



The County of San Diego

Planning Commission Hearing Report

Date:	September 9, 2022	Case/File No.:	PDS2021-POD-21-007
Place:	County Conference Center 5520 Overland Avenue San Diego, CA 92123	Project:	Overview Presentation of Exploration of Community Benefits Agreements
Time:	9:00 a.m.	Location:	Various
Agenda Item:	#1	General Plan:	Various
Appeal Status:	Approval by the Board of Supervisors	Zoning:	Various
Applicant:	County of San Diego	Community:	All
Environmental:	CEQA § 15061(b)(3) Exemption	APNs:	Various

A. OVERVIEW

Community Benefits Agreements (CBAs) are a tool that can be used to offset social, environmental, and economic impacts to communities that are created by large-scale projects, such as renewable energy and industrial/warehouse/distribution facilities. CBAs are agreements that are negotiated between project applicants and the community or government agency to provide local benefits as part of the project. These can be legally binding or voluntary agreements between project applicants and community groups, or project applicants and local governments. Various benefits can be offered through CBAs, such as parks and recreation opportunities, community facilities, workforce development, local hiring, and apprenticeships. CBAs can be used for various land development projects, and in California, they are often used for large-scale renewable energy projects.

On December 8, 2021 (7), the County of San Diego (County) Board of Supervisors (Board) directed staff to investigate the feasibility and resources needed for the County to establish CBA programs, policies, and/or guidelines to include the following options:

1. Guidelines for the County to facilitate mandatory Community Benefits Agreements including items such as prevailing wage, local hire, job outreach to disadvantaged communities, and other items as appropriate including a focus on the nexus between the negative impact on the community and the project being proposed;
2. Guidelines for the types of development projects that would be subject to CBAs, including renewable energy projects, warehouses, hospitals, business parks, large scale housing, and other type projects deemed to have a significant impact; and

3. Guidelines for the County to negotiate and enter into CBAs with applicants, including identification of potential incentives that the County could offer in return for community benefits.

This report presents an overview of considerations and options for CBAs based on literature review and best practices research; research into common uses of CBAs, research of and interviews with other jurisdictions about their approach (jurisdictional research), an analysis of County programs, plans, and existing efforts; and stakeholder input received through various public engagements, including large public meetings, “lunch-and-learns,” and small group meetings.

Today’s presentation will include an overview of 1) Program Participation, whether the program will be Mandatory and/or Voluntary; 2) Program Administration, whether the County or a third-party will administer the program; and 3) Program Components, which includes options for consideration, such as benefits, community participation, and incentives. Staff will present these options to the Board at a future date to seek further direction.

B. STAFF RECOMMENDATIONS

Based on its analysis, staff recommends that the Planning Commission take the following actions:

1. Find that the proposed actions are exempt from the California Environmental Quality Act (CEQA) per Section 15061(b)(3) of the CEQA Guidelines because the proposed actions do not commit the County to any definitive course of action and there is no possibility that the activity in question may have a significant effect on the environment. Subsequent actions would be reviewed pursuant to CEQA and presented to the Board for consideration prior to program implementation.
2. Receive the Overview Presentation of Exploration of Community Benefits Agreements.

C. BACKGROUND

Community Benefits Agreements (CBAs) are used to establish, early in a land development project’s planning process, agreements between a community and a project applicant in which the applicant agrees to provide local economic or public benefits. These agreements also (1) support ongoing community input, (2) establish commitment through contracts to provide community benefits, (3) promote transparency between all interested parties, (4) encourage early negotiation between project applicants and the community prior to the project approval process, and (5) provide an opportunity for creative solutions that would not typically be included in a standard regulatory process. CBAs have applications for use in residential, commercial, and industrial developments.

On December 8, 2021 (7), the Board of Supervisors (Board) directed staff to investigate the feasibility and resources that would be needed for the County to establish CBA programs, policies, and/or guidelines to include (1) guidelines for the County to facilitate mandatory Community Benefits Agreements including items such as prevailing wage, local hire, job outreach to disadvantaged (undeserved) communities, and the negative impact on the community and the project being proposed; (2) guidelines for the types of development projects that would be subject to CBAs, including renewable energy projects, warehouse, hospitals, business parks, large scale housing, and other type projects deemed to have a significant impact; and (3) guidelines for the County to negotiate and enter into CBAs with applicants, including identification of potential incentives that the County could offer in return for community benefits.

Based on best practice research, CBAs can be categorized into two different types of benefit programs including (1) a structured fee program and (2) a public benefit program. A structured fee program uses fees paid by the project applicant for a specified purpose such as health and safety. For example, San Bernardino County implements a mandatory impact fee that applies to all commercial solar power plant projects to offset the project's impacts on public services, such as public safety services. The project applicant pays an annual per acre fee depending on the project's parcel size. Alternatively, the project applicant may conduct a project-specific study of the project's public safety services impacts to determine the annual fee amount. The fees are then used to fund a specific use, in this case the public safety needs of the specific project area.

The second CBA type is a public benefits program. This type of program provides the ability for the project applicant to provide a local benefit or benefits to the communities impacted by the project. For example, the 2001 Los Angeles Sports and Entertainment District secured a wide range of benefits for the Figueroa Corridor community and involved a coalition of over 20 community groups and hundreds of residents in the negotiation process. The project applicant provided economic benefits including a developer-funded assessment of community park & recreation needs, and a \$1 million commitment toward meeting those needs; providing \$25,000 to a residential parking program for surrounding neighborhoods; \$150,000 to a "first source" hiring program in which the project applicant agreed to first hire individuals from the Figueroa Corridor community; and pledged compliance with the City of Los Angeles Living Wage Ordinance for 70% of the permanent jobs created.

In December 2021, the Board elected not to pursue a fee benefit program, because the intent of a CBA program is to keep the potential benefits local to the community impacted by the large-scale project. Whereas in a fee program, similar to the Riverside County example, funds are contributed to the County General Fund and distributed for public services countywide.

In addition to best practice research, to better understand the feasibility and resources needed for the County to establish CBA programs, policies, and/or guidelines, staff researched common uses of CBAs and looked into existing County of San Diego programs, plans, and initiatives. Staff relied heavily on stakeholder engagement through public meetings, "lunch-and-learns," and small group meetings to better understand potential CBA options for the County of San Diego. Staff is seeking further direction on the proposed options detailed further below.

