and is approved in connection with the enabling ordinance for this program (“CPACE Ordinance”) dated October 18, 2022, and the first amendment to that Ordinance “Amendment”, which is Ordinance 892 dated November 8, 2022. Capitalized terms used herein, but not defined herein, have the meaning given to such terms in the CPACE Ordinance.

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

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

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

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

1. Establishment of CPACE Program Boundaries

Washington County adopted Ordinance 891 on October 18, 2022, establishing the CPACE Program for all eligible commercial properties within the boundaries of the county, including both incorporated and unincorporated territory (the “Region”). The Region is illustrated in: Appendix A: Washington County CPACE “Region”.

2. Administration of Program; Authorized Officials

Washington County's Economic Development Office is designated and authorized to review each Project Application to confirm that it is complete, contains no errors on its face and includes an eligible CPACE project. Upon determining completeness and eligibility the Economic Development Office will execute the Benefit Assessment Agreement and CPACE Lien documents on behalf of the County and record them with the real property records.

As part of Program operation, the Economic Development Office will:

- Receive Project Applications (see Appendix B. Project Application) from Property Owners and Capital Providers for prospective CPACE projects.
- Review the Project Application to determine conformance with the Project Application Checklist (PAC) (See Appendix C: Project Application Checklist).
- Approve/conditionally approve/disapprove the Project Application and communicate to applicant.
- Execute the:
  - (1) Benefit Assessment Agreement,
  - (2) Notice of Assessment Interest and CPACE Lien ("Notice of Assessment Interest") and,
  - (3) Assignment of Notice of Assessment Interest ("Assignment").
- Record the Notice of Assessment Interest (2) and Assignment (3).

3. Eligibility Requirements

Eligible Property, referred to as "Qualifying Real Property" in Washington County's CPACE Ordinance means any privately-owned commercial, industrial, or multi-family real property of five (5) or more dwelling units located within the boundaries of the Region (including properties owned by a not-for-profit organization).

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

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

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

- Decrease energy consumption or demand through the use of efficiency technologies, products, or activities that reduce or support the reduction of energy consumption or allow for the reduction in demand or reduce greenhouse gas emissions (“Energy Efficiency Improvement”);
- Support the production of clean, renewable energy, including but not limited to a product, device, or interacting group of products or devices on the customer's side of the meter that generates electricity, provides thermal energy, or regulates temperature (“Renewable Energy Improvement”);
- Decrease water consumption or demand and address safe drinking water through the use of efficiency technologies, products, or activities that reduce or support the reduction of water consumption, allow for the reduction in demand, or reduce or eliminate lead from water which may be used for drinking or cooking (“Water Conservation Improvement”); or
- Increase seismic safety through rehabilitation improvements (“Seismic Improvement”).

Qualified Projects include the following:

- The acquisition, construction (including new construction), lease, installation, or modification of a Qualified Improvement permanently affixed to a Qualifying Real Property.
- For Renewable Energy Improvements, “permanently affixed” includes Qualified Projects that are subject to a power purchase agreement or lease between the Property Owner/applicant and the owner of the subject renewable energy system, if the power purchase agreement or lease contains all of the following provisions:
  - The Renewable Energy Improvement relates to a Renewable Resource, which includes: (a) water; (b) wind; (c) solar energy; (d) geothermal energy; (e) bioenergy from biomass (like manure or wood products) or biogas (like methane); (f) renewable hydrogen; (g) wave, ocean, or tidal power; or (h) alternative fuels such as ethanol, biodiesel, renewable diesel.
  - The term of the power purchase agreement or lease is at least as long as the term of the related Benefit Assessment Agreement.
  - The owner of the Renewable Energy Improvement agrees to install, maintain, and monitor the system for the entire term of the Benefit Assessment Agreement.
  - Neither the owner of the Renewable Energy Improvement, nor the Property Owner, nor any successors in interest are permitted to remove the Improvement prior to completion of the full repayment of the CPACE Lien.
  - After installation, the power purchase agreement or lease is paid, either partially or in full, using the funds from the CPACE financing.

    - The power purchase agreement or lease specifies the holder of the CPACE Lien is a third-party beneficiary of the power purchase agreement or lease until the CPACE Lien has been fully repaid.
- Qualified Projects include the refinancing of existing properties that have had Qualified Improvements installed and completed for no more than three (3) years prior to the date of Project Application.

Qualifying Capital Provider may be any of the following:

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

Qualifying costs that can be CPACE financed include:

- Materials and labor necessary for installation or modification of a Qualified Improvement;
- Permit fees;
- Inspection fees;
- Financing or origination fees;
- Program application and administrative fees;
- Project development, architectural and engineering fees;
- Third-party review fees, including verification review fees;
- Capitalized interest;
- Interest reserves;
- Escrow for prepaid property taxes and insurance;
- Any other fees or costs that may be incurred by the Property Owner incident to the installation, modification, or improvement on a specific or pro rata basis.

4. Application Process

The Economic Development Office will review the Project Application Checklist for proof of compliance with the requirements of the statute that are necessary for the County to approve the application and execute the applicable documents for the proposed CPACE transaction. All applicants are encouraged to review the Project Application Checklist accompanying the Application to ensure that the types of information that the County will rely upon to verify compliance with the statute are present in the completed Application.

