

DOCKETED	
Docket Number:	24-OPT-02
Project Title:	Compass Energy Storage Project
TN #:	267998
Document Title:	City of San Juan Capistrano Comments - City of San Juan Capistrano Formal Request for Response to Previous Correspondence
Description:	N/A
Filer:	System
Organization:	City of San Juan Capistrano
Submitter Role:	Public Agency
Submission Date:	12/19/2025 11:10:02 AM
Docketed Date:	12/19/2025

*Comment Received From: City of San Juan Capistrano
Submitted On: 12/19/2025
Docket Number: 24-OPT-02*

**City of San Juan Capistrano Formal Request for Response to
Previous Correspondence**

Additional submitted attachment is included below.

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MEMBERS OF THE CITY COUNCIL

TROY BOURNE
JOHN CAMPBELL
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HOWARD HART
JOHN TAYLOR

Via Docket 24-OPT-02

December 19, 2025

Drew Bohan
Executive Director
California Energy Commission
715 P Street
Sacramento, CA 95814
drew.bohan@energy.ca.gov

**Re: City of San Juan Capistrano Formal Request for Response to
Previous Correspondence**

Dear Mr. Bohan:

Please consider this correspondence a formal request from the City of San Juan Capistrano ("City") for a detailed written response from the California Energy Commission ("CEC") regarding the City's multiple communications concerning the Compass Energy Storage Project ("Project") (Docket 24-OPT-2), none of which have received a substantive reply to date. Attached for your reference are the City's prior letters:

- December 5, 2025 – Comments regarding the Project applicant's response to the CEC's Post Scoping Set 2 Data Request and updated application materials.
- July 22, 2025 – Objection to Project applicant's request to modify the Project.
- July 22, 2025 – Comments on Post-Scoping Biological Resources Data Request
- July 22, 2025 – Comments on the Second Harvest Food Bank Community Benefits Agreement (CBA).

Key issues raised in these letters that warrant a CEC response are provided in summary on the following pages. For clarity, and as provided in the City's July 22, 2025, letter titled "City of San Juan Capistrano Objection to Engie Request to Modify the Compass Energy Storage Project," the City's overarching position is that the CEC must either deny the existing application or require the applicant to withdraw it, as the extent of the Project amendments submitted by the applicant violates AB 205.

In addition, the City expects responses to all remaining questions and requests for clarification raised in prior correspondence and summarized herein. Importantly, the CEC should refrain from further processing the Project application until these matters have been fully addressed, the Notice of Preparation has been revised and recirculated, and all required surveys and investigations have been properly completed.

1. Letter Dated December 5, 2025

- The revised Project description reflects significant and material changes in both scope and regulatory considerations, including Oso Creek rehabilitation and expansion of the Project footprint, warranting recirculation of the Notice of Preparation (NOP) and a new 30-day public review period. The City expects a response from the CEC either confirming its intent to recirculate the NOP or providing justification for why recirculation is not required.
- The Project applicant has not demonstrated lawful site control for expanded off-site improvements and in accordance with the CEC's application requirements; Project processing should not proceed until the applicant validates that authorization to perform these off-site improvements has been obtained from the owner(s) of record. We do not believe that authorization currently exists and, if that is the case, it is unclear how the application can continue to be processed. The City expects a response from the CEC confirming that Project processing will be paused until the applicant submits written authorization from the property owners approving the proposed off-site improvements on their respective properties.
- The Southwestern Pond Turtle Survey does not meet USGS protocol, which requires additional surveys during spring/early summer of 2026. The CEC should incorporate these results before releasing the Staff Assessment and Draft Environmental Impact Report. The City expects a response from the CEC confirming that the applicant will be required to conduct additional surveys which meet the protocols outlined by USGS prior to the release of the Staff Assessment and Draft Environmental Impact Report.

2. Letter Dated July 22, 2025 (Objection to Request to Modify the Project)

- The City objects to the Project applicant's attempt to pause the proceeding and submit new geotechnical information, as AB 205 does not allow such modifications after the application was deemed complete. The City expects a response from the CEC providing justification for why the applicant is permitted to submit new geotechnical information, and related updated materials, after the Project was deemed complete.

- The CEC must deny the existing application or demand withdrawal, as amending the application to such an extent at this stage violates AB 205 and the due process rights of the City and other public and private stakeholders. The City expects a response from the CEC either providing justification for why the Project continues to be evaluated or confirming that the application will be denied or required to be withdrawn.

3. Letter Dated July 22, 2025 (Comments on Post-Scoping Data Request)

- The Project applicant's Crotch's Bumble Bee and Burrowing Owl surveys are incomplete and insufficient. Further, the expansion of the project footprint by approximately 13 acres requires expansion of the survey area, which applies globally to all biological surveys required for the Project. Therefore, additional surveys are required and can only be conducted during the 2026 survey window. The City expects a response from the CEC confirming that the applicant will be required to conduct additional surveys in accordance with required protocols prior to the release of the Staff Assessment and Draft Environmental Impact Report.

4. Letter Dated July 22, 2025 (Second Harvest CBA)

- The proposed CBA with Second Harvest Food Bank does not comply with statutory and regulatory requirements, is untimely, and does not provide tangible benefits to the local community. The City expects a response from the CEC stating the CEC's position regarding the Project's compliance with AB 205 community benefits requirements.

The City emphasizes that this Project is of regional concern. The CEC's lack of responsiveness to date impacts not only the residents of San Juan Capistrano but all those in the region who are rightfully alarmed by the proposed Project and who have raised legitimate public safety and environmental concerns. The City is a key stakeholder and continues to invest significant time and taxpayer resources to participate in this State process, and the CEC has an obligation to maintain transparency and meaningful engagement with local governments as contemplated under AB 205.

While the CEC appears to be in continuous dialogue with the applicant, for reasons we cannot understand the City has not received responses to the letters referenced above. We therefore respectfully request that the CEC provide a clear and substantive response to the attached correspondence by **January 15, 2026**, clarifying how these issues will be addressed to ensure a complete and transparent public process.

Should you have any questions, please contact Paul Garcia, Principal Analyst, at (949) 443-6327 or by email at pgarcia@sanjuancapistrano.org.

Sincerely,



Benjamin Siegel
City Manager

Attachments:

Letter Dated December 5, 2025
Letter Dated July 22, 2025 (Objection to Request to Modify the Project)
Letter Dated July 22, 2025 (Comments on Post-Scoping Data Request)
Letter Dated July 22, 2025 (Second Harvest CBA)

c : Congressman Mike Levin, 49th District
 Governor Gavin Newsom
 CEC Commissioner Gallardo
 Assemblymember Laurie Davies, 74th District
 Assemblymember Diane Dixon, 72nd District
 Senator Catherine Blakespear, 38th Senate District
 Senator Steven S. Choi, 37th Senate District
 Orange County Supervisor Katrina Foley, 5th District
 San Diego County Supervisor Jim Desmond, 5th District
 Dan Phu, Orange County Transit Authority
 City of Dana Point
 City of Laguna Hills
 City of Laguna Niguel
 City of San Clemente
 Cathleen Pryor, BLESSIN
 Williams Orchard Limited Partnership

DOCKETED	
Docket Number:	24-OPT-02
Project Title:	Compass Energy Storage Project
TN #:	267839
Document Title:	City of San Juan Capistrano Comments - City of San Juan Capistrano Comments on Applicant's Response to Post Scoping Set 2 Data Request & Updated Application Materials
Description:	N/A
Filer:	System
Organization:	City of San Juan Capistrano
Submitter Role:	Public Agency
Submission Date:	12/5/2025 10:24:45 AM
Docketed Date:	12/5/2025

*Comment Received From: City of San Juan Capistrano
Submitted On: 12/5/2025
Docket Number: 24-OPT-02*

**City of San Juan Capistrano Comments on Applicant's Response to
Post Scoping Set 2 Data Request & Updated Application Materials**

Additional submitted attachment is included below.

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Via Docket 24-OPT-02

December 5, 2025

Drew Bohan
Executive Director
California Energy Commission
715 P Street
Sacramento, CA 95814
drew.bohan@energy.ca.gov

Re: City of San Juan Capistrano (“City”) Comments Regarding the Applicant’s Response to Post Scoping Set 2 Data Request and Updated Application Materials

Dear Mr. Bohan:

On November 14, 2025, the Project applicant’s response to the California Energy Commission (CEC) Post Scoping Set 2 Data Request for the Compass Energy Storage Project (“Project”), dated August 12, 2025, was added to the Project Docket Log (24-OPT-2). Additionally, the Project applicant submitted updated application materials, including an updated Project description, and indicated that other affected analyses in the application are in the process of being updated to incorporate the creek stabilization component and stormwater design. As such, the City reserves the right to review the updated application materials and forthcoming documents and to comment accordingly, consistent with our abilities under AB 205. As a reminder, on July 22, 2025, the City submitted an objection to the applicant’s request to modify the Project, as amending the application at this stage violates AB 205 and the due process rights of the City and other public and private stakeholders; we reassert that same objection here with respect to the updated submittals referenced above.

At this time, the City offers the following comments with respect to what has been submitted to date:

1. The Notice of Preparation Must be Recirculated for a New 30-day Review Period

The revised Project description reflects significant and material changes in both scope and regulatory considerations for the Project. The introduction of the Oso Creek rehabilitation and stabilization work encompasses approximately 2,600 linear feet and 12.49 acres, with an 80-foot-wide channel, regraded and revegetated slopes, and six instream rock stabilization structures. This expanded scope has driven significant increases in earthwork quantities, including large rises in cut, fill, and net export volumes associated with the creek modifications. This work also triggers significant additional regulatory permitting that was not in play prior to this change.

As a result of the introduction of work in and around Oso Creek, the overall project footprint has also grown substantially, nearly doubling in size from approximately 14.23 acres to approximately 27.16 acres. Importantly, the project footprint has expanded beyond property for which the applicant currently holds an option to purchase and/or improve, as discussed in a following section of this letter.

Collectively, these changes represent a material modification of the Project description and carry important procedural implications. The magnitude of the revisions warrant recirculation of the Notice of Preparation (NOP) and the need to conduct an additional Public Informational and Scoping Meeting to ensure compliance with CEQA requirements and transparent public engagement. The NOP was required to be sent to every federal agency involved in approving or funding the project. (State CEQA Guidelines, section 15082(a).) Based on the Project revisions posted to the docket on November 14, 2025, the Army Corps of Engineers and the United States Fish and Wildlife Service may have a significant role in permitting work proposed to occur in Oso Creek. These agencies should have received direct notice of the Project's environmental process to allow for the appropriate review under state and federal law.

In addition, the NOP must be recirculated because the Project description has significantly changed since the NOP was originally released on May 2, 2025 (the "Original NOP"). The NOP must provide responsible and trustee agencies, the Office of Land Use and Climate Innovation and the county clerk sufficient information describing the Project and the potential environmental effects to allow those entities to provide a meaningful response. (State CEQA Guidelines, section 15082(b).) The Original NOP said nothing about the Project's proposed, extensive work in Oso Creek. In fact, the only permit contemplated in the Project application was an NPDES Construction General Permit, not permits and other approvals that are now needed from federal agencies with discretionary authority over the Project. Thus, the aforementioned entities have not had an opportunity

to provide a meaningful response to the new information posted to the docket. The NOP must be revised to reflect the whole of the action, and must be reissued for a new 30-day review period to afford all interested entities an opportunity to comment on the full scope of the project. (State CEQA Guidelines, section 15082.)

2. New Protocol-Level Southwestern Pond Turtle Survey is Required

On August 12, 2025, CEC staff issued Post-Scoping Data Request Set 2 for the Project, including a biological resources request in response to a comment letter on the Original NOP from the California Department of Fish and Wildlife (CDFW). As part of this request, CEC staff asked the applicant to conduct visual surveys following the Western Pond Turtle Visual Survey Protocol for the Southcoast Ecoregion (USGS 2006) to confirm the presence or absence of southwestern pond turtles.

The southwestern pond turtle, a California Species of Special Concern and proposed Threatened species under the U.S. Endangered Species Act, requires thorough consideration under CEQA. The August 2025 Southwestern Pond Turtle Habitat Assessment and Survey Results, prepared by Dudek on behalf of the applicant, *do not* meet accepted biological standards or the requirements of the USGS (2006) protocol. The survey consisted of a single visual encounter in late August, outside the turtles' peak activity period (May-July), and did not cover all potential habitat or employ alternative detection methods. Despite these limitations, multiple turtles were observed, suggesting a resident breeding population may be present.

