

# What Are Community Benefits?

Step one in bringing benefits and protections to your community is understanding what we mean by “community benefits.” This section provides foundational information about what community benefits include.

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## What are Community Benefits and Protections?

We use “community benefits” as an umbrella term that includes a range of legal agreements for how a development or business will benefit and protect the community in tangible and meaningful ways. Community benefits have been used for many types of developments, including housing or retail developments, sports stadiums, hospital expansions, solar or wind fields, mines, and refineries, just as a few examples.

Although these types of agreements represent different types of processes, all community benefits should be an ongoing process of *visioning, relationships, negotiation, and follow-through* between three groups of people:

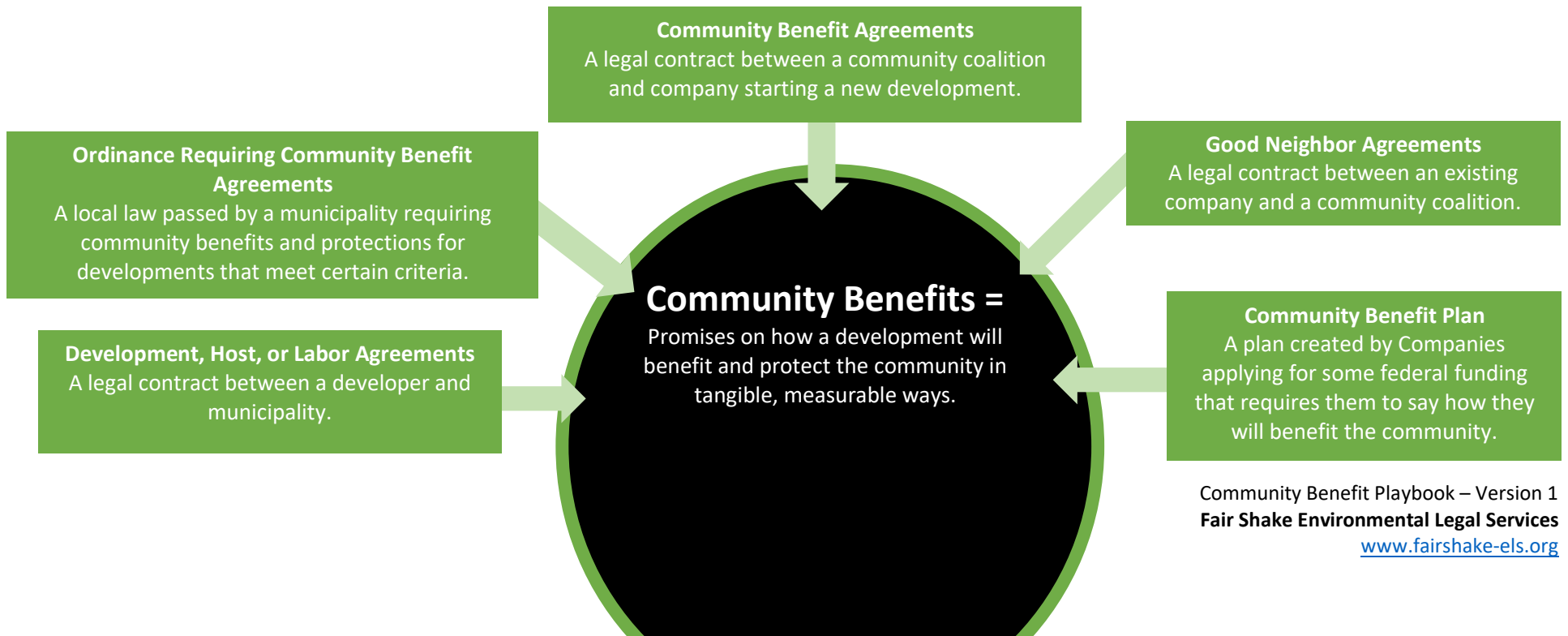











- **Developer:** The entity, person, or company who is trying to build something new, or change or expand an existing facility or building. For example, developers could be trying to build new housing, a new industrial facility, a renewable energy field, a sports stadium, hospital or university expansions, or a strip mall or mixed-use development. We use the terms “developer” and “company” interchangeably.






- **Community Coalition:** A group of organizations representing the community that come together for a common goal. For example, a coalition could include nonprofits, faith-based groups, neighborhood associations, local businesses, and community development corporations. We use the terms “coalition,” “community coalition,” and “community” interchangeably.




- **Municipality:** A village, town, or city that's usually overseen by a governing body, which could include a mayor, city council, commissioners, or supervisors.



| Benefit name:                         | What is it?  | Who is it between?   | When is it signed?   | What are proven examples of benefits or protections?   | Who has legal enforcement power?  | When are these a good option?  | Interesting notes:   | News and examples:  |
|---------------------------------------|--|--|--|--|---|--|--|---|
| <b>Development or Host Agreements</b> | A legal contract between a developer and municipality that clearly states the standards and conditions the developer must follow in exchange for the municipality's support. | Municipality and developer<br>                              | Before development begins<br>   | <ul style="list-style-type: none"> <li>• Infrastructure improvements</li> <li>• Public open space</li> <li>• Monetary payment to the municipality</li> </ul>   | Municipality<br> | When the municipality wants to work proactively to support development.  | These help developers build with confidence, knowing they have the municipality's support.   | <a href="#">"City eyes new development agreement for transit center housing"</a>        |
| <b>Community Benefits Ordinance</b>   | A local law passed by the municipality which requires a Community Benefit Agreement or community benefits process for developments that meet certain criteria.               | Municipality and developer (and can include community)<br> | Before development begins<br>  | <ul style="list-style-type: none"> <li>• Transparency</li> <li>• Community involvement in decision-making</li> <li>• Infrastructure improvements</li> <li>• Public open space and parks</li> <li>• Monetary payments that benefit the community</li> <li>• Environmental or public health protections</li> </ul> | Municipality<br> | When the municipality wants to work proactively to support development and is interested in increased transparency and community engagement. | This is a strong way to bring transparency and proactively bring the community to the table (without the community having to fight to be invited.) | <a href="#">"New Cleveland law aims to get more community benefits from developers"</a> |
| <b>Community Benefit Agreements</b>   | A legal contract between a community coalition and company starting a new development.   | Community and developer<br>                               | Before development begins<br> | <ul style="list-style-type: none"> <li>• Transparency</li> <li>• Community involvement in decision-making</li> </ul>   | Community<br>  | When a community hears rumors about a new development  | This is one of the only ways communities can have legal  | <a href="#">"Community, developers agree on Staples Plan"</a>                           |







|                                 |  |  |  |  |  |   |  |  |
|---------------------------------|--|--|--|--|--|---|--|--|
|                                 | The community benefit agreement states the benefits and protections the company agrees to in exchange for the coalition’s support on the project.  |  |  | <ul style="list-style-type: none"> <li>• Infrastructure improvements</li> <li>• Public open space and parks</li> <li>• Monetary payments that benefit the community</li> <li>• Environmental or public health protections</li> </ul> |  | and feels like they can support it if certain conditions are met.<br>OR<br>If a community recognizes that a development will take place and the community decides they want to mitigate the harm. | enforcement power.<br><br>Municipality support is not required.  |  |
| <b>Good Neighbor Agreements</b> | A legal contract between an existing company and a community coalition which states how the company will change its behavior to meet the coalition’s needs. Good Neighbor Agreements are often focused on environmental and public health impacts. | Community and developer<br> | After business already operating<br> | <ul style="list-style-type: none"> <li>• Transparency</li> <li>• Community involvement in decision-making</li> <li>• Monetary payments that benefit the community</li> <li>• Environmental or public health protections</li> </ul>   | Community<br> | If a company is operating in bad faith, has had repeated permit violations, or, in general, is hurting or harming the community.  | This is one of the only ways communities can have legal enforcement power, even years AFTER a company begins operations. | <a href="#">"The story of the Good Neighbor Agreement"</a> |
| <b>Community Benefit Plan</b>   | A specific term from many federal funding requirements for all   | Federal government agency (often   | After government gives funding,  | <ul style="list-style-type: none"> <li>• Unknown – these have not been used for long</li> </ul>  | Federal government <sup>1</sup>  | When a new development receives some  | Although they do not give communities  | <a href="#">"The DOE Community Benefits Plan"</a>          |

<sup>1</sup> These plans are part of a funding contract signed between the developer and federal government agency. Therefore, the agency can withdraw funding from the Developer if the Developer is not completing the activities listed in their Community Benefits Plan to satisfaction or as intended. We anticipate this will require a lot of community engagement to advocate to the federal government agency that the developer is not upholding their plan’s activities.

|  |  |   |  |  |   |   |  |  |
|--|--|---|--|--|---|---|--|--|
|  | <p>Infrastructure Law and Inflation Reduction Act funding opportunities. Companies submit Community Benefit Plans with their applications and include details about how the development will meet four core policy priorities, including: investing in the workforce; engaging communities and labor; advancing diversity, equity, inclusion, and accessibility; and implementing Justice40.</p> | <p>Dept. of Energy) and developer</p>  | <p>but before development begins</p>  | <p>enough to have evidence about the benefits and protections they create.</p> <ul style="list-style-type: none"> <li>• Communities could use the plan’s existence to advocate for a Community Benefit Agreement.</li> </ul> |  | <p>federal funding and are required to submit these with their funding application.</p> | <p>legal enforcement power, these plans can give communities increased leverage to be at the table and advocate for their needs.</p> |  |
|--|--|---|--|--|---|---|--|--|

