Navigating the Negotiation

A Community Guide to Binding Agreements in Clean Energy

EFI FOUNDATION

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Acknowledgements

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Introduction

Welcome to the world of binding agreement negotiations.

In a small farming town in western New York, screens flickered to life one by one as residents logged into the virtual hearing. Each participant announced themselves with their name and address as they joined the remote session to discuss a solar project that could reshape their community. At the start of the hearing, the judge and siting board prepared to hear statements from community members.

As residents took turns speaking, two perspectives emerged. Supporters saw the project's revenue as vital for farm maintenance and long-term survival. A farmer with 7,500 acres across six counties saw it as a path to lasting investment and diversification. "My grandfather said the most important thing a farmer can put on his land is a shadow," he reflected. "I hope we and our community are allowed to do the same." Labor representatives also described the project's employment benefits with the creation of hundreds of local jobs.

The opposition was equally vocal. Residents protested "placing solar panels in place of waving grass or corn" on 2,000 acres of Class 1 farmland - some of New York's best – as "a very large change; it is not rural character, it is industrial character." A community survey showed 350 residents opposed to the project, with critics citing potential losses of $12.3 million in total economic impact, including 27 full-time jobs and $1.6 million in labor income in the dairy industry alone.

This meeting was just the beginning of a long process of compiling community input. Rather than a contest of opposing interests, this was a concerted effort to find common ground and address the needs of all parties involved. What came out of this negotiation was a "binding agreement" that promised specific, tangible benefits to the impacted community in exchange for the community's support for the project.[1]

This is but one example of the ways binding agreement negotiations unfold. They can take months or years to negotiate; they can involve only local governments or a broader group of community members; they are brokered in conference rooms and over dinner; they may proceed in fits and starts, with different stakeholders entering and leaving at various junctures. In short, the processes to get there can vary considerably, but, if done well, both parties feel they are partners in a fair, inclusive, equitable, and just process that is mutually beneficial for the community and the developer.

The projects awarded as part of the Department of Energy (DOE)'s Regional Clean Hydrogen Hubs program (H2Hubs) are currently beginning their project planning phase and will soon begin the long process of negotiating binding agreements between the communities hosting and the companies working on their projects. Many developers have ample experience with these types of negotiations. For many of the communities, however, this is the first time they are entering into such agreements.

This report aims to help community members understand what to expect during binding agreement negotiations to help them avoid potential pitfalls and facilitate a more equitable process.[2] The EFI Foundation (EFIF) plans to release a companion piece to guide developers.

"We were citizens and ranchers and sheep shearers ... we've never done anything like this before. But you know, it was our community, and we were the ones on the line."

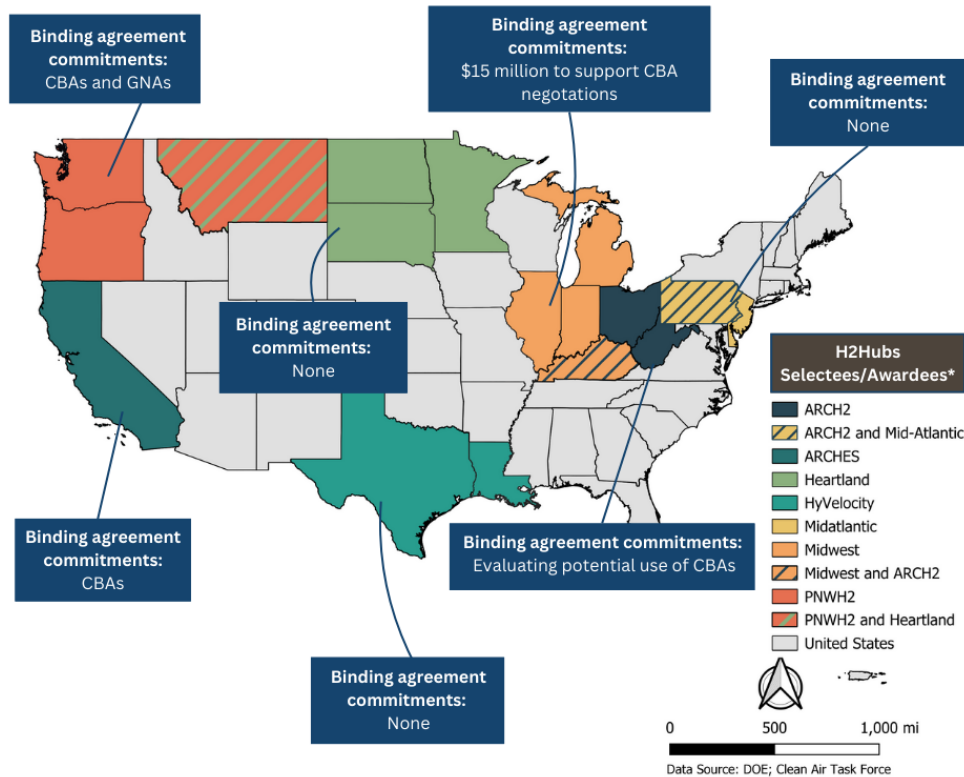*- Anonymous GNA participant interviewed by EFIF*

Purpose of Study

This EFI Foundation report lays out expectations for communities entering into binding agreement negotiations with the H2Hubs program to help demystify the process and enable more effective negotiations for the mutual benefit of communities and developers.

Binding agreements shape emerging energy projects and secure community benefits.

DOE's H2Hubs program is ushering in a new era of community engagement in energy development. During the H2Hubs application process, DOE required each hub to develop Community Benefits Plans (CBPs). These CBPs outlined how the hubs intend to provide meaningful benefits to potential host communities. To formalize the commitments made in CBPs, DOE and other stakeholders are taking an additional step by encouraging H2Hubs selectees to establish legally binding agreements with host communities.[3]

Figure 1. H2Hubs binding agreement commitments

Figure 1. H2Hubs binding agreement commitments. Map of the United States showing binding agreement commitments by hub region.

