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Expert Insights on Best Practices for Community Benefits Agreements

Matthew Eisenson

Columbia Law School, Sabin Center for Climate Change Law, matthew.eisenson@law.columbia.edu

Romany M. Webb

Columbia Law School, Sabin Center for Climate Change Law, rwebb@law.columbia.edu

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**Expert Insights on Best Practices for Community Benefits Agreements
(September 2023)**

By Matthew Eisenson and Romany M. Webb¹

Abstract: This report outlines 35 recommendations for developers and host communities when negotiating and drafting Community Benefits Agreements (CBAs) for direct air capture hubs and other clean energy projects. These recommendations come from interviews with attorneys and other experts who have collectively negotiated dozens of CBAs for climate infrastructure and other types of projects.

Decarbonizing the U.S. economy will require building a vast amount of new infrastructure in a very short amount of time. The scale of construction required far exceeds anything previously seen in the United States. A recent study by the National Renewable Energy Laboratory estimated that, to achieve the Biden Administration’s goal of 100% clean electricity by 2035, new renewable energy facilities will need to be developed “at rates three to six times recent levels” and there will need to be a “doubling or tripling of the capacity of the transmission system.”² In addition, facilities that remove and utilize or store carbon dioxide (CO₂) from the atmosphere will also be needed. This type of infrastructure—often overlooked in the past—is currently receiving significant attention. While it is now widely accepted that CO₂ removal (CDR), in addition to deep emissions cuts, will be necessary to achieve climate goals,³ the infrastructure required for large scale CDR is still in the very early stages of development and lags far behind other sectors (e.g., renewable energy).⁴

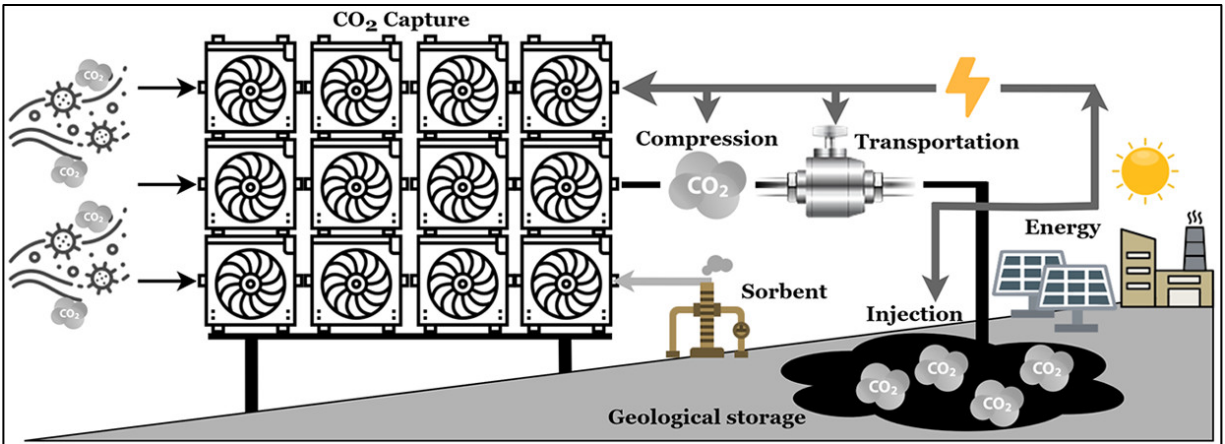
U.S. government investment in CDR is increasing rapidly. In the Infrastructure Investment and Jobs Act (IIJA), Congress appropriated \$3.5 billion to the Department of Energy (DOE) to fund “projects that contribute to the development of 4 regional direct air capture hubs” that remove and

¹ Matthew Eisenson is an Associate Research Scholar at Columbia Law School and Senior Fellow at the Sabin Center for Climate Change Law. Romany M. Webb is a Research Scholar at Columbia Law School, Adjunct Assistant Professor of Climate at the Columbia Climate School, and Deputy Director of the Sabin Center for Climate Change Law. The authors would like to thank Titi Akinade, 2023 Summer Intern at the Sabin Center for Climate Change Law, for her help with background research for this paper. Production of the paper was generously supported by ClimateWorks Foundation.

