

# Developing and Financing Infrastructure and Housing Virtual Training/Technical Assistance

John Clancy & Brian Pierson  
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## INTRODUCTION AND OVERVIEW

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## Godfrey & Kahn, S.C.

- ▶ Wisconsin-based law firm – 175 lawyers
- ▶ Renewable Energy Strategies Team Leader John Clancy 18 + years experience working with tribes in environmental protection, renewable energy development, beginning with successful opposition to sulfide mine
- ▶ Indian Nations Law Team Leader Brian Pierson 30+ years experience working with tribes, beginning with Wisconsin treaty rights litigation
- ▶ Link to reference materials:

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## OVERVIEW

- ▶ PART I: ORGANIZING FOR DEVELOPMENT
- ▶ PART II: TRIBAL LAWS TO SUPPORT DEVELOPMENT
- ▶ PART III: GRANTS AND OTHER FINANCING SOURCES
  - ▷ A. Infrastructure
  - ▷ B. Rental Housing
  - ▷ C. Homeownership
  - ▷ D. Energy
- ▶ PART IV: CASE STUDIES

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# PART I ORGANIZING FOR DEVELOPMENT

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## AHA Supportive Housing

IHBG, HOME Funds, AHP, NY Homeless Housing

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## ORGANIZING FOR DEVELOPMENT

Form a Development Team to develop expertise in

- ▶ Planning projects,
- ▶ Identifying financials resources,
- ▶ Identifying key partners,
- ▶ Preparing grant and other applications,
- ▶ Developing projects

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## Organizing for Development

Who Should be on the Development Team?

Team Leader (e.g. Executive Director, Deputy Director)

- ▶ coordinates the efforts of the development team,
- ▶ assures compliance with procurement and other grant requirements,
- ▶ serves as the TDHE's contact for outside contractors and government agencies,
- ▶ **works to assure that each proposed development project is fully understood by, and has the full support of the TDHE board and the tribe's elected leaders.**

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## Organizing for Development

Finance Officer (or outside accountant)

- ▶ assists in preparing project budgets and projections,
- ▶ assesses the financial viability of proposed projects,
- ▶ tracks the uses of project funds,
- ▶ prepares financial reports and certifications required by various funding agencies.

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## Organizing for Development

Attorney

- ▶ advises on legal requirements of the funding programs,
- ▶ reviews or negotiates agreements with contractors, lenders, and government agencies,
- ▶ explains tribal jurisdictional issues to outside parties, deals with the BIA and other governmental agencies on federal approvals and issues,
- ▶ works with the tribe to enact any codes or ordinances necessary to maximize eligibility for funding,
- ▶ addresses compliance and other legal issues as they arise.

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## Organizing for Development

In-house grant writer and/or consultant:

- ▶ collects/prepare data and other information to support grant applications,
- ▶ prepares grant applications
- ▶ outside consultant assistance likely more valuable for more complex or specialized grants

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## Organizing for Development

Development Plan identifies one or more projects addressing housing/infrastructure needs and priorities:

- ▶ Infrastructure needs (e.g., roads, water/sewer, storm water facilities, electric lines, gas lines, etc.)
- ▶ Housing type(s) (e.g., new housing, rehab, rental, home ownership, seniors, veterans, etc.)
- ▶ Energy projects (e.g., solar photovoltaic, battery storage, solar hot water, energy efficiency)

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## Organizing for Development

Key inputs for Development Plan:

- ▶ Accurate information regarding the demographics (age, family status, income) of the tribal population and members' housing preferences;
- ▶ Good information regarding project setting, including existing infrastructure and development limitations;
- ▶ Input from community, focus groups, elders, etc.
- ▶ Results of survey or professional market study;
- ▶ Priorities approved by elected leaders

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## Organizing for Development

For each potential project, the Development Plan should consider:

- ▶ Estimated Costs;
- ▶ Potential funding sources;
- ▶ Potential Legal Issues, e.g., jurisdiction, immunity & federal approvals;
- ▶ Potential Site issues, e.g. site control, environmental issues.