## What Types of Benefits and Protections are Common?


Community benefits are not a one-size-fits-all solution but can be created and negotiated to meet the unique needs and context of the community, along with the potential impacts of the development. Many Community Benefits include some of the following benefits and protections:








|  |   |   |
|--|---|---|
| <ul style="list-style-type: none"> <li>• Local hiring</li> <li>• Living wage commitments</li> <li>• Job training</li> <li>• Right to organize commitments</li> </ul> <p><b>Jobs &amp; Labor</b></p>                       | <ul style="list-style-type: none"> <li>• Investment or commitments to affordable housing</li> <li>• Commercial retail</li> <li>• Local businesses prioritized</li> <li>• Community-preferred retail, like: drugstores, laundromat, grocery store</li> </ul> <p><b>Affordable Housing &amp; Preferred Retail</b></p>  | <ul style="list-style-type: none"> <li>• Open space</li> <li>• Green spaces</li> <li>• Access to river and waters</li> <li>• Public art</li> <li>• Lighting</li> <li>• Noise</li> <li>• Construction hours</li> <li>• Traffic &amp; parking</li> </ul> <p><b>Quality of Life</b></p>   |
| <ul style="list-style-type: none"> <li>• Funding for community services</li> <li>• Childcare center</li> <li>• Health center</li> <li>• Art center or school</li> </ul> <p><b>Community Funding &amp; Services</b></p>  | <ul style="list-style-type: none"> <li>• LEED or environmental building certification</li> <li>• Ongoing air monitoring</li> <li>• Covering soil and trucks</li> <li>• Renewable energy</li> <li>• Flood or water mitigation</li> </ul> <p><b>Environmental Benefits</b></p>                                       | <ul style="list-style-type: none"> <li>• Funding for coalition for ongoing monitoring and enforcement work</li> <li>• Including youth</li> <li>• Creating advisory councils</li> <li>• Clear and measurable outputs</li> <li>• Clear and transparent decision-making processes</li> <li>• Accountability and enforcement processes (ex: discussions, meeting with an Arbitrator, lawsuits and financial recovery.)</li> </ul> <p><b>Inclusive Decision-Making</b></p>  |

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Examples of Community Benefits and Protections

See the [Community Benefits Menu](#) for concrete examples of benefits from other agreements that have been passed across the country.

| Vision  | Community Goal   |
|---|--|
|  <p>THRIVING NATURAL WORLD</p> | <ul style="list-style-type: none"> <li>• <u>Clean Air</u></li> <li>• <u>Clean Water</u></li> <li>• <u>Healthy Soil</u></li> <li>• <u>Equitable and Accessible Trees, Green Spaces, Forests, Parks</u></li> <li>• <u>Stormwater Management</u></li> </ul> |

|   |                                   |  |
|---|-----------------------------------|--|
|    | MEANINGFUL WORK AND WEALTH        | <ul style="list-style-type: none"> <li>● <u>Climate Resiliency + Healthy Buildings</u></li> <li>● <u>Thriving Main Street and Businesses</u></li> <li>● <u>Recreational Tourism</u></li> <li>● <u>Good Jobs for Residents</u></li> <li>● <u>Good Benefits for Workers</u></li> <li>● <u>Workforce Development and Vocational Programs</u></li> </ul> |
|    | LIFELONG LEARNING                 | <ul style="list-style-type: none"> <li>● <u>Strong and Equitable K-12 Education</u></li> <li>● <u>Early Childhood Development</u></li> </ul>   |
|    | BELONGING AND CIVIC MUSCLE        | <ul style="list-style-type: none"> <li>● <u>Opportunities and Activities for Families</u></li> <li>● <u>Collaboration and Planning for the Future</u></li> <li>● <u>Public Art</u></li> </ul>  |
|    | BASIC NEEDS FOR HEALTH AND SAFETY | <ul style="list-style-type: none"> <li>● <u>Emergency Safety and Response</u></li> <li>● <u>Access to Healthy Food</u></li> <li>● <u>Public Healthcare and Services</u></li> <li>● <u>Low Noise, Light, and Smell Pollution</u></li> </ul>   |
|    | HUMANE HOUSING                    | <ul style="list-style-type: none"> <li>● <u>Affordable Housing</u></li> <li>● <u>Safe Housing and Weatherization</u></li> <li>● <u>Renewable Energy for Housing</u></li> </ul>   |
|   | RELIABLE TRANSPORTATION           | <ul style="list-style-type: none"> <li>● <u>Road and Sidewalk Safety</u></li> <li>● <u>Biking and Hiking Trails</u></li> <li>● <u>Alternative Transportation and Electric Vehicles</u></li> </ul>  |
|  | INCLUSIVE DECISION-MAKING         | <ul style="list-style-type: none"> <li>● <u>Transparency Between Company and Community</u></li> <li>● <u>Public Participation and Collaborative Decision-Making</u></li> <li>● <u>Monitoring and Enforcement</u></li> </ul>  |

One tool to help your coalition ensure there are concrete benefits is to use S.M.A.R.T.I.E.S. Adapted from S.M.A.R.T. goals, this format can help your group have strong, measurable, and enforceable benefits. S.M.A.R.T.I.E.S. is an acronym to help establish criteria for strong and concrete community benefit goals. Each letter stands for the following:

- **Specific:** States what will happen in clear words.
- **Measurable:** Includes standards by which reasonable people can agree on whether the goal has been met (by numbers or defined qualities).
- **Actionable:** Not so challenging as to indicate lack of thought about resources, capacity, or execution; setting the bar high, but knowing what you can negotiate around.
- **Relevant:** Reflects an important aspect of the community's goals and vision.
- **Timebound:** Includes a clear deadline.
- **Intentionally Targeted Impact:** Is thoughtful in how the development will impact the community and who will be most impacted by the development and creates the benefit to address those impacts.
- **Equitable:** Seeks to address systemic injustice, inequity, or oppression.
- **Supported:** by a diverse coalition.

See the [S.M.A.R.T.I.E.S. worksheet](#) for more information and examples.



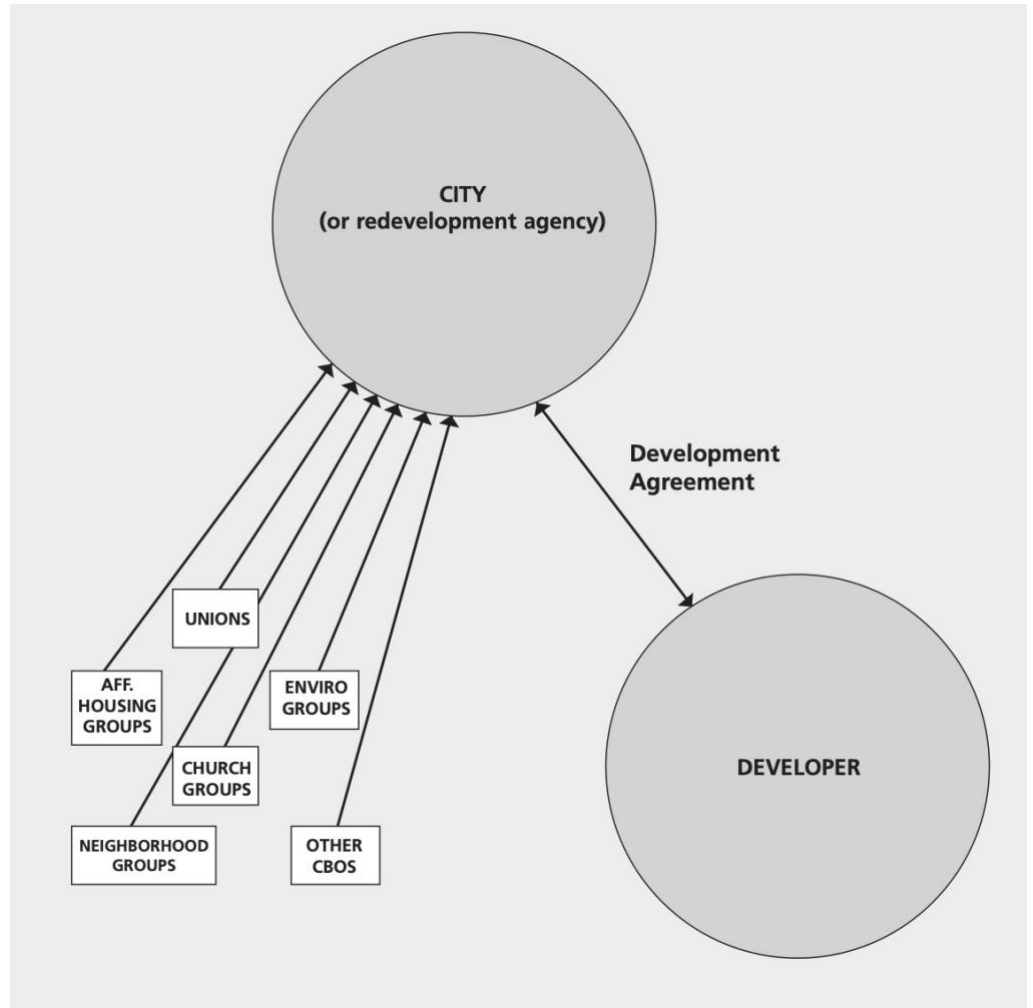


## Why are Benefits Important?<sup>2</sup>

Historically, community members are not involved — and may even be surprised — when new developments begin construction because the process is typically opaque and “behind a cloak.” “Community organizing groups, and the members they organize, have limited mechanisms to influence publicly supported economic development projects. Individuals may testify at land use approval hearings, lobby elected officials, or in some cases, use litigation strategies to delay or derail project approvals. These strategies often frustrate the parties involved, and, in most cases, limit the ability of local residents to meaningfully influence development in their neighborhoods.”<sup>3</sup>