Based on recent discussions around large-scale development projects, the Board directed staff to investigate the feasibility and resources needed for the County to establish CBA programs, policies, and/or guidelines related to mandatory CBAs and for the County to negotiate and enter into CBAs with applicants. Due to legal limitations, which are further discussed below, mandatory CBAs may only be used in very specific situations. Through best practice research, staff found the use of mandatory CBAs is limited, but other jurisdictions in the State do offer voluntary guidance on CBAs to project applicants.

For example, Merced County adopted a voluntary community benefits agreement for the Wright Solar Park in 2015, a 200 MW solar photovoltaic facility on 2,731 acres. The project applicant will contribute \$25,000 annually to Merced County's General Fund for twenty years to offset the project's impacts to services, such as public safety services provided by the Merced County Sheriff and Fire Department.

Industry and development stakeholder groups, including the Building Industry Association of San Diego, expressed support for the development of Voluntary CBA Guidelines to assist interested parties in engaging in CBAs. Both mandatory and voluntary CBAs are further discussed below.

Mandatory and Voluntary CBAs

Guidelines for the County to Facilitate Mandatory Community Benefits Agreements

Mandatory programs that would require project applicants to provide additional mitigation or benefits (Mandatory CBAs) could have legal implications. The United States Supreme Court ruled in two separate cases, *Nollan v. California Coastal Commission* (1987) and *Dolan v. City of Tigard* (1994), that there must be a project nexus to impacts and rough proportionality before a local authority can require mitigation or project conditions, such as requiring a project applicant to enter into a CBA. Consequently, CBA program participation could only be mandatory if the impacts are directly linked to the project, which are typically addressed through the environmental review process. These impacts are generally studied and mitigated, or offset, by other actions (such as the replacement of habitat somewhere else if it is impacted on a project site).

A local authority cannot require double mitigation or project conditions for impacts that are already mitigated by State or federal laws. However, when the environmental review process, typically through an Environmental Impact Report or EIR, identifies unavoidable environmental impacts, the California Environmental Quality Act (CEQA) requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including regionwide or statewide environmental benefits, of a proposed project against the unavoidable impacts when considering approval of the project. If the specific economic, legal, social, technological, or other benefits, including regionwide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental impacts, the project as a whole may be considered acceptable. When the Board makes this determination, it is memorialized in a CEQA Statement of Overriding Considerations (SOC).

A mandatory CBA program could be considered for land development projects that, through the EIR process, have identified environmental impacts that are not able to be fully mitigated and therefore would require Board consideration of an SOC. The mandatory CBA program could apply to any project that could not fully mitigate its direct environmental impacts to a “less than significant” threshold, which is a key threshold under CEQA. In this case, the CBA could be required by the Board as part of the economic and social benefits that the Board could consider when determining whether to approve the project. The Board could determine that the benefits of the project, including the existence of a CBA for the project, would outweigh the significant, unmitigable environmental impacts from the project as part of their decision to approve the project through a Statement of Overriding Considerations (SOC).

Guidelines for Voluntary CBAs and the Types of Development Projects That Could Be Subject to CBAs

Voluntary Guidelines would provide more flexibility than what is legally permitted through a mandatory CBA program. A voluntary program could be utilized by any project type and could provide direction on things such as types of benefits that the generated funds may be used for, additional benefits that a project applicant can provide, and the ways to legally memorialize the agreement such as a recorded

development agreement. Voluntary CBA Guidelines could be used as a tool to meet the intent of the Board direction for certain projects that are not legally required to do a mandatory CBA, including large-scale projects, such as solar, industrial/warehouse/ distribution, business parks, and hospitals. Voluntary Guidelines can initiate more conversations between the applicant and community groups early in the project process.

Guidelines for the County to Negotiate and Enter into CBAs With Applicants

When CBAs are negotiated between the project applicant and the local land use authority, the local land use authority could offer an incentive or subsidy in return for community benefits. As discussed above, mandating this process could be applied to development projects that have significant unmitigable environmental impacts, based on CEQA. However, when there are no unavoidable impacts, subsidies could provide an additional opportunity for CBA consideration. For example, the County could include community benefits when negotiating a lease of public property or land, or when offering subsidies for a project, such as a reduction in fees. In these cases, the County may negotiate and support agreements that require employees to live within a specific proximity to the development project, also known as local hire provisions. These types of agreements are intended to create opportunities to expand local jobs. However, State and federal laws limit when local authorities can impose on a private project local hire provisions, wage requirements above State minimum wage (known as prevailing wages, which are defined as the basic hourly rates paid on public works projects to a majority of workers engaged in a particular craft, classification, or type of work within the locality and in the nearest labor market area), and job outreach to communities as benefit options or as a project condition, as further detailed below. Therefore, the County is limited when it can require a private project to include local hire provision, prevailing wages, and job outreach.

Communities can also negotiate CBAs. In community led negotiations, community groups form coalitions comprised of neighborhood associations, faith-based organizations, labor unions, environmental groups, and other stakeholders often with support from the local agency. These coalitions negotiate with the project applicant to obtain various benefits. These benefits can include funding for community specific needs, such as community parks, road repair, youth education programs, community services, and grants for small businesses and apprenticeships. There are ways the County could support community groups that would like to negotiate CBA's, these could include: providing the project applicant a list of groups to engage, providing a pre-identified list of community benefits desired, and/or providing potential incentives the County can offer to encourage CBAs.

Program Options

To respond to the Board's direction, staff developed three categories of options and additional considerations for the Board's review. These include:

- Category 1 - Program Participation: Who can participate in the program- Mandatory and/or Voluntary CBAs;
- Category 2 - Program Administration: Who will lead the administration of the program-County or Third-Party lead; and
- Category 3 - Program Components: What can be included within the program- Benefits and Incentives.

If the Board provides future direction on any of these options and provides the resources requested, staff will begin program development. These categories are shown in Table 1 and discussed in detail further below.

