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TAKING WARTIME MOBILIZATION SERIOUSLY:

HOW TARGETED CEQA EXEMPTIONS CAN PROMOTE UTILITY-SCALE RENEWABLE ENERGY

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Abstract

State environmental laws such as the California Environmental Quality Act (CEQA) have historically focused on the conservation and preservation of environmental conditions. This paradigm prioritizes issues such as pollution, land management, and resource sustainability. However, most jurisdictions which have sought to address climate change have expanded their clean energy production capacity through new physical infrastructure. Since this expansion consumes land and water resources and creates other environmental side-effects, it often produces conflicts between historical environmental conservation and preservation mandates and the urgent imperative to expand carbon-free energy generating capacity in order to reduce greenhouse gas emissions (GHGs). California has in the past created exemptions from certain review requirements in CEQA for socially beneficial projects and streamlined the review process for renewable energy generating facilities. This work proposes that California go further and

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create exemptions from CEQA review requirements for Utility-Scale Renewable Energy Projects (USREPs) in order to prevent vexatious litigation and promote renewable energy development. These exemptions should be modeled on the exemptions created for certain environmentally friendly housing and transit projects and should ensure that sufficient classical environmental safety criteria are still satisfied. While this work focuses specifically on California, its suggestions for regulatory reform are generally applicable to all states with an interest in developing thriving renewable energy sectors and mitigating the effects of climate change.

INTRODUCTION

In 2009, Solargen, a solar power generation company, applied for a conditional use permit to construct the Panoche Valley Solar Farm, a 420-megawatt solar energy generation facility in rural San Benito County, California.[2] After the preparation of multiple environmental impact reports and consideration of recommendations from the California Department of Fish & Game (DFG), the proposed solar farm was reduced to a roughly 400 megawatt facility with mitigation measures in place to protect various species native to the area and reduce its land area.[3] The solar farm was approved for construction in 2010.[4] Notwithstanding this review process, Save Panoche Valley (SPV), a local citizens group, petitioned a trial court to cancel the County's approval of the project under CEQA, which the trial court declined to do a year later in 2011.[5] SPV appealed this decision to the California Court of Appeals on the grounds that "the County approved the project despite the fact that (1) there was a feasible, environmentally superior alternative, (2) the EIR's impact analyses were deficient, and (3) the findings made by the Board were improper and

[2] *See* Save Panoche Valley v. San Benito County, 217 Cal. App. 4th 503, 510 (Ct. App. 2013).
[3] *See id.* at 510-13.
[4] *See id*. (the revised project alternative "incorporated changes meant to avoid areas with the highest concentration of giant kangaroo rat and blunt-nosed leopard lizard populations…included a biological conservation easement on 1,683 acres of the project site… implement[ed] a 22-acre buffer zone for each individual blunt-nosed leopard lizard").
[5] *See id*. at 513.

unsupported by evidence."[6] The Court of Appeal affirmed the trial court's denial of SPV's petition on CEQA grounds in 2013.[7] Construction had still not begun on the solar farm.[8]

In 2014 Panoche Valley Solar (PVS), the successor-in-interest to Solargen, sought to modify the conditional use permit for the project and reduce the proposed project size again to 247 megawatts.[9] This modification was approved in 2015, which spawned a lawsuit by the Sierra Club challenging the environmental impact report for the project modification.[10] The Sierra Club claimed that (1) the new environmental impact report contained "significant new information" that did not appear in its initial draft which would require the county to recirculate the final review for public comment, (2) failed to address new research about the conditions of endangered species in the area, (3) failed to propose enforceable mitigation measures, and (4) failed to address the effect of an accelerated construction schedule on local water resources.[11] On appeal, every one of these contentions was found to be lacking and the environmental impact report was determined to be adequate by the Court of Appeal in 2017.[12] The same year, Con Edison, which had taken ownership of the project, settled with the Sierra Club and other environmental groups in order to prevent further litigation.[13] This settlement further reduced the projected power output of the solar project to 130 megawatts with a commissioning date to begin operating in 2018.[14]

In summary, the Panoche Valley Solar Farm took nine years to go from its initial proposal to commissioning, and its energy generating capacity was cut to roughly one-third of that of the original. By comparison, the 550-megawatt Topaz Solar Farm in the same inland mountain region of California went from the release of its final environmental impact report in 2011 to full operation

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[6] *Id*. at 519, 521, 523-24, 528, 530-31 (specifically, SPV argued that "the Westlands CREZ is a feasible, proximate alternative that the Board erroneously dismissed as infeasible," "the presence of the blunt-nosed leopard lizard is well known, but that the EIR failed to adequately complete biological surveys regarding the species . . . . [T]he project would result in an unlawful take of the species under Fish and Game Code section 5050," "the proposed mitigation measures to protect the 13,000 acres of land in and around the project site and to create agricultural conservation easements that would either cover 4,563 acres of rangeland or 285 acres of high quality cropland is inadequate . . . . [M]itigation measures should minimize, rectify, reduce and eliminate impacts, which these measures fail to accomplish." The Court rejected all of these assertions).

[7] *See id*. at 531.

[8] *See* Paul Rogers, *Giant California Solar Project Cut Back After Environmentalists Oppose It*, THE MERCURY NEWS, (Jul. 21, 2017), https://www.mercurynews.com/2017/07/21/giant-solar-project-reduced-due-to-environmentalists-opposition/ [https://perma.cc/6D2J-RKZ8].

[9] *See id*.; *see also* Sierra Club v. Cty. of San Benito, No. H042915, 2017 Cal. App. Unpub. LEXIS 1987 (Cal. Ct. App. March 22, 2017).

[10] Rogers, *supra* note 8.

[11] Sierra Club, Cal. App. Unpub. at *6, *15-*16, *23, *26-*27.

[12] *See id*. at *35.

[13] Rogers, *supra* note 8.

[14] *See id*.

only three years later in 2014.[15] This shorter timeline was executed after lawsuits filed by multiple environmental groups opposing the project were quickly settled in 2011.[16] In the case of the Panoche Valley Solar Farm, two rounds of trial and appellate CEQA litigation delayed a solar project by multiple years and ultimately resulted in a two-thirds reduction in generating capacity. In the case of the Topaz Solar Farm, a relatively quick settlement resulted in the construction of a much larger solar energy generating facility in a much shorter period. Despite its focus on environmental protection, CEQA litigation has sometimes resulted in delays and costs which only increase and extend the reliance of California energy consumers on fossil fuels and other non-renewable energy sources. It is cases like those spawned from the Panoche Valley Solar Farm proposal which highlight the need for CEQA reform that will protect and expedite environmentally friendly utility-scale renewable energy projects in order to reduce California's reliance on fossil fuels and combat climate change.