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## Implementing the Development Plan

1. Evaluate non-financial (land, water, sewer, and other utilities) and financial (potential grants, loans, other) resources available for development;
2. Evaluate the eligibility criteria, amounts available, and funding cycles of the various grant, tax credit and loan programs to determine which are best suited for project;
3. Select project, based on community priorities, the eligibility criteria of the various potential funding sources and other factors;

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## Implementing Development Plan

4. Assure that development team has thorough understanding of regulatory requirements and deadlines associated with finance programs to be used.
5. Obtain TDHE board approval, tribal government approval, as necessary.
6. Prepare necessary grant, tax credit and loan applications – lots of work.
7. Receive grant awards, tax credit eligibility and loan approvals.
8. Execute: meet deadlines and respond promptly to requests for information from government agencies, lenders, and contractors.

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## Implementing Development Plan

9. Comply with applicable program requirements (e.g. procurement, Indian preference, tribal preference);
10. Negotiate contracts to protect tribal interests (e.g. grant and Part 200 requirements, bonding/security, guarantees, warranties, performance benchmarks, dispute resolution, applicability of tribal law, tribal training and employment requirements, etc.);
11. Assure that resolutions provide adequate authority;
12. Monitor contract compliance and address issues that will arise;
13. Ongoing (likely quarterly) reporting;
14. Complete Project (including final reporting).

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## Implementing Development Plan

- ▶ REPEAT STEPS 1 – 14 FOR NEXT PROJECT

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Photo courtesy Red Cliff Chippewa Housing Authority

## PART II FEDERAL AND TRIBAL LAWS RELATING TO DEVELOPMENT

## Tribal Regulatory Over Non-Indians

“For nearly two centuries now, we have recognized Indian tribes as ‘distinct, independent political communities,’ *Worcester v. Georgia*, 6 Pet. 515, 559, 8 L.Ed. 483 (1832), qualified to exercise many of the powers and prerogatives of self-government.”

*Plains Commerce Bank v. Long Family Land and Cattle Co.*, 554 U.S. 316, 327 128 S.Ct. 2709 (2008)

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## Tribal Regulatory Over Non-Indians

Indian country was once the territory within which the laws of the State “can have no force.” *Worcester v. Georgia*, 31 U.S. 515 (1832).

Today: “Generally speaking, primary jurisdiction over land that is Indian country rests with the Federal Government and the Indian tribe inhabiting it, not with the States.” *Alaska v. Native Village of Venetie*, 522 U.S. 520, 527 n. 1 (1998).

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## Tribal Regulatory Over Non-Indians

The “*Montana*” Rule (*Montana v. United States*, 450 U.S. 544, 101 S.Ct. 1245, (1981)):

Tribal authority doesn’t go beyond “what is necessary to protect tribal self-government or to control internal relations,” which doesn’t include jurisdiction over non-members except that:

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## Tribal Regulatory Over Non-Indians

“a tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.” and

“a tribe may exercise civil authority over the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.”

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## Tribal Laws to Support Development

Enact tribal laws that support development and protect the tribe and its reservation resources:

- ▶ HEARTH Act-Compliant Leasing Ordinance
- ▶ Right-of-Way Ordinance
- ▶ Utility Ordinance
- ▶ Commercial and Corporate Codes
- ▶ Environmental Protection Ordinances

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## HEARTH Compliant Leasing Ordinance

HEARTH Act, 25 U.S.C. 415(e), effective in 2012:

- ▶ gives tribes the right to lease lands for up to 75 years without BIA approval;
  - ▶ Saves time and money; and
  - ▶ Promotes tribal sovereignty.
- ▶ **OVER 50 TRIBES HAVE BIA-APPROVED HEARTH ORDINANCES, 18 FOR RESIDENTIAL LEASING**

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## HEARTH Compliant Leasing Ordinance

Tribe must enact a leasing ordinance that is consistent with regulations at 25 C.F.R. Part 162 and requires –

- ▶ identification and evaluation of any significant effects of a proposed lease on the environment;
- ▶ public notice and opportunity for comment on significant environmental impacts of lease; and
- ▶ Response to public comments before lease is approved;

Tribe, not BIA, defines “significant effects” and “public” notice.

