



Advancing Community Health through Community Benefits Agreements

**Four Case Studies
and Lessons
for the
Redevelopment
of the
Oakland Army Base**

**October 2010
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**PACIFIC
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ABOUT THE PACIFIC INSTITUTE

The Pacific Institute is an Oakland-based independent nonprofit that works to create a healthier planet and sustainable communities. Founded in 1987, we conduct interdisciplinary research and partner with stakeholders to produce solutions that advance environmental protection, economic development, and social equity—in California, nationally, and internationally. Our Community Strategies for Sustainability and Justice Program works to build community power to create and sustain healthy neighborhood environments. Since 1995 this program has worked to overcome the common root causes to economic, environmental, and community health challenges in low-income neighborhoods and communities of color through innovative, cross-cutting strategies developed with impacted residents.

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Executive Summary

Community Benefits Agreements (CBA) are increasingly used by communities and developers to ensure that a development project results in benefits to affected community members. A CBA is a legally binding contract between a developer and community groups, and sometimes local government, that specifies benefits that a development project will result in for the local community. This report presents research into how CBAs have been used to advance community health. It begins with a brief description of what Community Benefits Agreements are, how they work, and briefly explores their legality and enforceability. What follows is a survey of four Community Benefits Agreements: SunQuest Industrial Park (Los Angeles, 2001); Los Angeles Airport Expansion (Los Angeles, 2004); Ballpark Village (San Diego, 2005); and Cherokee-Gates Rubber Company Redevelopment Project (Denver, 2006). These cases were selected because they involved community health issues similar to those at the former Oakland Army Base in West Oakland, California. These issues include: decisions on specific land uses, accommodating the relocation of businesses, containing the impacts of cleanup and construction, setting green standards for ongoing business operations, and specifying types of tenants compatible with community health goals. This research was carried out by reviewing mass media articles and academic literature on Community Benefits Agreements and analyzing the official Community Benefits Agreements and related documents for the selected cases. For each of the four cases, we present information on:

- What was the development project and why was a CBA initiated?
- Who was involved in negotiating the CBA?
- What were the specific actions committed to in the agreement?
- How was the agreement monitored and enforced?
- What has the impact been since the agreement went into effect?

Each case provides precedents and lessons learned for holding a developer accountable to specific measures that protect and strengthen community health. The report concludes with a discussion of these lessons learned and how these highlighted components pertain to the community health interests of West Oakland community members involved in the redevelopment of the former Oakland Army Base.

Advancing Community Health through Community Benefits Agreements Four Case Studies and Lessons for the Redevelopment of the Oakland Army Base

Introduction

There is growing recognition that the social, environmental, and economic conditions of a neighborhood profoundly influence residents' health and well-being. "Community health" is a term for this broader understanding of the diverse causes of health conditions. Advancing community health means strengthening neighborhood resources as well as the physical and natural environment so that it improves the overall health of community residents by encouraging healthy behavior and creating a healthier environment. This can include providing community residents with access to safe parks and green open space; quality, affordable housing; youth programs and good performing schools; economic opportunities; first-rate access to health care; walkable streets; and healthy food. In addition, creating healthy communities ensures that neighborhood features that harm health, such as air pollution, blight, and concentrated poverty, are reduced to the point of being harmless. Many communities have known for a long time that a shortage of these neighborhood resources and an abundance of these health hazards have been affecting their lives.

Conditions that cause health problems, such as air pollution or lack of access to healthy food, are disproportionately concentrated in low-income neighborhoods and communities of color. This contributes to the higher rates of health outcomes like obesity, diabetes, and asthma in these communities. In West Oakland, a legacy of environmental injustice and unwise planning has produced conditions that have a profoundly negative effect on community health. An African-American child born in West Oakland has a life expectancy that is 15 years shorter than a white child born in the Oakland Hills.¹ According to the Alameda County Department of Public Health, this discrepancy is due in large part to the neighborhood conditions in West Oakland. Like many similar communities of color around the country, West Oakland has a high concentration of polluting industries, liquor stores, and blighted properties and a scarcity of living-wage jobs, youth programs, and other vital community resources.

These same communities also tend to be the areas targeted for urban redevelopment projects, presenting an opportunity that redevelopment can address community health problems – and a risk that it may perpetuate and intensify them. Residents in areas like West Oakland have been historically excluded from land use planning and development decisions.

Unfortunately, many public institutions and policies responsible for decisions that greatly affect community health are far behind in their ability and willingness to implement strategies informed by this understanding of health. Land use planning, the public decision-making process that

guides development priorities for each property in a city, is an example of the types of decisions that make an enormous difference for community health and yet are typically made without any formal recognition about how land use affects health. Land use decisions such as zoning and conditional use permits can determine whether a polluting industry is established next to a daycare facility and how many grocery stores a neighborhood has.

With the shortcomings of public institutions in implementing strategies to support community health, community advocates have begun using approaches like Community Benefits Agreements (CBAs), a strategy initially developed by labor advocates seeking to ensure that development projects result in living-wage local jobs. A CBA offers broad flexibility in the types of community health benefits it can bring about, from investment in resources like youth centers or job-training programs, to environmental protections that reduce air pollution, to local hiring and living-wage agreements. A developer proposing a new project will typically ask the local government for subsidies, tax breaks, and other accommodations, which are often granted with the justification that the project will contribute public benefits like increased tax revenue, employment opportunities, or neighborhood revitalization. CBAs arose as a tool to ensure that these promised public benefits materialize.