This work will examine the current permitting process under CEQA for utility-scale renewable energy projects (USREPs) and evaluate how this permitting process both helps and hinders California in meeting its greenhouse gas emission goals on schedule. This work proposes that California continue its recent course of CEQA reforms to provide limited exemptions for USREPs which demonstrably meet specific, environmentally friendly criteria. Part I provides a brief overview of California's current legislative position on climate change and CEQA's environmental review procedures. Part II provides an overview of the existing CEQA review and litigation process for USREPs and discusses how courts have constructed CEQA regulations with respect to these projects. Part III explores the history of legislative and administrative CEQA exemptions and streamlining, how these exemptions and streamlining policies have developed across multiple sectors of economic activity, and how they have facilitated the development of environmentally responsible and socially beneficial projects. Part IV argues that, given the narrow construction of existing CEQA exemptions, the California legislature should codify specific and limited CEQA exemptions for clean energy facilities. These exemptions should be modeled on the existing and recent statutory exemptions passed for mass-transit and affordable housing projects, which also work to duly consider and protect environmental interests without needlessly delaying or hindering the development of critical infrastructure. In addition, these exemptions should include the criteria recently established by the state legislature for streamlined utility-scale renewable energy projects.

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[15] *See* SAN LUIS OBISPO DEPT. OF PLANNING & BUILDING, VOLUME I FINAL ENVIRONMENTAL IMPACT REPORT TOPAZ SOLAR FARM PROJECT (Mar. 2011), https://www.slocounty.ca.gov/Departments/Planning-Building/Forms-Documents/Environmental-Forms-and-Documents/Archived-Environmental-Documents-(July-2017-June/Archived-(July-2017-June-2019)-Environmental-Imp/Topaz-Solar-Farm-FEIR/FEIR-Volume-1.pdf; NASA, *Topaz Solar Farm, California*, NASA EARTH OBSERVATORY (Jan. 2015), https://earthobservatory.nasa.gov/images/85403/topaz-solar-farm-california [https://perma.cc/286R-GMDQ].

[16] *See* Alan Bernheimer, *Topaz Solar Farm, North County Watch, and Carrizo Commons Reach Agreement on Topaz Solar Farm*, FIRST SOLAR (Sept. 2011), https://investor.firstsolar.com/news/press-release-details/2011/Topaz-Solar-Farm-North-County-Watch-and-Carrizo-Commons-Reach-Agreement-on-Topaz-Solar-Farm/default.aspx [https://perma.cc/6S2U-HECR].

PART I: THE CHOICE BETWEEN REVIEW AND MOBILIZATION

In 2021, Special Presidential Envoy for Climate John Kerry repeated his frequent calls for a "wartime mobilization" to fight the global crisis of climate change.[17] Special Presidential Envoy Kerry's call for dramatic legislative reform and government intervention is increasingly relevant for federal, state, and local economic policy.[18] Apparently heeding the call, many US states have intensified their efforts to reverse climate change by reducing greenhouse gas emissions.[19] As a result, thirty-three states have released or are developing their own respective versions of climate action plans—which prescribe a diverse range of measures from revising building codes, to investing in energy-efficient technology, to mandating the installation of renewable energy generation sources.[20] Twenty-five of these states, as well as the District of Columbia, have set statutory or executive targets for greenhouse gas emission reductions, many aiming for net-zero or near net-zero greenhouse gas emissions by the year 2050.[21] However, these statutory and executive targets are not self-enforcing and do not contain specific approvals for or requirements for approval of tangible emission reduction efforts.[22] It is unsurprising then that, of the five states which were scheduled to meet greenhouse gas emissions reduction targets in 2020, only one did so: California.[23]

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[17] John Kerry, *Remarks on the Urgency of Climate Action* (July 20, 2021), https://www.state.gov/remarks-on-the-urgency-of-global-climate-action/ [https://perma.cc/F93S-976Q] (last visited Mar. 23, 2024).

[18] Indeed, some scholars and lawmakers have drawn explicitly from economic reforms undertaken by the U.S. government during World War II to provide a basis for meeting the challenges of climate change. *See* Hugh Rockoff, *The U.S. Economy in WWII as a Model for Coping With Climate Change* (NBER Working Paper No. 22590, 2016), https://www.nber.org/system/files/working_papers/w22590/w22590.pdf (last visited Mar. 23, 2024); J.B. Ruhl & James Salzman, *What Happens When the Green New Deal Meets the Old Green Laws?*, 44 VT. L. REV. 693, 698 n.20 (2020).

[19] *See* Center for Climate and Energy Solutions, *U.S. State Climate Actions Plans*, https://www.c2es.org/document/climate-action-plans/ [https://perma.cc/8LJT-TBA9] (last visited Apr. 25, 2024).

[20] *See id*.

[21] *See* Center for Climate and Energy Solutions, *U.S. State Greenhouse Gas Emissions Targets*, https://www.c2es.org/document/greenhouse-gas-emissions-targets/ [https://perma.cc/3H4R-WRPS] (last visited Apr. 25, 2024).

[22] *See, e.g.*, Cal. Exec. Order No. B-55-18 (Sept. 10, 2018), https://www.ca.gov/archive/gov39/wp-content/uploads/2018/09/9.10.18-Executive-Order.pdf ("This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person") .

[23] *See* Center for Climate and Energy Solutions, *supra* note 21.

California has stood out among US states for its commitment to fighting climate change, going so far as to commit to a 40 percent reduction in greenhouse gas emissions below 1990 levels and a 60 percent Renewable Portfolio Standard (RPS) by 2030, as well as 100 percent carbon-free electricity generation by 2045.[24] These efforts enjoy support from a supermajority of the California public.[25] California's ambitious and domestically uncontroversial climate goals stand in contrast, however, to its lengthy and often-costly requirements for environmental review and compliance for renewable energy generation projects under the California Environmental Quality Act (CEQA).[26] The compliance and litigation costs imposed by CEQA create a "paradoxical tradeoff between CEQA environmental review and controlling greenhouse gas emissions."[27] These tradeoffs in clean energy generation contribute to an estimate that California, although it has hit its emissions targets so far, may face decades-long or even centuries-long delays in achieving its future emissions reduction goals.[28]

CEQA was signed in 1970 by then-California Governor Ronald Reagan in order to ensure that "all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage. . . ."[29] Similar to the National Environmental Policy Act (NEPA), CEQA requires California state and municipal agencies to conduct an Environmental Impact Report (EIR) before carrying out a project which would have a substantial impact on the environment.[30] These projects include any environmentally significant projects by private entities or parties which require any discretionary

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[24] *See* Cal. Exec. Order No. B-30-15 (Apr. 29, 2015), https://www.library.ca.gov/wp-content/uploads/GovernmentPublications/executive-order-proclamation/39-B-30-15.pdf; *see also* Cal. Pub. Util. Code §§ 399.11, 454.53 (Deering 2022).