Where the federal government has undertaken an environmental review process in connection with a federally-funded activity, the tribe can rely on the federal environmental review.

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Bergamot

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## Right-of-Way Ordinance

1948 federal ROW statute is unchanged:

- ▶ BIA approval still required.
- ▶ But BIA's 2015 ROW regulations, 25 C.F.R. Part 169, shift power to tribes with respect to consent.

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## ROW Ordinance

ROW ordinance can provide –

- ▶ framework for tribal consent (e.g. required terms, environmental review, process) and for ROW Agreement between tribe and utility;
- ▶ **compensation to the Tribe that is not limited to “fair market value” as defined under common law.**
- ▶ **potential for long-term stream of significant tribal revenue for tribe.**
- ▶ **ability for tribe to consent, or withhold consent, as it deems appropriate. BIA will not interfere.**

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## ROW Ordinance

- ▶ Tribe can require such compensation as it deems acceptable (e.g., based on length of lines, voltage of lines or other basis).
- ▶ Tribe's leverage will depend on circumstances (transmission vs. distribution line, customers served, alternative routes, alternative suppliers).
- ▶ ROW compensation is a potential tribal (non-federal) source of revenue to fund projects.

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## ROW Ordinances

- ▶ Many utilities maintain facilities whose ROWs have expired or which may never have been authorized.
- ▶ Tribal law can provide monetary penalties for trespass.
- ▶ Tribal law can assess annual property taxes on utilities (even those with valid ROWs).
- ▶ **ROW Compensation, trespass penalties and taxes are potential sources of revenue to finance tribal infrastructure, housing and energy projects.**

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## ROW and Tax Ordinance Assessment

ROW and Tax Revenue-generation factors:

1. Does lines serve exclusively tribal members?
2. What is utility on-reservation revenue?
3. Are reservation lines necessary for utility to serve off-reservation customers?
4. How long are the lines?
5. What is their capacity (e.g., kV rating, diameter)
6. What is the status of the lines (e.g. no ROW, expired ROW, valid ROW, soon-to-expire ROW)?

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## Utility Ordinance

Utility Ordinance can:

- ▶ provide legal foundation for a tribal utility;
- ▶ help address state law limits on energy projects (e.g., limits on third party ownership for tax financing); and
- ▶ regulate non-tribal utilities doing business on the reservation (e.g. require reasonable terms for net metering and interconnection to facilitate tribal development of solar and wind energy facilities).

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## Commercial Codes

Commercial and Corporate Codes can provide:

- ▶ option for setting up tribally-chartered LLC or corporation for joint venture with investors;
- ▶ potential ability to better position tribal projects regarding sovereign immunity and taxation issues;
- ▶ tribal law for perfecting and enforcing lien rights.

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## Environmental Laws

Tribal Environmental laws provide:

- ▶ a tribal counterpart to the federal National Environmental Policy Act (“NEPA”) that incorporates the tribe’s own environmental priorities and values;
- ▶ tribal procedures to satisfy environmental requirements for issuance of leases and ROWs;
- ▶ Specific protections and procedures regarding impacts to reservation resources (e.g., wetland permitting, storm water permitting).

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Coneflower

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## Sovereign Immunity

Housing Authorities are arms of their tribes and should share tribal sovereign immunity:

*Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Hous. Auth.*, 207 F.3d 21, 29 (1st Cir.2000) (“The Authority, as an arm of the Tribe, enjoys the full extent of the Tribe’s sovereign immunity”); *Dillon v. Yankton Sioux Tribe Hous. Auth.*, 144 F.3d 581, 583–4 (8th Cir.1998); *Fritcher v. Zucco*, 2012 WL 78257 (E.D. Cal. 2012).

BUT ...

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## Sovereign Immunity

HUD 1976 boilerplate IHA ordinance provides:

“The Council hereby gives its irrevocable consent to allowing the Authority to sue and be sued in its corporate name ...”

*Cook v. Avi Casino Enterprises, Inc.*, 548 F.3d 718, 726 (9th Cir., 2008)(“[T]he issue whether a ‘sue and be sued’ clause in a tribe's enabling ordinance effectuates a waiver of tribal sovereign immunity remains a live issue for determination in this circuit.”)

