

# OFFSHORE WIND & *Community Benefits* *Agreements* IN CALIFORNIA

CBA Examples

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Policy Report



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# OFFSHORE WIND & COMMUNITY BENEFITS AGREEMENTS IN CALIFORNIA

## CBA Examples

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# ABOUT THIS REPORT

## ABOUT THE CENTER FOR LAW, ENERGY & THE ENVIRONMENT

The Center for Law, Energy & the Environment (CLEE) channels the expertise and creativity of the Berkeley Law community into pragmatic policy solutions to environmental and energy challenges. CLEE works with government, business, and the nonprofit sector to help solve urgent problems requiring innovative, often interdisciplinary approaches. Drawing on the combined expertise of faculty, staff, and students across the University of California, Berkeley, CLEE strives to translate empirical findings into smart public policy solutions to better environmental and energy governance systems.

In 2024, CLEE will be focusing on CBAs and community benefits in the offshore wind context in California. CLEE does not endorse a specific offshore wind development outcome; instead, CLEE's role is to provide space for dialogue and to contribute research that improves communications and the CBA process. Please check our website throughout the year for additional information and publications. CLEE's work on offshore wind is made possible by a grant from the Energy Foundation.

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California's goal of achieving 25,000 megawatts of offshore wind electricity by 2045 will help the State meet its carbon neutrality target and will also have transformative effects on the State's economy and communities. Community Benefits Agreements (CBAs) are tools that can enable local communities to have a voice in the development of new projects and ensure that the state's transition to offshore wind creates sustainable, equitable economic opportunity, and local investment. While signed CBAs for California's offshore wind projects are still several years away, development of these agreements often takes significant time, and it is important to start conversations early to ensure robust engagement, representation, and dialogue. This report provides an introduction to select CBA examples from offshore wind development in other regions and from other sectors. These examples provide context and ideas for the communities, developers, and other stakeholders who will be shaping offshore wind Community Benefits Agreements in California.



# INTRODUCTION

California is embarking on significant new energy infrastructure development to increase its clean energy capacity and meet its climate change and clean electricity goals. As part of this transition, the California Energy Commission (CEC) has set a goal of installing up to five gigawatts (GW) of offshore wind by 2030 and 25 GW by 2045, enough to provide power to 3.75 million homes in the short term and 25 million homes by 2050.<sup>1</sup>

California is in the early stages of the offshore wind development process. The state's first offshore wind auction occurred in December of 2022, resulting in two Northern California and three Central California Coast lease areas being awarded to winning bidders. The Bureau of Ocean Energy Management (BOEM) formally executed these leases on June 1, 2023, and lessees are now moving forward to the next stage in the planning and permitting process.<sup>2</sup>

California communities have hosted infrastructure projects for decades, and many of these communities have experienced a wide range of impacts, including negative effects such as air pollution and noise associated with the projects. Through California's new offshore wind leases, however, there is an opportunity to ensure that renewable energy development uplifts host communities and others impacted by these projects through the development and implementation of Community Benefits Agreements, or CBAs. As offshore wind development emerges along California's coast, CBAs can help create space for stakeholders to have a voice in the future of their communities, secure commitments to project components and structures that meet local needs and expand economic opportunity, and enhance equity in development.<sup>3</sup> If done well, offshore wind development could provide a model for other clean energy and climate infrastructure projects in California and across the country.

This policy brief is the second in a series. CLEE's first report, [Offshore Wind & Community Benefits Agreements in California: An Introduction](#),<sup>4</sup> provided an overview of CBAs in the context of offshore wind development. This subsequent policy brief focuses on Community Benefits Agreements between communities (e.g., community groups or coalitions) and project developers by sharing examples of CBAs, Host Community Agreements, and other community benefits from the offshore wind sector. Given the limited availability of offshore

## SELECT CALIFORNIA OFFSHORE WIND RESOURCES AT A GLANCE

Lead Federal Agency: [Bureau of Ocean Energy Management](#) (BOEM)

Map of [California Offshore Wind Lease Areas](#)

BOEM [Offshore Wind Permitting Timeline](#)

BOEM [Offshore Wind California Activities Page](#)

US Department of Energy [WINDExchange](#)

wind CBAs, this report augments those examples with CBAs developed in the manufacturing and property development sectors.

Final CBAs are likely years away in the California offshore wind process, but initiating conversations early, exchanging information, and demystifying options will benefit all groups, and ideally, result in CBAs that deliver meaningful benefits to communities. The examples in this report are provided in the hope that they will help furnish context, examples, and ideas for stakeholders who may be negotiating offshore wind CBAs in the future. As the offshore wind industry in California takes shape, it will be crucial to foster robust, inclusive stakeholder engagement and to coordinate efforts so that offshore wind delivers meaningful benefits to communities alongside clean electricity to California.

## COMMUNITY BENEFITS AGREEMENTS (CBAs)

Community Benefits Agreements (CBAs) can deliver benefits in several ways. First, a CBA can provide funds for community development,<sup>5</sup> with specifics about how funds will be managed and allocated.<sup>6</sup> CBAs can also directly support affordable housing, environmental mitigation, infrastructure, and priority projects identified by the community.<sup>7</sup> In addition, CBAs can provide an opportunity to set clear terms for dispute resolution, transparency, accountability, and other interactions between parties.<sup>8</sup> CBAs are legally enforceable agreements and should include enforcement conditions and details about how implementation will be tracked.<sup>9</sup>

## OFFSHORE WIND DEVELOPMENT IN CALIFORNIA

While at least one offshore wind project is currently being planned in California state waters,<sup>10</sup> this discussion focuses on the governance of projects in federal waters (i.e., the ocean space that begins approximately three geographical miles from shore<sup>11</sup>). The Bureau of Ocean Energy Management (BOEM) is the lead federal agency on offshore wind (OSW) in the United States. Through the Outer Continental Shelf Lands Act, BOEM has the authority to sell energy leases on the Outer Continental Shelf through auctions.<sup>12</sup>

California's offshore wind development process began in 2016 when a developer submitted an unsolicited request for a commercial lease to BOEM.<sup>13</sup> In October of 2018, BOEM published a Call for Information and Nominations ("Call") to collect public comment on potential lease areas and potential interest from offshore wind developers.<sup>14</sup> After reaching an agreement with the Department of Defense on possible areas for offshore wind development, BOEM issued a second Call in 2021,<sup>15</sup> after which BOEM solicited public comment on the proposed Humboldt and Morro Bay Wind Energy Areas and conducted an environmental review. BOEM published the Proposed Sale Notice for both Wind Energy Areas in May of 2022, and the Final Sale Notice in October of 2022. BOEM held California's first offshore wind lease auction in December 2022.<sup>16</sup> Table 1 provides an overview of key milestones to date in California's offshore wind development process.

### COMMON ACRONYMS USED IN THE BOEM OFFSHORE WIND PLANNING PROCESS:

<b>BFF</b>	Bidder's Financial Form
<b>SAP</b>	Site Assessment Plan
<b>COP</b>	Construction and Operations Plan
<b>FDR</b>	Facility Design Report

## WHAT IS A COMMUNITY BENEFITS AGREEMENT (CBA)?<sup>17</sup>

- A CBA results from negotiations between community representatives and project developers.
- A CBA is a legally binding, enforceable contract signed by project developers and community group(s) or a coalition of groups.
- CBAs have been used widely in different contexts, including manufacturing plants, water districts, school districts, and stadium developments.
- CBAs can serve as “economic empowerment mechanisms” for communities by providing support for job development, new infrastructure and local facilities, and environmental protections.
- Typically, in exchange for CBA benefits, signatory communities agree to support the project—or, at a minimum, not oppose it.
- If well-constructed, a CBA is mutually beneficial, offering positive outcomes for community members and more certainty for project developers.

A CBA should reflect the specific needs and unique circumstances of the affected community or communities.



CALIFORNIA OFFSHORE WIND: BOEM TIMELINE	
2016	Trident Winds LLC sends an <a href="#">unsolicited request for a commercial lease</a> to BOEM.
2018	BOEM publishes a Call for Information and Nominations (Call) to solicit nominations from companies interested in acquiring commercial leases in selected areas in Northern and Central California waters, and to request public comment on site conditions, resources, and multiple uses in the designated Call Areas.
2021	The Department of the Interior, the Department of Defense, and the State of California reach an agreement on specific offshore wind areas along the California coast.
2021	BOEM publishes a second Call in the Federal Register for the Morro Bay East and West Extensions, initiating a 45-day public comment period.
2021	BOEM designates two Wind Energy Areas (WEAs): Morro Bay and Humboldt.
2021-2022	BOEM conducts an environmental review for each of the two Wind Energy Areas under the National Environmental Policy Act (NEPA).
May 2022	BOEM publishes the Proposed Sale Notice (PSN) for the Morro Bay and Humboldt Wind Energy Areas in the Federal Register.
October 2022	BOEM publishes the Final Sale Notice (FSN) for the Morro Bay and Humboldt Wind Energy Areas in the Federal Register.
December 2022	BOEM holds an offshore wind energy lease sale for the Morro Bay and Humboldt Wind Energy Areas.
June 1, 2023	BOEM executes final leases with five developers for five lease areas in the Morro Bay and Humboldt Wind Energy Areas.

Table 1. Source: BOEM California Activities webpage: [“Planning History.”](#)

In the 2022 offshore wind auction, BOEM leased five discrete areas (two off the coast of Humboldt County in Northern California and three northwest of Morro Bay in the Central Coast) to five winning bidders (see Figure 1). BOEM formally executed the leases with each of the five lessees on June 1, 2023.<sup>18</sup> The North Coast Lessees are: RWE Offshore Wind Holdings, LLC, and California North Floating, LLC, a subsidiary of Copenhagen Infrastructure Partners.<sup>19</sup> The Central Coast lessees are: Equinor Wind US, LLC, Golden State Wind, LLC (name changed from [Central California Offshore Wind, LLC](#)), and Invenergy California Offshore, LLC.

