

DOCKETED	
Docket Number:	23-OPT-01
Project Title:	Fountain Wind Project
TN #:	263380
Document Title:	County of Shasta Letter Comments - Attachment 2 Community Benefits Agreement
Description:	County of Shasta Letter Comments - Attachment 2 Community Benefits Agreement
Filer:	Kari Cameron
Organization:	County of Shasta
Submitter Role:	Public Agency
Submission Date:	5/27/2025 2:34:49 PM
Docketed Date:	5/27/2025



Ryan M. F. Baron
(949) 263-6568
ryan.baron@bbklaw.com

Memorandum

To: Joseph Larmour, County Counsel
Adam Fieseler, Assistant Director, Department of Resource Management
County of Shasta

From: Ryan Baron, Partner

Date: May 27, 2025

Re: Fountain Wind Project Staff Assessment Findings re Community Benefits Agreement(s)

The following memo is a review of the community benefits agreement analysis that is included in the California Energy Commission's (Commission) *Fountain Wind Project Staff Assessment*, dated March 25, 2025 (Staff Assessment).¹ In order to certify the Fountain Wind Project, the Commission is required by Assembly Bill (AB) 205 as codified in the Public Resources Code and applicable regulation to find that the applicant, Fountain Wind LLC (Repsol), has entered into one or more legally binding and enforceable agreements with one or more community-based organizations (*i.e.*, community benefits agreement). Repsol has not complied with this requirement:

1. The applicant knowingly filed a false community benefits plan by identifying organizations, funds, and timelines that were part of the County's 2021 review of the Fountain Wind Project where those groups rejected the funding or it never came to fruition.
2. The applicant misled the Commission and failed to disclose or otherwise identify alternative organizations that it was in negotiations with as part of a revised community benefits plan or application amendment or inform the Commission that negotiations had failed.
3. The applicant failed to execute an agreement with a *bona fide* community-based organization and the agreement it did execute was not a meaningful

¹ TN262350; State Clearinghouse No. 2023110139.

community benefits agreement for purposes of the Public Resources Code and the legislative intent of AB 205.

4. The applicant failed to execute an agreement within the Commission's regulatory timeframe for the filing of such agreement and never identified the agreement plan or strategy in its application.

The Commission cannot make the required finding based on a lack of substantial evidence in the record. We also believe that the Commission would need to apply some qualitative or quantitative criteria as to the value of the services or the proportionality of the impact in a community benefits agreement, and not doing so would be an abuse of discretion.

The County of Shasta (County) has provided extensive comment in the proceeding on the community benefits plan/agreement issues. We do not intend to restate those comments here but offer a summary of why the applicant has failed to satisfy this important requirement and why the Commission cannot make the community benefits finding. For purposes of the County filing this analysis as comments on the Staff Assessment, the following docketed items serve as the basis for our review and are incorporated by reference herein:

1. TN 248296-2, *Community Benefits Program* (Jan. 3, 2023).
2. TN 252320, *Community Benefits Data Request for the Fountain Wind Project* (Sept. 20, 2023).
3. TN 252431, *REDACTED Response to Community Benefits Data Request* (Sept. 28, 2023).
4. TN 252457, *County of Shasta Objection to Applicant Confidentiality Request re Community Benefits Agreement Data Response* (Sept. 29, 2023).
5. TN 252585, *Community Benefits DRAFT Fund Agreement* (Oct. 12, 2023).
6. TN 252586, *Response to Community Benefits Agreement Data Request* (Oct. 12, 2023).
7. TN 252625, *Pit River Tribe Comments – Objection to Fountain Wind Project* (Oct. 18, 2023).
8. TN 252912, *Letter to CEC Chair from Supervisor Rickert* (Nov. 3, 2023).
9. TN 253348, *County of Shasta Information Request re Community Benefits Plan* (Nov. 28, 2023).
10. TN 253611, *Fountain Wind Community Benefit Agreement* (Dec. 14, 2023).
11. TN 253801, *20 CCR § 1231 – Request for Investigation into Fountain Wind LLC Regarding Fountain Wind Project* (Jan. 4, 2024).
12. TN 253813, *County of Shasta AB 205 Review and Comments on Fountain Wind Project Community Benefits Agreement Update and Submittal with Exhibits* (Jan. 5, 2024) (superseding TN253797).
13. TN 254101, *Applicant Response to Shasta County Investigation Request* (Jan. 24, 2024).
14. TN 254155, *Response to County of Shasta's Request for Investigation into Fountain Wind LLC regarding Fountain Wind Project* (Jan. 26, 2024).
15. TN 254421, *County of Shasta Request for Chair Review of Exec Dir Determination – Pursuant to 20 CCR 12325* (Feb. 12, 2024).

16. TN 255299, *Response to Shasta County's Request for the Chair of the CEC to Review the Executive Director's Determination* (Mar. 27, 2024).
17. TN 256472, *FWP_CBA#2_Submittal_20240520* (May 20, 2024).
18. TN 259533, *County of Shasta Comments on Shasta College Foundation CBA* (Oct. 14, 2024).

We note that the Staff Assessment at Section 10.11 *References* only provides a citation to the County's comments from TN 253813, which addressed a purported community benefits agreement with the Northeastern California Building & Construction Trades Council (North State Builds). We believe that the issues as to why the Commission cannot make this finding, however, are discussed throughout the various filings listed above, are germane to the required finding, and should be further analyzed in the Staff Assessment and included in the *References* section.

Background

Public Resources Code section 25545.10 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 agreements(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.² As Commission staff has recognized in the Fountain Wind proceeding, 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

On January 3, 2023, the project application included a Community Benefits Program discussing six organizations it “identified” as part of its alleged community benefit program to contribute approximately \$2,000,000 in funding to local programs for education, public safety, fire protection, and workforce development.⁴ These organizations and projects consisted of an elementary school, a fire reduction project, internet expansion, workforce development for the Pit River Tribe, the Shasta County Sheriff, and open access to the timberlands property of the project.⁵ The same community benefits plan had been provided to the County in 2021 as part of its review and denial of the project at the local level.⁶ The identified entities at that time refused

² 20 C.C.R. § 1878(c).

