ARTICLES

HOW TO BLOW UP A SOLAR FARM: LOCAL OPPOSITION TO RENEWABLE ENERGY PROJECTS

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SUMMARY

Local opposition to siting of wind and solar energy projects stands to threaten the renewable energy transition in New York State. The state government has sought to quell this opposition by statutorily requiring developers to provide community benefits as a condition of their permits. One way these benefits are secured is through host community agreements (HCAs), with the developer typically agreeing to make payments to the municipality from project revenue in exchange for the municipality promising not to oppose the project during the state permitting process. This Article sets out to understand the practical role HCAs play in siting of renewable energy projects by reviewing and analyzing the six publicly available HCAs negotiated in New York State. It argues that thus far, developers and local governments use HCAs as a tool to serve their own interests, rather than to address concerns articulated by community members.

To meet international, national, and state decarbonization targets, the United States, like many countries, must take an aggressive approach to facilitating the clean energy transition.[1] The aim of the energy transition is to move away from an energy system that is supported by fossil fuels to one that is supported by renewable forms of energy, such as solar or wind power. There is no shortage of hurdles to enabling this transition, including industry opposition, legal challenges, and lack of political will, as well as general concerns about the costs associated with a shift that will transform the U.S. economy.[2]

Recently, another hurdle has emerged: community groups vehemently opposed to the siting of renewable energy infrastructure projects in their neighborhoods.[3] These groups have generally voiced their opposition in public meetings, comments and, increasingly, litigation.[4] At a high level, many of these groups argue that renewable energy projects use up valuable agricultural land, threaten ecological systems, and reduce property values in the area. Other groups have taken more extreme measures, such as buying up land adjacent to the proposed project site to have greater say in the planning process and likely a stronger nuisance case in court.[5] They have also peddled xenopho-

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1. *See, e.g.*, Richard G. Newell & Daniel Raimi, Resources for the Future, The New Climate Math: Energy Addition, Subtraction, and Transition (2018), https://media.rff.org/documents/RFF-IssueBrief-NewClimateMath-final.pdf.
2. National Academies of Sciences, Engineering, and Medicine, Accelerating Decarbonization in the United States: Technology, Policy, and Societal Dimensions 61-66 (2024), https://nap.nationalacademies.org/catalog/25931/accelerating-decarbonization-in-the-united-states-technology-policy-and-societal (summarizing the risks to achieving net-zero emissions by 2050 in the United States); *Shifting U.S. to 100 Percent Renewables Would Cost $4.5 Trillion, Analysis Finds*, Yale Env't 360 (June 28, 2019), https://e360.yale.edu/digest/shifting-u-s-to-100-percent-renewables-would-cost-4-5-trillion-analysis-finds.
3. Note that while resistance to renewable energy projects is not "new," the intensity of the resistance is. *See* Bo Mahr, *New State Laws Take Aim at Renewable Energy Siting NIMBYism*, LexBlog (Mar. 1, 2023), https://www.lexblog.com/2023/03/01/new-state-laws-take-aim-at-renewable-energy-siting-nimbyism/.
4. *See, e.g.*, Julia Simon, *In Some Fights Over Solar, It's Environmentalist vs. Environmentalist*, NPR (June 18, 2023), https://www.npr.org/2023/06/18/1177524841/solar-energy-project-location-debate; Emma Foehringer Merchant, *Community Opposition and Grid Challenges Slow the Pace of Renewable Efforts, National Survey of Developers Shows*, Inside Climate News (Feb. 23, 2024), https://insideclimatenews.org/news/23022024/community-opposition-and-grid-challenges-slow-pace-of-renewable-efforts/; Jerusalem Demsas, *Why America Doesn't Build*, Atlantic (Oct. 27, 2023), https://www.theatlantic.com/ideas/archive/2023/10/wind-farms-community-opposition/675791/.
5. Oliver Milman, *"It's Got Nasty": The Battle to Build the US's Biggest Solar Power Farm*, Guardian (Oct. 30, 2022), https://www.theguardian.

bic and racist theories about protecting America's farmland from "foreign interests" and "Chinese-made technology."[6]

Renewable energy projects are not the types of projects that one would think of as generating such fierce opposition. While these projects may be aesthetically unappealing, research suggests that they are not nearly as toxic to human health or as ecologically threatening as natural gas pipelines or hazardous waste sites.[7] Additionally, at first glance, they do not seem to be displacing people from their homes or putting them out of work. As a bonus, for many of these projects, the developer agrees to enter into a "host community agreement" (HCA) with a municipality in which they promise to provide benefits (e.g., a portion of project revenues for municipal infrastructure) in exchange for community support.

This Article aims to understand what role these HCAs play in the siting of renewable energy projects. To answer this question, I analyzed and compared wind and solar HCAs that are available through the Sabin Center for Climate Change Law's Community Benefits Agreements Database.[8] The database contains 15 total wind and solar project HCAs from across the United States. To keep this project manageable and to provide a like-to-like comparison of HCAs, I narrowed the geographic focus of my research to New York State, for which there are six relevant HCAs in the database.[9]

New York is an interesting case study because, despite the fact that most people in the state support climate-related policies, renewable energy projects have generated significant community opposition.[10] In 2020, the state sought to quell this opposition by enacting the Accelerated Renewable Energy Growth and Community Benefit Act.[11] The Act expands the state's authority to override municipal actions that block the siting of renewable energy projects, and requires developers to provide a community benefit as a condition of their project permit.

Even with this community benefits mandate, communities continue to fight against renewable projects. This opposition is costly not only for developers but also for the state writ large, which has invested significant resources to enable the clean energy transition that is needed to stave off the worst of the climate crisis.[12] At the same time, environmental justice (EJ) advocates and scholars have argued that the urgency of the crisis cannot be used as a justification for railroading the concerns of the communities in which these projects are to be sited.[13]

Focusing on the use of HCAs in the siting of renewable projects in New York State, the Article proceeds in three main parts. Part I sets out New York State's decarbonization goals as codified in the Climate Leadership and Community Protection Act, and briefly outlines recent actions the state has taken to meet these goals. It also lays out the legal framework for the siting of renewable energy projects in the state and the role of HCAs in this framework. Part II identifies reasons for local opposition to renewable energy projects generally, and then presents a case study on reac-

com/environment/2022/oct/30/its-got-nasty-the-battle-to-build-the-uss-biggest-solar-power-farm.

6. *Id.*
7. Dan Gearino, *A Reality Check About Solar Panel Waste and the Effects on Human Health*, Inside Climate News (Oct. 12, 2023), https://insideclimatenews.org/news/12102023/inside-clean-energy-reality-check-solar-panel-waste/. *See also* Hannah J. Wiseman, *Localizing the Green Energy Revolution*, 70 Emory L.J. 59, 73 (2021):

> Beyond creating durable infrastructure that occupies thousands of acres of land, renewable energy has environmental impacts, although it is important to contextualize these impacts. The environmental impacts of renewable energy are lower than those of fossil fuels, and they pale in comparison to the mass wildlife extinctions likely to be wrought by climate change.

8. Sabin Center for Climate Change Law, *Community Benefits Agreements Database*, https://climate.law.columbia.edu/content/community-benefits-agreements-database (last visited Sept. 4, 2024).
9. This Article was written based on the information in the database current to August 2024. More agreements have been added to the database since then, including two agreements in New York State. Neither of these two agreements is relevant to the analysis in this Article because they were permitted outside of the §94-c process under N.Y. Exec. Law.
10. Roberta S. Nilson & Richard C. Stedman, *Reacting to the Rural Burden: Understanding Opposition to Utility-Scale Solar Development in Upstate New York*, 88 Rural Socio. 578 (2023).
11. N.Y. Exec. Law §94-c (McKinney).
12. *See, e.g.*, Press Release, Governor Kathy Hochul, Governor Hochul Announces Nation-Leading $500 Million Investment in Offshore Wind (Jan. 5, 2022), https://www.governor.ny.gov/news/governor-hochul-announces-nation-leading-500-million-investment-offshore-wind (investment of up to $500 million in "ports, manufacturing, and supply chain infrastructure" to promote offshore wind industry in the state); Press Release, Governor Kathy Hochul, Governor Hochul Announces $16.6 Million in Awards for Five Long Duration Energy Storage Projects (Sept. 8, 2022), https://www.governor.ny.gov/news/governor-hochul-announces-166-million-awards-five-long-duration-energy-storage-projects; Press Release, Governor Kathy Hochul, Governor Hochul Announces Partnership Between U.S. Department of Energy and New York State Energy Research and Development Authority to Accelerate Clean Energy Financing (Sept. 28, 2023), https://www.governor.ny.gov/news/governor-hochul-announces-partnership-between-us-department-energy-and-new-york-state-energy (memorandum of understanding between the U.S. Department of Energy (DOE) and New York State Energy Research and Development Authority (NYSERDA) to streamline financing for renewable energy projects in the state that seek to use the DOE Loan Programs Office); Press Release, Governor Kathy Hochul, Governor Hochul Announces Nation's Largest-Ever State Investment in Renewable Energy Is Moving Forward in New York (Oct. 24, 2023), https://www.governor.ny.gov/news/governor-hochul-announces-nations-largest-ever-state-investment-renewable-energy-moving (awards made to three offshore wind and 22 land-based renewable energy projects); Press Release, Governor Kathy Hochul, Governor Hochul Advances Expedited Renewable Energy Procurement Process as Part of New York's 10-Point Action Plan (Oct. 26, 2023), https://www.governor.ny.gov/news/governor-hochul-advances-expedited-renewable-energy-procurement-process-part-new-yorks-10 ($2.3 million in awards from the state's Offshore Wind Training Institute to trades training programs).
13. *See generally* Center for Biological Diversity et al., Pursuing a Just and Renewable Energy System: A Positive & Progressive Permitting Vision to Unlock Resilient Renewable Energy and Empower Impacted Communities (2023), https://www.biologicaldiversity.org/programs/energy-justice/pdfs/Policy-Brief-for-Positive-Vision.pdf (questioning the idea that participation in siting processes must give way to meeting clean energy goals); Hannah Wiseman, Kleinman Center for Energy Policy, Balancing Renewable Energy Goals With Community Interests (2020), https://kleinmanenergy.upenn.edu/wp-content/uploads/2020/08/KCEP-Balancing-Renewable-Energy-Singles-1.pdf (suggesting ways that clean energy goals can be met without sacrificing community participation in siting processes and outlining the problems with streamlining these processes). *See also* Katrina Fischer Kuh, *Avoiding Performative Climate Justice*, 54 ELR 10230, 10237-40 (Mar. 2024), https://www.elr.info/articles/elr-articles/avoiding-performative-climate-justice; Shalanda H. Baker, *Anti-Resilience: A Road Map for Transformational Justice Within the Energy System*, 54 Harv. C.R.-C.L. L. Rev. 1, 16-20 (2019); Shalanda H. Baker, Revolutionary Power: An Activist's Guide to the Energy Transition 1, 9-11 (2021).

tions to a solar project in the town of Ripley, New York. The purpose of the case study is to draw out key concerns of the project as articulated by residents and the town of Ripley's council.