Table 1. CBA Program Options

#	Category	Options	Additional Considerations
1.	Program Participation	A. Establish A Mandatory Program for Projects Requiring a CEQA Statement of Overriding Considerations (SOC)	Consider exempting one or all the following development types with perceived benefits:
			i. Agriculture Projects
			ii. General Plan Consistent Housing Projects
			iii. Other Project Types as Determined by the Board
2.	Program Administration	B. Establish Voluntary Guidelines for Projects That Do Not Qualify for a Mandatory Program	No Additional Considerations Identified at this Time
		C. Establish Both a Mandatory CBA Program (1A) and Voluntary Guidelines (1B)	No Additional Considerations Identified at this Time
3.	Program Components	A. Benefit Options	No Additional Considerations Identified at this Time. Staffing Resources Will Be Considered at the Time of Program Adoption.
		B. Establish Expanded Mandatory Community Engagement to Initiate Early Conversations with Potentially Impacted Communities	i. Develop Pre-Set List of Benefits
			ii. Determine Benefits on a Case-by-case Basis Through Community Engagement
			i. Develop Project Types for Expanding Outreach Requirements
			ii. Establish Expanded Outreach for all Projects Subject to CEQA Review
			iii. Establish Expanded Outreach for Certain Project Types Determined by the Board
			iv. No Expanded Outreach Requirements
		C. Incentives County Can Offer in Return for CBA	i. Develop Pre-Set List of Incentives
			ii. Case-by-Case Basis Through Community Engagement

D. ANALYSIS AND DISCUSSION

Category 1: CBA Program Participation

Within CBA Program Participation, the Board can direct staff to establish a Mandatory CBA Program and/or Voluntary CBA Guidelines.

1.A: Establish A Mandatory Program for Projects Requiring a CEQA Statement of Overriding Considerations

This option directs staff to establish a Mandatory CBA program for land development projects that have environmental impacts not fully mitigated and that require the Board to consider an SOC. In this option, the mandatory program would not be specific to any type of projects, such as renewable energy projects or business parks, but instead would apply to any project that could not fully mitigate its environmental impacts to a less than significant threshold under CEQA and that needs the Board to approve an SOC. The CBA entered into between the project applicant and community could then be considered by the Board as economic and social benefits that are included as part of the SOC approval process.

Since 2015, the Board has approved nine land use projects requiring a CEQA SOC. Three projects were solar developments, five projects were housing and/or mixed-use developments, and one was a commercial retail center development. Four of the five housing and/or mixed-use developments required a General Plan Amendment as part of project approval. These four projects were not General Plan consistent, therefore they would have qualified for a Mandatory CBA program if it was in place at that time. In total, three solar and four housing and/or mixed-use developments totaling seven of the nine SOC's approved since 2015, would have been eligible for a Mandatory CBA program based on the proposed options presented.

A Mandatory CBA Program could include a list of pre-identified benefit types, expanded outreach guidelines for applicants, potential incentives for participation, and identify potential community groups to engage. Category 3: CBA Program Components, provides options for what types of items could be included in a Mandatory CBA program. If the Board directs a Mandatory CBA Program, staff will begin to prepare regulatory documents, conduct environmental review per CEQA, and return to the Board for consideration at a future date.

The Board previously allocated \$540,000 in Fiscal Year (FY) 22-23 to CBA program development. Should the Board of Supervisors (Board) direct staff to develop a Mandatory CBA Program, there will be additional costs for expanded outreach, a technical consultant to develop a market analysis and a peer review to establish a Mandatory CBA Program.

In response to stakeholder input, staff prepared options described below for the Board's consideration of potential project type exemptions from a Mandatory CBA program, including agriculture and General Plan consistent housing. Described below under Category 1.A.i and 1.A.ii, stakeholders expressed a desire to exclude certain project types from a Mandatory CBA program because of the benefits these project types offer to the unincorporated area. Additionally, staff included options if the Board would like to include any other project types not identified by staff, or not allow exemptions based on project type.

1.A.i: Exempt Agriculture Projects

This option would exclude all agricultural projects from Mandatory CBA requirements. This option was suggested during stakeholder and public outreach from various stakeholder groups, such as labor unions, and the Farm Bureau. Stakeholders stated that agricultural projects should be excluded because (1) agriculture is a benefit to the communities they are placed in and society at large. The exclusion of these project types would support Board Policy I-133 – Support and Encouragement of

Farming in San Diego County, which states the County is committed to supporting and encouraging farming in San Diego County through the establishment of partnerships with landowners and other stakeholders to identify, secure, and implement incentives that support the continuation of farming as a major industry in San Diego County.

1.A.ii: Exempt General Plan Consistent Housing Projects

This option excludes all housing projects that are consistent with the County's General Plan. Housing projects that do not require a General Plan Amendment to change the land use or density established in the General Plan would be exempt from this requirement. This option complies with existing State laws, though during stakeholder and public outreach, various stakeholder groups, such as labor unions, housing advocates, business and industry working groups suggested exempting all housing projects, not just General Plan consistent projects. The exclusion of General Plan consistent housing projects supports the Board's direction to evaluate large-scale housing as part of a Mandatory CBA Program, and mandating CBAs for all housing projects could increase the time and cost of small-scale housing development projects which are consistent with the General Plan, and do not create local significant impacts to the communities in which they are built.

1.A.iii: Exempt Other Project Types Determined by the Board

If the Board directs a Mandatory CBA Program, the Board also has the option to provide input as to whether to exempt other project types that have not been identified by staff and stakeholders.

1.A.iv: No Exemptions

If the Board directs a Mandatory CBA Program, the Board also has the option to direct the CBA program to have no project type exemptions. This option would ensure that all projects, including agriculture and housing, requiring a CEQA SOC would include a Mandatory CBA.

1.B: Establish Voluntary Guidelines for Projects That Do Not Qualify for a Mandatory Program

Due to the legal limitations of a Mandatory CBA Program, staff developed an option for Voluntary CBA Guidelines for the Board's consideration. Voluntary Guidelines are intended to provide more flexibility than what is legally permitted through a Mandatory Program. The Voluntary Guidelines are intended to facilitate the voluntary creation of CBAs for projects which do not meet the criteria for the Mandatory Program. A voluntary program could be utilized by any project type through voluntary actions between a project applicant and a community group. Through best practice research, staff found other jurisdictions in the State do offer voluntary guidance to project applicants. Imperial County has identified that large-scale solar projects have negative impacts to the community, local economy, and agriculture industry when these projects are located on agricultural lands within Imperial County. To offset these impacts, Imperial County developed guidelines for the public benefits program, which is a fee-based program for these projects. Applicants of these projects voluntarily agree to the fees. The guidelines provide direction on the fee schedule, types of benefits that the generated funds may be used for, additional benefits that a project applicant can provide, and the form of legally memorializing the agreement such as a development agreement.