³ TN 252320 at 3.

⁴ TN 248296-2.

⁵ *Id.* at 3.

⁶ See *Fountain Wind Project Planning Commission Presentation*, slides 19-20 (June 22, 2021), attached hereto.

to accept funding and none of the proposed programs came to fruition, yet the plan was recycled to the Commission. After almost 9 months of reviewing the application, Commission staff concluded in September 2023 that the applicant did not, in fact, have a community benefits plan and requested the applicant docket information related to the purported agreements.⁷ The applicant was not forthcoming and in September 2023 docketed a heavily redacted filing alleging negotiations with a community foundation and that an agreement was imminent.⁸ After the County raised Public Records Act objections to the so-called “confidential” filing,⁹ the applicant docketed an unredacted version of the original filing claiming that it was in negotiations with the Community Foundation of the North State where approximately \$2,000,000 in programs would be funded through the Foundation, including money for the Pit River Tribe.¹⁰ The foundation was not previously identified in the original community benefits plan.¹¹

The Pit River Tribe subsequently filed comments challenging the honesty and veracity of the applicant and vehemently objected to the funds in that the Tribe was not in discussions with the applicant and had expressly stated that the Tribe would not take money for the project and was not part of the original community benefits plan.¹² In November 2023, Shasta County Supervisor Mary Rickert subsequently filed a letter with the Commission that based on firsthand knowledge, the Foundation was not in negotiations with the applicant and an agreement had been rejected.¹³ Also in November 2023, the County sent an information request to the applicant as allowed by Commission regulation seeking, among other documents, evidence of negotiations with the Community Foundation of the North State.¹⁴ The applicant declined to provide any information related to its October 2023 filing and the Commission did not follow-up on the issue.

On December 14, 2023, the last day by Commission regulation that an applicant is allowed to supplement application information,¹⁵ the applicant docketed a community benefits agreement with the North State Builds, which organization had not been previously identified in the community benefits plan or in responses to the September 2023 Commission data request.¹⁶ In January 2024, the County filed comments on the North State Builds agreement that the applicant had not followed the law, the North State Builds was not a community-based organization under the Public Resources Code, and there was no meaningful benefit from the agreement.¹⁷ Concurrently, the County requested a Commission investigation in that the applicant did not provide the Commission with a valid or honest community benefits plan at the time of its application, had committed perjury by listing organizations that had rejected benefit agreements or had no intention of negotiating with, and had misrepresented and misled the

⁷ TN 253320.

⁸ TN 252431.

⁹ TN 252457.

¹⁰ TN 252586.

¹¹ TN 248296-2.

¹² TN 252625.

¹³ TN 252912.

¹⁴ TN 253348.

¹⁵ 20 C.C.R. § 1878(c).

¹⁶ TN 253611.

¹⁷ TN 253813.

Commission and the public as to who it was actually entering into an agreement with.¹⁸ The Commission Executive Director declined to initiate an investigation,¹⁹ which was upheld by the Commission Chair.²⁰

In May 2024, the applicant submitted a community benefits agreement for \$2,000,000 for the Shasta College Foundation.²¹ The foundation was never identified in the original plan or in responses to Commission data requests. The agreement was also filed after the 45-day deadline and over 5 months later when supplemental information was required to be submitted to the Executive Director. In October 2024, after conducting due diligence on the agreement and after discussions with the Shasta College Foundation, the County filed comments that the agreement was invalid for purposes of the Public Resources Code.²² The agreement had been submitted after the 45-day deadline and the foundation was never identified in the application or in data request responses. The County further argued that the negotiations occurred under false pretenses and that the Foundation was not informed of the need for the agreement, that prior agreements had been rejected due to unmitigable impacts to the environment and Tribal lands, and the applicant was creating a community rift and continuing to raise “serious ethical and transparency concerns.”

Staff Assessment Findings

In section 5.11.2.2 entitled *Direct and Indirect Impacts*, the Staff Assessment discusses the agreement with the North State Builds outlining the purposes of the agreement for workforce training and education. The Staff Assessment notes that funds will be used for programs and project job fairs and certain, two-month trainings for union services and workers near the project site, “to the extent feasible.”²³ The Staff Assessment also notes the County’s previously filed comments that North State Builds is not a community-based organization and the \$175,000 contribution to the organization is not a meaningful contribution.²⁴

In Section 10.5, the Staff Assessment outlines AB 205 community benefits agreement requirements finding that the North State Builds agreement satisfies the Public Resources Code because, in sum, the entity is a community-based organization representing workers in Shasta and neighboring counties and the agreement benefits the organization by furthering workforce training and development and providing money for education and job fairs.²⁵ The Staff Assessment dismisses the County’s objections, however, on the grounds that despite the acknowledged “low dollar amount” and the “narrow benefit” to an “advocacy” group, the law does not establish a minimum level of benefit or require a benefit proportionate to the impact of the project.²⁶

¹⁸ TN 253801.

¹⁹ TN 254155.

²⁰ TN 255421 and TN 255299.

²¹ TN 256472.

²² TN 259533.

²³ Staff Assessment at 5.11-10.

²⁴ *Id.*

²⁵ Staff Assessment at 10-17 – 10-20.

²⁶ *Id.* at 10-20.

Notably, the findings do not include reference to or discussion of an agreement with the Shasta College Foundation. In Section 11.11 *Consumer Benefits*, however, the Shasta College Foundation agreement is referenced as a local consumer benefit by providing \$2,000,000 for scholarships and worker training. The Staff Assessment does not cite to or discuss the County's comments on other aspects of the community benefits plan.

