

Understanding Community Benefits Agreements



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CBA's have both opportunities and traps for developers, municipalities, and community organizations.

A COMMUNITY BENEFITS AGREEMENT (“CBA”) is a private contract negotiated between a prospective developer and community representatives. In essence, the CBA specifies the benefits that the developer will provide to the community in exchange for the community’s support of its proposed development. A promise of community support may be especially useful to a developer seeking government subsidies or project approvals. Julian Gross, Greg LeRoy and Madeline Janis-Aparicio, *Community Benefits Agreements: Making Development Projects Accountable*, at 9-10 (Good Jobs First 2005), available at <http://www.goodjobsfirst.org/pdf/cba2005final.pdf>.

CBA's are generally negotiated by coalitions of community groups that often include labor, environmental, and religious organizations. Many CBA provisions are inspired by social justice issues; common CBA benefits are living-wage provisions, “first-source” (local) hiring plans, guarantees that developments will include low-income housing, and assurances of minority hiring minimums. *Id.* at 10-11. Because the agreements are negotiated between community coalitions and interested developers, the benefits can be tailored to meet specific community needs, such as the need for parks, daycare centers, or job training facilities. *Id.* The parties involved in creating the

LAX airport CBA, for example, agreed that LAX would fund sound-proofing in nearby schools and residences.

The flexibility of CBAs is reflected in how they are negotiated. Negotiations may be initiated by a developer, a community coalition, or in some cases they may be encouraged by city officials. Negotiations for the community are generally undertaken by representatives of individual community groups, but they may also involve local government officials. Public input also plays an important role in determining community goals.

After a CBA has been completed, it will in some cases be incorporated into a development agreement made between the developer and the municipality as part of the planning process. (A development agreement is a contract negotiated between a local government planning agency and a developer. In these agreements, the developer agrees to provide certain benefits to the public or to restrict the use of the land. In exchange, the local government promises to freeze the current zoning and land use laws for a certain period of time, assuring that the development's construction will not be interrupted or stopped. *See generally* David L. Callies & Julie Tappendorf, *Unconstitutional Land Development Conditions and the Development Agreement Solution: Bargaining for Public Facilities After Nollan and Dolan*, 51 Case W. Res. L. Rev. 663 (2001).) This ensures a certain measure of transparency and also permits the government, as well as coalition members, to enforce the agreement. However, because most states do not authorize local governments to enter into development agreements, many CBAs will be enforceable only by the contracting community groups. *See* Gross et al., *supra*, at 11.

CBAs are considered by their supporters to be powerful tools for assuring that communities' needs will not be neglected by large developers. Many developers also support the negotiating process as a method by which to obtain community support and thereby avoid government refusal of their projects.

CBAs have been negotiated in dozens of development projects in cities across the country. *See* Community Benefits Agreements Blog, <http://communitybenefits.blogspot.com>; and Harold Meyerson, *No Justice, No Growth: How Los Angeles is Making Big-Time Developers Create Decent Jobs*, The American Prospect (Oct. 22, 2006), available at www.prospect.org/cs/articles?article=no_justice_no_growth.

THE GROWING INTEREST IN CBAs • Proponents of CBAs cite to several trends for the growing interest in them: urban redevelopment and re-investment in the face of shrinking federal aid, the evolution of the Smart Growth Movement, and increased public concern for developer accountability. According to the Neighborhood Funders Group Study published in 2005, eight out of the 10 largest cities in the United States experienced population increases during the 1990s for the first time in decades and the growth rate is expected to accelerate over the next 20 years. Greg LeRoy and Anna Purinton, Neighborhood Funders Group, *Community Benefit Agreements: Ensuring That Urban Redevelopment Benefits Everyone*, at 19 (2005), available at www.nfg.org/publications/community_benefits_agreements.pdf. Urban scholars have coined the phrase "the back to city movement," and attribute it to an increased number of baby boomers looking to downsize and live closer to work, the post-1960s generation perception that an urban lifestyle is preferable, and an influx of Asian and Latin American immigrants relocating in urban neighborhoods. Meyerson, *supra*; *see also* Gross et al., *supra*, at 4. There are a growing number of urban centers where space limitations or geographic boundaries have created expansion barriers and have resulted in the need for redevelopment of already populated areas; CBAs allow for community participation in the redevelopment process so that specified needs can be addressed. LeRoy and Purinton, *supra*.

Resurgence In Urban Center Growth

While there is resurgence in urban center growth, this comes at a time when federal aid to cities has been in a long slow decline. Fear of further reductions in funding for Community Development Block Grants and concern about future federal support levels for public housing and Section 8 rent-subsidy vouchers have created increased interest in developing effective public-private partnerships to meet low-income housing needs. *Id.* at 17. Though city and county governments have planning departments, many emphasize “processing of permits and other land use applications” and act as facilitators in the private development process rather than take a leadership role. Gross et al., *supra*, at 4. Critics hold that substantial tax incentives or subsidies are provided to developers to support new job creation, but pin community hopes upon the “ripple effect” and have too little control over the job opportunities created. *Id.* Billions of dollars of taxpayer monies have been funneled into economic development projects, but standards for urban redevelopment and developer accountability remain inconsistent, and as such, many projects produce mixed results for the existing communities. *Id.* Inner-city gentrification, the creation of low-wage dead-end jobs lacking health benefits, and the loss of affordable housing frequently occur. *Id.* In April 2005, the New York City Council’s Select Committee on Community Development held a series of hearings due to concerns “that despite recent economic development activity and community development efforts, thousands of City residents living in distressed New York City neighborhoods still continue to experience high levels of concentrated poverty, joblessness, poor health outcomes and low educational achievement.” Marcel Van Ooyen, Legislative Director, *NYC Oversight: Linking New York City Economic Development Policies and Programs to Community Development Strategies*. Briefing Paper of the Infrastructure Division, May 16, 2005, available at <http://webdocs.nycouncil.info/>