Certain stakeholders engaged, such as members of the development community, and the Building Industry Association (BIA) of San Diego, stated that they would support a voluntary program over a

mandatory program, as they had concern that a mandatory program may hinder development and industry. The BIA expressed concerns about the addition of new initiatives and the negative impact on development and industry. Options as to what can be included in a CBA program can be seen in Category 3: CBA Program Components, below. Other stakeholders, such as the Environmental Coalition, were not in full support of any CBA program due to concerns that CBAs could be used as a means to avoid environmental mitigations. Additionally, labor unions were in support of CBA programs as long as specific benefits were included such as wage requirements above State minimum wage (prevailing wage), and requirements for employees to live within a specific proximity to the project known as local hire provisions.

1.C Establishing both Mandatory CBA Program and Voluntary CBA Guidelines

The Board can also consider and direct staff to develop both a Mandatory CBA Program and Voluntary Guidelines. This would combine Options 1.A and 1.B above.

Category 2: CBA Program Administration

If the Board selects an option under Category 1: Program Participation, staff seeks the Board's input on whether CBA programs should be administered by the County or by a third party. Staff researched CBA policies and programs and found that CBAs can be administered by either the local jurisdiction or a third party, such as a local non-profit organization. Jurisdictional best practice research showed that when CBAs are administered by a third party, the jurisdiction provides support for applicants and community members through information and guidance. Staff also found that jurisdictional roles can vary and could include (1) periodic updates to regulations to support CBAs; (2) negotiating and forming agreements that include the jurisdiction and either the applicant, community, or both; (3) helping obtain State or federal financing for a benefit; (4) participating in the delivery, operation, and maintenance of a benefit; (5) facilitating discussions between a project applicant who voluntarily establishes a CBA and the community in which the project is located; and (6) helping communities build coalitions to discuss and negotiate with project applicants.

When facilitating a Mandatory CBA Program or Voluntary CBA Guidelines, the County could have an active or neutral role in negotiations. When CBAs are mandated, the local jurisdiction often have an active role in negotiations. When CBAs are voluntary, the jurisdiction is not typically a party to the negotiations but may still provide support to the CBA process. CBAs are typically negotiated by the applicant of the project involved, and a coalition of community groups that represent the affected community or communities. CBAs can also be negotiated by a project applicant and local jurisdiction if the CBA involves subsidies or incentives provided by the local jurisdiction.

When facilitating a Mandatory CBA Program or Voluntary CBA Guidelines the County could have an active role or a neutral role in delivery, operation, and maintenance of benefits. For instance, when the County takes a neutral role, CBA monetary benefits can be managed through a non-profit, such as a foundation. During jurisdictional research, staff found the Ocotillo Wind Community Benefits Program in Imperial County includes three endowment funds that are managed by the Imperial Valley Community Foundation, a non-profit organization serving the communities in Imperial County. The Ocotillo Wind Project is a renewable energy facility that utilizes 112 wind turbines. When the County takes an active role in delivery, operation, and maintenance of CBA benefits the responsibilities will vary based on the

benefits agreed to. Additional County staffing and resources will need to be identified if the Board directs staff to take an active role in CBA administration.

2.A: County Administered Mandatory and/or Voluntary CBA Programs

This option directs County staff to lead the administration of a Mandatory CBA Program and Voluntary Guidelines. County staff roles for a Mandatory Program could include (1) periodic updates to the regulations setting protocols for the types of projects required to enter into CBAs; (2) negotiating and forming agreements; (3) helping obtain State or federal financing for a benefit; (4) participating in the delivery, operation, and maintenance of a benefit; and (5) helping communities build coalitions to discuss and negotiate with project applicants. County staff roles for supporting Voluntary Guidelines could include little to no County involvement. However, based on the applicant or community desires, County staff roles could include (1) negotiating and forming agreements; (2) helping obtain State or federal financing for a benefit; (3) participating in the delivery, operation, and maintenance of a benefit; (4) facilitating discussions between project applicants who voluntarily establish CBAs; and (5) helping communities build coalitions to discuss and negotiate with project applicants. If the Board selects this option, staff will identify staffing resources necessary at the time of program adoption to implement the program.

2.B: Third Party Administered Mandatory and/or Voluntary CBA Programs

This option directs County staff to identify potential options for third party organizations to have a lead role in the administration of the CBA program. A third-party organization could lead the following administration roles: (1) helping obtain State or federal financing for a benefit; (2) participating in the delivery, operation, and maintenance of a benefit; (3) facilitating discussions between project applicants who voluntarily establish CBAs; and (4) helping communities build coalitions to discuss and negotiate with project applicants. If the Board directs this option, staff will return to the Board to approve a third party and any potential administrative actions as needed.

Category 3: CBA Program Components

In December 2021, the Board directed staff to develop benefits and incentives guidelines, staff reference these as components of CBA Programs. In addition to benefit and incentive guidelines, staff developed options for expanded outreach, and community participation to encourage more communication between a project applicant and community group with the goal of creating more CBA opportunities. Through jurisdictional interviews and outreach efforts, staff identified potential options for benefits and incentives, for which staff is seeking further Board input.

3.A: Benefit Options

The Board directed staff to consider the types of benefits that could be provided during a mandatory program between a project applicant and communities. These could include wage requirements above State minimum wage (prevailing wage), require employees live within a specific proximity to the project (local hire provisions), job outreach to underserved communities, and other items as appropriate, including a focus on the nexus between the negative impact on the community and the project being proposed. Benefits such as prevailing wage, local hire provisions, and job outreach to underserved communities intend to strengthen the local work force with wages above the State's minimum value, more specific job training opportunities, and outreach to underserved communities to expand knowledge of employment options. However, the County is limited under law in the amount of direction the County

could provide during negotiations between project applicants and community groups. The County cannot infringe on private agreements. If the County is participating in the negotiation of the agreement, or a specific project involves County owned lands or County leases, then the County does have more options to support and negotiate for these desired benefits. Additionally, stakeholder outreach suggested that communities want to be able to negotiate for benefits that are meaningful to their communities.