[25] *See* PUBLIC POLICY INSTITUTE OF CALIFORNIA, PPIC STATEWIDE SURVEY: CALIFORNIANS AND THE ENVIRONMENT at 12 (July 2022), https://www.ppic.org/?show-pdf=true&docraptor=true&url=https%3A%2F%2Fwww.ppic.org%2Fpublication%2Fppic-statewide-survey-californians-and-the-environment-july-2022%2F.

[26] *See* CHRIS CARR, ET AL., THE CEQA GAUNTLET: HOW THE CALIFORNIA ENVIRONMENTAL QUALITY ACT CAUSED THE STATE'S CONSTRUCTION CRISIS AND HOW TO REFORM IT at 24 (Feb. 2022), https://www.pacificresearch.org/wp-content/uploads/2022/02/CEQA_Report_Final.pdf.

[27] Brian Troxler, *Stifling The Wind: California Environmental Quality Act & Local Permitting*, 38 COLUM. J. ENVTL. L. 163, 178 (2013).

[28] *See* Ruhl & Salzman, *supra* note 18, at 702 n.43.

[29] Cal. Pub. Resources Code § 21000(g) (Deering 2022).

[30] *See id.* § 21151(a); *see also* 42 U.S.C. § 4332(C) (all agencies of the federal government shall "include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on -- (i) reasonably foreseeable environmental effects of the proposed agency action; (ii) any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented; (iii) a reasonable range of alternatives to the proposed agency action . . . , (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and (v) any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented.").

permitting from a California state or municipal agency.[31] As a result, all utility-scale energy generation projects in California which do not have an exemption, including renewable energy projects, require an EIR due to the inevitable, significant impacts of such large-scale projects on the environment and the permits required for utility operation.[32]

PART II: CEQA REVIEW & LITIGATION

The first step of CEQA review is a determination by the agency conducting or designated to oversee an action of whether an action is a project for the purposes of CEQA. In order to be a project under CEQA, an action must directly or foreseeably cause a substantial change in the physical environment and must be undertaken by a public agency or a private party which has received public funding or approval for its action.[33] In the case of utility-scale renewable energy generation, meaning energy generation of 50 megawatts (MW) or greater in a single facility or land area, construction and operation will likely require a local permit or state level approval by the California Energy Commission (CEC).[34] If a plot of land is zoned for utility-scale renewable energy generation, then this zoning action will also be considered a project subject to CEQA.[35] Because utility-scale renewable energy generation necessarily changes the physical environment by reducing the use of fossil fuels which cause climate change, any such project will directly or foreseeably change the physical environment.[36] Any utility-scale energy permitting and zoning will therefore likely constitute a USREP.

After an acting agency or private actor determines that an action is a project, it must examine whether any statutory exemptions created by the California Legislature or categorical

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[31] *See, e.g.*, Friends of Mammoth v. Bd. of Supervisors, 500 P.2d 1360 (Cal. 1972); *infra* note 54 (defining the criteria for determining a project's environmental significance); *see also* Protect the Historic Amador Waterways v. Amador Water Agency, 116 Cal. App. 4th 1099, 1106-10 (Ct. App. 2004) (explaining the application of thresholds of significance to determine whether a project's environmental effects are significant).

[32] *See* Cal. Pub. Util. Code § 1001(a) (Deering 2022); *see also* Cal. Code Regs. tit. 20, § 2.4; Cal. Pub. Resources Code § 25545(b)(1) (Deering 2022) (defining a "facility" as, among other things, "[a] solar photovoltaic or terrestrial wind electrical generating powerplant with a generating capacity of 50 megawatts or more and any facilities appurtenant thereto.").

[33] *See* Cal. Pub. Resources Code § 21065 (Deering 2022); Cal. Code Regs., tit. 14, § 15064(a).

[34] *See Building Renewable Power Facilities in California*, Mintz, https://www.mintz.com/industries-practices/california-land-use/building-renewable-power-facilities (last visited Mar. 23, 2024); Cal. Pub. Resources Code §§ 25545(b)(1), 25545.1(a)-(b) (Deering 2022).

[35] *See, e.g.*, Backcountry Against Dumps v. San Diego Cty. Bd. of Supervisors, No. D066135, 2015 Cal. App. Unpub. LEXIS 6592, at *2-*3 (Cal. Ct. App. Sept. 16, 2015) (giving an example of a county conducting a CEQA review for a zoning change related to wind turbines).

[36] *See* Cal. Pub. Util. Code § 1001(a); *see also* Cal. Code Regs. tit. 20, § 2.4; Cal. Pub. Resources Code § 25545(b)(1) (Deering 2022).

exemptions created by the Natural Resources Agency apply to the action.[37] The legislature creates statutory exemptions to cover projects generally considered by the legislature to be socially beneficial. These projects include, but are not limited to, emergency projects, totally ministerial projects, certain mass transit expansions and modernizations, agricultural housing developments, affordable housing developments, and residential infills.[38] To the extent they apply, statutory exemptions apply regardless of the potential for a project to have significant effects on the environment.[39] In order to apply a statutory exemption, "there must be substantial evidence that the activity is within the exempt category of projects."[40] A "common sense" exemption may also apply if a project would ordinarily have the potential to significantly affect the environment, but "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment . . . ."[41]

Given the emergency posed by climate change and related natural disasters, one statutory exemption stands out as a potential option for expediting renewable energy development: the emergency project exemption.[42] CEQA defines an emergency as "a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services."[43] Although the emergency project exemption may therefore seem promising as a route for USREPs to bypass CEQA review, this avenue has been foreclosed by legal precedent. In the past, California courts have limited the definition of an emergency "to an *'occurrence*,' not a condition, and . . . the occurrence must involve a 'clear and imminent danger, demanding immediate action.'"[44] To be an emergency, a condition must also demand an immediate response for which there is no delayed, viable alternative.[45] Climate change or global warming, while it might increase the frequency of emergencies over time which require mitigation, would not qualify as an emergency that would allow for USREPs to escape CEQA review even if it were declared an emergency by state or

