BEAR
STRATEGIES

COUNTY MANAGEMENT GUIDE

Community Benefits Agreements for Large-Load Development

A Current-Law Operating Guide for North Carolina County Managers

One county operating system. Multiple legally supported agreements. Continuing accountability.

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Management proposition. A North Carolina county can negotiate a meaningful community-benefits package today, but it should not begin by asking, What can we put in one CBA? It should ask, What commitments does the county need, who has authority over each one, which agreement can lawfully carry it, and how will the county administer it for the next 20 years?

This guide is designed for county managers and executive teams. It is not legal advice. County counsel must determine authority, procedure, wording, enforceability, and transaction-specific risk.

Executive Brief

North Carolina does not provide counties one comprehensive statutory instrument called a community benefits agreement. The practical current-law solution is a Community Benefits and Accountability Agreement Package built from several coordinated agreements.

The package normally uses:

- a Chapter 160D development agreement as the coordinating spine;
- utility and infrastructure agreements for capacity, construction, lifecycle cost, and service responsibility;
- separate easements, leases, emergency-service agreements, environmental commitments, or security instruments where needed;
- a private agreement with a community foundation or nonprofit for independently administered community investment; and
- an economic-development agreement only if the county actually provides discretionary assistance.

For a no-incentive data-center project, the central fiscal challenge is machinery depreciation. The county cannot solve that problem by negotiating a different tax assessment or creating its own PILOT. It can pursue stable, project-related value through infrastructure responsibility, authorized utility or property payments, documented service-cost reimbursement, expansion triggers, decommissioning protection, and a privately administered annual community investment.

The manager’s job is to create one decision and accountability system across the separate instruments. Counsel’s job is to verify that each obligation rests on valid authority and follows the required process.

1. Start With the County s Objectives

Before negotiating specific language, the county should identify the outcomes it needs to protect:

- infrastructure capacity and lifecycle responsibility;
- existing customer and taxpayer protection;
- emergency-response capability;
- environmental and community protection;
- predictable implementation and reporting;
- benefits that continue after the initial announcement;
- enforceable obligations after ownership or operator changes;
- public legitimacy and meaningful stakeholder influence; and
- an accurate long-term fiscal picture, including machinery depreciation and closure risk.

These objectives should be approved as negotiating principles, not as a promise to approve or reject a specific project.

2. Build an Agreement Package, Not a Catch-All Document

Development agreement

Use the Chapter 160D development agreement for property, phasing, public facilities, schedules, mitigation, monitoring, breach, recordation, and successor obligations. Development agreements may coordinate public and private responsibilities, but cannot impose authority, taxes, or fees the county does not otherwise possess.1

Utility and infrastructure agreements

Use these for service studies, capacity, extensions, construction, ownership, authorized charges, operating responsibility, renewal, replacement, curtailment, extraordinary demand, security, and abandonment.

Private community-benefit agreement

Use an independent community foundation or nonprofit when the desired benefits include scholarships, workforce initiatives, community grants, housing support, conservation, small-business programs, or similar purposes that are not readily characterized as county infrastructure or project costs.

Other instruments

Use separate easements, leases, interlocal agreements, environmental covenants, emergency-service contracts, parent guaranties, escrows, letters of credit, and decommissioning security when those instruments provide clearer authority or enforcement.

3. The Financial Model When No Incentives Are Offered

The county should assume that ordinary property taxes will fluctuate as machinery is installed, depreciated, replaced, transferred, appealed, or retired. The tax administrator must remain independent, and the agreement should not promise an assessed value, depreciation schedule, exemption, classification, or appeal result.

The stable-value strategy has four parts.

3.1 Infrastructure responsibility

Require the developer to construct, fund, operate, renew, replace, or secure the infrastructure responsibilities properly assigned to it. Address both initial construction and the useful life of the facility.

3.2 Supported project-cost reimbursement

Identify the actual county responsibilities created by the project—technical review, monitoring, emergency planning, specialized equipment, extraordinary response, or agreement administration—and have counsel determine whether and how those costs may be allocated or reimbursed.

3.3 Stable operating metrics

Where legally supportable, use operating measures that do not depreciate like servers: energized capacity, reserved utility capacity, operating phases, square footage, buildings, generators, or similar metrics. The metric must measure an authorized charge, supported responsibility, expressly enumerated mitigation, or private benefit. A per-megawatt label does not create authority by itself.

3.4 Private annual community investment

Negotiate a separate, secured agreement between the developer and an independent community foundation or nonprofit. It may include an annual minimum, inflation adjustment, expansion contributions, public reporting, successor assumption, and direct enforcement by the recipient.

> **Do not use: a payment described as the difference between actual property taxes and a negotiated hypothetical tax amount. That resembles a locally created PILOT and presents material legal risk under North Carolina s constitutional and statutory tax structure.2**

4. The County s Eight-Step Process

Step 1 Establish governance

Designate the manager as executive sponsor, the county attorney as authority lead, and a project administrator as keeper of the complete agreement record. Identify finance, tax, planning, utilities, emergency services, environmental, communications, and economic-development roles.

Step 2 Build the full-buildout evidence record

Analyze the entire plausible campus, not merely the first phase. Include electric load, water, wastewater, roads, emergency services, environment, construction, operations, taxable property, equipment refresh, depreciation, expansion, ownership transfer, and closure.

Step 3 Map stakeholders and decisions

Identify affected residents, municipalities, utilities, landowners, institutions, businesses, emergency responders, workforce organizations, environmental interests, and persons unlikely to participate in conventional hearings. State which decisions they can influence.