Staff provided suggestions as to the types of benefits that the County could support and would be meaningful to the various communities in the unincorporated areas based on jurisdictional best practices research and input from stakeholders. During stakeholder and public outreach, community members and stakeholder groups such as agricultural and development industry representatives, environmental, and labor unions identified that there is a wide array of benefits both project applicants and the community support. Examples of benefits suggested during stakeholder outreach include: (1) improvements to public spaces including plazas or parks facilities, (2) multi-modal transportation (e.g., bike lanes, pedestrian & transit facilities), (3) Project Labor Agreements (PLAs), which are collective bargaining agreements between building trade unions and contractors that govern terms and conditions of employment for all craft or trade workers, both union and non-union, on a construction project, and (4) addressing the needs of communities that have experienced negative health impacts due to pollution from the built environment (Environmental Justice Communities). Environmental Justice Communities and other unincorporated communities have unique needs, and throughout stakeholder outreach staff received comments that the community or its representatives should be a part of benefit negotiations to ensure the community need is met.

Additionally, pursuant to State and federal law a local authority can only mandate specific benefits such as prevailing wages, local hire, job outreach to underserved communities when the project is located on publicly owned land, projects the County provides funding or the local agency provides a subsidy for the project. However, the local authority may strongly support these benefits and provide these example benefits to the community and project applicant as options to be voluntarily selected and negotiated.

In developing benefit options, staff considered best practice research, stakeholder input received, and reviewed the County's Strategic Initiatives. The County's Strategic Initiatives provide the framework for the County to set measurable goals. The initiatives are designed to span the entire organization, break down silos, and extend across groups for all departments to see their work contributing to the overall success of the region. The initiatives are (1) Sustainability, (2) Equity, (3) Empower, (4) Community, and (5) Justice. Many of the benefits identified during stakeholder engagement can be supported by the County Strategic Initiatives such as:

- Sustainability: Benefits that support improvements to the environment such as solar panel installations and support agricultural lands and its industry through reduced regulation, and equipment sharing opportunities.
- Equity: Benefits that support equal opportunities to services and jobs, such as job outreach to underserved communities.
- Empower: Benefits that support strong workforces such as Project Labor Agreements (PLAs), and job outreach and training.

- Community: Benefits that support the promotion of safe communities, partnerships to support communities, and neighborhood reinvestment programs specific to the community needs and desires.
- Justice: Benefits that support the reduction of disparities and disproportionalities such as negative health effects or racial injustices and benefits thereof.

3.A.i: Develop Pre-Set List of Benefits

The Board can direct staff to develop guidelines, such as those included in the dot-list above, of the types of benefits to offer to project applicants and the public that do not limit CBA participants to specific benefits. A general list grouped by initiatives that the County supports would provide transparency to both the project applicant and the community and would provide a starting point for project applicant and the community in benefits negotiations. This would also provide resources to the project applicant and show good faith to limit impacts project timelines.

Even though Imperial County's Benefit Guidelines are supported by a fee-based program for utility-scale solar projects, the collected fees are distributed to identified categories for potential funding such as Community Services, and Community and Economic Development. The Community Services funding can include arts and culture, library, homeless programs, youth programs, and scholarship programs. The Community and Economic Development funding can include small business loans, parks and recreation, and entrepreneurial training. The Board can direct staff to develop benefit guidelines that list benefit options by specific grouping and include options similar to Imperial County and other jurisdictions, and that also incorporate stakeholder input.

3.A.ii: Determine Benefits on a Case-by-case Basis Through Community Engagement

The Board can direct staff to not develop guidelines on benefits but rather have benefits be a discussion point of each negotiation. This option would allow the applicant to choose a benefit based on the project impacts or a specific community's unique needs by identifying a benefit that was not identified as part of the original program adoption and implementation. However, this option would not provide project applicants guidance as to the types of benefits the County and unincorporated area residents are most interested in seeing included in a project.

3.B: Establish Expanded Mandatory Community Engagement to Initiate Early Conversations with Potentially Impacted Communities

The County currently actively engages with the community and stakeholders throughout the project review process. This option would provide opportunities for expanded outreach to discuss and negotiate a CBA early in the project process. In either a Mandatory or Voluntary CBA program, the County could assist with creating new and creative opportunities for outreach.

To date, stakeholders' comments requested that project applicants conduct community outreach early in the process. Existing permit and project processes require project applicants to issue public notices and require County staff to bring proposed projects to the Community Planning or Sponsor Groups. This option would look at ways to expand upon the existing public outreach process. Expanding outreach requirements for project applicants in the Mandatory CBA Program could foster relationships with community members early on and could assist in the negotiation process. Additionally, the expanded

outreach requirements between project applicants and affected communities could help foster voluntary CBA adoption by project applicants who would not otherwise be subject to the Mandatory CBA Program.

3.B.i: Develop Project Types for Expanded Outreach Requirements

This option would establish expanded outreach requirements based on project type. Expanded community outreach guidelines could include required participation by the project applicant. Currently, County-led outreach occurs throughout the discretionary process, which includes public outreach meetings with CPSGs, public review of technical documents, stakeholder engagement, and public noticing. However, applicant attendance is not required throughout this process. Guidelines could encourage project applicants to facilitate public meetings which could allow for more touchpoints with the applicant and community groups prior to decisions on whether a CBA could be part of the project. Potential options for expanded outreach may include: 1) early application public noticing, 2) attending community meetings, and 3) hosting virtual meetings or workshops. The expanded outreach would include County staff participation.

3.B.ii: Establish Expanded Outreach for all Projects Subject to CEQA Review

Under this option, the Board would direct staff to establish expanded outreach requirements for all projects requiring CEQA review.

3.B.iii: Establish Expanded Outreach for Certain Project Types Identified by the Board

On December 8, 2021, the Board identified certain types of projects that should be considered for a mandatory program, including renewable energy, warehouse, hospitals, business parks, and large-scale housing. However, as discussed above, due to the legal limitations of the Mandatory CBA Program, mandatory CBAs must be determined to have a nexus to the project's environmental impact, not a project type. However, expanded outreach could be required based on project type. Staff reviewed and compared the Board list of project types to the existing Regulatory Code and Zoning Ordinance and provided the types of projects listed in Option 3.B.iii and Table 2 be considered for expanded outreach requirements.

