

Memorandum

To: Commr. David Hochschild,
Renewables Lead Commissioner

Date: July 2, 2015

From: Christa Salo, Staff Counsel
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California Energy Commission
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Subject: **Docket No. 06-NSHP-01**
Revisions to *New Solar Homes Partnership Guidebook* in the 9th Edition

Summary

This memo addresses the application of the California Environmental Quality Act (“CEQA”) to the Commission’s adoption of proposed revisions to the *New Solar Homes Partnership Guidebook* (“*Guidebook*”), as reflected in the 9th Edition. The *Guidebook* sets forth the guidelines governing the Commission’s New Solar Homes Partnership (“NSHP”) program. The *Guidebook* was initially adopted by the Commission in December 2006 and subsequently revised on several occasions. The *Guidebook* is being revised to make program changes and clarifications related to requirements for meters, lease and power purchase agreements, affordable housing projects, HERS rater field verification, program deadlines, processes for requesting project funding, application of previous editions of the *Guidebook*, minor revisions to forms, and other minor corrections and clarifying changes to existing *Guidebook* requirements and procedures previously adopted by the Commission.

Based on a review of CEQA and the pertinent legal authority, I have concluded that the Commission’s adoption of the proposed *Guidebook* revisions is exempt from CEQA, either because the action is not a “project” under CEQA, or because the action is exempt. The action is exempt under what is commonly referred to as the “common sense” exception to CEQA and under the exemption for solar on rooftops in Public Resources section 21080.35.

Background

The *NSHP Guidebook* explains how the Energy Commission implements and administers the New Solar Homes Partnership pursuant to Senate Bill 1 (Statutes of 2006, Chapter 132) and Senate Bill 107 (Statutes of 2006, Chapter 464, Sec. 7). The New Solar Homes Partnership provides funding to offset a portion of the cost of solar energy systems installed on new residential construction, with the goal of 360 MW of solar on new residential units by 2016. NSHP provides funding in the form of rebates that decline over time and are based on the expected performance of the solar energy system and level of energy efficiency achieved in the new residential building. The incentive is paid after the

solar energy system and energy efficiency measures are installed and program requirements are met. Some applicants may qualify for a partial payment of the incentive after the solar energy system is installed and then a final payment when the energy efficiency measures are complete.

The *NSHP Guidebook* is revised from time to time to reflect changes in law and changes in market conditions affecting the NSHP. Revisions to the *Guidebook* are adopted by the Energy Commission pursuant to Public Resources Code section 25747, Subdivision (a), and section 25784. The *Guidebook* describes eligible solar energy systems, eligible applicants, funding limitations, incentive levels, and the administrative procedures to apply for and receive funding from the NSHP. The *Guidebook* also includes the necessary application forms and instructions to apply for a rebate or incentive and describes how the Commission will review, process, and approve applications for incentives.

In summary, the proposed *Guidebook* revisions will do the following:

- Clarify that the NSHP will accept reservation applications until program funding is no longer available and the legislative goals of the program have been met;
- Clarify the metering requirements for a project;
- Revise and clarify documentation required for affordable housing projects' system owner tax-exempt status and regulatory agreements;
- Revise the required options to be provided at the end of the initial term of lease agreements and power purchase agreements ("PPAs");
- Revise requirements for lease agreements and PPAs when the NSHP incentive will be paid directly to the lessee or end-use customer;
- Require that HERS field verifications of solar energy systems in new housing developments follow the sample testing requirements described in the Building Energy Efficiency Standards under which the project was permitted, with certain exceptions;
- Provide qualifying projects either 3 months or 90 calendar days, whichever is later, after the project reservation expiration date to submit the required supporting documentation for a complete payment claim package;
- Revise the process for requesting additional project funding beyond the original reserved amount for projects with single and multiple solar energy systems;
- Allow applicants with projects with a payment claim that has not yet been approved to request that the project be subject to the reservation criteria and processes identified in this *NSHP Guidebook, Ninth Edition*;
- Clarify that projects with payment claims that have not yet been approved may be subject to the payment claim criteria and processes identified in *this NSHP Guidebook, Ninth Edition*;
- Minor revisions to the NSHP-1 (Reservation Application Form), NSHP-2 (Payment Claim Form), and the NSHP-3 (Ten Year Warranty Form); and
- Other minor corrections and clarifying changes.

CEQA

CEQA (Pub. Resources Code, § 21000 et seq.) requires state agencies to consider the environmental impacts of their discretionary decisions. CEQA generally applies to “discretionary projects proposed to be carried out or approved by public agencies...” (Pub. Resource Code, § 21080(a).) The CEQA Guidelines (Cal. Code of Regs., title 14) define a “project” to mean “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...” (CEQA Guidelines, § 15378(a).) The CEQA Guidelines list activities that may be considered a “project,” including approvals by public agencies for public works construction or related activities, contracts, grants, subsidiaries, loans or other forms of assistance, or leases, permits, licenses, certificates, or other entitlements. (CEQA Guidelines, § 15378(a)(1) - (3).)