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## Sovereign Immunity

- ▶ So the ordinance should be amended to remove the “sue and be sued” clause or to clarify that each waiver requires specific action by the board

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## Sovereign Immunity

Chinks in the armor: Plaintiffs may seek to avoid sovereign immunity by -

- ▶ seeking injunctive relief under the *Ex Parte Young* doctrine (Michigan v. Bay Mills Indian Community, 134 S.Ct. 2024 (2014))
- ▶ naming tribal officials individually (*Lewis v. Clarke* 137 S.Ct. 1285 (U.S. 2017))
- ▶ asserting that immunity does not apply to torts (*Bay Mills footnote- Wilkes v. PCI Gaming Authority*, 287 So.3d 330 (Ala. 2017))
- ▶ suing over an off-reservation interest in land (*Upper Skagit Indian Tribe v. Lundgren*, 138 S.Ct. 1649 (U.S. 2018))

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## Sovereign Immunity

Tribes and TDHEs should -

- ▶ Be mindful of the chinks in the SI armor
- ▶ Don't waive it if you don't have to
- ▶ Prefer tribal law over state law
- ▶ Prefer tribal court over state court
- ▶ Consider arbitration with enforcement in tribal court as a middle ground

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## Federal Approvals

- ▶ Alienation of any kind: 25 U.S.C. 177
- ▶ Leases: 25 C.F.R. 415, 25 C.F.R. Part 162; Requires tribal consent, BIA approval (unless under HEARTH Act)
- ▶ Rights-of-Way: 25 U.S.C. 323-28, 25 C.F.R. Part 169 requires tribal consent, BIA grant
- ▶ Encumbrances: 25 U.S.C. 81, 25 C.F.R. Part 84;
  - ▷ Applies to agreements that attach “claim, lien, charge, right of entry or liability to real property,” ... including “leasehold mortgages, easements, and other contracts or agreements that by their terms could give to a third party exclusive or nearly exclusive proprietary control over tribal land.”
  - ▷ Requires BIA approval if encumbrance is more than 7 years and agreement has not been approved by Secretary under other law (e.g. leases, leasehold mortgages)

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## PART III A. FINANCING INFRASTRUCTURE

(HOUSING ADDRESSED SEPARATELY  
BELOW BUT MANY PROGRAMS CAN BE  
USED FOR BOTH)

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Harvesting Manoomin in the Bad River Sloughs

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## Key Government Agencies

- ▶ HUD
- ▶ USDA Rural Development (contacts on next slides)
- ▶ BIA
- ▶ DOT
- ▶ EPA/IHS
- ▶ FEMA

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## Sources

1. CARES Act
2. Multipurpose Grants
3. Multipurpose Loans
4. Multipurpose Tax Programs
5. Road Programs
6. Water & Waste Water Programs
7. RUS Electric Programs
8. Telecommunications Programs
9. Disaster/Security Programs
10. Department of Defense IRT Program
11. State Programs
12. Tribal Sources

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## NOTE:

- ▶ For more detailed information on many of the financing programs discussed, see National American Indian Housing Council's 2020 Indian Housing Development Handbook, available free at -
- ▶ <http://naihc.net/project/indian-housing-development-handbook/>

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## CARES ACT

Coronavirus Aid, Relief, and Economic Security Act (“CARES” Act), P.L. 116-136 enacted 3/27/20 in response to COVID 19 pandemic includes

- ▶ Tribal Relief Funds largely distributed but not spent and subject to complex rules govern permissible expenditures
- ▶ Supplemental appropriations under existing laws
  - ▷ DOI funding for tribal operations
  - ▷ HHS funding for tribal health
  - ▷ Indian Housing Block Grant
  - ▷ Indian Community Development Block Grant

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## CARES Act

Tribal Relief Fund \$8 Billion (Amendment to Social Security Act)

### Purposes

“(d) to cover only those costs ... that— (1) are **necessary** expenditures incurred **due to** the public health emergency with respect to the **Coronavirus Disease 2019 (COVID–19)**; (2) were not accounted for in the budget most recently approved as of the date of enactment of this section for the State or government; and (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

### Allocations

- ▶ Specific tribal allocations not published
- ▶ First tranche distributed in accordance with 5/5/20 methodology.
- ▶ Second tranche distributed in accordance with methodology published 6/5/20 and 6/17/20

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## CARES Act

Relief Fund September 2, 2020 FAQ:

Q: “Could Fund payments be used for capital improvement projects that broadly provide potential economic development in a community?”