Part III reviews and analyzes the six publicly available renewable energy HCAs in the state. Based on this analysis, I argue that, thus far, developers and local governments in New York State use HCAs as a tool to serve their own interests, rather than to address concerns articulated by community members. Part IV concludes.

I. Legal Framework for Decarbonizing New York State

A. *The Climate Leadership and Community Protection Act*

In 2019, New York State enacted the nation's most ambitious climate legislation, known as the Climate Leadership and Community Protection Act (Climate Act).[14] Significantly, the Climate Act requires the Department of Environmental Conservation (DEC) to set statewide greenhouse gas (GHG) emission limits to achieve a 40% reduction in emissions by 2030 and an 85% reduction by 2050.[15] The Act also codifies the state's goal of achieving net-zero emissions in every sector of the economy by 2050, including the energy sector, the leading source of GHG emissions in the state.[16]

Current data show that natural gas-fired power plants account for 47% of the state's electricity generation, nuclear power accounts for 23%, hydroelectric power accounts for 21%, and power from non-hydro renewables (wind, solar, and biomass) accounts for 9%.[17] The burning of fossil fuels, such as natural gas, for energy generation purposes causes the emission of GHGs, most notably carbon dioxide, that warm the planet. Burning fossil fuels also leads to the emission of co-pollutants (e.g., particulate matter) that are dangerous to human health.[18] Thus, enabling the transition away from fossil fuels and toward renewables is a critical part of the state's plan to achieve decarbonization and in mitigating the impacts of the climate crisis already underway.[19]

The Climate Act codifies the following energy-specific goals: generate carbon-free electricity by 2040, generate 70% of electricity used in the state from renewable sources by 2030, and install 9,000 megawatts (MW) of offshore wind electric capacity by 2035 and 6,000 MW of distributed solar electric capacity by 2025.[20] The state has taken various important steps to meet these goals by developing incentive programs to encourage private-sector development of renewable energy generation projects, streamlining the state's siting process for such projects, and ensuring that the state's transmission infrastructure can support the new energy generated.

Indeed, in her 2024 State of the State address, New York Gov. Kathy Hochul announced further steps that her administration will take to facilitate the energy transition.[21] These steps include streamlining the permitting of energy transmission infrastructure, offering more credits to reduce electricity bills in disadvantaged communities and for low-income households, encouraging the use of smart technologies by households to manage daily energy use, and shifting the burden to pay for natural gas hookups from existing ratepayers to new customers that request such hookups.[22]

The state has also developed three key policies to guide the development of renewable energy in the state: the State Scoping Plan, the Distributed Solar Roadmap, and the Offshore Wind Master Plan. The State Scoping Plan, as required by the Climate Act, sets out sector-specific policies and programs that will enable the state to meet its obligations under the Act.[23] In the energy context, the state is focused on aggressively building out renewable energy

14. David Roberts, *New York Just Passed the Most Ambitious Climate Target in the Country*, Vox (July 22, 2019), https://www.vox.com/energy-and-environment/2019/6/20/18691058/new-york-green-new-deal-climate-change-cuomo. Recent reporting shows that the state has not been able to meet a number of its targets. *See* Colin Kinniburgh, *Missed Deadlines Pile Up as New York's Climate Law Turns Five*, N.Y. Focus (June 19, 2024), https://nysfocus.com/2024/06/19/new-york-climate-law-progress.
15. *Id. See also* N.Y. Env't Conserv. Law §75-0107 (McKinney).
16. *See* Climate Leadership and Community Protection Act, 2019 N.Y. Sess. Laws ch. 106, §1(4) (McKinney). *See also* DEC, 2023 NYS Greenhouse Gas Emissions Report: Sectoral Report #1—Energy 1, 2 (2023), https://dec.ny.gov/sites/default/files/2023-12/sr1energynysghgemissionsreport2023.pdf ("The energy system is the primary source of greenhouse gas emissions in New York (Table SR1.1). In 2021, total energy emissions were 269.47mmt CO_2e [million metric tons of carbon dioxide equivalent] or 76% of statewide gross emissions and over 80% of net emissions . . . .").
17. U.S. Energy Information Administration, *New York State Energy Profile*, https://www.eia.gov/state/print.php?sid=NY (last updated Dec. 21, 2023).
18. *See generally* Marina Romanello et al., *The 2022 Report of the Lancet Countdown on Health and Climate Change: Health at the Mercy of Fossil Fuels*, 400 Lancet 1619 (2022).
19. *See* Christopher Lamie et al., *New York State's Changing Climate*, *in* New York State Climate Impacts Assessment 1, 9 (Amanda Stevens ed., NYSERDA 2024), https://nysclimateimpacts.org/wp-content/uploads/2024/01/Assessment-ch2-NYS-changing-climate-01-09-24.pdf (finding that the average temperature in New York State increased by almost 2.6 degrees Fahrenheit (°F) between 1901 and 2022, which has led to the increased occurrence of extreme weather events, heavy precipitation, sea-level rise, and coastal flooding across the state).
20. *See* Climate Leadership and Community Protection Act, 2019 N.Y. Sess. Laws ch. 106, §1(4) (McKinney). I note that the focus of this Article is utility-scale solar rather than distributed energy. Utility-scale renewable projects have the "generation capacity (maximum potential output of electricity) rivaling that of a fossil fuel plant," whereas distributed renewable projects are smaller-scale and generate enough energy to serve a single household or a small community. *See* Joel B. Eisen, *Renewable Energy Resources*, *in* Advanced Introduction to Law and Renewable Energy §2.1 (2021).
21. Kathy Hochul, 2024 State of the State 1 (2024), https://www.governor.ny.gov/sites/default/files/2024-01/2024-SOTS-Book-Online.pdf.
22. *Id.* at 94-98. Some of the governor's initiatives will not go forward as a result of budget negotiations with the New York State Legislature, including her proposal to shift the burden to pay for natural gas hookups from existing ratepayers to new customers that request such hookups. *See* Julia Rock & Colin Kinniburgh, *Assembly Spikes Biggest Climate Proposal in New York Budget*, N.Y. Focus (Apr. 19, 2024), https://nysfocus.com/2024/04/19/new-york-heat-act-state-budget. Notably, Governor Hochul's promises to streamline the permitting of energy transmission infrastructure was realized through the budget process. *See infra* note 33.
23. New York State Climate Action Council, New York State Climate Action Council Scoping Plan 1 (2022), https://climate.ny.gov/resources/scoping-plan/.

infrastructure, enhancing the efficiency and reliability of the electricity grid, and investing in new technology to increase energy efficiency.[24]

The Distributed Solar Roadmap updates the Climate Act's target for solar energy deployment, requiring 10,000 MW of distributed solar energy to be generated in the state by 2030.[25] The first version of the state's Offshore Wind Master Plan, published prior to the enactment of the Climate Act, discusses the benefits and costs of offshore wind projects and identifies ideal areas for these projects to be sited in the state, as well as mechanisms to reduce costs to ratepayers and mitigate social and environmental impacts.[26] The state is currently developing the second version of the Master Plan, which considers expansion of offshore wind projects into deeper waters.[27]

Despite the efforts made by the state so far, it has fallen short of making the progress required to meet its goals. The state's 2023 GHG emissions report finds that while energy-sector emissions decreased in 2021 by 4% as compared to 2019, they increased by 8% in 2021 during the recovery from the COVID-19 pandemic.[28] Further research shows that in the best-case scenario (low rate of energy demand, high rate of renewable energy deployment), 61% of the state's energy supply will come from renewables by 2030, 9% below the state's goal of 70% by 2030.[29] In the worst-case scenario (high rate of energy demand, low rate of renewable energy deployment), only 45% of the state's energy supply will come from renewables.[30]

One reason that the state may not meet its goals is because of strong opposition to the siting of renewable energy infrastructure at the local level, slowing down or stopping the construction of such infrastructure altogether.[31] Before moving to discuss the issues that arise from local participation in and opposition to siting decisions, I will first lay out the current legal framework that applies to the siting of utility-scale renewable energy projects that are the focus of this Article.

B. *Renewable Energy Siting Legal Framework*

Building on the ambitions of the Climate Act, in 2020 the state passed the Accelerated Renewable Energy Growth and Community Benefit Act (Accelerated Renewables Act), creating a new process for the siting of major renewable energy facilities, defined as any facility with the capacity to generate 25 MW or more of energy, pursuant to §94-c of the Executive Law.[32] In April 2024, the state enacted the Renewable Action Through Project Interconnection and Deployment (RAPID) Act.[33] The RAPID Act repeals §94-c and replaces it with Article 8 of the Public Service Law.[34] The Act consolidates the permitting of major renewable energy facilities and major electric utility transmission facilities in one office and seems to leave the §94-c process intact.[35] The projects that I consider were permitted under the Article 10 or §94-c process, and will be the focus of discussion here.

Prior to the enactment of §94-c (and now Article 8), the siting process was governed by Article 10 of the Public Service Law.[36] Article 10 requires developers of all major electricity-generating facilities, renewable or not, to apply to the state's Board of Electric Generation Siting and the Environment (Siting Board) for a siting permit.[37] Article 10 is still relevant in that projects started under that process can stay there, though the Accelerated Renewables Act allows developers to opt into the §94-c process.[38] Both the Article 10 and the §94-c processes exempt the projects that they cover from environmental impact assessment under the State Environmental Quality Review Act (SEQRA).[39]