² Paul Denholm et al., National Renewable Energy Laboratory, *Examining Supply-Side Options to Achieve 100% Clean Electricity by 2035* xix (2022), <https://www.nrel.gov/docs/fy22osti/81644.pdf>.

³ IPCC, Summary for Policymakers, in *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change 1*, 36 (P.R. Shukla et al. eds, 2022), https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_SPM.pdf.

⁴ See generally S.M. Smith et al., *The State of Carbon Dioxide Removal* (2023), <https://www.stateofcdr.org/s/SoCDR-1st-edition-2023-V9.pdf>.



Caption: The figure above depicts a direct air capture system that removes CO₂ from the atmosphere and then compresses it for transport (via pipeline) to an underground storage site. The process requires energy at all stages, from capture, to compression, to transportation, to injection.⁵

utilize or store CO₂ from the atmosphere.⁶ Also in the IJJA, Congress authorized DOE to provide grants, loans, and other financial assistance for the development of CO₂ pipelines, which are essential to realize large-scale CDR.⁷ Indeed, by some estimates, achieving net-zero emissions by 2050 will require over 68,000 miles of new CO₂ pipelines,⁸ a massive undertaking considering that the United States only has about 5,000 miles of CO₂ pipelines today.⁹

Large infrastructure projects often face local opposition, which can delay or even prevent them from moving ahead.¹⁰ For example, the Cape Wind project, first proposed in 2001, was abandoned by the developer in 2017 amid relentless opposition from wealthy and politically connected owners of summer homes in Cape Cod, Massachusetts.¹¹ The opponents were largely concerned that the

⁵ Tom Terlouw et al., Life Cycle Assessment of Direct Air Carbon Capture and Storage with Low-Carbon Energy Sources, *Environ. Sci. Technol.* 2021, 55, 16, 11397-11411, <https://pubs.acs.org/doi/10.1021/acs.est.1c03263>.

⁶ See IJJA § 40308. These regional direct air capture hubs include “direct air capture projects,” which remove CO₂ from the atmosphere, as well as “connective carbon dioxide transportation infrastructure,” which transport CO₂ from direct air capture projects to storage, such as CO₂ pipelines. *Id.*

⁷ IJJA § 40304.

⁸ Eric Larson et al., *Net-Zero America*, Princeton University, Oct. 29, 2021, at 205, <https://netzeroamerica.princeton.edu/the-report> (estimating that 110,000 kilometers, or 68,972 miles, of “new CO₂ pipeline infrastructure” will be required by 2050).

⁹ See Congressional Research Service, *Carbon Dioxide Pipelines: Safety Issues* (2022), <https://crsreports.congress.gov/product/pdf/IN/IN11944>.

¹⁰ See, e.g., Matthew Eisenson, *Opposition to Renewable Energy Facilities in the United States*, Sabin Center for Climate Change Law (May 2023 ed.), at 2-3, https://scholarship.law.columbia.edu/sabin_climate_change/200/ (describing 293 renewable energy projects that have encountered significant opposition in the last few decades).

¹¹ *Id.* at 83 (citing Katharine Q. Seelye, After 16 Years, Hopes for Cape Cod Wind Farm Float Away, *N.Y. TIMES*, Dec. 19, 2017, <https://www.nytimes.com/2017/12/19/us/offshore-cape-wind-farm.html>).

proposed offshore wind project would have spoiled their views of the ocean.¹² By the time the project was abandoned, the developer had sunk \$100 million into it.¹³ Likewise, plans to develop long-distance power lines have also encountered serious opposition and delays. For example, the New England Clean Energy Connect project, a proposed transmission line that would deliver 1,200 MW of electricity from Quebec to Massachusetts, has been delayed for several years by local opposition to a 53-mile section of the line in Maine.¹⁴ Opponents have expressed concern that the line will alter Maine’s “scenic character” and thus impact its “four-season recreational tourism industry” (among other things).¹⁵

In some cases, local opposition to renewable and other infrastructure projects has been largely driven by aesthetic preferences.¹⁶ In other cases, however, local opposition is driven by deeper concerns about the economic, environmental, health, or other impacts of infrastructure projects.¹⁷ This is particularly true where projects involve novel technologies, such as direct air capture, that communities do not have experience with and may not fully understand.

