



U.S. DEPARTMENT OF
ENERGY

Office of Economic
Impact and Diversity

Guide to Advancing Opportunities for Community Benefits through Energy Project Development



U.S. Department of Energy
Office of Minority Business & Economic Development

August 1, 2017

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Introduction: What is the energy landscape?

The American energy landscape is changing. The United States has become the world's leading producer of oil and natural gas. The composition of the nation's energy demand has also started to shift, and the use of natural gas and renewable energy has grown significantly. The United States is also undergoing an energy sector transformation, resulting from advances in energy technologies that are reducing the cost of renewable power generation and enabling the extraction of fossil fuel resources that were once uneconomical to produce. As highlighted in the EIA's Annual Energy Outlook 2017, the change has been dramatic and is poised to continue: since 2000, natural gas use in the electricity market has increased by 86% and is forecasted to account for 33% of total energy consumption by 2040, while renewable energy's share is forecasted to reach 14% in the same timeframe.

Across the country, energy transformation is fueling trillions of dollars in infrastructure investment. The type of development varies greatly, depending on local fuel resources, existing infrastructure, and/or the ability to export fuels to other markets. Significant energy investments will continue to be made as the energy mix evolves, including new natural gas, renewable, and nuclear power generation facilities, as well as potential export projects.

What is the community benefits approach?

Major energy development and infrastructure projects provide significant opportunities, as well as challenges, for local communities. Although they often create new jobs and economic growth, they do not automatically result in sustained, local economic benefits. Increasingly, state and local governments and communities are looking for tools that help build sustained benefits to host communities.

The DOE Office of Minority Business and Economic Development (MBED) supports the nation's energy goals by fostering entrepreneurship, innovation, and job creation for diverse communities in the high-growth energy sector and in DOE programs and research opportunities. MBED develops tools and resources to increase diverse participation in the energy economy, drive American innovation, and increase America's competitiveness.

These materials are intended to provide information to communities and state and local governments on Community Benefit Agreements (CBAs) and how to bring them to fruition. They can serve as an aid for these entities, especially where large-scale energy projects are being proposed. Realistic outcomes for a particular community to successfully negotiate and implement an agreement can depend on the specifics of each project, how organized the community is, the political context, and the program infrastructure in place.

What is a Community Benefit Agreement?

A CBA is an agreement signed by community benefit groups and a developer, identifying the community benefits a developer agrees to deliver, *in return for community support of the project*. Community benefit groups are coalitions comprised of neighborhood associations, faith-based organizations, unions, environmental groups and other stakeholders. They represent the interests of residents who will be impacted by proposed developments. CBAs can ensure that measurable, local benefits will be given to a community. They are enforceable, legally-binding contracts for all parties that stipulate community benefits and are the direct result of substantial community input.

What is the energy development context?

Most large-scale energy development projects involve a lengthy and complex negotiation between public entities and a developer. Often, these projects are subsidized by taxpayer dollars and require land-use approvals. Negotiations generally take place at the state or local government level. Community benefit strategies are most effective when a state or local government is participating in the development, providing a public subsidy in the form of a land-lease/land-use approval, or offering financial incentives for the project. Developers often seek public subsidies for large-scale projects, and this provides leverage for state and local governments and community groups to negotiate for community benefits. Under these circumstances, state and local governments and community coalitions play significant roles in shaping and providing input during negotiations on public subsidies.

The CBA process should begin while energy development is still being formulated by the project proponent. It is important to consider participation in proposed projects that have the potential to offer benefits and those that impact immediate and surrounding neighborhoods. Once a coalition is formed, the community should announce its formation, thereby making it easier for developers to communicate and foster cooperation. Developers should actively seek partnership with neighborhoods, as their support would raise the probability of state or local government approvals for zoning variances, state permits, and other regulatory approvals.

The CBA process should also begin before land-use negotiations take place. The public input process for land-use decisions largely consists of public hearings during planning commission meetings. This format does not lend itself well to the intensive negotiating process required between community representatives and developers. By the time a project reaches the land-use approval process, many of the details that could have been points of negotiation for CBAs may already be final. This contrasts with the economic development process. When public subsidies are considered in that context, the process is not limited by the same rules governing land-use approval. In the context of land use, the CBA process should begin as soon as possible.