24. New York State Climate Action Council, Executive Summary: Scoping Plan 1, 15 (2022), https://climate.ny.gov/resources/scoping-plan/.
25. Press Release, NYSERDA, Governor Hochul Announces Approval of New Framework to Achieve at Least Ten Gigawatts of Distributed Solar by 2030 (Apr. 14, 2022), https://www.nyserda.ny.gov/About/Newsroom/2022-Announcements/2022-04-14-Governor-Hochul-Announces-New-Framework-to-Achieve-Ten-Gigawatts-of-Distributed-Solar.
26. NYSERDA, *Offshore Wind Master Plan*, https://www.nyserda.ny.gov/All-Programs/Offshore-Wind/About-Offshore-Wind/Master-Plan (last visited Sept. 4, 2024).
27. *Id.*
28. DEC, 2023 Statewide GHG Emissions Report—Summary Report i, iv (2023), https://dec.ny.gov/sites/default/files/2023-12/summaryreportnysghgemissionsreport2023.pdf.
29. Sergio Dueñas et al., Strategen, Mind the Gap: An Estimation of the Renewable Energy Needed to Meet New York's Clean Energy Mandates 1, 4, 20 (2023), https://s3.documentcloud.org/documents/24175597/mind-the-gap_-an-estimation-of-the-renewable-energy-needed-to-meet-new-yorks-clean-energy-mandates.pdf.
30. *Id.* at 4.
31. Opposition to the siting of renewable energy facilities has been noted as one barrier, among many, to the state meeting its climate goals. *See, e.g.*, Samantha VanDyke, CLOSUP, Renewable Energy Policy in New York 1, 14-15 (2020), https://closup.umich.edu/sites/closup/files/uploads/working-papers/closup-wp-49-VanDyke-Renewable-Energy-Policy-in-New-York.pdf; Thomas P. DiNapoli, Office of the New York State Comptroller, Renewable Electricity in New York State: Review and Prospects 1, 10 (2023), https://www.osc.ny.gov/files/reports/pdf/renewable-electricity-in-nys.pdf; Michael B. Gerrard, *Legal Pathways for a Massive Increase in Utility-Scale Renewable Generation Capacity*, 47 ELR 10591, 10607-08 (July 2017), https://www.elr.info/articles/elr-articles/legal-pathways-massive-increase-utility-scale-renewable-generating-capacity.
32. N.Y. Exec. Law §94-c(2)(h) (McKinney). For a historical overview of the siting process from 1972 to the present, see Michael B. Gerrard & Edward McTiernan, *New York's New Statute on Siting Renewable Energy Facilities*, 263 N.Y. L.J. 1 (2020).
33. A.B. 8808, 2023-2024 Gen. Assemb. (N.Y. 2024), 2024 N.Y. Sess. Laws ch. 58, pt. O (McKinney). The RAPID Act delivers on Governor Hochul's commitment to streamline the permitting of energy transmission infrastructure by consolidating the permitting of major renewable energy facilities and major electric utility transmission facilities within the Office of Renewable Energy Siting (ORES).
34. *Id.* §§2, 11.
35. *Id.* §9.
36. N.Y. Pub. Serv. Law §162 (McKinney).
37. *Id.* Note that the term used in Article 10 is "certificate" rather than "permit."
38. N.Y. Exec. Law §94-c(4)(f) (McKinney). *See also* Gerrard & McTiernan, *supra* note 32, at 2.
39. For projects that do not meet the definition of "major renewable energy facility," localities can review these projects in accordance with their local laws and with SEQRA. Note that recent challenges to both state and local siting decisions have been rejected by courts. *See, e.g.*, Biggs v. Eden Renewables, LLC, 137 N.Y.S.3d 515 (N.Y. App. Div. 2020) (holding that the local Planning Board had a "rational basis" for concluding that "the [solar] project will not affect any historic resources," providing "a rational basis for the Planning Board's determination that the character of the neighborhood and property values would be reasonably safeguarded"); Citizens for the Pres. of Wainscott, Inc. v. New York State Pub. Serv. Comm'n, 188 N.Y.S.3d 639 (N.Y. App. Div. 2023) (rejecting challenge to permit issued by the New York Public Service Commission for a transmission line to connect offshore wind turbine generators to an onshore interconnection facility in the South

Under Article 10, permit applicants are required to submit a preliminary scoping statement and public involvement plan to the Siting Board before submitting a final application describing the project and its impacts.[40] Once a formal application has been submitted, the Siting Board has 60 days to determine if it complies with the statutory requirements and, if it does, to set a date for a public hearing.[41] The Siting Board must ultimately decide whether to grant or deny the permit within one year of finding that the application complies with the statutory requirements.[42] In making its decision, the Siting Board can choose not to apply "unreasonably burdensome" local laws.[43] Though the current version of Article 10 was enacted in 2011 for the purpose of streamlining the siting permit process, it has been criticized for subjecting renewable and nonrenewable energy projects to the same time-consuming process and, as such, slowing down the clean energy transition.[44]

The Accelerated Renewables Act aims to address this criticism by creating the Office of Renewable Energy Siting (ORES) within the Department of State, which acts as a one-stop shop for the review and approval of siting permits for renewable energy facilities across the state.[45] Section 94-c of the Executive Law eliminates some pre-application procedures (including the preparation of a scoping statement and public involvement plan) and sets strict timelines for processing the application. More specifically, no later than 60 days after determining that an application is complete, ORES is required to publish draft permit conditions for public comment.[46]

Permit conditions are based on uniform standards and conditions promulgated by ORES in a regulation, and are intended "to avoid or minimize, to the maximum extent practicable, any potential significant adverse environmental impacts related to the siting, design, construction and operation of a major renewable energy facility."[47] Based on public comments, including those from the municipality in which the project is to be sited, ORES can decide whether or not to hold an adjudicatory public hearing.

An adjudicatory hearing will be held if a comment from a municipality or member of the public raises a "substantive and significant issue" as defined by ORES.[48] Following the close of the comment period or the end of the hearing, ORES may issue a siting permit if it finds that the project complies with all applicable laws and regulations.[49] ORES is required to make a final decision within one year from when the application was deemed complete or within six months if the project is to be sited on an "existing or abandoned commercial use," such as brownfields or landfills. If ORES misses either of these deadlines, the permit is automatically issued.[50]

In determining whether all laws have been complied with for the purpose of issuing a permit, ORES can choose not to apply "any local law or ordinance which would otherwise be applicable" if it finds that such laws are "unreasonably burdensome in view of the CLCPA [the Climate Act] targets and the environmental benefits of the proposed major renewable energy facility."[51] This provision has been lauded as a victory for environmentalists because it can be used to prevent municipalities from blocking renewable projects by looking to environmental aims rather than, as under Article 10, to technological constraints and costs to ratepayers.[52]

To balance §94-c's aim to rapidly build out renewables with the need for community participation, the regulations promulgated by ORES pursuant to the Accelerated Renewables Act set out application engagement procedures.[53] More specifically, the regulations provide that at least 60 days before the applicant files their application, they must meet with officials from the municipality in which the project will be sited. Following this initial meeting, the applicant must hold at least one community meeting with members of the public that "may be adversely affected by the siting of the facility."[54] Once an application is filed, the municipality and members of the public will have the opportunity to comment on the application and permit conditions, as well as to participate in a public comment hearing and potentially an adjudicatory hearing.[55]

The Act requires that the final permit conditions include a community benefit as determined by the New

Fork of Long Island); Town of Copake v. New York State Off. of Renewable Energy Siting, 191 N.Y.S.3d 181 (N.Y. App. Div. 2023) (rejecting challenge to ORES' promulgation of regulations pursuant to §94-c on the basis of an improper SEQRA review by the office).

40. N.Y. Pub. Serv. Law §163 (McKinney).
41. *Id.* §165(1).
42. *Id.* §165(4).
43. *Id.* §168(3)(e).
44. Alexander Fields, *Will Section 94-c Enable Renewable Energy Project Siting and Help New York State Achieve Its Energy Targets?*, 46 Colum. J. Env't L. 125, 136 (2020) ("Article 10's detailed and onerous requirements are tailored to fossil-fuel projects, which have far greater negative environmental impacts and require a more time-intensive environmental review process."). See also Jesse Honig, *Local Restrictions on Renewable Energy Siting in the United States*, 74 Hastings L.J. 1483 (2023), for a discussion of the pros and cons of using preemption of local ordinances to simplify the siting process.
45. N.Y. Exec. Law §94-c(3)(a) (McKinney).
46. *Id.* §94-c(5)(b).
47. *Id.* §94-c(3)(b)-(c). *See generally* N.Y. Comp. Codes R. & Regs. tit. 16, §1100-6.1-6.6 (Uniform Standards and Conditions).
48. N.Y. Exec. Law §94-c(5)(d) (McKinney). ORES defines a "substantive issue" as follows: "An issue is substantive if there is sufficient doubt about the applicant's ability to meet statutory or regulatory criteria applicable to the project, such that a reasonable person would require further inquiry." (N.Y. Comp. Codes R. & Regs. tit. 16, §1100-8.3(c)(2)). ORES defines a "significant issue" as follows: "An issue is significant if it has the potential to result in the denial of a siting permit, a major modification to the proposed project or the imposition of significant permit conditions in addition to those proposed in the draft permit, including uniform standards and conditions." (N.Y. Comp. Codes R. & Regs. tit. 16, §1100-8.3(c)(3)).
49. *Id.* §94-c(5)(e).
50. *Id.* §94-c(5)(f).
51. *Id.* §94-c(5)(e).
52. N.Y. Pub. Serv. Law §168(3)(e) (McKinney). For a criticism of this provision in Article 10 and §94-c, see Alexa L. Archambault, *Green Energy v. The Constitution: New York State's Battle With Home Rule Provisions in the Age of Environmentalism*, 69 Buff. L. Rev. 873, 896 (2021) ("Article 10 wreaked havoc on the ability of local governments to regulate their property and affairs, and Section 94-c centralized power in Albany to an even larger extent. Local governments and their constituents have been pushing back for years against this perceived encroachment upon their rights.").
53. N.Y. Comp. Codes R. & Regs. tit. 16, §1100-1.3.
54. *Id.* §1100-1.3(a)-(b).
55. N.Y. Exec. Law §94-c(5)(c), (d) (McKinney).

York Public Service Commission (PSC) or ORES, or as negotiated between the permittee and the host municipality in an HCA.[56] To be clear, an HCA is not required where either the PSC or ORES has developed a community benefits program, but can be entered into to supplement those programs.

The PSC, New York's utility regulator, approved its Host Community Benefit Program in 2021.[57] Through the program, the project developer will pay an annual fee of $500 per MW of solar capacity and $1,000 per MW of wind capacity to the utility that operates in the municipality.[58] The utility will then apply the funds as a credit to reduce the electricity bill of each resident in the municipality.

ORES has not yet developed a separate community benefits program. But developers and host municipalities in New York have engaged in private contractual negotiations resulting in HCAs. These HCAs will be the focus of the remainder of the Article.

II. Renewable Energy HCAs in New York State

It is not an overgeneralization to say that in communities across the United States, renewable energy projects have generated fierce opposition.[59] Scholars have tried to make sense of this opposition that seems to be coming from environmentalists as well as non-environmentalists.[60] Zooming in to focus on New York State, Section A discusses what factors drive local opposition in the state generally. Section B then moves to present a case study of a solar project in the town of Ripley that culminated in the negotiation and signing of an HCA. The purpose of the case study is to highlight the (often divergent) concerns of community members and the local government as articulated in the lead-up to the HCA.[61]

A. Local Opposition to Renewable Energy Projects

According to John Nagle, wind and solar infrastructure projects, as they have developed in the United States, are not "environmentally harmless."[62] In fact, these projects can have significant negative impacts on the physical environments in which they are sited, as well as on a community's sense of place. There has been extensive discussion in the literature on the nature of these impacts and how they can be mitigated.[63] For example, Gene Kelly and Michelle Piasecki identified five common issues that arise in hearings to grant or deny renewable energy permits in New York: concern over wetland protection, rare or endangered species, conversion of agricultural lands, grid interconnection issues, and aesthetics.[64] Rather than rehash these arguments, I am going to focus here on the sociopolitical forces that shape local opposition in New York State.