The development process in many communities looks like this:

1. Developers look or ask for government subsidies.
2. Developers need permits or a “stamp of approval” from a municipal, state, or sometimes federal agency or department.
3. There is usually little or no communication between the community and the developer.
4. All development promises go to the municipality or are public relations for the developer.
5. There is little or no coordination between community groups supporting or opposing the development.
6. The community has no enforcement or accountability power to hold the developer to being a good neighbor and following through on their word.

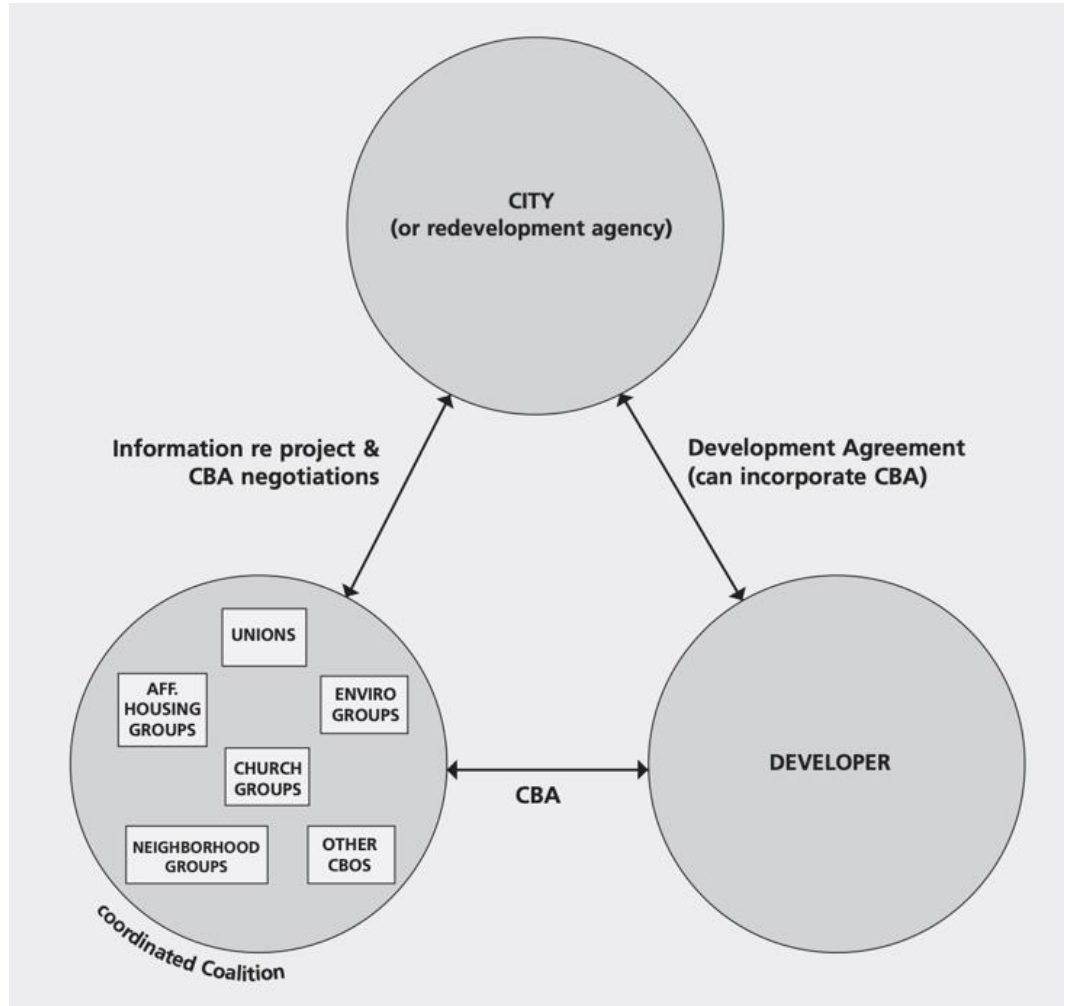


<sup>2</sup> Gross, J. (2005). Community benefits Agreements: Making Development Projects Accountable. <https://goodjobsfirst.org/wp-content/uploads/docs/pdf/cba2005final.pdf>.

<sup>3</sup> DeBarbieri, E. W. (2016). *Do Community Benefits Agreements Benefit Communities?* (Page 178). Brooklyn Law School Legal Studies Research Paper. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2802409](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2802409).

A community benefit process shifts this process, so the community has more power in the decision-making process:

1. The developer promises to go into the legally binding Community Benefit Agreement.
2. The coalition and developer draft and negotiate benefits together.
3. The coalition has legal enforcement power if the developer doesn't follow through. This means that a coalition can take the developer through mediation or court to fulfill the agreed-to benefits and protections.
4. The community builds a coalition and can more easily share information, have strength in numbers, and coordinate advocacy.
5. Municipal and other government entities can feel more certain to approve projects without strong opposition from coalitions.



*Development Process Without Community Benefits*

*Image credit: [Community Benefits Agreements: Making Development Projects Accountable by Julian Gross](#)*

In a nutshell, community benefits have the chance to shift the power back into the community. [See Community Benefits Agreements: Making Development Projects Accountable by Julian Gross](#) for more information.

## Who Is Involved?

There are three groups that are typically involved in community benefits and, if the process is inclusive, representative, and accountable, can lead to positive outcomes for all groups involved.

| Group  | Roles + Responsibilities   | What's In It for Them  |
|--|--|--|
| <p><b>Community Coalition</b></p>         | <ul style="list-style-type: none"> <li>• Builds a diverse coalition.</li> <li>• Creates a shared vision and prioritizes goals based on community needs and strengths.</li> <li>• Can approach a developer or be approached by a developer.</li> <li>• Represents community's interests.</li> <li>• Negotiates and signs the agreement.</li> <li>• Usually has a role to play in ongoing implementation of the agreement.</li> <li>• Usually has a role to play in ongoing monitoring and enforcement.</li> </ul> | <ul style="list-style-type: none"> <li>• Leads to substantial and tangible benefits for the community.</li> <li>• Fosters stronger community coalitions.</li> <li>• Brings new residents into decision-making processes to foster stronger solutions. "As communities organize and gain sophistication, more diverse voices are added to the land use decision process, which was heretofore the exclusive domain of businesses and developers. The inclusion of diverse voices yields better decisions and more positive impacts on citizens' lives."<sup>4</sup></li> <li>• Opens two-way communication and brings transparency between dialogue between communities, developers, and, at times, the municipality.</li> <li>• Levels power imbalances between impacted communities and developers.</li> <li>• Fosters clarity and concrete actions and expectations for the municipality.</li> </ul> |
| <p><b>Developer and/or Company</b></p>  | <ul style="list-style-type: none"> <li>• Can be approached by a coalition or approach a coalition.</li> <li>• Negotiates and signs the agreement.</li> <li>• Usually has a role to play in ongoing implementation of the agreement.</li> <li>• Usually has a role to play in ongoing monitoring and enforcement.</li> </ul>  | <ul style="list-style-type: none"> <li>• Fosters clarity and concrete actions and expectations for the developer.</li> <li>• Puts promises (for example, the number of local jobs) into writing, which can also allow other partners to help them reach that goal (for example, helping them recruit a local, qualified workforce).</li> <li>• Decreases project uncertainty, which can protect against sunk costs or delay costs.<sup>5</sup> "By settling disputes prelitigation, properly negotiated CBAs may lower transaction costs for developers. CBAs bring an added certainty of securing project approval that benefits developers when</li> </ul>   |

<sup>4</sup> DeBarbieri, E. W. (2016). *Do Community Benefits Agreements Benefit Communities?* (Page 1816). Brooklyn Law School Legal Studies Research Paper. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2802409](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2802409).