One tool that a developer can use to address local concerns and avoid costly opposition is to enter into a community benefits agreement (CBA) with a host municipality and/or local community groups.¹⁸ These agreements are legally binding contracts and are distinct from the non-binding community benefits plans (CBPs) that DOE now requires as part of applications to receive funding for direct air capture hubs.¹⁹

CBAs are highly customizable in form and content and can be tailored to meet the specific needs of the host community and to mitigate the specific impacts of a project. The host community will typically receive a combination of monetary benefits (*e.g.*, direct payments or the establishment of a community fund) and non-monetary benefits (*e.g.*, environmental stewardship commitments, monitoring of hazards, or promises to hire local labor) that can be used to mitigate local impacts. In return for these benefits, the developer will typically receive increased community support and

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 73; Catherine Clifford, Fierce local battles over power lines are a bottleneck for clean energy, CNBC, June 26, 2022, <https://www.cnbc.com/2022/06/26/why-the-us-has-a-massive-power-line-problem.html>.

¹⁵ Clifford, *supra* note 14.

¹⁶ *See, e.g., id.* at 95 (expressing concern that a proposed solar project would be an “eyesore”).

¹⁷ *See* Julia Simon, *The U.S. is expanding CO2 pipelines. One poisoned town wants you to know its story*, NPR, May 21, 2023, <https://www.npr.org/2023/05/21/1172679786/carbon-capture-carbon-dioxide-pipeline>.

¹⁸ Agreements with local governments are frequently called Host Community Agreements, while agreements with neighboring landowners are frequently called Good Neighbor Agreements. For simplicity, this guide will refer to all of these agreements as CBAs.

¹⁹ Department of Energy, *About Community Benefits Plans*, <https://www.energy.gov/infrastructure/about-community-benefits-plans> (last visited Sept. 12, 2023).

increased certainty in the approval process. Importantly, the process of negotiating these agreements may also lead to better results. The robust exchange of information during the negotiation process can improve the design of projects, including by ensuring that they: (a) are sensibly integrated into neighborhoods and other landscapes; and (b) effectively serve the needs of local communities. As one recent study found, with proper planning and robust community participation, “local residents, [direct air capture] developers, urban planners, and architects can jointly develop architecture that serves multiple purposes,” and is elegantly integrated into recreational spaces, housing, grocery stores, and other spaces.²⁰

Because direct air capture hubs and CO₂ pipelines are so new, there is virtually no track record for the use of CBAs in connection with such projects. However, there is a long track record of using CBAs for other types of infrastructure projects, including renewable energy facilities, industrial facilities, entertainment arenas, and landfills. These other CBAs and the experience of negotiating them can provide useful precedent.²¹

The Sabin Center for Climate Change Law (Sabin Center) has created a database of example CBAs from various types of projects (e.g., renewable energy, waste management, entertainment, housing, etc.), which can be accessed [here](#).²² The Sabin Center has also created this best-practices guide for negotiating and drafting CBAs. This guide is based on insights gleaned from extensive interviews with a group of U.S.-based experts who have collectively negotiated dozens of CBAs and similar agreements on behalf of developers and host communities.²³ While the immediate aim is to assist developers and host communities who are negotiating CBAs in the context of direct air capture hubs and CO₂ pipelines in the United States the guide should also be useful to developers and host communities negotiating CBAs for other types of climate infrastructure. The guide is divided into

²⁰ Courtni Holness, *A pathway to community-centered DAC*, Carbon180, Jan. 4, 2022, <https://carbon180.medium.com/a-pathway-to-community-centered-dac-c5be55bf8feb>.

²¹ In some states, such as New York and California, it is now commonplace for developers of large infrastructure projects, including renewable energy facilities, to voluntarily enter into CBAs with host communities. In other states, such as Texas, it is very uncommon for developers to enter into such agreements outside the context of litigation or administrative proceedings. In those states, the closest analogue to CBAs are settlement agreements that include provisions for community benefits.