Utility-scale renewable energy projects, particularly solar projects, require a lot of land to be built on.[65] In New York, most of the suitable land is located upstate in rural

56. *Id.* §94-c(5)(f).
57. PSC, Case No. 20-E-0249, In the Matter of a Renewable Energy Facility Host Community Benefit Program, Order Adopting a Host Community Benefit Program 1 (Feb. 11, 2021), https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=62773 (click on "Filed Documents" then search "Order Adopting a Host Community Benefit Program").
58. *Id.* at 6.
59. *See generally* Matthew Eisenson, Sabin Center for Climate Change Law, Opposition to Renewable Energy Facilities in the United States (2023) (providing an overview of state and local laws, as well as legal challenges opposing renewable energy facilities in each of the 50 states). *See also* Lawrence Susskind & Ryan Cook, *The Cost of Contentiousness: A Status Report on Offshore Wind in the Eastern United States*, 33 Va. Env't L.J. 204 (2015).
60. Simon, *supra* note 4. For scholarly discussion of opposition to renewable energy projects, see, for example, Leah C. Stokes et al., *Prevalence and Predictors of Wind Energy Opposition in North America*, 120 Sustainability Sci. 1, 6 (2023); Nilson & Stedman, *supra* note 10; Patrick Devine-Wright & Yuko Howes, *Disruption to Place Attachment and the Protection of Restoration Environments: A Wind Energy Case Study*, 30 J. Env't Psych. 271 (2010); Joseph Rand & Ben Hoen, *Thirty Years of North American Wind Energy Acceptance Research: What Have We Learned?*, 29 Energy Rsch. & Soc. Sci. 135 (2017).
61. I chose to focus on the project in Ripley because it generated a manageable number of comments for me to review here.
62. John Copeland Nagle, *Green Harms of Green Projects*, 27 Notre Dame J. L. Ethics & Pub. Pol'y 59, 62 (2013).
63. *See, e.g.*, *id.* at 63, 67-68, 71-73 (discussing harm to biodiversity, animal habitat, and landscape, as well as high levels of land and water use, noise, and the destruction of Native American cultural resources); Roopali Phadke, *Public Deliberation and the Geographies of Wind Justice*, 22 Sci. as Culture 247, 249 (2013) (discussing noise impacts of wind turbines); Allison M. Dussias, *Room for a (Sacred) View? American Indian Tribes Confront Visual Desecration Caused by Wind Energy Projects*, 38 Am. Indian L. Rev. 333 (2014) (considering the issues that tribes face in countering wind energy projects, looking to projects in Massachusetts, California, and Oklahoma); Alexandra B. Klass, *Energy and Animals: A History of Conflict*, 3 San Diego J. Climate & Energy L. 159 (2012) (considering challenges with striking balance between national renewable energy goals and the protection of wildlife); Morgan Walton, *A Lesson From Icarus: How the Mandate for Rapid Solar Development Has Singed a Few Feathers*, 40 Vt. L. Rev. 131 (2015) (describing impact of solar panel technology on wildlife, particularly focused on birds); Peggy Kirk Hall et al., National Agricultural Law Center, Land Use Conflicts Between Wind and Solar Renewable Energy and Agricultural Uses (2022), https://nationalaglawcenter.org/wp-content/uploads//assets/articles/Wind-Solar-Land-Use.pdf (discussing land consumption and impacts of renewables on "prime farmland"). For deeper discussion of the harms to land, see generally Sara C. Bronin, *Curbing Energy Sprawl With Microgrids*, 43 Conn. L. Rev. 547 (2010); Amy Morris et al., *Green Siting for Green Energy*, 5 J. Energy & Env't L. 17 (2014); Uma Outka, *The Renewable Energy Footprint*, 30 Stan. Env't L.J. 241 (2011).
64. Gene Kelly & Michelle Piasecki, *The Impossible Search for Perfect Land: Siting Renewable Energy Projects in New York State*, 30 Env't L. N.Y. 167, 169 (2019).
65. Samantha Gross, Brookings Institution, Renewables, Land Use, and Local Opposition in the United States 1 (2020), https://www.brookings.edu/wp-content/uploads/2020/01/FP_20200113_renewables_land_use_local_opposition_gross.pdf (finding that "[w]ind and solar generation require at least 10 times as much land per unit of power produced than coal- or natural gas-fired power plants, including land disturbed to produce and transport the fossil fuels").

But see Steve Clemmer, *How Much Land Would It Require to Get Most of Our Electricity From Wind and Solar?*, Union Concerned Scientists: Equation (Feb. 22, 2023), https://blog.ucsusa.org/steve-clemmer/how-much-land-would-it-require-to-get-most-of-our-electricity-from-wind-and-solar/ (reporting on a study that found that "land area directly occupied by wind and solar infrastructure by 2035 would make up less than 1 percent of the land in 94 percent of the country and less than or equal to 7 percent of total land area in just three states"). For a discussion of ways to increase land use efficiency, see Nature Conservancy, Power of Place—National: Executive Summary 1, 8-10 (2023), https://www.nature.org/content/dam/tnc/nature/en/documents/FINAL_TNC_Power_of_Place_National_Executive_Summary_5_2_2023.pdf.

towns where large swaths of relatively affordable land sit "idle." Downstate New York, on the other hand, which covers New York City, has much higher energy demands than upstate and little to no land to support utility-scale projects.[66] As Frederic Mauhs puts it:

> the burden of hosting renewables facilities, especially solar farms, will not be distributed evenly throughout the state. Rather, they will be concentrated in those areas where it is easiest and least expensive for energy companies to build. This means that developers will choose sites where population density and land prices are low, the ground is level, the soil contains no rocks or roots, and transmission lines are close—typically within two miles. These also happen to be the very places where New York's prime agricultural soils are located.[67]

To make matters more complicated, the state essentially has two electricity grids—one that serves the New York City area and runs on electricity from fossil fuel plants located around the city, and another that serves the rest of the state and runs on electricity from clean power sources.[68] Currently, the state does not have sufficient transmission infrastructure to enable renewable energy generated upstate to be transmitted downstate.[69] To meet its Climate Act goals, the state will need to build up its transmission infrastructure, which will cut through the same communities that are being asked to site energy generation facilities.

This state of affairs has reignited debates about the upstate-downstate (or rural-urban) divide, with upstate New Yorkers arguing that their communities are being sacrificed for the benefit of New York City and Long Island.[70] Indeed, these communities say that renewable projects on farmland will severely impact their agriculture-based economies, decrease property values, and affect the tourism industry that promotes upstate New York's pastoral landscape.[71] Some urbanites dismiss these arguments as based on conservative politics and climate denialism. However, in a study on renewable energy opposition in New York, Roberta Nilson and Richard Stedman find that, rather than being tied to political beliefs, "opposition appears rooted in issues of place attachment and perceived injustices (which are also linked to peripheral identity; the sense that 'we' are suffering an injustice requires a sense of 'we'), thus producing a sense of rural burden."[72]

The framing of the siting of renewable projects as an EJ issue is fraught. The EJ movement has roots in the Civil Rights Movement of the 1960s and has often focused on the environmental burdens placed on low-income, Black, and Latinx communities through the siting of hazardous projects.[73] As Nilson and Stedman acknowledge, research shows that most renewable energy projects in New York are sited in predominantly white rural communities.[74] Indeed, of the 15 projects approved by the state under the §94-c process, four will be sited in what ORES has defined as an "Environmental Justice area."[75] None of the projects that are the focus of the six HCAs reviewed here will be sited in an EJ area.

In my view, the fact that only a few of the projects approved so far are within EJ areas should not negate some of the concerns that upstate New Yorkers are raising. Again, renewable energy projects are not harmless—they are resource-intensive, and can negatively impact human health, as well as property values. There is also the potential, as has been the case with fossil fuel infrastructure, that developers will exploit the towns in which their projects

66. Strategen Consulting, The Fossil Fuel End Game: A Frontline Vision to Retire New York City's Peaker Plants by 2030, at 1, 7, 21 (2021), https://www.cleanegroup.org/wp-content/uploads/Fossil-Fuel-End-Game.pdf.

67. Frederic M. Mauhs, *Preempting Local Zoning Codes Fuels Opposition to Renewable Energy in New York*, 94 N.Y. State Bar Ass'n J. 44, 45 (2022). *See also* Shelley Welton & Joel Eisen, *Clean Energy Justice: Charting an Emerging Agenda*, 43 Harv. Env't L. Rev. 307, 361 (2019).

68. James Barron, *Ending a Tale of Two Power Grids*, N.Y. Times (Nov. 30, 2021), https://www.nytimes.com/2021/11/30/nyregion/clean-energy-nyc.html.

69. *Id. See also* Edward V. Schneier et al., *The States of New York*, *in* New York Politics: A Tale of Two States 1, 14-17 (3d ed. 2023).

70. Thomas C. Zambito, *NY Created an Agency to OK Wind and Solar Projects Quickly. Upstate Towns Aren't Happy*, Lohud (Jan. 11, 2023), https://www.lohud.com/story/news/2022/10/12/upstate-ny-towns-push-back-against-wind-and-solar-projects/65411544007/.

71. *See, e.g.*, Dennis Yusko, *State Senators Say Proposed Solar Facility Threatens Columbia County Farmland*, Spectrum News 1 (Aug. 25, 2023), https://spectrumlocalnews.com/nys/central-ny/news/2023/08/25/senators-say-solar-proposal-threatens-copake-farmland--; Ashley Onyon, *Opposition Mounts Against Large-Scale Solar Project Proposed in Glen*, Daily Gazette (Mar. 5, 2024), https://www.dailygazette.com/the_recorder/glen-solar-project/article_fd1e2616-d80c-11ee-92ff-3f8549434412.html.

72. Nilson & Stedman, *supra* note 10, at 596. The sense of a "rural burden" is not unique to New York. Indeed, as Rick Su argues:

> Energy operations are not evenly distributed across the nation, but tend to be concentrated in specific communities—primarily rural, often poor, and frequently those belonging to people of color. . . . And this geographic split is also why energy politics is so fraught, especially when it intersects with partisan and regional identities.

See Rick Su, *The Localist Constraints of Energy Localism*, 36 J. Land Use & Env't L. 271, 276 (2021).