Because the survey likely underrepresents the species' presence and habitat use, any impact analysis or mitigation based on these data is uncertain and may underestimate potential harm. Given the species' pending federal protection, improper handling could trigger Endangered Species Act prohibitions. To address these shortcomings, additional surveys should be conducted in spring and early summer 2026 following full USGS (2006) protocols, ensuring multiple visits, complete habitat coverage, and proper detection methods. The Staff Assessment and Draft Environmental Impact Report for the Project should not be released until a new protocol-level survey has been completed and incorporated into the document.

3. Requirement for Authorization of Off-Site Land-Use Rights

The project footprint has expanded beyond the property for which the applicant currently holds an option to purchase and/or improve, extending into the railroad right-of-way and an adjacent private parcel (APN 637-082-14) owned by WILLIAMS ORCHARD LTD PTNSHP. Because the proposed improvements now occur on land outside the applicant's optioned control, the applicant must secure the necessary land-use rights for all off-site work before the CEC can process an

December 5, 2025

application for a Project that would impact that property. We have yet to see any documentation indicating that the applicant has secured legal rights to the easement and private property now included in the expanded footprint.

Project processing should not proceed until the applicant demonstrates that authorization to perform these off-site improvements has been obtained from the owner(s) of record. The City reminds the CEC that its opt-in application requirements in Appendix B required a description of the legal interest that the applicant has in the off-site properties, and to the extent applicable, a list of all owners within 1,000 feet of the revised boundaries, among other requirements.

The City appreciates the opportunity to provide these comments and remains committed to working collaboratively with CEC staff to ensure a complete, accurate and legally adequate review of the Project. Given the substantive changes to the Project description, the deficiency in biological resource information needs, and the unresolved off-site land-use authorization issues described above, the City respectfully requests that the CEC refrain from further processing of the Project application until these matters have been fully addressed, the NOP revised and recirculated, and all necessary and proper surveys and investigations have been completed. The City looks forward to continued coordination and will provide additional comments upon receipt and review of the updated application materials.

Should you have any questions regarding the information in this letter, please contact Paul Garcia, Principal Analyst, at (949) 443-6327 or by email at pgarcia@sanjuancapistrano.org.

Sincerely,



Benjamin Siegel
City Manager

Cc : U.S. Army Corp of Engineers
U.S. Fish and Wildlife Service
California Department of Fish and Wildlife
Regional Water Quality Control Board
Orange County Transportation Authority
Orange County Public Works
Santa Margarita Water District
City of Laguna Niguel
Williams Orchard Limited Partnership

DOCKETED	
Docket Number:	24-OPT-02
Project Title:	Compass Energy Storage Project
TN #:	264969
Document Title:	City of San Juan Capistrano Objection to Engie Request to Modify the Compass Energy Storage Project
Description:	City of San Juan Capistrano Objection to Engie Request to Modify the Compass Energy Storage Project
Filer:	Kari Cameron
Organization:	City of San Juan Capistrano
Submitter Role:	Public Agency
Submission Date:	7/22/2025 2:27:13 PM
Docketed Date:	7/22/2025



Ryan M. F. Baron
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Via Docket 24-OPT-02

July 22, 2025

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**Re: City of San Juan Capistrano Objection to Engie Request to Modify the
Compass Energy Storage Project**

We are writing on behalf of the City of San Juan Capistrano regarding the July 11, 2025 request from Engie North America (Compass Energy Storage, LLC), the applicant on the Compass Energy Storage Project (Docket 24-OPT-02), that the California Energy Commission (Commission) pause its consideration of the current application so that Engie can submit “additional design and technical materials” on the geotechnical portion of its application.¹ *San Juan Capistrano demands that the Commission reject this request.* The Commission must inform the applicant that: (1) geotechnical flaws in the original application of this magnitude warrant its immediate rejection, or (2) a project alteration of this magnitude may only be considered as part of a new, amended application, following Engie’s withdrawal of its current application and filing of a new one, subject to the same public review process that applied to the original application.

Engie claims that the request is made to provide adequate information regarding long-term slope stability of Oso Creek adjacent to the project site. Engie further claims that it only received “new” information in the last three weeks that increased erosion and slope stabilization conditions have occurred in the last 12 months, and that project design changes are needed to mitigate issues with the creek. Engie requests the 270 day proceeding schedule be paused and that it be allowed to submit new information to the Commission in the next 60 days. The City of San Juan Capistrano objects to Engie’s request. The City also objects to the new geotechnical evaluation report and hazardous consequence analysis submitted in the docket on June 27, 2025 and July 2, 2025.²

Engie filed its application on April 8, 2024. As part of the application, it filed several sub-chapters purporting to analyze issues with Oso Creek.³ Engie was required by Assembly Bill 205 and Commission regulation to file all necessary and required information with the Commission as

¹ TN 264698, *Letter Geotech Supplement* (July 11, 2025).

² TN 264482, 264483, 264492, 264550, 264551, 264552, 264553, 264554, 264555, 264556, 264557, and 264558.

³ See, e.g., TN 255561-6-8, Appendix 4-4A_Geotechnical Evaluation Report Parts 1-3 (Apr. 8, 2024).

part of its application.⁴ Commission regulations consists of 38 pages of required data that includes geologic hazards, geotechnical information and impacts to and constraints of adjacent waterbodies.⁵ The Commission's review of the application is an "adequacy" review whereby it reviews the application for compliance with its application requirements prior to deeming it complete. During this review, the Commission can issue data requests to the applicant if certain portions of the application are incomplete.⁶ On April 30, 2025, the Commission deemed the application complete finding that the applicant had met its application requirements.⁷ In bold letters, the Commission stated "**Based on this review, and in conjunction of the totality of the record present in the project docket, the CEC staff has determined that the submitted application complies with Public Resources Code, section 25545.2 and therefore is complete.**"⁸

The Commission is in the process of preparing the draft Staff Assessment and Environmental Impact Report, as required by AB 205.⁹ There is no basis by law or in the Commission's regulations by which Engie can now supplement its application with new geotechnical data, pause the proceeding, or modify its project. The application was deemed complete as to all issues related to Oso Creek. The Commission must evaluate the application information it has before it, which would lead to a denial of the project since Engie is now on record indicating that its current design is infeasible and here are significant, unavoidable and unmitigable impacts to Oso Creek.

Engie attempts to cite to "new" information in the last three weeks regarding erosion in the prior 12 months that now necessitates more studies. This is preposterous and in bald contradiction to the history of Oso Creek and comments that have been filed in this proceeding. It has been well-documented stemming from studies and publicly available data from 1983 that there is severe bank erosion, loss of valuable land, and flooding and stability impacts to the adjacent property and rail lines. Not only is such information available through the regional water board, the Orange County Flood Control District,¹⁰ and Army Corps of Engineers, it was publicly commented on in the record of this proceeding by the Orange County Transportation Authority at least six months prior to the application being deemed complete.¹¹ There is absolutely no new information that has come to light since the application was deemed complete and there has not been any new information regarding erosion of the creek in the prior 12 months that was not already known or

⁴ Pub. Res. Code §§ 25520 and 25545.2; 20 C.C.R. § 1878.

⁵ 20 C.C.R. App. B.

⁶ 20 C.C.R. § 1878(a).

⁷ 20 C.C.R. § 1878(b); TN 262874, *Determination of Complete Application for the Compass Energy Storage Project (24-OPT-02)* (Apr. 30, 2025).

⁸ *Id.* at 1.

⁹ TN 262903, *Notice of Preparation of a Draft Environmental Impact Report for the Compass Energy Project* (May 2, 2025).

¹⁰ See, e.g., *San Juan Creek Flood Risk Management Feasibility Study*, available at <https://ocip.ocpublicworks.com/san-juan-creek-flood-risk-management-feasibility-study> (discussing the background and impacts for flooding, erosion, channel instability and habitat function in Oso Creek).

¹¹ TN 259591, *Orange County Transportation Authority Comments – Comment Letter* (Oct. 17, 2024) (providing the full history of erosion in the creek).

should have been known at the time the application was filed and reviewed by the Commission during its adequacy review. The assertion that there is new information is a complete misrepresentation of the facts, so much so that Engie does not offer what the information even is in its request letter. In reality, the request shows the utter lack of due diligence by the applicant and the failure to work with the regional, state and federal agencies that have information about and discretionary authority over the creek (independent of the Commission's jurisdiction). It also shows that the application was likely deficient and should not have been deemed complete.

The law is replete with examples where once an application is deemed complete, it is considered final. AB 205 does not allow Engie at this stage to substitute an amended project for the one included in the public review to date, and the Commission as a hearing body should not enable this. Information and amendments arising after an application is deemed complete cannot be applied to that application, and any supplemental information or modifications to a completed application constitute a re-submittal of the original application. In other words, Engie cannot provide supplemental information to the Commission or modify its project without submitting a new application or re-starting the review and timing under AB 205. Therefore, the only option is a withdrawal or denial of the current project because Engie by its own admission acknowledges that the project design is deficient and infeasible.

Engie's request also states that it wants to continue its scheduled site visit (this week) with Commission staff "to obtain CEC SME input as we clarify the design considerations."¹² Given the lack of transparency by Engie throughout this project that has been well-documented in the proceeding, the City requests that any dialogue with the applicant about supplementing the application or modifying its project take place in public. The City objects to staff deliberations about an unlawful project modification, and asks that any communications that have occurred be filed in the docket as a full and detailed record of conversation, as the Commission has done in other opt-in proceedings like the Darden Energy Project.

The Commission must deny the existing application or demand that Engie withdraw its application. Amending the application to this extent at this stage violates AB 205 and the due process rights of San Juan Capistrano and other public and private stakeholders.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan M. F. Baron".

Ryan M. F. Baron
of BEST BEST & KRIEGER LLP

¹² TN 264698 at 1.

DOCKETED	
Docket Number:	24-OPT-02
Project Title:	Compass Energy Storage Project
TN #:	264967
Document Title:	City of San Juan Capistrano Comments on Post-Scoping Biological Resources Data Requests
Description:	City of San Juan Capistrano Comments on Post-Scoping Biological Resources Data Requests
Filer:	Kari Cameron
Organization:	City of San Juan Capistrano
Submitter Role:	Public Agency
Submission Date:	7/22/2025 2:21:25 PM
Docketed Date:	7/22/2025

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Via Docket 24-OPT-02

July 22, 2025

Drew Bohan
Executive Director
California Energy Commission
715 P Street
Sacramento, CA 95814
drew.bohan@energy.ca.gov

**Re: Comments of the City of San Juan Capistrano regarding the
Post Scoping Biological Resources Data Requests**

On June 27, 2025, California Energy Commission (CEC) staff issued a post scoping biological resources data request for the Compass Energy Project in response to a letter from the California Department of Fish and Wildlife (CDFW). The data request ask the applicant to complete and conduct additional surveys for Crotch's Bumble Bee and Burrowing Owl during the remaining colony active and breeding season subject to certain procedures and timing.

The CEC's supplemental data request requires additional surveys for Crotch's Bumble Bee (CBB) and Burrowing Owl (BUOW; SDR BIO-1 and SDR BIO-2). As noted in the request, CDFW establishes survey protocol for these special status species. CBB active season surveys are required to be conducted from March to September, aligning with the foraging and nesting periods. BUOW requires four (4) separate survey events conducted from one hour before sunrise to two hours after sunset, as follows: Survey #1 (Feb 15–April 15), Survey #2 (three weeks apart), Survey #3 (three weeks apart), Survey #4 (three weeks apart, one visit after June 15). Note that BUOW overwintering surveys, conducted outside of these windows, are not determinative of species presence. CDFW protocol surveys must include a detailed map showing survey coverage among other requirements.

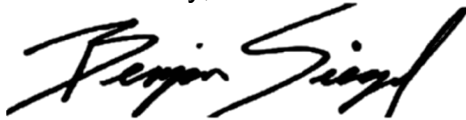
The surveys conducted by Dudek on July 31, 2024, and August 24, 2024, do not meet the CDFW criteria. Specifically, only two (2) surveys were conducted for BUOW, instead of the required four (4). The surveys did not include an accompanying detailed map to identify the survey locations. The 2024 surveys did not cover the buffer area (500 meters for BUOW) or habitat adjacent to Oso Creek, as requested by CEC. Source: <https://statics.teams.cdn.office.net/evergreen-assets/safelinks/1/atp-safelinks.html>.

Based on CDFW's survey criteria and CEC's supplemental data request (SDR BIO-1 and SDR BIO-2), the applicant is required to conduct CBB and BUOW surveys during the next survey window starting February 2026 and ending July/August 2026. Additionally, the applicant must include the buffer areas requested by the CEC, which was not included in the BUOW survey conducted in July and August of 2024. Furthermore, the surveys must include detailed maps showing the area surveyed.