Binding agreement commitments: CBAs and GNAs

Binding agreement commitments: $15 million to support CBA negotiations

Binding agreement commitments: None

Binding agreement commitments: None

Binding agreement commitments: CBAs

Binding agreement commitments: Evaluating potential use of CBAs

Binding agreement commitments: None

H2Hubs Selectees/Awardees*
- ARCH2
- ARCH2 and Mid-Atlantic
- ARCHES
- Heartland
- HyVelocity
- Midatlantic
- Midwest
- Midwest and ARCH2
- PNWH2
- PNWH2 and Heartland
- United States

0   500   1,000 mi

Data Source: DOE; Clean Air Task Force

On October 13, 2023, OCED announced projects selected for award negotiations (Selectees). In July 2024, OCED began awarding H2Hubs to begin work in Phase 1 of their projects (Awardees). As of September 2024, three of the hubs have signed their Phase 1 Awardee contracts, including the Pacific Northwest Hydrogen Hub (PNW H2), Appalachian Regional Clean Hydrogen Hub (ARCH2), and Alliance for Renewable Clean Hydrogen Energy Systems (ARCHES). The remaining four hubs are still under award negotiations (Selectees), which includes the Gulf Coast Hydrogen Hub (HyVelocity H2Hub), Heartland Hydrogen Hub, Mid-Atlantic Clean Hydrogen Hub (MACH2), and Midwest Alliance for Clean Hydrogen (MachH2). Community Benefits Agreements (CBAs) and Good Neighbor Agreements (GNAs) are two forms of binding agreements that H2Hubs developers are considering for host sites. Source: U.S. Department of Energy (DOE) Office of Clean Energy Demonstrations (OCED), "Regional Clean Hydrogen Hubs Selections for Award Negotiations," https://www.energy.gov/oced/regional-clean-hydrogen-hubs-selections-award-negotiations.

As of September 2024, three H2Hubs have committed to pursuing binding agreements with host communities, though commitment levels vary (Figure 1). California's ARCHES hub pledges to negotiate CBAs without NDAs where desired. ARCH2 in Appalachia will evaluate the potential for such agreements. However, Gulf Coast's HyVelocity and the Heartland hub have not explicitly committed to binding agreements.

As a result, communities near potential H2Hub sites can expect to be approached about entering into binding agreements with developers.

Rather than prescribing a one-size-fits-all negotiation model, this report aims to relay procedural knowledge and expectations for these agreements. With this know-how,

stakeholders can be equipped to proactively prepare for and navigate the negotiation process.

EFIF developed this report by drawing on lessons learned from binding agreement negotiations in analogous sectors, including projects for fossil fuel infrastructure, offshore and onshore wind generation, and mining and metals processing. The team carried out semi-structured interviews with more than 25 individuals directly involved in nine different negotiations. These interviews gathered diverse perspectives from developers and community members, including local government officials, technical experts, lawyers, and community groups. Both developers and community members reported learning valuable insights from each other during these negotiations. See Appendix A for details on the study methodology.

Interviews covered a range of agreement types: Community Benefits Agreements (CBAs), Good Neighbor Agreements (GNAs), and Host Community Agreements (HCAs). Labor organizations can also establish contracts with developers through agreements like Project Labor Agreements (PLAs) and Community Workforce Agreements (CWAs), with or without broader community involvement. EFIF chose not to examine these types of agreements because labor unions already function as organized entities with negotiation experience and established processes; and previous EFIF research showed that labor communities were statistically less interested than environmental justice and underserved communities in research on how to develop a binding agreement. Selected cases also covered different time periods (2000 to 2021) and geographic locations (e.g., Maine, Montana, and New York). See Appendix B for the full distribution of agreement locations.

In addition to the interviews, the team consulted with a handful of professionals in the field and attended numerous expert convenings to talk about and learn more about binding agreements.[a]

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[a] A diversity of input emerged from the convenings with participants, including community members, academics, developers, researchers, and others.

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Overview of Binding Agreement Types

Community Benefits Agreements, Good Neighbor Agreements, and Host Community Agreements are all types of binding agreements with varying structures to suit different needs.

"The agreements were also effective in lowering the temperature of opposing viewpoints and provided good optics for both sides to say they had done something to make things better."

- Anonymous GNA participant interviewed by EFIF

Binding agreements can protect and address community interests and project goals.

These agreements offer a way to garner concrete benefits for communities and help to de-risk the project by establishing clear expectations for community members and building relationships with affected communities.

Communities likely must agree to support the project in exchange for signing the binding agreement. Communities' support includes refraining from lawsuits or criticism of the developers. For example, one agreement includes a clause that indemnifies the developer from "any and all claims [and] suits."[4] This call for support, in turn, strengthens the community's investment in the project and contributes to its overall success.

Agreements can come in various forms, including but not limited to CBAs, GNAs, and HCAs. There are several notable differences among the negotiation processes for each agreement type, including the negotiation participants, agreement signatories, and the typical benefits chosen. EFIF's case studies revealed several patterns, detailed in Figure 2. These patterns are based only on the analyzed cases and do not represent all possible scenarios. For instance, labor groups could be signatories to the types of agreements outlined in Figure 2, but the selected cases did not include such scenarios.

Figure 2. Types of community benefits

	Typical signatories	Types of benefits
Community Benefits Agreement (CBA)	• Project developer, • **Community coalitions or organizations,** and/or • Local government	• **Funding for specific community benefits, programs, or services and/or monetary allocations** • Benefits often managed by a nongovernmental organization or local government
Good Neighbor Agreement (GNA)	• Project developer, • **Landowners in close proximity to the project,** • Community coalitions or organizations, and/or • Local government	• Funding for specific community benefits, **such as direct impact mitigation to property (e.g., easement contracts)** • Benefits often managed by a nongovernmental organization or local government
Host Community Agreement (HCA)	• Project developer • **Local government**	• One-time or recurring **monetary compensation** • Less frequently allocated to specific benefits and/or community services • Compensation managed by local government

Note: The highlighted text refers to notable distinctions between agreement types. Sources: Debra Hilton-Creek et al., 2024, https://masscannabiscontrol.com/wp-content/uploads/2022/01/Guidance-on-Host-Community-Agreements.pdf, and Rudek, Sionainn, 2023, https://reimagineappalachia.org/community-benefits-plans-how-do-they-work-a-deep-dive/.