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[37] *See* Cal. Code Regs. tit. 14, § 15061(a).
[38] *See* Cal. Pub. Resources Code § 21080 (Deering 2022); Cal. Code Regs., tit. 14, §§ 15192-15195, 15268-15269, 15275.
[39] *See* Cal. Code Regs., tit. 14, § 15260; North Coast Rivers Alliance v. Westlands Water Dist., 227 Cal. App. 4th 832, 850 (Ct. App. 2014).
[40] North Coast Rivers Alliance, 227 Cal. App. 4th at 850 (cleaned up).
[41] Cal. Code Regs. tit. 14, § 15061(b)(3).
[42] Sixty-four municipalities in California have declared a "climate emergency" due to the effects of climate change on local environmental conditions. *See* Climate Emergency Declaration, *Climate Emergency Declarations in 2,323 Jurisdictions and Local Governments Cover 1 Billion Citizens* (Mar. 2023), https://climateemergencydeclaration.org/climate-emergency-declarations-cover-15-million-citizens/ [https://perma.cc/V9XB-7DJ9].
[43] Cal. Pub. Resources Code § 21060.3 (Deering 2022).
[44] CalBeach Advocates v. City of Solana Beach, 103 Cal. App. 4th 529, 536 (Ct. App. 2002) (quoting Western Mun. Water Dist. v. Superior Court, 187 Cal. App. 3d 1104, 1111 (Ct. App. 1986)).
[45] *See* Martin v. Riverside County Dept. of Code Enforcement, 166 Cal. App. 4th 1406, 1414 (Ct. App. 2008) (a seven-month delay in the response to a specific occurrence indicated that an event was not an emergency).

federal statute.[46] Because substantial evidence could not support the claim that any of the existing statutory exemptions apply to USREPs, there is no indication that such exemptions have been asserted for this class of projects.

Categorical exemptions are exemptions for classes of non-ministerial projects which have been determined by the Natural Resources Agency to per se lack a significant effect on the environment.[47] These classes of projects generally encompass projects such as minor alterations to existing structures and land, non-construction related regulatory actions to protect natural resources or the environment, and minor power generation installations or actions to prevent the release of hazardous substances.[48] Because USREPs involve construction and significantly affect the environment, categorical exemptions can not practically extend to large scale projects such as USREPs.[49]

After determining that USREPs are non-exempt projects, the lead agency for a project conducts an initial study with the goal of determining whether a full EIR, a negative declaration (ND), or a mitigated negative declaration (MND) is necessary.[50] The lead agency is "the public agency which has the principal responsibility for carrying out or approving a project."[51] The lead agency's initial study may be bypassed and an EIR immediately undertaken if the lead agency determines that an EIR is clearly required in light of the obvious, substantial effects of a project

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[46] *See* Western Mun. Water Dist., 187 Cal. App. 3d at 1112 (rejecting application of the emergency exemption to projects meant to diminish the risk or harms of a general class of natural disasters because it would "create a hole in CEQA of fathomless depth and spectacular breadth. Indeed, it is difficult to imagine a large-scale public works project . . . which could not qualify for emergency exemption from an EIR on the grounds that it might ultimately mitigate the harms attendant on a major natural disaster.").

[47] *See* Cal. Pub. Resources Code § 21084(a) (Deering 2022); Cal. Code Regs., tit. 14, §§ 15300-15300.1.

[48] Cal. Code Regs., tit. 14, §§ 15303-15305, 15307-15308, 15314-15315, 15327-15330.

[49] *See* Cal. Pub. Util. Code § 1001(a); *see also* Cal. Code Regs. tit. 20, § 2.4; Cal. Pub. Resources Code § 25545(b)(1) (Deering 2022); *see also* Cal. Code Regs., tit. 14, § 15300.2(c)-(d).

[50] *See* Cal. Pub. Resources Code § 21080.1(a) (Deering 2022); an environmental impact report is a detailed statement describing the impacts of a project upon all aspects of the human environment; a negative declaration is "a written statement briefly describing the reasons that a proposed project will not have a significant effect on the environment and does not require the preparation of an environmental impact report;" a mitigated negative declaration is "a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment." Cal. Pub. Resources Code §§ 21061, 21064, 21064.5.

[51] Cal. Pub. Resources Code 21067; *see also* Cal. Code Regs., tit. 14, § 15367

upon the environment.[52] Even if an initial study finds that the environmental effects of a project are overall beneficial, the agency must still prepare or use an EIR which adequately analyzes all significant environmental effects of the project if there is substantial evidence that the environmental effects of the project may be significant.[53] This substantial evidence of possible significant effect must be derived from a brief but holistic evaluation of the project's environmental effects which considers scientific data, views expressed by the public, direct or indirect physical changes to the environment, and economic or social changes derived from these physical changes.[54]

> This finding of significant effect is mandatory if there is substantial evidence that: The project has the potential to substantially degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; substantially reduce the number or restrict the range of an endangered, rare or threatened species; or eliminate important examples of the major periods of California history or prehistory.[55]

A finding of significant effect is also required if "[t]he project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals," if the effects of the project are cumulatively significant, or if "[t]he environmental effects of a project will cause substantial adverse effects on human beings . . . ." [56] Only if there is no substantial evidence that a project may have a significant effect on the environment is a ND permitted.[57] A MND is permitted if there is no substantial evidence that the effects of a project may be significant in light of mitigation measures imposed upon the project by the lead agency or the acting private party.[58] Notably, these mitigation measures are not optional once they are included in a MND or final EIR and must be included in the project's completion.[59] Its effects taken together, any USREP will likely satisfy the requirements for preparation of an EIR given the purpose of renewable energy to have a beneficial impact on the environment by reducing greenhouse gas emissions.[60]

Once a lead agency has determined that an USREP requires an EIR, it must begin the EIR drafting process by sending "a notice of preparation stating that an environmental impact report

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[52] *See* Cal. Code Regs., tit. 14, § 15063(a).
[53] *See id*. § 15063(b)(1).
[54] *See id*. § 15064(b)-(e).
[55] *Id.* § 15065(a)(1).
[56] *Id.* § 15065(a).
[57] *See id*. § 15063(b)(2); *see also* Friends of "B" Street v. City of Hayward, 106 Cal. App. 3d 988, 1002-03 (Ct. App. 1980) (requiring a fair argument based on the record before the lead agency that a project might have a significant environmental effect to compel the preparation of an EIR rather than a ND); Cal. Pub. Resources Code § 21080(c) (Deering 2022).
[58] *See* Cal. Code Regs., tit. 14, §§ 15064(f)(2), 15070(b).
[59] *See* Cal. Pub. Resources Code § 21081.6 (Deering 2022).
[60] *See* Cal. Pub. Util. Code § 1001(a); *see also* Cal. Code Regs. tit. 20, § 2.4; Cal. Pub. Resources Code § 25545(b)(1) (Deering 2022).

will be prepared to the Office of Planning and Research and each responsible and trustee agency and file with the county clerk of each county in which the project will be located."[61] The lead agency or the project applicant, with agency oversight, then prepares a draft EIR (DEIR) which contains all required elements of an EIR and must be circulated amongst the public for between thirty to sixty days in order to facilitate public comment, unless unusual circumstances require a longer public comment period.[62] After circulating the DEIR, the lead agency must create a final

[61] Cal. Code Regs. tit. 14, § 15082(a) ("This notice shall also be sent to every federal agency involved in approving or funding the project.").