The applicant cannot satisfy the timelines required by CDFW for the CEC data requests given the limited remainder of the colony and breeding season. Furthermore, our review of the site indicates that there are no prior CDFW surveys that have been conducted at the site, and thus neither the applicant nor the CEC can rely on prior CDFW surveys to supplement the data request. Therefore, the additional surveys can only be conducted in the next breeding season in 2026. No other exception applies.

Should you have any questions regarding the information in this letter, please contact Paul Garcia, Principal Analyst, at (949) 443-6327 or by email at pgarcia@sanjuancapistrano.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Benjamin Siegel". The signature is fluid and cursive, with the first name "Benjamin" and last name "Siegel" clearly distinguishable.

Benjamin Siegel
City Manager

DOCKETED	
Docket Number:	24-OPT-02
Project Title:	Compass Energy Storage Project
TN #:	264968
Document Title:	City of San Juan Capistrano Comments on Second Harvest Food Bank CBA
Description:	City of San Juan Capistrano Comments on Second Harvest Food Bank CBA
Filer:	Kari Cameron
Organization:	City of San Juan Capistrano
Submitter Role:	Public Agency
Submission Date:	7/22/2025 2:24:28 PM
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Via Docket 24-OPT-02

July 22, 2025

Drew Bohan
Executive Director
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drew.bohan@energy.ca.gov

Re: Second Harvest Food Bank Community Benefits Agreement

On July 14, 2025, Engie North America, the applicant on the Compass Energy Storage Project (Docket 24-OPT-02), filed an agreement with Second Harvest Food Bank of Orange County (Second Harvest) offering certain contributions to the organization subject to conditions precedent that have not been fulfilled.

The applicant submits the agreement as a “community benefits agreement” in purported satisfaction of Public Resources Code section 25545.10. That section states that “the commission shall not certify a site or related facility . . . unless the commission finds that the applicant has entered into one or more legally binding and enforceable agreements, with, or that benefit, a coalition of one or more community-based organizations . . .” In implementing this statutory requirement, the Commission has adopted 20 C.C.R. section 1877(g) that an opt-in application “shall include the applicant’s plan or strategy, including a timeline for execution, to obtain legally binding and enforceable agreement(s) with, or that benefit, a coalition of one or more community-based organizations prior to project certification, consistent with Public Resources Code section 25545.10.” In reviewing an opt-in application, and upon deeming the application complete, an applicant is required to “provide information updating or supplementing the information in the application to support the findings required by Public Resources Code sections 25545.9 and 25545.10” no later than 45 days after the application is deemed complete.¹ As Commission staff has recognized in the analogous Fountain Wind Project proceeding,² no later than 45 days after an application is deemed complete, or a later date set forth by the executive director, an applicant shall provide the executed community benefits agreement(s) required by section 25545.10.³ The Compass application was deemed complete on April 30, 2025. The 45-day deadline to have

¹ 20 C.C.R. § 1878(c).

² CEC Docket 23-OPT-01.

³ TN 252320 at 3.

submitted an executed community benefits agreement was June 14, 2025. The regulatory deadline has passed, no extension has been requested or granted, and thus, the community benefits agreement is untimely and time-barred by law. The Commission cannot consider it.

To the extent the agreement is filed timely, it was not identified in the community benefits plan as part of the Application and has never been disclosed to the Commission. The Application's Community Benefits Plan identified four organization types along with the community interests and a timeline for agreement that was between April and July 2024, as follows:

Anticipated Timeline

Discussions with the aforementioned community-based organizations and the City are ongoing. Between April and August 2024, Compass intends to execute legally binding agreements with one or more of the organizations described above, to satisfy AB 205's opt-in requirements. A complete Community Benefits Agreement plan will be submitted no later than 45 days after completeness review to be in compliance with Public Resources Code Section 25545.10.

Community Based Organization	Community Interest	Timeline for Agreement
Local Non-Profit	Disadvantaged SJC community support	April – July 2024
Youth-Serving Non-Profit	Orange County children, mentorship	April – July 2024
Higher Education Institution	Workforce development, Hispanic Community	April – July 2024
City of San Juan Capistrano	Public Safety, Parks and Recreation	April – July 2024

The Second Harvest Food Bank of Orange County is not one of the entities or organization types that was identified in the original plan. In fact, Engie has expressly stated in a filing before the Commission that it will not disclose its plans to the Commission or the public and “will not provide an update to those negotiations here but instead will submit executed agreements when they are final.”⁴ This is a direct violation of Commission regulation that requires the plan or strategy to be identified in the Application and the Applicant to update the Commission with a revised plan or with supplemental information.⁵ Even if Engie argues that it is not required to identify named organizations or organization types, it did not comply with the Public Resources Code or the Commission's own regulation in providing general information on the funds, purposes, and timeline with this entity at any time during this proceeding.

There is also no evidence in the agreement that Second Harvest is a community-based organization that serves or will serve the community interests of San Juan Capistrano. Although the agreement proposes an overall \$500,000 contribution to Second Harvest,

⁴ TN 262863, *Community Outreach Update*, pg. 5 (Apr. 30, 2025).

⁵ 20 C.C.R. §§ 1877(g) and 1878(c).

there is no specific provision or other requirement that funds are to be expended for food purposes in the San Juan Capistrano community or are to benefit the city in any way. Second Harvest may serve certain communities in the county, but Orange County is also the sixth largest county in the United States with over 3 million residents. There is not one section or exhibit in the agreement that requires funds to benefit San Juan Capistrano. The purpose of a community benefits agreement is to provide for meaningful benefits to a community impacted by development projects. The agreement is to assist the community where a project will be built. There is no benefit to San Juan Capistrano and no community served therein. In fact, in reviewing Second Harvest tax returns filed in the past five years, there has not been a single San Juan Capistrano entity that has received a material cash grant or non-cash assistance (greater than \$5,000) from Second Harvest as is required to be reported in the non-profit's annual Form 990.⁶ Therefore, the "community benefits agreement" is not material and does not serve the community where the proposed project is to be located. The agreement then does not comply with the opt-in certification requirements and is not a valid community benefits agreement under the law.

The City's comments on the Second Harvest agreement are also buttressed by Commission precedent in the recent Darden Clean Energy Project proceeding, which has been held up by the Commission as the model for opt-in certifications. We have reviewed the opt-in application and Staff Assessment for the Darden Clean Energy Project, which assessment was updated on May 12, 2025.⁷ We note that the applicant in that proceeding identified in its community benefits plan all of the various organization types with specific timelines and entered into several agreements with those same identified entities. Furthermore, in response to certain objections that some of the agreements contained a termination clause and were not enforceable, the Staff Assessment applied some qualitative criteria in stating the agreements "reflect the applicant's broader effort to provide meaningful, voluntary community benefits . . ."⁸ The Commission has, therefore, recognized that complete information is to be submitted in an application and that some criteria or benefit (materiality) threshold applies to the contribution to the community's interest where the project is proposed to be sited.

When the California Legislature enacted Assembly Bill 205, it intended community benefits agreements to be transparent and meaningful and that they benefit the community displaced and impacted by a large development project where the local community no longer had discretionary authority to review the project. The Legislature did not intend for renewable energy developers to skirt their obligations to the community. In a research study published by the MIT Renewable Energy Lab, attached hereto, the study cites samples of good benefits agreements for renewable energy projects, including some in California. The study finds that elements of effective

⁶ <https://projects.propublica.org/nonprofits/organizations/320362611>. Second Harvest Food Bank of Orange County, Inc.; Tax Filings and Audits by Year, Fiscal Years Ending 2020-2024; Schedule I (Grants and Other Assistance to Organizations, Governments and Individuals in the United States), attached hereto as Attachment 1.

⁷ TN 253022, *Appendix E Community Benefits Plan_Darden Clean Energy* (Nov. 7, 2023); TN 263053, *Darden Clean Energy Project Updated Staff Assessment* (May 12, 2025).

⁸ *Id.* at 2-6 and 2-7.

agreements include (1) community interests are well-represented; (2) a process that is transparent, inclusive and accessible; (3) concrete and meaningful benefits that deliver community needs; and (4) clearly defined enforcement mechanisms. The study also finds that weaker or ineffective agreements are (1) those where there is little public participation, (2) the negotiation process is secretive and exclusive, (3) commitments are vague with no clear timeframes, and (4) there is no accountability. The Second Harvest agreement meets none of the effective criteria and all of the ineffective criteria. Certainly, the Legislature intended similar standards to apply and so should the Commission.

Should you have any questions regarding the information in this letter, please contact Paul Garcia, Principal Analyst, at (949) 443-6327 or by email at pgarcia@sanjuancapistrano.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Benjamin Siegel". The signature is fluid and cursive, with the first name "Benjamin" and last name "Siegel" clearly distinguishable.

Benjamin Siegel
City Manager

Attachment 1: Second Harvest Form 990's
Attachment 2: CBA Research Study

efile Public Visual Render

ObjectID: 202101389349300005 - Submission: 2021-05-17

TIN: 32-0362611

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Schedule I
(Form 990)

OMB No. 1545-0047
2019
Open to Public Inspection

Department of the Treasury
Internal Revenue Service
Name of the organization
SECOND HARVEST FOOD BANK
OF ORANGE COUNTY INC

Grants and Other Assistance to Organizations,
Governments and Individuals in the United States
Complete if the organization answered "Yes," on Form 990, Part IV, line 21 or 22.
▶ Attach to Form 990.
▶ Go to www.irs.gov/Form990 for the latest information.

Employer identification number
32-0362611

Part I General Information on Grants and Assistance

1 Does the organization maintain records to substantiate the amount of the grants or assistance, the grantees' eligibility for the grants or assistance, and the selection criteria used to award the grants or assistance?

☐ Yes ☒ No

2 Describe in Part IV the organization's procedures for monitoring the use of grant funds in the United States.

Part II Grants and Other Assistance to Domestic Organizations and Domestic Governments. Complete if the organization answered "Yes" on Form 990, Part IV, line 21, for any recipient that received more than \$5,000. Part II can be duplicated if additional space is needed.

(a) Name and address of organization or government	(b) EIN	(c) IRC section (if applicable)	(d) Amount of cash grant	(e) Amount of non-cash assistance	(f) Method of valuation (book, FMV, appraisal, other)	(g) Description of noncash assistance	(h) Purpose of grant or assistance
(1) GRATEFUL HEARTS PO BOX 948 LOS ALAMITOS, CA 90720	33-0905753	501C3	25,000				PROGRAM ASSISTANCE

2 Enter total number of section 501(c)(3) and government organizations listed in the line 1 table

1

3 Enter total number of other organizations listed in the line 1 table

For Paperwork Reduction Act Notice, see the Instructions for Form 990.

Cat. No. 50055P

Schedule I (Form 990) 2019

Schedule I (Form 990) 2019

Page 2

Part III Grants and Other Assistance to Domestic Individuals. Complete if the organization answered "Yes" on Form 990, Part IV, line 22.
Part III can be duplicated if additional space is needed.

(a) Type of grant or assistance	(b) Number of recipients	(c) Amount of cash grant	(d) Amount of noncash assistance	(e) Method of valuation (book, FMV, appraisal, other)	(f) Description of noncash assistance
(1)					
(2)					
(3)					
(4)					
(5)					
(6)					
(7)					

Part IV Supplemental Information. Provide the information required in Part I, line 2; Part III, column (b); and any other additional information.

Return Reference	Explanation
PART I, LINE 2 - PROCEDURES FOR MONITORING USE OF GRANTS FUNDS IN U.S.	THERE IS AN APPLICATION PROCESS AND REVIEW COMMITTEE. ALL OF OUR COMMUNITY PARTNERS ARE REGULARLY MONITORED FOR PROGRAM COMPLIANCE BY OUR STAFF.

Schedule I (Form 990) 2019

Note: To capture the full content of this document, please select landscape mode (11" x 8.5") when printing.

Schedule I
(Form 990)

OMB No. 1545-0047

2022

Open to Public
Inspection

Grants and Other Assistance to Organizations,
Governments and Individuals in the United States
Complete if the organization answered "Yes," on Form 990, Part IV, line 21 or 22.
▶ Attach to Form 990.
▶ Go to www.irs.gov/Form990 for the latest information.

Department of the
Treasury
Internal Revenue Service
Name of the organization
SECOND HARVEST FOOD BANK
OF ORANGE COUNTY INC

Employer identification number
32-0362611

Part I General Information on Grants and Assistance

- 1 Does the organization maintain records to substantiate the amount of the grants or assistance, the grantees' eligibility for the grants or assistance, and the selection criteria used to award the grants or assistance?
- 2 Describe in Part IV the organization's procedures for monitoring the use of grant funds in the United States.

☐ Yes ☒ No

Part II Grants and Other Assistance to Domestic Organizations and Domestic Governments. Complete if the organization answered "Yes" on Form 990, Part IV, line 21, for any recipient that received more than \$5,000. Part II can be duplicated if additional space is needed.