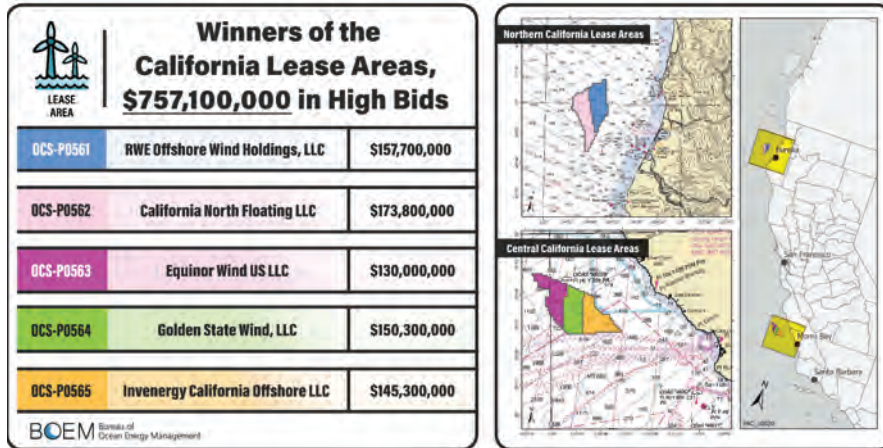


Figure 1. Source: Bureau of Ocean Energy Management.

Following the execution of the leases, the lessees began pre-survey meetings and planning (see Figure 2). In the next phase, developers will explore the lease areas and conduct a multi-year permitting and surveying process that includes several key decision points by federal and state agencies. Based on the BOEM timeline shown in Figure 2, the period between the lease auctions in December 2022 and the beginning of installation is anticipated to be approximately seven to eight years. CBAs, as specified in the executed leases, must be finalized by the time the lessees submit their first Facility Design Reports (FDR),<sup>20</sup> which follows the submission of the Construction and Operations Plans.<sup>21</sup> In the offshore wind process, CBAs are likely to be finalized approximately six to eight years after the 2022 lease auction and prior to the commencement of construction (at the stage labeled “Submit Design & Installation Plans” in Figure 2).

As explained above, an optimal CBA process begins years before finalizing the Community Benefits Agreement(s). Because the signed CBAs must be submitted to BOEM by the time the first Facility Design Report is submitted, the CBA negotiation process will necessarily advance in parallel with, and at the same time as, the offshore wind permitting process. An optimal CBA timeline is shown in Figure 3.

BOEM OFFSHORE WIND TIMELINE

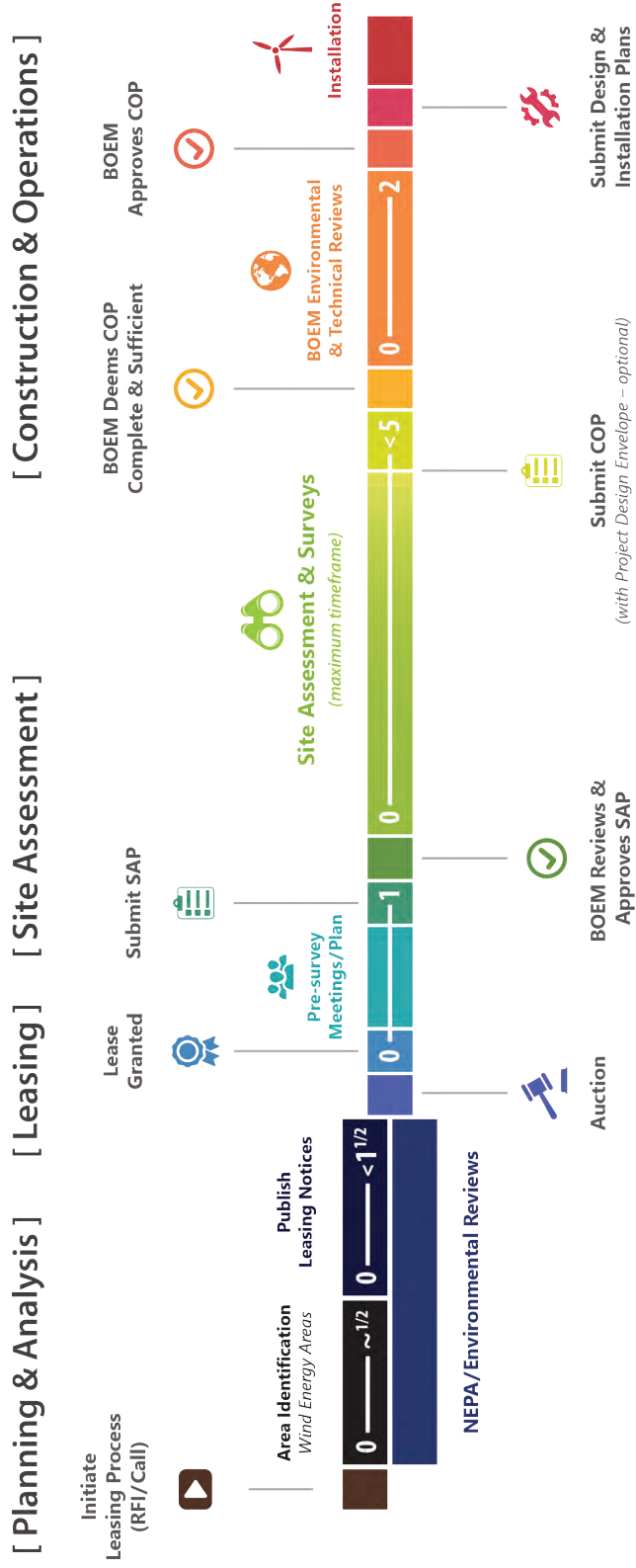
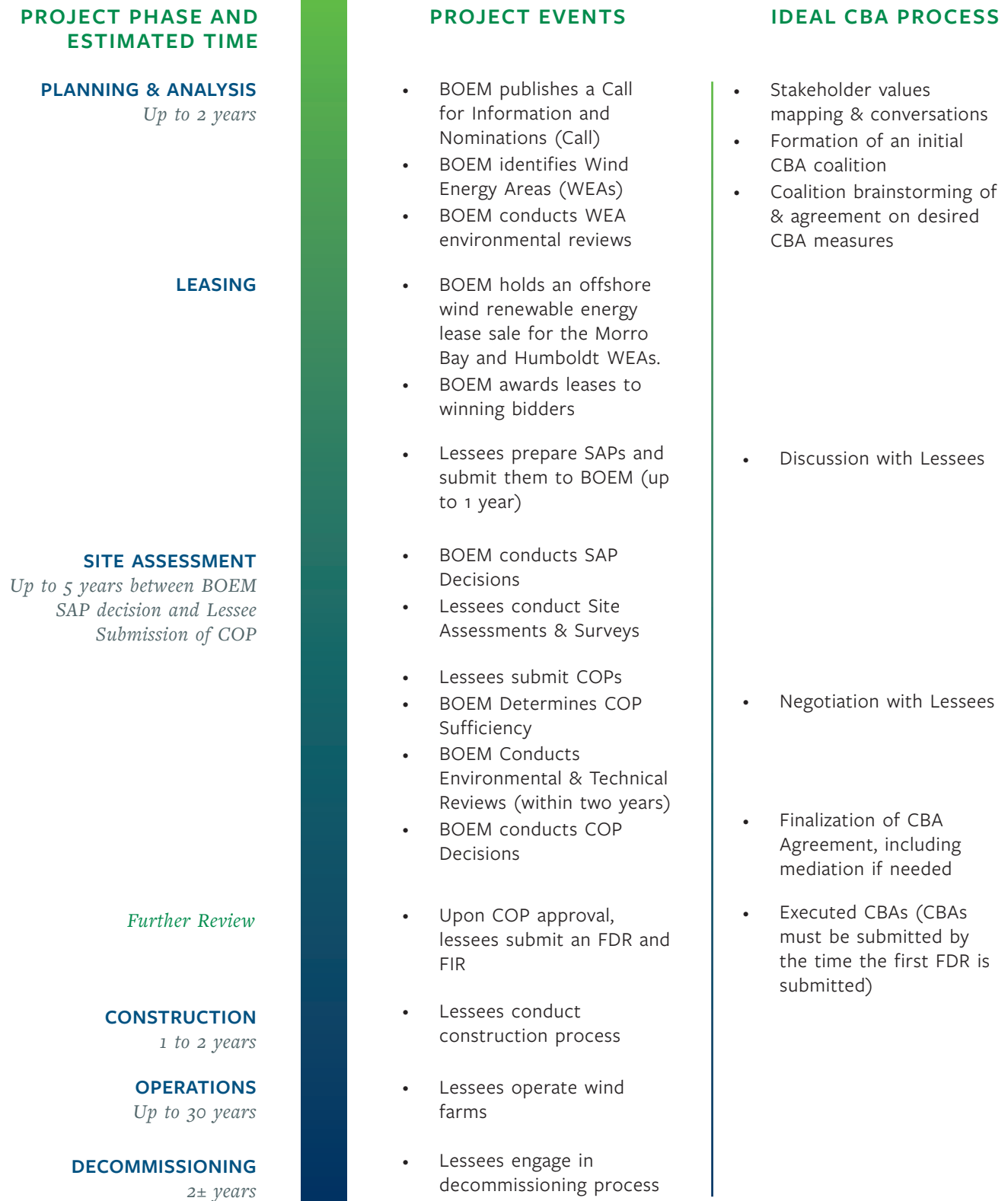


Figure 2. Source: Bureau of Ocean Energy Management.

## IDEAL CBA PROCESS MAPPED ONTO BOEM OFFSHORE WIND TIMELINE



**ACRONYM KEY:** Wind Energy Area (WEA) | Site Assessment Plan (SAP) | Construction & Operation Plan (COP)  
 Facility Design Report (FDR) | Fabrication and Installation Report (FIR)

Figure 3.