[62] *See id*. §§ 15105(a), 15123-15130 (a DEIR must include a discussion of each significant effect of the project along with its proposed mitigation measures, areas of controversy regarding these significant effects, issues regarding choices amongst project alternatives and methods of mitigating significant effects, the "precise location and boundaries" of the proposed project, "a statement of the objectives sought by the proposed project," "a general description of the project's technical, economic, and environmental characteristics," "a description of the physical environmental conditions in the vicinity of the project," "direct and indirect significant effects of the project on the environment . . . giving due consideration to both the short-term and long-term effects . . .relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, . . . water, historical resources, scenic quality, and public services," "any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area affected," "the project's energy use for all project phases and components, including transportation-related energy, during construction and operation," "ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth . . . Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects . . . the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively," "feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy," "the basis for selecting a particular measure," " the effects of the mitigation measure . . . but in less detail than the significant effects of the project as proposed," "a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project," "sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project… If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative . . . but in less detail than the significant effects of the project as proposed," "a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be

EIR (FEIR) consisting of the DEIR, any submitted public comments and recommendation for the DEIR, a list of all commenters on the DEIR, the lead agency's responses to environmental issues raised during any review or consultation on the EIR, and any other information the lead agency seeks to add to the DEIR before finalizing it.[63] If any subsequent changes are made to the project or new information arises which suggests environmental impacts not considered in the FEIR, the lead agency must either provide substantial evidence that these changes will not cause new and significant or more severe environmental impacts, or must prepare a supplemental EIR with respect to the subsequent changes.[64]

PART III: STATUTORY EXEMPTIONS AND STREAMLINING

A. Statutory Exemptions

Even without litigation, on average "a typical EIR may take up to a year to complete."[65] For large projects such as USREPs, this process inhibits the growth of renewable energy sources.[66] Because of the time-consuming and expensive nature of CEQA's EIR requirements, the California legislature has created statutory exemptions from CEQA for a number of categories of projects which address overriding priorities such as affordable housing and mass transportation.[67] At the same time, the legislature has also expedited and delegated the EIR drafting and finalization process to state agencies for specific types of renewable energy projects which are not exempt from CEQA but which can face delays in typical municipal agency review processes.[68] These efforts reflect and further California's goal to "[a]chieve net zero greenhouse gas emissions as soon as possible, but no later than 2045, and to achieve and maintain net negative greenhouse gas

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significant," "all federal, state, or local agencies, other organizations, and private individuals consulted in preparing the draft EIR, and the persons, firm, or agency preparing the draft EIR," and "cumulative impacts of a project when the project's incremental effect is cumulatively considerable, as defined in section 15065(a)(3).").

[63] *Id.* § 15132.

[64] *See* Cal. Pub. Res. Code § 21166 (Deering 2022); American Canyon Community United for Responsible Growth v. City of American Canyon, 145 Cal. App. 4th 1062, 1072 (Ct. App. 2022).

[65] Sacramento County, *Planning and Environmental Review*, https://planning.saccounty.net/applicants/Pages/FAQ_ER.aspx#:~ [https://perma.cc/3BB8-AQJC] (last visited Mar. 23, 2024).

[66] *See* Michael B. Gerrard, *Legal Pathways for a Massive Increase in Utility-Scale Renewable Generation Capacity*, 47 ENVTL. L. REP. 10,591, 10,606-07 nn. 150-51 (2017).

[67] *See* Cal. Pub. Resources Code § 21080 (Deering 2022); Cal. Code Regs., tit. 14, §§ 15192-15195, 15268-15269, 15275.

[68] *See, e.g.*, Cal. Pub. Res. Code § 25545.7(a) (Deering 2022) ("The [California Energy] [C]ommission is the lead agency for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000)) and, except as provided in this chapter, shall prepare an environmental impact report pursuant to Division 13 (commencing with Section 21000)." This lead agency designation applies to renewable and non-fossil fuel thermal power plants with a generating capacity of 50 megawatts or greater).

emissions thereafter."[69] By applying the relevant labor, social, economic, and environmental standards for exempted housing and transportation projects and incorporating the criteria for expedited review of renewable energy projects, it is possible to synthesize a consistent set of potential rules for exempting utility-scale renewable energy projects from CEQA review.

In order to qualify for a statutory exemption from CEQA review, a housing project in California must (1) be consistent with all applicable development plans and a certified or adopted community-level environmental review, (2) have existing and adequate funding and power sources for development, and (3) not encroach on wetlands or the habitats of species protected under the Endangered Species Act (ESA), Native Plant Protection Act (NPPA), the California Endangered Species Act (CESA), or any species protected by relevant local ordinances.[70] The project must also (1) not be built on the site of a toxic waste facility or land contaminated by hazardous wastes, (2) not be built in an area or manner subject to a significantly heightened risk of natural disasters, (3) not be built in spaces developed for recreational use by the general public, and (4) not be located in a state conservancy.[71] To ensure local resource preservation, the project must (1) prevent the release of hazardous substances from the project site and mitigate any such release if it is discovered, and (2) must prevent any significant effect on historical resources.[72] In order to accomplish the social goals of affordable housing, the project must either be an affordable housing development for agricultural workers, a small acreage development in an urban area, or a transit-oriented residential infill project in an urban area which will create no more than one-hundred housing units.[73]

Before 2020, a limited set of mass transportation projects were exempted from CEQA review, on the condition that they were either increases or institutions of passenger travel on pre-existing commuter service rail lines or high occupancy vehicle (HOV) lanes, or "[f]acility extensions not to exceed four miles in length which are required for the transfer of passengers from or to exclusive public mass transit guideway or busway public transit services."[74] In 2020, these exemptions were temporarily expanded until the beginning of 2023 for some exemptions and 2030 for others to include construction of pedestrian and bicycle facilities, mass transit stations and increases in mass transit services along existing public rights-of-way, minimum parking requirement reductions, and other mass-transit friendly service modifications.[75] With the exception of changes to parking minimums, the projects eligible for exemption were required to be located in an urban area, be in an existing public right of way, and not add significantly greater

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[69] Cal. Health & Safety Code § 38562.2(c)(1) (Deering 2022).
[70] *See* Cal. Pub. Res. Code § 21159.21(a)-(d) (Deering 2022).
[71] *See id.* § 21159.21(e), (h)-(i).
[72] *See id*. § 21159.21(f)-(g).
[73] *See id.* §§ 21159.22 (for agricultural housing), 21159.23 (for urban development), 21159.24 (for transit oriented residential infill); *see also* Cal. Code Regs. tit. 14, §§ 15193-15195.
[74] Cal. Pub. Resources Code § 21080(b)(11)-(12) (Deering 2022).
[75] *See* California Environmental Quality Act: Exemptions: Transportation-Related Projects, Cal. S.B. 288 (2019-2020), Chapter 200 (Cal. Stat. 2020).