"I really, really, really try to ... get away from it being about money, but being about projects that work for both of us, because these projects need so much political support to happen. ... We're not going to be providing things until and unless the project is successful, and you are a key part of making the project successful."

- Anonymous GNA participant interviewed by EFIF

A **CBA** is a collaborative contract where the negotiations typically involve project developers, community coalitions or organizations, and local governments. These agreements aim to provide tangible benefits to the community by providing funding for specific programs or services (Figure 2).

GNAs serve a similar purpose. The primary difference between a GNA and a CBA lies in the inclusion of landowners near the project site as GNA negotiators and/or specified recipients, for example, landowners who are "seeing or hearing" project impacts.[5] GNAs

are sometimes exclusively between developers and landowners. One interviewee shared that "good neighbor agreements are … directly with a landowner, not a municipality."[6]

Despite these potential differences in signatories, the types of benefits can be quite similar. For example, one participant mentioned that their CBA allocated $45 million to various environmental and climate-focused projects, including tree planting and providing "free or subsidized PV solar systems" to low-income individuals.[7] Similarly, one GNA offered funding for a position dedicated to assisting private property owners with establishing conservation easements on their lands, leading to 20,000 acres of land with conservation easements. Additionally, the GNA supported a loan program to help these landowners cover initial expenses, such as appraisals and other associated costs.[8]

Other benefits for CBAs and GNAs typically include funding sustainable transportation projects, providing grant matching,[9] or developing parks.[10] The benefits outlined in CBAs and GNAs are often managed by nongovernmental organizations or local government bodies. Ultimately, the decision to pursue a CBA and/or a GNA will depend on the project context.

Among agreement types, **HCAs** stand out in both structure and impact. While local government is involved in most binding agreement negotiations, local government always acts as the sole community signatory for HCAs, suggesting that additional community representation could be absent in the negotiation process. As one participant noted, "My colleagues on the town board … later ended up voting to approve the agreement."[11] In HCAs, town councils or boards make the final decision on approval on these agreements.

Additionally, though less common with CBAs and GNAs, all binding agreements *can* include monetary payments without specifying community benefits, programs, or services. HCAs most frequently lack provisions for targeted community benefits and tend to favor lump-sum payments to communities. The preference for lump-sum payments over detailed benefits can hinder tangible outcomes for communities.

HCAs generally have a more standardized process, likely because of local and state policies that govern their implementation. For example, New York's Accelerated Renewable Energy Growth and Community Benefit Act[12] of 2020 requires "host community benefits" for developers of "large-scale renewable energy facilities (25 MW+)." Developers must pay $500/megawatt (MW) for solar and $1,000/MW for wind annually for the first 10 years.[13]

Similarly, in Virginia, House Bill No. 636, Siting of Energy Facilities under § 56-632, requires applicants for an energy facility certificate to enter into a host community agreement with each host locality, paying $2,000/MW of nameplate capacity.[14] If a host locality declines,

the applicant may instead enter into a CBA with community-based organizations, ensuring the payment is "equal to or greater" and benefits the local community.[14]

State and federal laws can provide important incentives for communities but are effective only if communities are aware of them. One interviewee noted, "We had the advantage of the layers of state and federal law in the U.S. that do offer some protection."[15]

At the local level, communities also can leverage community benefits ordinances, which are municipal requirements for binding agreements or other types of benefits. Again, community knowledge of these benefits is essential. One interviewee remarked that while individual municipalities "have rights under the state Environmental Quality Review Act to get our attorneys' fees and our engineering fees paid, whether a town knows that is a different issue." As will be discussed below, access to this expertise can be pivotal in a successful negotiation.

The legal structure of HCAs reinforces the standardization of their process, as they are governed by clear, state-mandated guidelines. Other agreement types often lack this level of policy structure, which can lead to more variability in their negotiation and execution processes. While CBAs, GNAs, and HCAs differ, all serve to formalize commitments between developers and communities.

Negotiation Essentials: What To Expect

Despite nuances between community benefit types, EFIF found many common elements across the case studies that offer insights about what communities can expect during the negotiation process, summarized in Figure 3 and the text that follows.

Figure 3. Summary of lessons learned from the cases of binding agreements

What to expect in a binding agreement negotiation

	Key Takeaways	
Who	Smaller groups of local representatives meet with the developer first.	Local government is often a key player.
What	Parties tend to agree on broader goals but struggle with specifics.	Communities need formal negotiating skills and legal representation.
When	The timeline for negotiation can vary widely, from several months to a few years.	Meeting more frequently leads to an agreement more quickly.
Where	Meetings often follow a mix of formal sessions with agendas and documentation and informal gatherings aimed at relationship-building.	
How	Agreements tied to project assets (e.g., land covenants) are more resilient to unexpected events, like developer changes, than those bound to specific companies.	Strategic pauses were common during negotiations to realign internally on areas of conflict and create a path forward.

Source: EFI Foundation.

Who: Negotiations involve diverse stakeholders, including local government representatives, in both small and large group settings.

Smaller groups of local representatives meet with the developer first.

Interactions are typically smoother if early discussions are smaller and include local leaders who can provide context and set expectations about how to approach the broader community. Developers also can provide early insight into their own limitations and what benefits are in the realm of possibility.

One interviewee suggested "two dozen smaller meetings before your [big] meetings" as a method of gathering information before discussion with the larger group.[16] Developers might accomplish this through a listening tour with local leaders to inform communities that a project is being considered. They also can share how different communities may be impacted and learn what communities might need or want.[17] These preliminary conversations establish a foundation for the prospect of an agreement, allowing for a more cohesive, prepared rollout to the community at large.