Discussion

In order for the Commission to find that the applicant has entered into one or more legally binding and enforceable agreement(s) with a community-based organization for community benefits related to the project, the agency must follow the legislative direction of AB 205 and make such finding by substantial evidence.²⁷ The Commission cannot do so.

The applicant filed a knowingly false community benefits plan by identifying organizations, funds, and timelines that were part of the County's 2021 review of the Fountain Wind Project where those groups rejected the funding and it never came to fruition. Indeed, the applicant also identified the Pit River Tribe as a benefits recipient, and as stated earlier, the Tribe denounced the applicant for its misrepresentations. The applicant also failed to update the Commission with a revised plan when it was purportedly negotiating an agreement with the Community Foundation of the North State or inform the Commission after the application had been deemed complete that this negotiation was no longer occurring and had been broken off by the Foundation. Furthermore, the applicant did not identify North State Builds or the Shasta College Foundation in any of the application materials it filed, including the original plan, or in its responses to the Commission's September 2023 data request even though the North State Builds agreement was filed just two months after the applicant's October 2023 response. Even if the applicant argues that it is not required to identify named organizations, it did not comply with the Public Resources Code or the Commission's own regulation in providing general information on the funds, purposes, or timeline associated with these entities at any time in the proceeding.

Public Resources Code section 25545.10 is clear that the Commission cannot certify a project unless there is an executed community benefits agreement. The law is equally clear that the Legislature delegated authority to the Commission to implement regulations to effectuate AB 205 and prescribe application requirements²⁸ and require supplemental information, documents and data as is necessary to make a decision and even request information asked for by another public agency, like the County.²⁹ The Commission adopted a rule that every opt-in application shall include a community benefits plan or strategy and a timeline for execution.³⁰ Commission regulation also requires applications to be truthful and signed under penalty of perjury.³¹

²⁷ Cal. Civ. Proc. Code § 1094.5.

²⁸ Pub. Res. Code §§ 25545.2 and 25545.12(a).

²⁹ Pub. Res. Code § 25545.4(b) and (d).

³⁰ 20 C.C.R. § 1877(g).

³¹ 20 C.C.R. §§ 1707 and 1876.

The community benefits plan and agreement is a material finding under the opt-in application laws. The North State Builds and Shasta College Foundation “plan” or “strategy” has never been part of the application or before the agency in any manner until the “agreements” were filed in the docket. The Staff Assessment does not analyze these issues or the prior comments that were filed. The Commission cannot now make a finding that community benefits are satisfied when the plan for these benefits were never before the Commission in the first place. This is an unlawful bait and switch, and nothing of this sort was intended by the Legislature when it promulgated the community benefits requirement and directed the Commission to implement it. It is akin to a developer having a use permit application deemed complete for a project and then changing a material portion of the project without having to re-file or amend its application or provide any information to the permitting agency on the change. This is not how environmental permitting and development approvals work at any federal, state or local level.

The Staff Assessment further finds that North State Builds is a community-based organization under AB 205 and that the \$175,000 amount suffices as substantial evidence of a benefit in that the law does not establish a minimum benefit amount or require any proportionality to the impacts of the project. We disagree. As the County previously commented, the applicant submitted a plan that offered \$1,800,000 in the initial application. It then offered another \$2,000,000 into the record for the Community Foundation of the North State. Had the applicant only identified a single benefit of \$175,000 in its application, the County and community would have objected and this portion of the application would not have been deemed complete. Although the statute does not contain explicit qualitative or quantitative criteria, the Legislature certainly expected the Commission to implement governing regulations or apply some criteria in its application review to ensure that meaningful benefits actually accrued to the community. This was the *quid pro quo* of AB 205 where benefits to the community are required in exchange for the local government losing its discretionary authority over the project where it would otherwise be able to enter into a project development agreement or require exactions and other financial benefits. If the statute does not require a minimum benefit amount or some valuation on the proposed benefit, then logically a single dollar (\$1.00) of value is a benefit for opt-in application purposes. Certainly, that it not what the law intends or the Commission supports.

We have reviewed the opt-in application³² and Staff Assessment for the Darden Clean Energy Project, which assessment was updated on May 12, 2025.³³ 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. In response to certain objections that some of the agreements contained a termination clause and were not enforceable, the assessment applies some qualitative criteria in stating “they reflect the applicant’s broader effort to provide meaningful, voluntary community benefits”³⁴ This shows that the Commission does indeed recognize that there is some criteria or benefit threshold that applies.

³² TN 253022, *Appendix E Community Benefits Plan_Darden Clean Energy* (Nov. 7, 2023).

³³ TN 263053, *Darden Clean Energy Project Updated Staff Assessment* (May 12, 2025).

³⁴ *Id.* at 2-6 and 2-7.

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 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 North State Builds 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. The lack of any standard as to value or proportionality then is an abuse of discretion and any finding lacks substantial evidence because there is no criteria to support the finding, particularly when the applicant did not follow Commission regulations and withheld information after valid Commission data requests.

Lastly, the Shasta College Foundation agreement is not addressed in the community benefits agreement findings. Our conclusion is that the Commission did not find that the agreement met AB 205 requirements. We agree. As previously discussed, it appears, among other things, that the agreement was negotiated under false pretenses. It was also not identified in the plan or to the Commission generally and was filed after the application was deemed complete and the 45-day supplemental period under 20 C.C.R. § 1878(c) closed. Thus, it should not be considered. The agreement is addressed in the Staff Assessment, however, as a local consumer benefit.³⁵ Exhibit B of the agreement clearly identifies the purposes of the contract and that it and the funds received by the benefits recipient fall under and are to be governed by Public Resources Code section 25545.10.³⁶ Therefore, it is unclear why the agreement is still considered a benefit of the project when the agreement that was filed was solely to comply with section 25545.10, does not satisfy the required finding for a community benefits agreement, and is not cited in the proposed findings in the Staff Assessment. The sentence referencing the agreement as a consumer benefit should be removed.