[attachments/66242.htm?CFID=1779550&CFTOKEN=23654057](http://webdocs.nycouncil.info/attachments/66242.htm?CFID=1779550&CFTOKEN=23654057). In testimony supporting the use of CBAs, a representative from the Pratt Institute Center for Community and Environmental Development stated, “[New York] City’s community development efforts have often been separate from the larger economic development strategy which largely consisted of tax breaks, subsidies and large scale projects.... Today’s community development needs to embrace new strategies to insure that the City’s economic development investments create truly shared prosperity, not with lip service to job creation, but with sustained and significant efforts.” *Id.*

Smart Growth

The Smart Growth Movement, with its emphasis on development guided by “equity, economy, and the environment,” is credited with the evolution of CBAs. Gross et al., *supra*, at 4. As Smart Growth matured, key advocates realized the need to expand their focus beyond urban sprawl and the environment and to include policy concerns related to the creation of livable cities with living wage jobs. *Id.* at 5. Additionally, “[t]he community benefits movement gives Smart Growth advocates a set of concrete policy tools to advance these outcomes in ways that can be measured: e.g., how many thousands of affordable housing units have been built, how many tens of thousands of living wage jobs have been guaranteed, and how many millions of dollars have been redirected towards community services.” *Id.*

CALIFORNIA CBAs • The first CBA was negotiated in 1998 in relation to the planned development of the Hollywood and Highland Center, now home to the Kodak Theater, which hosts the annual Oscar ceremonies. *Id.* The development, which includes more than 4,000 theater seats, several parking lots and hotels, and 1.2 million square feet of retail space, was projected to cost \$388 million. Greg

Goldin, *Mall-ywood*, LA Weekly, Dec. 18, 1998, at 30. The eight-and-a-half acre project understandably sparked concerns among Hollywood residents and business owners, including fears of increased traffic and congestion, possible environmental effects, increased crime, and impacts on the city's aesthetics. *Id.* However, with the help of Los Angeles Councilwoman Jackie Goldberg and the Los Angeles Alliance for a New Economy ("LAANE"), the developer struck a deal: in exchange for community support, the developer offered to finance traffic improvements, ensure that workers at the Center would be paid a living wage and implement a first-source hiring plan and a policy of union neutrality. Goldin, *supra*; Laura Wolf-Powers, *Building in Good Jobs: Linking Economic and Workforce Development with Real Estate-Led Economic Development*, 18 (Dec. 2006), available at http://www.nycetc.org/pdf/Building_in_Good_Jobs_Report_12_06.pdf. The deal, though, was not one-sided; community support of the development also helped the developer to obtain \$90 million in subsidies from the city. Wolf-Powers, *supra*, at 18. By most accounts, the project has been a success: in addition to revitalizing Hollywood Boulevard, nearly 70 percent of the initial employees hired at the complex were recruited from the immediate area and about half of the permanent positions provide living wages. *Id.*

Staples Center

The success of the Hollywood and Highland CBA was followed in 2001 by the completion of the first "full-fledged" CBA. This CBA concerned the Los Angeles Staples Center, a sports arena that is home to several professional teams, including the Los Angeles Lakers. Good Jobs First, *Community Benefits Agreements Victories*, http://www.goodjobsfirst.org/accountable_development/community_benefit_vic.cfm (last visited Mar. 14, 2007) (hereinafter *Community Benefits Agreements Victories*). Community residents had suffered a blow when the develop-

er failed to provide orally promised benefits after the completion of the project's first phase. (Union groups had obtained promises of union neutrality and living wage benefits, but the developers refused to implement them after receiving variances and subsidies from the city. The community had been further affected by the displacement of more than 250 residents, mostly low-income, and by the increase in traffic, noise, and parking problems.) The CBA model was hoped to provide assurances of the developer's responsibility in relation to the development of a sports and entertainment complex surrounding the previously constructed arena, a project affecting a 27-acre parcel and including two hotels, a 7,000-seat theater, a 250,000 square foot expansion of the convention center, two apartment buildings, and a retail complex. Negotiations were held between the developer and the Figueroa Corridor Coalition for Economic Justice, which represented more than 30 community organizations, including environmental groups, church groups, health organizations and immigrants' and tenants' rights supporters. Strategic Actions for a Just Economy ("SAJE") and LAANE were also involved in the negotiating process, which lasted over nine months, providing organizational and political support to the coalition and community members. *Id.*

The spectre of broad community opposition to the project, which required significant land use variances and city subsidies, provided the community with the necessary leverage to negotiate a comprehensive CBA. The completed agreement states that its purposes are to "provide publicly accessible park space, open space, and recreational facilities; target employment opportunities to residents in the vicinity of the Figueroa Corridor; provide permanent affordable housing; provide basic services needed by the Figueroa Corridor community; and address issues of traffic, parking, and public safety." *Id.*; Staples Center Community Benefits Agreement, at section I, available at www.saje.net (go to "articles and publications" under "quick links" and