During the Site Assessment & Survey stage, relevant stakeholder groups should engage in values mapping and conversation about what community benefits they would like to see the project deliver. If conditions allow, and assuming a consensus can be reached, two or more stakeholder groups should form a coalition to enable the community to speak with one voice in conversations with the developer(s). During this time, lessee-stakeholder CBA conversations can also take place, if either side requests it. If neither side requests a CBA discussion, developers will still be meeting with stakeholders about the project during this phase under various BOEM requirements (such as, for example, the required engagement on the Site Assessment Plan and workforce planning as part of the developers' mandatory Progress Reports<sup>22</sup>).

CBA negotiations will likely take months, if not years,<sup>23</sup> given the complexity of issues and the number of related project locations and stakeholder groups involved. Consequently, it is optimal if negotiations, and mediation, if necessary, have commenced by the beginning of the BOEM Environmental & Technical Review stage (the orange bar in Figure 2). Finalization of the CBA will need to be completed by the initiation of the next permitting stage, the submission of the developer's first Facility Design Report, shown in pink in Figure 2.

## COMMUNITY BENEFITS AND CBAs IN CALIFORNIA OFFSHORE WIND DEVELOPMENT

The Bureau of Ocean Energy Management (BOEM) did not require community benefits as part of California's offshore wind process but offered bidding credits for workforce, supply chain manufacturing, and Community Benefits Agreements (CBAs) as voluntary elements in the Final Sale Notice<sup>24</sup> and December 2022 auction. Each developer included initial plans and strategies for bidding credits to BOEM in their Bidder's Financial Form (submitted before the auction), which, if accepted, reduced the cost of a developer's winning bid.<sup>25</sup> In return for those reductions in payment, lessees must deliver executed CBAs by the time they submit the first Facility Design Reports or FDRs (see "Submit Design and Installation Plans," Figure 2) or pay the value of the bid credit to the US Treasury.<sup>26</sup>

Between the three types of bidding credits, a maximum of 30% in credits was available to each developer in the 2022 auction,<sup>27</sup> which was more than in previous BOEM offshore wind auctions in the New York Bight<sup>28</sup> and North Carolina.<sup>29</sup>

Community-beneficial provisions in the California BOEM executed leases include the various types of bidding credits mentioned above, as well as Project Labor Agreements, as follows:

- **The Workforce Training/Supply Chain Development Bidding Credit:** If a developer claimed this credit, worth 20% of its cash bid, its funds must support "workforce training programs for the U.S. floating offshore wind industry, development of a U.S. domestic supply chain for the floating offshore wind industry, or both."<sup>30</sup> Each of the five winning developers received credit for this provision.
- **The Lease Area Use CBA Credit:** A bidding credit offered through the BOEM auction process, worth five percent of the cash bid, which states that

a developer can “execute a CBA with one or more communities, stakeholder groups, or Tribal entities whose use of the geographic space of the Lease Area, or whose use of resources harvested from that geographic space, is expected to be impacted by the Lessee’s potential offshore wind development.”<sup>31</sup> Each of the five winning developers received credit for this provision.

- **The General CBA Credit:** A bidding credit offered through the BOEM auction process, worth five percent of the cash bid, which specifies that a developer can opt to “execute a General CBA with one or more communities, Tribes, or stakeholder groups that are expected to be affected by the potential impacts on the marine, coastal, and/or human environment (such as impacts on visual or cultural resources) from activities resulting from lease development that are not otherwise addressed by the Lease Area Use CBA.”<sup>32</sup> All winning developers, with the exception of Golden State Wind (formerly [Central California Offshore Wind LLC](#)), received credit for this provision.

In addition, the BOEM lease process in California included a strong preference for project labor agreements:

- **Project Labor Agreements:** The “Lessee must make every reasonable effort to enter a Project Labor Agreement(s) (PLA) that covers the construction stage of any project proposed for the leased area, and that applies to all contractors.”<sup>33</sup> All five lessees are subject to this provision.

EXCERPTED DEVELOPER COMMITMENTS IN CALIFORNIA AS OUTLINED IN THE BOEM EXECUTED LEASES <sup>34</sup>				
REGION	LESSEE	TOTAL BID	LEASE AREA USE CBA COMMITMENT	GENERAL CBA COMMITMENT
Humboldt (North Coast)	RWE Offshore Wind Holdings, LLC	\$157,700,000- (\$36,392,308 in Bid Credits) = \$121,307,692	\$6,065,385	\$6,065,385
Humboldt (North Coast)	California North Floating, LLC, a subsidiary of Copenhagen Infrastructure Partners	\$173,800,000- (\$40,107,692 in Bid Credits) = \$133,692,308	\$6,684,615	\$6,684,615
Morro Bay (Central Coast)	Equinor Wind US, LLC	\$130,000,000- (\$30,000,000 in Bid Credits) = \$100,000,000	\$5,000,000	\$5,000,000

EXCERPTED DEVELOPER COMMITMENTS IN CALIFORNIA AS OUTLINED IN THE BOEM EXECUTED LEASES <sup>34</sup>				
Morro Bay (Central Coast)	Golden State Wind, LLC (name changed after lease issuance from Central California Offshore Wind LLC)	\$150,300,000- (\$30,060,000 in Bid Credits) = \$120,240,000	\$6,012,000	None
Morro Bay (Central Coast)	Invenergy California Offshore, LLC	\$145,300,000- (\$33,530,769 in Bid Credits) = \$111,769,231	\$5,588,462	\$5,588,462

Table 2

TOTAL COMBINED DEVELOPER COMMITMENTS IN EACH CALIFORNIA OSW LEASE AREA AS OUTLINED IN THE BOEM EXECUTED LEASES <sup>35</sup>		
	HUMBOLDT WIND ENERGY AREA (NORTH COAST)	MORRO BAY WIND ENERGY AREA (CENTRAL COAST)
Number of Leases	2	3
Lease Area Use CBA Developer Commitments	\$12,750,000	\$16,600,462
General CBA Developer Commitments	\$12,750,000	\$10,588,462
Total CBA Developer Commitments	\$25,500,000	\$27,188,924
Workforce/Supply Chain Development Bidding Credit Commitments	\$51,000,000	\$66,401,846

Table 3

Both the Lease Area Use CBAs and the General CBAs can include financial as well as non-monetary benefits,<sup>36</sup> and developers must use “best efforts” to deliver benefits that are “at least commensurate to the value of the bidding credit received.”<sup>37</sup> However, developers should not include in either CBA benefits that duplicate those developers must provide under other laws, and developers’ General CBAs may not duplicate provisions from the Lease Area Use CBAs.<sup>38</sup>

BOEM has the discretion to determine the adequacy of the final agreement and whether the developer's bidding credit obligation has been met.<sup>39</sup> If BOEM concludes that a lessee or assignee has failed to execute a CBA that satisfies that developer's commitment, the full amount of the bidding credit is due and payable with interest from the date of lease execution.<sup>40</sup>

BOEM's provided examples of possible CBA provisions, and other CBA details from the executed leases, can be found at the end of this report in Appendix A. While the BOEM executed leases include some process-oriented requirements,<sup>41</sup> they do not contain specific requirements regarding the content of the CBAs. Thus, moving forward, communities can think broadly and creatively about the measures they would like included in federal California offshore wind CBAs and build coalitions to advance those priorities. The remainder of this report shares examples from community benefits processes in the context of offshore wind and other infrastructure projects in the US and Europe.





# EXAMPLES OF EXISTING CBAs AND OTHER TYPES OF COMMUNITY AGREEMENTS

As offshore wind is a newer industry in the United States, few US wind-related CBA models exist. However, CBAs in other US sectors illustrate the many types of provisions that communities and coalitions can negotiate for and gain through the CBA process. Any of the measures included in the profiled examples below could conceivably be adopted as part of a General CBA in California, although some—if not all—wage, workforce, and job training measures may be included instead in developers' workforce training and/or supply chain development bidding credit plans and the developers' Project Labor Agreements. However, the diverse community benefit models and examples included in this report exemplify the variety of ways in which stakeholders may bargain for community beneficial measures as part of offshore wind development.

## COMMUNITY BENEFITS AGREEMENTS IN REAL ESTATE DEVELOPMENT AND MANUFACTURING

### The 2001 Staples Center (LA Live) CBA

The Staples Center (LA Live) CBA provides an important precedent and an example of a strong agreement negotiated in California. Seen by some as a north star<sup>42</sup> for Community Benefits Agreements, the Staples Center (LA Live) CBA was signed in 2001 and was negotiated around the development of a hotel and entertainment complex adjacent to the Staples Center in Los Angeles. The financiers and developers included Rupert Murdoch<sup>43</sup> and the Anschutz Entertainment Group (AEG),<sup>44</sup> and the community coalition consisted of environmental, labor, and community groups<sup>45</sup> such as Strategic Action for a Just Economy (SAJE), LA Alliance for a New Economy (LAANE), and many others.<sup>46</sup>

The negotiations, which lasted nine months,<sup>47</sup> culminated in two documents, a Community Benefits Agreement (“CBA”)<sup>48</sup> and a Cooperation Agreement.<sup>49</sup> Together, these two documents set out the benefits the community coalition gained in the negotiations, including affordable housing, living wages, and open-space provisions, and the legal and structural terms governing the parties.