> *"A big part of it is really getting to know the communities and who really is in a leadership position that can start quietly assembling it into something that's meaningful. It's hard."*
>
> *-Anonymous CBA participant*

Working groups, task forces, or councils also may represent community constituents as negotiations move forward. These individuals play a more tactical role in negotiations, facilitating communication, relationship-building, and effective decision-making. For one CBA, communities identified "two community members … as representatives of key constituencies that would be affected by development."[18] One CBA picked representatives from the "north, south, east, and west parts of the community" to represent many communities.[19] One GNA agreement focused on selecting representatives that "make decisions," so negotiations could proceed with efficiency.[20]

Some communities are better positioned to identify individuals for negotiations, such as those who already work with grass-roots organizations or who are local leaders. These established structures allow for quicker mobilization and more effective representation. Communities lacking such resources may face challenges. As one GNA said, "It would be tough to, like, build that organization through the grass roots and try and negotiate one of these things at the same time."[21] Communities without this infrastructure can adapt by receiving assistance from the developer to build capacity, by collaborating with other municipalities, or by reaching out to larger grass-roots organizations.[22,23]

For the in-the-weeds negotiations, it's usually best to avoid larger groups. Competing interests, an abundance of opinions, and different priorities can lead to decision paralysis. A participant in a CBA negotiation said, for instance, that they had "really constructive meetings" when the meetings were with a small group, but when they had a big group, "nothing happened."[24] Similarly, large group meetings can quickly turn into "tomato-throwing sessions."[25]

Despite the potential risks and inefficiencies with large groups, selected community leaders and developers often conduct less-frequent activities with broader, larger community groups to maintain transparency, transfer knowledge from community members to developers, and develop an organized community base.

Effectively organizing larger community bases and stakeholders allows for different members' priorities to shine through. One interviewee remarked that there should be some subset of the community "educated and [on] board."[26,27]

One interviewee from the developer's perspective shared that it's a balance of "help[ing] [selected representatives] manage constituents … that's theirs to figure out, and then them to tell us what they need."[28] An organized community base allows an effective transfer of priorities to representatives, enabling these representatives to best execute negotiations.

Independent third parties can help educate and organize large community groups. One interviewee saw success in engaging "third parties, including government entities" to "build confidence in all the work."[29] Further, "we would provide technical data … to help people understand … what the project's going to look like … and then help other people form their own opinions."[30]

One interviewee's role was to educate community members on "water quality and permit requirements." They talked through questions and identified concerns that were ultimately used to request more information and negotiate additional controls beyond what was included in regulations.

Local government is often a central player.
In negotiations, local government members may act as moderators, regulators, or sole community representatives. However, additional community representatives can be brought into the process, albeit not always with the same decision-making power as government representatives.

Local government participation is vital, as an interviewee emphasized that elected officials "really have the power to cut a deal."[31] In one CBA, the mayor was the sole representative authorized to enter into the agreement with the developer.[32] While typically involved, local government is not always the *sole* representative. For example, in this same CBA, the negotiation team on behalf of the city also included technical experts and community representatives.[33]

The inclusion of nongovernmental "counterparties" at the negotiation table can be a positive force to level the playing field with other negotiating parties. In some cases, local government may not adequately represent or push for appropriate community benefits. In

one case, community representatives developed a robust community benefits package that was not accepted by the city council and never made it to the negotiating table, resulting in minimal concessions by the developer.[34]

If these counterparties are not included in the negotiations as equals, a community may miss out on a fair process. One interviewee remarked that a true counterparty is someone who "really holds the company's feet to the fire."[35]

To summarize, communities can anticipate working with local government leaders during binding agreement negotiations and can expect a combination of small, focused groups for detailed discussions and larger engagements for transparency. The work will involve local officials, community representatives, and, occasionally, independent third parties.

What: Communities need negotiation skills and legal expertise to navigate debates over project details and benefits.

Parties tend to agree on broader goals like environmental protection and community benefits but struggle with specifics, such as project location, financial support, and benefit allocation.

"We didn't often reach consensus; however, the collaboration created a greater understanding of the challenges faced from all sides of the table. It also allowed participants to more easily identify the areas of potential agreement or compromise, which ultimately eased a lot of the tension that had prevailed before the collaboration began."

- Anonymous GNA participant

Negotiations often begin with a shared commitment to high-level objectives like environmental protection and economic development. Although agreeing on broader goals may be relatively straightforward, translating these goals into actionable and mutually acceptable solutions can be challenging.

For example, one participant explained that "landing on the water management programs was fairly easy," but figuring out the logistics to implement that program, and what the developer would be accountable for, was one of the toughest debates.[36]

The specifics of how and where a project is developed often lead to disputes that call for careful resolution. One CBA faced such challenges, with concerns about the impact of

large infrastructure: "What is that going to look like? And then what's it going to look like where it has to go up and over the terrain to get to our distribution center? … That took us a long time to figure out and then with the developer."[37] Another GNA said, "The issues that really aren't easy are aesthetics, the noise, the sound, the economic impacts … these are the things that you really need a lot more time and have to ferret out."[38]

Communities often also have different preferences for how they receive benefits from developers. Some favor direct monetary payments or credits on property taxes, while others prefer tangible benefits. For example, one CBA faced lengthy deliberation over whether to receive free electricity or monetary compensation: "The difficult thing to figure out was, do we want to have this free electricity directly from the windmill? Or do we want to just get money? … We went back and forth about that for a really, really long time; that was a huge decision."[39] Participants can refer to budgets from comparable agreements to inform their own financial planning.[40]

Labor considerations and buy-in also affect the negotiation process. One interviewee noted that industrial development agencies involved in negotiations "really care about … job creation," so will often look for items like apprenticeship programs and prevailing wage within agreements.[41] Another interviewee said that when a company did not use local labor, it ended up costing the developer "about an extra half million dollars to make everybody happy again."[42] This same interviewee recommended "bringing labor to the table to be involved right away," especially given that these unions will have legal capacity.[43]

As agreement provisions are being finalized, community representatives can present proposed benefit options and rationale to the wider community and the developer, helping ensure everyone agrees on the chosen benefits.[44]

Communities need formal negotiating skills and legal representation.

Negotiations often involve complex technical details and legal considerations. As such, interviewees emphasized the value of having individuals with the right expertise in the room for the negotiations.