A: “In general, no. If capital improvement projects are not necessary expenditures incurred due to the COVID-19 public health emergency, then Fund payments may not be used for such projects. However, Fund payments may be used for the expenses of, for example, establishing **temporary public medical facilities** and other measures to increase COVID-19 treatment capacity or improve mitigation measures, including related construction costs.”

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## CARES Act

Relief Fund FAQ:

Q: May recipients use Fund payments to expand rural broadband capacity to assist with distance learning and telework?

A: Such expenditures would only be permissible if they are necessary for the public health emergency. The cost of projects that would not be expected to increase capacity to a significant extent until the need for distance learning and telework have passed due to this public health emergency would not be necessary due to the public health emergency and thus would not be eligible uses of Fund payments.

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## CARES Act

Q: Are costs associated with increased solid waste capacity an eligible use of payments from the Fund?

A: Yes, costs to address increase in solid waste as a result of the public health emergency, such as relates to the disposal of used personal protective equipment, would be an eligible expenditure.

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## CARES Act

Q “May Fund recipients upgrade critical public health infrastructure, such as providing access to running water for individuals and families in rural and tribal areas to allow them to maintain proper hygiene and defend themselves against the virus?”

A. “Yes, fund recipients may use payments from the Fund to upgrade public health infrastructure, such as providing individuals and families access to running water to help reduce the further spread of the virus. As required by the CARES Act, expenses associated with such upgrades must be incurred by December 30, 2020. Please see Treasury’s Guidance as updated on June 30 regarding when a cost is considered to be incurred for purposes of the requirement that expenses be incurred within the covered period.”

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## CARES Act

Per 6/30/20 Guidance, key requirements are that

- ▶ “performance or delivery must occur during the covered period” (i.e. by 12/30/20) and
- ▶ “it must be necessary that performance or delivery take place during the covered period.”

The guidance also discusses when delivery or performance is “necessary.”

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## CARES Act

Tribal Relief Fund can be used only to cover COVID-related expenses not budgeted as of 3/27/20.

Does this mean that expenses that were included in an IHA budget, but not the Tribe’s budget, can be covered?

Answer so far unknown.

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## CARES Act

### \$200M Supplemental Indian Housing Block:

- ▶ to prevent, prepare for, and respond to coronavirus, including to maintain normal operations and fund eligible affordable housing activities under NAHASDA during the period that the program is impacted by coronavirus: Provided further, That amounts provided under this heading in this Act may be used to cover or reimburse allowable costs to prevent, prepare for, and respond to coronavirus that are incurred by a recipient, including for costs incurred prior to the date of enactment of this Act”

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## CARES Act

### Supplemental IHBG

- ▶ Liberal interpretation of eligible activities at PIH Notice 2020-06: IHBG CARES Implementation Notice
- ▶ Funds already distributed per formula

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## CARES Act

\$100M Supplemental Indian Community Development Block Grant (“ICDBG”)

- ▶ “to prevent, prepare for, and respond to coronavirus, for emergencies that constitute imminent threats to health and safety: Provided, That the Secretary shall prioritize, without competition, allocations of these amounts for activities and projects designed to prevent, prepare for, and respond to coronavirus:”

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## CARES Act

\$100M Supplemental ICDBG Notice 2020-11: Permissible purposes include –

- ▶ Rehabilitation of, and other improvements to, housing to prepare units to be used to temporarily house persons that need to quarantine/shelter-in-place.
- ▶ Rehabilitation of housing to improve ventilation to reduce the risks of COVID-19.
- ▶ **New Construction of housing, including tiny homes, when such construction is done expeditiously and carried out to reduce overcrowding or to otherwise prevent, prepare for, and respond to COVID-19.**
- ▶ Acquisition of modular homes or RVs to meet an immediate need to provide housing for medical workers, and other essential service providers and front-line staff.
- ▶ Applicants may acquire, construct, rehabilitate, or install public works, facilities, and site or other improvements, when carried out expeditiously to prevent, prepare for, and respond to COVID-19.