²² The Sabin Center’s database includes a number of CBAs previously published by Power Switch Action. For further information on those CBAs, see *Community Benefits Agreements: Examples*, Power Switch Action, <https://www.powerswitchaction.org/resources/community-benefits-agreements#examples> (last visited Sept. 25, 2023).

²³ While the recommendations set out in this guide are derived primarily from expert interviews, the authors also drew on prior work on benefit sharing undertaken by the World Resources Institute, Data for Progress, Power Switch Action, the U.S. Department of Energy, and others. See, e.g., Evana Said et al., *US Clean Energy Projects Need Public Buy-in. Community Benefits Agreements Can Help*, World Resources Institute, Aug. 31, 2023, <https://www.wri.org/insights/community-benefits-agreements-us-clean-energy>; Catherine Fraser, *Community and Labor Benefits in Climate Infrastructure: Lessons for Equitable, Community-Centered Direct Air Capture Hub Development*, Data for Progress, Jan. 2023, <https://www.filesforprogress.org/memos/community-and-labor-benefits-in-climate-infrastructure.pdf>; *Community Benefits Agreements: Framework for Success*, Power Switch Action, <https://www.powerswitchaction.org/resources/community-benefits-agreements#examples> (last visited Sept. 25, 2023); U.S. Department of Energy, Office of Economic Impact and Diversity, *Community Benefit Agreement (CBA) Toolkit*, <https://www.energy.gov/diversity/community-benefit-agreement-cba-toolkit> (last visited Sept. 25, 2023).

three parts: (A) best practices for developers; (B) best practices for host communities; and (C) best practices for drafting CBAs and key terms for inclusion.

A. Best Practices for Developers Negotiating CBAs

The experts interviewed by the Sabin Center provided many recommendations about how developers should conduct themselves during the CBA negotiation process. These recommendations address, among other topics: when and how to conduct initial outreach with local community members and local governments; how to identify key groups and individuals to prioritize for outreach; how to conduct communications with the local community; how to frame discussions about benefits; and how to coordinate the negotiation of CBAs with other parts of the project approval process. Seventeen of these insights are summarized below.

Recommendation #1: Hire a local outreach firm. Local knowledge and relationships are extremely important. Developers should hire local outreach firms who live in, or spend significant time in, the community to manage outreach and communications, instead of relying on outsiders who fly in and out for meetings and presentations. To an outsider, it may not be obvious who the local leaders are, which segments of the community those leaders speak for, or the extent to which the views of different segments of the community align. Local outreach firms can help to identify the groups and individuals that the developer needs to speak with to learn about community needs and concerns and to earn community support.

Recommendation #2: Initiate local outreach with conversations rather than deals. Developers should be cognizant of the fact that different communities will have different needs and concerns. To that end, developers should view the CBA negotiation process as an opportunity to understand and address the issues most important to those impacted by a project. Some communities may need increased funding for public services, while others might attach more value to job creation or environmental remediation; likewise, some communities may be concerned primarily about a project's visual impacts, while safety might be more important to others. Developers should speak with as many community members as possible to learn about these needs and concerns. These conversations can also provide valuable insights into the types of impacts communities will or will not accept. Learning such information early in the process can save a developer the trouble of submitting a proposal that has no chance of community acceptance. Likewise, if the developer is lacking information about local needs and values, there is little hope of developing a project that will be viewed as fair and just.

Recommendation #3: Frame negotiations around addressing impacts rather than buying community support. Related to Recommendation #2 above, developers should treat the process of negotiating a CBA as a way to address community concerns and mitigate impacts. In particular, they should ask the community what its concerns are and how they can be mitigated, instead of asking how much money it will take to buy the community's support. To be sure, money is often a major part of CBA negotiations: in many cases, the most efficient way to mitigate impacts is for the developer to make monetary payments to the local community, which the local community can then deploy as it sees fit. However, the framing of the discussion matters. When developers discuss

monetary payments as a way to mitigate impacts, it sends a message to the community that local impacts and concerns are taken seriously; when developers discuss monetary payments as a way to buy (or win) community support, it sends a message to the community that the relationship is purely transactional.