The redevelopment of the former Oakland Army Base presents an enormous opportunity for investment in strategies to improve community health. The former Base was once an economic anchor where local residents had long-term careers, but these jobs disappeared with the Base's decommissioning. Now in the hands of the City and Port of Oakland, the over 100 acres of mostly industrially zoned land are now slotted for redevelopment. The Base property now belongs to the City of Oakland and the Port of Oakland, who are in a position to help ensure that the redevelopment project produces community benefits.

West Oakland has seen its share of redevelopment projects and struggles to secure local benefits. For instance, the relocation of the Cypress Freeway was carried out with little community input and resulted in displacement and neighborhood fragmentation. The community then successfully advocated for revitalization of the land where the freeway was originally located. A Community Benefits Agreement with the developer of the former Base is one strategy for the community to directly negotiate the benefits that will meet their priorities, monitor the project's impact as it moves forward, and hold the developer accountable for the agreement.

This paper explores the potential of a Community Benefits Agreement with the Oakland Army Base developer as a strategy for advancing community health in Oakland, with research focusing on four cases of CBAs that covered community health issues that are also of concern in Oakland. We begin with an overview of Community Benefits Agreements and then discuss in some depth each of the four CBA case studies.

Overview of Community Benefits Agreements

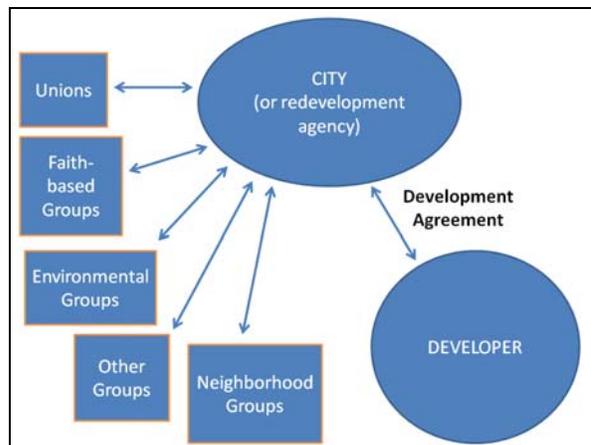
General Description

Beginning in the late 1990's, Community Benefits Agreements (CBAs) were developed as a way to ensure measurable, local benefits such as job opportunities, affordable housing, and health-protective measures for communities neighboring development projects.² To date, there are approximately thirty Community Benefits Agreements in effect all around the United States. Attorney Julian Gross defines a CBA as “a legally binding contract (or set of contracts) setting forth a range of community benefits regarding a development project, and resulting from substantial community involvement.”³ Community coalitions involved in negotiating a CBA with a developer may include, but are not limited to, neighborhood associations, faith-based organizations, unions, environmental groups, and others representing the interest of people who will be impacted by proposed developments.⁴ Because Community Benefits Agreements are private contracts, activists have more leeway on the kinds of demands they can include in a CBA than the benefits they could secure through the public permitting process. However, the process of local government granting permits and subsidies is closely tied to the negotiation of a CBA because the communities will often pressure elected representatives to have the developer sign a CBA before the elected body moves forward with approving the project.⁵

Organizing to Win a CBA

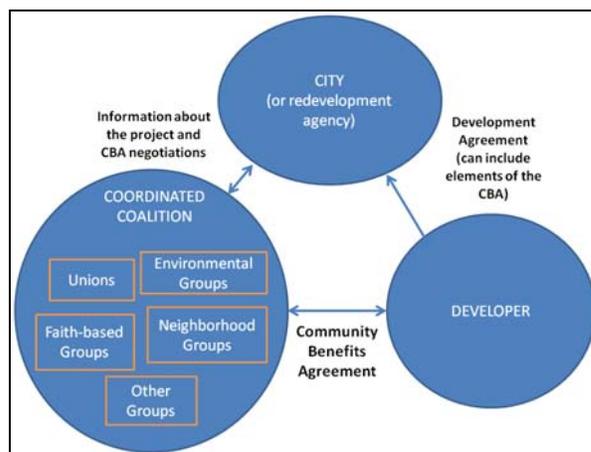
Community Benefits Agreements are typically negotiated between leaders of a coalition of community groups and the developer, prior to city approval of a project. As Julian Gross notes, “The developer will usually negotiate with community representatives to the extent he thinks he needs community support to move the

Figure 1. Advocacy with No CBA



- Little or no direct communication between community groups and developer.
- All developer commitments go into development agreement – city and developer draft language.
- No coordination and shared power among community groups.
- Community groups cannot enforce developer commitments.

Figure 2. Advocacy with a CBA



- Developer commitments re community benefits go into CBA.
- Coalition and developer draft language together.
- Community groups can enforce developer commitments. (City and agency can too, if CBA is included in the development agreement.)
- Community groups share information, have strength in numbers, and coordinate their advocacy.

Source: Gross (2005), pages 12-13

project forward.”⁶ Therefore, ***grassroots organizing is an essential component of the CBA negotiation process***. Upon learning of a new development proposal, either through public notice or public hearings, members of potentially affected communities must coalesce around their shared interests and seek support from influential organizations to form a coalition. According to Gross, “Only ***a broadly inclusive coalition***, composed of organizations whose views carry some weight with the governmental decision makers, is likely to have any success persuading a developer to negotiate with it.”⁷ Key capacities for the coalition include the ability to manage and resolve internal conflicts and set collective priorities, and to obtain trustworthy and capable legal assistance. For more information on questions to consider when developing a CBA campaign, see Appendix A.