73. For an overview of the EJ movement and principles, see Robert Bullard, *Environmental Justice in the 21st Century: Race Still Matters*, 49 Phylon 151 (2001). *See also* Dayna Nadine Scott & Adrian A. Smith, *"Sacrifice Zones" in the Green Energy Economy: Toward an Environmental Justice Framework*, 62 McGill L.J. 861 (2017) (discussing the challenges of framing renewable energy opposition as an EJ issue).

74. Nilson & Stedman, *supra* note 10, at 597-98.

75. ORES has not defined an EJ area in the same way that the state has in the Climate Act. ORES has set out what counts as an EJ area in its regulations, which state that applicants are required to conduct an evaluation of "significant and adverse disproportionate environmental impacts of the facility on an Environmental Justice (EJ) area, if any, resulting from its construction and operation" (*see* N.Y. Comp. Codes R. & Regs. tit. 16, §1100-2.20). An "environmental justice area" means "a minority or low-income community that may bear a disproportionate share of the negative environmental consequences resulting from the siting of a major renewable energy facility" (*see* N.Y. Comp. Codes R. & Regs. tit. 16, §1100-1.2(u)). The four projects in EJ areas are as follows: Morris Ridge Solar Energy Center, LLC, Case No. 18-F-0440, 1001.28 Exhibit 28—Environmental Justice, https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={3D3F9DE1-4799-45F3-B30F-704C68DFB969}; Homer Solar Energy Center, LLC, Matter No. 21-00976, Application for a Major Renewable Energy Facility Permit, Revision 1, Exhibit 19—Environmental Justice, https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={0DA1FE6C-BE7D-4414-8A64-EF57A941DF17}; Bear Ridge Solar Project, LLC, Matter No. 21-02104, 900-2.20 Exhibit 19—Environmental Justice, https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={FF5218C3-34ED-4143-B988-E11574F011C7}; and Riverhead Solar 2, LLC, Case No. 17-F-0655, 1001.28 Exhibit 28—Environmental Justice, https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={863EE81D-88AA-450E-9F9B-3FA54FA8B21C}.

are situated by not properly decommissioning infrastructure at the end of its useful life.[76] At the same time, rural communities in upstate New York are struggling. The state recently reported that the population in rural counties is declining and aging, leading to low rates of labor force participation (55.9%) as compared to the state average (63.1%) and less economic activity more generally.[77]

Against this backdrop, HCAs seem like the ideal tool to help resolve the disputes between disinvested rural communities and renewable energy developers. Indeed, HCAs have the potential of being used to recognize and address specific local concerns. In Section B below, I present a case study of a solar project in the town of Ripley that generated opposition and in which the town and the project developer signed an HCA. I set out the concerns raised by Ripley community members with the project and the concerns of the town council. I draw on these findings in Part III to argue that HCAs in New York are better suited to addressing concerns of municipal governments and developers than those of community members.

B. Case Study: South Ripley Solar

In 2019, ConnectGen, a Texas-based company, expressed its intent to apply for a siting permit under New York's Article 10 process for a solar project in the town of Ripley, New York.[78] ConnectGen sought to construct a solar-powered electric facility with 270 MW of generating capacity and a 20-MW energy storage facility. The now-approved project is sited on private property covering approximately 3,382 acres and is "expected to generate enough clean energy to power over 60,000 homes and reduce carbon emissions by over 280,000 metric tons, which is equivalent to taking nearly 65,000 cars off the road."[79] In 2021, following the state's enactment of §94-c of the Executive Law, ConnectGen transferred its application from the Article 10 process to the new §94-c process. Later that same year, the town of Ripley and ConnectGen entered into an HCA effective as of December 30, 2021.[80] The final siting permit was issued by ORES to ConnectGen in April 2023.

Between 2019 and 2023, ConnectGen consulted with the town council, Chautauqua County, and two local school districts to discuss the project and its potential impacts, and to answer questions.[81] Before the transition to the §94-c process, ConnectGen hosted four consultations with members of the Ripley community and attended most monthly meetings of the Town Board and its Planning Board to provide updates and take questions.[82] After the transition to the §94-c process, ConnectGen hosted another community meeting as required by state regulation.[83] It also hosted four meetings with the Ripley Fire Department, the Planning Board, and the Chautauqua County Emergency Services Department to answer questions and receive feedback on the proposed project.[84]

In addition, pursuant to both the Article 10 and §94-c processes, community members were given the opportunity to submit comments on the proposed project to the state. These comments were reviewed and responded to by ConnectGen and the state. For purposes of this Article, I reviewed the 108 comments provided under the Article 10 process to understand the concerns raised by community members about the Ripley project prior to the signing of the HCA. I did not review the 61 comments provided under the §94-c process because they were submitted after the HCA was signed. To discern the views of the town council, I reviewed the meeting minutes of the town council in 2021 in the lead-up to the negotiation and signing of the HCA.[85] Before moving to discuss the specifics of the project and the HCA, I will provide some background information on the town of Ripley.

1. Town of Ripley, New York

Ripley is located in Chautauqua County in the western part of New York State. Like many rural areas in upstate New York, both the town of Ripley and the county have long been in a period of decline.[86] Indeed, the town's and the county's populations have decreased by about 4% and 3%, respectively, over the last decade.[87] The county has also seen significant job loss in the manufacturing industry,

76. *See* Environmental Defense Fund, Mapping Orphan Wells in New York (2021), https://www.edf.org/sites/default/files/2021-10/Orphan%20Well%20FactSheet%20NY.pdf:

> After oil and gas wells are done producing, they must be properly closed to prevent air and water pollution, protect the health of the surrounding communities, restore the property values of the landowner, and in addition, prevent high-priority, climate-forcing methane emissions. When they are not, the state must step in—New York's orphan well plugging program has closed several hundred wells over the past decade, only denting the population of documented orphan wells, let alone the estimated population of undocumented orphan wells, which is several times as large. Nevertheless, this work is crucial to meet New York's net-zero greenhouse gas emission goals.

77. Thomas P. DiNapoli, Office of the New York State Comptroller, Rural New York: Challenges and Opportunities 1, 9 (2023), https://www.osc.ny.gov/files/reports/pdf/challenges-faced-by-rural-new-york.pdf [hereinafter Rural New York: Challenges and Opportunities].

78. ConnectGen Chautauqua County LLC, South Ripley Solar Project, Matter No. 21-00750, 900-2.3 Exhibit 2—Overview and Public Involvement, https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={F0CD5DAD-564B-4A62-943A-8FDABA0AEE3B} [hereinafter ConnectGen, Overview and Public Involvement].

79. *Id.* at 1; Greg Larson, *State Officials Issue Final Siting Permit for South Ripley Solar Project*, Chautauqua Today (Apr. 22, 2023), https://chautauquatoday.com/news/details.cfm?id=347687.

80. Town of Ripley & ConnectGen Chautauqua County LLC, Host Community Agreement for the South Ripley Solar Project (effective as of Dec. 30, 2021), https://climate.law.columbia.edu/sites/default/files/content/CBAs/01.%20Town%20of%20Ripley%20Agreement.pdf.

81. ConnectGen, Overview and Public Involvement, *supra* note 78, at 13, 15.

82. *Id.* at 13.

83. *Id.* at 16-17.

84. *Id.* at 17-18.

85. *See* Town of Ripley, New York, *Board Meeting Minutes*, https://www.ripleyny.org/minutes.html (last visited Sept. 4, 2024).

86. Rural New York: Challenges and Opportunities, *supra* note 77, at 1.

87. Town of Ripley, New York, 2023 Comprehensive Plan 1-34 (2023), https://www.ripleyny.org/uploads/1/2/7/4/127469110/final_ripley_comprehensive_plan_september_2023.pdf [hereinafter Ripley Comprehensive Plan]; Camoin Associates, Economic Profile: Chautauqua County, NY 5 (2020), https://planningchautauqua.com/wp-content/uploads/2020/03/Revised-Economic-Baseline-CREDC-Strategic-Plan.pdf [hereinafter Economic Profile: Chautauqua County].

retail trade, and government—sectors of the economy that, together, employ more than 30% of Ripley's population.[88]

Agriculture is significant to the county's and the town's economies and sense of rural identity. Currently, 28.3% of town land is designated for active agricultural uses, including vineyards, field crops, and livestock.[89] Though farms are having trouble staying profitable as food processing facilities, they are an important part of the tourism industry in the town, and the county more broadly, contributing to the pastoral landscape.[90] The town's website specifically encourages visitors to

> take a drive through the southern part of Ripley township that maintains its rural way of life with agriculture and grapes as the principal land use. The view of Lake Erie from the rolling hills of Ripley is just spectacular, especially as the sun sets along the lake. You may never see a more beautiful sight.[91]

Despite the fact that, among the more rural counties of western New York, Chautauqua County generates the most visitor revenues, agrotourism alone cannot support the county nor the town economy.[92] As such, the county has identified the expansion of renewable energy projects as a way to strengthen and diversify its economy.[93] Renewable energy developers, with support from the state, have seized on this opportunity to build out utility-scale renewable energy projects.[94] In Ripley alone, there are two projects underway—the utility-scale project in south Ripley that is the focus of this Article, and a community solar project with a generation capacity of 5 MW to be developed by Martin NY CSG, LLC.[95] I turn now to discuss the reactions to the South Ripley Solar Project and the concerns raised by community members and the town council.

2. Reactions to the South Ripley Solar Project

As mentioned above, I discerned the views of community members by looking at the public comments submitted to ORES prior to the signing of the HCA. Of the 108 comments submitted to ORES, 49 were in support of the project and 59 were opposed. Forty-eight of the 49 people in support were part of the Laborers' International Union of North America Local 621 and submitted the same letter that argued that the project would benefit union members by bringing construction jobs to the area.

It is worth noting that Local 621 signed a memorandum of understanding with ConnectGen requiring ConnectGen to employ its members during the construction of the project.[96] The one other comment in support of the project emphasized its economic benefits to the town.[97] I categorized the comments in opposition to the project as related to four key themes: the environment, human health and safety, aesthetics, and the "rural burden." I will address each theme in turn below.

First, a number of environmental concerns were raised in comments to the project, including the loss of green space, inefficient sprawl, destruction of wetlands, and harm to plants and wildlife (e.g., deer, bald eagles, etc.). There was also concern about the siting of the project on privately held agricultural lands. From an environmental perspective, residents expressed worry about these lands becoming unusable by future generations to grow food after the project is decommissioned because of soil compaction and chemical runoff from the solar panels.

Some of these concerns are addressed in the siting permit, which requires ConnectGen, among other things, to implement measures to avoid or mitigate impacts on bald eagles and to protect wetlands.[98] ConnectGen is also

88. Economic Profile: Chautauqua County, *supra* note 87, at 17:
> Between 2009 and 2019, the Agriculture, Forestry, Fishing and Hunting and the Arts, Entertainment and Recreation industries are the only industries that have experienced positive growth, adding 52 and 81 jobs respectively. The Manufacturing industry experienced the biggest contraction in the past ten years, shedding nearly 1,100 jobs or 11%. Retail Trade lost approximately 851 jobs (12%) and Government contracted by 524 (5%).