(a) Name and address of organization or government	(b) EIN	(c) IRC section (if applicable)	(d) Amount of cash grant	(e) Amount of non-cash assistance	(f) Method of valuation (book, FMV, appraisal, other)	(g) Description of noncash assistance	(h) Purpose of grant or assistance
(1) DELHI CENTER 505 E CENTRAL AVE SANTA ANA, CA 92707	95-2620952	501C3	9,000	0			SERVICE AWARD
(2) GIVING CHILDREN HOPE 8332 COMMONWEALTH AVE BUENA PARK, CA 90621	95-3464287	501C3	7,000	0			SERVICE AWARD
(3) OC FIRST ASSEMBLY OF GOD 1440 E SANTA CLARA AVE SANTA ANA, CA 92705	95-6003830	501C3	15,000	0			SERVICE AWARD
(4) VIETNAMESE AMERICAN CANCER FOUNDATION 17150 NEWHOPE ST STE 203 FOUNTAIN VALLEY, CA 92708	91-2170415	501C3	11,000	0			SERVICE AWARD
(5) CATHOLIC CHARITIES OF ORANGE COUNTY 12141 S LEWIS ST 11 GARDEN GROVE, CA 92840	53-0196617	501C3	9,500	0			CAPACITY GRANT
(6) DWELLING PLACE ANAHEIM 5340 E LA PALMA AVE ANAHEIM, CA 92807	95-3447927	501C3	25,000	0			CAPACITY GRANT
(7) PATHWAYS OF HOPE PO BOX 6326 FULLERTON, CA 92834	33-0147739	501C3	28,000	0			CAPACITY GRANT
(8) ANAHEIM UNITED METHODIST CHURCH - NEIGHBORS PANTRY 1000 S ST COLLEGE BLVD ANAHEIM, CA 92806	36-2167731	501C3	25,500	0			CAPACITY GRANT
(9) LAGUNA FOOD PANTRY 20652 LAGUNA CANYON RD UNIT B LAGUNA BEACH, CA 92651	33-0593551	501C3	51,250	0			CAPACITY GRANT
(10) SAN FRANCISCO SOLANO FOOD PANTRY 22082 ANTONIO PARKWAY RSM, CA 92688	33-0366095	501C3	35,000	0			CAPACITY GRANT
(11) VIETNAMESE AMERICAN CANCER FOUNDATION 17150 NEWHOPE ST STE 203 FOUNTAIN VALLEY, CA 92708	91-2170415	501C3	0	85,940	BOOK	REFRIGERATED VAN	CAPACITY GRANT

- 2 Enter total number of section 501(c)(3) and government organizations listed in the line 1 table 12
- 3 Enter total number of other organizations listed in the line 1 table

Part III Grants and Other Assistance to Domestic Individuals. Complete if the organization answered "Yes" on Form 990, Part IV, line 22.
Part III can be duplicated if additional space is needed.

(a) Type of grant or assistance	(b) Number of recipients	(c) Amount of cash grant	(d) Amount of noncash assistance	(e) Method of valuation (book, FMV, appraisal, other)	(f) Description of noncash assistance
(1)					
(2)					
(3)					
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(6)					
(7)					

Part IV Supplemental Information. Provide the information required in Part I, line 2; Part III, column (b); and any other additional information.

Return Reference	Explanation
FORM 990, SCHEDULE I, PART I, LINE 2	PROCEDURES FOR MONITORING USE OF GRANTS FUNDS IN U.S. THERE IS AN APPLICATION PROCESS AND REVIEW COMMITTEE. ALL OF OUR COMMUNITY PARTNERS ARE REGULARLY MONITORED FOR PROGRAM COMPLIANCE BY OUR STAFF.

Additional Data

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**Schedule I
(Form 990)**

**Grants and Other Assistance to Organizations,
Governments and Individuals in the United States**
Complete if the organization answered "Yes," on Form 990, Part IV, line 21 or 22.
▶ Attach to Form 990.
▶ Go to www.irs.gov/Form990 for the latest information.

OMB No. 1545-0047

2023
Open to Public
Inspection

Department of the
Treasury
Internal Revenue Service

Name of the organization
SECOND HARVEST FOOD BANK
OF ORANGE COUNTY INC

Employer identification number
32-0362611

Part I General Information on Grants and Assistance

- 1** Does the organization maintain records to substantiate the amount of the grants or assistance, the grantees' eligibility for the grants or assistance, and the selection criteria used to award the grants or assistance? ☒ **Yes** ☐ **No**
- 2** Describe in Part IV the organization's procedures for monitoring the use of grant funds in the United States.

Part II Grants and Other Assistance to Domestic Organizations and Domestic Governments. Complete if the organization answered "Yes" on Form 990, Part IV, line 21, for any recipient that received more than \$5,000. Part II can be duplicated if additional space is needed.

(a) Name and address of organization or government	(b) EIN	(c) IRC section (if applicable)	(d) Amount of cash grant	(e) Amount of non-cash assistance	(f) Method of valuation (book, FMV, appraisal, other)	(g) Description of noncash assistance	(h) Purpose of grant or assistance
(1) ANAHEIM UNITED METHODIST CHURCH - NEIGHBORS PANTRY 1000 S ST COLLEGE BLVD ANAHEIM, CA 92806	36-2167731	501C3	15,100	0			STAFF EXPENSE & SERV AWARD
(2) ASSOCIATED STUDENTS INC 800 N STATE COLLEGE BLVD STU-107A FULLERTON, CA 92831	95-6006691	501C3	24,960	0			STAFF EXPENSE
(3) BOYS & GIRLS CLUB OF GG 13645 CLINTON ST GARDEN GROVE, CA 92840	95-2426280	501C3	0	11,523	FMV	COLD STORAGE	COLD STORAGE
(4) BOYS & GIRLS CLUB OF TUSTIN 580 W SIXTH ST TUSTIN, CA 92780	95-2482220	501C3	0	5,991	FMV	COLD STORAGE	COLD STORAGE
(5) CATHOLIC CHARITIES OF ORANGE COUNTY 12141 S LEWIS ST 11 GARDEN GROVE, CA 92840	53-0196617	501C3	17,375	0			STAFF EXPENSES
(6) CIVIC CTR BARRIO HOUSING 1277 SOUTH LYON ST SANTA ANA, CA 92705	95-3508428	501C3	0	7,500	FMV	GIFT CARD	CAPACITY GRANT
(7) COMMUNITY OUTREACH ALLIANCE 3316 AVIENDA DEL PRESIDENTE SAN CLEMENTE, CA 92672	95-3819236	501C3	10,700	5,784	FMV	COLD STORAGE	COLD STORAGE & SERVICE AWARDS
(8) CROSSLINE COMM CHURCH 23331 MOULTON PARKWAY LAGUNA HILLS, CA 92653	73-1721664	501C3	0	5,784	FMV	COLD STORAGE	COLD STORAGE
(9) DWELLING PLACE ANAHEIM 5340 E LA PALMA AVE ANAHEIM, CA 92807	95-3447927	501C3	50,000	0			COLD STORAGE
(10) EDISON ELEMENTARY 2063 S ORANGE AVENUE SANTA ANA, CA 92707	95-6002823	501C3	0	7,500	FMV	GIFT CARD	CAPACITY GRANT
(11) FAMILIES FORWARD 8 THOMAS IRVINE, CA 92618	33-0086043	501C3	0	7,784	FMV	COLD STORAGE	COLD STORAGE
(12) FIRST EVANGELICAL FREE CHURCH OF FULLERTON 2904 N BREA BLVD RM 170 FULLERTON, CA 92835	95-6006133	501C3	10,000	0			SERVICE AWARD
(13) FIRST PRESBYTERIAN CHURCH OF ORANGE 11832 EUCLID ST GARDEN GROVE, CA 92840	95-1972241	501C3	0	5,817	FMV	COLD STORAGE	COLD STORAGE
(14) FRIENDLY CENTER 147 W ROSE AVE ORANGE, CA 92867	95-2479833	501C3	0	7,500	FMV	GIFT CARD	CAPACITY GRANT
(15) ISLAMIC CIRCLE OF NORTH AMERICA RELIEF 505 E COMMONWEALTH FULLERTON, CA 92832	04-3810161	501C3	0	6,101	FMV	COLD STORAGE	COLD STORAGE
(16) LAGUNA FOOD PANTRY 20652 LAGUNA CANYON RD UNIT B LAGUNA BEACH, CA 92651	33-0593551	501C3	32,500	8,057	FMV	COLD STORAGE	STAFF EXPENSES & COLD STORAGE
(17) LIVINGSTONE COMMUNITY HEALTH CLINIC 12362 BEACH BLVD STE 10 STANTON, CA 90680	27-0947808	501C3	0	7,500	FMV	GIFT CARD	CAPACITY GRANT
(18) MERCADO EL SOL 1002 N BROADWAY ST SANTA ANA, CA 92707	33-0960964	501C3	0	17,842	FMV	COLD STORAGE AND GIFT CARD	COLD STORAGE & CAPACITY GRANT
(19) NATIVE AMERICAN UNITED METHODIST 800 SOUTH LEMON ST ANAHEIM, CA 92805	36-2167731	501C3	0	9,868	FMV	COLD STORAGE	COLD STORAGE
(20) ORANGE COAST COLLEGE 2701 FAIRVIEW ROAD COSTA MESA, CA 92626	33-0071349	501C3	0	7,784	FMV	COLD STORAGE	COLD STORAGE
(21) ORANGEWOOD FOUNDATION 1575 E 17TH ST SANTA ANA, CA 92705	95-3616628	501C3	15,000	0			SERVICE AWARD

SANTA ANA, CA 92703							
(22) OUR LADY OF GUADALUPE 341 HILLCREST ST LA HABRA, CA 90631	95-2558669	501C3	0	8,057	FMV	COLD STORAGE	COLD STORAGE
(23) PATHWAYS OF HOPE PO BOX 6326 FULLERTON, CA 92834	33-0147739	501C3	56,000	0			STAFF EXPENSES
(24) ROSE DRIVE FRIENDS CHURCH 4221 ROSE DRIVE YORBA LINDA, CA 92886	95-6150216	501C3	7,500	0			SERVICE AWARD
(25) SABIL 3230 SOUTH SUSAN ST SANTA ANA, CA 92704	46-1100276	501C3	0	8,101	FMV	COLD STORAGE	COLD STORAGE
(26) SALVATION ARMY OF SANTA ANA TEMPLE 1710 W EDINGER AVE SANTA ANA, CA 92704	95-3033494	501C3	15,000	5,817	FMV	COLD STORAGE	COLD STORAGE & SERVICE AWARD
(27) ST ANSELMS EPISCOPAL CHURCH 13091 GALWAY ST GARDEN GROVE, CA 92844	31-1629166	501C3	0	8,057	FMV	COLD STORAGE	COLD STORAGE
(28) ST MICHAELS CHURCH 107 W MARQUITA SAN CLEMENTE, CA 92672	95-3605143	501C3	0	8,700	FMV	COLD STORAGE	COLD STORAGE
(29) THE MEN WITH VISION FOUNDATION 13552 GOLDENWEST ST WESTMINISTER, CA 92683	46-4903460	501C3	0	13,600	FMV	COLD STORAGE & GIFT CARD	COLD STORAGE & CAPACITY GRANT
(30) TUSTIN FAMILY & YOUTH CENTER 14722 NEWPORT AVE TUSTIN, CA 92780	95-2414547	501C3	0	7,000	FMV	GIFT CARD	CAPACITY GRANT
(31) VITAL ACCESS CARE FOUNDATION 17150 NEWHOPE ST FOUNTAIN VALLEY, CA 92708	91-2170415	501C3	6,880	0			STAFF EXPENSES
(32) WESTERN AVE CHURCH OF CHRIST 641 S WESTERN AVE ANAHEIM, CA 92804	32-0730271	501C3	0	11,350	FMV	COLD STORAGE	COLD STORAGE

2 Enter total number of section 501(c)(3) and government organizations listed in the line 1 table 32

3 Enter total number of other organizations listed in the line 1 table

Schedule I (Form 990) 2023

Page 2

Part III Grants and Other Assistance to Domestic Individuals. Complete if the organization answered "Yes" on Form 990, Part IV, line 22.
Part III can be duplicated if additional space is needed.