Energy projects may have a connection to environmental issues and engender important community interest. As a result, community interest increases. CBAs can help facilitate public participation in the regulatory decision-making and approval processes associated with energy

projects. For example, the City of Richmond's Refinery Modernization Project developed a Community Investment Agreement that included measures to lower emissions and reduce energy use.

What values do CBAs promote?

According to the Partnership for Working Families, CBAs can greatly improve many state and local government approval processes by promoting these values: Inclusiveness, Enforceability, Transparency, Coalition-Building, Efficiency, and Clarity of Outcomes (Gross, Julian; Community Benefits Agreements: Making Development Projects Accountable; pgs. 21-22). The CBA process relies on collective action, which enhances communication and thereby positions communities and developers for success. The CBA process centralizes dispersed flows of information so developers and communities have a chance to proactively foster accord, which increases the probability of state or local government approvals. While it is clear communities benefit from CBAs, developers stand to gain just as much, albeit differently. CBAs *increase their chances of starting and sustaining* projects.

Inclusiveness. The CBA negotiation process ensures that community issues are heard and addressed. Historically-underrepresented community members are often missing in the development process. Public hearings are held at times and places that are not neighborhood-friendly. Having a negotiation process helps provide a forum for affected communities.

Enforceability. CBAs can ensure that developer and community promises regarding community benefits are legally enforceable. Sometimes, the promises developers make when pitching a project do not come to fruition. CBAs commit developers – in writing – to promises they make, thus simplifying enforcement. Depending on the CBA's language, enforcement can be a two-way street, if communities do not honor their commitments.

Transparency. CBAs help the public, community groups, state and local government officials, and news media monitor a project's outcome. Having all the benefits stipulated in one place allows everyone to understand and assess the specific commitments made by the developer and the community. They can then compare these benefits to those provided by similar projects in the past. Moreover, it is easier to compare, side-by-side, benefits being offered by competing developers.

Coalition-Building. The process of negotiating a CBA fosters new alliances among community groups that may care about different issues or have different constituencies. CBAs can foster political relationships between different but potential allies, bringing together labor, environmental, community and religious groups. Dissimilar stakeholders can be unified by socioeconomic potential and promise, with CBA discussions that highlight career pathways for disadvantaged workers, high-quality jobs, resources for environmental projects and even affordable housing.

Efficiency. CBAs encourage early negotiation between developers and a community, avoiding lengthy processes for local zoning and other necessary approvals. Without a CBA process,

community groups usually express their views at public hearings, when a project is up for local government approvals. At that point, there are generally three possible outcomes: 1) the local government can approve a project over neighborhood objections, leaving residents unhappy and leading to a project that fails to address some of the community's needs; 2) local government officials can reject the project completely, leaving the developer unhappy and the community without the benefits the project could have provided; or 3) the local government can delay the project, until the controversial issue(s) is resolved. This would leave the developer unhappy and delay community benefits. CBAs could help foster a cooperative relationship between potentially-adversarial parties and avoid conflict during the approval process, helping avoid delays in getting good projects approved.

Clarity of Outcomes. CBAs provide local governments the information they need to illustrate successful delivery of promised benefits, like job creation. Very few state or local economic development entities can easily quantify their outcomes when questioned by legislatures or the public about the success of programs or return on investment. CBAs are a vehicle to gather and maintain information that demonstrates jobs and other benefits actually materialize.

What are the benefits of a CBA?

CBAs are an excellent tool for supporting both communities and developers. They are negotiated between a developer and a community coalition and specify a particular project's contributions to a community, in exchange for community support for the proposed project. CBAs often include monitoring mechanisms to make sure the expectations of a community and developer performance goals are met.

Comprehensive public input is critical in determining priorities for a proposed project. Thus community coalitions should be broad and represent a cross-section of residents and other stakeholders in the impacted neighborhood or region. The negotiation process allows for more proactive and collaborative community engagement and can address a wider range of views than is possible in traditional land-use and economic development decision-making. Depending on state law, CBA terms can be enforced via inclusion in development agreements between local governments and developers; both developers and communities can benefit from this.