RYAN BARON

³⁵ Staff Assessment at 11-13.

³⁶ TN 256472, Ex. B, §§ 1, 2.b, 2.c.i., 3.b.i., and 3.c.iii.

Attachment

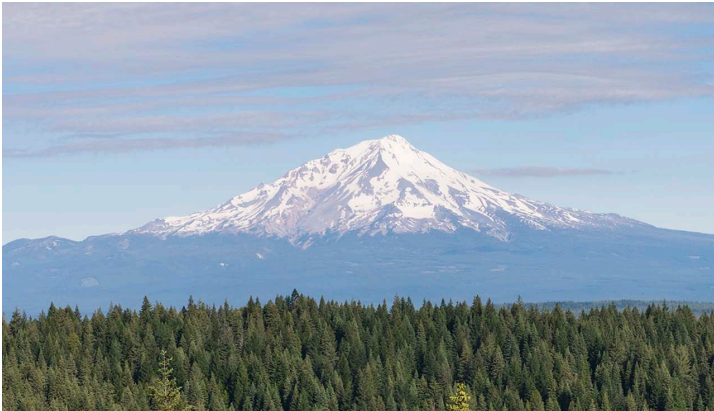
Fountain Wind Project Planning Commission Presentation



Fountain
WIND PROJECT

June 22, 2021

Fountain Wind Project Planning Commission Presentation



Connecting Power, Projects, and People

www.fountainwind.com

Overview

I. ABOUT CONNECTGEN

II. WHY WIND IN SHASTA COUNTY

III. COMPREHENSIVE ENVIRONMENTAL REVIEW

IV. PROJECT BENEFITS



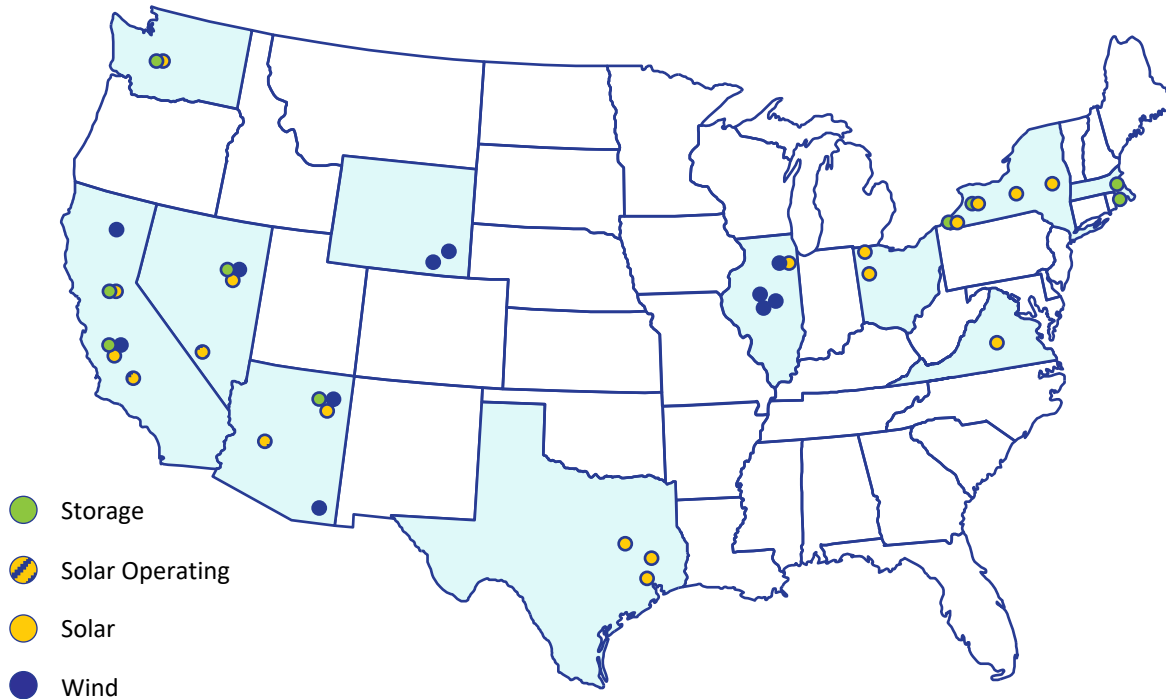
Who is ConnectGen?



ConnectGen is an independent renewable energy company developing large-scale wind, solar, and energy storage projects across North America.

ConnectGen has established a portfolio of over 8,500 MW of wind, solar, and energy storage projects.

Our experienced team holds deep familiarity with transmission system analysis and market design/regulatory issues.



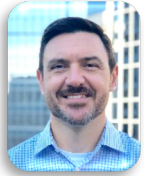
- Storage
- Solar Operating
- Solar
- Wind



ConnectGen is backed by Quantum Energy Partners. Founded in 1998, Quantum Energy Partners is a leading provider of private equity capital to the global energy industry, having managed together with its affiliates more than \$17 billion in equity commitments since inception.



ConnectGen's Experiences



Caton Fenz
Chief Executive Officer
*Formerly Calpine, EDP
Renewables*



Andrew Kushner
Chief Financial Officer
Formerly NextEra Energy



Stephany LeGrand
General Counsel
*Formerly Shell New
Energies, Eversheds
Sutherland*



Maddie Knowland
Vice President, Origination
*Formerly E.ON, BrightSource
Energy*



Mark Lawlor
Vice President,
Development
*Formerly Clean Line Energy
Partners, Horizon Wind*



Derek Rieman
Vice President,
Development
*Formerly Calpine, Bluewave,
EDP Renewables*



Chris Hills
Vice President, EPC
*Formerly BMS Heavy
Cranes, RES Americas*

ConnectGen's senior management team brings a wealth of experience from industry-leading companies including EDP Renewables, E.ON/RWE, NextEra, Clean Line Energy Partners, Shell New Energies, and Calpine.