automobile capacity or demolish affordable housing.[76] Projects exceeding one-hundred million dollars in costs were additionally required to be incorporated into a broader plan which had undergone an environmental review as a whole, mitigate the environmental impacts of their construction to the degree required by applicable law, consider the impacts of the project on the local economy and racial equity, and hold at least three public meetings in the project area to engage with public comments on the proposed project.[77] To be eligible, any project must have also been completed by a trained and skilled workforce or have been bound by a prior project labor agreement.[78]

Taken together, the conditions imposed upon housing and transportation projects eligible for statutory exemption from CEQA review reflect a few relevant themes which are transferable to considerations for review of utility-scale renewable energy projects. First, eligible projects must be covered by a broader program environmental impact report (PEIR) which considers the impacts of a host of projects connected by geography, a "chain of contemplated actions," a "continuing program," or "the same authorizing statutory or regulatory authority . . . having generally similar environmental effects which can be mitigated in similar ways."[79] Second, eligible projects must not damage sensitive environmental conditions or habitats of protected or endangered species.[80] Third, eligible projects must assist or at least not impede the development of affordable housing.[81] Fourth, eligible projects must consider the impacts of their execution on the local economy and racial equity.[82] Fifth, eligible projects must make prior arrangements for adequate financial, logistical, and labor conditions related to the project.[83] Sixth, eligible projects must involve the local public through at least three public meetings, where the project and the related evidence of its compliance with conditions for exemption from CEQA review are open to public commentary.[84] These conditions ensure that CEQA exemptions are only applied to projects which can still ensure a baseline adequate level of environmental protection and equitable conduct in the absence of a full environmental impact report.

B. Streamlining

Streamlining refers to a general set of regulations which involve some combination of changing the lead agency designated to oversee the environmental impact report of a project, enacting statutory exemptions as already described, and shortening the timelines for project

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[76] *See id.*
[77] *See id.*
[78] *See id.*; *see also* Cal. Pub. Cont. Code § 2500(b)(1) (Deering 2022) ("Project labor agreement means a prehire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in Section 158(f) of Title 29 of the United States Code.") (internal quotation marks omitted).
[79] Cal. Code Regs. tit. 14, § 15168(a); *see also* California Environmental Quality Act: Exemptions: Transportation-Related Projects, *supra* note 75; *infra* notes 98-99.
[80] *See* discussion *supra* Part III(A).
[81] *See id.*
[82] *See id.*
[83] *See id.*
[84] *See id.*

approval or disapproval and judicial review of challenges to project approval.[85] Streamlining is generally intended "to provide, for a limited time, unique and unprecedented streamlining benefits under the California Environmental Quality Act for projects that provide the benefits described above to put people to work as soon as possible."[86] The purported benefits of projects eligible for streamlining include "replac[ing] old and outmoded facilities with new job-creating facilities to meet those regions' needs while also establishing new, cutting-edge environmental benefits in those regions."[87] By looking at the recent conditions imposed on renewable energy projects in order for these projects to qualify for streamlining, it is possible to identify the possible conditions which would be well-suited to qualify a project for statutory exemption from CEQA review in addition to those conditions identified by looking at statutory exemptions in other sectors of the economy.

Streamlining permits a utility scale renewable energy project applicant to change the lead agency for project approval from the local municipal agency with default jurisdiction over the project site to the California Energy Commission (CEC), which then has nearly sole authority over a project's approval with respect to CEQA compliance after it is designated as the lead agency.[88] This change prevents local agencies from stalling or rejecting an application due to local opposition. Streamlining also expedites the project application process by obligating the CEC to certify an application's completeness within thirty days in the absence of additional necessary information and decide on the certification of the project's environmental impact report within two-hundred and seventy days of an application being deemed complete.[89] The CEC is further required to ensure "timely and effective consultation" with other related state environmental regulatory agencies.[90] In the process of preparing an environmental impact report, the CEC must (1) "conduct public outreach to solicit input on an application," (2) "take feasible measures to avoid or minimize adverse impacts to tribal cultural resources," and (3) at the end of the review process "shall not certify a site and related facility under this chapter unless . . . (a) the facility will have an overall net positive economic benefit to the local government" and (b) "the applicant has entered into one or more legally binding and enforceable agreements with, or that benefit, a

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[85] *See, e.g.*, Environmental quality: Jobs and Economic Improvement Through Environmental Leadership Act of 2021., Cal. S.B. 7 (2021-2022), Chapter 19 (Cal. Stat. 2021).
[86] Cal. Pub. Res. Code § 21178(h) (Deering 2022).
[87] *Id.* § 21178(c).
[88] *See id.* § 25545.1(a)-(b) ("Upon receipt of the application, the commission shall have the exclusive power to certify the site and related facility, whether the application proposes a new site and related facility or a change or addition to an existing facility . . . . [T]he issuance of a certificate by the commission for a site and related facility pursuant to this chapter shall be in lieu of any permit, certificate, or similar document required . . . and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law.").
[89] *See id.* § 25545.4(a)-(e).
[90] *See id.* § 25545.5(a).

coalition of one or more community-based organizations . . . where there is mutual benefit to the parties to the agreement."[91]

The streamlined CEQA process still permits litigation by California parties to challenge the adequacy of the CEC's environmental impact report, including the adequacy of the CEC's determination that a project has met the threshold requirements for streamlining procedures. However, streamlining for an "environmental leadership project," a special class of projects which can include utility-scale renewable energy projects meeting certain elevated labor and environmental quality standards as certified by the Governor of California, requires all judicial challenges to the certification of an EIR "to be resolved, to the extent feasible, within 270 days of the filing of the certified administrative record with the court."[92] In order to qualify as an "environmental leadership development project," in addition to the criteria already required to attain streamlined review by the CEC, a utility-scale renewable energy project must also (1) involve a total investment of over one-hundred million dollars upon the completion of construction, (2) use a skilled and trained workforce paid prevailing and living wages, (3) promote apprenticeships, (4) prevent a net increase in greenhouse gas emissions, (5) recycle its waste products, (6) apply all mitigation measures listed in its certified environmental impact report, and (7) pay the court costs of any challenge brought under CEQA to the certification of the environmental impact report and the costs of the CEC arising from the preparation of the environmental impact report.[93] These extensive requirements reflect "the intent of the Legislature, in enacting this section, to maximize the environmental and public health benefits from measures to mitigate the project impacts resulting from the emissions of greenhouse gases to those people that are impacted most by the project."[94] By streamlining the litigation process, these provisions limit the effectiveness of the sort of delay and pressure via-litigation strategies illustrated by the comparison between the Panoche Valley Solar Farm and the Topaz Solar Farm.[95]