A. Potential Developer Benefits

- ✓ The Community Coalition agrees to support the project, with *public testimony and written statements*;
- ✓ Community support *reduces risk for developers*, by uniting community groups behind a project; and
- ✓ Developers more reliably get needed *state or local subsidies or approvals*.

B. Potential Community Benefits

- ✓ Local and targeted *hiring commitments*;
- ✓ Living wage and benefits;
- ✓ *Educational partnerships* between developers and community schools; and
- ✓ Support for local, small business.

How can you ensure benefits are measurable?

As the range of community benefits is delineated in an agreement, the community and the developer should ensure they establish clear and measurable commitments, not just aspirational standards. CBAs should describe expectations of project deliverables, include reporting requirements, and describe how reports will be publicly available. In addition, CBAs should clearly describe both roles and responsibilities – and how information will be furnished – in order to determine compliance. Furthermore, they should describe how noncompliance will be addressed.

Who negotiates a CBA?

According to the *Partnership for Working Families*, CBAs are negotiated between community group leaders and a developer, prior to government approval of a development project. In some cases, a state or local government agency will play an active role in CBA negotiations.

Community development advocates recognize the importance of coalition building to facilitate CBA development. Community-based organizations involved in CBA negotiations are usually formed by concerned citizens and may be built upon traditional community organizing structures, such as block clubs or church-based groups. These groups may coalesce with living wage campaigns, individual labor unions, and/or central labor councils.

Collective action is inherently difficult. As a result, community groups should get themselves properly organized as a Community Benefits Coalition. Organization can be informal, but there are benefits associated with more formal coalescing. For instance, a group could draft and agree to an operating agreement. Community groups are more successful in engaging with developers to promote community involvement and acceptance of development, when community support is necessary to realize a project. Usually, a representative from the developer, or the developer's attorney, will conduct negotiations on its behalf.

Local or state government staff may or may not be involved in CBA negotiations. While they and their attorneys are busy negotiating development agreements for projects, they sometimes leave community representatives to negotiate CBAs. In other cases, local government entities may be the developers of a project, while one or more other government entities have permitting authority. In such cases, the local or state government “developer” will be pivotal in negotiations and party to the CBA.

How can community engagement begin?

CBA negotiations usually require communities to organize a broad coalition of community interests. Community advocates – or local governments – need to bring community interests into the development process at the front end of discussions between developers and public entities, in order to understand community concerns and get input on their needs. Developers,

communities, and state and local governments can use the following strategies to get the most of the engagement.

Developers

- Identify stakeholders and build public trust. Stakeholders should represent a diverse group of community-based organizations and individuals.
- Engage community representatives, as well as coalitions, and communicate project benefits with open dialogue/transparency.
- Ensure stakeholder representatives are part of the project development team *early in the process* and align project goals and schedules with their understanding.
- Initiate project briefings with key state and local government officials.
- Train company project representatives about community outreach and CBAs.
- Educate stakeholders about the technical aspects of the development.

Communities

- Research development proposals in your region and identify any that have the potential to bring *important benefits or significant impacts* to the neighborhood(s) where they will be located.
- Organize a broad-based coalition of community interests and recruit stakeholder organizations.
- In order to *maximize turnout*, hold public meetings with assistance from identified leaders. Utilize multiple communication mechanisms to reach affected populations.
- Actively engage the developer(s) with sustainable community objectives, via open dialogue and transparency.

State and Local Governments

- Inform community coalitions of proposed developments.
- Encourage developers to enter good-faith negotiations with responsible coalitions.
- Inform developers of the benefits they can achieve through CBAs.
- Respect the negotiating process and honor community coalition agreements.
- Fold CBAs into public-private partnership (PPP) agreements – when and where appropriate – for added enforcement.

How are CBAs implemented?

How CBAs are implemented depends on each of the commitments made in the agreement. Implementation of a CBA may take years and involve a variety of issues. Usually, one local organization does not have the capacity to handle everything that is involved in the process. Members of CBA coalitions will likely work together for years to assure strong implementation of the commitments they negotiate. CBAs may establish oversight committees, which include community members who monitor the progress of delivery of benefits agreed upon.