<sup>5</sup> <https://rmi.org/how-utilities-can-mitigate-risks-through-robust-community-benefits-plans/>


|   |   |   |
|---|---|---|
|   |   | <p>they approach investors and lenders in the capital markets and protects the developers' investment.”<sup>6</sup></p> <ul style="list-style-type: none"> <li>• May fulfill requirements for development funding from the federal government or local laws requiring benefits for certain projects.</li> <li>• Can fulfill Environmental, Social, and Governance (ESG) goals or portions of a Diversity, Equity, Inclusion business plan.<sup>7</sup></li> <li>• Leads to partnerships and solutions that can maximize products and profits. As the VP of a cement manufacturer Sublime Systems said, “The requirements for [Community Benefit Plans] seeded a number of workstreams at Sublime that only make our transition to clean energy manufacturing more resilient, not only deliver not only scaled-up, clean cement to the market – but also deliver multi-sector wins involving high quality jobs, reduced environmental burdens, economic benefits to overlooked communities, and aligned community-specific educational benefits. Delivering additional tangible benefits to neighbors near Sublime facilities is inherent to Sublime’s broader mission in service to humanity and the planet.” This process led Sublime to new partnerships, ideas, and opportunities that ultimately supported their federal funding and future development.<sup>8</sup></li> </ul> |
| <p><b>Municipality</b> (not a required party in Community Benefit Agreements or Good Neighbor Agreements but can play a very helpful role.)</p> | <ul style="list-style-type: none"> <li>• Provides transparency around the project.</li> <li>• Helps to open communication between the community and developer.</li> <li>• Encourages or requires community support for project approval.</li> </ul> | <ul style="list-style-type: none"> <li>• Brings support from voters. Recent research shows that among likely voters, over three-fourths of voters support the use of community benefit agreements on development projects.<sup>9</sup></li> <li>• Puts promises (for example, the number of local jobs) into writing while also allowing other entities to help them reach that goal (for example, helping them recruit a local, qualified workforce).</li> </ul>   |

<sup>6</sup> DeBarbieri, E. W. (2016). *Do Community Benefits Agreements Benefit Communities?* (Page 1781). Brooklyn Law School Legal Studies Research Paper. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2802409](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2802409).

<sup>7</sup> Richardson, J., Draklellis, E, and Clayton, Z. (May 7, 2024). How Utilities Can Mitigate Risks through Robust Community Benefits Plans. Rocky Mountain Institute. <https://rmi.org/how-utilities-can-mitigate-risks-through-robust-community-benefits-plans/>

<sup>8</sup> Chicken, J. (March 28, 2024.) *Community Benefit Plan Innovations*. LinkedIn. <https://www.linkedin.com/pulse/community-benefit-plan-innovations-joe-hicken-fslhe/?trackingId=DXoieEYQ3pNR%2F9itG8KfUA%3D%3D>.

<sup>9</sup> World Resources Institute. (2023). *US Clean Energy Projects Need Public Buy-In. Community Benefits Agreements Can Help*. <https://www.wri.org/insights/community-benefits-agreements-us-clean-energy>.

|   |  |   |
|---|--|---|
|  | <ul style="list-style-type: none"> <li>• Can take responsibility for ongoing implementation of the agreement (in instances when implementation overlaps with municipal duties or programs).</li> <li>• Can take responsibility for ongoing monitoring and enforcement (in instances when implementation overlaps with municipal duties, programs, or data that is being collected).</li> <li>• Can be included into Host Community Agreements or Community Benefit Ordinance to automatically standardize as a process.</li> </ul> | <ul style="list-style-type: none"> <li>• Fosters clarity and concrete actions and expectations for the municipality.</li> <li>• Provides an ongoing channel to have open communication between municipality, developer, and community.</li> </ul> |
|---|--|---|

## Who Is Part of a Community Coalition?

A community coalition is a group of organizations representing the community that come together for a common goal. “It is key for a CBA coalition to be representative of as many of the varying community interests surrounding the project as possible...in certain CBA campaigns where the coalition was not representative of different views on the community...CBAs are not likely to be accepted or seen as legitimate by the community.”<sup>10</sup> For example, a coalition could include nonprofits, faith-based groups, neighborhood associations, community development corporations, and, at times, representatives from the local municipality. Strong community benefits require a diverse coalition that can represent the needs and voices of the community. Coalition members must fairly represent different areas of identities, interest, knowledge, and expertise, and research shows that “it is essential that board membership on Community Advisory Boards is diverse across a variety of factors. These include: social identity such as age, gender, race, socioeconomic background, sexual orientation, occupation, creed, geography, ability, and so on.... In addition, effective Coalitions requires members with a range of professional backgrounds (for example, an environmental law background, communications background, or a community organizing background), but also by experience, skills, and perspectives”<sup>11</sup> on the project.

Often, the most successful “members are willing and able to engage with their community outside of...meetings...”<sup>12</sup> and “who have strong but informal connections to the community and who can demonstrate an ability to recruit new members, potentially through social media platforms or otherwise.

We believe that inviting coalition members who represent these characteristics will lead to stronger and more equitable benefits because it ensures diverse representation that can bring unique strengths, perspectives, and experiences into the process. We recommend building relationships and engaging with people and groups who fit the following characteristics, adapted from the Larimer County, CO Equity, Diversity, and Inclusion Advisory Board.<sup>13</sup>

- Belong to communities that have a history of environmental injustice and/or most impacted neighborhoods (as identified currently as an EJ community per federal screening map).
- Bring a connection to, relationship with, and advocacy for specific communities, particularly communities that are environmental justice communities and/or most impacted neighborhoods.
- Have a professional background, community leadership, or other relevant experience in mostly impacted neighborhoods, environmental justice issues and/or public health.
- Know how to impact institutional change in the areas of environmental justice, and/or public health.

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<sup>10</sup> DeBarbieri, E. W. (2016). *Do Community Benefits Agreements Benefit Communities?* (Page 1784). Brooklyn Law School Legal Studies Research Paper. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2802409](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2802409).

<sup>11</sup> Clark, J. & Friedman, B. *Community Advisory Board: What Works and What Doesn't – Lessons from a National Study* (page 13). Policing Project at NYU Law. <https://knowledgebank.criminaljustice.ny.gov/system/files/documents/2023/09/community-advisory-boards-what-works-and-what-doesnt.pdf>.

<sup>12</sup> Clark, J. & Friedman, B. *Community Advisory Board: What Works and What Doesn't – Lessons from a National Study* (page 13). Policing Project at NYU Law. <https://knowledgebank.criminaljustice.ny.gov/system/files/documents/2023/09/community-advisory-boards-what-works-and-what-doesnt.pdf>.

<sup>13</sup> Larimer County, Colorado. Boards and Commissions: Equity, Diversity, and Inclusion Advisory Board. <https://www.larimer.gov/boards#/board/equity-diversity-and-inclusion-advisory-board/>.

- Bring intersectional experience across multiple dimensions of diversity, including racial, socioeconomic, gender, disability, and intergenerational.

Additionally, because this coalition will be part of the ongoing process of community engagement and community benefit negotiation within each host community, we recommend using [Community Common’s 7 Vital Conditions for Health and Well-Being](https://www.communitycommons.org/collections/Seven-Vital-Conditions-for-Health-and-Well-Being) to further support engaging strong coalition members who represent diverse sectors. “The Seven Vital Conditions for Well-Being is a useful framework for conceptualizing holistic well-being and the Conditions that give rise to it, as well as identifying levers for community change and improvement. It brings together major determinants of health, exposing how parts of a multi-faceted whole work as a system to produce population well-being. This framework helps users consider the properties of places and institutions that all people need all the time to be healthy and well.”<sup>14</sup> This framework can be a helpful tool to ensure the appropriate representation from various communities that bring direct expertise to your community benefits work. It includes the following seven sectors: Thriving Natural World; Basic Needs for Health and Safety; Humane Housing; Meaningful Work + Wealth; Lifelong Learning; Reliable Transportation; Belonging and Civic Muscle.

| 7 Vital Conditions <sup>15</sup> | Examples of Representative Group or Organization   | Characteristics of Representative Partners <sup>16</sup>   |
|----------------------------------|--|--|
| Thriving Natural World           | <ul style="list-style-type: none"> <li>● Environmental justice organization</li> <li>● Waterkeepers group</li> <li>● Tree or community garden leaders</li> <li>● Citizen science groups, including air and water monitoring programs</li> </ul>  | <ul style="list-style-type: none"> <li>● Belong to communities that have a history of environmental injustice and/or most impacted neighborhoods (as identified currently as an EJ community per federal screening map).</li> <li>● Bring a connection to, relationship with, and advocacy for specific communities, particularly communities that are environmental justice communities and/or most impacted neighborhoods.</li> <li>● Have a professional background, community leadership, or other relevant experience in mostly impacted neighborhoods, environmental justice issues and/or public health.</li> <li>● Know how to impact institutional change in the areas of environmental justice, and/or public health.</li> </ul> |
| Basic Needs for Health + Safety  | <ul style="list-style-type: none"> <li>● Community health centers</li> <li>● Emergency responders</li> <li>● Public health departments</li> <li>● Mental health providers</li> <li>● Addiction and recovery support</li> <li>● Domestic violence shelters</li> <li>● Farmers or agricultural business</li> </ul> |  |
| Humane Housing                   | <ul style="list-style-type: none"> <li>● Affordable housing agency</li> <li>● Local affordable housing developer</li> <li>● Neighborhood alliances</li> </ul>  |  |
| Meaningful Work + Wealth         | <ul style="list-style-type: none"> <li>● Labor groups and Unions</li> <li>● Local small businesses</li> <li>● Workforce development</li> </ul>   |  |

<sup>14</sup> Community Commons. “7 Vital Conditions for Health and Wellbeing.” <https://www.communitycommons.org/collections/Seven-Vital-Conditions-for-Health-and-Well-Being>.