PART IV: NEW STATUTORY EXEMPTIONS FOR USREPS

While not all of the criteria included in existing statutory exemption and streamlining statutes are applicable to USREPs, these criteria provide a useful starting point for determining what set of conditions would best balance California's goals of reducing greenhouse gas emissions with CEQA's purpose to protect the environment.[96] Briefly, the potential criteria include: (1)

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[91] *Id.* §§ 25545.7.2, 25545.7.4(c), 25545.9, 25545.10.
[92] *Id.* § 25545.13.
[93] *Id.* §§ 21183, 25545.13(a).
[94] *Id.* § 21183.6(b).
[95] *See* introduction *supra*.
[96] It would be unwise to propose that CEQA should be eliminated entirely or that its review and mitigation requirements should be loosened across the board or without protective conditions in place, lest such a change endanger *both* preservation and climate change goals. *See, e.g.*, League to Save Lake Tahoe v. County of Placer, 75 Cal. App. 5th 63, 164–68 (Ct. App. 2022) (discussing how CEQA requires environmental impact reports to explore renewable energy alternatives for the energy demands of a project and requires the implementation of renewable energy alternatives as a mitigation measure where feasible to meet the California legislature's goal of reducing greenhouse gas emissions overall); *see also* Center for Biological Diversity v. Department of Fish & Wildlife, 62 Cal. 4th 204, 225-26 (2015) (finding that a project's

consistency with a broader or programmatic environmental impact report, (2) application of all mitigation measures listed in the relevant environmental impact report, (3) payment of administrative costs and court costs related to the development of and legal challenge to the relevant environmental impact report, (4) protection of sensitive habitats and protected species, (5) non-interference with historical resources and recreational spaces, (6) appropriate siting with respect to urban versus rural settings, (7) prevention of a net increase in greenhouse gas emissions, (8) recycling of waste products, (9) adequate funding and resources, (10) non-interference with affordable housing, (11) consideration of impacts upon local economic health and racial equity, (12) holding local public meetings, (13) use of a trained and skilled workforce or project labor agreement, (14) an investment by the end of construction of at least one-hundred million dollars, (15) payment of a prevailing or living wage, whichever is higher, and (16) promotion of apprenticeships.[97]

At the outset, some of these criteria are inapplicable to a statutory exemption framework with utility-scale renewable energy facilities because they reference the preparation of an environmental impact report, which a statutory exemption would preclude in the first place. Criteria (1), (2), and (3) fall into this category and therefore should be excluded from a utility-scale renewable energy project statutory exemption framework. While a broader PEIR applies well to projects such as local collections of urban housing developments which are related "[g]eographically" or "[a]s individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways[,]" utility-scale renewable energy projects are generally separate projects undertaken in isolation from each other, with varying conditions in different locations requiring different responses to ensure protection of local environmental conditions.[98] To adequately cover multiple, separate utility-scale renewable energy projects, a programmatic environmental impact report would need to be "sufficiently detailed and adequately supported," a requirement which, if applied to multiple independent and dispersed projects, would require a PEIR so extensive, broad, and open to legal challenge as to defeat the point of a statutory exemption in the first place: the expeditious construction of utility-scale renewable energy projects without parochial and vexatious litigation.[99]

Although the lack of a PEIR or EIR for a utility-scale renewable energy project may be a concerning prospect, the remaining criteria (4), (5), (6), (7), and (8) which cover specific

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greenhouse gas emissions may have a cumulatively significant impact on the environment in light of legislative goals to reduce greenhouse gas emissions *even if* the project proposes to reduce its greenhouse gas emissions below a "business-as-usual" level of emissions by a greater percentage than the legislature's percentage reduction target for statewide greenhouse gas emissions).

[97] *See* discussion *supra* Part III.

[98] Cal. Code Regs. tit. 14, § 15168(a) (listing the circumstances under which a single PEIR may cover a series of actions).

[99] *Center for Biological Diversity*, 62 Cal. 4th at 230 (explaining the circumstances under which a PEIR may be used to evaluate a project's impact on greenhouse gas emissions).

environmental benchmarks and the necessary opportunity to challenge a certification of compliance still fulfill the underlying purpose of CEQA.[100] Sensitive habitats should include: wetlands; habitats of species protected by the ESA, NPPA, or CESA; species protected by applicable local ordinances; locations contaminated with toxic wastes; locations containing historical resources; locations subject to a significantly heightened risk of natural disasters; locations developed for public recreational use; and lands designated as state conservancies.[101] With respect to criterion (6), utility-scale renewable energy facilities should be restricted to rural areas, which will avoid any possible imposition on critical urban housing developments and will pose little burden to solar and wind projects which already utilize primarily rural areas such as deserts and farms.[102] Criterion (7) will pose no issue for renewable energy facilities, which by their nature prevent a net increase in greenhouse gas emissions by displacing fossil fuel energy facilities as a power source.[103] Finally, criterion (8) exists to acknowledge that renewable energy construction creates waste products which could be damaging to the environment, and requires that these waste products be recycled where possible or otherwise disposed of in order to prevent environmental damage and degradation which would be inconsistent with CEQA's broader goals of environmental protection.[104] Consistent with CEQA's mission to protect against "cumulatively considerable" effects upon the environment, each of these criteria should continue to be evaluated by considering the added effects of a proposed project towards any of the above-listed environmental criteria on top of any "past projects, the effects of other current projects, and the effects of probable future projects."[105]

Criteria (9), (10), (11), (12), (13), (14), (15), and (16) safeguard a range of social and economic welfare considerations which California has applied to other projects exempted from the CEQA review and environmental impact report process.[106] Any successful effort to create a statutory exemption for utility-scale renewable energy projects is therefore likely to require similar safeguards. Criterion (9) will ensure that utility-scale renewable energy projects, which are naturally capital-intensive, are not initiated and then abandoned due to a lack of adequate funding or financing. Criterion (10) will ensure that projects do not impede affordable housing goals set