Recommendation #4: Engage with local government officials early and often, even when they lack permitting authority. Before submitting any formal project plans, developers should seek input from local officials. This early engagement can be instrumental in setting a constructive tone and avoiding future conflict. For example, one solar developer in New York has established a favorable reputation by asking questions rather than making demands during initial meetings with town officials: the developer explains that it would like to build a project of a certain minimum size and then asks for input on where the project should be sited and how to make the project work for the town. This sort of engagement is important even when the local government lacks permitting authority, such as when a project is subject to state or federal permitting. Indeed, when the local government lacks permitting authority and therefore lacks the power to attach conditions to a permit, CBAs can be especially critical in addressing local concerns to ensure a positive long-term relationship with the community. It is also in the developers' own self-interest since state and federal permitting agencies will typically view a developer more positively—and be more likely to grant approval—when the developer has made substantial outreach to local governments, including by entering into a CBA with them.

Recommendation #5: Seek to include at least one public entity in the agreement. When pursuing a CBA, developers should aim for at least one of the counterparties to be a public entity, such as a local government agency or town board. An agreement with one or more public entities generally provides greater certainty in the approval process than an agreement with private parties alone and, as compared to private parties, there is less ambiguity about whose interests public entities represent.

Recommendation #6: Meet one-on-one with neighbors. Because neighbors are typically the ones who will experience the greatest direct impacts from infrastructure projects, it is important for the developer to offer to have one-on-one meetings with them. Sometimes it is not possible for a developer to address all of the neighbors' concerns, and sometimes neighbors will continue to oppose a project even after meetings with developers and significant concessions by them. However, these meetings are a valuable opportunity for mutual education, and can help to reduce the intensity of the opposition and provide information to developers that ultimately results in a better and more just project.

Recommendation #7: Prioritize outreach to established groups that are most engaged with the issues at hand. Sometimes, the most influential and best-informed groups on the particular topic at issue are not the biggest groups. Developers should prioritize outreach to the groups that have established themselves as the leaders on an issue. Developers should also seek out established groups that have a legitimate, independent purpose other than stopping projects. Groups that have an independent purpose, such as land trusts, hunting groups, and environmental advocacy organizations, often have discrete concerns that can be addressed through a CBA.

Recommendation #8: Take community members and local government officials on tours of comparable facilities. Developers should organize tours of comparable facilities so that community members and local officials can see what those facilities are like in person. These in-person tours can be an important learning opportunity for local communities and help to alleviate concerns and dispel misinformation.

Recommendation #9: Be willing to fail when conducting community outreach. While negotiations with local opponents and opposition groups are less likely to be fruitful, developers should give their employees license to take risks—and fail—in reaching out to these individuals and groups. There is a tendency for developers to negotiate only with those who are most amenable to the project and most willing to talk. Indeed, there is a high risk that negotiations with opponents will fail. However, developers should resist the temptation to speak only with their supporters. Even if the developer cannot fully address the concerns of all members of the community, the attempts at outreach may ultimately help to reduce the intensity of opposition. In addition, if a developer is perceived to be negotiating only with supporters while ignoring other community members, local supporters may encounter hostility from other community members who believe the supporters are too closely aligned with the developer, and the community may experience serious strife and division.

Recommendation #10: Consider setting ground rules for the negotiation process. Before negotiating the specifics of a CBA, the developer should consider entering into a memorandum of understanding (MOU) to outline how negotiations will take place. An MOU can set the right tone and expectations as the parties navigate community benefit sharing through multiple stages of a project.

Recommendation #11: Do not begin negotiating the specifics until the size, scope, impacts, and potential benefits of the project are reasonably well defined. To avoid setting unreasonable expectations, a developer should not begin negotiating the terms of a CBA until it has a clear vision of the size and scope of the project, as well as the range of benefits it can afford to provide in light of other anticipated costs. If the developer changes its plans for the project after negotiations have begun, the developer may lose credibility, especially if the developer decides to expand the scope of the project in any meaningful way. This does not mean that developers should avoid engaging with local officials and community groups until all project plans are finalized. On the contrary, as explained above, early engagement with the local community is important to build strong relationships and can improve the project design process. Formal negotiations can wait, however.