This option would direct staff to establish expanded outreach guidelines for project types to adhere to, which could include public notifications and public meetings early in the process to get a conversation started between the community and the project applicant. Staff relied on the project types listed by the Board on December 8, 2021 (7) as a guide, such as renewable energy projects, warehouses, hospitals, and business parks. Staff reviewed the County's Zoning Ordinance to determine which Use Type would most closely align with the Board's direction. Based on the legal limitations of what can be included in a Mandatory CBA, staff will further evaluate potential thresholds or criteria which would most likely cause significant community impacts.

Table 2. Project Types Requiring Expanded Community Outreach Requirements

Project Category	Zoning Ordinance Use Type
Renewable Energy	1350 Major Impact Services and Utilities
Warehouses	1630 Heavy Industrial
Hospitals	1350 Major Impact Services and Utilities
Business Parks	1310 Administration Services
	1630 Heavy Industrial

3.B.iv: No Expanded Outreach Requirements

The Board may also choose not to direct staff to expand outreach procedures. Project applicants may be limited by resources to be able to attend or hold public meetings on their own without the assistance of County staff. As mentioned above, staff conducts community and stakeholder outreach throughout the discretionary review of a project. If this option is selected, no changes to the current outreach procedures would be needed requiring applicant attendance.

3.C: Incentives County Can Offer in Return for CBAs

Another way the County can support project applicants participating in a Voluntary CBA Program is to offer incentives or subsidies to the project applicants. Stakeholder input and research indicate that CBAs are only successful when project applicants and the community both participate. Staff identified examples of incentives to encourage both the community and applicant participation based on research and stakeholder input. See Option 3.C.i below for further details.

When identifying the types of incentives the County may offer, staff looked to a related policy: Board of Supervisors Policy A-124, Economic Incentives. The policy discusses two types of incentives: (1) non-financial incentives, such as expedited permit processing, letter of support for grant applications, legislative support, and provision of customized training programs through non-profit organizations and State agencies; and (2) financial incentives, such as leases of County-owned land at below market price, industrial development bonds, and assistance in securing financial backing acting as a liaison.

The City of Morro Bay, for example, agreed to provide the applicant of a proposed offshore wind project an exclusive option to lease the City's infrastructure for connection to the electrical grid, and the applicant agreed to provide economic benefits to the city, including local hiring. Additionally, project applicant incentives suggested by industry stakeholders included incentives such as a density bonus or floor area ratio (FAR) bonus, which could increase the allowed size or number of units of a project. They also suggested codifying a public meeting requirement, as mentioned in Option 3.B above, to initiate conversations with various community members other than the CPSG members as the County protocols define now.

3.C.i: Pre-Set List of Incentives

The Board can direct staff to develop incentive guidelines similar to those identified within Board Policy A-124 and additional incentives that were suggested by stakeholders, such as density bonuses.

3.C.ii: Case-by-case Basis Through Community Engagement

The Board can direct staff to not develop incentive guidelines. This option creates flexibility for the applicant and staff to identify the appropriate incentive based on the proposed project.

E. COMMUNITY PLANNING & SPONSOR GROUP (CPSG)

Staff reached out to all Community Planning Group and Sponsor Groups (CPSGs) with an offer to present on the CBA project. The following is input received through the CPSG outreach process.

Staff attended the Twin Oaks Valley CPG meeting on October 20, 2021, to discuss community benefits. No formal action was taken by the CPG. However, some members expressed concerns with CBAs.

Member comments included questions related to the difficulties of identifying who the community negotiators should be, and how to select benefits for the community (a potential avenue for applicants to buy support for their projects was also discussed). There was also a stated desire for the CPG to have a role in the CBA process to ensure members of the affected communities will be included in the negotiations.

Staff also attended the Campo Lake Morena CPG meeting on October 25, 2021. No formal action was taken by the Campo Lake Morena CPG. Individual member comments included the following: (1) CBAs should not be used as a deciding factor to approve a project, (2) the funds collected from CBAs should only be used in the affected communities, (3) benefits should be defined and decided by the affected communities, (4) CBAs should not replace State environmental review requirements, (5) CBAs should be mandatory for the applicant for any project in Campo/Lake Morena, and (6) CBA negotiations should be conducted at the community level instead of by various individual entities.

One member of the Palomar CSG met with staff on November 8, 2021. They stated that much of east county is economically distressed, and residents are at a disadvantage when negotiating with wealthy corporations building renewable energy projects. The member suggested that CBAs be used to fund groups that can effectively negotiate with applicants for community benefits.

In addition to outreach to individual CPSGs, on May 12, 2022, staff held a small group session with CPSGs and Community Based Organizations. Members from the Fallbrook, Jacumba, and Descanso CPSGs participated in the meeting, as well as members from Community Based Organizations such as Urban League of San Diego County, SoCal Pre Apprenticeship, Local Initiatives Support Corporation (LISC) San Diego, and Outdoor Outreach. Several attendees stated that a project that exports benefits outside of the project area but impacts the surrounding community, should participate in a mandatory CBA, and that a project that provides local benefits through their development should not have to participate in a mandatory CBA but instead could opt to do a voluntary CBA, if they so choose.

On July 7, 2022, the Boulevard CPG submitted written comments on CBAs (Attachment C – Public Comments). The CPG stated that community benefits should be mandatory for all industrial-scale wind, solar, related transmission, and other industrial type projects that have an impact on underserved communities. The comment letter further stated that community benefits should not require project support from appointed or elected community planning groups and that the proposed community benefits should remain in the immediate project-impacted community within the Community Planning Area boundaries. The CPG comment letter further states that for solar projects that pay into community benefits, a one-time per megawatt community benefit amount may not be appropriate for all solar projects in the region. Community benefits could be based on the cost of the project, such as a certain percentage of the cost of the project, and that projects proposed in disproportionately impacted communities such as Boulevard and Jacumba should be required to pay benefits annually throughout the life of the project.

F. PUBLIC INPUT

Community and stakeholder input is vital to the success of CBA programs, policies, and guidelines. Since 2021, staff has engaged with stakeholder groups and members of the public and used their input to develop options for CBA programs, policies, and guidelines for the Board's consideration. Outreach efforts and input received to date are described in the sections below.

Phase 1 Outreach: Prior to receiving Board direction on December 8, 2021, staff hosted three public input sessions that included housing applicants, individuals from business and industry, renewable energy applicants, climate activists, members of Community Planning and Sponsor Groups (CPSGs) and interested members of the public.