In addition, for certain provisions, such as local hiring commitments, communities will need program infrastructure to successfully deliver benefits. For instance, a local or targeted hiring

provision will require support from multiple entities. CBA provisions may stipulate the sending of job opportunity notices by employers, as well as subsequent candidate interviews. The local community would need a central job center in place capable of conducting intake and screenings of prospective applicants and making referrals to employers. Local, programmatic infrastructure would need to exist for each key provision of the CBA, to enable the successful delivery of promised benefits.

What are examples of CBAs?

There are many different CBA examples and situations tailored for each community; no one experience or CBA is the same. Below are examples that resulted in strong community benefit commitments, with broad support from community stakeholders.

A. Town of Robbinston, Maine

Downeast LNG INC.'s Liquefied Natural Gas Import Terminal Project

The community of Robbinston, Maine and Downeast LNG Inc. developed a CBA for the permitting, construction, development and operation of a liquefied natural gas (LNG) import terminal, which would have been located within the town at Mill Cove. Although the import project did not proceed, the cooperation between the community and Downeast LNG Inc. is still instructive. The community recognized the significant economic and other benefits it would bring to the town, its residents, and the surrounding communities and wanted to support the project. The developer, recognizing the town's past and continuing support of the import terminal project, agreed to provide Robbinston, and its surrounding areas, with the following community benefits:

- ✓ Establishment of an annual *County Economic Trust Fund*;
- ✓ 5% *supplier goal* for local, qualified contractors;
- ✓ 60% recruitment of full-time operations workforce from the local county;
- ✓ Construction job training;
- ✓ School education support; and
- ✓ Road repair and transportation.

B. City of Richmond, California

Chevron U.S.A. Inc.'s Richmond Refinery Modernization Project

The city of Richmond, California and Chevron U.S.A. Inc.'s *Richmond Refinery Modernization Project* developed a Communities Investment Agreement – similar to a CBA – which is designed to protect the environment, enhance safety, reduce energy use and create 1,000 local construction jobs. Chevron's \$1 billion investment to modernize the refinery will replace some of the facility's oldest processing equipment with modern technology.

The main project components include replacing a 1960s hydrogen plant with modern technology. Chevron states that the new plant will process higher-quality hydrogen more

efficiently and reliably, and the upgrades will give the refinery flexibility to process *crude oil blends* and *gas oils*, while meeting environmental regulations.

Under the Communities Investment Agreement, Chevron has committed to investing \$30 million over 10 years in both Richmond and North Richmond, lowering greenhouse gas emissions and creating local green jobs. The agreement intends for the project to create 1,000 local construction jobs.

The Communities Investment Agreement also included:

- ✓ A scholarship program;
- ✓ Pre-apprenticeship construction skills training, with direct entry agreements with the local union;
- ✓ On-the-job training programs, which provide wage subsidies for businesses that hire Richmond residents and improve the skills and job-readiness of residents;
- ✓ Adult education and skills-building programs, to prepare Richmond residents to be productive members of the local labor force – with the goal of achieving full and meaningful employment;
- ✓ Youth employment and skills-building programs, designed to enhance the readiness of Richmond youth for employment in various technical areas, including the *petrochemical, renewable energy* and *emergency preparedness and response* sectors;
- ✓ Implementation of full-service community schools, especially elementary schools nearest to the facility;
- ✓ Community-based greenhouse gas reduction programs, including a Climate Action Plan, rooftop solar systems and utility-scale photovoltaic solar farms; and
- ✓ Local-hiring process and plan for construction and non-construction, including addition of a local-hire coordinator.

Are there resources for communities interested in the CBA process?

To successfully develop a Community Benefit Agreement (CBA), a powerful coalition must be built, area residents should be organized, extensive research needs to be carried out, and negotiations with a developer must occur. Research, communications, and legal navigation capacities are critical, and groups without these often find themselves at a serious disadvantage because they lack a strategic understanding of numerous hurdles, outright oppositional forces, and/or the financial structure of a proposed deal. Some groups have strong research capacities but, unfortunately, are hindered by poor organization.