(a) Type of grant or assistance	(b) Number of recipients	(c) Amount of cash grant	(d) Amount of noncash assistance	(e) Method of valuation (book, FMV, appraisal, other)	(f) Description of noncash assistance
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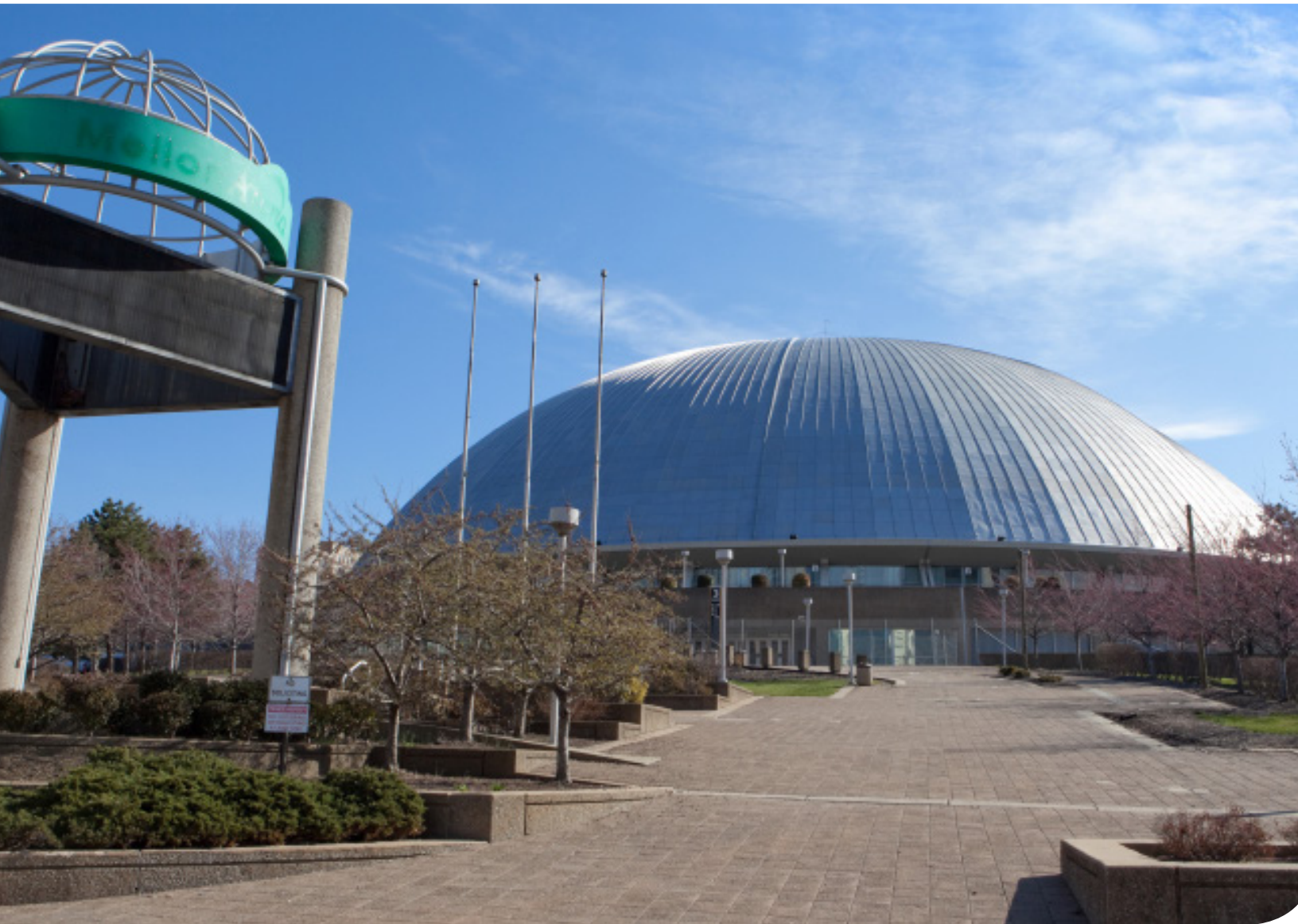
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Common Challenges in Negotiating Community Benefits Agreements

— AND — **HOW TO AVOID THEM**



JANUARY 2016



ATTACHMENT 2

Introduction

Pittsburgh's Hill District was once home to a deeply rooted African-American community. A wave of publicly subsidized urban renewal projects in the 1950s promised jobs, housing, and a revitalized community, but instead left the area with deep poverty, a dismantled community, and a lack of economic opportunity. When Mellon Arena, home to the Pittsburgh Penguins, opened in 1961 it became a symbol of this period of so-called renewal that displaced more than 400 businesses and 8,000 African-American residents.

In 2007, the Pittsburgh Penguins threatened to leave the city unless they received \$750 million in public funds to support the construction of a new stadium. Hill District residents united in response to the city making a multi-million dollar investment in a private corporation while residents struggled to make ends meet. In 2008, the One Hill coalition, representing more than 100 organizations, negotiated the first community benefits agreement (CBA) in Pittsburgh's history. The legally binding agreement provided \$8.3 million in neighborhood improvements to address the lack of access to vital services and the need for real economic opportunity for local residents beyond the cost of constructing the new arena.

What Are CBAs?

Community benefits agreements (CBA) are legally binding agreements between developers and coalitions of community organizations, addressing a broad range of community needs. CBAs ensure that local residents share in the benefits of major developments in their communities. They elevate the voices of community residents and shift the balance of power in economic development from developers back toward the community. They enable local residents to have a meaningful seat at the table with public agencies and developers, shaping large scale development projects in their neighborhoods, pressing for community benefits tailored to their needs, and holding developers accountable for their promises.

When the arena and hotel opened in 2011, 38% of the 522 employees were Hill District residents, attributable to the CBA's local hire requirements. The coalition also negotiated living wage requirements for the development and a card check provision that protects workers' right to organize. Funds provided by the CBA helped to establish a grocery store in 2012, which provided a source of fresh produce for local residents for the first time in more than three decades. The new grocery store created 120 new jobs, of which Hill District residents have filled 65%. The CBA also created significant opportunities to improve community health by assisting with the redevelopment of the YMCA recreation center. And the agreement creates meaningful roles for residents to engage in future development planning in the Hill District.

Unfortunately, this is not how CBAs always work out. In some circumstances, ineffective (so-called) CBAs have provided a tool for co-optation of low-income communities and the broader public, generating support for large scale development projects without delivering actual community benefits.¹ Worse still, in some circumstances, the community has been misled into thinking that it had won enforceable

The CBA Movement History

The community benefits movement began in California in the early 2000s, where coalitions in Los Angeles, San Diego, San Jose, and the Bay Area used CBAs and other tools to realize the tremendous social justice potential of economic development and land use planning. Since then, organizations in Atlanta, Boston, Chicago, Denver, Indianapolis, Miami, Milwaukee, Minneapolis/St. Paul, Pittsburgh, New Orleans, New York City, Seattle, and Washington D.C. have pursued a community benefits approach to major economic development projects, often successfully. Today, as investment in real estate development returns with tremendous force to metropolitan regions, stakeholders across the country are demanding community benefits and pursuing campaigns for CBAs.

commitments when it had not. The fallout from ineffective CBAs has in few instances even undermined the legitimacy of CBAs as a platform for greater democracy and equitable development.

As more organizations embrace CBAs as a tool, we offer this guide to help avoid processes and outcomes that may disempower, rather than empower, local communities.

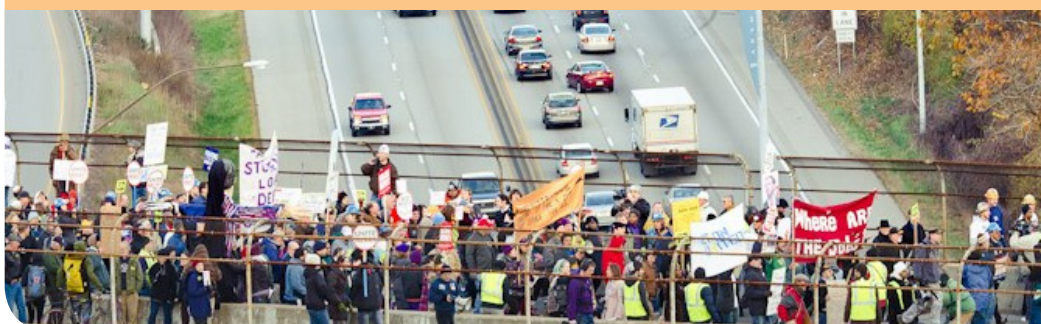
More than a decade of work in the community benefits movement has yielded a number of important lessons about common challenges

*The **community benefits movement** is centered on the proposition that public and private sector investment in economic development should bring **measurable, permanent improvements** to the lives of affected residents, particularly **low-income communities of color**, through the creation of **good jobs, affordable housing, and neighborhood services**.*

facing CBA coalitions and how they may be avoided. Absent strong, authentic, and diverse community representation and commitment to negotiating legally enforceable agreements that meet community needs, the community may not realize the full potential of the approach.

What Can Happen When CBAs Are Weak?

- ▶ The developer **co-opts** and retains power and uses the CBA as a tool to benefit itself.
- ▶ The community is **misled** and under the assumption that the project will provide benefits, but because of bad drafting or weak enforcement provisions, the benefits never materialize.
- ▶ The CBA **does not address the actual needs** of the impacted community.



¹ Kathleen Mulligan-Hansel, Community Benefits Movements and the Race to the Top.

How to Use This Guide:

This guide includes case studies, checklists, charts, and resources for individuals and organizations interested in moving community benefits campaigns forward in their jurisdiction, and who want to learn more about the pitfalls and indicators of potentially harmful CBAs. It provides:

- ▶ Principles for Effective CBAs
- ▶ Indicators of Potentially Weak CBAs
- ▶ Case Studies on Ineffective and Harmful CBAs
- ▶ Charts Breaking Down and Comparing the Elements of Strong and Weak CBAs

For individuals new to CBAs, the following list of resources may be helpful for background and guidance on the CBA process.

For those interested in learning about the weaknesses of purely aspirational CBAs, the case studies beginning on page 10 are most relevant.

For those seeking a quick reference guide on real-life examples of strong/effective versus weak/ineffective CBAs, the grid on page 17 is helpful.

Resources on CBAs

- ▶ The Partnership for Working Families Policy and Tools on CBAs webpage includes summaries and text of CBAs currently in effect: <http://www.forworkingfamilies.org/resources/policy-tools-community-benefits-agreements-and-policies>
- ▶ Paving the Path to Opportunity: How Revive Oakland Innovated a New Model for Inclusive Economic Development: <http://www.forworkingfamilies.org/resources/publications/paving-path-opportunity-how-revive-oakland-innovated-new-model-inclusive>
- ▶ Delivering Community Benefits Through Economic Development: A Guide for Elected and Appointed Officials: <http://www.forworkingfamilies.org/resources/publications/cba-elected-officials>
- ▶ Equitable Transit: Creating Healthy, Accessible and Affordable Communities: <http://www.forworkingfamilies.org/resources/publications/equitable-transit-creating-healthy-accessible-and-affordable-communities>
- ▶ Economic Development with Real Community Benefit: Land Development in the Public Interest: <http://www.forworkingfamilies.org/resources/publications/economic-development-real-community-benefit-land-development-public-interest>
- ▶ The Community Benefits Law Center, a project of the Partnership for Working Families, provides legal assistance to community-based efforts to transform local economies. The CBLC website includes numerous resources on CBAs, the development process, and responsible development standards: <http://www.forworkingfamilies.org/cblc>

What Makes an Effective CBA?

Successful community benefits campaigns lead to meaningful benefits for communities impacted by economic development projects. A CBA is a legally binding contract (or set of related contracts), resulting from substantial community involvement, and signed by community groups and by a developer. The contract establishes a range of community benefits regarding a development project. CBAs are not aspirational memorandums of understanding made up of issues to be resolved or negotiated on a future date. Instead, they feature concrete deliverables, timeframes, monitoring requirements, and enforcement mechanisms.



An effective CBA is grounded in four core principles:

1. It is negotiated by a coalition that ***effectively represents the interests of the impacted community***;
2. The CBA process is ***transparent, inclusive, and accessible*** to the community;
3. The terms provide ***specific, concrete, meaningful benefits***, and deliver what the community needs; and
4. There are clearly defined, formal means by which the community can hold the developer (and other parties) ***accountable*** to their obligations.

The following section explains these principles and their application, which may help protect against the misuse of the CBA tool.

Elements of Effective CBAs

1. Community Interests are Well-Represented

A community's ability to win a strong CBA is directly related to how much power it organizes and the strength of its coalition infrastructure.

- ▶ Coalition members have deep, active connections to the community, representing those most threatened by project impacts and frequently excluded from participation in decisions about economic development, often low-income people of color.
- ▶ The coalition aligns with networks that have experience with CBAs (e.g., regional or national actors) to build connections, technical assistance, and resources.
- ▶ There is strong capacity among coalition members participating in the CBA process in order to effectively negotiate and secure an appropriate bargain.
- ▶ Coalition members are not beholden to elected officials, developers, or others with potentially conflicting interests in the project.

