

# COMMENTS ON COMMUNITY BENEFIT PLANS AND AGREEMENTS

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Sept. 26, 2025

## I. INTRODUCTION

### B. Key Terms

#### Key Stakeholders

Narrowing key stakeholders to residents, interest groups and organizations within a mile of a proposed facility drastically limits community engagement. The impact of a clean energy facility can have community-wide or cross-community impacts. This definition needs to be expanded. Notably, it also seems inconsistent with much of the rest of this document which speaks about community-wide engagement.

### C. The Importance of Community Benefit Plans

The more I think about Community Benefit Plans, the more CBPs seem to have limited utility on their own and should not be suggested as an ultimate goal. The primary benefit that I see of a CBP is as a necessary precursor to a Community Benefit Agreement. Since the clean energy siting process is a regulatory process and a CBP is not legally binding, it does not seem to be an effective definitive tool since on its own it cannot be enforceable. It can however serve as a bridge to getting to a CBA, as OEJE suggests. Alternatively, if a CBA cannot be reached, then a CBP could form the basis for conditions put on a project by a regulatory body.

As noted earlier, unless the definition of Key Stakeholders is expanded, the input on a CBP will be limited and therefore its effectiveness.

### D. Consideration of CBPs and CBAs in Consolidated Permit Process

#### 1. Development Process

Since OEJE only recommends CBPs, it seems that the proposed development of a CBP is weak and there is a high likelihood they won't happen. Specifically, "*OEJE recommends that applicants develop and discuss a draft CBP with community members during the pre-filing stage*". In order for a CBP be the pathway to an informed regulatory decision and an enforceable understanding with the community, whether in the form of a CBA or not, a CBP needs to be required in the pre-filing phase. It is worth noting that the rest of this section reads as if there is a presumption that a CBP will be created.

While there is mention that Key Stakeholders will provide feedback on the preferred site or route, at this point in the guidelines there is mention of any follow-up review by Key Stakeholders prior to submission with an application. Later in the guidance there is a recommendation for ongoing engagement between the Applicant and the community but unless

required and has a stated outcome, there is little chance this will occur. Given the importance placed on the CBP as a vehicle for expressing community needs and interests, there needs to be the requirement that community feedback and the comments are accurately and fully included in the CBP. Without this, regulators reviewing an application cannot have confidence that the CBP provides the “most up-to-date record of community feedback”, which is what OEJE assumes.

As I read the suggested process for developing a CBP, it seems that OEJE is in effect considering the CBP to be the pre-filing community engagement document. If this is the case, it should certainly be required. I am glad that these guidelines are specific about what should be included in a CBP since the scope and content of a CBP should not left up to the applicant to establish.

Given the 12-month window for local regulation and 12-15 months for EFSB, there is limited time for regulatory review. After an application is formally submitted, I do not anticipate an applicant actively engaging in back and forth on the Community Benefit Plan unless it is required by EFSB/DOER guidelines or by the local regulators. Currently, there is no enforcement for continued meetings and/or adjustments to a CBP. If OEJE wants this to be a living document for the life of the permitting process, this needs to be established as a requirement. Furthermore, a mutually approved and “signed off” version of a CBP should be submitted with the Application; subsequent modifications could be submitted the regulatory body to account for evolving understanding between the parties but only if mutually agreed to.

## ii. Enforcement Capabilities

The statement that “*OEJE strongly encourages project applicants to treat the commitments made in CBPs or CBAs as binding moral and operational obligations*” seems naïve in the context of a for-profit development, regulatory process. Without enforcement, accountability is dubious. OEJE states that EFSB has no enforcement of a CBP or a CBA, so the only mechanism is legal action. The same is true with a local government regulatory process. In all cases, it is likely that compliance by an uncooperative applicant will require legal action on the part of the host municipality, Key Stakeholders, or the EFSB.

## **II. Community Benefits**

### Meaningful Benefits

The statement that “*Benefits should be defined through direct dialogue with the community, recognizing that needs vary across geographies, cultures, and contexts*” confirms by prior comment that the one-mile limit for Key Stakeholders is insufficient.

While I ultimately respect and support the concept of a community identifying its own needs, as I commented in regards to the Site Suitability Scoring guidelines, benefits should be aligned with the siting aspects of the project if the benefits will be used to improve a siting score. Scoring is an official part of the regulatory process. Given this, I support two of the categories that OEJE identifies for community benefits:

1. Environmental Justice and Equity
4. Implementation of Environmental and Public Health Protections.

Community benefits that don’t improve scores should be given more latitude to address community-identified needs. I see categories #2 and #3 being benefits that can be helpful to a

community but which should not change scoring. I am sure there are others a community might identify. What is important given that this is a regulatory process about siting facilities, is that non-affiliated benefits should not give applicants an easier path to development.

#### Trackable Benefits

OEJE states “*that mitigation and benefits are not the same*”; this is an excellent and important point. This should provide clarification of where they each fit into the regulatory process.

An environmental compliance officer will only work if it is required of the applicant and at the applicant’s expense but directly accountable to parties in the community or the host municipality. I would encourage OEJE to look at a similar role now being required by projects receiving subsidies under SMART 3.0 Codifying this for all projects would certainly help with compliance and accountability of projects.