The Cooperation Agreement and the CBA address different but related topics. The Cooperation Agreement outlines legal and mutual support obligations.<sup>50</sup> Under the Cooperation Agreement, the coalition commits to advocate for the project in exchange for the promised benefits, for example, by testifying and preparing a letter in favor of the development.<sup>51</sup> The coalition and the developers agree to forgo future legal claims, with the exception of a few narrowly defined issues, and the coalition commits not to

bring legal or administrative actions against the project.<sup>52</sup> The Cooperation Agreement also provides details on coalition structure. The Cooperation Agreement includes and defines both “interested organizations,” which may or may not have participated in the negotiations, and did not sign the CBA, and the organizations that signed the CBA and form the “Coalition.”<sup>53</sup> The Cooperation Agreement specifies that SAJE will initially represent the Coalition and that a steering committee will guide SAJE’s actions.<sup>54</sup>

The Community Benefits Agreement lists the community benefits agreed to by the parties, including parks and recreation, community protection, living wages, local hiring and training, service worker retention, responsible contracting, affordable housing, relocation of families, and a coalition advisory committee. The CBA also contains provisions for tracking progress, decision-making, and enforcement of the First Source Hiring Policy.<sup>55</sup>

KEY PROVISIONS IN THE 2001 STAPLES CENTER (LA LIVE) CBA <sup>56</sup>	
<b>WORKER TRAINING AND JOBS</b>	<ul style="list-style-type: none"> <li>• A local hiring and a job training program.</li> <li>• A goal that 70% of jobs associated with the project provide a living wage.</li> <li>• A worker retention policy.</li> <li>• \$100,000 in seed funding for a non-profit, chosen and agreed on by the parties, to assist in job referrals.</li> <li>• An agreement that the developer consider a prospective tenant’s ability to meet the living wage goal as a substantial factor in tenant selection.</li> <li>• Reporting requirements and periodic assessments.</li> </ul>
<b>HOUSING</b>	<ul style="list-style-type: none"> <li>• Between 100 and 160 units of affordable housing (20% of the entire project’s units).</li> <li>• \$650,000 in interest free loans to provide seed money to one or more non-profit housing developers.</li> </ul>
<b>OPEN-SPACE PROVISIONS</b>	<ul style="list-style-type: none"> <li>• A needs assessment to analyze the community’s need for parks, open space, and recreational facilities within a specified area.</li> <li>• At least one million dollars for the construction of park and recreation facilities.</li> </ul>
<b>MEASURING PROGRESS UNDER THE CBA</b>	<ul style="list-style-type: none"> <li>• The developer must report each year to the LA City Council Community and Economic Development Committee with data showing the percentage of living wage jobs included in the project.</li> <li>• Progress towards the living wage goal is to be measured five and ten years from the signing of the CBA.</li> </ul>

KEY PROVISIONS IN THE 2001 STAPLES CENTER (LA LIVE) CBA <sup>56</sup>	
<b>PROCESS, CONFLICT RESOLUTION, AND DECISION-MAKING PROVISIONS</b>	<ul style="list-style-type: none"> <li>• “Advisory Committee” made up of representatives from the Coalition and the Developer meets quarterly to communicate about the project and share any concerns.</li> <li>• A commitment to meet and confer, with additional provisions in case legal action to enforce the Agreement becomes necessary.<sup>57</sup></li> </ul>
<b>DURATION</b>	<ul style="list-style-type: none"> <li>• The community benefits program expires in 2111, unless another date is specified with regard to particular benefits in the CBA.</li> </ul>

Table 4

### The New Flyer 2022 Community Benefits Agreement

New Flyer of America Inc., an electric bus manufacturer, and two non-profit organizations, Greater Birmingham Ministries (GBM) and Jobs to Move America (JMA), represented by the law firm Robbins Geller Rudman & Dowd LLP, negotiated the New Flyer CBA in 2022 as part of a settlement to legal action.<sup>58</sup> The CBA applies to New Flyer’s facilities in two locations: Ontario, California, and Anniston, Alabama. The agreement expires in 2027 unless the parties choose to extend it.<sup>59</sup>

Many of the CBA’s articles center around workforce issues, including job training, hiring, workplace protections, diversity, equity, and inclusion (DEI), and professional development. Provisions in the agreement include the following.<sup>60</sup>

- Collaboration with community organizations to support skill and career development for underrepresented groups.
- A prohibition on questions about an applicant’s criminal history before an offer of employment.
- A commitment that 45% of new hires (including both offers and those actually employed) and 20% of promotions at each plant come from Historically Disadvantaged Groups.
- Measures that increase veteran outreach and hiring, such as coordination and collaboration with the Center for Military Recruitment, Assessment and Veterans Employment.
- A commitment that New Flyer, in collaboration with JMA and GBM, design a customized pre-apprenticeship program.
- A commitment that New Flyer design and administer a technical training program.
- Provisions to supplement existing environmental health and safety measures, such as the addition of employee access to non-profit provided health and safety trainings.
- Quarterly meetings to evaluate compliance with the CBA provisions.

As part of these measures, the CBA incorporates processes for collaboration between the parties. For example, the CBA states that New Flyer “will work with [GBM and JMA] on developing and implementing a program to affirmatively build outreach, recruitment, and placement of Historically Disadvantaged People into jobs at the Plants.”<sup>61</sup>

To address local needs, the CBA defines those people it intends to benefit in a way that reflects local context and concerns. The CBA defines “Historically Disadvantaged People” and “Historically Disadvantaged Group” as “Black, Indigenous, and/or People of Color; women; LGBTQ+ persons; Systems-Impacted People, as defined herein; persons emancipated from the foster-care system; residents of Anniston, Alabama lacking GED or high school diploma; and veterans.”<sup>62</sup> The CBA defines Systems-Impacted People as “persons who have been arrested or convicted of a crime; incarcerated in a juvenile-detention center, jail, prison, or other carceral institution; and/or been placed on probation or parole and who have a desire for rehabilitation and a chance to obtain sustained gainful employment.”<sup>63</sup>

KEY PROVISIONS IN THE 2022 NEW FLYER CBA <sup>64</sup>	
<b>WORKER TRAINING AND JOBS</b>	<ul style="list-style-type: none"> <li>• A prohibition on questions about an applicant’s criminal history before an offer of employment.</li> <li>• A commitment that 45% of new hires (including both offers and those actually employed) and 20% of promotions at each plant come from Historically Disadvantaged Groups.</li> <li>• A pre-apprenticeship and an apprenticeship program.<sup>65</sup></li> <li>• A hotline and e-hotline for registering discrimination and harassment claims.</li> <li>• A system to address worker-filed discrimination and harassment claims, with an independent advocate to assist workers who file claims.<sup>66</sup></li> </ul>
<b>HOUSING</b>	<ul style="list-style-type: none"> <li>• None</li> </ul>
<b>OPEN-SPACE PROVISIONS</b>	<ul style="list-style-type: none"> <li>• None</li> </ul>
<b>MEASURING PROGRESS UNDER THE CBA</b>	<ul style="list-style-type: none"> <li>• New Flyer must submit annual progress towards hiring and promotion targets for Historically Disadvantaged People.</li> <li>• The parties must meet quarterly to discuss updated hiring percentages and progress on CBA measures, with written updates by the parties to describe their efforts.</li> </ul>

KEY PROVISIONS IN THE 2022 NEW FLYER CBA <sup>64</sup>	
<b>PROCESS, CONFLICT RESOLUTION, AND DECISION-MAKING PROVISIONS</b>	<ul style="list-style-type: none"> <li>Conflict resolution measures include non-binding mediation and binding arbitration. Before proceeding to binding arbitration, the protesting party must send a written complaint and representatives for both sides must try to meet to discuss the issues.</li> </ul>
<b>DURATION</b>	<ul style="list-style-type: none"> <li>The CBA is in effect for five years and can be renewed after that on an annual basis by mutual agreement of the parties.</li> </ul>

Table 5

**COMMUNITY BENEFITS AGREEMENTS AND CBA PRECURSORS IN OFFSHORE WIND**

The Staples Center (LA Live) and the New Flyer agreements resulted from negotiations between a company (or companies) and a coalition of stakeholders, establishing legally binding and enforceable agreements. By contrast, in the offshore wind space, the community benefits deployed to date exhibit greater variation in structure, scope, and process. In Europe, several community benefits programs involve funds rather than negotiated legal agreements. This section reviews some of the offshore wind sector’s models, drawing from the UK and Europe, the eastern United States, and California.

**The United Kingdom**

European countries and the UK have deployed both onshore and offshore wind energy for decades. However, unlike the negotiated CBA model discussed above, European and UK community benefits schemes are often structured through funds. These vary but typically provide compensation for impacted parties, funding for community-based projects, or a combination of the two. Different European countries and the UK have employed either mandatory approaches, voluntary approaches, or both to community benefits funds. This discussion will focus in particular on the UK’s voluntary and quasi-mandatory schemes.

The United Kingdom employs multiple community benefits schemes, but voluntary contributions are ubiquitous<sup>67</sup> and often consist of funds established by the developer.<sup>68</sup> There is no UK-wide standard for voluntary community benefits contributions,<sup>69</sup> although regional governments and trade associations have published recommended contribution amounts.<sup>70</sup>

In the UK’s voluntary schemes, the sum of annual payments sometimes depends upon installed capacity, with funding magnitudes that increase alongside electricity production (for example, a contribution of x British pounds per megawatt produced). In other cases, developers decide to contribute monies independent of the project’s electricity output as part of a “good neighbor” strategy.<sup>71</sup> As one example of the installed capacity funding mechanism, the Scottish Highland Council regional government has stated that

it will negotiate with developers to secure £5,000 per megawatt (MW) (or roughly \$6,000 US dollars) of installed capacity per year to project-hosting communities,<sup>72</sup> but has also stated that this is a “goodwill contribution” to be voluntarily donated by developers.<sup>73</sup> RenewableUK, a wind trade association, has developed a Community Benefits Protocol on all of its English *onshore* wind projects over 5 MW, which stipulates that developers provide benefits of £5,000 per MW of installed capacity.<sup>74</sup>

In certain cases, the UK has implemented a quasi-mandatory community benefits scheme. Developers are required to lease the seabed from the Crown to access the seabed itself and the water above.<sup>75</sup> In one program, which operated from 2012 to 2022,<sup>76</sup> the Crown passed on a portion of seabed lease monies to the Coastal Communities Fund, a government administered program (under the program’s original rules, half of the Crown’s marine asset revenues were passed on). Although this pass-through proportion was later decreased, the reduction was largely offset by an increase in maritime leasing activity, which substantially broadened the funding source.<sup>77</sup>

The UK government intended the Coastal Communities Fund (the Fund) to help coastal towns regenerate.<sup>78</sup> Scotland, Wales, Northern Ireland, and England each administered the Fund separately, although these countries’ administration schemes shared common attributes until the last two rounds of funding.<sup>79</sup> In England, stakeholders applied for funding<sup>80</sup> for a wide variety of projects.<sup>81</sup> These included many cultural heritage efforts to enhance the tourist experience in seaside towns but also encompassed larger-scale projects such as the launch of seaweed farming on the Yorkshire coast.<sup>82</sup>

## European Fund Structures

Whether established through voluntary or mandatory contributions,<sup>83</sup> the fund structure is a very common mechanism for community benefits in the UK and Europe. Funds can be established in conjunction with a CBA or independently. A fund-only structure (without an accompanying CBA) can potentially provide a useful structure for aggregating funds for community projects; however, there are important design considerations to take into account.