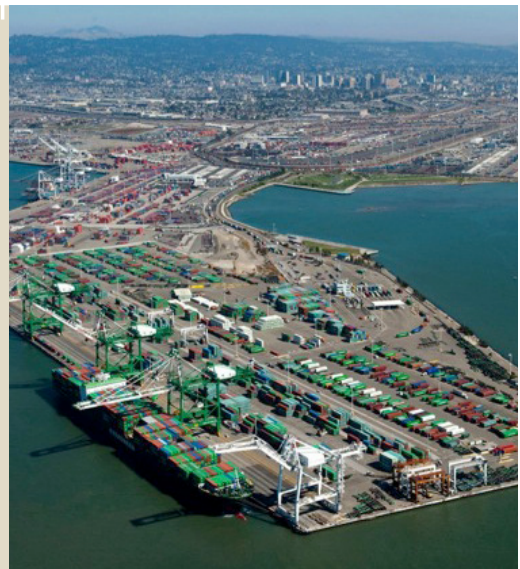
2. The CBA Process is Transparent, Inclusive, and Accessible

A strong CBA results from a process – drafting, negotiating, and signing – which involves, and is accessible to, the community.

- ▶ The community has a vehicle, e.g., regular coalition meeting, for news and information to be distributed regarding the CBA process, including the negotiations.
- ▶ The community has opportunities, e.g., public forums, to provide feedback and input throughout the process in order to ensure that a broad range of concerns are heard and addressed prior to project approval.
- ▶ There are effective mechanisms, e.g., processes for decision making, to ensure transparency within the coalition, foster collaboration, and guard against conflicts of interest on the part of coalition members.

Oakland Army Base CBA

The Revive Oakland! coalition was led by a 12-organization steering committee and represented over 30 entities, including community organizations, faith leaders, labor unions, and government agencies. The coalition led extensive CBA negotiations between the city, coalition, and developers, which resulted in the Oakland Army Base CBA. The coalition's multi-pronged strategy included creatively engaging its member organizations' strengths through organizing, media outreach, research and policy development, legal support, leadership development, rallying interfaith congregations with the project, contacting voters to gauge support for key provisions of the agreement, and engaging political leaders. The city and coalition members entered into a co-operation agreement under which the groups agreed to support the project in exchange for assurances about the delivery of community benefits.



3. Concrete, Meaningful Benefits Deliver What Community Needs

A strong CBA delivers on the issues of greatest importance to the most vulnerable members of the impacted community.

- ▶ The CBA terms are concrete and specific, detailing which party is responsible, for what and where, and on what timeframe, and not deferring decisions for a future negotiation date when community leverage may be gone.
- ▶ The core community benefits terms address all the important details that may arise in implementation.
- ▶ The CBA addresses issues of concern to the community, which may include:
 - creating higher quality jobs;
 - requiring targeted hiring programs that help connect individuals with barriers to employment to newly created jobs;
 - creating affordable housing to counter racial and economic segregation that may accompany development;
 - addressing environmental issues created or intensified by development;
 - supporting the principle of worker organizing;
 - providing access to grocery stores, community meeting space, public art, traffic mitigation, and parking.

Pittsburgh Hill District CBA

Though the CBA contains a provision for the creation of a Master Plan for the Hill District at a future date, the process and timeframe were clearly outlined (down to the monthly meeting requirements between the steering committee and planning professional), as well as the parties responsible, community participation required, issues required to address, and funding requirements. The developers agreed to quarterly meetings with community members on the development and construction of the new arena. The CBA included clearly defined local hire and living wage requirements for jobs at the arena and hotel. The city, county, and developers committed exact dollar amounts to specific projects within the CBA, including \$1M towards securing a grocery store by a certain date, and \$150,000 per year for at least two years to start a model first source referral center to provide and coordinate job preparation, training, and supportive services.



4. Clearly Defined Enforcement Mechanisms Ensure Developer Accountability

An effective CBA contains formal means to hold the parties accountable to their obligations, including a monitoring and compliance vehicle and avenues for community enforcement.

- ▶ The CBA clearly identifies the parties, along with their obligations and which party is responsible for implementing each provision.
- ▶ The CBA clearly outlines timeframes and processes for each commitment to be fulfilled.
- ▶ The CBA includes a monitoring and implementation system that requires the parties to engage in future activities related to the CBA, and the community parties continue to hold developers accountable to its provisions over time.
- ▶ The CBA includes enforcement measures with real consequences, i.e., remedies that give community parties the ability to ensure that the obligations are delivered upon and contains no impediments to community parties seeking judicial enforcement.
- ▶ The CBA provides for enforcement against commercial tenants and contractors as well as successors in interest of the developer.

Kingsbridge Armory CBA

This CBA created formal structures for community-based oversight and enforcement of each of the provisions with clear penalties and broad remedies. Defined reporting processes and recordkeeping requirements for each employer involved in the development must be provided to the Community Advisory Council, an entity established by the CBA to assist with and monitor implementation of the agreement. Individuals not paid a living wage have a cause of action against the developer to enforce the terms and are entitled to interest and attorneys' fees if successful. If employers fail to meet the CBA requirements within a certain timeframe, the Community Advisory Council may seek various remedies, including monetary damages or injunctive relief in court.



Key Indicators of Ineffective CBAs

Efforts to pursue CBAs that did not adhere to the four principles outlined above have produced aspirational and unenforceable agreements that served to undermine local community power. These weak agreements in some cases enabled co-optation and were used by developers and elected officials as a tool to facilitate approval of a development project. In some cases, the community representatives in the CBA negotiations were selected by politicians or the developers themselves and did not represent the local community or the array of community interests affected by the development. In other cases, developers employed “divide and conquer” techniques to appease some community groups that could be more easily swayed or negotiated with, while excluding and shutting out of the decision-making process groups that were more critical of the project or that represented residents most vulnerable to the consequences of the development. Additionally, the community in some cases lacked the institutional capacity to oversee the implementation of the CBA and hold developers accountable to its provisions.

Though there are practical difficulties for community organizations to ensure that those participating in the CBA process are part of a diverse, inclusive, well-organized coalition of local residents and organizations with political power, and properly equipped to effectively secure an appropriate bargain, there may be severe consequences and bad precedent created by coalitions that lack this capacity. In cases resulting in weak CBAs, developers that committed to minimal CBA obligations could still spin their projects through deceptive marketing as being community-supported.

The following chart summarizes key indicators of a weak CBA that is unlikely to represent the needs of diverse community interests or be effectively enforceable.

How to Spot a Weak CBA:

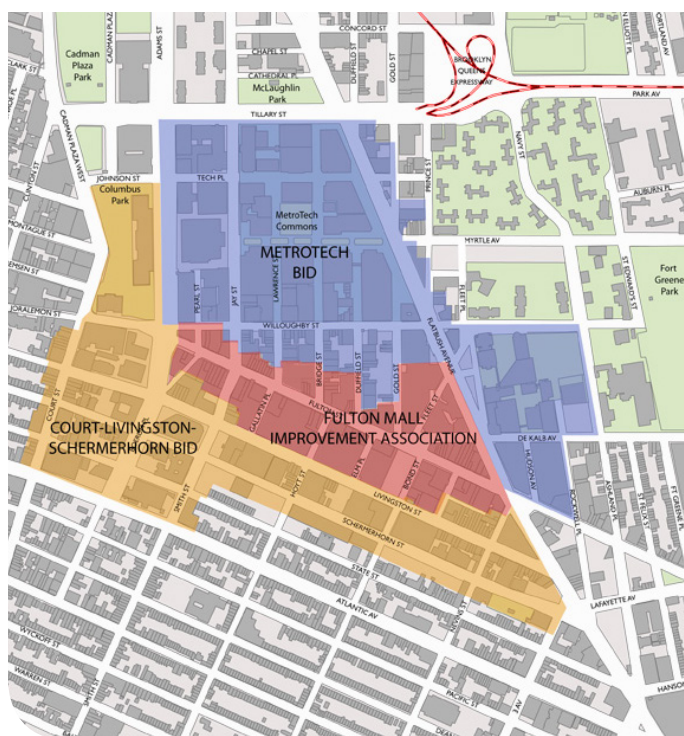
- ▶ **There is little real community participation:** the signatories are handpicked by the developer or politicians, there is no coalition presence at all, or the coalition lacks the broad based representation of the array of community interests affected by the development.
- ▶ **The negotiation process is secretive and exclusive:** a small group is involved in the process with little or no communication with local residents and organizations.
- ▶ **The commitments are vague, with no clear timeframes or measurements:** parties may easily opt out, provisions are voluntary, or compliance relies too heavily on good faith efforts; there are no processes outlining how provisions will be implemented to make the commitments real.
- ▶ **There are no effective formal means of holding parties accountable:** there is no clearly defined structure to monitor progress, an impeded avenue of recourse for the community parties should there be a breach of contract, or there is an inexpensive “buy out” provision under which developers can pay for their obligations instead of actually providing community benefits.

Case Studies of Ineffective CBAs

The following development projects demonstrate the reality of these concerns. In each case, a large and controversial project was approved in conjunction with agreements that project proponents called CBAs. But the negotiation process and resulting documents fell short of the four principles and did not follow through on achieving benefits to the local community. Instead, the community parties were unrepresentative of local residents, the ultimate agreement lacked strong terms to achieve benefits for the local community, and the process as a whole served to disempower, rather than empower, the community most impacted by the development projects.

Atlantic Yards CBA (since renamed Pacific Park Brooklyn)

- ▶ *Small group of community signatories handpicked by developer.*
- ▶ *Conflicts of interest between community signatories and broader community.*
- ▶ *Terms of agreement aspirational, broad, with few details on execution and funding.*
- ▶ *Lack of enforcement mechanisms and independent compliance monitor requirement never fulfilled.*



The first New York CBA was completed in 2005 in connection with the multibillion dollar development of the Atlantic Yards arena for the NBA's New Jersey Nets, and an attached residential and office high-rise complex.² The developer embarked on a campaign to win support for the project, and as part of that campaign, raised the idea of a CBA.³ The developer initially convened a meeting of a small group of community organizations in July 2004 and continued to meet with these eight groups regularly to negotiate the CBA.⁴ Controversy arose over the process after community activists learned about the negotiations underway, and certain groups that had come out against the project did not participate in the negotiations (there is disagreement about whether they were excluded or refused to participate).⁵ In June 2005, the developer and eight community organizations signed the CBA.⁶ While the CBA's provisions cover the broad range of issues that correspond with the missions of the eight signatories, the provisions are aspirational, vaguely described, and difficult to enforce. Reaction to the agreement has been critical.

² Patricia Salkin, Understanding Community Benefit Agreements: Opportunities and Traps for Developers, Municipalities and Community Organizations (October 29, 2007), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1025724 (last visited November 16, 2015).

³ Vicki Been, The Role of Community Benefit Agreements in New York City's Land Use Process' (March 8, 2010), available at <http://www.nycbar.org/pdf/report/uploads/20071844-TheRoleofCommunityBenefitAgreementsinNYCLandUseProcess.pdf> (last visited November 16, 2015).

⁴ *Id.* at 7. The groups involved in the negotiations were the All-Faith Council of Brooklyn, the Association of Community Organizations for Reform Now (ACORN), Brooklyn United for Innovative Local Development (BUILD), the Downtown Brooklyn Educational Consortium, the Downtown Brooklyn Neighborhood Alliance, the First Atlantic Terminal Housing Committee, the New York State Association of Minority Contractors and the Public Housing Communities. Salkin, *supra* note 2.

⁵ *Id.* at 7.

⁶ *Id.* at 8.

Representativeness

Parties Selected/Controlled by Developer

- ▶ Eight organizations were selected by the developer before negotiations began. Though there were established organizations among them, others within the group were created just prior to or during the negotiations.⁷

No CBA Negotiating Experience

- ▶ It has been suggested that some of the community groups were not experienced enough to properly negotiate and eventually administer the CBA's provisions.⁸

Divided Community

- ▶ Eight organizations signed the CBA but more than 50 community organizations representing Brooklyn residents signed a petition opposing the project due to the extensive impacts it would have on the local community.⁹

Transparency, Inclusivity

Broader Community Not Involved With Negotiations

- ▶ Several representatives of local community boards protested statements made by the developer overstating their role in the negotiations.¹⁰ They contended that their involvement with the agreement ended very early in the process and well before a final draft was prepared.¹¹

Negotiations Exclusive and Marked by Secrecy

- ▶ As more community groups learned about negotiations underway, there is disagreement about whether they were excluded or refused to participate.¹² Since little information was provided publicly about the negotiations, there was a fragmentation of community responses.¹³

Conflicts of Interest

- ▶ One of the signatories, Brooklyn United for Innovative Local Development, incorporated as a nonprofit days before it announced its support for the development and received \$100,000, office space, overhead, computer equipment, and furniture from the developer shortly after the CBA was signed.¹⁴

Substance

Vague, Broad, Aspirational Goals with Few Details on Execution

- ▶ The developer is required to "give preference" to firms with a demonstrated commitment to hiring minorities and women, with no clearly defined goals or benchmarks with vague language about funding (e.g., "Developers and BUILD will seek and secure adequate public and/or private funding for this initiative").¹⁵
- ▶ The agreement mandates the creation of a high school for construction management with almost no details on how this is to be achieved; and this is similarly true for creation of a community health center.¹⁶

⁷ Salkin, *supra* note 2.