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

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

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

(2) The Economic Development Office will have 10 business days to review and approve the Project Application. If the office has received an unusually high number of applications, or if review is delayed because of some force majeure event, the office may notify the applicant that the application review and approval will be delayed by no more than 10 additional business days.

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

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

(5) Upon application approval the Property Owner will pay the program fee. Washington County charges a processing fee for an approved application and document processing. The program fee is 1% of CPACE total financing, or a minimum of $2,500 and capped at a total of no more than $15,000.

(6) Upon receipt of approval, the Capital Provider will initiate the following "Closing Documents" (draft forms to be provided by the County):

(1) The Benefit Assessment Agreement,

(2) the Notice of Assessment Interest, and

(3) the Assignment.

At or before closing, at the request of the applicant, the designated and authorized official will execute Closing Documents.

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

(7) At closing, the County will record:

(2) the Notice of Assessment Interest, and,

(3) the Assignment, in the Office of the Recorder for Washington County.

At the election of the applicant, the County may delegate the recording of the Closing Documents to the applicant or their designee(s)[1].

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

(9) The Property Owner begins making assessment payments per the Benefit Assessment Agreement and in accordance with the Financing Agreement.

5. Application Documents

The Project Application (Appendix B) must be submitted with the following documents appended:

- Project Application Checklist (Appendix C)
- Lienholder(s) Consent (Appendix D)
- Certificate of Qualified Improvements (Appendix E)

[1] For more information regarding these documents, see Section 2.Administration of Program; Authorized Officials

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

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

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

Other professional entities may be accepted by the Economic Development Program at its discretion.

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

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

State licensed structural engineer. The evaluation must justify the cost measures included in the Application as cost-effective.

(4) For New Construction:

Relating to energy or water efficiency, certification by a licensed professional engineer stating that each proposed Qualified Improvement will enable the subject property to exceed the applicable energy efficiency, water efficiency, or renewable energy code requirements. The building as designed and as a whole, must demonstrate five percent (5%) performance above current and applicable code at the time of permitting to be eligible for CPACE financing.

(5) For Existing Buildings:

For existing buildings, the improvement must, at a minimum, meet current and applicable code and performance should be superior to existing conditions.

(5) Term of Benefit Assessment:

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

6. Closing Documents

The following documents require the signature of the County and shall be part of the closing of any CPACE transaction. The County will provide template forms. Each final document must be substantially similar in substance to the forms provided, and any changes shall be proposed clearly and in writing to the County. Form variation may be accepted at the discretion of the County. Note that proposed variations may extend the application timeline.

- Benefit Assessment Agreement
- Notice of Benefit Assessment and CPACE Lien
- Assignment of Notice of Benefit Assessment and Benefit Assessment Agreement

7. Interest Rates

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

8. Billing and Collection of Assessments

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

9. Enforcement of CPACE Lien

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

10. Program Fee

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

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

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

12. Form of Closing Documents

The Program has adopted form Closing Documents: The Benefit Assessment Agreements, Notice of Benefit Assessment and CPACE Lien, and Assignment of Notice of Benefit Assessment and Benefit Assessment Agreement. A Property Owner and Capital Provider may propose adaptions to the forms to address the needs of their particular transaction. Adapted forms will be accepted at the discretion of the County. These forms must not modify or omit any materially substantive terms contained therein.

13. Written Consent from Lienholder(s) Required

Before entering into a Benefit Assessment Agreement with the County, and pursuant to Oregon Statutes 223.680(6)(a) and (b) and 223.685(5)(a) and (b), the Capital Provider must obtain, and the Project Applications must show proof of notice and written consent for the placement of the assessment and CPACE Lien from any holder of a lien, mortgage, or security interest in the real property. The County will not execute the closing documents until the completed consents are received. Oregon Statutes require that the consent state that the agreement does not constitute a default.

14. Provisions for Marketing and Participant Education

This Guidebook will be made available to the public on the County's website. It is presumed that Property Owners and Capital Providers understand the principles and processes associated with CPACE financing and will look to the Guidebook for understanding and clarification of the County Program.

15. Washington County Has No Liability or Financial Responsibility

As detailed in the Benefit Assessment Agreement and Assignment document, neither the County, its governing body, executives, or employees shall be personally liable as a result of exercising any rights or responsibilities granted under this Program. The County shall not pledge, offer, or encumber its full faith and credit for any lien amount under the CPACE program. No public funds may be used to repay any CPACE financing obligation.