### **III. COMMUNITY ENGAGEMENT PROCESS**

I think OEJE needs to resolve the inconsistency between “community wide” and Key Stakeholders, as defined in section I. Again, defining Key Stakeholders as those people living within one mile of a facility is not “community wide” and is insufficient for this purpose.

#### A. Core Principles of Effective Engagement

I think these principles are excellent but unfortunately the exception rather than the rule in development projects. I would suggest that OEJE convert these into an agreement that the applicant is required to sign at the outset of a project and submit as part of a CBP submission with an application. This creates real accountability to these principles. If such a document is created and submitted it should also be made available to those engaged in a CBP process. This will establish a clear set of expectations so that either the community or the regulators can hold the applicant accountable to.

#### B. Step by Step Engagement Process

Step 1: While an admirable list, I think lists, generally speaking, end up being limited by the perspective of the list-maker. I would suggest that it is better to be more inclusive and general. For example, OEJE calls out Youth and Elderly advocacy groups; why are advocacy groups representing people with physical and mental disabilities not included? I would suggest it is therefore better to state this as “advocacy groups representing traditionally disenfranchised people” which covers more populations.

Similarly, many communities where clean energy projects are sited are small and/or rural and do not have these formal organizations. Encouraging inclusion of groups outside of the community, regardless of their earnest concerns or effective advocacy role, invites non-stakeholders to the process above those in the immediate community that is being impacted. Local residents should not be put in a position where an outside organization is negotiating for zero-sum benefit options. Non local organizations should be invited by residents to assist the parties in the process.

Step 2: This will happen in an ideal world. I can foresee an applicant including some of these items in a CBP if it is required but a plan for plan, will require a very knowledgeable community group to ensure and usually the community doesn't have the power to define the parameters. It would be up to the regulators or these guidelines to establish this as necessary.

Step 3: Mostly great. It is worth noting that meeting times that are good for working families are usually not good for older adults who may prefer daytime hours. These guidelines should not prioritize one group's availability over another's since an applicant could take this guidance literally, thereby excluding people that should be included in the process. The reality is that no one time is good for all; the goal is to maximize engagement by different groups of people.

It would be best if the function of documenting community input was paid for by the applicant but done by third party to ensure that feedback and input is accurately portrayed.

Step 6: EFSB is requiring the applicant to maintain a project website so project information can be readily available. DOER has not yet required this (hope they will). I strongly support OEJE's suggestions to track and publish both community input, as well as all project information the community needs to provide that input. This should be required in the regulations.

## **V. Structuring a Community Benefit Plan**

### **A. OEJE's Recommended Components of CBP**

#### **Item 2. Project Description and Context**

Since the CBP will be submitted as one of many application documents, the Project Description and Context is redundant and likely will not be as comprehensive as these primary submissions that do this. Rather the CBP should describe elements of the project that are informing the recommendations of the CBP – specifically the concerns and benefits. This can certainly be augmented by maps, etc., as OEJE suggests.

#### **Item 7. Sustainability and Long-term Impact**

The term "*sustained beyond the construction phase*" is highly concerning and makes me wonder what timeframe and scope OEJE is assuming. While the construction phase can be intense and bring challenges/harms to a community, the scope of a CBP must be on the life of the project – 20 to 25 years of operation and there period post-operation since one must consider decommissioning and a changed landscape for residents several decades down the road. In that context, construction is a blink of an eye.

## **VII. Oversight and Accountability**

OEJE's statement that "*project applicants should commit to regular, transparent reporting and open communication with the community*" will likely not occur without being required. This can be required through regulatory conditions in a permit. OEJE should suggest this to EFSB and DOER so these activities are explicitly allowed, if not required, in the Large and Small Clean

Energy regulations and in turn can then be included in permit conditions. This would include the five bullet points provided by OEJE.

- *A monitoring and reporting schedule, aligned with project milestones.*
- *Designated point(s) of contact for community members and regulatory bodies. Public-facing progress reports published at least quarterly and made available in the languages spoken by the host community and accessible formats.*
- *Opportunities for the community to review progress either through advisory committees, community listening sessions, or other forums; and/or Approaches for transitioning community stewardship across generations,*
- *ensuring that local leadership isn't dependent on a few individuals. This might involve youth mentorship, compensated advisory roles, or rotating governance structures.*

It is important to note that a permit is different from a CBA, especially in terms of the possible signatories. But the accountability needs to be the same.

### **VIII. Long-Term Sustainability**

While I agree that community needs change over time, I have a hard time seeing that “*mechanisms for the community to propose adjustments or raise concerns as the project evolves and/or advances*” will or can be put in place unless required.

### **A QUESTION/ SUGGESTION**

Given the stated importance of a CBA, can a municipal bylaw require one? I would suggest that since statute states that if municipalities comply with DOER guidance, then they are deemed compliant with the Dover Amendment (Ch40A Sec3 para9), then it would be good for DOER regulations to explicitly state that municipalities can in local bylaws require a Community Benefit Agreement for clean energy projects.