Collectively over their careers, team members have developed, commercialized, financed, constructed, and operated many gigawatts of renewable energy projects across the U.S. and Canada.

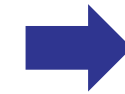
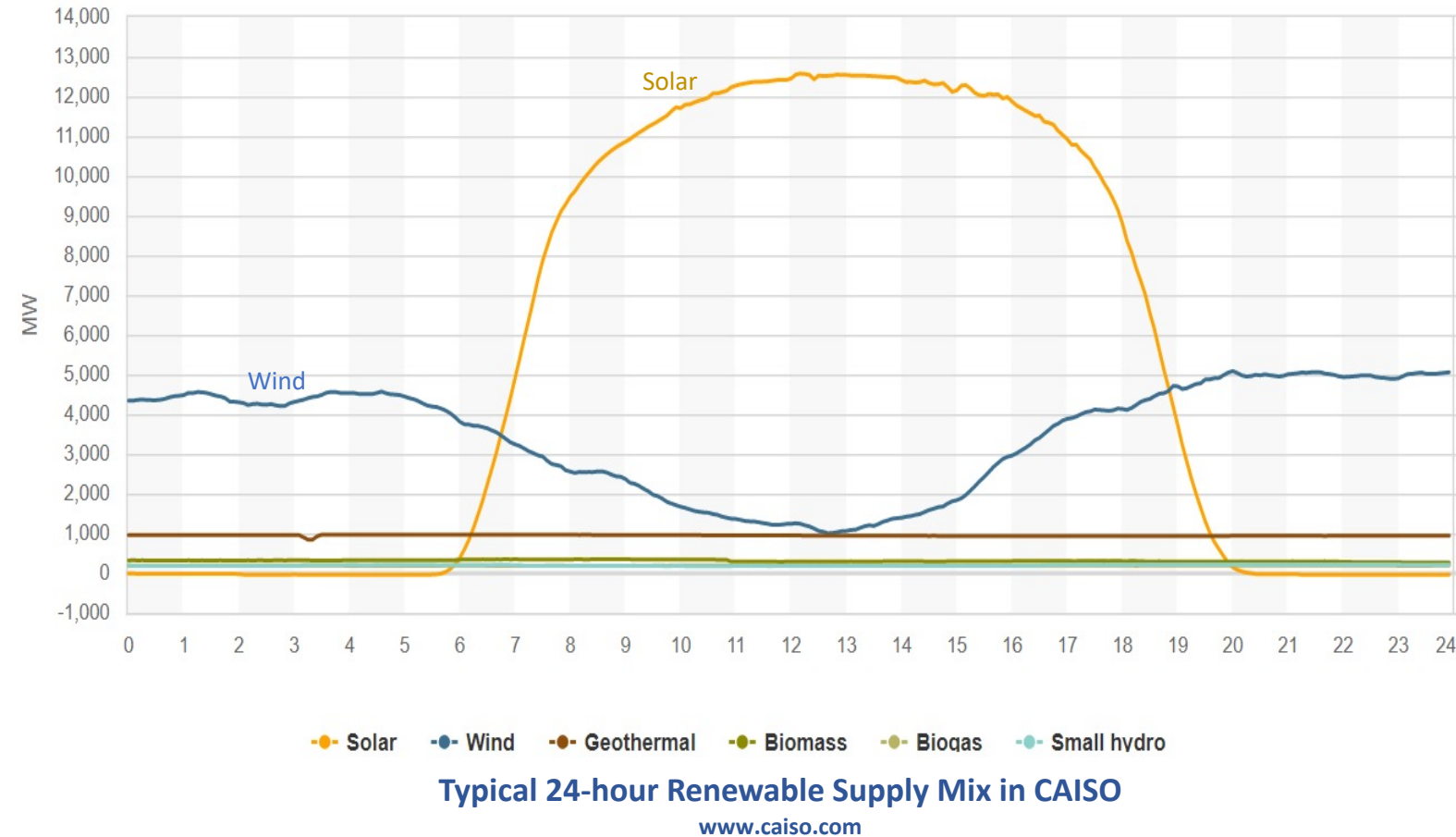


Why is Wind Needed?

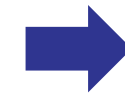
- ▶ SB100 mandates all retail electricity to be **50% carbon free by 2026**, and **100% carbon free by 2045**
- ▶ Commercial and industrial consumers demanding more renewable energy before these deadlines
- ▶ Significant Solar operational in California, but much less wind today
 - **12,527 MW** operational solar
 - **5,973 MW** operational wind
- ▶ **More wind is needed in California** to meet demand and balance high solar output