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## CARES Act

### \$100M Supplemental ICDBG Permitted Uses (cont.)

- ▶ Construction of permanent or temporary facilities for testing, diagnosis, or treatment of COVID-19.
- ▶ Rehabilitation of facilities to establish an infectious disease treatment clinic.
- ▶ Acquisition, rehabilitation, or construction of a group living facility that may be used to centralize patients Retrofitting of a food bank to ensure that employees and volunteers can safely work in the facility
- ▶ Construction or conversion of structures as temporary emergency shelters to shelter homeless persons and minimize risk of community spread.
- ▶ **Paying for the operation and maintenance expenses of existing shelters and other public facilities (not including staffing costs) designed to ensure homeless persons are provided safe shelter and to minimize the risk of community spread.**

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## CARES Act

### \$100M Supplemental ICDBG permissible uses (cont.)

- ▶ Acquisition or conversion of a motel or hotel building or similar facility to expand capacity of hospitals to accommodate isolation of patients during recovery.
- ▶ Expanding or repairing water lines to ensure access to water to adhere to CDC guidelines and prevent the spread of COVID-19.
- ▶ Purchase of water tank trucks and other water distribution equipment, supplies, and facilities to support families without access to water.
- ▶ Purchase of emergency ambulances and related specialized equipment
- ▶ Expanding cell towers and broadband infrastructure capacity needed to assist communities lacking internet and phone service to conduct business, allow students to participate in distance learning, support telehealth strategies, and provide other community services, provided such activities can be carried out expeditiously.

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## CARES Act

\$100M Supplemental ICDBG

Maximum grants Based on IHBG-CARES Formula

- ▶ More than \$2 million IHBG-CARES = \$3M ICDBG max
- ▶ More than \$750K but < \$2M IHBG-CARES = \$1.5M max
- ▶ Less than \$750K IHBG-CARES = \$900K max

Applications accepted as of 6/1/20 - First come- first serve

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## CARES Act

\$100M Supplemental ICDBG. Per July 16<sup>th</sup> HUD ONAP Teleconference:

- ▶ Awards are being made serially. Third round of awards will be made shortly and there will be several additional rounds until all the \$100M is fully spent.
- ▶ Press release will occur only after all awards have been made.
- ▶ **New applications accepted but current pipeline will likely exhaust funds**

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## CARES Act

### \$453 Tribal Operations Supplemental Appropriation

- ▶ Distributed by means of amendments to Indian Self-Determination Act contracts.
- ▶ Permissible Uses
  - prevent, prepare for, and respond to coronavirus, domestically or internationally, including, but not limited to, funds for public safety and justice programs, executive direction to carry out deep cleaning of facilities, purchase of personal protective equipment, purchase of information technology to improve teleworking capability, welfare assistance and social services programs (including assistance to individuals), and assistance to tribal governments, including tribal governments who participate in the “Small and Needy” program
- ▶ These funds have been distributed.

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## CARES Act

- ▶ \$450M Supplemental Health Appropriation
- ▶ “distributed through IHS directly operated programs and to tribes and tribal organizations under the Indian Self-Determination and Education Assistance Act and through contracts or grants with urban Indian organizations under title V of the Indian Health Care Improvement Act”
- ▶ Purposes” prevent, prepare for, and respond to coronavirus, domestically or internationally, including for public health support, electronic health record modernization, telehealth and other information technology upgrades, Purchased/Referred Care, Catastrophic Health Emergency Fund, Urban Indian Organizations, Tribal Epidemiology Centers, Community Health Representatives, and other activities to protect the safety of patients and staff...”
- ▶ These funds have been distributed, specific allocations unknown.