For example, offshore wind projects have a limited track record regarding their impacts on local communities, and they have complex regulatory hoops. As noted by one GNA participant, "We were dealing with offshore wind, which required multiple layers of approval for new technology. It took time and involved both federal and state regulations."[45]

Lawyers can expedite the agreement process and play an important role in ensuring that the final agreement includes priorities from the community. For one CBA agreement, "attorneys met with the community to develop a sense of values and needs of the community and built this into the benefits agreement."[46] One interviewee with a legal

background expressed that, when negotiating with another attorney, "I've come to agreement on terms in a day."[47]

> *"The Community Benefits Agreement is the product of experienced lawyers who understand local communities and are trained in communicating at an inclusive and focus-driven level."*
>
> *- Anonymous CBA participant interviewed by EFIF*

Interviewees were cognizant of not over-relying on lawyers; participants also need strong practical negotiation skills. As noted by one interviewee, "lawyers are not always the best mediators … their skills are not always suited for complex negotiations."[48] One town hired "a professional negotiator in D.C. who … gave us a weekend workshop on how to negotiate."[49]

> *"Don't undersell … what value you as a community might be bringing to the project, right? There's the whole adage that pigs get fat and hogs get slaughtered."*
>
> *- Anonymous HCA participant interviewed by EFIF*

Agreement provisions will often set aside funding so communities can contract with third parties to handle complex legal and technical demands. For one CBA, the developer "paid for us to hire lawyers to help guide us through the process."[50] Similarly, another CBA said, "We ask developers to pay into escrow to cover attorneys and engineering fees. This ensures that municipalities have the resources needed for thorough evaluations."

A negotiator for a GNA remarked that providing technical capacity allowed the community to "meaningfully participate in … some of these decisions [that] get pretty technical and scientific."[51] For this same agreement, the interviewee highlighted the importance of funding technical expertise: "The company has to fund the implementation of the Good Neighbor Agreement. We settled on $135,000 a year for technical consultants. This funding was essential for informed decision-making and successful implementation."[52]

In brief, although broad goals may be agreed upon, communities often face challenges and debates over project specifics, benefit allocation, and labor issues. Additionally, while legal

expertise was valuable, communities balanced using lawyers with building their own negotiation skills.

When: Negotiation timelines fluctuate, but more frequent meetings often lead to faster resolutions.

The timeline for negotiation can vary widely, from several months to a few years.

Conversations preceding formal negotiations can last decades; one CBA was discussed as a prospect for 20 years before formal negotiations began.[53] However, the average length of negotiations is about two years. One GNA negotiation took around three years, while another CBA was completed in a few months.[54] The latter participant acknowledged that they "were sensitive to the community concerns throughout the process and maintained transparency, which was also helpful to successful negotiations."[55] Understanding potential timelines allows for realistic planning and better resource management throughout the negotiation process.

Since agreement negotiations can drag on for extended periods of time, some negotiations establish ground rules to manage public communication. One interviewee said, "We set a rule: no talking to the press. If we did talk to the press, both sides agreed to say, 'You know, we're negotiating, and things are going well, and we're still working on stuff,' because we didn't want the negotiation to be out in the press where we lose control of each side and how it might work."[56] This strategy helped maintain control over the narrative and prevented external pressures from complicating the negotiation process and timeline.

Meeting more frequently leads to an agreement more quickly.

In one CBA case, the parties met every one to three weeks, which led to the completion of agreement terms in four to five months. By contrast, a different CBA negotiation took three years, as participants met monthly with little progress made. Participants noted, "There were lots of meetings where nothing really happened, and people talked about the weather." The sporadic and less-focused meeting schedule contributed to a lengthier process.

To summarize, communities should be prepared for negotiations to last anywhere from a few months to several years. They may be asked to agree to communication guidelines, such as limits on press interactions, and should anticipate that more frequent meetings could lead to faster resolutions. However, negotiations can face challenges that threaten negotiation timelines and the longevity of the agreement.

Where: Negotiations take place in both formal settings and informal gatherings throughout the process.

"I have a story. It goes: 'Hi, my name is Joe. I just moved into your community and I'm going to open a landfill here. Thank you. I wanted to introduce myself,' and somebody stands up next to him and said, 'Well, how come we weren't told about this?'"

- Anonymous CBA participant interviewed by EFIF

Meetings often follow a mix of formal sessions with agendas and documentation and informal gatherings aimed at relationship-building.

Formal sessions, such as public hearings, town board meetings, and even recorded smaller-group sessions create space for transparency with a wider set of community members. One participant noted that, as local government members, their meetings had to be public, requiring them to gather in formal conference rooms. The design of the settings allowed for a range of stakeholders to attend: "Public working group meetings typically occurred in a municipal board room or community room setting, with participants seated around a group of tables. Sometimes the room was set up for presentations."[57]

In formal settings, negotiators were able to provide additional transparency through diligent notes and transcription of meetings in some instances.[58,59,60,61] Recordkeeping was also important from the negotiator's perspective to ensure "things weren't falling through the cracks" and helpful for community members who "wanted a transparent process, but people didn't have time to monitor it."[62,63] One interviewee noted that they were "sensitive to the community concerns throughout the process and maintained transparency, which was also helpful to successful negotiations."[64]

The nature of these meetings can vary in terms of structure and content. One participant described the discussions as structured yet flexible, saying, "Engagement between stakeholders was professional but also frequently quite conversational."[65] For this GNA, representatives would typically share updates on upcoming plans, community concerns, and potential engagement strategies. The structure of these meetings also allowed for pointed discussions, as they were "typically time-limited, yet frequent enough to revisit unresolved topics or introduce new topics."[66]

Just as important, informal gatherings offer avenues for relationship-building. In one GNA case, a participant emphasized the importance of meals: "Usually, meals are involved in

building relationships ... meals and time spent and invested."[67] This approach was particularly valuable, as this was the first time the community had negotiated with a company. Another negotiator highlighted how informal settings facilitated candid discussions, saying, "After formal sessions, we'd have beers with the other side where we could really talk about stuff."[68]

Ultimately, stakeholders should anticipate and prepare for both formal and informal interactions throughout the negotiation process.