Recommendation #12: Do not tell communities that they just need to trust you. In a competitive marketplace, complete transparency may not be possible. However, developers must be as open as possible when it comes to addressing community concerns. Importantly, developers should never tell community members they do not need information relevant to their concerns or that they just need to trust the developers. Local communities will likely understand if a company is not willing to release detailed financials. However, communities will react very negatively if told that they do not need information about potential project impacts.

Recommendation #13 Negotiate CBAs in tandem with taxes. In states where payment-in-lieu-of-tax (PILOT) agreements are prevalent for large infrastructure projects, it is critical to negotiate CBAs in tandem with PILOT agreements. The CBA is often just one of many different agreements that a developer must negotiate with a host community to obtain approval. In some states, such as New York, it is common for developers of energy infrastructure projects to negotiate a PILOT agreement with local governments alongside a CBA. In New York, the majority of benefits under a PILOT agreement flow directly to local school districts, leaving little money for other town services. CBAs are a useful way for town governments to obtain substantial revenues for other purposes. In addition, unlike PILOT agreements, CBAs are not subject to any statutory limits on annual tax increases.²⁴ Thus, they offer more flexibility with respect to the size of any payments. Because CBAs and PILOT agreements can each impose substantial costs on developers, it is critical that the two agreements be negotiated in tandem. Further, as discussed below in Section C, payments under the CBA should be tied to the tax burden under any PILOT agreement.

Recommendation #14: Negotiate for favorable zoning. If a local government has a law that inadvertently or purposefully zones out the type of development at issue, the developer can ask the local government to change the law in the course of the negotiation process. This should not be a quid pro quo for the community benefit. Instead, the developer can explain that the restrictions on zoning would likely translate into a smaller project and therefore less benefit.

Recommendation #15: Get all of the terms finalized before agreeing on the amount of payment. The non-monetary provisions of a CBA, such as road repair and landscaping, can ultimately cost the developer a significant amount of money. To ensure that there will be sufficient funds to pay the benefits of a CBA, the developer should wait to agree on the amount of any monetary payments until after the other terms are finalized.

Recommendation #16: Treat community outreach as being equally important to satisfying legal requirements. Even though community support is not legally required, earning and maintaining the support of the community can smooth the approval process and avoid costly litigation or administrative challenges. Importantly, however, earning and maintaining community support is not a one-step process. Rather, it may require sustained and continual outreach. Throughout the approval process, developers should maintain dialog with the local organizations that are trying to help the project move forward.

Recommendation #17: Recognize that CBAs are only one part of a larger community engagement process. Engagement must start early and continue throughout the process. Communities are often distrusting of developers, even when they are constructing something that the community agrees is necessary. To ensure success in the long term, the developer should want to create support, not just override the opposition. Indeed, as one article recently explained, the failure to address local concerns “could undermine support

²⁴ See N.Y. Laws of 2011, Chapter 97, available at <https://www.osc.state.ny.us/files/local-government/property-tax-cap/pdf/parta-chapter97.pdf> (setting out formula for “[l]imit upon real property tax levies by local governments”).

for clean energy deployment and jeopardize the United States' ability to meet its climate targets, while also hindering developers' ability to meet their own goals.”²⁵

B. Best Practices for Host Communities Negotiating CBAs

In addition to identifying best practices for developers, the experts identified various recommendations for host communities and their counsel during the negotiation process. The discussions covered, among other things, how communities should sequence internal discussions with external discussions; how communities can mediate internal disputes; how communities should select counsel; when separate counsel for separate groups may be required; and how counsel for community groups should communicate important messages to clients. Nine key recommendations are set out below.

Recommendation #1: Speak among yourselves first before speaking to the developer.

There is sometimes a benefit to not involving the developer in the early stages of negotiation. Before entering into negotiations with the developer, it can be helpful for community members to: (a) resolve internal disputes; (b) identify common interests, needs, and priorities; and (c) figure out what they want, what they will accept, and what they think would be fair. It can also be helpful for community members to identify, in advance, any internal disputes that cannot be resolved, so that these groups can hire separate counsel to represent them in negotiations.

Recommendation #2: Consider asking a trusted individual to serve as a mediator.

Mediation can facilitate discussions within the community, as well as discussions between the community and the developer. The mediator should be a trusted individual who does not have a personal stake in the outcome of the negotiations or strong views about the project at issue.