U.S. Census Bureau, *Industry for the Civilian Employed Population 16 Years and Over in Ripley Town, Chautauqua County, New York*, https://data.census.gov/vizwidget?g=060XX00US3601361885&infoSection=Industry (last visited Sept. 4, 2024) (14.3% manufacturing, 15.4% retail trade, and 1.9% public administration).

89. Ripley Comprehensive Plan, *supra* note 87, at 1-4.

90. *Id.* at 2-8; Chautauqua County Department of Planning and Economic Development, Chautauqua 20/20 Comprehensive Plan (2011), https://planningchautauqua.com/wp-content/uploads/2017/02/Comprehensive-Plan_2011_small.pdf [hereinafter Chautauqua 20/20 Comprehensive Plan].

91. Town of Ripley, New York, *Home Page*, https://www.ripleyny.org/ (last visited Sept. 4, 2024).

92. Economic Profile: Chautauqua County, *supra* note 87, at 47.

93. Chautauqua 20/20 Comprehensive Plan, *supra* note 90, at 59.

94. One way that the state, through NYSERDA, supports developers is by soliciting and awarding long-term contracts for the buildout of renewable energy infrastructure. In fact, since 2017, "NYSERDA has conducted four annual solicitations which have resulted in over $4 billion awarded to 89 large-scale renewable energy projects." *See* NYSERDA, Large-Scale Renewables: 2020 Renewable Energy Standard Solicitation: Frequently Asked Questions (2021), https://www.nyserda.ny.gov/-/media/Project/Nyserda/files/Publications/Fact-Sheets/2020-renewable-energy-standard-solicitation-faq.pdf.

95. Ripley Comprehensive Plan, *supra* note 87, at 1-22. The town and Martin NY CSG, LLC entered into an HCA as approved by a town resolution on August 10, 2023. *See* Town of Ripley, New York, Minutes of the Town Board Meeting (Aug. 10, 2023), https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fmunicipality-management.s3.us-east-2.amazonaws.com%2F14%2Fminutes%2FRJVtaBCActLLDONg_rtbm08102023.doc&wdOrigin=BROWSELINK. In January 2024, it was reported that the Chautauqua County Industrial Development Agency sold some of its land to ConnectGen for a potential expansion of its project. *See* Gregory Bacon, *County Sells Property for Major Ripley Solar Project*, Post-Journal (Jan. 2, 2024), https://www.post-journal.com/news/top-stories/2024/01/county-sells-property-for-major-ripley-solar-project/.

96. ConnectGen Chautauqua County LLC, South Ripley Solar Project Community Engagement Plan 1, 22 (2024), https://www.nyserda.ny.gov/-/media/Project/Nyserda/Files/Programs/LSR/Community-Engagement/South-Ripley-Solar_Community_Engagement_Plan.pdf.

97. New York State Department of Public Service, *Matter Master: 19-02059/19-F-0560*, https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=19-F-0560&submit=Search (last visited Sept. 4, 2024) [hereinafter South Ripley Solar Project Comments] (click on "Public Comments" then search "Dr. John P. Hamels").

98. *See* ORES, Siting Permit for a Major Renewable Energy Facility in Town of Ripley, Chautauqua County, Issued to ConnectGen Chautauqua County LLC, ORES DMM Matter No. 21-00750, at 38-39

required to clear trees and vegetation only to the extent necessary to complete the project.[99] To ensure that it complies with the environmental permit conditions, ConnectGen must hire a third party to test the potability of water wells, as well as an independent environmental monitor and an agricultural monitor.[100]

Second, from a human health and safety perspective, there was an acute concern about chemical runoff leaching into the ground and into water wells making people sick, causing cancer, rendering women infertile, and leading their children to be born with birth defects. Particular chemicals that commenters were concerned about included hydrochloric acid, herbicides, and cadmium telluride. There was also concern about the fire risk arising from the solar panels and the 20-MW energy storage facility that will also be constructed as part of the project. Commenters were worried about losing their homes to a fire, air pollution caused by fires, and the limited capacity of the town's volunteer fire department to be able to respond to fires at the site.

Third, community members raised what I am calling aesthetic concerns but are broader than solar infrastructure simply being ugly or reducing property values, though both of these issues were raised by commenters. Going further, many of the comments indicated a concern about losing a way of life that is connected to farming, hunting, and the preservation of the town's pastoral landscape. Community members submitted the following illustrative comments:

> There is no amount of payment from this company or any other that can compensate for losing our agricultural lands. The dangers from the panels, storage facilities and fire hazard are not acceptable.[101]
>
> . . .
>
> No amount of money is worth the loss of our little bit of Heaven.[102]
>
> . . .
>
> The project area is active productive farmland and includes but is not limited to; cattle, horses, pigs, chickens, hay fields, corn fields, alfalfa, clover, blueberries and much more. These are not "brown fields" or waste lands as [ConnectGen] would have everyone to believe. We have State Wetlands and State lands in the project area. We enjoy hunting, fishing, hiking, nature watching, swimming and kayaking in the waterways within the project area.[103]

Fourth, and relatedly, commenters also raised concerns about the burden being placed on the town for the benefit of New York City, the state at large, and developers:

> Leave the solar panels to the city that use more energy/power than we do and leave us country folk alone. I understand that plans with renewable energy just want to help us, but we are proud of our farmers and our farming/hunting land and we don't want anything that will get in the way of that.[104]
>
> . . .
>
> Why not use common sense and place these solar projects in brownfields, on commercial buildings, sky-scrapers, abandoned parking lots etc., in downstate demand centers; namely NYC and Long Island, which also consume the most fossil fuels? Why sacrifice rural Upstate NY when we already utilize 90% renewable energy and are bottle-necked with transmission constraints???[105]
>
> . . .
>
> Seems like our gov.t leaders in Albany want to jam this project down our throat as long as its [sic] not in their backyard.[106]
>
> . . .
>
> Other concerns we have is when this company disappears as so many of them have over the years once they "get their funding money from the government," who is going to help the people get these ungodly eyesores off of their property. Who is going to be responsible for the maintenance when people in the area are hunting on their property and they get shot or damaged as they are bound to, the homeowners??[107]

The concerns of the town council related to the solar project seemed to diverge from those expressed by community members. To discern the views of the council, I reviewed the meeting minutes of the council in 2021 during the lead-up to the negotiation and signing of the HCA. Unfortunately, the meeting minutes did not provide insight into the concerns of the town council in negotiating the HCA.

However, the council did enact a solar energy law in 2021 amending the town's zoning law to require solar project developers to apply for a building permit, undergo an environmental assessment under SEQRA, and comply

(bald eagles), 42-51 (wetlands) (Apr. 21, 2023), https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=21-00750&CaseSearch=Search (last visited Sept. 4, 2024) [hereinafter South Ripley Solar Project Siting Permit] (click on "Filed Documents" then search "South Ripley Solar - Siting Permit").

99. *Id.* at 26.
100. *Id.* at 28-29 (water testing), 19 (environmental monitor), 53-54 (agricultural monitor).
101. South Ripley Solar Project Comments, *supra* note 97 (click on "Public Comments" then search "Shirley Dunlap").
102. *Id.* (click on "Public Comments" then search "Carol Wozniak").
103. *Id.* (click on "Public Comments" then search "Shelly Spacht").
104. *Id.* (click on "Public Comments" then search "Rachel Henry").
105. *Id.* (click on "Public Comments" then search "Joni Riggle").
106. *Id.* (click on "Public Comments" then search "Jerry Lowes").
107. *Id.* (click on "Public Comments" then search "Lisa Henry").

with requirements related to project setback, height, and size.[108] The statement of purpose of the law indicates that the council aimed to draft a law that balanced New York's efforts to reduce fossil fuel reliance with the town's interest in encouraging economic growth and maintaining a rural sense of place.[109] Some parts of the solar law were preempted by the state during the §94-c siting process, but the law is still useful for understanding what issues the town council was concerned about in relation to the siting of solar panels generally.[110]

Given the statement of purpose in the solar law and the fact that Ripley is an economically depressed town, I suspect that in negotiating the HCA with ConnectGen, the council was concerned about the financial benefits flowing to the town from the solar project. The council was likely also concerned about the terms and conditions of the payment-in-leu of taxes (PILOT) agreement negotiated between ConnectGen and the Chautauqua County Industrial Development Agency.[111] In addition to benefits secured under the §94-c process, localities and developers can negotiate for tax benefits under §487 of the Real Property Tax Law (RPTL).[112]

The RPTL exempts utility-scale solar and wind projects from property taxes for 15 years.[113] Local taxing jurisdictions (e.g., towns, school districts) can opt out of the tax exemption and require developers to pay property taxes in full or to negotiate PILOT agreements.[114] Local entities often choose to negotiate these agreements with developers to ensure the financial viability of the project.[115] Property taxes are the most common source of municipal tax revenues[116] and if the entire project were to be nontaxable, the town might not have shown any willingness to support the project.

Despite scant evidence as to the town council's concerns about the South Ripley Solar Project, my review of the HCA, public comments, and the town's meeting minutes suggests that the concerns of some town residents are not perfectly aligned with those of the council. While the council, like community members, is concerned about the environmental and aesthetic impacts of solar projects, it is also interested in the economic benefits that will flow to the municipality from such projects.

III. The Limited Potential of HCAs

A. *Contracting for Community Benefits*

HCAs can be thought of as similar to other contractual arrangements in which a developer provides certain benefits in exchange for community support for an undesirable project.[117] These arrangements take various forms and go by different names, such as community benefits agreements or impact benefits agreements,[118] but their purpose is the same: to set out "a range of community benefits regarding a development project . . . resulting from substantial community involvement."[119] Common benefits promised by developers include local hiring commitments, job training opportunities, investment in local infrastructure, and profit sharing, among others.[120]

108. Ripley, N.Y., Local Law 1-2021 (2021), https://www.ripleyny.org/uploads/1/2/7/4/127469110/solar_energy_zoning_law.pdf. For a copy of the town's local law in full, see https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={F9CAC941-0301-4A2B-AB86-F6CE2B465CE0} (last visited Sept. 4, 2024).

109. Ripley, N.Y., Local Law 1-2021 §1 (2021) (Purpose and legislative intent):
> The modifications to the law set out herein support state energy policy by promoting appropriate solar development while further protecting existing community character, valuable farmland, and other exceptional local resources, and protecting the local environment. The enactment of this law also evinces the Town's intent for state siting bodies to strictly apply all substantive provisions in the Town of Ripley Zoning Law.