<sup>15</sup> Community Commons. “7 Vital Conditions for Health and Wellbeing.” <https://www.communitycommons.org/collections/Seven-Vital-Conditions-for-Health-and-Well-Being>.

<sup>16</sup> Adapted from the Larimer County, CO. Boards and Commissions: Equity, Diversity, and Inclusion Advisory Board. <https://www.larimer.gov/boards#/board/equity-diversity-and-inclusion-advisory-board/>.

|                            |  |  |
|----------------------------|--|--|
|                            | <ul style="list-style-type: none"> <li>• Community development corporation</li> <li>• Basic needs social service organization</li> </ul>   | <ul style="list-style-type: none"> <li>• Bring intersectional experience across multiple dimensions of diversity, including racial, socioeconomic, gender, disability, and intergenerational diversity.</li> </ul> |
| Lifelong Learning          | <ul style="list-style-type: none"> <li>• Youth development organization</li> <li>• School boards or school superintendent</li> <li>• Library</li> <li>• Community college or local university</li> <li>• Head Start programs</li> <li>• Museum</li> </ul>                      |  |
| Reliable Transportation    | <ul style="list-style-type: none"> <li>• Biking or hiking grassroots groups or clubs</li> <li>• Public transit entity</li> <li>• Local business specializing in electric transportation.</li> </ul>  |  |
| Belonging and Civic Muscle | <ul style="list-style-type: none"> <li>• Racial justice organization</li> <li>• Civic engagement group</li> <li>• Faith institutions</li> <li>• Community centers</li> <li>• Senior centers</li> <li>• Art organizations or centers</li> <li>• Community foundation</li> </ul> |  |



## When are Community Benefits Right?

Community benefits can be a powerful tool, especially in the right situation. There are two things that can help you answer if it's the right situation:

### **Baseline of Community Support**

- The coalition can actively support the development IF certain conditions are met. (For example, green space guarantees.) OR
- The coalition can agree to not protest or oppose the facility IF certain conditions are met. (For example, stronger air quality monitoring, truck routes that stay out of neighborhoods, or local hiring promises.) OR
- A coalition has worked hard to oppose a development, however, sees that the development will be built or continue to receive an operating permit. (See "What About Community Benefits with a Development the Community Doesn't Want?")

### **Community Coalition has Leverage**

- **Municipal Support:** If the municipality needs to approve the development through public subsidies, sale of public property, zoning changes, other public managed investments, and/or approval of the proposed project.
- **Threat of Legal Action:** If your coalition will bring legal action over potential permits or current violations.
- **Requirements by Law or Funding:** If the developer is required to complete an agreement by municipal ordinance or funding opportunity.
- **Geographic Uniqueness:** If the developer needs to be in your community because they need a particular geographic or infrastructure.
- **Developer Needs Buy-In:** If the developer needs community buy-in to proceed, potentially because of bad publicity in the past or a change in ownership.

There are a few additional conditions that could impact the leverage. These conditions could lead the coalition to negotiate larger benefits more successfully. Leverage conditions include:

- **Coalition Size:** The larger the coalition, the more power your coalition has to advocate and protest.
  - A large coalition puts pressure on how municipalities can help by showing a large voting bloc in support of community benefits and working together.
  - A large coalition puts pressure on the company by showing a large number of community members who could, potentially, protest the development if the company does not come to the table.
  - A large coalition brings in a lot of different types of expertise to discuss specific benefit topics (for example, having a housing nonprofit bringing their expertise for housing benefits and an environmental nonprofit bringing their expertise on air monitoring technology).



*Less Leverage*



*More Leverage*

- **Coalition's Past Successes:** The more experience being involved in local decision-making your coalition has, likely the more power they have. This experience can bring:
  - Knowledge of and relationships with local powerbrokers, and a general understanding of how power is used and held in your community.
  - Past success in protesting against various developments. This can put more pressure on developers to come to the negotiation table because they do not want to be in a protest situation with a coalition who

has successfully protested a previous development. This slows their progress and financial security with funding and investments.



Less Leverage



More Leverage

- **Size of Development:** Generally, the larger the development (in terms of size, operations, and financial need), the larger the benefits a coalition can negotiate. This is due to a few realities:
  - Higher future earnings: Generally, a larger development will also be associated with higher potential for future earnings. This can help a coalition negotiate for larger or more comprehensive benefits. This also means that the development needs substantial capital to be built, giving the coalition more leverage during negotiations.
  - Larger impacts: Usually, a larger development will also have more negative impacts on the environment, public health, and community. This requires the coalition to negotiate strong benefits to protect their community’s well-being.
  - More permits and approvals: Frequently, the larger the development, the more approvals that development would need from local, state, and sometimes federal agencies. This gives the coalition more leverage and opportunities to protest in the future should the developer not come to the table with the openness to work together.



Less Leverage



More Leverage

### Story of a Successful CBA with Less Leverage

**Coalition size** In one community, a group of three youth development nonprofits got together to form a coalition to negotiate a community benefits agreement with an incoming solar farm. The coalition was worried the solar farm would displace some of their afterschool program participants. They had not worked on community benefits, and this was their first time engaging with City Council and trying to advocate for their needs. While researching the development, they found out the biggest impact it would have was decreasing street parking availability during construction. They also discovered that the solar farm fits in their municipality’s zoning plan, therefore it didn’t need any zoning approvals, just a construction permit. The coalition gave negotiations their best shot, and arrived at an agreement that the developer will provide community education around solar to their afterschool program participants.

**Coalition’s past successes**

**Size of development**

**Outcome**





### Story of a Successful CBA with More Leverage

In a neighboring community, a public health coalition heard about a similar incoming green steel manufacturer. The coalition was made up of the same youth-development nonprofits, in addition to faith leaders, public health agencies, social service providers, housing nonprofits, an environmental grassroots group, and a community development corporation. The coalition was worried the manufacturer would displace many families who live in the area. The coalition had worked with City Council in the past around several park initiatives to increase the tree canopy in the

Coalition size

Coalition's past successes

lowest-income neighborhood. Also, the community development corporation had negotiated a successful CBA in the past when the local hospital was looking to expand, and, in the CBA with the hospital, achieved benefits including hiring health outreach workers; development of two public access parks; construction noise and truck hours; and a yearly funding that would go into the local school district and fund STEM workforce development programs. When doing their research, this coalition

found out that the manufacturer was going to increase air pollution, truck traffic on Main Street, loud noises (especially between 5-8pm), and negatively impact their city's stormwater and flooding. The coalition found out that their town didn't have zoning, therefore there weren't any local approvals needed, but that they needed multiple state permits. In their research, they also discovered that the same manufacturing company had three permit violations for wastewater discharge in another county. With this information at hand, the coalition approached the developer. They said that they want to work with the developer to negotiate community benefits, and, if the company was not interested, the coalition was going to create a strong oppositional force during the state permitting process and was going to go to the media sharing the other permit violations information. The company came to the negotiation table.

Size of development

Outcome

During negotiations, the environmental group recommended strong air and water monitoring and mitigation strategies, the health agency recommended health impact studies before and after operations begin, and the community development corporation was able to offer strong solutions to mitigate truck traffic and noise and brought in a local expert on stormwater management to offer solutions to flooding concerns. Lastly, the group was able to negotiate a yearly contribution of \$500,000 to the local school district for afterschool STEM education programming.

## What is a Strong Community Benefit Process?

A strong process will lead to strong benefits. Green flags include the following<sup>17</sup>:

- “Community interests are well-represented by diverse coalition members.
- CBA process is transparent, inclusive, and accessible.
- Concrete, meaningful benefits deliver what the community needs.
- Clearly defined enforcement mechanisms ensure accountability.”