Why Wind: Off-Peak Renewable Production



Wind can supply carbon-free energy in the hours solar is not producing

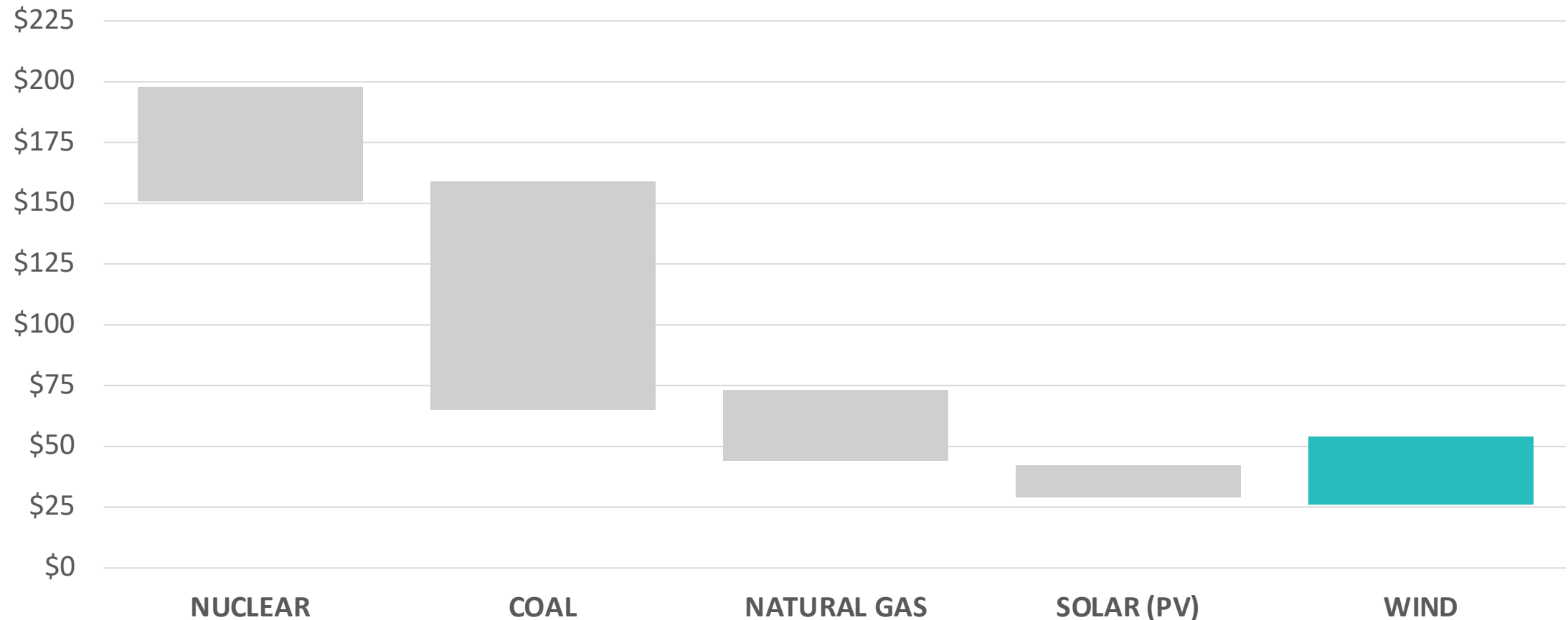


Fountain Wind will supply much-needed capacity when solar is off-line



Why Wind: Low-Cost Energy

\$ per MW Hour (New Generation)



Why Shasta County?



ROBUST WIND RESOURCE



**EXISTING ELECTRICAL
INFRASTRUCTURE**



COMPATIBLE LAND USE



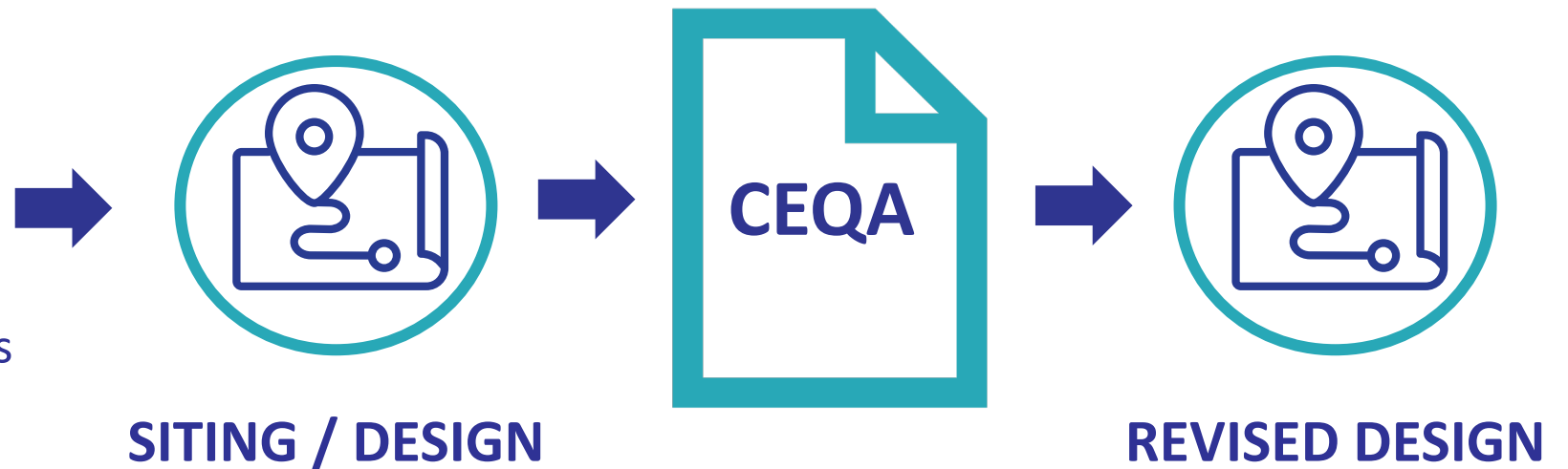
Why Fountain Wind?

- ▶ Fountain Wind is a \$300+ Million clean energy project that will boost Shasta County's tax base, create jobs, enhance fire safety, benefit schools and public safety and so much more
- ▶ These benefits outweigh the impacts not fully mitigated
- ▶ The County has successfully completed the CEQA evaluation for Fountain Wind and recommended certification of FEIR and approval of the Use Permit



Comprehensive Environmental Review

- Site Characterization
- Avian and Bats
- Rare Plants & Natural Vegetation Communities
- Sensitive Species
- Hydrology and Aquatic Resources
- Cultural Resources
- Aesthetics and Visual Impacts
- Shadow Flicker
- Communications
- Sound
- Transportation