110. *See* South Ripley Solar Project Siting Permit, *supra* note 98, at 7-11 (findings of relief from compliance with the town's solar law). Note that the town of Ripley enacted the Battery Energy Storage System (BESS) Law in 2022 prohibiting the construction of such systems with more than 250 kilowatt hours (kWh) of storage capacity. The system proposed by ConnectGen has an energy storage capacity of 20,000 kWh. In a ruling, ORES held that the local law does not apply to the project. *See* ORES, Ruling of the Administrative Law Judges on Issues and Party Status, ORES DMM Matter No. 21-00750, at 49-57 (Oct. 12, 2022), https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=21-00750&CaseSearch=Search (click on "Filed Documents" then search "Ruling on Issues and Party Status").

111. Note that negotiation of the PILOT agreement is a separate process from the siting permit process, which I did not consider in this Article. PILOT agreements are typically entered into by county-level industrial development agencies (IDAs), public corporations that incentivize economic development, which act on behalf of all local taxing jurisdictions covered by the project. IDAs are created pursuant to New York General Municipal Law ch. 24, art. 18-A, tit. 1, Refs & Annos (McKinney). For criticism of IDAs, see Arabella Saunders & Julia Rock, *These Local Agencies Hand Out Over a Billion in Tax Breaks Across New York*, N.Y. Focus (Mar. 6, 2024), https://nysfocus.com/2024/03/06/idas-new-york-economic-development.

112. N.Y. Real Prop. Tax Law §487 (McKinney).

113. *Id.* §487(2).

114. *Id.* §487(8)-(9).

115. VanDyke, *supra* note 31, at 9-10. NYSERDA, *Solar Payment-in-Lieu-of-Taxes (PILOT)*, *in* Solar Guidebook for Local Governments 129, 131 (2021), https://apa.ny.gov/Mailing/2021/05/LocalGov/NYSERDA-Solar-PILOT-Toolkit.pdf.

116. Lynn A. Baker et al., Local Government Law: Cases & Materials 567 (6th ed. 2021).

117. Daniel A. Spitzer et al., *Host Community Agreements for Wind Farm Development*, 9 N.Y. Zoning & Prac. Rep. 1 (2009).

118. Ciaran O'Faircheallaigh calls all of these contracts "community development agreements" because they share certain "fundamental" characteristics, including that "[t]hey involve formal agreements between developers (private or public) and community representatives or organizations. They are designed to minimize negative project impacts and ensure that local communities obtain benefits from development they would not enjoy in the absence of agreements, thus helping to reduce or eliminate conflict surrounding development." *See* Ciaran O'Faircheallaigh, *Community Development Agreements in the Mining Industry: An Emerging Global Phenomenon*, 44 Cmty. Dev. 222, 222-23 (2013).

119. Julian Gross, *Community Benefits Agreements: Definitions, Values, and Legal Enforceability*, 17 J. Affordable Hous. & Cmty. Dev. L. 35, 37 (2007).

120. Patricia E. Salkin & Amy Lavine, *Understanding Community Benefits Agreements: Equitable Development, Social Justice, and Other Considerations for Developers, Municipalities, and Community Organizations*, 26 UCLA J. Env't L. & Pol'y 291, 294 (2008); Vicki Been, *Community Benefits Agreements: A New Local Government Tool or Another Variation on the Exactions Theme?*, 77 U. Chi. L. Rev. 5, 7 (2010); Lisa Berglund & Jodi Miles, *British Columbia's Community Benefits Agreement: Economic Justice for Indigenous Workers in Relation to Union Politics in Urban Infrastructure Projects*, 13 Int'l Indigenous Pol'y J. 1, 4 (2022); Catherine Fraser, Data for Progress, Community and Labor Benefits in Climate Infrastructure: Lessons for Equitable, Community-Centered Direct Air Capture Hub Development 1, 3 (2023), https://www.filesforprogress.org/memos/community-and-labor-benefits-in-climate-infrastructure.pdf.

Who makes up the "community" may change from agreement to agreement. For instance, in the 1990s, when community benefits agreements gained popularity in the siting of urban megaprojects, the "community" was typically made up of a coalition of grassroots groups that negotiated with the developer directly.[121] Today, local governments are often parties to such agreements, and have even gone so far as to require developers to provide some form of community benefits to the locality.[122]

The concept of contracting for community benefits has generally been criticized for reflecting an inherent power imbalance between well-resourced developers and under-resourced communities or local governments, and for requiring communities to bargain for basic goods or protections against harms that the government should be providing.[123] In addition, promises made by community groups or local governments to not oppose developments may be criticized as exploitative because they can be used to prevent parties from raising legitimate issues with projects.[124] From the developer's perspective, community benefits contracts can be criticized for being inefficient because they require developers to incur increased costs for projects that they are legally permitted to pursue and that have a net benefit on society.[125] These costs are on top of those already paid by the developer to the government during the permitting process.[126]

The HCAs negotiated in the renewable energy context are vulnerable to these same critiques. In Section B below, I add to this list of critiques. I argue that thus far, developers and local governments in New York State use HCAs as a tool to serve their own interests, rather than to address concerns articulated by community members. This likely limits the potential of these HCAs to substantively address community opposition to such projects.

B. Role of HCAs in New York State

As mentioned in the introduction, there are six publicly available HCAs related to renewable energy projects in New York State (see Table 1 on the next page). Each HCA was negotiated between a project developer and a municipality, rather than between a developer and a community group. Two of the projects—the solar project in Ripley and the wind project in the town of Barre—were permitted under the §94-c siting process. The other four, a solar project in the town of Byron and three wind projects in West Union, Arkwright, and East Hampton, respectively, were permitted under the Article 10 siting process.

From the perspective of the local governments negotiating HCAs, it seems that these agreements serve the purpose of generating economic opportunity and compensating municipalities for the siting of utility-scale projects in their jurisdictions.[127] This is evidenced by the fact that in all six of the agreements that I reviewed, the developer agreed to make annual payments to the local government over the life of the project, which ranged from 20 to 30 years. The annual amount due in each case is based on the price negotiated by the parties for each MW of generation capacity of the project. Generally, the price of each MW increases each year by 2% to 3%. Developers are to begin making annual payments once the project is generating both energy and revenue.

In two out of the six HCAs that I reviewed, the municipality was able to extract additional financial benefits from the developer by obligating them to cover the reasonable fees of the municipality to hire an engineer or other professionals to monitor the project as it progresses. In the agreement for a wind turbine project in the town of Arkwright, the developer, Cassadaga Wind, is obligated to make a one-time payment ($1,000 multiplied by the number of wind turbines constructed) to the town to account for community disruption during the construction period. In the agreement between the town of Ripley and ConnectGen, ConnectGen is obligated to decommission the project at the end of its life or cover the costs of the town doing so.

The agreement between the town of East Hampton and South Fork Wind LLC for an offshore wind project went further than the other five HCAs reviewed in terms of benefits to the municipality. The South Fork Wind agreement

121. Berglund & Miles, *supra* note 120, at 3.

122. For example, the city of Detroit enacted the Community Benefits Ordinance in 2016 that "requires developers to proactively engage with the community to identify community benefits and address potential negative impacts of certain development projects." *See* City of Detroit, *Community Benefits Ordinance*, https://detroitmi.gov/departments/planning-and-development-department/community-benefits-ordinance (last visited Sept. 4, 2024). *See also* Laura Wolf-Powers, *Community Benefits Agreements and Local Government*, 76 JAPA 141 (2010) (discussing the role of local governments in negotiating community benefits agreements).

123. *See, e.g.*, Christine A. Fazio & Judith Wallace, *Legal and Policy Issues Related to Community Benefits Agreements*, 21 Fordham Env't L. Rev. 543, 551-52, 553 (2010).

124. Charlotte Clarke, *Community Benefits Agreements: To the Extent Possible*, 6 U. Balt. J. Land & Dev. 33, 44 (2016).

125. Fazio & Wallace, *supra* note 123, at 549-50. For a general discussion of the benefits of renewable energy projects, see *Benefits of Renewable Energy Use*, Union Concerned Scientists (Dec. 20, 2017), https://www.ucsusa.org/resources/benefits-renewable-energy-use. *But see* Susan Lorde Martin, *Wind Farms and NIMBYs: Generating Conflict, Reducing Litigation*, 20 Fordham Env't L. Rev. 427, 430 (2010) (arguing that wind farm developers "should pay not only landowners on whose properties the turbines are installed, but other owners who are negatively affected as well").

126. For example, in the renewable energy context in New York, developers are required to pay a review fee at the time that they apply for a permit and to make contributions to a fund for local participation in the permitting process. *See* N.Y. Comp. Codes R. & Regs. tit. 16, §1100-1.5(a) (ORES review fee) ("The Office shall charge a fee to the applicant in order to recover the costs of reviewing and processing an application in an amount equal to one thousand (1,000) dollars for each one thousand (1,000) kilowatts of capacity, which shall be due at the time of application filing."); N.Y. Exec. Law §94-c(7)(a) (McKinney) (local agency account):

> Each application for a siting permit shall be accompanied by a fee in an amount equal to one thousand dollars for each thousand kilowatts of capacity of the proposed major renewable energy facility, to be deposited in an account to be known as the local agency account established for the benefit of local agencies and community intervenors by the New York state energy research and development authority and maintained in a segregated account in the custody of the commissioner of taxation and finance.

127. *See* Josef van Wijk et al., *Penny Wise or Pound Foolish? Compensation Schemes and the Attainment of Community Acceptance in Renewable Energy*, 81 Energy Rsch. & Soc. Sci. 1 (2021) (arguing that compensation to a host community is a way to gain community acceptance of renewable energy projects).