Enforcement

Community Benefits Agreements are legal contracts, similar to an agreement between two entities with a business deal. As such, each party can go to court to hold the other accountable to the promises made in the agreement. Typical commitments made by the developer include a living-wage requirement, construction of affordable housing, or funding for neighborhood capital improvements.⁸ In return, “...community groups agree to support the project through the approval process, to refrain from lobbying against it, and/or to release legal claims regarding the project.”⁹ All CBAs contain provisions detailing how the parties’ commitments will be monitored and enforced.¹⁰ Often a committee that includes community members will be formed to monitor compliance and address noncompliance issues.¹¹ The type of authority the committee has to take action to address noncompliance must also be defined in the CBA.

There are two types of CBAs: private and public. Private CBAs are negotiated between and signed by the coalition and the developer. Public CBAs are negotiated between and signed by the developer and the local government.¹² Some critics argue that private CBAs provide enforcement that is more reliable and accountable to communities because, with public CBAs, changing politics can lead local government to revise a CBA against the community’s interests. The case discussed below of the Cherokee-Gates Rubber Company redevelopment project is an example of a public CBA.

To strengthen the enforcement of a CBA, the agreement can be incorporated into a *development agreement*, which is the contract between local government and the developer setting forth the terms on which the development may proceed and any contractual responsibilities of the local government.¹³ By doing so, the agreement becomes enforceable by both the municipality and the coalition. In some states, local governments are not legally permitted to enter into development agreements, so this prevents them from inserting a CBA into the development agreement. But in California, local governments have inserted a CBA into a development agreement, as in the case of the Staples Center in Los Angeles.¹⁴ Numerous CBAs have been in effect for over ten years, starting with the Staples Center expansion, and none have been challenged in court.¹⁵

Community Benefits Agreements can apply to the companies and persons who contract with, rent, or buy from the developer by including “flow-down” language. This refers to the language used in a CBA to ensure that parties other than the developer (such as the developer’s contractors, tenants, various subcontractors, those who the developer may sell the land to, etc.) are also bound by the agreement. For example, if a coalition hopes to ensure that all subcontractors of a development project implement green business practices in their operations, then the CBA must contain specific “flow down” language to that effect.¹⁶ To do this, the CBA must establish a system whereby each business is informed of and agrees to the applicable requirements, includes those requirements in other contracts it enters into, and acknowledges that the coalition, local governments, or third party beneficiaries can enforce those requirements.¹⁷ Various CBAs have successfully done this, included the Los Angeles Airport case discussed below. The critical role of these and other legal aspects of a CBA point to the importance of community groups having their own excellent legal support.

Case Studies of Community Benefits Agreements

The four cases of Community Benefits Agreements discussed here were selected because they in some way addressed the impacts of the project on the health of the neighboring community. This research focused on particular community health issues that are priorities in the redevelopment of the Oakland Army Base: Potential health effects of the site cleanup and project construction; the implementation of green standards for ongoing businesses; the specification of the types of businesses to be accommodated at the site; and formal authority for community oversight. We were unable to locate CBAs that involved commitments to accommodating specific land uses or the relocation of businesses, which are also priorities for Oakland.

SunQuest Industrial Park (Los Angeles, 2001)

Introduction

In 2001, a Community Benefits Agreement was signed between a community coalition and the developer involved in redeveloping an environmentally contaminated industrial site in Los Angeles into an industrial business complex. The land was sold by the city to the developer, SunQuest Development LLC, and the city committed to clean up the site so that it could be developed for industrial use. The Sun Valley Jobs Coalition organized for the CBA and the negotiations were led by the Los Angeles Alliance for a New Economy (LAANE).¹⁸ Little information could be obtained regarding the composition of the coalition.

CBA Content

The SunQuest CBA includes developer commitments regarding truck traffic in nearby neighborhoods, truck idling on the project site, the formation of a Community Oversight Committee and Community Design Review process, living-wage measures, contributions to a community fund, and construction of a youth center in the neighboring community.

To ensure that heavy industrial trucks would not spill over into neighboring residential streets during construction, the agreement commits the developer to route truck traffic away from certain residential streets within two blocks of the site.¹⁹ The penalty in the event that trucks were found to be using prohibited residential streets is that the developer would have to pay for installation of physical barriers or other visible deterrents such as traffic signs to prevent or deter truck traffic on these residential streets.²⁰ The impact on air quality of trucks leaving their engines idling was a key concern and an agreement was also made “that any commercial truck that will be on Site without moving for more than ten minutes shall have its engine turned off, rather than idling.”²¹

Community monitoring of the CBA was established through a Community Oversight Committee composed of representatives from each organization comprising the coalition. The CBA gives the committee access to the site to monitor implementation of the CBA, while the city is to investigate all non-compliance complaints.²² The CBA also provided for a Community Design Review process, requiring the developer to make all designs and plans available for the coalition to review. The plans specified for committee review include landscape plans, plans for parking areas, building design, drainage, traffic routing, and maintenance.²³

The developer also committed to contribute \$150,000 to a neighborhood improvement fund and make reasonable efforts to ensure that 70% of all jobs would pay a living wage on the first day that all businesses were open on the site. The contribution to the neighborhood improvement fund was matched by the city to total \$300,000. The purpose of this fund was to finance neighborhood improvement projects in the Sun Valley Community.