One of the potential drawbacks to voluntary benefits schemes is that there is no established floor for contributions and developers do not necessarily increase the monetary value of awarded funds over time. One scholar has noted, for example, that while UK community benefits funding has become more common for offshore wind projects, the amount of funding per project does not seem to have risen over time,<sup>84</sup> with levels varying from £50 per MW per year for the Triton Knoll OSW project (developed by RWE) to £1,500 per MW per year for the Aberdeen project (developed by Vattenfall).<sup>85</sup> These commitments are much lower than some recommended contribution amounts for onshore UK wind projects.<sup>86</sup>

An important feature of community benefits delivered through funds is stakeholder participation; it is important to have a constructive working environment between developer and community representatives. Stakeholders should be “active participant[s]” in the community benefits design process.<sup>87</sup> At Vattenfall’s Aberdeen Offshore Wind Farm, for example, a full-time local liaison provided communication to local residents about the project and surveyed concerns from the community long before the construction phase. The consultant, working with the Scottish Government’s guidance document,

as well as recommendations from the University of Edinburgh and Oxford Brookes University, consulted with community members over three months (in person and through online surveys) about their preferences for the planned community benefits fund, including the type of initiatives that should be supported and the geographical focus of grants.<sup>88</sup> The scholar who analyzed community benefits at the Aberdeen Wind Farm found that the active involvement of the community and staffing by the liaison provided a good example of addressing issues related to community participation.<sup>89</sup>

Another documented issue is with the administration of developer-donated funds, particularly with respect to concerns around fairness and equity.<sup>90</sup> The Aberdeen wind farm in Scotland recruited a body of community members (a “community champions’ panel”) who offered guidance on the best structure for community benefits and benefits allocation. As a result, the panel administering the funds included local representation. In addition, a neutral party, in this case a charity, oversaw the collection of funding applications.<sup>91</sup> The researcher documenting this process found that the champions’ panel and the charity’s administration of funds demonstrated good practice with respect to managing issues surrounding community benefits allocation and distribution.<sup>92</sup>

A fourth concern with community benefits administered through a fund is the accessibility of the process for very local, very small, or undercapitalized organizations. As a solution, some scholars have suggested that intermediary organizations be engaged to bolster local organizations’ capacity.<sup>93</sup>

## US Community Benefits and Other Agreements

Unlike Europe, the United States is still in the beginning stages of launching its offshore wind industry at commercial scale. Two relatively small projects (42 megawatts (MW) in total) are generating electricity in Rhode Island (the 30 MW Block Island wind farm) and Virginia (the 12 MW Coastal Virginia Offshore Wind pilot project).<sup>94</sup> The 130 MW South Fork project became the first utility-scale offshore wind farm in the US to produce power for the grid in December 2023.<sup>95</sup> An even larger project, the 806 MW Vineyard Wind 1 offshore wind farm, began delivering power to the grid in January 2024.<sup>96</sup> Additional offshore wind projects are leased and in the pre-construction process.

At least one east coast CBA has been signed and elsewhere on the east coast, several municipalities have executed Host Community Agreements. (Although similar to a CBA, a Host Community Agreement is more likely to be negotiated between a city and a developer, rather than between the community and a developer.<sup>97</sup>) Other community benefits examples also exist, both on the east coast and in California.

### *Host Community Agreements*

A Host Community Agreement signed by South Fork Wind, the Town of East Hampton, New York, and the East Hampton Town Trustees established easements for an onshore export cable in exchange for monetary and non-monetary benefits.<sup>98</sup> Per the agreement, South Fork Wind will pay approximately \$29 million to the town over 25 years. Non-monetary benefits include any road repairs needed because of cable installation construction and a fisheries liaison to communicate between the developer and the local fishing community for the lifetime of the project.<sup>99</sup> The agreement also included

The content in this section includes updated material previously published in [\*Offshore Wind & Community Benefits Agreements in California: An Introduction\*](#) (June 2023)



specific conditions for cable construction, installation, maintenance, repair, replacement, removal, and decommissioning, such as time limitations, traffic management conditions, noise standards, and environmental protections. The agreement went into effect in March 2021,<sup>100</sup> before construction on the project began.<sup>101</sup>

The Long Island town of Brookhaven, New York, signed a Host Community Agreement with offshore wind developers on the Sunrise Wind project in 2023. Under the agreement, developers will contribute \$169.9 million in community investments over 25 years, which includes \$5 million for community projects and a Tri-Hamlet Park, as well as \$28 million of payments in lieu of taxes.<sup>102</sup> Suffolk County, which is home to Brookhaven, expects to receive over \$700 million in project-related investment throughout the lifetime of the wind project.<sup>103</sup> The agreement also secures 18 miles of real estate rights for Sunrise Wind developers to construct underground transmission lines and interconnection infrastructure onshore, which will create union jobs.<sup>104</sup> Projects supported by Sunrise Wind's investments include \$10 million for a new National Offshore Wind Training Center and a new Operations and Maintenance Hub in Suffolk County, as well as partnerships with academic institutions and agreements to use local port facilities.<sup>105</sup>

### *Community Benefits Agreements and Community Provisions*

**Vineyard Wind CBA:** In Massachusetts, developer Vineyard Wind and local non-profit Vineyard Power Cooperative signed “the nation’s first, federally recognized, offshore wind” CBA in 2015, resulting in a 10% credit in the project’s auction costs.<sup>106</sup> The agreement requires the parties to explore opportunities for power purchase agreements to serve local communities, seek job creation opportunities for the local community, and deliver other benefits. The agreement also specifies that the parties should consult community stakeholders and discuss ways to amplify project benefits.<sup>107</sup> Vineyard Power Coop agreed to “advocate and support offshore wind legislation in Massachusetts; support the offshore wind project through education and outreach; and provide advice and guidance to [the developer] through permitting and financing process [sic].”<sup>108</sup> In addition, Vineyard Wind agreed to “provide reimbursement for operation costs in 2015 up to \$100,000.”<sup>109</sup> Vineyard Wind also signed a Host Community Agreement with Barnstable, Massachusetts, which is the site of the project’s cable landing and associated transmission development.<sup>110</sup>

**Block Island Community Provisions:** The Block Island Wind Farm, the country’s first offshore wind farm, is comprised of five turbines and is located off the coast of Rhode Island.<sup>111</sup> Before the project was proposed, the state of Rhode Island completed a public seascape planning process in 2010 (the Rhode Island Ocean Special Area Management Plan (SAMP)). The city council of New Shoreham, a town located on Block Island, contributed to the SAMP process.<sup>112</sup>

As wind farm planning got underway, the developer, Deepwater Wind, paid for consultants to help with education about the project and translate technical information into layman’s terms, as well as provide testimony at official proceedings based on resident feedback. Deepwater Wind also hired a liaison, located on Block Island, to provide a steady flow of information and help organize meetings.<sup>113</sup>

In addition, the town secured commitments from the developer to support a fiber optics cable running to the mainland, providing the island with high-speed internet.<sup>114</sup>

The wind farm provided diesel-free electricity for the island for the first time and the possibility of relying on the mainland's electricity grid when the wind farm was offline.<sup>115</sup>

**California Castle Wind CBA:** Castle Wind LLC was a qualified bidder for the California offshore wind lease auctions but was not one of the winning lease holders. Prior to the 2022 auctions, Castle Wind negotiated and signed CBAs with the City of Morro Bay and two commercial fishermen's organizations (Morro Bay Commercial Fishermen's Organization and Port San Luis Commercial Fishermen's Association).<sup>116</sup> The agreement with the fishermen's organizations contained job training, infrastructure improvements, and other benefits for fishermen impacted by the proposed project.<sup>117</sup> The Morro Bay City Council subsequently approved a Community Benefits Agreement in 2018,<sup>118</sup> giving Castle Wind an exclusive option to lease from the City an outfall conduit near the Morro Bay power plant, which could take offshore electricity to the Morro Bay Substation<sup>119</sup>—an example of concrete benefits that CBAs can produce for developers.

In October 2022, to facilitate cooperation, Castle Wind and the fishermen's organizations formed the Morro Bay Lease Areas Mutual Benefits Corporation<sup>120</sup> (Morro Bay MBC)—a type of legal corporation formed for the benefit of its members.<sup>121</sup> While Castle Wind did not acquire a lease in the 2022 BOEM auction in California, winning bidders can voluntarily choose to sign onto Castle Wind's Mutual Benefits Corporation agreement, or they may opt to design their own CBAs in coordination with the relevant communities and stakeholders.

### Other Offshore Wind Community Benefits Models in the BOEM Leasing Process

While the 2022 offshore wind auctions on the east coast and in California seemed to build on each other with regard to CBA provisions, the 2023 Gulf Coast and Atlantic 10 offshore wind leasing frameworks pared back on such community-oriented measures. In the Gulf Coast Final Sale Notice, BOEM declined to include a Lease Area Use CBA or a General CBA but did put forth a 10% bidding credit for a fisheries compensatory mitigation fund and bidding credits for workforce training and/or domestic supply chain development.<sup>122</sup> Developers who received the fisheries compensatory mitigation fund credit will establish and contribute the bid credit value to a fund to compensate commercial fisheries or for-hire recreational fisheries for negative impacts from the offshore wind project, including loss of fishing income and gear loss.<sup>123</sup> The fund must be set up and the financial contribution completed before the sooner of either the developer's submission of its first Facility Design Report or the fifth lease anniversary.<sup>124</sup> BOEM requires the fund to be independently overseen and administered by a third party.<sup>125</sup>

The proposed sale notice (PSN) for the Atlantic Wind Lease Sale 10, published in December 2023,<sup>126</sup> also omits CBAs. The PSN does include a workforce training and/or supply chain development bidding credit, a fisheries compensatory mitigation fund credit, and a potential future bidding credit for conservation programs.<sup>127</sup>

These new models in the Gulf Coast and the Atlantic raise the question of how many future federal offshore wind auctions will include CBAs at all, and whether fishing compensatory and other funds may become more commonplace in future US offshore wind auctions.