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[100] *See* Cal. Pub. Res. Code § 21000(b), (g) (Deering 2022).
[101] *See* Cal. Health & Saf. Code § 38562.2(c)(1) (Deering 2022).
[102] *See* Nichola Groom, *Special Report: U.S. Solar Expansion Stalled By Rural Land-Use Protests*, REUTERS, (Apr. 7, 2022), https://www.reuters.com/world/us/us-solar-expansion-stalled-by-rural-land-use-protests-2022-04-07/ [https://perma.cc/8RFG-DVMR]; Audubon California, *Wind Power*, National Audubon Society, https://ca.audubon.org/conservation/wind-power [https://perma.cc/H6HE-ECW3] (last visited Mar. 23, 2024).
[103] *See* discussion *supra* Part III(B).
[104] *See* Cal. Pub. Res. Code § 21000(b), (g) (Deering 2022); *see also* European Environment Agency, *Emerging Waste Streams: Opportunities and Challenges of the Clean-Energy Transition From a Circular Economy Perspective* (Feb. 10, 2023), https://www.eea.europa.eu/publications/emerging-waste-streams-opportunities-and [https://perma.cc/65RM-XMAB].
[105] Cal. Pub. Res. Code § 21083(b)(2) (Deering 2022); Cal. Code Regs. tit. 14, § 15355; *see also* Raptors Are The Solution v. Superior Court, No. A161787, 2022 Cal. App. Unpub. LEXIS 5902, at *21–*22 (Cal. Ct. App. Sept. 22, 2022) (giving an example of the requirements and policy reasons for a cumulative impacts analysis).
[106] *See* discussion *supra* Part III(B).

out by other statutory exemptions.[107] Criterion (11) will protect against inequitable siting decisions which disparately impact poor and racial minority residents. Criterion (12) will promote local buy-in for utility-scale renewable energy projects and allow for local residents to raise particular local issues which contradict the environmental standards laid out for projects covered by the proposed exemption which might otherwise be overlooked in the absence of a fully-fledged environmental impact report. Criteria (13), (15), and (16) will collectively incentivize projects seeking the benefits of an exemption to provide substantial benefits and labor rights to their workforces, consistent with the standards for other existing statutory exemptions. Lastly, criterion (14) will be relatively simple for high-cost projects such as utility-scale renewable energy projects to satisfy and will ensure that these projects bring significant capital investment into the state economy in exchange for the benefit of statutory exemptions.

The CEC, as the project lead agency for all projects meeting these compliance criteria, should require project sponsors to compile a report certifying that the above-listed criteria are satisfied by a proposed project. The CEC should require that this report be submitted concurrently with an application to the CEC for a statutory exemption. If the above-listed criteria are satisfied, the CEC should be required to certify the project and grant it a statutory exemption. This report would in theory be cheaper to compile than a standard environmental impact report due to the abbreviated list of compliance criteria, and should be certified or not certified in accordance with the expedited thirty day and two-hundred and seventy day timelines respectively laid out in the existing streamlining statute for utility-scale renewable energy projects.[108] It is especially important that the CEC be able to apply this abbreviated list of criteria rather than the current CEQA review process in light of evidence that solar projects reviewed by the CEC under the current CEQA regime take even longer on average than projects reviewed by local jurisdictions under CEQA.[109] Consistent with existing and prior statutory exemptions, California residents should be free to challenge the CEC's grant of a statutory exemption for a project on the theory that the project does not comply with the above-listed eligibility criteria, but the statute should provide that this litigation is also streamlined similar to litigation brought after the passage of the existing streamlining statute so that it is concluded within two-hundred and seventy days of the filing of the project's administrative record with the court.[110] In order to disincentivize vexatious

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[107] *See* Cal. Pub. Resources Code § 21159.21(a)-(d) (Deering 2022).

[108] *See* discussion *supra* Part III(A); *see also*, IDAHO NATIONAL LABORATORY, ASSESSMENT OF ECONOMIC IMPACT OF PERMITTING TIMELINES ON PRODUCED GEOTHERMAL POWER IN IMPERIAL COUNTY, CALIFORNIA (Feb. 2022), https://inldigitallibrary.inl.gov/sites/sti/sti/Sort_56108.pdf (providing analogous examples of the costs and timelines associated with the CEQA review process for geothermal energy production under the current regulatory regime).

[109] *See* Meaghan Mroz-Barrett, *Utility Scale Solar Projects in California: An Initial Survey* 14 (2015), http://digitalcommons.calpoly.edu/cgi/viewcontent.cgi?article=2535&context=theses (last visited Mar. 23, 2024).

[110] Cal Pub. Resources Code § 25545.13 (Deering 2022); *see also* County of Ventura v. City of Moorpark, 24 Cal. App. 5th 377 (Ct. App. 2018) (providing an example of a challenge under

litigation, the requirement that project sponsors pay for the costs of litigation should apply only at the discretion of the trial court, giving "due weight" to the degree to which an USREP's approval under the proposed exemption furthers the broad environmental protection goals of CEQA, the "suitability of the site" for a USREP, and the "reasonableness of the decision" to apply the proposed exemption.[111] This new fee shifting standard draws on recent housing legislation which only further highlights the timeliness of reforms to CEQA that tackle "cris[es] of historic proportions," such as climate change.[112]

CONCLUSIONS

California is at a crossroads. While it has met its greenhouse gas emission reduction targets so far, the state has made a greater commitment to combating climate change which will require it to go beyond its proportional obligations as other states and countries fail to similarly reduce their own greenhouse gas emissions. In an emergency where greenhouse gas emissions do not delineate based on where such emissions were generated, California has a vested interest in achieving net-zero emissions ahead of schedule. Here, wartime mobilization must be more than a metaphor. To achieve a wartime mobilization to fight climate change, expedited construction of utility-scale renewable energy projects will be critical. These projects, whether they be wind, solar, or any other method of renewable energy generation, are often impeded and delayed by the very environmental protection statutes meant to safeguard California's environmental health. While some delay is necessary as part of a thoughtful, deliberative, and holistic system of infrastructure development, governments must strike a balance between the classical goals of local environmental protection and the increasingly relevant, modern priority of creating a livable climate. This statutory exemption proposal strikes just such a balance, and does so by adopting and combining many of the existing criteria for statutory exemptions and streamlining already implemented by the California legislature in a variety of critical infrastructure contexts.[113] Whether legislatures adopt this set of criteria or some alternative set of criteria for a statutory exemption, the need for an exemption of some sort for renewable energy becomes more clear with each delay imposed upon vital renewable energy projects.[114]

CEQA to the application of a statutory exemption); *see also* Defend Our Waterfront v. State Lands Com., 240 Cal. App. 4th 570 (Ct. App. 2015).

[111] Cal. Gov't Code § 65589.5(p)(1) (Deering 2023).

[112] *Id.* § (a)(2)(a); Assem. Bill 1633, 2023-2024 Reg. Sess. (Cal. 2023).

[113] This work puts forward a model for balancing climate change and classical environmental protection goals in California, but similar models may also be applicable in other states with similar state environmental protection laws. *See* Ruhl & Salzman, *supra* note 18, at 698 ("What would that balance be? We do not know the answer to these questions").

[114] *See id.* at 720–21.