The CEQA Guidelines also list several activities that do not fall within the meaning of the term “project” and thus are not subject to CEQA. These projects include the following activities:

- (1)
 - (2) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making (except as they are applied to specific instances covered above);
 - (3)
 - (4) The creation of governmental funding mechanisms or other governmental fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment;
 - (5)
- (CEQA Guidelines, Cal. Code Regs., tit. 14, § 15378(b).)

Adoption of *Guidebook* Revisions

The activity in this case is the Commission’s adoption of the proposed *Guidebook* revisions, as set forth in the 9th Edition. The relevant revisions outlined above revise and clarify existing *Guidebook* requirements and procedures previously adopted by the Commission.

The *Guidebook* revisions do not approve any public works construction or related activities, any contracts, grants, subsidiaries, loans or other forms of assistance, or any leases, permits, licenses, certificates, or other entitlements within the meaning of CEQA Guidelines section 15378. Nor do the *Guidebook* revisions approve the development of any new renewable projects that may have a direct or indirect physical impact on the environment, or award funding for any such project. Instead, the revisions to the *NSHP Guidebook* merely adjust or clarify administrative procedures for providing incentives for solar energy system installations under this existing program and clarify existing requirements.

As such, the adoption of the *NSHP Guidebook* revisions appears to fall within the list of activities excluded from the definition of “project” under CEQA Guidelines sections 15378(b)(2) and (4). As described above, section 15378(b)(2) excludes continuing administrative and maintenance activities

such as “...general policy and procedure making..” and section 15378(b)(4) excludes “[t]he creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment...”

The proposed revisions also reorganize and make nonsubstantive changes and edits to the text in various sections of the *Guidebook* and update various application and reporting forms as needed. These proposed *Guidebook* revisions are administrative in nature. Therefore, the Commission’s approval of the proposed revisions should be characterized as a continuing administrative or maintenance activity related to general policy and procedure making, and thereby excluded from the definition of a “project” under CEQA Guidelines, § 15378(b)(2).

For these reasons, adoption of the proposed *Guidebook* revisions should not be considered a “project” subject to CEQA. Assuming for the sake of argument, however, that adoption of the proposed revisions does in fact constitute a “project” under CEQA, the Commission’s action is nevertheless exempt under CEQA Guidelines section 15061(b)(3) and Public Resources Code section 21080.35.

By law, certain projects are exempt from CEQA. These include projects that have been granted an exemption by statute, projects that fall within a categorical exemption established in the CEQA Guidelines, and activities that fall within the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. (CEQA Guidelines, § 15061(b)(1) - (3).) Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is exempt from CEQA. (CEQA Guidelines, § 15061(b)(3).)

Adoption of these changes to the *NSHP Guidebook* will not have a direct or indirect significant effect on the environment. The action being taken by the Commission to adopt guidebook revisions merely establishes or adjusts administrative procedures. It does not commit funding for any particular renewable energy system. Nor are the revisions expected to result in a significant increase in the number or size of solar energy systems installed under the *NSHP Guidebook, 9th Edition*.

In addition, many if not all of the solar energy system installations that receive incentives from the NSHP likely fall under the CEQA exemption for the installation of solar energy systems on rooftops. (Pub. Resources Code, § 21080.35.) Public Resources Code section 21080.35 exempts from CEQA the “installation of a solar energy system on the roof of an existing building or at an existing parking lot” with an exception if the ground surface occupied by the solar energy system’s associated equipment is more than 500 square feet, and other relevant exceptions related to protected plants, water and waterway related permits, and endangered species take permits. The NSHP provides incentives for solar energy installations on new residential buildings, with the majority of installations placed on rooftops of single-family homes, some multi-family buildings, and on associated common areas. Typically, permits for installation of solar energy systems for these projects are over-the-counter permits from the permitting jurisdiction and the installations do not require over 500 square feet of ground space for associated equipment. Therefore, the installations would be exempt from CEQA.

Based on the foregoing, it appears that adoption of the *Guidebook* revisions will not result in a significant effect on the environment, and many if not all of the solar energy installations that receive incentives from the program are exempt from CEQA, and therefore the *Guidebook* adoption is both excluded and exempt from CEQA pursuant to CEQA Guidelines sections 15061 and 15378, and Public Resources section 21080.35.

For these reasons, the Commission's adoption of the proposed *Guidebook* revisions is exempt from CEQA.

Follow Up

The legal office will file this memo as part of the record in the NSHP proceeding, Docket No. 06-NSHP-01, to support the Commission's action if it chooses to adopt the proposed *Guidebook* revisions.

Additionally, if the proposed *Guidebook* revisions are adopted, the legal office will prepare and file a Notice of Exemption ("NOE") with the Office of Planning and Research ("OPR") pursuant to Pub. Resources Code, § 21108 (b) and CEQA Guidelines, §§ 15061 (d) and 15062.