As much promises as community benefits have, it is important to look out for red flags that could lead to weak agreements. The Partnership for Working Families and the Community Benefits Law Center suggest that when CBAs are weak, the developer could use the CBA as a tool to benefit itself by retaining all real power; the community may be misled and the benefits never come to fruition; or the CBA may provide some benefits, but not the benefits truly needed by the impacted community.<sup>18</sup>

| Red Flags   | Why this is a Red Flag  | How To Turn Into a Green Flag   |
|---|---|---|
| Little community participation or the coalition lacks broad-based representation from a diverse range of sectors and needs. | A diverse coalition provides more leverage, builds more “people power,” brings unique expertise, and ensures the full community is represented. | <ul style="list-style-type: none"> <li>• Take the time to build up the coalition.</li> <li>• Use the Representative Coalition Checklist in the <a href="#">Community Benefits Process</a> to help identify strong and needed coalition members.</li> </ul>  |
| The coalition has little trust or “togetherness.”   | Often, “divide-and-conquer” strategies will be used to try and give some coalition members what they want to create conflict.                   | <ul style="list-style-type: none"> <li>• Engage in intentional trust-building exercises, including:               <ul style="list-style-type: none"> <li>○ Activities helping partners name who they are there representing.</li> <li>○ Activities helping partners name their strengths and expertise.</li> <li>○ Activities helping partners name their gaps or organizational constraints.</li> </ul> </li> <li>• Come back to the shared vision that the group created at the beginning.</li> </ul> |

<sup>17</sup> Partnership for Working Families and Community Benefits Law Center. Common Challenges in Negotiating Community Benefit Agreements and How To Avoid Them, page 9. Four Principles of Successful CBAs: <https://citizensplanninginstitute.org/wp-content/uploads/2022/06/Effective-CBAs.pdf>.

<sup>18</sup> Partnership for Working Families and Community Benefits Law Center. Common Challenges in Negotiating Community Benefit Agreements and How To Avoid Them, page 9. Four Principles of Successful CBAs: <https://citizensplanninginstitute.org/wp-content/uploads/2022/06/Effective-CBAs.pdf>.

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| <p>The structure for community participation or the Advisory Board is weak and leaves holes for the developers to retain full decision-making power.</p> | <p>A weak participatory process can lead to developers retaining all meaningful decision-making power.</p>   | <p>Negotiate and create Advisory Board or committees which have:</p> <ul style="list-style-type: none"> <li>• Clearly defined board/committee goals, roles and responsibilities, including any specific decision-making points the board or committee should be involved in, or limits to the group's decision-making power.</li> <li>• Over-represented number of members who represent the developer or who directly benefit from the development, so the community's interests or concerns will always be voted down.</li> <li>• Requirements for quorum to have discussions and make decisions (so that a select number of members meet independently to make decisions).</li> <li>• Clear process about who is invited to participate, and the characteristics, experience, or skills that members must demonstrate.</li> <li>• Clear voting processes, and how the board or committee will resolve conflict or differences in opinion.</li> <li>• Clear transparency about how the board or committee will communicate and integrate feedback from the broader community.</li> <li>• Clear dispute resolution processes.</li> </ul> |
| <p>Negotiations are secret and exclusive.</p>  | <p>This looks like a small group who is doing all the planning and negotiating with the company, and no clear communication mechanism to share updates and seek feedback from the broader coalition.</p> | <ul style="list-style-type: none"> <li>• Build and facilitate communication and transparency activities early and often.</li> <li>• Use a variety of methods to ensure transparency, including open meetings, social media, outreach activities, and mailings.</li> </ul>   |
| <p>Agreement commitments are vague.</p>  | <p>This allows parties to opt-out, make promises "voluntary," or include a lot of "good-faith" efforts without concrete and objective assessments or outputs.</p>  | <ul style="list-style-type: none"> <li>• Use <a href="#">S.M.A.R.T.I.E.S.</a> to build strong benefit language to make all benefits concrete with objective assessments or outputs.</li> <li>• Find ways to measure long-term outcomes by assessing the degree by which that outcome is being met. For example, some long-term health benefits such as asthma or cancer rates could take a long time to assess. Look for ways to measure that outcome at various intervals and by what degree can be measured to assess and report. (For example: Within one year, at least a 15% drop in asthma Emergency Room visits by</li> </ul>  |

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|   |  | children ages 0-15, as measured and reported by City Hospital during annual report to Advisory Committee; within two years, at least a 23% drop in asthma Emergency room visits by children ages 0-15, etc.)   |
| No formal accountability process, or a process that is too intensive and complicated for a nonprofit. | Without a clear structure to monitor progress, it is impossible to hold each other accountable to following through on commitments.<br>Or, on the flipside, the monitoring and enforcement process is long and intensive and too much for a small community-based nonprofit without institutional support.   | <ul style="list-style-type: none"> <li>● Incorporate discussions about the accountability process early in negotiations.</li> <li>● Ensure a process for ongoing communication. “The most effective CBAs include an arrangement where the community feels free to communicate any demands, questions, or suggestions to the developer at any time, and where the developer responds 100 percent of the time – regardless of whether the answer is what the community hoped for or not.”<sup>19</sup></li> <li>● Negotiate nonprofit capacity (including funding or staffing) if they have some ongoing monitoring responsibilities.</li> </ul> |
| Projects are already fully designed and then the community is brought in at the end to “sign-off.”    | Community benefit processes should step from the community’s needs; therefore, the community should be part of creating the vision and prioritizing goals and needs. If the benefits are already fully designed, there is a good chance the community’s true needs will not be met through a transparent and inclusive process.  | <ul style="list-style-type: none"> <li>● Create a shared vision and prioritize benefits first, before engaging in ongoing negotiation meetings with the developer.</li> <li>● Use the <a href="#">Retreat Agenda</a> and <a href="#">Community Benefits Menu</a> to help your group make sure you are starting off advocating for your strongest benefit and protections.</li> <li>● Work with an attorney and use the negotiation strategies in <a href="#">Community Benefits Process</a> help give your coalition an understanding of negotiation practices.</li> </ul>   |
| The Developer or Company that begins negotiations doesn’t have sign-off power.                        | The entities that are in negotiations should all have the power to agree to, solidify, and confirm final benefits. There have been instances when a community group begins negotiations with some representatives of a company, however as negotiations or permitting went forward, separate company representatives took over negotiations and had no interest in continuing in good faith. | <ul style="list-style-type: none"> <li>● Make sure that the entity you are engaging with is actually the one who can make the commitments being negotiated.</li> </ul>   |

<sup>19</sup> Rose, J., and Haggerty, J. (August, 2018). *Community Benefit Agreements And Funds* (page 2). Resources & Communities Research Group. [https://static1.squarespace.com/static/5490f581e4b040d63fb03c5f/t/5ca4b8c8104c7b0d3418db30/1554299081198/CBAreport\\_Final+.pdf](https://static1.squarespace.com/static/5490f581e4b040d63fb03c5f/t/5ca4b8c8104c7b0d3418db30/1554299081198/CBAreport_Final+.pdf).

## What Can We Expect In Negotiations, Monitoring, and Enforcement?

Once the developer agrees to partner together on community benefits, it's time to negotiate. Negotiation is a "... back-and-forth communication designed to reach an agreement when you and the other side have some interests that are shared and others that are opposed."<sup>20</sup> **Negotiations are not battles.** It is not a competition to "beat" the other side. There needs to be a give-and-take or a mutual exchange of value. The bottom line is that when negotiating, you are looking for a win-win scenario.

Negotiating in a legal setting or with for-profit companies is often new for nonprofits and grassroots groups. We encourage you to work with an attorney at this point, as well as reach out to other groups who have negotiated community benefits to learn from their successes and challenges.

### Negotiation FAQs:

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| <p>Do We Need an Attorney for Negotiations?</p> | <p>It's not required but advised! As Julian Gross notes: "Attorneys will have to become involved at some point, since CBAs are enforceable contracts, with real legal consequences for both the developer and the community groups. Ideally, the neighborhood organizations will start the negotiations directly with the developer, and attorneys for both sides are brought in to formalize the contracts after an agreement has been reached. In such cases the role of the attorney is simply to memorialize, in a legally enforceable manner, the substance of the agreement. However, one side or the other may wish to have an attorney help conduct its part of the substantive negotiations. <i>If the developer negotiates through an attorney, community groups should negotiate through one as well.</i>"<sup>21</sup> Attorneys can also help coalitions understand other issues that the company may bring up. For example, one partner shared that the company tried to weaponize the coalition's lack of technical knowledge during negotiations (for example, understanding of land use law). In this case, an attorney can help the coalition understand those laws that could be activated or impacted through the agreement.</p>   |
| <p>What Can We Expect During Negotiation?</p>   | <p>These six steps of negotiation are often present during negotiations — but it's important to remember that they aren't always linear — you may come back to some steps or some steps may take a long time:</p> <ul style="list-style-type: none"> <li>● <b>Preparation:</b> This includes logistics, attendance, agenda, determining negotiation strategy and position, determining alternative scenarios and the best alternative to a negotiated agreement (or <a href="#">BANTA</a>), and research.</li> <li>● <b>Discussion:</b> Each side presents their position (opening offer) with equal time. Skills to practice at this stage include questioning, listening, and clarifying. Take notes to ensure clarity and preserve issues.</li> <li>● <b>Clarifying Goals:</b> Goals, interests, and viewpoints of each side need to be clarified. This is done to avoid misunderstandings and to help craft a mutually beneficial outcome.</li> <li>● <b>Negotiation of a Win-Win Outcome:</b> This is the point where both sides have made some gains and are invested in an agreement. A true, equal win-win is not always possible, but each side needs to feel they got something. To arrive at this point, one needs to suggest alternative strategies and compromises. Look for positive alternatives.</li> <li>● <b>Agreement:</b> Sometimes called agreement in principle. The written details are worked out at this point. Sometimes it can still fall apart here — the devil is in the details as they</li> </ul> |

<sup>20</sup> Fisher, R. and Ury, W. (2001). Getting to Yes. Penguin Books.