16. Participation in Rebate/Incentive Programs

Although not required, the County strongly encourages Property Owners to participate in all rebate and incentive programs available to the project based upon the proposed Qualified Improvements. Rebates and incentive programs provide participants with cash payments or tax credits for implementing Qualified Improvements, thus reducing overall project costs. This can lower the amount a Property Owner will need to finance. Rebate and incentive programs can also act as a third-party check on the validity of the proposed Qualified Improvements and their likely cost savings, thus reducing additional third-party project review costs that would otherwise be passed on to the Property Owners. To learn more about incentives and rebates visit:

- Energy Trust of Oregon
- Portland General Electric
- Northwest Natural Gas
- Oregon Department of Energy
- US Department of Energy

IV. Program Documents

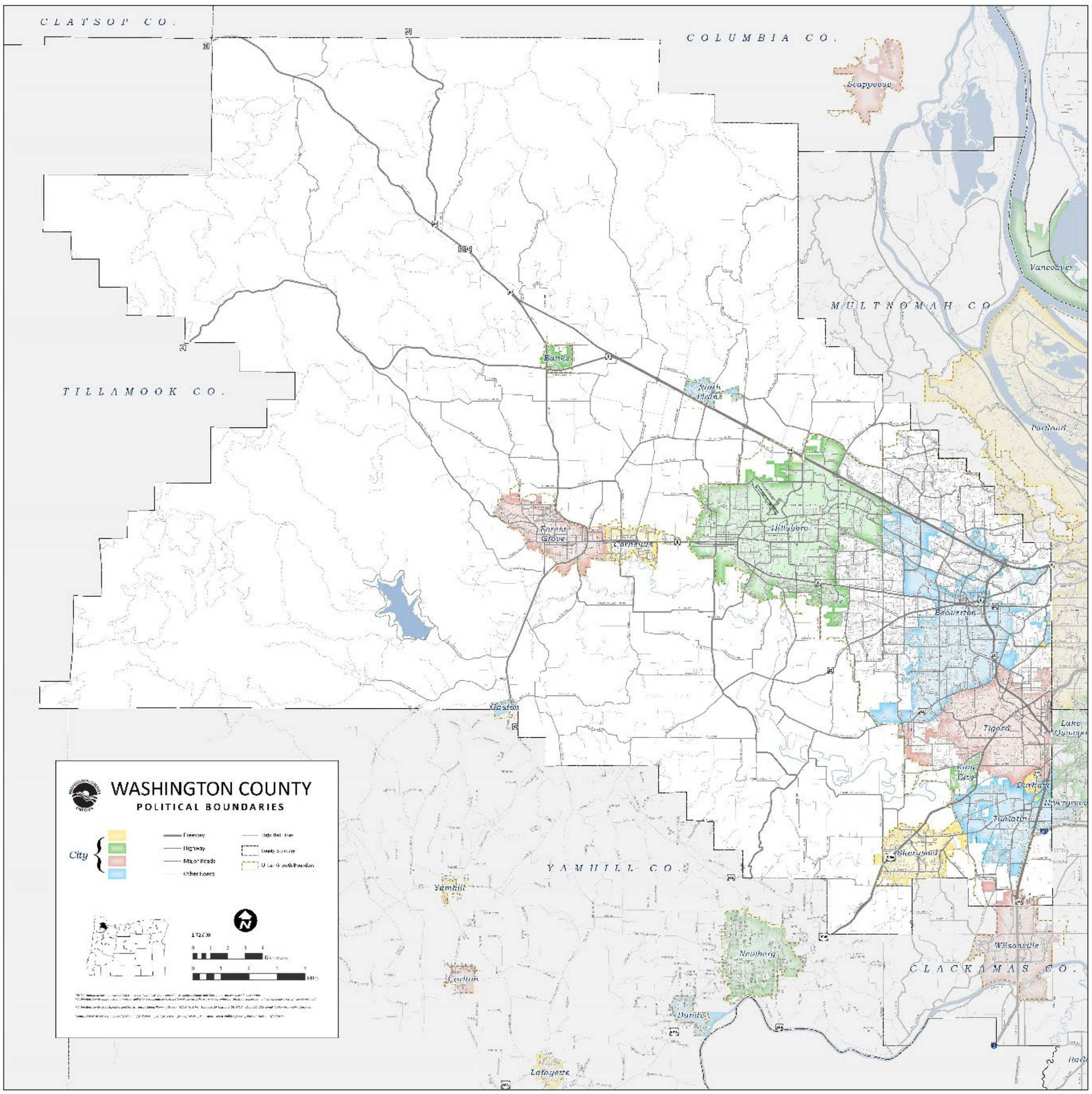
- Appendix A: Washington County CPACE "Region"
- Appendix B: Project Application
- Appendix C: Project Application Checklist (PAC)
- Appendix D: Lienholder Consent Forms
- Appendix E: Certificate of Capital Provider Qualification
- Appendix F: Certificate of Qualified Improvements

Appendix A: Washington County CPACE "Region"

Washington County adopted Ordinance 891 on October 18, 2022, establishing the CPACE Program for all eligible commercial properties within the boundaries of the county, including both incorporated and unincorporated territory (the "Region"). Moreover, the Region is comprised of all real property within the Washington County boundaries. The Region is illustrated in the following graphic.

Exhibit 1. Washington County Political Boundaries Map

Source: Washington County



Appendix B. Project Application

See following pages.

Appendix C: Project Application Checklist

See following pages.

Appendix D: Lienholder Consent Form

See following pages.

Appendix E: Certificate of Capital Provider Qualification

See following pages

Appendix F: Certificate of Qualified Improvements

See following pages