Another notable benefit in this CBA is a detailed commitment to build a youth center in the nearby community. In the CBA, the developer commits to “the purchase of the land, the construction of the building shell, and the conveyance of such to the city”.²⁴ The CBA details the size of the facility and outdoor space and the requirement that the city is given the property and either operates the youth center or contracts with a nonprofit organization approved by the community coalition.

Some of the environmental measures in the SunQuest CBA were drawn directly from the environmental protection measures that the developer was required to take based on the Environmental Impact Report (EIR). When an EIR is carried out for a development project and it finds potential environmental harm, the developer must identify what actions s/he will take to prevent these negative environmental impacts. This statement, the “mitigated negative declaration,” is enforceable by local government. When the Sun Valley Coalition took the environmental commitments the developer made in the mitigated negative, they created a means for the community to also enforce these commitments.²⁵

Current Status

Unfortunately, plans for the SunQuest industrial park project were slowed after the developer went bankrupt. Trammel Crow, a development company, bought out the project and contends that the bankruptcy sale cancelled the CBA.²⁶ LAANE and the Sun Valley Jobs Coalition may file a legal challenge arguing that the CBA was in fact tied to the land, as the CBA explicitly stated, “the provisions of this CBP [Community Benefits Plan] are covenants that run with the land and bind all grantees, lessees, or other transferees.”²⁷ However, there is controversy as to whether the CBA was filed with the necessary agencies for the agreement to be recorded in the necessary property documents.

At this point, the future of the development project and CBA remains unclear. Development at the former dumpsite also became complicated just when the cost of remediation turned out to be more than what SunQuest and the city were willing to pay. Though Trammel Crow currently owns the site, there are doubts as to whether or not the company plans to move forward with the project.²⁸

Relevance to the Oakland Army Base Redevelopment

The SunQuest case demonstrates the diverse range of community benefits that can be included in a Community Benefits Agreement. The CBA provided a means to meet the community needs for a youth center, clean air, streets safe from heavy truck traffic, local investment in neighborhood improvement projects, and living-wage jobs. The inclusion in the CBA of environmental measures that the EIR required and the creation of the Community Oversight Committee and Community Design Review Process ensured that the community would have a powerful means to monitor and enforce the agreement.

This case also points to the possible challenge to a CBA that can arise in the event that the land in question is sold during bankruptcy proceedings. Coalitions negotiating CBAs in the future must make sure the CBA has the necessary language and is properly recorded by the appropriate city agencies to ensure that it is tied to the land. The inevitable turn-over of elected officials and staff at public agencies means the community must also keep excellent records to ensure institutional memory of commitments made and documents filed.

Los Angeles Airport (LAX) Expansion (Los Angeles, 2004)

Introduction

This CBA related to an \$11 billion expansion of the Los Angeles Airport was negotiated between Los Angeles World Airports (LAWA), the public administrator of LAX airport, and the LAX Coalition for Economic, Environmental, & Educational Justice.²⁹ The LAX Coalition for Economic, Environmental, & Educational Justice was comprised of 22 member groups, including two local school districts, and faith-based, community-based, labor, and environmental organizations.³⁰ The agreement was approved in December 2004.

CBA Content

As part of the LAX Community Benefits Agreement, the airport agreed to hire an independent expert to conduct studies on air quality and community health and to provide funding for community-based research to inform the LAX Master Plan. The purpose of the health study was to “measure and investigate upper respiratory system and hearing loss impacts of LAX operations due to the LAX Master Plan”.³¹ For all three studies, the CBA states that if the Federal Aviation Administration prohibits the studies then the funding is to go into a fund to support other elements of the CBA.

The CBA requires LAX to implement a number of environmental controls, including the electrification of passenger gates and cargo areas (to reduce engine idling); the installation of emission control devices on all construction equipment and heavy vehicles, and the conversion of airport vehicles to alternative fuels. A notable environmental health measure included in the CBA is a section of rules for rock-crushing operations and the stockpiling of construction materials designed to prevent dust from drifting into nearby neighborhoods. The agreement requires the developer to locate such operations and the stockpiling of those materials away from residential areas adjacent to LAX.

These standards also apply to ongoing business operations at the airport because of language providing that CBA provisions are inserted into all airport contracts, lease agreements, and licensing or permitting agreements, effectively transferring the requirements to the airport's contractors and tenants.³²

LAWA also committed in the CBA to provide \$3 million per year for five years to go toward job training for airport- and aviation-related jobs, as well as additional spending on work experience jobs for community residents to gain on-the-job experience. The CBA also details commitments to a first-source hiring program and adherence to the city's living-wage ordinance.