<sup>21</sup> Gross, J. (2005). Community Benefits Agreements: Holding Development Projects Accountable, page

11. <https://goodjobsfirst.org/wp-content/uploads/docs/pdf/cba2005final.pdf>.

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|   | <p>say. Keep an open mind and continue to ask questions of the other side — probe why they may insist on certain language.</p> <ul style="list-style-type: none"> <li>● <b>Implementation the Agreed Upon Course of Action:</b> This is an important step even though it can seem like an afterthought at the time. Each side needs to be committed to full implementation of the agreement and should be held accountable if they fail to perform in good faith. Don't stop observing the issue, keep the other side honest. "Trust, but verify," as the saying goes.</li> </ul>  |
| <p>How Can We Be Prepared for Negotiations?</p>           | <p>Getting an attorney, building a trusting coalition, having a strong start in your coalition's vision, goals, and benefit priorities, and identifying strong leverage are great steps. Your group can also think about Harvard's Program on Negotiation's <i>Seven Elements of Negotiation</i><sup>22</sup>:</p> <ul style="list-style-type: none"> <li>● <b>Interests:</b> Personal interests are the fundamental drivers of negotiation — our basic needs, wants, and motivations. They can be unspoken or hidden, but they guide us regardless. Experienced negotiators ask questions to probe their counterpart's position to better understand the underlying interests.</li> <li>● <b>Legitimacy:</b> The goal is for a legitimate, fair agreement. To succeed in negotiating an agreement and in implementation, the other side must see the process as legitimate and fair. <i>Why is this important?</i> Not only do we all want fairness, but it also supports efficiency. A deal that is seen as illegitimate will fail and send everyone back to square one.</li> <li>● <b>Relationships:</b> Managing your relationship with your counterpart is essential, especially with ongoing relationships and implementation. Don't burn bridges. Follow the Golden Rule. Be respectful and adhere to your own ethical standards.</li> <li>● <b>Alternatives &amp; BATNA:</b> Be prepared to pivot to an alternative position. Have a fall back alternative. But also, be aware of your BATNA — Best Alternative To a Negotiated Agreement. This is what you get if negotiations fall apart. This should be compared throughout negotiations to whatever is on the table and will help you to evaluate proposals.</li> <li>● <b>Options:</b> This refers to horse-trading. It refers to the parties' choices for satisfying their position and can include contingencies, conditions, and trades. For example, the amount of money a company will contribute to a specific benefit, or who will be part of an Advisory Committee.</li> <li>● <b>Commitments:</b> This does not necessarily refer to the entire agreement, but elements that the other party has committed to. They are steps in the process.</li> <li>● <b>Communication:</b> A successful negotiation hinges on communication choices. Be measured in your communications and consider all angles. Do your best to avoid rushing through a negotiation. If you need to take time to consider a communication, please do so.</li> </ul> |
| <p>How long does the agreement last?</p>                  | <ul style="list-style-type: none"> <li>● The community benefits begin on the day that it was signed, unless stated otherwise.</li> <li>● A timeline is usually included in the agreement, including how long monitoring and enforcement should last. It's usually years, if not decades or "in-perpetuity" (which means forever).</li> </ul>   |
| <p>Who has oversight and monitoring responsibilities?</p> | <ul style="list-style-type: none"> <li>● Part of negotiations is what monitoring and oversight activities should exist, who has responsibility to complete those activities, how ongoing communication should happen during the monitoring period, and how updates are provided back to the broader community.</li> </ul>  |

<sup>22</sup> Shonk, K. (February 1, 2024). Harvard Law School Program on Negotiation. *What Is Negotiation? Learning the building blocks of indispensable negotiation business skills.* <https://www.pon.harvard.edu/daily/negotiation-skills-daily/what-is-negotiation/>.



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|   | <ul style="list-style-type: none"> <li>● Usually, agreements include a group of coalition members and company members who take responsibility to meet on an ongoing basis to oversee and monitor how the agreement is going. This may include shifting or changing some of the activities based on how they are working. Sometimes municipalities can take part in some monitoring activities, for example, if they are already maintaining a database of public health outcomes and there is a specific public health outcome the agreement is working on, the municipality could oversee monitoring and providing that data back as part of the monitoring process.             <ul style="list-style-type: none"> <li>○ Common oversight processes include:                 <ul style="list-style-type: none"> <li>▪ Advisory Board: In a Community Benefit Agreement for a sports stadium<sup>23</sup>, the Advisory Board that created and negotiated the agreement agreed to continue meeting and take responsibility for ongoing monitoring of the agreement. For this process, the Advisory Board said that they will create an annual report which states all activities completed that year within the agreement; provide examples of the coalition and the company’s compliance with the agreement; and make recommendations to ensure ongoing compliance. The company pays for this report, and the coalition and company make the report public and shared during neighborhood meetings.</li> <li>▪ Oversight Committee: In a Good Neighbor Agreement between a coalition and mining company<sup>24</sup>, they agreed to create an Oversight Committee. The oversight committee includes two people nominated by the coalition, and two individuals named by the company. The committee meets at least twice a year or more frequently if one party requests it and discusses oversight and implementation of the agreement to monitor compliance; addresses issues of concern; provides a space for open communication between the coalition, communities, and the company; oversees the development of all audits, plans, programs, studies, and monitoring; resolves disputes when they arise; and serves as a decision-making body.</li> </ul> </li> </ul> </li> </ul> |
| <p>What happens if one party is not complying with the agreement?</p> | <ul style="list-style-type: none"> <li>● Another part of negotiations is what happens if one party is not in compliance, or there is conflict between the coalition and the company.</li> <li>● Conflict processes can include these types of enforcement steps:</li> </ul>  |

<sup>23</sup> Columbia Law School Sabin Center for Climate Change Law. (2018). *Nashville MLS Soccer Community Benefits Agreement*. Retrieved from Community Benefits Agreements Database: <https://climate.law.columbia.edu/sites/default/files/content/CBAs/Nashville%20MLS%20CBA.pdf>.

<sup>24</sup> Northern Plains Resource Council. (2000). Northern Plains Resource Council. Retrieved from *Good Neighbor Agreement between Still Water Mining Company and Northern Plains Resource Council, Cottonwood Resource Council, Stillwater Protective Association*: [https://northernplains.org/wp-content/uploads/2022/07/FinalCopy\\_GNA\\_2016\\_12\\_9.pdf](https://northernplains.org/wp-content/uploads/2022/07/FinalCopy_GNA_2016_12_9.pdf)

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|  | <div style="display: flex; flex-direction: column; align-items: center;"> <div style="display: flex; align-items: center; width: 100%; border: 1px solid #ccc; border-radius: 10px; margin-bottom: 10px;"> <div style="background-color: #76b82a; color: white; padding: 10px; text-align: center; width: 150px; margin-right: 10px;">Meetings</div> <div style="flex-grow: 1; padding: 10px;">Discussion between the coalition and company through good-faith efforts.</div> </div> <div style="display: flex; align-items: center; width: 100%; border: 1px solid #ccc; border-radius: 10px; margin-bottom: 10px;"> <div style="background-color: #76b82a; color: white; padding: 10px; text-align: center; width: 150px; margin-right: 10px;">Arbitration</div> <div style="flex-grow: 1; padding: 10px;">Arbitration is a way of handling a conflict without going through judiciary court proceedings. In this process, one party attempts to enforce any parts of the agreement with the help of an Arbitrator. The arbitrator can have the power to order either party to rectify the issue.</div> </div> <div style="display: flex; align-items: center; width: 100%; border: 1px solid #ccc; border-radius: 10px; margin-bottom: 10px;"> <div style="background-color: #76b82a; color: white; padding: 10px; text-align: center; width: 150px; margin-right: 10px;">Relief in Court</div> <div style="flex-grow: 1; padding: 10px;">One party can begin legal proceedings to enforce specific issues or problems.</div> </div> <div style="display: flex; align-items: center; width: 100%; border: 1px solid #ccc; border-radius: 10px;"> <div style="background-color: #76b82a; color: white; padding: 10px; text-align: center; width: 150px; margin-right: 10px;">Attorney Fees</div> <div style="flex-grow: 1; padding: 10px;">If one party is in default (not complying with the agreement), the other party will pay the court fees.</div> </div> </div> |
| <p>Can the Agreement be Terminated?</p>  | <p>Most agreements have language about termination. Most of the time, it is terminated at the end of a timeframe that is written into the document. Other agreements have specific language giving the company or coalition the power to terminate the contract. For example, the Good Neighbor Agreement with the mining company states that it can be terminated if the mining operations stop, all closure and reclamation activities are completed as required by their state permits, and the water quality of all discharges has returned to baseline water quality.</p>   |
| <p>How can we make sure we have enough time and capacity to monitor the agreement?</p> | <p>Some agreements include funding for nonprofits who are involved in implementation and monitoring activities. This funding is often paid by the company directly, or the company and nonprofits will work together to seek funding. We recommend adding this into your agreement to ensure that nonprofit coalition members have the time built into their job descriptions to support this work.</p>  |

## Ready to move community benefits forward in your community?

**Keep reading to learn how we are doing it in Beaver County and for resources you can use to advocate and negotiate for benefits and protections!**

### What About Community Benefits with a Development the Community Doesn't Want?

There may be times when the community doesn't necessarily want a facility, maybe has tried to use all their power during permitting and commenting periods without luck or is also very concerned about the negative public health, environmental, and economic impacts a facility that is already operating has in their community. In the Ohio River Valley, these could include building new fracking infrastructure, pyrolysis facilities, or building or expanding large petrochemical facilities. These are really hard situations for environmental justice communities. "Securing long-term local benefits of extractive industries is a far riskier proposition, as local communities often bear a far greater share of post-development costs than does industry. Such costs include out-migration, environmental contamination, and an 'over-adaption' of labor force and infrastructure that constrain future economic development opportunities. For these reasons, communities anticipating industrial projects need to think about mitigating impacts...and about long-term economic and social development and wealth retention."<sup>25</sup> In these cases, communities may decide that mitigating harm is the best strategy, and a Community Benefit Agreement (for new facilities) or Good Neighbor Agreement (for already-operating facilities) could be a strong tool to protect their health and wellbeing.

