

Memorandum

To: Commr. David Hochschild,
Renewables Lead Commissioner

Date: October 2, 2017

From: Michelle Chester, Staff Counsel
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California Energy Commission
1516 Ninth Street
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Subject: **Docket No. 06-NSHP-01**

Adoption of Proposed Revisions to *New Solar Homes Partnership Guidebook, Eleventh Edition*, at the October 11, 2017 Business Meeting

Summary

This memo addresses the application of the California Environmental Quality Act (CEQA) to the Energy Commission's adoption of proposed revisions to the *New Solar Homes Partnership Guidebook (Guidebook)*, as reflected in the Eleventh 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 program participation deadlines, incentive levels, incentive calculation, energy efficiency requirements, system verification, affordable housing projects, and forms and documentation.

Based on a review of CEQA and the pertinent legal authority, I have concluded that the Energy 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 under what is commonly referred to as the "common sense" exception to CEQA.

Background

The *Guidebook* explains how the Energy Commission implements and administers the NSHP program pursuant to Senate Bill 1 (Statutes of 2006, Chapter 132) and Senate Bill 107 (Statutes of 2006, Chapter 464, Sec. 7). The NSHP program provides funding to offset a portion of the cost to install solar energy systems on new residential construction, with the goal of installing 360 MW of solar energy capacity on new residential units by the end of the program. The NSHP program provides funding in the form of rebates 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.

The *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:

Program Participation Deadlines:

- Implements participation deadlines in accordance with legal encumbrance and payment program end dates.
- Establishes the reservation application submittal deadline as April 1, 2018, in order to satisfy the June 1, 2018, statutory encumbrance deadline, required by Senate Bill 83 (2015).
- Establishes the payment claim submittal deadline as August 31, 2021, in order to satisfy the December 31, 2021, statutory payment disbursement deadline, required by SB 83 (2015).

Incentive Levels:

- Increases incentive rates for all claims subject to the *2016 Building Energy Efficiency Standards*, under Title 24, Part 6 (*2016 Energy Standards*).

Incentive Calculation:

- Discontinues the alternative incentive calculation approach designed for large development projects with multiple building plans less than 2,500 square feet.

Energy Efficiency:

- Requires all reservation applications to include Title 24 documentation demonstrating that the applicant's project meets *2013 Energy Standards* or better.

PV System Verification:

- Allows the NSHP FI-1 form to be submitted at payment claim to calculate the incentive for systems that are minimally shaded and have recorded PV system verification results using the NSHP PV-3.

Affordable Housing and Multifamily Projects:

- Allows a "letter of intent" to be submitted in lieu of an executed installation agreement at the reservation stage for affordable housing and multifamily projects. An executed installation agreement will be required before final payment approval.

General Program Changes:

- Revises the NSHP-1, NSHP-2, and NSHP-3 forms.
- Provides clarification that the solar permit must be dated before the certificate of occupancy.
- Removes the requirement that building permits and subdivision tract maps be submitted with an application for a reservation, and instead allows the Energy Commission to request copies of these documents at a later date. The Energy Commission reserves the right to request copies of these documents for any reason.
- Removes the requirement that leases or power purchase agreements (PPA) be submitted with payment claims. The Energy Commission reserves the right to request a copy for any reason.
- Eliminates the Incentive Disclosure Affidavit form since the NSHP incentive amount will be listed on the NSHP-1 form and acknowledged by the applicant at reservation.
- Discontinues the Established Installer Lease/PPA form since leases or PPA's are no longer required at the time of payment claim. The Energy Commission reserves the right to subsequently request copies of these agreements for any reason.
- Removes the intended timeline for processing payment claims.
- Establishes a limit of a one-time extension up to 12 months per project, not to extend beyond August 31, 2021.
- Allows applicants with an approved project reservation that has not received an approved payment claim to request that the project be subject to the reservation criteria and processes identified in this *NSHP Guidebook, Eleventh Edition*. Applicants must notify the Energy Commission in writing or email if they wish to be subject to the *NSHP Guidebook, Eleventh Edition*.

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, including a public agency’s “[c]ontinuing administrative or maintenance activities, such as . . . general policy and procedure making” and 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.” (CEQA Guidelines, § 15378(b)(2) and (4).)

Adoption of *Guidebook* Revisions

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

The adoption of the *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 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).

Furthermore, 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(b)(4). 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 *Guidebook* merely adjust or clarify administrative procedures for providing incentives for solar energy system installations under this existing program and clarify existing requirements.

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).

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).)

Based on the foregoing, the Commission’s adoption of the proposed *Guidebook* is both excluded and

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 Energy 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.