Stakeholder feedback at that time included the following: the need for flexibility in benefits provided, consideration of the diversity of project types and community needs, consideration of the potential for the increased cost to build in San Diego, and the role of the County in negotiating CBAs between developers and community members; CPSGs should be involved in the CBA discussion and be a part of future CBA agreements because these groups are already actively involved with their community and the land development process for projects. Also, community benefits should not replace CEQA mitigation; CBAs should remain voluntary to provide the most flexibility and benefits to the community surrounding the project; CBAs should not increase local regulatory measures on development projects and affordable housing projects should be considered community benefits in themselves and not be subject to additional community benefit requirements.

Phase 2 Outreach: After receiving Board direction on December 8, 2021, staff held three public input sessions, and six small group meetings that included one on one meetings with stakeholder groups which included: Labor, Business and Industry, Applicants/Developers, Building and Construction, Community Planning and Community Sponsor Groups (CPSGs), Community-Based Organizations (CBOs), Government and Youth Groups, Environmental Groups, and Tribal Governments. Additionally, staff met with specific stakeholders from the following groups: Farm Bureau, Building Industry Association (BIA), Land Development Technical Working Group (LDTWG), Environmental Coalition, and Wildlife Agencies.

Staff met with stakeholders from the business community, including the BIA, and project applicants, and heard the following from attendees: (1) housing projects should be excluded from CBAs, (2) benefits from a CBA do not have to be financial or monetary in nature but could also include modifications to aspects of a project, such as a project design and roads, (3) voluntary CBAs are not as burdensome as a requirement process may be, and (4) the parties involved in the CBA should be able to reach an agreement with mediation, otherwise, the CBA should be a condition of approval to the project.

Stakeholders from the development, building, and construction industry also stated the importance of excluding housing projects from CBAs because San Diego already faces housing challenges, and mandatory CBAs could increase the time and cost for housing development, creating further barriers to housing production. They also stated that the County should consider setting a baseline or threshold for projects that would be subject to CBAs (i.e., defining what a large project is by dwelling units or acreage). They also reiterated the following: (1) to be effective, incentives for applicants, such as streamlined reviews, should be implemented early in the project, (2) to assist in negotiations, which take time and expertise that community groups might not have, the County should consider a menu of options that applicants and community groups can choose from so the process is streamlined and less open-ended.

Members of CPSGs, CBOs, and labor groups stated that: (1) a project that exports benefits outside of the project area, but its impacts are felt by the surrounding community, should participate in a mandatory

CBA; (2) a project that provides local benefits by its development (i.e., housing) does not have to participate in a mandatory CBA and can instead opt to do a voluntary CBA; (3) that the County should be involved in negotiations between applicant and community groups and act as an arbitrator or authority figure; and (4) if funds are involved, the County should play a role in assuring that funds are distributed locally, either by administering the funds or providing a list of vetted, local third-party organizations that may hold and administer the funds.

Additionally, in 2022, staff engaged the California Department of Water Resources, Imperial County staff, and Riverside County staff to discuss their respective CBA approaches. The California Department of Water Resources is currently developing a Delta Conveyance Project Community Benefits Program. The Delta Conveyance Project is a large infrastructure project that will modernize the water transport infrastructure in the Sacramento-San Joaquin Delta. In the case of the Delta Conveyance Project Community Benefits Program, community members stated that they do not want a State-run grant program because local organizations do not have the resources or capacity to apply for grants; therefore, the Department of Water Resources will explore other options for a community benefit program.

Staff met with the nearest jurisdictions with Community Benefits Agreement Programs related to renewable energy projects including Imperial County and Riverside County staff to discuss their respective programs and policies. The Imperial County Executive Office administers the Public Benefits Program, which includes a fee program based on the Megawatt (MW) capacity for solar power plants and a CBA component. Staff found that participation in the Public Benefits Program occurs early in the project review process prior to receiving grading permits. The funds collected through the program are administered by the County Executive Office (CEO) and used to fund loans and grants. Loan and grant applications are reviewed by an appointed committee comprised of Imperial County staff and community members.

Riverside County implements their Board Policy B-29, which applies to solar power plants with capacity above 20 MW and implements a fee per MW capacity. Staff learned that projects that participate in this policy may also submit a Development Agreement application, which is negotiated between the applicant and Riverside County Counsel. These projects also go through a "fast track" public hearing process and do not have to appear before the Planning Commission prior to appearing before the Board of Supervisors. The Riverside Board of Supervisors ultimately approves Development Agreements but does not typically get involved in negotiations.

Phase 3 Outreach: Staff held additional stakeholder engagement with the public. On July 1, 2022, staff held a virtual Lunch and Learn stakeholder meeting, and on July 7, 2022, staff held a Public Webinar to present the draft CBA options and inform stakeholders of the next steps and upcoming public hearings. Public stakeholders stated that 1) the County should consider reaching out to Community Based Organizations, and youth groups that will be most impacted by development projects and CBAs; 2) that CBAs should contain measurable changes and should be monitored closely so that communities can receive the most from promised benefits; and 3) some attendees expressed that it might be difficult to get stakeholders involved, and suggested the County create a team to reconvene stakeholders for future CBAs. These stakeholder recommendations and draft options for the Board's consideration are further captured below under Program Options.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

This project has been reviewed for compliance with California Environmental Quality Act (CEQA). The project is for the Planning Commission to accept the report and requests direction on policies with later actions to be analyzed under CEQA (Attachment A).

Accepting these options for Community Benefits Agreements does not commit the County to any definitive course of action and would have no potential for resulting in significant physical change or effect on the environment directly or indirectly. Subsequent actions would be reviewed pursuant to CEQA and presented to the Board for consideration before implementation. Therefore, the project is exempt from CEQA, pursuant to Section 15061(b)(3) of the CEQA Guidelines, as it can be seen with certainty that there is no possibility that today's actions may have a significant effect on the environment.

H. CONCLUSION

Staff explored Community Benefits Agreements (CBAs) through a literature review best practice research, jurisdiction research and interviews; an analysis of County Programs, Plans, and existing efforts; and stakeholder input received through public meetings, lunch and learns, and small group meetings. Staff used the information gathered from these efforts to develop the considerations and options for CBA guidelines presented today.

Staff anticipates returning to the Board in the Fall of 2022 to present information for additional consideration and direction. At that time, staff will also present the funding and resources needed to prepare CBA programs, policies, and guidelines for consideration and adoption at a later date. The Planning Commission may choose to: (1) find the proposed recommendations are exempt from CEQA, and (2) receive the presentation.