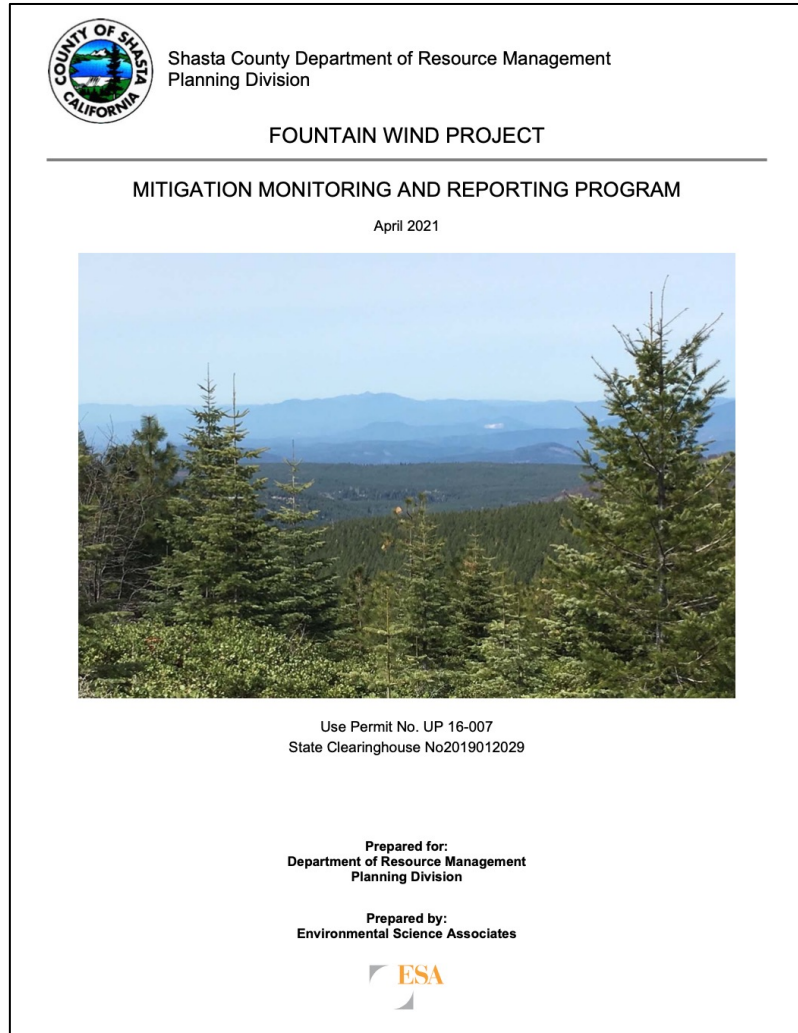
Siting and Design Considerations

The Project has sought to Avoid and Minimize Impacts during all Phases of Development:

- Approximately 1,400 acres of temporary disturbance, and 700 acres of permanent disturbance
- Compatible land use associated with an active timber operation
- Colocation of existing roads and waterbody crossings
- Additional micrositing to avoid sensitive resources



Mitigating Environmental Impacts



Required Mitigation, Monitoring, and Reporting:

- Over 100 Mitigation Measures incorporated through the CEQA process
- Applicant Proposed Conservation Measures and design changes
- Additional “Conditions of Approval”
- Commitment to significant temporal and spatial restrictions during construction
- Preparation of various construction and operation plans based on final design
- Extensive construction and operational environmental monitoring and reporting requirements
- Adaptive management in coordination with the County and State and Federal Agencies



Tribal Concerns and Cultural Resources

Archeological Resource Investigations and Coordination

- Native American Heritage Commission and Sacred Land search
- Pedestrian field survey covering ~4,400 acres
- Tribal outreach
- Pit River Tribe coordination and site visit

Applicant Proposed Commitments and CEQA Mitigation Measures

- Continued coordination with the Pit River Tribe during Project development and construction
- Micrositing to avoid identified historic and prehistoric archeological sites
- Ethnographic recordation in coordination with the Pit River Tribe
- Inadvertent discovery plans and protocols
- Cultural resources monitoring program during construction



Biological Resources

Extensive Study and Review of Aquatic, Terrestrial, and Avian Species and Habitats

- Avian and Bat studies followed USFWS Wind Energy Guidelines and Eagle Conservation Plan Guidance
- Habitat Assessments and Presence/Absence Studies
- Existing operational mortality data for birds and bats

Applicant Proposed Commitments and CEQA Mitigation Measures

- Elimination of turbine identified as higher risk to raptors by CDFW (M03)
- APLIC guidelines to address collision and electrocution risk
- Bird and Bat Conservation Strategy and Nesting Bird Management Plan
- Post Construction Mortality Monitoring and Reporting
- Extensive coordination with agencies prior to construction, during construction, and during operation



Project Benefits

I. ENHANCED WILDFIRE PROTECTION

II. GRID RELIABILITY

III. ECONOMIC ACTIVITY IN SHASTA COUNTY

IV. COMMUNITY BENEFIT PROGRAM



Enhanced Wildfire Protection

ENHANCED FIRE SAFETY



Added Fire Breaks



Advanced Fire Suppression



Comprehensive Fire Protection Plan



Full Time Site Presence



Grid Reliability



ENHANCED GRID RESILIENCY

- Ability to help stabilize the grid through reactive power capabilities
- Upgrades to local PG&E infrastructure



ENERGY INDEPENDENCE

- Up to **216 megawatts** of locally sourced energy generation



Direct Economic Benefits



ECONOMIC ACTIVITY

- **\$50 million+** in property tax revenue to Shasta County over 30 years
- **\$3.5 million+** in local sales taxes during project construction



LOCAL JOB CREATION

- Approximately **200 construction jobs** during peak
- Up to **12 full-time jobs** during project operations



Community Benefit Program



\$1 million investment
to repurpose the Cedar Creek
Elementary School to benefit the
Round Mountain and Montgomery
Creek communities



\$200,000 commitment
to ShastaBeam to enhance
internet service in the
Intermountain region



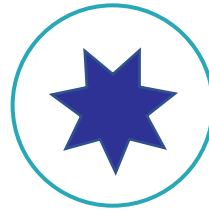
\$250,000 commitment
to the Fall River RCD to implement
a Fuel Break Project along
Highway 299 and Big Bend Road