Recommendation #3: Treat negotiations as a mutual education process. To the extent possible, community members and groups should approach negotiations about climate infrastructure projects with an open mind and a willingness to be persuaded. The goal should be to ensure that the project and any associated benefits package will meet the needs of the community.

Recommendation #4: Ask the developer to provide information about its other facilities and affiliates. Host communities should insist that the developer provide a complete list of all facilities owned or operated by the developer and its affiliates, as well as comprehensive information about the compliance history of those facilities and entities, including past violations and consent orders.

Recommendation #5: Ask the developer to provide all the information it has about the site. Host communities should insist that the developer provide any environmental site assessments, as well as any environmental reviews prepared pursuant to the National

²⁵ Evana Said et al., *US Clean Energy Projects Need Public Buy-in. Community Benefits Agreements Can Help*, World Resources Institute, Aug. 31, 2023, <https://www.wri.org/insights/community-benefits-agreements-us-clean-energy>.

Environmental Policy Act (NEPA) or state equivalents. In general, the community should be able to fully understand any risks it will be exposed to if the project moves forward.

Recommendation #6: Hire a technical expert. Host communities should hire a technical expert to interpret the information referenced in Recommendations #4 and #5 above. If funding is not available, the host community should ask the developer to provide funding for the community to hire its own technical expert as part of negotiation process.

Recommendation #7: Hire counsel. Because CBAs are legally binding contracts, any party to a CBA should be represented by legal counsel. When selecting counsel, community members should consider hiring an attorney with subject matter expertise concerning the technology at issue. Importantly, an attorney with subject matter expertise may have a better understanding of the range of options for mitigating impacts.

Recommendation #8 (for counsel): Be transparent about who will qualify for benefits—and who will not. When representing community groups and local residents, it is important to be transparent with one's clients as to which groups and individuals will qualify for benefits and under what circumstances. If the criteria for receiving benefits are not made clear in advance, there may be negative feelings, conflict, and a loss of trust later on when those criteria eventually do become clear.

Recommendation #9 (for counsel): Make clear to clients that any individuals who receive benefits may not be allowed to participate in the process of administering benefits. Sometimes, a CBA involves the creation of a nonprofit entity to manage and administer benefits. Community members should be made aware in advance that, due to tax laws and potential conflicts of interest, they will not be able to serve on the boards of any entities administering benefits while also receiving benefits.

For additional resources and recommendations, host communities should consult the publications and toolkits on this topic by Data for Progress (see [here](#)), Power Switch Action (see [here](#)), the World Resources Institute (see [here](#)), and DOE (see [here](#)).²⁶

C. **Best Practices for Drafting CBAs and Key Terms for Inclusion**

Finally, in addition to identifying best practices for how developers and host communities should approach the *process* of negotiating a CBA, the experts identified best practices for drafting CBAs and key terms for inclusion. Nine key recommendations are outlined below.

Recommendation #1: Tailor the benefits to community needs and priorities. As discussed above in Section A, when negotiating a CBA, the developer must listen to community members to understand their needs and priorities. The benefits in the CBA should be shaped around those needs and priorities. If the developer presents a boilerplate agreement that does not recognize any of the specific concerns, community members may feel as though the developer is simply trying to throw money at them.

²⁶ See *supra* note 23 for full citations to these other resources.

Recommendation #2: Avoid ambiguity. If there is any ambiguity in the CBA about the nature of the benefits or how they will be distributed, the community may balk at the agreement, no matter how generous the benefits are. For example, the developer of one failed transmission project promised to put hundreds of millions of dollars into a community benefit fund that would have been administered at the state level by a body of individuals nominated by state politicians; that state-level body would then have decided how the money would be used. Although the fund would have been substantial in size, it became viewed as meaningless within the community, because nobody knew who was going to run the fund or how the money was going to be spent.