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Crown vetch

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## Multipurpose Grants

- ▶ NAHASDA Indian Housing Block Grant (IHBG)
- ▶ Indian Community Development Block Grant (ICDBG)

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## “MULTI-PURPOSE”

NAHASDA IHBG IS PREEMINENTLY A HOUSING FINANCE TOOL BUT IS “MULTI-PURPOSE” IN THE SENSE THAT IT CAN ALSO BE USED FOR INFRASTRUCTURE

ICDBG TRULY “MULTI-PURPOSE:” WIDE VARIETY OF INFRASTRUCTURE USES BUT ALSO CAN BE USED FOR HOUSING REHAB

CARES ACT VERSIONS TRICKIER – FUNDS HAVE TO BE TIED TO COVID.

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## NAHASDA

► NAHASDA Indian Housing Block Grant (“IHBG”) primary focus is housing but funds may be used for:

- a) modernization of, or operating assistance to, housing previously developed under a contract between HUD and a tribal housing authority
- b) **affordable housing development, including** real property acquisition, **site improvement**, new construction, rehabilitation, **utilities, infrastructure, conversion, demolition, financing**, administration and planning, **energy efficiency improvement**, mold remediation, and related activities
- c) ...
- d) “model activities” approved by HUD

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## NAHASDA

- ▶ Key advantages:
  - ▷ Flexibility of use
  - ▷ Not competitive
- ▶ Key concern:
  - ▷ Needed for operations
- ▶ So need to find other leveraging sources of funding.

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## ICDBG

Objective is “development of viable Indian and Alaska native communities, including decent housing, a suitable living environment, and economic opportunities, principally for persons of **low and moderate income**” (i.e., < 80% of area median income). 24 CFR 1003.2

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## ICDBG

Eligible Uses include:

- ▶ Acquisition of real property
- ▶ Housing rehabilitation (to be discussed in housing section)
- ▶ Infrastructure projects including streets, roads, water and sewer projects
- ▶ Public facilities and improvements (e.g. shelters for the homeless; convalescent homes, clinics, nursing homes; temporary housing for disaster victims)

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## ICDBG

Other Eligible Uses:

Special economic development activities, including “acquisition, construction, reconstruction, rehabilitation or installation of commercial or industrial buildings, structures, and other real property equipment and improvements”

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## ICDBG

### Other Eligible Uses

Planning activities, i.e., “data gathering, studies, analysis, and preparation of plans and the identification of actions that will implement such plans, including, but not limited to **comprehensive plans, community development plans and functional plans in areas such as housing and economic development.**”

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## ICDBG

### Other Eligible Uses (cont.)

“[G]eneral environmental studies, and strategies and action programs to implement plans, including the development of codes and ordinances are also eligible activities.”

**Policy—planning—management— capacity building activities** including those which will enable the grantee to determine its needs, set long term goals and short term objectives, devise programs to meet these goals and objectives, evaluate the progress being made in accomplishing the goals and objectives.

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## ICDBG

### ► LMI Program requirements:

- ▷ (1) the project benefits all residents of an area in which at least 51% of the residents are low and moderate income persons (LMI)
- ▷ (2) the project benefits a limited clientele of which at least 51% are LMI persons
- ▷ (3) housing developed with program funds is occupied by LMI persons or, in case of multi-family housing, is at least 51% occupied by LMI persons; or
- ▷ (4) at least 51% of jobs to be created in a job creation project are designated for LMI persons.

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## ICDBG

An application announcement is made biennially in accordance with a Notice of Funds Available.

[www.hud.gov/program\\_offices/public\\_indian\\_housing/ih/grants/icdbg](http://www.hud.gov/program_offices/public_indian_housing/ih/grants/icdbg)

Typically about \$65 Million appropriation per year = about \$130M million per biennial round.

FY 2019/2020 ICDBG NOFA was published on November 19, 2019, as a two-year NOFA (“HUD moved to a two-year NOFA for this cycle to reduce administrative burden on both HUD and ICDBG applicants, and to encourage longer term planning and larger projects. HUD accepted applications under the NOFA for both years’ funding (FY 2019 and FY 2020).

