

# Memorandum

To: Commissioner David Hochschild  
Renewables Lead Commissioner

Date: April 18, 2017

From: Michelle Chester, Staff Counsel  
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Subject: **Docket No. 16-NSHP-01 Revisions to New Solar Homes Partnership Guidebook, Tenth Edition**

## Summary

This memo addresses the application of the California Environmental Quality Act (CEQA) to the Commission's adoption of proposed minor revisions to the *New Solar Homes Partnership Guidebook, Tenth Edition* (hereinafter referred to as the Guidebook), as reflected in *New Solar Homes Partnership Guidebook, Tenth Edition (Revised)* and Attachment A – Revisions to the NSHP Guidebook, Tenth Edition – to the Notice to Consider Adoption of *New Solar Homes Partnership Guidebook, Tenth Edition (Revised)*. The Guidebook is being revised to change the timing of the submission of a current STD-204 form to the point of reservation to conform with the statewide transition to the Financial Information System for California (Fi\$Cal), which affects NSHP program budgeting and accounting processes, and to make minor changes to the Established Installer Reservation Form and the Incentive Disclosure Affidavit that will satisfy the requirements listed in the Guidebook.

Based on a review of CEQA and the pertinent legal authority, I have concluded that the Commission's adoption of the proposed Guidebook revision 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" exemption to CEQA. This is the same conclusion that was made in the Memorandum dated February 27, 2017 with regards to the proposed adoption of the *New Solar Homes Partnership Guidebook, Tenth Edition*.

## 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. 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 currently proposed changes to the *Guidebook* will do the following:

- Update the reservation application and payment claim processes by requiring a current STD-204 form to be on file at time of reservation application and approval to accommodate the transition to Fi\$Cal on July 1, 2017; and
- Make minor changes to the Established Installer Reservation Form and the Incentive Disclosure Affidavit that will satisfy the requirements listed in the NSHP *Guidebook*.

### CEQA

CEQA (Public 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 . . .” (Public Resources Code, § 21080(a)). The CEQA Guidelines (Cal. Code Regs., Title 14, Chapter 3) 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, 14 CCR § 15378(a)). The CEQA Guidelines lists activities that may be considered a “project,” including approvals by public agencies for public works construction or related activities, contracts, grants, loans or other forms of assistance, or leases, permits, licenses, certificates, or other entitlements (CEQA Guidelines, 14 CCR § 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 . . .” (CEQA Guidelines, § 15378(b)(2).)

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 Minor Changes to the Guidebook

All of the proposed changes are administrative in nature. As such, the Commission’s approval of the proposed changes 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, 14 CCR § 15378(b)(2), and not subject to CEQA.

However, if the adoption of the proposed changes do in fact constitute a “project” under CEQA, the Commission’s action is nevertheless exempt under CEQA Guidelines, 14 CCR § 15061(b)(3), commonly referred to as the “common sense” exemption. Where there is no possibility that the activity in question may have a significant effect on the environment, the activity is exempt from CEQA under this exemption (CEQA Guidelines, 14 CCR § 15061(b)(3)). The proposed changes do not constitute material changes to the *Guidebook* and so would not have a significant effect on the

environment. Additionally, the Commission has already determined the Guidebook is exempt under the common sense exemption, so changes thereto should fall under the same analysis.

For these reasons, the Commission's adoption of the proposed minor changes to the Guidebook are exempt from CEQA.