Step 4 Create the authority matrix

For every requested commitment, counsel identifies the responsible party, recipient, authority, approving body, required process, agreement, remedy, successor treatment, and unresolved risk.

Step 5 Negotiate a nonbinding term sheet

Organize the term sheet by schedules: development, utilities, infrastructure, public services, private community investment, reporting, security, enforcement, and successors. Preserve all legally separate approvals.

Step 6 Draft and test the agreements

Technical staff and counsel should test each obligation against realistic scenarios: delayed construction, partial buildout, lower load, higher load, machinery depreciation, ownership transfer, missed payment, system failure, curtailment, closure, and decommissioning.

Step 7 Complete hearings and approvals

Development agreements require a legislative hearing and governing-board approval. Conditional zoning, property transactions, utility actions, interlocal agreements, and other instruments may require separate procedures. Economic-development commitments must be approved in open session.3

Step 8 Record, secure, administer, and report

Record the development agreement, perfect security, establish the baseline, publish the public package, calendar every deadline, and begin annual compliance review immediately.

5. Social License and Stakeholder Influence

Stakeholder engagement should not be a communications exercise conducted after the bargain is substantially complete. The county should ask for input early enough to change:

- technical studies;
- site design;
- infrastructure sequencing;
- mitigation;

- emergency planning;
- environmental monitoring;
- community investment priorities;
- reporting; and
- remedies.

Maintain an Influence Record documenting what was heard, how the claim was tested, what changed, and why a request was accepted, modified, redirected, or declined.

Social license does not mean unanimity or a public veto. It means a continuing condition of procedural legitimacy, credible evidence, visible influence, and accountable performance.

6. Minimum Business Terms

Every enforceable obligation should identify:

- responsible entity;
- beneficiary or enforcing party;
- action or payment;
- formula or amount;
- trigger and due date;
- required evidence;
- verification rights;
- cure period;
- remedy;
- security;
- expansion treatment;
- assignment and successor treatment; and
- survival after closure or transfer.

Do not rely on a project subsidiary alone. Evaluate the need for a parent guaranty, letter of credit, escrow, owner joinder, operator joinder, and continuing decommissioning security.

7. Annual Accountability

The developer should submit an annual compliance certificate covering:

- operational phases and load;
- construction and investment;
- equipment additions, retirements, and transfers;
- employment and contracting commitments, if any;
- infrastructure work;
- utility and environmental metrics;
- public-service and private-community payments;

- security status;
- ownership changes; and
- known noncompliance.

The county should issue an annual public report showing commitments due, performance received, exceptions, corrective actions, and unresolved matters. Protect only information that qualifies for legal confidentiality.

8. Management Red Flags

Pause and obtain specific legal advice when a proposal includes:

- an unrestricted annual payment to the county;
- a payment designed to replace declining property taxes;
- a per-megawatt charge without a cost or authority analysis;
- a payment connected to an administrative or quasi-judicial approval;
- a private nonprofit payment effectively required by the county;
- wage, benefit, local-hire, or labor requirements;
- a promise affecting appraisal or depreciation;
- confidentiality covering the final bargain;
- an obligation binding only a thin project subsidiary;
- a remedy involving permit suspension or revocation;
- an agreement that can be materially amended by staff; or
- a community promise with no amount, deadline, evidence, security, or remedy.

North Carolina courts have invalidated development-related fees and conditions where the local government lacked the necessary authority. Monetary exactions can also trigger constitutional scrutiny.4

9. Decision Record for the Governing Board

Before approval, the manager should provide a Decision Record stating:

- the decision before the board;
- public objectives;
- alternatives considered;
- authorities identified by counsel;
- benefits and risks;
- infrastructure and fiscal effects;
- stakeholder input and influence;
- commitments by instrument;
- security and remedies;
- unresolved issues;
- implementation owners; and
- performance measures.

The Decision Record provides institutional memory when commissioners, managers, attorneys, developers, utilities, and operators change.

10. Manager s Final Checklist

- Is the project evaluated at full buildout?
- Does counsel have an authority for every county action and receipt?
- Is each commitment in the correct agreement?
- Are payments separated from ordinary taxation?
- Are utility and infrastructure lifecycle costs assigned?
- Did stakeholder input occur early enough to matter?
- Can the county show what input changed?
- Are obligations measurable?
- Are the correct developer, owner, operator, and guarantor bound?
- Is security adequate?
- Will obligations survive transfer?
- Are hearings and open-session approvals complete?
- Is the final public bargain understandable?
- Is one administrator responsible for the complete package?
- Are annual reporting, audit, breach, cure, and remedies operational?

Closing Proposition

The county does not need one oversized agreement. It needs one disciplined operating system.

> **Use the development agreement as the coordinating spine; assign utility, infrastructure, private-community, security, and other commitments to the instruments that can support them; preserve ordinary taxation; document stakeholder influence; and administer every promise through a continuing accountability record.**

Sources

1. N.C. Gen. Stat. §§ 160D-1001 through 160D-1012, development agreements: Official source

2. Constitution of North Carolina, Article V, § 2; N.C. Gen. Stat. § 105-274: Official source

3. N.C. Gen. Stat. § 143-318.11, closed sessions and open-session approval of economic-development commitments: Official source

4. Lanvale Properties, LLC v. County of Cabarrus, 366 N.C. 142 (2012); Anderson Creek Partners, L.P. v. County of Harnett, 2022-NCSC-93; Sheetz v. County of El Dorado, 601 U.S. 267 (2024): Official source