# MOVING TOWARD CALIFORNIA OFFSHORE WIND CBAs

CBA examples from the United States real estate and manufacturing sectors, and offshore wind development in Europe, the UK, and the US, can provide important models and lessons for offshore wind development in California. When envisioning and designing CBAs that are rooted in impacted communities and that reflect stakeholders' values and needs, important considerations include CBA structure, processes and representation, and oversight and accountability.

## STRUCTURAL MECHANISMS FOR COMMUNITY BENEFITS

In the case of a compensation fund approach, examples from Europe and the UK suggest the importance of local input and guidance (for example, through a “champion’s panel” as in the Aberdeen model) to determine which organizations receive funding. The literature has also pointed to the significance of a neutral party such as a charity to oversee funding applications and administration.<sup>128</sup>

However, while compensation funds may simplify matters for both developers and communities, academic research has shown that compensation funds, on their own, may undermine community trust in at least some instances and be seen as a “bribe.”<sup>129</sup> In addition, a fund can fail to redress resident concerns, which may be cultural rather than monetary (for example, concerns about impacts to local ways of life or environmental impacts),<sup>130</sup> and may be at best partial solutions because they do not provide sufficient local benefits, equitable access, just procedures, or transparency.<sup>131</sup>

Other potential challenges that could foreseeably arise with the use of compensation funds include competition for grants between various local interests and entities, and piecemeal distribution to multiple grant applicants, which could dilute the overall impact of already limited funds. For these reasons, a compensation fund can be a tool, but the ideal community benefits scheme is an enforceable CBA—which may include a compensation fund but will also contain other measures. At a minimum, a compensation fund should employ a local governance structure to ensure that monies are spent in accordance with community goals.

To achieve a coordinated, synergistic funding approach, a diverse and representative coalition that reaches agreement on regional priorities is ideal. In order to optimize the capacity of this coalition, adequate resources will need to be provided either by developers or by interested but neutral parties, such as funders or bridging organizations. However, not all coalition members need to participate equally. The Staples Center (LA Live) example shows that one non-profit organization can be nominated by others to carry out the day-to-day negotiations with developers and provide periodic updates to the rest of the coalition.

## PROCESS AND REPRESENTATION

In general, scholars whose work was reviewed for this report have underlined the importance of active participation by stakeholders in the community benefits process. Experts instrumental in the LA Live and New Flyer CBAs have emphasized the necessity of organizing strong coalitions to achieve maximum benefits for communities. A united group of diverse stakeholders can draw on each other's strengths and expertise and negotiate a broader range of winning measures than would be feasible for any one of the groups alone.

The Aberdeen Offshore Wind Farm and Block Island examples also demonstrate the importance of locally trusted liaisons who can provide information to residents about project development and advocate for these residents in appropriate forums. In addition, the Aberdeen wind farm example exhibits mechanisms through which developers can regularly involve the community. In the Aberdeen project, a consultant surveyed local residents about their preferences for a community benefits fund (including the types of initiatives that should be supported and the preferred geographical focus of that funding). In California, community liaisons and community surveys can add value but should be included as components of a more comprehensive community engagement strategy, and, given the scale of the state's offshore wind development efforts, will likely be more efficient and effective if a coalition is in place.

A full community engagement process in the offshore wind space should include best practices such as transparency, compensation, and accessibility. Transparency includes elements such as reporting back to communities on the outcome of their input, to ensure that stakeholders feel heard.<sup>132</sup> Accessibility includes ensuring that there is sufficient budget for—and that meeting organizers provide—food, audio-visual equipment, translation and interpretation, transportation, and childcare.<sup>133</sup> Accessibility also entails holding meetings at times and in places that are convenient for local community members and stakeholders.<sup>134</sup>

Community advocates and experts also point to the significance of compensation and long-term support to enable community participation and feedback. Providing gas and grocery gift cards for community meeting attendees is one way to provide compensation.<sup>135</sup> For more extensive engagement, another approach is to provide stipends and cover travel and hotel costs to facilitate full participation by community members.<sup>136</sup> A third approach is to pay community and tribal members for their input and time.<sup>137</sup> With respect to the California offshore wind lease areas, the California Coastal Commission “strongly encouraged” compensation for tribal and environmental justice and other community members as part of its conditional concurrences (Consistency Determinations CD-0004-22 and CD-0001-22) for California's first offshore wind areas.<sup>138</sup>

Lastly, some advocates have called attention to the importance of long-term support for projects to enable stable community participation.<sup>139</sup> To allow very local, very small, or undercapitalized organizations to participate, scholars have also suggested that intermediary organizations be engaged to bolster local organizations' capacity.<sup>140</sup>

## OVERSIGHT AND ACCOUNTABILITY

An additional piece in creating meaningful CBAs is oversight and enforceability. In California, BOEM has oversight and enforcement authority at the time the final executed CBAs are submitted. However, it will be important to ensure oversight over CBA implementation as well. A negotiated CBA is a legally enforceable contract and a non-profit organization or coalition with local representation, either pre-existing or created by the CBA, could be one solution. The Transformative Climate Communities (TCC) East Oakland project, for example, instituted this governance structure for project implementation.<sup>141</sup>

To create accountability, the New Flyer and LA Live CBAs integrated monitoring and reporting provisions to measure project progress against goals in an ongoing manner. In a similar vein, a group of organizations has developed a framework for a just transition in offshore wind and recommends “[a]ccountability measures, process, and timeline to incorporate and address impacted community concerns and priorities.”<sup>142</sup>

## LESSONS FOR CALIFORNIA OFFSHORE WIND DEVELOPMENT

In September 2023, the state legislature passed Senate Bill 286,<sup>143</sup> which establishes a fisheries task force process led by the California Coastal Commission and a fisheries working group. The process delineated in the bill requires the working group to propose a statewide strategy by 2026 that: outlines ways to “avoid and minimize impacts to ocean fisheries,” puts forth best practices for addressing impacts to the fishing industry, tribal fisheries, and natural resources, and proposes a compensation framework for unavoidable impacts.<sup>144</sup> This task force will likely feed into the Lease Area Use CBAs. However, no such structure exists for the General CBAs, meaning it is likely there will be multiple offshore wind General CBAs in each region. With five California leaseholders and potentially dozens of interested Tribal nations and community and stakeholder groups, the landscape for federal California offshore wind General CBAs is less structured than for Lease Area Use CBAs.

Given that there may be multiple General CBAs, and given that experts have cited vigorous negotiations and strong coalitions as being key to strong CBAs,<sup>145</sup> it behooves community groups and stakeholders to embark on active organizing and negotiating efforts to establish a strong precedent in the first California agreements on federal OSW projects. Interested parties should endeavor to provide aggressive technical assistance and additional capacity as soon as possible to give stakeholders, tribal nations, and community groups the resources to actively participate and negotiate in the CBA process. Finally, the state could also develop minimum guidelines or principles for General CBAs to provide guidance for these agreements in California.

Such a baseline or model CBA should consider not only the monetary value of CBA benefits but also the democratic and participatory processes CBAs can create. Given

feedback from many stakeholders during the BOEM California leasing process,<sup>146</sup> it is clear that diverse stakeholders in the state are concerned not only about specific outcomes resulting from offshore wind development, but also about having a greater voice in the California offshore wind development process.

To help address these concerns, CBAs should not just be pass-through mechanisms for distributing funding, but instead should help create community-responsive organizations with local governance that lead to long-term community improvements and a community voice in offshore wind project monitoring and adaptive management. CBAs should also establish conditions to support these community institutions over the long term to help break the boom-and-bust cycle of development that has occurred in some California regions. By structuring CBAs in this way, these agreements can not only lift up communities through long-term, sustainable investment but also lead to more effective, efficient offshore wind development.





# APPENDIX A: LEASE AREA USE AND GENERAL CBA PROVISIONS IN THE EXECUTED CALIFORNIA OFFSHORE WIND LEASES

While there are several categories of potentially community-beneficial measures in the California offshore wind leases, including, for example, workforce development bidding credits, there are two different types of CBAs: Lease Area Use Community Benefits Agreements (CBAs), and General CBAs. The Lease Area Use CBAs apply to groups or Tribal nations using the geographic lease areas,<sup>147</sup> while General CBAs address impacts on stakeholder groups, communities, and Tribal nations that are not covered by the Lease Area Use CBAs.<sup>148</sup> All winning developers in California were awarded bidding credits for both CBA types *except* Golden State (formerly Ocean Winds, bidding as Central California Offshore Wind LLC), which received only the Lease Area Use CBA credit *but not* the General CBA bidding credit.<sup>149</sup> In addition, different developers committed slightly different amounts to the CBAs (see Table 2).