⁸ *Ibid.*

⁹ "Organizations that are Opposed to or Deeply Concerned About the Proposed Forest City Ratner Nets Arena, 16 Highrise Tower Proposal for Brooklyn," available at <http://dddb.net/php/opposition.php> (last visited November 12, 2015).

¹⁰ *Community Benefits Agreements*, "Atlantic Yards CBA," available at <http://communitybenefits.blogspot.com/2008/01/atlantic-yards-cba.html> (last visited November 12, 2015).

¹¹ *Ibid.*

¹² Been, *supra* note 3.

¹³ Salkin, *supra* note 2.

¹⁴ Been, *supra* note 3.

¹⁵ Atlantic Yards CBA, available at <https://www.scribd.com/doc/31432536/atlantic-yards-community-benefits-agreement-cba> (last visited November 16, 2015).

¹⁶ *Ibid.*

Accountability

No Enforcement Mechanism for Terms

- ▶ The agreement requires the developer to fund the appointment of an “independent compliance monitor” to oversee the implementation of the agreement and investigate any complaints about its implementation.¹⁷ As of 2015, the developer had not fulfilled this obligation, making evaluation of the CBA’s progress difficult and limiting the public’s access to information about the project’s impact on the local community.¹⁸

Unclear Whether Community Benefits Delivered Upon

- ▶ Media reports on the progress of the development reveal that amidst various construction delays due to litigation and the economic downturn, the developer’s compliance with the affordable housing requirements has fallen desperately short and there are questions as to whether the “affordable” units built are actually affordable.¹⁹ Moreover, only 26 percent of the construction jobs promised in the CBA by a certain period were fulfilled, with ambiguous and sparse data provided by the developer on the number of local/women-owned firms who have received contracts or the number of jobs provided to Brooklyn residents.²⁰

Yankee Stadium

- ▶ *No community signatories.*
- ▶ *Community opposition to project and no community involvement in CBA process.*
- ▶ *Vague goals not responsive to community needs.*
- ▶ *Unclear whether agreement is valid, enforceable contract.*

In 2006, New York City approved construction of a controversial new stadium for the New York Yankees.²¹ Local parks advocates concerned that construction would require paving large sections of local parks and razing hundreds of oak trees, residents concerned about increased traffic and noise, and community



organizations concerned about the public subsidies that would be used for the proposed stadium, opposed the project.²² In the weeks preceding project approval, in an effort to quell the opposition, several elected officials in New York signed a CBA with the Yankees, setting forth commitments exclusively by the Yankees with regard to construction and operation of a new stadium.²³ The agreement committed the Yankees to contribute \$800,000 per year for 40 years to Bronx nonprofits and community organizations, \$100,000 in equipment to Bronx nonprofits and schools, and 15,000 tickets to Yankee baseball home games to Bronx nonprofits and residents, to be distributed by a Fund Advisory Panel.²⁴ Unfortunately, there were clear issues of representativeness and transparency and serious questions of enforceability and accountability.

¹⁷ *Ibid.*

¹⁸ Newsday, “Nassau must be wary about plans for Coliseum,” available at <http://www.newsday.com/opinion/oped/nassau-must-be-wary-about-plans-for-coliseum-1.10458208> (last visited November 16, 2015).

¹⁹ Citylimits.org, “The Unfulfilled Promises of Atlantic Yards,” available at <http://citylimits.org/2011/10/24/the-unfulfilled-promises-of-atlantic-yards/> (last visited November 16, 2015).

²⁰ *Ibid.*

²¹ Julian Gross, Community Benefits Agreements, Definitions, Values, and Legal Enforceability, April 2008, available at http://juliangross.net/docs/CBA_Definitions_Values_Enforceability.pdf (last visited November 16, 2015).

²² Been, *supra* note 3.

²³ *Ibid.*

²⁴ Yankee Stadium CBA, available at http://goodjobsny.org/sites/default/files/docs/yankees_deal.pdf (last visited November 16, 2015).

Representativeness

No Community Signatories

- ▶ The agreement was made between the Yankees, the Bronx Borough President, and the Bronx Delegation of the New York City Council; it was not negotiated or signed by any community groups.²⁵

Transparency, Inclusivity

No Community Involvement in CBA Process and Community Opposition to Overall Project

- ▶ The City Council and Bronx political officials moved the agreement forward and authorized construction of the stadium despite continued opposition from the community.²⁶

Community Benefits

Vague, Broad, Aspirational Goals with Few Details on Execution

- ▶ The agreement requires the Yankees to provide the general contractor of the project with “sufficient resources” for technical assistance to local and minority or women-owned businesses, but does not clearly define “sufficient resources.”²⁷

Conflicts of Interest

- ▶ One of the agreement’s most controversial provisions is the Fund Advisory Panel to be administered by “an individual of prominence” and provide distributions to local nonprofit groups.²⁸ Because the fund’s trustee would be appointed by the same elected officials responsible for the agreement, it has been referred to as a “slush fund” by critics who feared that funding would not be distributed impartially.²⁹

Accountability

Lack of Consideration

- ▶ Because the agreement’s obligations run only to the Yankees and no other party, there is a question about whether the agreement is supported by adequate consideration, a basic requirement of contract law.³⁰

Unclear Whether Community Benefits Delivered Upon

- ▶ Under the agreement, the fund was to be established the same day that construction started, Aug. 17, 2006, and monies from it distributed annually through 2046.³¹ The funds distribution and meeting of the group responsible for administering them were delayed for years.³² The panel has been plagued by accusations of mismanagement of funds and providing monetary support to organizations that lacked credibility in the local community.³³

²⁵ Salkin, *supra* note 2.

²⁶ Been, *supra* note 3.

²⁷ Yankee Stadium CBA, *supra* note 24.

²⁸ *Ibid.*

²⁹ Observer, “The Yankees’ \$700,000 Play: ‘It Is Not A Shakedown,’” April 10, 2006, available at <http://observer.com/2006/04/the-yankees-700000-play-it-is-not-a-shakedown/> (last visited November 16, 2015).

³⁰ Gross, *supra* note 21.

³¹ New York Times, “Stadium Goes Up, but Bronx Still Seeks Benefits,” January 7, 2008, available at http://www.nytimes.com/2008/01/07/nyregion/07stadium.html?_r=0 (last visited November 16, 2015).

³² *Ibid.*; The New York Yankee Stadium Community Benefits Fund, available at <http://bronxyankeefund.org/> (last visited November 16, 2015).

³³ Field of Schemes, “Yankees Community Benefits List Include Dodgy Groups,” September 26, 2011, available at <http://www.fieldofschemes.com/2011/09/26/3169/yankees-community-benefits-list-includes-dodgy-groups/> (last visited November 16, 2015).

Miami Worldcenter

- ▶ *No community signatories.*
- ▶ *Community excluded from negotiations.*
- ▶ *Narrow terms, not responsive and unlikely to meet community needs.*
- ▶ *MOU terminates within five years and may be terminated at any time by any party.*

In 2015, a Memorandum of Understanding (MOU) was signed to accompany the Miami Worldcenter, one of the largest private master-planned development projects in the United States, including retail, hospitality, and residential space in a ten-block radius in downtown Miami.³⁴ The development was approved in December 2014 by the Southeast Overtown/Park West Community Redevelopment Agency, which provided potentially more than \$100 million in tax incentives to the developers of the project.³⁵ Overtown, once known as “Colored Town,” is the second oldest neighborhood in Miami, built by African American laborers who helped build the Florida East Coast Railway when blacks were not allowed to live in the same neighborhoods as whites. According to one account;

*“Overtown has faced continual declines since desegregation, as drugs, crime, and extreme poverty took hold. In the past 50 years, the historic neighborhood has seen its population dwindle from about 40,000 at its peak, to fewer than 7,000. Many of the poor and working class who have suffered from years of disinvestment see the Worldcenter deal as just another way to displace even more residents who have called the community home for generations”*³⁶



The Mayor, developer, and South Florida Workforce Investment Board signed the MOU to accompany the development project, which provides for job training services targeted to residents in Overtown, as well as recitals of federal non-discrimination laws.³⁷ The community remains concerned that local elected officials signed off on a deal that would force residents out and destroy Miami’s African American community.³⁸ The MOU has been criticized as being unrepresentative and lacking the substance of a truly comprehensive CBA.

³⁴ Miami Worldcenter Website, available at <http://miamiworldcenter.com/> (last visited November 16, 2015).

³⁵ The New Tropic, “Overtown’s past meets Overtown’s future,” available at <https://thenewtropic.com/overtown-past-future/> (last visited November 16, 2015).

³⁶ *Ibid.*

³⁷ Memorandum of Understanding Among the South Florida Workforce Investment Board, The Office of the Mayor of Miami-Dade County and Miami Worldcenter Associates, LLC (July 14, 2015).

³⁸ 7 News, “Overtown residents protest over Miami Worldcenter development,” available at <http://www.wsvn.com/story/29515226/overtown-residents-protest-over-miami-worldcenter-development> (last visited November 16, 2015).

Representativeness

No Community Signatories

- ▶ Only government entities were signatory; no community organizations.³⁹

Transparency, Inclusivity

Community Excluded From Negotiations

- ▶ The negotiations process was closed and did not involve community organizations.⁴⁰
- ▶ The elected officials involved in the negotiations allegedly refused to meet with community representatives, faith leaders, or labor organizers.⁴¹

Community Benefits

Does Not Address Real Community Needs

- ▶ Though there were provisions to train Overtown residents for project jobs and to eliminate questions regarding criminal history from initial employment applications, the MOU did not include many benefits sought by the local community, and local advocates argued that the agreement's terms are unlikely to lead to gainful employment for Overtown residents.⁴²

Vague Terms Unlikely to Benefit Impacted Residents

- ▶ In its job-related provisions, the MOU did not clearly define the geography for targeted hiring of individuals for construction jobs in a way that would ensure that the residents most affected by the project would actually benefit from the jobs.⁴³

Accountability

No Penalties

- ▶ The MOU contains aspirational, general provisions with no clear means of enforcing them and no penalties to hold the parties accountable.⁴⁴

Limited Term

- ▶ The MOU terminates in five years with no avenue to extend or renegotiate terms.⁴⁵

Termination Without Cause or Opt Out

- ▶ The MOU may be terminated without cause by any party by providing 30 days written notice.⁴⁶

³⁹ Miami Worldcenter MOU, *supra* note 37. The South Florida Workforce Investment Board is a quasi-governmental agency with a service-specific function

⁴⁰ *Miami Herald*, "FIU Study: Worldcenter subsidy deal falls short," available at <http://www.miamiherald.com/news/local/community/miami-dade/article20038665.html> (last visited November 16, 2015).

⁴¹ *The Real Deal*, South Florida Real Estate News, "Community activists push for better wages at Miami Worldcenter site," available at <http://therealdeal.com/miami/blog/2015/01/30/community-activists-push-for-better-wages-at-miami-worldcenter-site/#sthash.uUdf6WGL.dpuf> (last visited November 16, 2015).

⁴² *The New Tropic*, *supra* note 35.

⁴³ Miami Worldcenter MOU, *supra* note 37; Alayne Unterberger, Who Benefits? An analysis of the Miami Worldcenter "Economic Incentive Agreement," available at <https://riseup.fiu.edu/research-publications/equitable-urban-development/community-benefits-from-development/who-benefits-report-final50415.pdf> (last visited November 16, 2015).

⁴⁴ Miami Worldcenter MOU, *supra* note 37.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*



In each of the case studies, the processes and resulting agreements did not encompass the four principles of effective CBAs:

1. Community Interests are Well-Represented
2. CBA Process is Transparent, Inclusive, and Accessible
3. Concrete, Meaningful Benefits Deliver What Community Needs
4. Clearly Defined Enforcement Mechanisms Ensure Developer Accountability

The benefits to the local community were limited, and these projects largely did not accurately and fully represent the interests of local residents, lacked strong terms to hold developers and elected officials accountable, and served to disempower, rather than empower, the community most impacted by the development projects.