Table 1. Comparison of Renewable Energy HCAs

Parties	Project Description	Benefits to Developer	Benefits to Locality
Town of Ripley and ConnectGen Chautauqua County LLC	270 MW solar-powered electric-generating facility Location: Chautauqua County Effective HCA date: December 30, 2021	Town will not oppose a siting permit from ORES or application for financial assistance from the county. Town will bring any issues to the developer before going to any other governmental body. Town will grant all "municipal franchises" (e.g., rights-of-way, road permits) related to the project. Developer has exclusive right to terminate agreement.	Annual payments will be made to the town in the amount of $1,750 per MW of installed solar over a 30-year term. Annual payments will be increased by 2% each year, starting in year two of the agreement and ending in year 11. Reimbursement will be made of reasonable fees for hiring an independent engineer. Developer is responsible for decommissioning the project and for site restoration.
Town of Byron and Excelsior Energy, LLC	280 MW solar-powered electric-generating facility Location: Genesee County Effective HCA date: April 28, 2021	Town will not oppose the project. Developer has exclusive right to terminate agreement. Town will bring any issues to the developer in a timely manner and work with the developer to come up with "commercially reasonable" solutions.	Annual payments will be made to the town starting at $1,006,522 for year one and escalating by 2% each year thereafter for the 20-year term. Annual payments will be available to be spent by the town for any public purpose.
Town of Barre and Apex Clean Energy	184.8 MW onshore wind energy facility Location: Orleans County Effective HCA date: October 13, 2021	Full HCA is not publicly available, only a press release from the developer describing benefits to the community.	Annual payments will be made to town starting at $1.2 million and increasing by 2% each year for the first 15 years of the term and by 2.5% annually from years 15-25 of the term.
Town of West Union and Eight Point Wind LLC	102 MW onshore wind energy facility Location: Steuben County Effective HCA date: January 17, 2019	Developer has the exclusive right to terminate agreement if the town enacts laws that are more restrictive than those in effect at the time of the agreement or if the town wholly opposes the project during the permitting process.	Annual payments will be made to the town in the amount of $3,000 per MW of wind capacity. Payments will increase by 3% every year. Developer will cover the reasonable fees of the town for professional services (e.g., legal fees, engineering fees) incurred in relation to the project.
Town of Arkwright and Cassadaga Wind	126 MW onshore wind energy facility Location: Agreement between three towns in Chautauqua County (Cherry Creek, Arkwright, and Stockton) Effective HCA date: October 31, 2016	Town will grant all required road access. Developer has the exclusive right to terminate agreement if the town enacts laws that are more restrictive than those in effect at the time of the agreement or if the town wholly opposes the project during the permitting process.	One-time payment will be provided for construction period ($1,000 multiplied by the total number of turbines constructed). Annual payments will be made to the town in the amount of $3,800 per MW of wind capacity. Payments will increase by 2% every year or by the consumer price index for the previous year, whichever is less.
Town of East Hampton and South Fork Wind LLC	132 MW offshore wind energy facility Location: Suffolk County Effective HCA date: March 29, 2021	Town will not oppose any application for financial assistance made by the developer to New York State or Suffolk County in connection with the project. Town will grant all required easements.	If the developer can find a suitable location in Montauk, then it must require its turbine maintenance contractor to establish a project maintenance support facility there. Developer is to make good-faith efforts to promote job openings related to the project to town residents. Developer is to hire an individual to facilitate communication between the developer and the commercial fishing community in East Hampton. Annual payments will be made to the town starting at $700,000 for year one and escalating by 2% each year thereafter for the 25-year term. Developer is to make two milestone payments of $500,000 to the town. Developer is to pay $5.5 million to the town to establish the Wainscott Fund.

required the developer to make best efforts to establish its wind project maintenance facility in Montauk, to promote project jobs to qualified town residents, and to hire a person to facilitate communication between the developer and the commercial fishing community in East Hampton. South Fork will also make a $5.5 million payment to the town for the purpose of establishing a public fund known as the Wainscott Fund.

It is likely that all of the renewable energy projects developed in New York will spur additional benefits for municipalities not explicitly mentioned in the HCAs. For example, a recent economic analysis showed that the construction of the South Ripley Solar Project will further encourage economic opportunity by creating 253 full-time equivalent positions for New York State residents.[128] In addition, four full-time positions will be created for New York State residents for the operation of the Ripley facility once complete.[129] The developer of the Ripley project, ConnectGen, will also make direct payments "within the host communit[y] in the form of land leases, easements, GNAs [good neighbor agreements], as well as purchases of local goods and the provision of employment and spending of wages within the County."[130] Ultimately, it is expected that the Ripley project will generate $238 million in state and regional benefits.[131]

From the perspective of developers, it seems that HCAs serve as a way to secure municipal government acceptance of their projects. This is evidenced by the fact that, in each of the HCAs reviewed, the local government promises to grant necessary "municipal franchises" (e.g., easements) and to not oppose the development. More specifically, three of the six agreements state that in exchange for the monetary benefits provided by the developer, the municipality agrees not to oppose the project application, nor any future applications for financial assistance from the state or federal government. Relatedly, in four of the six agreements, the developer is granted the exclusive right to terminate the agreement if the municipality either enacts laws that are more restrictive than those in effect at the time of the agreement or if the municipality wholly opposes the project during the permitting process.

With the possible exception of the South Fork Wind HCA, my review of the available HCAs in New York State suggests that they are not being used as a vehicle for addressing the concerns of community members except insofar as local governments represent these concerns: local governments and developers are the only parties to these agreements and the contracted benefits flow to each of them, not directly to community members or groups. In East Hampton, where the South Fork Wind Project is underway, it may be that community groups were able to successfully lobby the town council to represent their specific concerns in its negotiations with the developer as are reflected in the terms of the HCA.

My analysis of HCAs in New York is significant in light of recent social science research finding that community benefits agreements have the potential to be more successful in addressing opposition to large-scale renewable projects when the benefits are narrowly tailored to specific community concerns and values. Indeed, in a survey on attitudes toward community benefits agreements negotiated around large-scale solar projects in the United States, Simona Trandafir et al. find that community members tend to prefer the private distribution (e.g., individual payments) to the collective distribution (e.g., community fund) of benefits and prefer voluntary implementation of such benefits to government-mandated implementation.[132]

Trandafir et al. argue that policymakers should develop guidelines for the negotiation of community benefits agreements and that community members should be consulted about these agreements early and often.[133] My review of the town of Ripley's municipal meeting minutes suggests that community members were not consulted on the terms of the HCA. And the benefits negotiated in each of the six HCAs in New York are "collective" because they are directed toward the local government, which acts to promote the general welfare of its residents, rather than to individual community members or groups.

Despite the fact that there are no legal restrictions imposed by the state as to the structure and uses of HCAs, there are a few reasons why municipalities may not want to engage community members in the negotiation of an HCA. One potential reason is that this would slow down the negotiation process. Another reason is that community members have the ability to participate in the permitting process at ORES and, as such, their concerns are likely to be addressed in the permit itself or in communications with the developer.

For example, in Ripley, even though none of the environmental concerns raised by community members are

128. ConnectGen Chautauqua County LLC, South Ripley Solar Project, Matter No. 21-00750, 900-2.19 Exhibit 18—Supplement 2: Socioeconomic Effects 8 (Apr. 12, 2022), https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={2851E1DD-939B-4C21-845B-FE258BA9A9C0}. But note that, according to ConnectGen, "[f]acility construction will also require workers with specialized skills, such as specialized excavators and high voltage electrical workers. It is anticipated that many of the highly specialized workers will come from outside the immediate area (i.e., Chautauqua County) and will remain only for the duration of construction." *Id.* at 9.

129. *Id.* at 10.

130. *Id.* at 19-20. Note that GNAs are agreements between project developers and project-adjacent landowners.

131. *CCIDA Board Approves $88 Million in Incentives for Ripley Solar Project*, WRFA Radio (Jan. 26, 2022), https://www.wrfalp.com/ccida-board-approves-88-million-in-incentives-for-ripley-solar-project/.

132. Simona Trandafir et al., *Community Benefit Agreements for Solar Energy: Examining Values, Preferences, and Perceived Benefits in the United States Using a Discrete Choice Experiment*, 106 Energy Rsch. & Soc. Sci. 1, 4, 14 (2023).

133. *Id. See also* Sarah C. Klain et al., *Will Communities "Open-Up" to Offshore Wind? Lessons Learned From New England Islands in the United States*, 34 Energy Rsch. & Soc. Sci. 1 (2017) (arguing that local opposition can be addressed through public engagement processes in which all stakeholders learn from each other and community benefits are negotiated collaboratively); LeRoy C. Paddock & Max Greenblum, *Community Benefit Agreements for Wind Farm Siting in Context*, *in* Sharing the Costs and Benefits of Energy and Resource Activity: Legal Change and Impact on Communities 155, 170 (Lila Barrera-Hernández et al. eds., Oxford Academic 2016) (arguing for public engagement in the negotiation of community benefit agreements and throughout the entire permitting process).

addressed in the HCA, some are addressed in the siting permit. More specifically, ConnectGen is required, among other things, to implement measures to avoid or mitigate impacts on bald eagles and to protect wetlands.[134] It is to clear trees and vegetation only to the extent necessary to complete the project.[135] And to ensure that it complies with the environmental permit conditions, ConnectGen is required to hire a third party to test the potability of water wells, as well as an independent environmental monitor and an agricultural monitor.

In addition, the concerns about the look of the solar panels and the loss of a way of life articulated by community members were not addressed in the HCA but were addressed by ConnectGen in its response to public comments. ConnectGen specifically stated that "existing topography, vegetation, and structures, as well as the installation of visual screening plantings," will contain the visibility of the solar panels to the project site for the most part.[136] And even though the solar panels will "add new visual elements" to the town, they are "consistent with the active agricultural use of the region. Many of the farms are commercial scale operations with several industrial buildings and facilities associated with them (many no longer in operation, but with existing structures)."[137]

In sum, while there may be valid reasons for a municipality to not engage community members in the negotiation of HCAs, my analysis of HCAs in New York, coupled with recent social science research, suggests that such engagement is likely needed to facilitate widespread community acceptance of renewable projects.

IV. Conclusion

In the face of continuing local opposition to renewable energy projects, this Article set out to understand the role that HCAs play in the siting of these projects in New York State. My analysis of the HCAs negotiated there raises the question of whether these agreements should be developed in conversation with both local governments and community members or whether it is preferable to retain the existing structure and uses of HCAs in the siting of renewable energy projects. Though more research is needed on the negotiation process for the HCA in Ripley and the other five HCAs reviewed here, the answer to this question likely depends on what the state is hoping to achieve. If the state is only interested in distributing the economic benefits of the clean energy transition to local governments, then I would argue the HCAs are a good tool to achieve that.

But if the state is in fact interested in dealing with opposition from community members, then I conclude that (likely to the chagrin of the state and local governments) the structure of HCAs needs to change to allow for more opportunities for citizen participation and narrowly tailored benefits that respond to community concerns. As Sherry Arnstein puts it, "[t]he idea of citizen participation is a little like eating spinach: no one is against it in principle because it is good for you."[138] Even though, in practice, the process of engaging citizens can be difficult, time-consuming, and inefficient, it is likely necessary to quell opposition to renewable projects. That is, New York State, and local governments, may need to eat a little more spinach.

134. *See* South Ripley Solar Project Siting Permit, *supra* note 98, at 38-39 (bald eagles), 42-51 (wetlands).

135. *Id*. at 26.

136. *See* South Ripley Solar Project, Matter No. 21-00750, ORES Draft Permit—Applicant Response to Public Comments 9, cmt. 10 (Aug. 23, 2022), https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=21-00750&CaseSearch=Search (ConnectGen's response to aesthetic concerns) (click on "Filed Documents" then search "South Ripley Solar_Draft Permit Public Comment Response Matrix").

137. *Id*.

138. Sherry R. Arnstein, *A Ladder of Citizen Participation*, 35 JAPA 216 (1969).