How: Communities face challenges but can use strategic pauses and lessons from past negotiations.

Agreements tied to project assets (e.g., land covenants) are more resilient to unexpected events, like developer changes, than those bound to specific companies.

The involvement of multiple developers at different project stages complicates the negotiation process. As one interviewee explained, "We have one developer who secures the land rights and does the application. We have another developer who actually constructs the project and then they sell it to someone else who actually operates it. And these companies may not have any relationship with each other."[69]

Additionally, changes in state policies and regulations can interrupt negotiations. In one case, legislative changes weakened existing protections, affecting the community's position.[70] These changes affect the developers as well. For example, one developer emphasized the need for regulatory stability: "We want robust and consistent regulation, all the way around. I mean, if you and people have come to us and said ... 'How can we ease the regulatory burden?' And I said, 'Well, just stop changing them. Stop it. Stop thinking that rescinding things is going to help us.'"[71]

To address these challenges, negotiators employ several strategies. One approach is to tie agreements to the project itself. This can be done by attaching agreements to the land covenant or project permits. As one interviewee said, "Developers do change. It does need to be tied to the project, and they do have to negotiate provisions that provide for substitution."[72] Negotiators also can link agreements to the project entity's name, which typically remains constant even when ownership changes. In some jurisdictions, projects may have their own LLC structure, as noted by an interviewee: "In New York, the project often has its own LLC or series of LLCs. These LLCs are what get sold, so the project entity often stays the same even if the parent company changes."[73]

Interviewees also recommended requiring future parties (e.g., tenants, contractors, buyers) to sign the original agreement. They advised including specific language about duties and obligations for all parties involved in the project, including future entities.[74]

It is important to note that while these strategies can improve agreement enforceability, there is limited case law specifically addressing Community Benefits Agreements. Consequently, general contract law principles are typically applied when considering their enforceability. To create better certainty around CBA enforcement, negotiators can craft CBAs with clear, specific language that aligns with contract law principles.[74]

> *"He told us right off the bat, 'Nobody's leaving until we reach an agreement.' That's when we got up and left."*
>
> *- Anonymous HCA participant interviewed by EFIF*

Strategic pauses were common during negotiations to realign internally on areas of conflict and create a path forward.

Negotiations often involve aligning multiple stakeholder groups, which can complicate the process. This includes managing differing goals among city departments, various community stakeholders, and external parties. As one stakeholder said, "We had to navigate the different views and objectives coming from our various disciplines." Another highlighted the challenge of internal negotiations, saying, "You have to find common ground among multiple groups and be prepared to compromise, as getting 100% of what you want is unlikely."[75]

Additionally, collaboration across municipal boundaries can add layers of complexity, especially when projects span multiple towns and involve various taxing jurisdictions. Although multiple agreements could be offered to each community, many developers favor a single agreement per project to minimize conflict and ensure clearer funding. However, if only one agreement is on the table, the different taxing jurisdictions must align their priorities to prevent disputes over the single funding pool. This need for consensus can complicate decision-making and could call for internal realignment throughout the process.

These pauses allowed teams to regroup and strengthen their positions. For example, one GNA negotiation team walked out when the other party did not support "their bottom line" and used the break to determine their next steps before returning to the table. Another team took a "good pause for months" until the issue was revisited.[76]

Pauses also create opportunities for communities to take the time to learn from other communities' experiences and strategies. One interviewee stressed the need for inter-community dialogue, as it "is going to bring up the baseline for everyone."[77]

However, this open communication can be challenging to implement. The same negotiator said, "That has been a tough sell to some municipalities that I've worked with. They are very, like, secretive and are, like, 'No, we don't want them to know how much we got.'"[78] This reluctance to share information can harm communities' collective bargaining power and limit the potential for mutually beneficial agreements.

Negotiating teams can use these intermissions to strengthen their internal position and create opportunities for information-sharing between communities. This approach can lead to more informed decisions and stronger negotiating positions.

In short, communities can expect to face unexpected challenges such as changes in project ownership or shifting policies, as well as strategic pauses to realign the team. By using the success strategies of other communities—like tying agreements to projects rather than specific entities, advocating for clear language on duties and obligations, and using pauses for inter-community learning—communities can work toward more durable agreements.

Key Takeaways

This report outlines the primary aspects—the Who, What, When, Where, and How—of binding agreement negotiations to equip communities for effective participation.

Who

Smaller groups of local representatives meet with the developer first.
Larger groups are not used early on for setting agreement priorities or for detailed discussions because of the tendency for decision paralysis. As negotiations advance, working groups or councils represent the community.
Local government is often a key player. In negotiations they may act as moderators, regulators, or sole community representatives. Additional community representatives may be involved but typically do not hold the same decision-making power as government officials.

What

Parties tend to agree on broader goals like environmental protection and community benefits but struggle with specifics such as project location, financial support, and benefit allocation. Communities also differ in how they prefer to receive benefits, with some favoring direct payments or taxes and others preferring tangible benefits.

Communities need formal negotiating skills and legal representation. Negotiations for binding agreements for energy projects can introduce highly technical questions. To address this, agreements typically include funding for legal and technical experts or for training communities in building their negotiation capacity.

When

The timeline for negotiation can vary widely, from several months to a few years. Conversations leading up to negotiations can span decades, but the typical duration for the negotiation process is about two years. Given that negotiations can be lengthy, some agreements establish ground rules for managing public communication to prevent sensitive information from triggering public responses that could disrupt the process.

Meeting more frequently leads to an agreement more quickly. Negotiations can conclude within a few months with weekly meetings, whereas monthly meetings have extended negotiations to three years.

Where

Meetings often follow a mix of formal sessions with agendas and documentation and informal gatherings aimed at relationship-building. Formal sessions, like public hearings, provide openness to a broad audience. Informal settings, such as shared meals, are essential for developing trust and facilitating open conversations, which could lead to more candid discussions.