The CBA provides for an Independent Third Party to be contracted by LAWA to monitor compliance. The CBA gives this entity access to all LAWA property necessary. The CBA obligates LAWA to address any findings of non-compliance made by the thirdparty and details penalties for violations (up to \$1000/day for each violation).³³

Current Status

The most recent data available regarding the status of this CBA was published in the 2007 LAX CBA Annual Report.³⁴ According to the report, the studies on air quality and community health were “in progress.”³⁵ The implementation of all environmental controls discussed above was also listed as “in progress”.³⁶ One hundred percent of the gates (the movable bridge that allows passengers to enter and exit an airplane without going outside) have been electrified, eliminating the diesel generators that were a source of significant air pollution.³⁷

A demonstration air quality study was completed with initial results in July of 2008, but completion of the full air quality study and health study has met resistance. According to one source, the delay is due to Federal Aviation Administration fears that air quality studies may find that airports do impact air quality and human health, leaving airports around the country open to lawsuits from affected communities. Since the community health study has to come after the air quality, that study has been put on hold as well.³⁸

Relevance to the Oakland Army Base Redevelopment

The LAX Expansion case demonstrates how a community coalition can use a CBA to bring about major investments toward improving air quality, mitigating construction impacts, and increasing employment opportunities. The CBA contains well thought-out and planned “flow down” language, necessary to ensure that all contractors and business at the airport adhere to and implement CBA commitments. The commitments to conduct air quality, health, and community-based studies provide a lasting source of strategic information and a leverage point for community groups to use to address later community health issues.

Ballpark Village (San Diego, 2005)

Introduction

The Ballpark Village project was a seven-acre project with offices, residences, and retail space surrounding a new baseball stadium. The coalition that negotiated the CBA, A Community Coalition for Responsible Development (ACCORD), was comprised of some 27 housing, labor, community, and environmental and faith-based groups. There was some criticism regarding the transparency of the negotiation process because the negotiations were held in private without the knowledge of the redevelopment agency. The CBA included more units of affordable housing but did not require them to be on-site as the plan put forward by the redevelopment agency had required. The announcement of the CBA at the City Council meeting generated controversy but in the end a revised version of the CBA was agreed to and signed in September of 2005.³⁹

CBA Content

The Ballpark Village CBA contains notable environmental commitments. The developer agreed to meet LEED green building standards for the development and use environmentally friendly construction practices. The CBA also details provisions for hazardous substance remediation (such as no on-site incineration, provisions for the stockpiling of contaminated soil) as well as

truck traffic routing and truck idling and dust mitigation (which includes covering all stockpiles and trucks transporting soil to and from the site, and wheel washes for all trucks exiting the site).⁴⁰

Several sections of the CBA commit the developer to pay for specific community projects. These include \$100,000 for a professional study to develop recommendations on how to prevent displacement of low-income downtown residents; \$50,000 to go toward arts programs; and a good-faith effort to lease space to a grocery store. The Ballpark Village developer also committed to building and furnishing an office space on the project site to be used rent-free as a job center, housing the first-source job referral system. Additionally, the CBA includes \$1.5 million toward job training programs and a commitment that all covered employees would be paid at least \$10/hour with benefits or \$12/hour without benefits.

To ensure compliance with implementation of the CBA, an Implementation Committee was established, comprised of representatives from both the developer and the coalition. This committee was to hold meetings to facilitate communication between the two parties and resolve any disputes or challenges regarding implementation. No monetary penalties for non-compliance are defined in the CBA. Instead a mediation process is detailed, which begins with both parties attempting to resolve any disputes in the Implementation Committee before any legal action may be taken.

Current Status

The project was put in jeopardy when information surfaced about financial ties between the former president of the local redevelopment agency and the developer. Criminal charges were filed when it was discovered that the agency president had a pre-existing financial relationship with one of the development partners, the Lennar Corp.⁴¹ State law forbids officials from having any financial ties to a contract they participate in making, and the agency head has since stepped down from her post as president. The revelation may negate the development agreement and potentially disqualify the developer that signed the original CBA.

Relevance to the Oakland Army Base Redevelopment

Ballpark Village again points to the flexibility and breadth of benefits that a CBA can cover. The provision for an on-site job center is unique to this case, as is the funding for arts and accommodation of a new grocery store. The unfortunate scandal involving the redevelopment agency presents another potentially grave risk rising after the CBA has been signed. Like the SunQuest case where bankruptcy sale of the land to a new developer may have cancelled the CBA, the challenge for the Ballpark Village is in guaranteeing that the CBA stands even if a new development agreement must be issued or the original developer must sell the property. Legal support able to foresee and prevent such developments from nullifying the CBA will be critical for a coalition to not risk losing all they have gained in a CBA after the immense work it takes to get it signed.

Cherokee-Gates Rubber Company Redevelopment Project (Denver, 2006)

Introduction

This project involved the planned demolition and clean up of an abandoned rubber plant located on a 50-acre brownfield in downtown Denver. To be built in its place was an 8 million-square-foot residential and retail center. The Front Range Economic Strategy Center (FRESC) organized a coalition of 53 housing, neighborhood, women's, environmental, and labor groups calling themselves the Campaign for Responsible Development. The site for redevelopment was highly contaminated with Trichloroethylene or TCE (an industrial solvent). According to coalition members, the TCE had been "found in such high concentrations in the groundwater near the plant that it presented a potentially harmful vapor intrusion threat to the indoor air of homes near the plant".⁴² A Community Benefits Agreement was signed by the developer and coalition members preceding a city council meeting at which the council would decide whether to grant the developer certain changes to the property's zoning. The CBA negotiations lasted for over three years and the agreement was finalized in 2006.⁴³

CBA Content

Concerns surrounding environmental cleanup were a priority for the coalition alongside interests in the provision of affordable housing and living-wage jobs. During the negotiation process, the coalition discovered that contaminants from the site had leaked into neighboring areas.⁴⁴ Neighborhood groups advocating testing and clean-up of the chemicals formed the Voluntary Cleanup Advisory Board to monitor the clean-up process. As part of the CBA, the developer agreed to allow public access to all documents regarding the monitoring of toxic levels and site remediation and keep those documents at a local library. When the developer applied for zoning changes, the coalition used the CBA to make sure that the new zoning would not allow for a big box type business like Walmart to be allowed. The CBA states that no property that the developer owns, leases, or sells at the site can be used by a business occupying more than 75,000 square feet and deriving more than 12.5% of its gross sales from activities not subject to sales tax.⁴⁵