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AUTHORIZED REPRESENTATIVE:


DAHVIA LYNCH, DIRECTOR

ATTACHMENTS:

A	Environmental Documentation
B	Public Comments

Attachment A – Environmental Documentation

1 - 20 NOTICE OF EXEMPTION

TO: Recorder/County Clerk
Attn: James Scott
1600 Pacific Highway, M.S. A33
San Diego, CA 92101

FROM: County of San Diego
Planning & Development Services, M.S. O650
Attn: Long Range Planning

SUBJECT: **FILING OF NOTICE OF EXEMPTION IN COMPLIANCE WITH PUBLIC RESOURCES CODE SECTION 21108 OR 21152**

Project Name: PDS2021-POD-21-007– Overview Presentation of Exploration of Community Benefits Agreements

Project Location: County of San Diego (All Districts)

Project Applicant: County of San Diego; Address: 5510 Overland Ave, San Diego, CA 92123;
Telephone Number: (858) 505-6677

Project Description: On December 8, 2021 (7), the Board of Supervisors (Board) directed staff to look into the following options: (1) Guidelines for the types of development projects that would be subject to CBAs, including large-scale renewable energy projects, warehouses, hospitals, businesses, parks, large-scale housing, and other types of projects deemed to have a significant impact; (2) Guidelines for the County to facilitate mandatory CBAs between applicants and community members; and (3) Guidelines for the County to negotiate and enter into CBAs with applicants, including identification of potential incentives that the County could offer in return for community benefits. During the Planning Commission hearing, staff will provide an informational presentation on the best practice research, stakeholder input, and draft options including program participation, administration, and program components which will be presented to the Board at a future date.

Agency Approving Project: County of San Diego

County Contact Person: Timothy Vertino; Telephone Number: 858-505-6677

Date Form Completed: September 9, 2022

This is to advise that the County of San Diego Planning Commission has approved the above described project on September 9, 2022, Item #1, and found the project to be exempt from the CEQA under the following criteria:

1. Exempt status and applicable section of the CEQA ("C") and/or State CEQA Guidelines ("G"): (check only one)
 - ☐ Declared Emergency [C 21080(b)(3); G 15269(a)]
 - ☐ Emergency Project [C 21080(b)(4); G 15269(b)(c)]
 - ☐ Statutory Exemption. C Section:
 - ☐ Categorical Exemption. G Section:
 - ☒ **G 15061(b)(3) - It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and the activity is not subject to the CEQA.**
 - ☐ G 15182 – Residential Projects Pursuant to a Specific Plan
 - ☐ G 15183 – Projects Consistent with a Community Plan, General Plan, or Zoning
 - ☐ Activity is exempt from the CEQA because it is not a project as defined in Section 15378.
2. Mitigation measures ☐ were ☐ were not made a condition of the approval of the project.
3. A Mitigation reporting or monitoring plan ☐ was ☐ was not adopted for this project.

Statement of reasons why project is exempt: It can be seen with certainty that there is no possibility this project may have a significant effect on the environment.

The following is to be filled in only upon formal project approval by the appropriate County of San Diego decision-making body.

Signature: _____ Telephone: (858) 505-6677

Name (Print): Timothy Vertino Title: Land Use/Environmental Planner

This Notice of Exemption has been signed and filed by the County of San Diego.

This notice must be filed with the Recorder/County Clerk as soon as possible after project approval by the decision-making body. The Recorder/County Clerk must post this notice within 24 hours of receipt and for a period of not less than 30 days. At the termination of the posting period, the Recorder/County Clerk must return this notice to the Department address listed above along with evidence of the posting period. The originating Department must then retain the returned notice for a period of not less than twelve months. Reference: CEQA Guidelines Section 15062.

Attachment B – Public Comments

COMMUNITY BENEFIT AGREEMENTS – BOULEVARD PLANNING GROUP COMMENTS

APPROVED BY 7/7/22 VOTE: 4 YES; 0 NO, 0 ABSTAINED, WITH 3 MEMBERS EXCUSED

Donna Tisdale, Chair: 619-766-4170; tisdale.donna@gmail.com

1. Community Benefits must be mandatory for all industrial scale wind, solar, related transmission, and other industrial type projects that impact underserved and disproportionately affected renewable energy front-line communities; increase wildfire risk and the availability and affordability of fire insurance rates in high-threat areas; in addition to adversely affecting community viability, quality of life, utility rates & more.
2. Community Benefits must NOT and cannot require project support from elected or appointed community planning groups. Quid-pro-quo is generally considered unethical and /or illegal under law.
3. Community Benefits MUST REMAIN in the immediate project-impacted community and MUST NOT include jobs for out-of-area labor, out-of-area land for wildlife mitigation, out-of-area manufacturing, out-of-area non-profits or other organizations.
4. Community Benefits must be strictly limited to remain within the impacted Community Planning Area boundaries.
5. The previous Soitec Solar alleged 'community benefits' included a manufacturing plant about 70 miles away from Boulevard where 4 -5 Soitec projects were proposed (Rugged Solar, Tierra Del Sol Solar, LanWest Solar, LanEast Solar & Los Robles Solar).
6. Most wind and solar projects receive taxpayer funded tax credits and / or incentives / subsidies, based on the cost of the project.
7. A generic one-time per Mega Watt (MW) Community Benefit amount may not be appropriate for all projects in all areas of the County.
8. Rugged Solar (88.7MW DC) is proposing \$10,000 per MW DC =\$887,000.
9. 90 MW JVR Solar: Board of Supervisors recommended \$4 million (\$44,444 per MW).
10. Community Benefits could also be based on cost of project. 1% of a \$400 million project would result in a \$4 million. 2% would be \$8 million.
11. Projects and cumulative impact projects proposed in disproportionately impacted / burdened rural communities, like Boulevard and Jacumba, should be required to pay benefits annually throughout the life of the project because that is how long the host community is burdened with that project.
12. Boulevard received NO community benefits, when the Board of Supervisors supported Terra-Gen's Campo Wind, with 9 miles of 600 ft tall turbines on Campo Reservation ridge-tops abutting many private properties, via Board approval of Terra-Gen's related Boulder Brush Substation on private land in Boulevard. NO benefits for Boulder Brush.

Boulevard deserves better.

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