## LEASE AREA USE COMMUNITY BENEFITS AGREEMENTS

The Lease Area Use CBA pertains to communities, stakeholder groups, and/or Tribal entities using the actual lease areas. The Lessees submitted their CBA strategies to BOEM before the lease auction.<sup>150</sup> BOEM ultimately determines the adequacy of each CBA and whether each developer has satisfied its commitments.<sup>151</sup>

Per the executed BOEM lease agreements, developers must, by the time the first Facility Design Report is submitted, “execute a CBA with one or more communities, stakeholder groups, or Tribal entities whose use of the geographic space of the Lease Area, or whose use of resources harvested from that geographic space, is expected to be impacted by the Lessee’s potential offshore wind development.”<sup>152</sup> The Lease Area Use CBA(s) must be executed with an organized entity, either a) a private, public, or municipal corporation, company, association, or partnership; b) a county, city, or town; c) another legal entity organized under domestic or Tribal law; d) a Federally recognized Tribe; or e) a US State or subdivision.<sup>153</sup>

Under the terms of the lease, the Lease Area Use CBA must, among other things:<sup>154</sup>

- **Detail how the affected community’s use of the lease area or its use of resources from the geographic lease area will be affected** by the developer’s project
- **“Address impacts** to the impacted community arising from lease development”
- Specify any **“monetary, material, or other benefits”** that are or will be supplied by the Lessee to the affected community, “including any **mitigation**

**or other compensatory measures**” (such as the “establishment of any special purpose funds and the mechanisms through which monies therein will be disbursed”)

- Describe **which method of collaboration and conflict resolution** the parties will use, whether it is mediation, a method for cooperation, or another plan
- “Describe **communication methods, engagement methods, or educational opportunities** for the impacted community”
- **Specify plans (or strategies) to mitigate potential impacts** from the proposed development of the Lease Area on the impacted community.

Thus, the requirements for the CBA provide broad guidelines rather than specific content, but developers must use “best efforts” to deliver benefits that are “at least commensurate to the value of the bidding credit received.”<sup>155</sup> This value ranges from \$5 million to roughly \$6.7 million among the different lessees statewide, depending on the amount each lessee was awarded in bidding credits. (These amounts are delineated in each executed lease.)<sup>156</sup>

Other Lease Area Use CBA requirements in the executed leases are as follows:

- Benefits delivered can include financial as well as non-monetary benefits<sup>157</sup>
- However, the developers cannot include benefits in the Lease Area Use CBA that overlap with
  - a. other benefits the developers are required to provide under other statutes (except for the Outer Continental Shelf Lands Act (OCSLA)),<sup>158</sup> or
  - b. the benefits provided under a lessee’s other bidding credits<sup>159</sup>
- The CBA “may assist fishing and related industries (including Tribal fisheries) by supporting their resilience and ability to adapt to gear changes or any potential gear loss or damage, as well as any loss of income, or other similar potential impacts that may arise from the development of the Lease Area”<sup>160</sup>
- The agreement can include payments to a special fund and can include financial support for new gear, navigation and/or safety upgrades, or monies “to compensate the fishing and related industries whose use of the geographic space of the Lease Area is impacted by the Lessee’s potential offshore wind development”<sup>161</sup>
- Importantly, the CBA “may apply within a reasonable distance onshore”<sup>162</sup>

Various documentation requirements apply, including written agreements, description of work done, and sworn statements attesting to the truth and accuracy of the information provided.<sup>163</sup> Under the terms of the lease, BOEM has the discretion to determine that “the bidding credit commitment to execute a Lease Area Use CBA has not been satisfied because changes to the Lessee’s conceptual strategy or its implementation, that occur after the auction, do not meet the criteria for the bidding credit described herein.”<sup>164</sup> Thus, BOEM determines the adequacy of the CBA. If BOEM decides that a lessee or assignee has failed to execute a CBA that satisfies its commitment (measured at the

time of the first Facility Design Report submission), the full amount of the bidding credit is due and payable with interest from the date of lease execution.<sup>165</sup>

## GENERAL COMMUNITY BENEFITS AGREEMENTS

The requirements for General CBAs are also explained in the executed leases and overlap significantly with the Lease Area Use CBAs. The General CBA must be executed with “one or more communities, Tribes, or stakeholder groups that are expected to be affected by the potential impacts on the marine, coastal, and/or human environment (such as impacts on visual or cultural resources) from activities resulting from lease development that are not otherwise addressed by the Lease Area Use CBA.”<sup>166</sup>

Among other things, the General CBA must:<sup>167</sup>

- Be made with an impacted community
- Detail how the impacted community could be affected by the project’s possible effects on the marine, coastal, and/or human environment
- Cover impacts that are not addressed by the Lease Area Use CBA
- Detail the monetary, material, or other benefits that the Lessee has provided or plans to provide
- Provide a commitment by the signatories to collaborate with each other and resolve any issues that arise. This can include a statement of intention to mediate, a strategy for collaboration, or another plan that addresses conflict resolution and collaboration
- Lay out communication or engagement methods, or “educational opportunities for the impacted community”
- Describe the plans or strategies to mitigate potential impacts on the impacted community

As with the Lease Area Use CBA, the developers must use “best efforts” to deliver benefits that are “at least commensurate to the value of the bidding credit received.”<sup>168</sup> This value ranges from zero to roughly \$6.7 million among the different lessees statewide.<sup>169</sup>

Examples of benefits that could be included in the General CBAs include:<sup>170</sup>

- Payments to a community fund, with the function of providing monies to mitigate the impacts of the developer’s project
- Support for engaging in the process of developing the CBA
- Mitigation of impacts to cultural viewsheds or to species (land and water) that are culturally significant to Tribal nations or impacted communities

Areas where the General CBA provisions mirror the Lease Area Use CBA include the following:

- Benefits delivered can include financial as well as non-monetary benefits<sup>171</sup>

- The developers cannot include benefits that overlap with other benefits the developers are required to provide under other statutes, except for the Outer Continental Shelf Lands Act (OCSLA), or with benefits provided under a lessee’s other bidding credits<sup>172</sup>
- There may be more than one CBA<sup>173</sup>
- The developer must sign the agreement with an organized entity including associations, public, private or municipal corporations, Tribal legal entities, or a US state or subdivision<sup>174</sup>
- The Lessee is to fulfill its CBA commitment(s) “in accordance with the conceptual strategy submitted as part of the [Bidder’s Financial Forms]”<sup>175</sup>

The documentation and enforcement provisions mirror those for the Lease Area Use Leases.<sup>176</sup> Thus, BOEM is also the agency responsible for ensuring that the General CBAs are adequate.

## ENDNOTES

All URLs last accessed December 20, 2023. Some may be paywall- or subscription-restricted.

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- 2 All five executed leases can be found on the “Existing Leases” tab on the Bureau of Ocean Energy Management, “California Activities” webpage, available at <https://www.boem.gov/renewable-energy/state-activities/california>.
- 3 All-In Cities, An Initiative of Policy Link, “Community benefits agreements” (webpage), available at <https://allincities.org/toolkit/community-benefits-agreements>.
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- 5 US Department of Energy (DOE), “Community Benefit Agreements: Frequently Asked Questions (FAQs),” p. 1, available at <https://www.energy.gov/diversity/articles/community-benefit-agreement-cba-resource-guide-faqs>.
- 6 “[S]ome CBA responsibilities can be fulfilled well before the development opens, like a developer’s one-time payment into an existing neighborhood improvement fund. Roles, responsibilities, and time frames should be clearly described in the CBA.” Julian Gross et al., *Community Benefits Agreements: Making Development Projects Accountable* (2005), p. 15, available at <https://www.powerswitchaction.org/resources/community-benefits-agreements-handbook>.
- 7 *Id.* at p. 10, chapters 4-7.
- 8 *Id.* at pp. 21-22.
- 9 *Id.* at pp. 11-15, 69-72.
- 10 CADEMO, “The Project” (webpage), available at <https://cademo.net/the-project/>.
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- 23 “For community groups, winning a CBA often takes many years and vast resources for organizing and negotiation.” Alex Williamson, “Which Community Benefits Agreements Really Delivered?” Shelterforce (Aug. 31, 2021), available at <https://shelterforce.org/2021/08/31/which-community-benefits-agreements-really-delivered/>.
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- 27 Pacific Wind Lease Sale 1 (PACW-1) for Commercial Leasing for Wind Power on the Outer Continental Shelf in California—Final Sale Notice, 87 Fed. Reg. 64093, 64102 (Oct. 21, 2022), available at <https://www.federalregister.gov/documents/2022/10/21/2022-22871/pacific-wind-lease-sale-1-pacw-1-for-commercial-leasing-for-wind-power-on-the-outer-continental>.
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- 123 Id. at p. 47183.
- 124 Id. at p. 47184.
- 125 Id. at pp. 47183-47184.
- 126 Atlantic Wind Lease Sale 10 for Commercial Leasing for Wind Power Development on the U.S. States Central Atlantic Outer Continental Shelf: Proposed Sale Notice, 88 Fed. Reg. 86145 (Dec. 12, 2023), available at <https://www.federalregister.gov/documents/2023/12/12/2023-27200/atlantic-wind-lease-sale-10-for-commercial-leasing-for-wind-power-development-on-the-us-states>.
- 127 Id. at p. 86148.
- 128 John Glasson, “Community Benefits and UK Offshore Wind Farms: Evolving Convergence in a Divergent Practice,” *Journal of Environmental Assessment Policy and Management*, Vol. 22, no. 1102 (2020), pp. 2150001-16, 2150001-17, available at <https://doi.org/10.1142/S1464333221500010>.
- 129 Marie Leer Jørgensen, “Low-carbon but corrupt? Bribery, inappropriateness and unfairness concerns in Danish energy policy,” *Energy Research & Social Science*, Volume 70, 101663, ISSN 2214-6296, (2020), pp. 5-6, available at <https://doi.org/10.1016/j.erss.2020.101663>; K. Johansen & J. Emborg, “Wind farm acceptance for sale? Evidence from the Danish wind farm co-ownership scheme,” *Energy Policy*, Volume 117, ISSN 0301-4215, (2018), p. 418, available at <https://doi.org/10.1016/j.enpol.2018.01.038>.
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- 131 “Another solution is to compensate affected neighbors for their nuisances and losses... These types of economic compensation have a limited effect, mainly because the compensation schemes poorly address non-monetary values affected by the projects, and they are criticized for not offering adequate local benefits, equal access, fair procedures, and transparency.” Finn Arler et al., “Landscape Democracy and the Implementation of Renewable Energy Facilities” *Energies* 16, no. 13: 4997 (2023), sect. 5.1, p. 8, available at <https://doi.org/10.3390/en16134997>.
- 132 Dr. Wilma Franco, Remarks at CLEE Webinar: Deriving Community Benefits from Climate Investments: Gathering Inspiration from California Place-Based Programs (Dec. 7, 2023) (recording available at <http://www.kaltura.com/tiny/hn22s>). See also, California Environmental Justice Alliance (CEJA) and PlaceWorks Inc., SB 1000 Implementation Toolkit: Planning for Healthy Communities (Oct. 2017, revised July 2018), pp. 42, 43, available at <https://caleja.org/2017/09/sb-1000-toolkit-release/>.
- 133 California Environmental Justice Alliance (CEJA) and PlaceWorks Inc., SB 1000 Implementation Toolkit: Planning for Healthy Communities (Oct. 2017, revised July 2018), p. 37, available at <https://caleja.org/2017/09/sb-1000-toolkit-release/>.
- 134 Id. at pp. 39-40.
- 135 Dr. Wilma Franco, Remarks at CLEE Webinar: Deriving Community Benefits from Climate Investments: Gathering Inspiration from California Place-Based Programs (Dec. 7, 2023) (recording available at <http://www.kaltura.com/tiny/hn22s>).
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- 137 The Greenlining Institute, *Clean Mobility Equity: A Playbook* (2021), p. 20, available at <https://greenlining.org/publications/clean-mobility-transportation-equity-report/>.