Current Status

As of 2008, a small phase of affordable and market rate housing was built on the site. However, the current state of the economy forced the vertical developer, Cherokee Denver LLC, to back out and sell the land back to the Gates Rubber Factory. As a result, the project is on hold, indefinitely. According to one source, the remaining affordable housing will most likely be negotiated once a future owner presents a new site plan. Other benefits tied to financing will run with the land and be triggered whenever the new project emerges.⁴⁶ The Voluntary Cleanup Advisory Board has continued to monitor clean-up and has been supported by grants from federal agencies and FRESC. Clean-up of the underground chemical TCE continues but the process has slowed since the property was sold back to Gates Rubber.⁴⁷

Relevance to the Oakland Army Base Redevelopment

Concerns about the health and environmental effects of chemicals in the soil at the Oakland Army Base are similar to those raised in Denver. The Gates-Cherokee CBA gave the community access to the information on the presence of chemicals that they could use to advocate for appropriate clean-up and to monitor implementation. The coalition was able to obtain seed money from the developer that they used to form the advisory board doing this monitoring. The specific agreement in the CBA prohibiting businesses of a certain size and type suggests that CBAs can be a strategy for the community to have input into the businesses renting, leasing, or buying property at the project site. The Voluntary Clean-up Advisory Board's reliance on technical assistance to interpret monitoring reports points to the need for ongoing support of community oversight bodies for them to be effective.

Key Lessons on Community Benefits Agreements and Health

These four cases of Community Benefits Agreements suggest great promise for this strategy to advance community health in West Oakland and similar communities. The diverse and comprehensive commitments made in the four CBAs demonstrate how flexible and responsive to community interests these agreements can be. The track record of implementation of the agreements and their formalized mechanisms for community oversight and enforcement show that they can in fact be a means to achieve on-the-ground results that reflect community priorities. However, the evidence of stalled projects and CBAs with incomplete implementation and uncertain futures points to various obstacles to realizing the potential of CBAs.

Despite the enormous effort that went into successfully negotiating these agreements, multiple communities saw their CBA frozen by legal or financial developments after its signing. Given the amount of energy it takes to organize a broad coalition and win a CBA, communities must give serious thought to the risks of the project being jeopardized and pursue all possible strategies for ensuring that the CBA commitments are fulfilled no matter the future circumstances.

The SunQuest Industrial bankruptcy led to the sale of the land to a new developer who asserts that the CBA no longer applies. To avoid this situation, CBAs must include appropriate language and be properly recorded by city agencies to ensure that the agreement is tied to the land. Changing markets and financing can also put a project and its CBA at risk, as with the Cherokee-Gates case where an economic downturn forced the developer to back out and sell the land back to the original owner. Although the CBA is to remain in effect in that case, the project itself may not proceed. A similarly difficult-to-control challenge is a project being nullified by legally suspect dealings of the public officials and agencies involved, as with the president of the redevelopment agency involved in the Ballpark Village.

Each of these cases also offers precedents for strategies for improving community health through CBAs. The Cherokee-Gates CBA provided for extensive site cleanup with community oversight, and the coalition was also able to specify set limits on types of businesses to be accommodated

on the completed project. The Ballpark Village, LAX, and SunQuest CBAs require the developers to implement green building standards and take actions to minimize construction impacts on neighboring communities. Moreover, the LAX CBA demonstrates well-thought-out and planned “flow down” language, which ensures parties subcontracted by or renting from the developer will also be bound to the agreement. See Table 1 for a summary of community health measures found in the four Community Benefits Agreements reviewed. Appendix B provides the location within each CBA of the language describing these community health measures.

Table 1. Community Health Measures in Select Community Benefits Agreements

Community Health Measure	CBAs that Included this Measure
1. Establishment of a neighborhood improvement fund paid into by both the developer and the city.	SunQuest Industrial Park Project
2. Routed truck traffic away from certain residential streets near the site, with penalties for non-compliance.	Ballpark Village Project, LAX Master Plan, SunQuest Industrial Park Project
3. Rules against trucks idling for longer than a specific time.	Ballpark Village Project, LAX Master Plan, SunQuest Industrial Park Project
4. Creation of a Community Design Review process, requiring the developer to make all designs and plans available for the coalition to review.	SunQuest Industrial Park Project
5. Establishment of a community oversight committee composed of representatives from the coalition and given access to the site and project documents to monitor implementation of the CBA.	SunQuest Industrial Park Project, LAX Master Plan, Ballpark Village Project, Cherokee-Gates Project
6. Commitment that 70% of all jobs would pay a living wage on the first day that all businesses were open on the site.	SunQuest Industrial Park Project
7. Construction of a youth center in the nearby neighborhood.	SunQuest Industrial Park Project
8. Environmental measures drawn directly from the Environmental Impact Report.	SunQuest Industrial Park Project
9. Developer-funded air quality studies.	LAX Master Plan
10. Developer-funded community health studies.	LAX Master Plan
11. Developer-funded study on how to prevent displacement of current residents.	Ballpark Village Project
12. Specific actions to reduce air pollution of ongoing operations (e.g. installation of electrified airport gates at LAX).	LAX Master Plan
13. Installation of emission control devices on all construction equipment and heavy vehicles.	LAX Master Plan