How

Agreements tied to project assets (e.g., land covenants) are more resilient to unexpected events, like developer changes, than those bound to specific companies. Project developers often change during the lifespan of an energy project. To safeguard binding agreements, participants tied these agreements to land covenants, project permits, or the project LLC instead of to individual developers.

Strategic pauses were common during negotiations to realign internally on areas of conflict and create a path forward. For projects covering multiple towns and taxing jurisdictions, a single agreement is often preferred to minimize conflicts and streamline

funding. However, conflicting priorities among jurisdictions can cause disputes and complicate decision-making. Aligning goals across stakeholders, including city departments and external parties, also can add complexity. These factors may necessitate strategic realignment during intermissions.

Areas for Future Research

Further study will help refine strategies for creating more effective and equitable binding agreements.

Creating binding agreements is a deeply collaborative process, and numerous resources are available for those interested in developing them. Various organizations offer guides, workshops, and case studies to support communities and developers throughout the process.[79,80,81,82,83] Building on these efforts, EFIF's interviews and convenings revealed several themes that require additional research, particularly focused on binding agreement initiation and implementation.

1. **Governance structures:** More work is required to establish effective governance frameworks for binding agreements, including the development of accountability mechanisms to monitor and enforce agreement terms.
2. **Long-term impact assessments:** Interviewees suggested a need for methods that can assess potential long-term impacts of projects, from the outset of the agreement process, to ensure that future effects are adequately considered and addressed.
3. **Policy structures for community benefits:** Research should explore various policy structures that mandate Community Benefits Agreements, examining how such policies can enable communities to pursue and enforce these contracts.
4. **Agreement accessibility:** Preliminary findings suggest that binding agreements are less common in rural and inland areas. This indicates a need for capacity-building efforts to enhance engagement and information-sharing in these regions. To improve accessibility, support and resources should be provided to facilitate meaningful community participation where agreements are less frequently found.
5. **Developer approaches to binding agreement negotiation:** Insights from stakeholder interviews also began to reveal how developers negotiated binding agreements. EFIF is planning a companion piece focused on takeaways for developers to implement when negotiating a binding agreement with communities.

By addressing these areas, future research can help refine strategies and policies to ensure that binding agreements in energy projects are actionable and equitable for all stakeholders involved.

Conclusion

Ultimately, understanding common negotiation elements empowers communities to achieve more equitable outcomes.

"And then after that, you know, we finally got to the point where we could just have frank discussions and trust each other."

- Anonymous CBA participant interviewed by EFIF

Although each project and its stakeholders may approach negotiations differently, EFIF's research suggests there are some common elements community members can expect during binding agreement negotiation processes.

EFIF's findings offer a framework that sets clear expectations for negotiations. This foundation arms communities with the knowledge needed to navigate the negotiation process more effectively and could reduce the likelihood of unexpected challenges. While this framework was developed for use in the H2Hubs negotiations, the principles are more broadly applicable to any new clean energy developments.

Through determined negotiation, the rural New York community secured a substantial agreement. Annual payments to the municipality will start at $1,006,522 and increase by 2% each year, totaling over $24.4 million across two decades.[84] As one resident put it: "The Byron community can and will benefit from the solar project. Working together is a positive thing for the whole community and our future generation."[1]

The ink has dried on the contract for that small town, but it marks just the beginning of a broader movement. Many more communities will soon engage with projects committed to equitable partnerships, particularly through the H2Hubs program and, hopefully, other clean energy initiatives. The time has come to prepare to sign on the dotted line.

Appendix A. Interview Methodology

The EFIF team undertook this research project to explore best practices in community engagement for energy projects involving co-created documents such as Community Benefits Agreements (CBAs), Host Community Agreements (HCAs), or Good Neighbor Agreements (GNAs). Our study focused on the early phases of binding agreement development between energy developers and communities. The agreements were classified according to how they labeled themselves. The Chevron ECIA was reclassified as a CBA to protect confidentiality.

To gather insights, we conducted in-depth interviews with individuals who were directly involved in the negotiation and development of various binding agreements across the country. These conversations provided valuable perspectives on the negotiation processes, challenges faced, and successful aspects of different agreements.

Our research methodology included:

1. Identifying and examining specific cases of binding agreements in various energy projects.

2. Conducting and analyzing semi-structured interviews with important stakeholders, including community representatives, developers, and local government officials.

3. Compiling expectations for negotiations based on interviews.

Interview questions

General

Can you tell me a bit about yourself and how you got involved in this agreement?

How did you see your role in the negotiation?

Time

How often did you meet with the developer?

Did you feel like the frequency of communication met your needs? Did you want more communication? Less? More emails but fewer meetings?

What was the length of time between the start of negotiations and a signed agreement?

Engagement

How did the developer engage with you?

What format were the convenings? (Panels, open room convos, digital meetings, etc.; could be any form of stakeholder engagement.)

How long did engagements last, i.e., were public hearings five hours long? Did they continue as long as there was active participation or were they time-limited?

How were participants recruited, i.e., through what methods? (flyers, mailers, phone calls, etc.)

Did you have the "right people" in the room? How did you define that? What did you do to identify those people initially?

Whose perspectives were missing from this agreement?

Were you able to reach consensus and were you comfortable with the outcomes of these engagements?

Who set the agenda for these conversations?

Would you consider these engagements successful? Why or why not? What worked or didn't work?

Priorities

What were your goals in engaging?

Were there specific benefits you were hoping to achieve?

What was the easiest point of consensus?

Were there particular areas of struggle?

Other examples

Has the agreement influenced you to pursue binding agreements more often? Why or why not?