To maximize the probability of success, a coalition should include members with experience in the abovementioned areas or access to such skills via partnerships and/or consultants. For this reason, many organizations with community benefit programs may reach out to organizations with experience in CBAs, such as the Partnership for Working Families, The Public Law Center at Tulane University, or the Los Angeles Alliance for a New Economy.ⁱ

For more information, visit: <http://energy.gov/diversity/office-economic-impact-and-diversity>.¹

¹ The following are references used to create this document:

1. *U.S. Department of Energy QER Report, April 2015*
2. *The Partnership for Working Families, Community Benefits Law Center Website*
3. *Community Benefits Agreements, The Power, Practice, and Promise of a Responsible Redevelopment Tool, 2007, The Annie E. Casey Foundation, Baltimore, MD*
4. *Recent Developments in Land Use, Planning and Zoning Law, David A. Marcello, 2007*
5. *Michigan Planner, A Publication of the Michigan Chapter of the American Planning Association, Making Great Communities Happen, September/October 2014*
6. *Tulane University, The Public Law Center Website, Community Agreements*
7. *FERC Guidance, Suggested Best Practices for Industry Outreach Programs to Stakeholders, July 2015*
8. *Chevron Refinery Modernization Project Environmental and Community Investment Agreement Between the City of Richmond, California and Chevron Products Company, A Division of Chevron U.S.A. Inc., Bill Lindsay, City Manager*
9. *Community Benefit Agreement Between the Town of Robbinston, Maine and Downeast LNG INC, Tom Moholland, Town of Robbinston and Dean Girdi, Downeast LNG, INC.*

Appendix: Additional Resources

Other resources for CBAs can be found here:

➤ **Community Support**

Partnership for Working Families

<http://www.forworkingfamilies.org/campaigns/CBA>

Community Benefits Agreements – Making Projects Accountable

http://juliangross.net/docs/CBA_Handbook.pdf

Tulane University – The Public Law Center

<http://www.law.tulane.edu/tlscenters/PublicLawCenter/index.aspx?id=3906>

<http://www.law.tulane.edu/assets/0/260/262/719A253B-F54A-4A56-BBC4-7FDF754CCCAB.pdf>

Annie E. Casey Foundation – Community Benefits Agreements, The Power, Practice, and Promise of a Responsible Redevelopment Tool

<http://www.aecf.org/resources/community-benefits-agreements-the-power-practice-and-promise-of-a-responsib/>

Community Benefits Coordinating Council (CBCC), Washington, DC 20024

<http://www.seswcbcc.org/>

United States Army Corps of Engineers

<http://www.usace.army.mil/Missions/Environmental/BrownfieldsUrbanWaters/HelpingCommunities.aspx>

The University of Chicago, Social Service Administration

Community Benefits Agreements in the Political Economy of Urban Development

<http://ssa.uchicago.edu/community-benefits-agreements-political-economy-urban-development>

Columbia University Law School -Emerging Practices in Community Development Agreements

<http://ccsi.columbia.edu/files/2016/02/Emerging-practices-in-CDAs-Feb-2016-1-sml.pdf>

➤ **CBA Success Stories and Lessons Learned**

Jobs for the Future – Community Workforce Agreements, Pathway to Career Opportunities

http://www.iff.org/sites/default/files/publications/CommunityWorkforceAgreements_030413.pdf

Michigan American Planning Association – Community Benefit Agreements

http://www.planningmi.org/downloads/michigan_planner_cbas_2014.pdf

Steelhead LNG and Malahat First Nation Sign Mutual Benefits Agreement and Lease for LNG Project

<http://www.steelheadlng.com/steelhead-lng-and-malahat-first-nation-sign-mutual-benefits-agreement-and-lease-for-lng-project/>

➤ **Miscellaneous Guidance**

FERC Guidance on Best Practices for Stakeholder Outreach Programs for Natural Gas Projects

http://www.ferc.gov/media/news-releases/2015/2015-3/07-28-15.asp#.VumE_30rJMw

➤ **CBA Agreement Examples**

Town of Robbinston, Maine – LNG Import Project

<http://www.townofrobbinston.org/agreement2.pdf>

City of Richmond, California – Chevron U.S.A. Inc.'s Richmond Refinery Modernization Project

<http://www.ci.richmond.ca.us/DocumentCenter/View/30667>

Note: This is not an exhaustive list of CBA references. Parties interested in adding a resource to this list should email BusinessDiversity@hq.doe.gov with the organization name, website link, and a brief description of the resource.

ⁱ All images in this document are from Pixabay.com or belong to the U.S. Department of Energy.