14. Won LEED green building certification for the development and use of environmentally friendly construction practices.	LAX Master Plan, Ballpark Village Project
15. Detailed provisions for hazardous substance remediation such as no on-site incineration and provisions for the stockpiling of contaminated soil.	Ballpark Village Project
16. Rules governing rock-crushing operations and the stockpiling of construction materials designed to prevent dust from drifting into nearby neighborhoods.	LAX Master Plan
17. Dust mitigation, including covering all stockpiles and trucks transporting soil to and from the site and wheel washes for all trucks exiting the site.	Ballpark Village Project
18. Community monitoring of clean-up of toxic chemicals in soil at the site.	Cherokee-Gates Project
19. Flow-down language ensuring that entities renting, contracting, or buying from the developer comply with the CBA.	LAX Master Plan
20. Job training programs.	LAX Master Plan, Ballpark Village Project
21. Third-party monitor.	LAX Master Plan

Several agreements secured funding for community investment funds or for specific off-site projects needed in the community, such as land and building for a youth center in the neighborhood near SunQuest. Various forms of community oversight committees have been formed with the authority to access the project site, view project documents, and review and give input on project design plans. The inclusion of air quality and community health studies for the airport is a major precedent for generating reliable data on the cumulative health effect of an entire project.

One characteristic shared by all of the case examples is the presence of a broad-based coalition representing groups such as, but not limited to, community, environmental, labor, and faith-based members. This point is often stressed because it takes such a coalition to bring the developer to the table, and developers will often try to find isolated groups who are demanding less for their support of the project. Salkin and Levine provide a useful checklist of questions to consider when writing a CBA (see Appendix A of this report).

The idea of “community-driven redevelopment” is not new, nor is the attempt to realize a project’s benefits for community health. Community Benefits Agreements were developed as a means to make sure the common promises of benefits from redevelopment projects materialize for those who need them most. While the frame of community health has not been explicit in the CBAs we reviewed, many of the demands and underlying interests are the same. Taking on the challenge of winning a CBA and seeing it through to implementation is no small feat, but this strategy stands out for its ability to bring about critical resources, protections, and means of accountability to affected communities.

Appendix A.

Checklist of Issues to Consider in a CBA Campaign⁴⁸

Following is a list of questions for community groups to use in thinking about organizing for a Community Benefits Agreement. The benefits and remedies are typically items that are all “on the table” when negotiating the agreement.

Community Organizing:

- Is the coalition inclusive of diverse community stakeholders, including faith-based organizations; unions; civic, environmental, and neighborhood groups; residents; and local business associations and youth groups?
- How have community goals been identified?
- Through input from coalition members?
- Public meetings?
- From active community research, like surveys, door-to-door canvassing, and socio-economic studies?
- How have the issues been framed? Can issues of equitable development, the positive prospects for the community, and the ability to create a win-win situation be emphasized to attract more community members and positive press attention?
- Have coalition constituents signed a coalition operating agreement and agreed to a list of operating principles? Are there procedures for choosing negotiators, resolving internal disputes, dealing with conflicts of interest among coalition members, etc.?

Parties:

- Is there more than one developer?
- How many community groups should/will be parties to the agreement? Will any individuals from the community sign the agreement?
- Is the municipality a party to the agreement?
- Who has the authority to speak for and/or sign for each party?

Developer Benefits:

- What are the benefits to the developer?
- Has the coalition agreed not to institute legal action to block the development?
- Are the developer’s benefits described in the CBA in a manner that satisfies the consideration requirement of contracts?

Community Benefits:

- What benefits will the developer promise the community?
- Is a needs assessment or study required that will determine the extent of the benefits (e.g., the amount of environmental remediation may be based on the results of a study)?

- Who will finance the assessment?
- Who will conduct the assessment? Are there safeguards to ensure independence?
- What is the scope of the developer's responsibility or financial obligation?
 - When does it begin and how long does it last?
- Do the obligations transfer to subsequent project owners or other third parties such as tenants, sub-contractors, or on-site vendors?

Monitoring:

- What is the implementation process and timeline?
- How will the process be monitored?
 - Will an individual community organization or committee be responsible for the oversight?
 - Will an independent monitor be hired?
 - How will monitoring be financed? If the developer funds the monitoring, are there safeguards in place to ensure neutrality?
 - How often will monitoring reports be generated?
 - How will monitoring reports be made available to the community?
- Is there a process to amend the terms of the benefits or program?

Enforcement:

- Is the CBA incorporated into a development agreement?
 - Where development agreements are not authorized by law, does the agreement contain an indication of who may enforce the document on behalf of the community?
- Has the CBA been signed by each individual community group making up the coalition?
- Is there an arbitration or mediation clause?
- Is there a third-party beneficiary clause?

Remedies:

- What constitutes a breach on the part of the developer and on the part of the community?
 - Has breach been defined in the contract?
- What are the remedies in the event of a breach?
 - Are the remedies specific to each benefit?
 - Is the right to request specific performance included?
 - Is equitable relief permitted in the event of an irreparable injury?
- Will the other clauses of a CBA remain in effect in the event of a breach?
- What type of notice is required before relief is sought?
- Who is responsible for attorneys' fees in the event of a court action?