- 138 See e.g., Adopted Findings: Consistency Determination No.: CD-0004-22, California Coastal Commission (June 8, 2022), pp. 15-16, 128, available at <https://www.coastal.ca.gov/meetings/agenda/#/2022/6>.
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- 141 “Recognizing a need for a strong community anchor to lead TCC during the Implementation Grant, East Oakland’s TCC stakeholders positioned the Black Cultural Zone Community Development Corporation to become the community anchor during Implementation Grant proposal and implementation . . . A few TCC community partners, advisors from the City of Oakland, and dozens of community organizations worked together to secure additional funding, create by-laws and build the Black Cultural Zone CDC’s organizational infrastructure in order to seed long-term sustainability for community-led initiatives in East Oakland.” Emi Wang & Rachel Lu, *Case Study: East Oakland A Community Vision for a Healthy Neighborhood Without Displacement*, The Greenlining Institute (Nov. 21), pp. 7-8, available at <https://greenlining.org/wp-content/uploads/2021/11/Community-Vision-Healthy-Neighborhood-Without-Displacement-TCC-Case-Study-.pdf>.
- 142 UPROSE, Rogue Climate, Taproot Earth, and the Climate Justice Alliance, *Principles For A Just Transition In Offshore Wind Energy*, available at <https://climatejusticealliance.org/wp-content/uploads/2022/11/JustTransition-OffshoreWindEnergy.pdf>.
- 143 Senate Bill 286 (McGuire, Chapter 386, Statutes of 2024), Cal. Pub. Res. Code §§ 30001.3, 30601.4, 30616, 30617 and Cal. Pub. Res. Code § 7100 et seq.
- 144 The bill establishes the California Offshore Wind Energy Fisheries Working Group, composed of representatives from the California Coastal Commission (CCC), the Department of Fish and Wildlife, the State Lands Commission, the Ocean Protection Council, representatives of the commercial and recreational fishing industries, the offshore wind energy industry, representatives of relevant federal agencies, representatives of California Native American tribes with affected tribal fisheries, and other stakeholders, as determined by the California Coastal Commission. The bill requires the CCC, in coordination with the Department of Fish and Wildlife, to convene the working group on or before January 1, 2025. The Working Group must propose a statewide strategy on or before January 1, 2026, which the CCC must adopt by May 1, 2026. Senate Bill 286 (McGuire, Chapter 386, Statutes of 2024).
- 145 Center for Law, Energy & the Environment, “California Offshore Wind Community Benefits: Examples from California and Elsewhere” (virtual forum) (Sept. 15, 2023) (event notes on file with authors).
- 146 See e.g., *Adopted Findings: Consistency Determination No.: CD-0004-22*, California Coastal Commission (June 8, 2022), p. 127, available at <https://www.coastal.ca.gov/meetings/agenda/#/2022/6>: “The Commission addresses several substantive concerns raised during these meetings throughout this CD, and stakeholders have requested that BOEM and lessees establish additional measures for meaningful engagement during all stages of offshore wind scoping and energy generation. In the Commission’s findings for CD-0001-22, which examined the Humboldt WEA, communities raised concerns on BOEM’s draft EA that ‘BOEM develop strategies to specifically engage [Black, Indigenous, and People of Color] communities throughout all phases of the Humboldt WEA development going forward’ to ensure offshore wind development has long-term community benefits and accountability and monitoring measures for lease activities and lessees. Specific requests include establishing a regional community steering committee with representation from Tribes, communities of color, low-income communities and other disadvantaged communities and that the cost of future working groups and monitoring activities should be covered by BOEM, lessees, and/or developers. These same considerations should be applied in the Morro Bay WEA, as there is a history of industrial development, environmental pollution, and lack of engagement of central coast communities.”
- 147 See e.g., Golden State Wind LLC lease ([name changed after lease issuance from Central California Offshore Wind LLC](#)), p. C-27, available at <https://www.boem.gov/renewable-energy/state-activities/boemccowpocsrlease-0564>.

- 148 See e.g., Invenergy California Offshore LLC lease, pp. C-29-C-30, available at <https://www.boem.gov/renewable-energy/state-activities/boeminenergypocsrlease-0565>.
- 149 Commercial Lease of Submerged Lands for Renewable Development on the Outer Continental Shelf, executed between the US Bureau of Ocean Energy Management and Central California Offshore Wind LLC, (effective June 1, 2023), available at <https://www.boem.gov/renewable-energy/state-activities/boemccowpocsrlease-0564>.
- 150 Each lessee must fulfill its Lease Area Use CBA commitment(s) “in accordance with the conceptual strategy submitted with the [lessee’s Bidder’s Financial Form (BFF)]” which was submitted by each developer before the lease auction. See e.g., Invenergy Lease, p. C-28, available at <https://www.boem.gov/renewable-energy/state-activities/boeminenergypocsrlease-0565>.
- 151 “BOEM reserves the right to determine that the bidding credit commitment to execute a Lease Area Use CBA has not been satisfied because changes to the Lessee’s conceptual strategy or its implementation, that occur after the auction, do not meet the criteria for the bidding credit described herein. The requirements and restrictions applicable to the bidding credit commitment described in Addendum ‘C,’ Section 12.1 bind the Lessee and any future assignee(s) of the lease as per 30 C.F.R. 585.410. If BOEM determines that a Lessee or assignee has failed to enter into a Lease Area Use CBA that satisfies the commitment by the Lessee’s first FDR submission, or if a Lessee or assignee relinquishes or otherwise fails to develop the lease by the tenth anniversary date of lease issuance, the amount corresponding to the bidding credit awarded will be immediately due and payable to ONRR with interest from the date of lease execution. The interest rate will be the underpayment interest rate identified by ONRR. BOEM may, at its sole discretion, extend the documentation deadline beyond the first FDR submission or the 10-year timeframe stated in this paragraph.” Invenergy Lease, p. C-29 (Section 12.3), available at <https://www.boem.gov/renewable-energy/state-activities/boeminenergypocsrlease-0565>.
- 152 See e.g., Invenergy Lease, p. C-27, available at <https://www.boem.gov/renewable-energy/state-activities/boeminenergypocsrlease-0565>.
- 153 Id. at p. C-28.
- 154 Id. at p. C-27.
- 155 Id. at p. C-28.
- 156 All five executed leases can be found on the “Existing Leases” tab on the Bureau of Ocean Energy Management “California Activities” webpage, available at <https://www.boem.gov/renewable-energy/state-activities/california>.
- 157 See e.g., Invenergy Lease, p. C-28, available at <https://www.boem.gov/renewable-energy/state-activities/boeminenergypocsrlease-0565>.
- 158 Id.
- 159 Id.
- 160 Id.
- 161 Id.
- 162 Id.
- 163 Id. at p. C-29 (Section 12.2).
- 164 Id. at p. C-29 (Section 12.3).
- 165 “BOEM reserves the right to determine that the bidding credit commitment to execute a Lease Area Use CBA has not been satisfied because changes to the Lessee’s conceptual strategy or its implementation, that occur after the auction, do not meet the criteria for the bidding credit described herein. The requirements and restrictions applicable to the bidding credit commitment described in Addendum ‘C,’ Section 12.1 bind the Lessee and any future assignee(s) of the lease as per 30 C.F.R. 585.410. If BOEM determines that a Lessee or assignee has failed to enter into a Lease Area Use CBA that satisfies the commitment by the Lessee’s first FDR submission, or if a Lessee or assignee relinquishes or otherwise fails to develop the lease by the tenth anniversary date of lease issuance, the amount corresponding to the bidding credit awarded will be immediately due and payable to ONRR with interest from the date of lease execution. The interest rate will be the underpayment interest rate identified by ONRR. BOEM may, at its sole discretion, extend the documentation deadline beyond the first FDR submission or the 10-year timeframe stated in this paragraph.” Invenergy Lease, p. C-29 (Section 12.3), available at <https://www.boem.gov/renewable-energy/state-activities/boeminenergypocsrlease-0565>.
- 166 See e.g., Equinor Lease, pp. C-29-C-30, available at <https://www.boem.gov/renewable-energy/state-activities/boemequinorpocsrlease-0563>.
- 167 Id. at p. C-30.
- 168 Id.

- 169 All five executed leases can be found on the “Existing Leases” tab on the Bureau of Ocean Energy Management “California Activities” webpage, available at <https://www.boem.gov/renewable-energy/state-activities/california>.
- 170 Equinor Lease, p. C-30, available at <https://www.boem.gov/renewable-energy/state-activities/boemequinorpocsrlease-0563>.
- 171 Id.
- 172 Id.
- 173 Id.
- 174 Id. at pp. C-30-C-31.
- 175 Id. at p. C-30.
- 176 Id. at pp. C-31-C-32.

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