Community Benefit Program



\$250,000 for Tribal workforce development programming to be administered by the Tribe's Tribal Employment Rights Office (TERO)



\$150,000 for the Shasta County Sheriff's Office to support County wide public safety purposes



Community access to Shasta Cascade Timberlands Property



Looking Ahead



Summer 2021: County Approval



Fall 2021: Finalize Engineering Design and additional permits



Winter 2021: Sign contract with General Contractor



Spring 2022: Start of Construction



Fall 2023: Project Completion

Conclusion



LONG TERM TAX REVENUES FOR SHASTA COUNTY



ENHANCED FIRE PROTECTION IN THE INTERMOUNTAIN REGION



NEAR TERM DIRECT COMMUNITY BENEFITS

The benefits of this project are tremendous for Shasta County. Yes, there are impacts related to the project, but those have been minimized and mitigated as much as possible, and we strongly believe the benefits of this project far outweigh the impacts.



Attachment

Common Challenges in Negotiating Community Benefits Agreements And How To Avoid Them

Common Challenges in Negotiating Community Benefits Agreements

— AND — **HOW TO AVOID THEM**



JANUARY 2016



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.

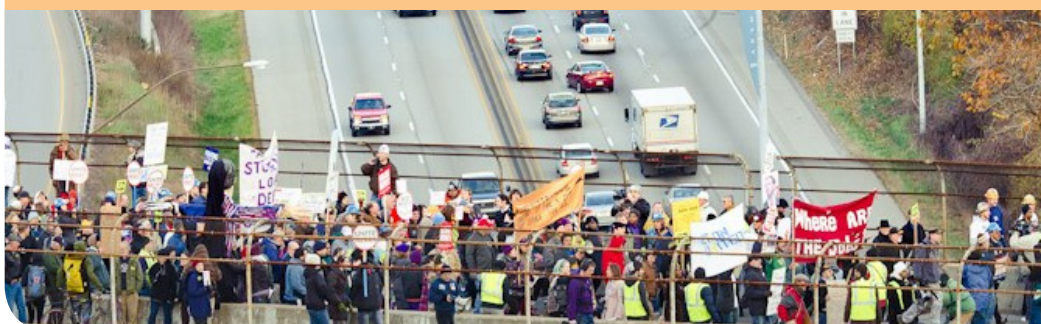
More than a decade of work in the community benefits movement has yielded a number of important lessons about common challenges

*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.

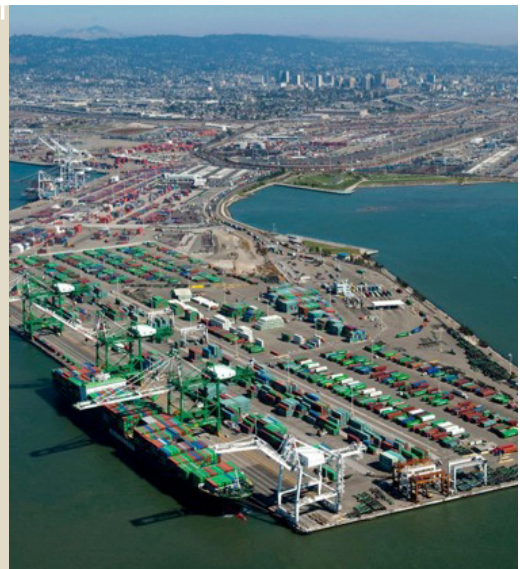
2. The CBA Process is Transparent, Inclusive, and Accessible

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:

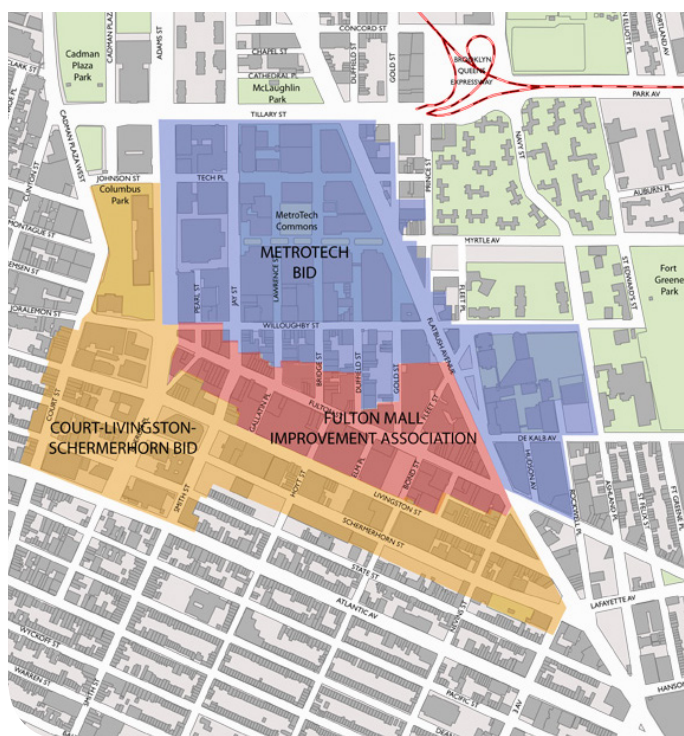
- ▶ **There is little real community participation:** the signatories are handpicked by the developer or politicians, there is no coalition presence at all, or the coalition lacks the broad based representation of the array of community interests affected by the development.
- ▶ **The negotiation process 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

Vague, aspirational terms with few details on execution

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

Does not address real community needs and unlikely to benefit impacted residents

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

Commitments voluntary

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

Conflicts of interest

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

Issues addressed through detailed, concrete, measurable terms

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

Addresses real community needs, agreed upon by coalition consensus that affect most vulnerable members of impacted community

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

Specific, measurable commitments with dollar amounts attached

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

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.



ForWorkingFamilies.org

Facebook.com/PartnershipforWorkingFamilies

@P4WF

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.



ForWorkingFamilies.org/clbc

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.