Appendix B.

Locations of Language on Community Health Measures Found in Select Community Benefits Agreements

1. Establishment of a neighborhood improvement fund paid into by both the developer and the city.
 - SunQuest Industrial Park Project, Community Benefits Plan: Section V (Pg 4)
2. Routed truck traffic away from certain residential streets near the site, with specific penalties for non-compliance.
 - Ballpark Village Project, Community Benefits Agreement: Section 3.3.3 (Pg 6)
 - LAX Master Plan, Community Benefits Agreement: Section XII.A.1 (Pg 29-30)
 - SunQuest Industrial Park Project, Community Benefits Plan: Section III.A (Pg 2), Section IV.C.5 (Pg 3), and Section IV.A of Attachment A (Pg 14)
3. Rules against trucks idling for longer than a specific time.
 - Ballpark Village Project, Community Benefits Agreement: Section 3.3.4 (Pg 6)
 - LAX Master Plan, Community Benefits Agreement: Section X.M (Pg 28-29)
 - SunQuest Industrial Park Project, Community Benefits Plan: Section III.B (Pg 2) and Section IV.B of Attachment A (Pg 14)
4. Creation of a Community Design Review process, requiring the developer to make all designs and plans available for the coalition to review, including landscape plans, plans for parking areas, building design, drainage, traffic routing, and maintenance.
 - SunQuest Industrial Park Project, Community Benefits Plan: Section IV.A (Pg 2) and Section IV.B (Pg 3)
5. Establishment of a community oversight committee composed of representatives from the coalition and given access to the site and project documents to monitor implementation of the CBA.
 - SunQuest Industrial Park Project, Community Benefits Plan: Section X (Pg 7) and Section V.B of Attachment A (Pgs 14-15)
 - LAX Master Plan, Community Benefits Agreement: Section XVI.A-B (Pgs 31-32)
 - Cherokee-Gates: Location unavailable.
 - Ballpark Village Project, Community Benefits Agreement: Section 7 (Pg 13)
6. Commitment that 70% of all jobs would pay a living wage on the first day that all businesses were open on the site.
 - SunQuest Industrial Park Project, Community Benefits Plan: Section VIII (Pg 5-6)

7. Construction of a youth center in the nearby neighborhood.
 - SunQuest Industrial Park Project, Community Benefits Plan: Section VII (Pg 5)
8. Environmental measures drawn directly from the Environmental Impact Report.
 - SunQuest Industrial Park Project, Community Benefits Plan: Section IV.C.1 (Pg 3) and Section IV.C.3 (Pg 3)
9. Developer-funded air quality studies.
 - LAX Master Plan, Community Benefits Agreement: Section VII (Pg 14-15)
10. Developer-funded community health studies.
 - LAX Master Plan, Community Benefits Agreement: Section VIII (15-16)
11. Developer-funded study on how to prevent displacement of current residents.
 - Ballpark Village Project, Community Benefits Agreement: Section 6.1 (Pg 12)
12. Specific actions to reduce air pollution of ongoing operations (e.g. installation of electrified airport gates at LAX).
 - LAX Master Plan, Community Benefits Agreement: Sections X.A-C (Pgs 17-19)
13. Installation of emission control devices on all construction equipment and heavy vehicles.
 - LAX Master Plan, Community Benefits Agreement: Sections X.F (Pgs 19-22)
14. Won LEED green building certification for the development and use of environmentally friendly construction practices.
 - LAX Master Plan, Community Benefits Agreement: Not required, but to “the extent practical and feasible” (see Section XI on Pg 29)
 - Ballpark Village Project, Community Benefits Agreement: Section 3.1 (Pg 5)
15. Detailed provisions for hazardous substance remediation such as no on-site incineration and provisions for the stockpiling of contaminated soil.
 - Ballpark Village Project, Community Benefits Agreement: Section 3.1 (Pg 5) and Attachment A
16. Rules governing rock-crushing operations and the stockpiling of construction materials designed to prevent dust from drifting into nearby neighborhoods.
 - LAX Master Plan, Community Benefits Agreement: Sections X.L (Pg 28)
17. Dust mitigation, including covering all stockpiles and trucks transporting soil to and from the site and wheel washes for all trucks exiting the site.
 - Ballpark Village Project, Community Benefits Agreement: Section 3.3.5 (Pg 6)
18. Community monitoring of clean-up of toxic chemicals in soil at the site.
 - One of at least two CBAs for the Cherokee-Gates project was not available, so the location of this language is not known.
19. Flow-down language ensuring that entities renting, contracting, or buying from the developer comply with the CBA.

- LAX Master Plan, Community Benefits Agreement: Section XVI.E (Pgs 33-34)
20. Job training programs.
- LAX Master Plan, Community Benefits Agreement: Section IV (Pgs 9-11)
 - Ballpark Village Project, Community Benefits Agreement: Section 4.5 (Pg 9)
21. Third-party monitor.
- LAX Master Plan, Community Benefits Agreement: Section X.F.8 (Pg 21), Section X.J.2.c (Pg 27), and Section XVI.E (Pgs 33-34)
22. Specific penalties for non-compliance.
- LAX Master Plan, Community Benefits Agreement: No specific penalties found, but Section XII.A.1.a (Pg 29), refers to a “mechanism for members of the public to report instances of non-compliance with designated truck routes.”
 - SunQuest Industrial Park Project, Community Benefits Plan: Section XI (Pg 7-8)

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