

There has been a lot of commentary over the decision by Tesla to [make its multi-billion dollar investment in a new battery factory in Nevada](#), rather than California. There have been some [criticisms](#) that California did not do enough to lure Tesla here, and/or that its business climate is not supportive enough for investment, including for high-tech, clean-energy investments like Tesla's.

Some of the inducements that the Governor and senior legislative leadership were reportedly considering offering to Tesla were [exemptions from the California Environmental Quality Act](#) (CEQA). As reported, these exemptions were more than the streamlining of judicial review that has been provided in the past to other projects, like the new NBA arena in downtown Sacramento. They were more akin to full exemptions from important CEQA requirements. For instance, the proposals would have allowed Tesla to start construction before the CEQA review and appeal process was complete. Any harm that the CEQA review discovered would be "mitigated" after the fact.

These proposed exemptions for Tesla are an example of the kind of creeping expansion of special CEQA exemptions that I [warned about in the past](#), in the context of proposed waivers for sports stadiums, high-speed rail, and infill projects. One special interest gets a special exemption; another set of special interests sees that exemptions are politically feasible and makes its own efforts to get those exemptions.

Of course, all of these special exemptions are based on claims that the projects are "green" and therefore should be encouraged. Tesla is building the electric car of the future that will fight climate change; high-speed rail will reduce the use of greenhouse-gas emitting airplanes and automobiles for long-distance trips within California; infill projects and urban sports stadiums reduce sprawl and encourage mass-transit use; solar and wind projects produce renewable energy.

These arguments all have much truth to them. But even the greenest projects have negative environmental consequences - see [this example](#) of the Ivanpah solar thermal plant literally frying birds that happen to be overhead. And given both the limited information we have with respect to environmental problems, and the many different conflicting value choices at issue, many different activities can be claimed to be "green" such that special treatment is warranted. ([Chevron argues that its refinery project would have environmental benefits.](#)) Once we've opened the door to letting specific "green" projects bypass the CEQA process, it's hard to know where the exemptions will end. The risk of exemptions is particularly high because many of the parties asking for exemptions - like Tesla - will have (lots of!) money and an interest in short-circuiting the process. In other words, they will both the interest and capacity to get what they want through the political process.

None of this means we shouldn't think about CEQA reform. But it does mean that we should focus on CEQA reform in general – not on one-off exemptions.

Another important lesson is the vulnerability of procedural statutes like CEQA to this kind of horse-trading. If Tesla had asked for exemptions from air quality standards, the political reaction might have been much more hostile – air quality exemptions are easily connected by the public to risks to their health and the environment. But CEQA can be portrayed as just paperwork. Of course, CEQA's paperwork does have important environmental benefits, but those are less obvious, and therefore harder to defend politically.

A final lesson is how the past exemptions (such as for the Sacramento NBA arena) have interacted politically with the Tesla fight. The GOP gubernatorial candidate, Neel Kashkari, has argued that [if CEQA exemptions were good for the NBA, they should be good for everyone](#). There are lots of problems with that argument (as Ethan [has pointed out elsewhere](#)), but it is politically appealing. And that is a risk of exemptions. What seems appropriate for one particular case can easily be extended in the political arena far beyond where it is appropriate.