It can be hard to know where the line is between "advocating against a facility" and "negotiating with the company for benefits and protections," as it comes with the nuanced feelings of both giving up and letting a harmful industry into the community while at the same time protecting or mitigating against some of the most harmful impacts. Here are some signs that shifting from protesting against to negotiating with a company could be an important strategy to mitigate against potential harm:

- Local zoning laws allow the facility to be built without any local permits or stamps of approval.
- Company secures financing.
- Company receives local or state permits.
- Company has a large amount of support from local, state, or federal decision-makers.

A few additional tips to consider when negotiating CBAs with extractive industries:

- **Negotiate Direct and Indirect Benefits and Protections:** Community Benefit Agreements and Good Neighbor Agreements have been used in large refinery modernization projects, mining projects, and power stations. The items included in CBAs with extractive industries are usually like other industries. These often include job and labor priorities and protections, and quality of life benefits. Additionally, these agreements also emphasize:
  - Permanent investments.
  - Environmental and public health monitoring, protections, and accountability that go above-and-beyond already required permitting requirements.
  - Economic diversification initiatives to protect against boom-and-bust cycles.

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<sup>25</sup> Rose, J., and Haggerty, J. (August, 2018). *Community benefit Agreements And Funds* (page 2). Resources & Communities Research Group.  
[https://static1.squarespace.com/static/5490f581e4b040d63fb03c5f/t/5ca4b8c8104c7b0d3418db30/1554299081198/CBAreport\\_Financial+.pdf](https://static1.squarespace.com/static/5490f581e4b040d63fb03c5f/t/5ca4b8c8104c7b0d3418db30/1554299081198/CBAreport_Financial+.pdf).

- **Shoot Big:** CBAs are a negotiation. During negotiation, both sides usually must give some things up to reach a mutually-agreed-upon decision. That means that communities should be prepared to ask BIG, knowing that you will most likely need to walk back some of those BIG asks to smaller ones that still can help you reach your needs. And, at the same time, know where your coalition will draw any “red lines” and be OK walking away from the negotiation table if these lines aren’t met or aren’t met to a satisfactory outcome. These “red lines” could include your most important items to protect your health and wellbeing.
- **Compensate Community Time and Capacity:** These are often large agreements which will require a lot of ongoing monitoring and enforcement, often in communities which are already struggling with financial resources and capacity. “Communities are the only partner not being paid to be at the table and often lack capacity, expertise, and standing to negotiate with project developers for a local need.”<sup>26</sup> Therefore, it is important that companies and government entities invest in the capacity of intermediaries and community partners who can negotiate for community benefits. Communities should advocate for capacity-building assistance through funding or technical expertise as part of their negotiations. This could include things like: funding for a new staff member to oversee the agreement; funding for ongoing coalition work; technical expertise to help independently interpret air or water monitoring information; and marketing budget to help community engagement efforts.
- **Plan for Governance Structure for Any Donations or Benefits Funds:** Many agreements include a large amount of money that can be used for described activities or outputs. However, for that fund to be appropriately used, the agreement must also create the structure and oversight to properly administer the money. The structure must include transparency, accountability, and investment guidelines – without these safeguards in place, the fund can create political conflicts which distracts from what the fund was meant to provide.
- **Plan Proactively for Company Closure:** Companies and developers often work with subcontractors or, sometimes, cease operations or sell to another entity. Communities should include closure planning into the agreement from the beginning of negotiations to ensure that the community and developer are on the same page, and it is explicitly written into the legally binding agreement about what is expected if the company were to close, sell, or be acquired by another company.
- **Look for Additional Funding:** The process of creating and prioritizing community benefits can open a community’s capacity to do larger community-making. Unfortunately, the developer or the government may not be able to meet all the community’s vision or goals. However, the community can ask for meaningful collaboration to find additional private or public funding to meet the community’s full needs. Benefits can be leveraged into broader development, “The [government] is making billions of dollars of investments...It makes sense to coordinate federal investments in workforce development by making aligned grants to universities, technical schools, and community colleges. Host communities may also lack housing, childcare, and other essential services. Additional opportunities to coordinate federal assistance from workforce, housing, and economic development programs would leverage the [government’s] investments.”<sup>27</sup> CBAs can include language asking its signing partners to commit to a future collaboration to ensure that funding needs are met, as well as concrete language to ensure that all parties are holding their end of the bargain. Examples could include: signatories will work together to submit five funding applications; set up and attend five financing meetings together; sign ten letters of commitment or support for grant applications; or make introductions to two federal funding agency contacts.
- **Avoid Siloed Developments:** Sometimes, facilities are part of a larger industrial complex the developer seeks to build. In these cases, the company may want to parse out each facility individually. We encourage companies and communities to negotiate around the full industrial complex instead of individual facilities. This will ensure the

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<sup>26</sup> Haggerty, M. and Chryssikopoulos, A. *Leveraging Renewable Energy Investments for Rural Development*. Center for American Progress (Nov. 6, 2023). <https://www.americanprogress.org/article/leveraging-renewable-energy-investments-for-rural-development/>.

<sup>27</sup> Haggerty, M. and Chryssikopoulos, A. *Leveraging Renewable Energy Investments for Rural Development*. Center for American Progress (Nov. 6, 2023). <https://www.americanprogress.org/article/leveraging-renewable-energy-investments-for-rural-development/>.

agreement compasses the cumulative impact of the full facility; respects the time and capacity of coalition members; and leads to more financial security for the company by decreasing the risk of protest a singular facility.

- **Include Language that Protects the Coalition’s Rights in the Future:** A coalition may want to try and include a “ramped-up” enforcement process. This can help the coalition have assurances that, if the agreement isn’t followed as agreed, they still have the right to take the company to court for damages. This can help ensure there is still accountability for things included in the agreement. In this situation, we recommend ensuring that all language uses [S.M.A.R.T.I.E.S.](#) for concrete and measurable outcomes, as well as a clear timeline. Here is an example of a “ramped-up” enforcing process that a sports stadium<sup>28</sup> included:
  1. Default: Failure of any party to perform or comply with any term of provision of this agreement, if not cured, shall constitute default under this agreement.
  2. Sixty-Day Right to Cure: If either party believes that the other party is in default of this agreement, it shall provide within notice an offer to meet and confer in a good-faith effort to resolve the issue and... provide 60 days to cure the alleged default, commencing at the time of the notice. The notice shall specify the nature of the alleged default and the way the alleged default can be cured.
  3. Implementation Meetings and mediation: Before or during the 60-day right-to-cure period, the parties may attempt to resolve any alleged default at the regularly scheduled implementation meetings, or in mediation requested by either party.
  4. Remedies: If another party is allegedly in default under this agreement, then the party alleging default may choose to pursue remedies listed below. Such remedies can only be pursued after the 60-day right-to-cure period, except where the alleged default may result in irreparable injury.
    - a. Remedy 1: Binding Arbitration: A party may pursue binding arbitration to enforce any term of this agreement that has been breached. A party may seek arbitration relief ordering, and the arbitrator shall have the power to order, affirmative equitable injunctive relief, temporary or permanent, requiring the defaulting party to comply with the agreement.
    - b. Remedy 2: Relief in Case of Irreparable Injury: The party shall be entitled to institute legal proceedings to enforce the specific performance of this agreement by that other party.
    - c. Remedy 3: Attorney’s Fees: If a party takes court action against a defaulting party... then that party shall be entitled to attorney’s fees and attribution costs from the defaulting party.

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<sup>28</sup> Gross, J. (2005). *Ballpark Village Project Community Benefits Agreement*. Retrieved from [https://juliangross.net/docs/CBA/Ballpark\\_Village\\_Agreement.pdf](https://juliangross.net/docs/CBA/Ballpark_Village_Agreement.pdf).