If they have pursued other binding agreements: What did you do differently in your approach to the other agreements? Why?
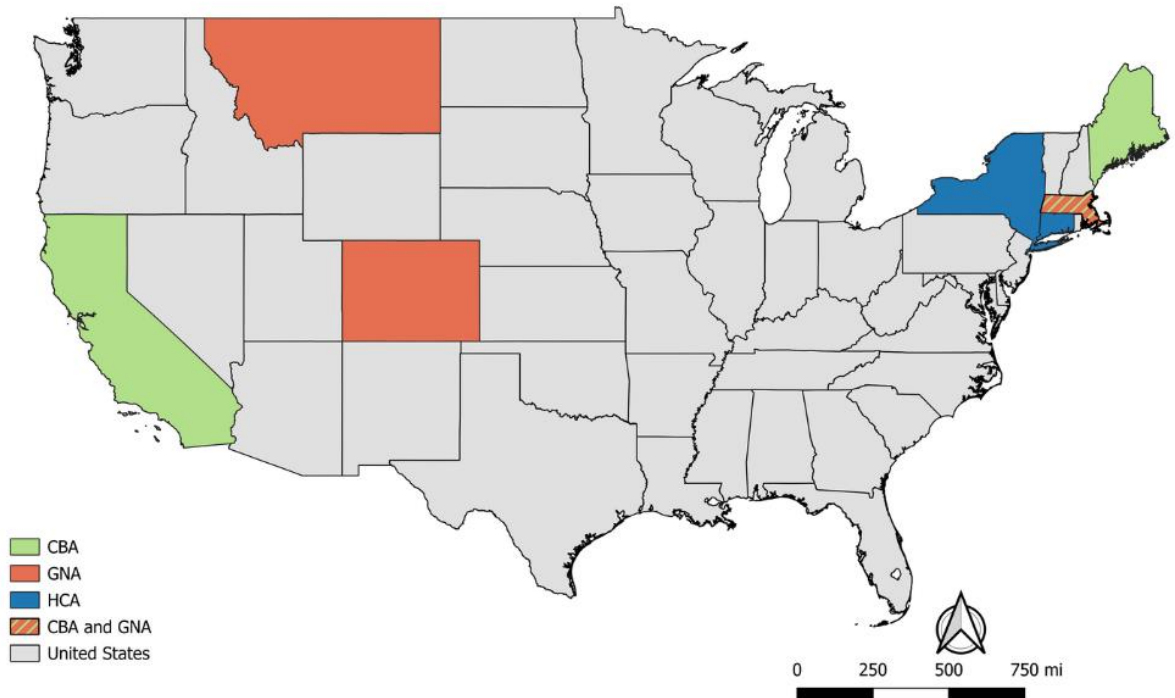
What priorities do you now hold if you were to pursue another agreement?

Recommendations

What would you say to other communities or developers who are thinking about pursuing a binding agreement? Any recommendations?

Appendix B. Binding Agreement Profiles

Map of agreement locations and type

Data Source: Columbia Law, Sabin Center for Climate Change Law

Profiles of studied agreements

Agreement name	Agreement link	Description
Maine Aqua Ventus - Monhegan - CBA	Link to agreement	Upfront payments include $100,000 for an energy/broadband infrastructure fund to implement grant work; $100,000 for a technical support fund; and $2,330,000 for an energy/broadband infrastructure capital fund. Annual payments to the municipality begin at $40,000 and escalate by 2.5% each year. Targeted benefits include local hiring opportunities and University of Maine scholarships for Monhegan residents.
Excelsior Energy - Byron - HCA	Link to agreement	Annual payments to the municipality begin at $1,006,522 and increase by 2% each year for 20 years for an expected total of $24,455,837.
South Fork Wind - East Hampton - HCA	Link to agreement	Annual payments to the municipality equal $700,000 for the first 25 years. After 25 years, annual payments shall be the installment amount plus a 2% escalation factor each year. The developer also agrees to fund a fisheries liaison, local job opportunities, and a community trust fund of $5.55 million.
Vineyard Wind - Nantucket - GNA	Link to agreement	Upfront payments to the municipality include $4 million at the financial close of the first project and $3 million at the financial close of each subsequent project. Targeted benefits include the establishment of an Offshore Wind Community Fund.

Bowie Resources - WSERC - GNA	Link to article about agreement	Provisions to transfer the permit for the silo and train load-out from Bowie #1 to Bowie #2. Repairs to Stevens Gulch Road with up to $100,000 from the mine. Stop use of Highway 133 stockpile once Bowie #2 storage is operational. Reclamation work in 2000, completing within 18 months. Report Bowie Portal #1 reclamation status by end of 2001. Limited production to 5 million tons/year for Bowie #1 and #2, with $1 per excess ton in liquidated damages. Meetings with CDOT in early 2000 for Highway 133 upgrades. Installation noise and light mitigation measures. Imposition of liquidated damages for noise violations. Prohibition of Garvin Mesa roads use if Terror Creek permit is approved. Restriction of ventilation fans. Finalization of water augmentation plan before mining within one mile of Terror Reservoir. Maintain open-door policy with residents. Contribution of up to $500,000 to the Delta County Rail Transportation Mitigation Fund.
North East Offshore - New London - HCA	Link to agreement	Upfront payment of $750,000. From years two through seven, annual payments will be $750,000. If North East Offshore continues its use of the pier, from years eight through 10, annual payments will be $750,000 plus payments to the municipality ranging from $250,000 to $1 million. If North East Offshore subleases the pier, annual payments will be $250,000.
Sibanye Stillwater - NPRC - GNA	Link to agreement	Establishes clear and enforceable water quality standards, as set out in the Adaptive Management Plans for each mine site, beyond state requirements. Provides local communities with access to valuable information about mining operations and the opportunity to address potential problems before they occur. Ensures public safety and security while protecting the interests of miners through traffic plans designed to reduce mining traffic on country roads. Logistics coordinator consolidates commercial loads to reduce traffic to the Stillwater mine, signs posted urging drivers to slow down, and employees encouraged to use company-provided buses. Sets goals and objectives for developing new technologies through a cooperative framework of local citizens, third-party experts, and the mining company.
Chevron - Richmond - ECIA	Link to agreement	Annual payments will be awarded as follows: $11 million for year one; $8 million for years two through six; $7 million for years seven and eight; $6 million for year nine; and $4 million for year 10. Payments are allocated for programs like greenhouse gas reduction, scholarships, and public safety.
Salem - Crowley - CBA	Link to agreement	A one-time $45,000 payment to the Essex County Community Foundation for seed funding to support regional coalition-building in clean energy and blue economy initiatives.

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