Recommendation #3: Tie benefits to the tax burden of the project. In some places, such as New York, it is common to negotiate a CBA in tandem with a PILOT agreement (see Section A, Recommendation #12). When negotiating a CBA with a host municipality in tandem with a PILOT agreement, it is important to include a safety valve provision in the CBA that sets a cap on cumulative payments under the CBA and PILOT agreement. This ensures that if PILOT payments are higher than expected, the CBA payment goes down; likewise, if PILOT payments are less than expected, the CBA payment goes up. This protects the developer from having to pay a higher cumulative total than anticipated. For two examples of such provisions, see (a) the Host Community Agreement between the Town of Ripley and ConnectGen Chautauqua County LLC [here](#) at Section 4.7; and (b) Host Community Agreement between the Town of Arkwright and Cassadaga Wind LLC [here](#) at Sections 4.6-4.7.

Recommendation #4: Set an end date to any benefits and obligations. The agreement should not run in perpetuity. There must be an end date when benefits and obligations cease. This is especially important if a CBA is tied to a project's tax burden: if the agreement expires before the CBA, then CBA payments may increase dramatically beyond what the developer can afford. For two examples, see: (a) the Host Community Agreement between the Town of Ripley and ConnectGen Chautauqua County LLC [here](#) at Section 3.2; and (b) the Good Neighbor Agreement between the Town of Nantucket and Vineyard Wind LLC [here](#) at Section 7.

Recommendation #5: Mandate a schedule for review of the project application. Developers have found it useful to include provisions in a CBA that lock down the timing of any necessary review by local authorities. If a building inspector, for example, fails to conduct timely review, a project can become significantly delayed. This can be avoided by setting deadlines for review by local officials and inspectors. For two examples of such provisions, see: (a) the Host Community Agreement between the Town of Ripley and ConnectGen Chautauqua County LLC [here](#) at Sections 6.1, 6.4, 6.8-6.9; and (b) the Host Community Agreement between the Town of Arkwright and Cassadaga Wind LLC [here](#) at Sections 5.3-5.5, 9.2, and 10.2-10.7.

Recommendation #6: Include provisions for amendment and renewal. While CBAs should not be designed to run in perpetuity, they should be designed to allow for adaptation to changing circumstances. Once an agreement has been signed, companies are often hesitant to reopen dialogue due to the time and cost associated with negotiations. However, if there is not a reasonable pathway to adapt the agreement to changing circumstances and

lessons learned, the agreement will become irrelevant and incapable of meeting the community's evolving needs. For an example of amendments to an agreement based on lessons learned and changing economic conditions, see the Agreement between Cable Companies and Fishermen [here](#) at Article III.

Recommendation #7: Include mechanisms for monitoring compliance and enforcement. Provisions for monitoring compliance with the agreement, as well as provisions to hold parties accountable for non-compliance, are critical to making CBAs legally enforceable documents with meaningful mutual obligations.

Recommendation #8: Include provisions for monitoring of environmental hazards. CBAs can be an important tool for environmental monitoring. In fact, it is sometimes more valuable to the host community and local government for developers to take on direct responsibility for monitoring hazards rather than simply cutting a check. For example, in fire-prone areas of the West, developers have agreed to install and maintain equipment, such as cameras, to monitor fires. Likewise, in East Hampton, New York, the developer of an offshore wind project agreed to monitor per- and polyfluoroalkyl substances (PFAS) to prevent groundwater contamination. For an example of such provisions, see the Host Community Agreement between South Fork Wind and the Town of East Hampton [here](#) at Schedule B, paragraph 83 (PDF pages 64-65).²⁷

Recommendation #9: Require developers to remedy impacts to roads. Major development projects often cause damage to roads. Developers frequently enter into separate road-use agreements with local governments to ensure that any roads damaged during construction are returned to their original state—or, indeed, an improved state—after completion of the project. When no such agreement exists, community members should consider asking developers to make such guarantees as part of a CBA. For an example, see the Host Community Agreement between South Fork Wind and the Town of East Hampton [here](#) at Exhibit 1 to Schedule B (PDF pages 79-89).

²⁷ In East Hampton, there is a long history of groundwater contamination due to the use and storage of “[f]ire-fighting foam containing per- and polyfluoroalkyl substances (PFAS)” at “the East Hampton Airport during crash response and training.” See N.Y. Dep’t of Environmental Conservation, State Superfund Site Classification Notice for East Hampton Airport, June 2019, <https://www.dec.ny.gov/data/der/factsheet/152250class2.pdf>.