Chart: Pitfalls versus Best Practices for CBAs

The following chart serves as a guide for both the pitfalls and best practices in the CBA process. It highlights shortcomings from the case studies and other purported CBAs. It contrasts these with elements from effective CBAs, providing real life examples of strong agreements, representative of the local community, where there were transparent negotiations processes that resulted in substantive terms responsive to communities' needs and formal mechanisms to hold the relevant parties accountable.

ELEMENTS OF BAD CBAS	ELEMENTS OF GOOD CBAS
Representativeness	
<p>No community signatories <i>Yankee Stadium: Only elected officials signatory.</i>⁴⁷</p> <p>Parties selected by developer or politicians <i>Atlantic Yards: Signatories selected by developer before negotiations began.</i>⁴⁸</p> <p>Divided community <i>Atlantic Yards: Eight organization signatories; over 50 organizations signed petition opposing project.</i>⁴⁹</p> <p>No CBA negotiating experience <i>Gateway Center at Bronx Terminal Market ("Gateway Center");</i>⁵⁰ <i>No signatory had CBA negotiating experience; no independent legal counsel to advise them through process.</i>⁵¹</p>	<p>Community signatories independent, diverse, align with networks with CBA expertise <i>Hill District: Coalition, led by two local community organizations, represented faith organizations, residents, labor unions, and local businesses, for a total of 100 organizations; worked with the Partnership for Working Families to develop CBA language.</i>⁵²</p> <p>Well organized coalition, strong capacity among community signatories to secure appropriate bargain <i>Oakland Army Base: Coalition led by 12-organization committee representing over 30 organizations in extensive CBA negotiations process; coalition engaged member organizations' strengths, through organizing, media outreach, research and policy development, legal support, leadership development, rallying interfaith congregations, and contacting voters to gauge support for key provisions.</i>⁵³</p> <p>Community signatories independent, diverse, represent those most threatened by project impacts <i>Kingsbridge Armory: Coalition included 25 signatures of church leaders, business owners, labor</i></p>

⁴⁷ Salkin, supra note 2.

⁴⁸ Ibid.

⁴⁹ Been, supra note 3.

⁵⁰ In 2006, the New York City Council approved a large, subsidized development called the Gateway Center, at the site of the Bronx Terminal Market. The community benefits agreement that accompanied the development was signed by the developer, a local community college, the local chapter of the chamber of commerce, and a nonprofit housing developer, and has been called "sweetheart deal" between Bronx politicians and the developer.

⁵¹ Neighborhood Retail Alliance, "CBA: Carrion's Benefit Agreement," February 6, 2006, available at <http://momandpopnyc.blogspot.com/2006/02/cba-carrions-benefit-agreement.html>.

⁵² Hill District CBA, available at <http://www.forworkingfamilies.org/page/policy-tools-community-benefits-agreements-and-policies-effect> (last visited January 7, 2016).

⁵³ Oakland Army Base CBA, available at <http://www.forworkingfamilies.org/page/policy-tools-community-benefits-agreements-and-policies-effect> (last visited January 7, 2016).

ELEMENTS OF BAD CBAS	ELEMENTS OF GOOD CBAS
Transparency, Inclusivity	
<p>Negotiations marked by secrecy <i>Atlantic Yards: Secretive negotiations contributed to fragmentation of community responses.⁵⁵</i></p> <p>Negotiations exclusive <i>Gateway Center: Taskforce never negotiated directly with developer; final negotiations occurred between elected officials and developer; resulted in watered down version of CBA.⁵⁶</i></p> <p>Conflicts of interest <i>Atlantic Yards: One community signatory received funding from developer.⁵⁷</i></p> <p>Negotiations timeframe rushed <i>Gateway Center: Taskforce members given one month to prepare draft CBA; copies of CBA distributed the morning of city council vote to approve development plans; few read CBA.⁵⁸</i></p> <p>⁵⁵Salkin, <i>supra</i> note 2. ⁵⁶<i>Ibid.</i> ⁵⁷Been, <i>supra</i> note 3. ⁵⁸Neighborhood Retail Alliance, <i>supra</i> note 54.</p>	<p>Community has opportunities to provide input throughout process; effective mechanisms to ensure transparency within coalition <i>Hill District: Coalition organized community members and testified at public hearings; established steering committee with representatives appointed by city officials and coalition to oversee implementation of agreement with clearly defined extensive community participation.⁵⁹</i></p> <p>Negotiations process transparent and inclusive <i>Oakland Army Base: Extensive negotiations between city staff, city councilmembers, broad range of community stakeholders, and included as terms of the Lease Disposition and Development Agreement between city and project developers and made binding on project contractors and tenants; city and community groups also entered into cooperation agreement under which the groups agreed to support project in exchange for assurances about delivery of community benefits.⁶⁰</i></p> <p>Multi-year stakeholder engagement process <i>Oakland Army Base: Coalition led a multi-year negotiations process that began with a city stakeholder engagement process.⁶¹</i></p> <p>⁵⁹Hill District CBA, <i>supra</i> note 48. ⁶⁰Oakland Army Base CBA, <i>supra</i> note 50. ⁶¹Oakland Army Base CBA, <i>supra</i> note 50.</p>



ELEMENTS OF BAD CBAS	ELEMENTS OF GOOD CBAS
Community Benefits	
<p><i>Vague, aspirational terms with few details on execution</i></p> <p>Cleveland MOU:⁶² Parties required to use “good-faith efforts” to raise funds for demand driven workforce study; results on which most provisions are based; funding based on parties vaguely “mobilizing funding for these items” with no requirements of developer.⁶³</p> <p><i>Does not address real community needs and unlikely to benefit impacted residents</i></p> <p>Miami Worldcenter: As a result of there being only one quasi-governmental signatory, CBA scope limited to job training with minimal specifics on meaningful employment opportunities for impacted residents, e.g., job-related provisions do not define geography for targeted hiring; does not ensure residents most affected by project would benefit from jobs.⁶⁴</p> <p><i>Commitments voluntary</i></p> <p>Gateway Center: Voluntary retention of local minority- or woman-owned contractors, payment of living wages, and requires developer to “work with” coalition to develop programs to benefit the community.⁶⁵</p> <p><i>Conflicts of interest</i></p> <p>Yankee Stadium: Fund Advisory Panel to be administered by “an individual of prominence,” appointed by same elected officials responsible for agreement; does not guard against funding being distributed impartially.⁶⁶</p>	<p><i>Issues addressed through detailed, concrete, measurable terms</i></p> <p>Hill District: Clearly defined local hire and living wage requirements for jobs at the arena and hotel; city, county, and developers committed exact dollar amounts to specific projects within CBA, including \$1,000,000 towards securing a grocery store within the Hill District by a certain date, and \$150,000 per year for at least two years to start model first source referral center to provide and coordinate job preparation, training, and supportive services.⁶⁷</p> <p><i>Addresses real community needs, agreed upon by coalition consensus that affect most vulnerable members of impacted community</i></p> <p>Oakland Army: Based on coalition priorities, CBA established Four Jobs Policies, which included clearly defined deliverables, benchmarks, responsibilities for hiring locally (including maps, streets, and zip codes for priority hiring areas), project labor agreements, long-term construction career opportunities, living wage standards, establishment of a jobs resource center in West Oakland, and requirements for employers to not ask about criminal background on job applications.⁶⁸</p> <p><i>Specific, measurable commitments with dollar amounts attached</i></p> <p>Kingsbridge Armory: Developer required to contribute \$8M dollars initially for specific purposes, including establishing an annual \$10,000 renewable energy scholarship fund for residents of Northwest Bronx to be trained to operate developer’s geothermal and/or solar power systems; establishes a “wall to wall” living wage payment requirement, covering all workers within the project.⁶⁹</p>

⁶² In 2013, the Cleveland Memorandum of Understanding was signed by the City of Cleveland and a group of organizations.

⁶³ Memorandum of Understanding Regarding Community Benefits and Inclusion (Cleveland) (February 26, 2013).

⁶⁴ Miami Worldcenter MOU, *supra* note 37.

⁶⁵ Gross, *supra* note 21.

⁶⁶ Observer, “The Yankees’ \$700,000 Play: ‘It Is Not A Shakedown,’” April 10, 2006, available at <http://observer.com/2006/04/the-yankees-700000-play-it-is-not-a-shakedown/> (last visited November 16, 2015).

⁶⁷ Hill District CBA, *supra* note 48.

⁶⁸ Oakland Army Base CBA, *supra* note 50.

⁶⁹ Kingsbridge Armory CBA, *supra* note 32.

ELEMENTS OF BAD CBAS	ELEMENTS OF GOOD CBAS
Accountability	
<p>Limited remedies; injunctive relief unavailable Gateway Center: Coalition's only remedy to obtain liquidated damages from developer, with amount capped at \$600,000 for all violations over the life of project.⁷⁰</p> <p>Overly burdensome enforcement and arbitration process Gateway Center: The parties must wait to seek remedies (arbitration or judicial) until the expiration of an onerously long period provided to the developer, who has "as long as necessary to resolve and cure the alleged failure."⁷¹</p> <p>Not enforceable against third parties Gateway Center: Local hiring and living wage provisions not enforceable against project's contractors or retail tenants, who make up majority of those responsible for provisions.⁷²</p> <p>Lack of consideration Yankee Stadium: Enforceable only against Yankees; questionable whether there is a valid contract because of lack of consideration.⁷³</p> <p>Limited term Miami Worldcenter: Terminates in five years with no avenue to extend or renegotiate.⁷⁴</p> <p>Termination without cause or opt out Miami Worldcenter: May be terminated without cause by any party with 30 days written notice.⁷⁵</p> <p>Lack of integrity in provision of benefits Atlantic Yards: Requirement for developer to fund "independent compliance monitor" to oversee and investigate complaints is still unfulfilled ten years after agreement executed.⁷⁶</p>	<p>Monetary damages and injunctive relief explicitly available Kingsbridge Armory: Individuals not paid a living wage have cause of action against the developer and employer to enforce terms; and entitled to interest and attorneys' fees if successful; clearly defined process with deliverables and deadlines for employers that provide Community Advisory Council to seek various remedies, including monetary damages or injunctive relief in court.⁷⁷</p> <p>Concrete, specific, clearly defined oversight process Kingsbridge Armory: Created formal structures for community-based oversight and enforcement of each CBA provision that include clear penalties and broad remedies, e.g., clearly defined reporting processes and recordkeeping requirements for each employer involved in development to provide to a "Community Advisory Council," established to monitor implementation of CBA.⁷⁸</p> <p>Enforceable against third parties and successors of each party Hill District: Binds the agents, assigns, and successors of each party to the agreement, so that if there is a new developer, the agreement would still be binding upon them.⁷⁹</p> <p>Oakland Army Base: Jobs policy agreements were included as terms of the Lease Disposition and Development Agreement between city and developers and made binding on project contractors and tenants, as well as successors and assigns.⁸⁰</p>

⁷⁰ Gross, *supra* note 21.⁷¹ Gross, *supra* note 21.⁷² Gross, *supra* note 21.⁷³ Gross, *supra* note 21.⁷⁴ Miami Worldcenter MOU, *supra* note 37.⁷⁵ *Ibid.*⁷⁶ Newsday, *supra* note 18.⁷⁷ Kingsbridge Armory CBA, *supra* note 32.⁷⁸ Kingsbridge Armory CBA, *supra* note 32.⁷⁹ Hill District CBA, *supra* note 48.⁸⁰ Oakland Army Base CBA, *supra* note 50.

Conclusion

If an agreement is not representative or a broad and inclusive coalition comprised of those most vulnerable to impacts of the development, if the negotiations process is not transparent, if the substance of the agreement is narrow, vague, and does not address a comprehensive range of issues, and its provisions are difficult to enforce, then the agreement likely will not truly benefit the local community. Equitable economic development advocates must beware of the likelihood in such circumstances of community co-optation by powerful developers and politicians in order to push through large scale, publicly subsidized projects. Those pursuing community benefits agreements can avoid this scenario by adhering to principles of representativeness, transparency, concrete and meaningful community benefits, and accountability.



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The Partnership disseminates a successful organizing model, shares a field of expert practitioners, and provides hands-on research and technical assistance to a growing and energized base of 17 affiliates, augmented by more than a dozen emerging organizations and coalitions. We are cultivating a new generation of leaders that connects strategic worker and community organizing with cutting edge public policy. These coalitions harness the power of cities while building an energized power base in key metropolitan areas nationwide.



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The Community Benefits Law Center, a project of the Partnership for Working Families, provides legal assistance to community-based efforts to transform local economies. We work with organizations and entities of government, helping them navigate the complex array of legal and policy issues on the path to meaningful results. Our attorneys are recognized national experts in the areas of community benefits agreements, community workforce agreements and other measures that make economic development more accountable to community needs.