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## ICDBG

### Maximum Grants 2019/20 Round

Eastern Woodlands	\$900,000
Southern Plains	\$900,000
Northern Plain	\$1,500,000
Northwest	\$750,000
Alaska	\$800,000

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## ICDBG

### SWONAP Maximums 2019/20 round:

50,001+	\$7,000,000
10,501-50,000	\$4,000,000
7,501-10,500	\$3,000,000
Below 7,500	\$1,500,000

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## ICDBG

2019/20 NOFA published November 11, 2019, awards announced June 4, 2020

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## ICDBG Imminent Threat (IT)

A portion of ICDBG funds are reserved for “Imminent threats.” Imminent Threat (“IT”) grants are intended to alleviate or remove threats to health and safety. According to program guidance, **the threat “must be unique and unusual and not something that the tribe has known about for a long time. It must also impact the entire tribal service area, not just a few homes.”**

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## ICDBG IT Grants

Grant ceiling for the IT program is \$450,000 or \$900,000 for presidentially declared disasters.

Available as needed, outside the annual NOFA process that applies to the non-IT ICDBG program.

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Corrigan's Lookout – The Penokee Iron Range

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## Multipurpose Loans

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## Multipurpose Loans

- ▶ Tax-Exempt Bonds
- ▶ Rural Development Community Facilities Program
- ▶ Title VI Loans

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## Tax-Exempt Bonds

- ▶ Under the Indian Tribal Government Tax Status Act of 1982, Indian tribes have the ability, like states and municipal governments, to issue an **unlimited** amount of **tax-exempt bonds** to finance projects relating to **essential government functions**, such as schools, roads, and water systems.
- ▶ **Tribal subdivisions, including TDHEs**, to which tribes have delegated essential governmental functions, **may apply to the IRS for the same authority** and many have done so.

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## Tax-Exempt Bonds

- ▶ In February 2009, Congress enacted the American Recovery and Reinvestment Act in response to the country's economic recession.
- ▶ The Act greatly expanded the authority of tribes to issue tax exempt bonds by authorizing the Secretary of the Treasury, in consultation with the Secretary of the Interior, to allocate up to \$2 billion in Tribal Economic Development Bonds (TEDBs).

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## Tax Exempt Bonds

TEDBs intended to give tribes parity with state governments, can be used to finance non-essential items, e.g. convention centers, golf courses, sports facilities, hotels, restaurants, water parks, entertainment facilities and marinas **but not gaming facilities.**

Impact underwhelming

Fully allocated; Future uncertain.

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## Tax-Exempt Bonds (cont.)

- ▶ Because bondholders do not pay federal income tax on the interest they earn, they are willing to accept a **lower interest rate.**
- ▶ Bonds can often be repaid over a **longer period** of time than bank loans.
- ▶ **Potential purchasers of a tribe's bonds include local banks or the RD Office of the USDA.** For a larger bond issue, a securities underwriter can arrange a public sale of the bonds.
- ▶ Because the bonds represent a loan to the tribe, a **tribe's creditworthiness** will affect its ability to sell bonds.

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## Tax-Exempt Bonds (cont.)

- ▶ When using their **pre-2009 authority** under the Tribal Governmental Tax Status Act, tribes (or their political subdivisions) can issue tax exempt bonds only if **substantially all (at least 90%) of the proceeds are used for “essential government functions” customarily provided by state or local governments.**
- ▶ Such bonds may be used to finance facilities owned and operated by a tribal government for the general benefit of tribal members, including **housing projects, schools, health care facilities, water, sewer, police and fire, convention halls, administration buildings, child welfare, drug and alcohol treatment centers, etc.**

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## Tax-Exempt Bonds (cont.)

- ▶ The **issuance of bonds** is a **complex process** and requires significant investment of time and money.
- ▶ The savings that a tribe can realize over the long term should be weighed against the **costs of issuance.**

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## RD Community Facilities Program

- ▶ The Community Facilities Program is a **grant/loan program** administered by the Rural Housing Service of Rural Development.
- ▶ Program funds may be used for **“essential community facilities.”**
- ▶ Essential community facilities includes a broad array of facilities, including but not limited to . . .

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## RD Community Facilities Program

- ▶ fire, rescue, and public safety;
- ▶ health services;
- ▶ community, social, or cultural services;
- ▶ transportation facilities such as streets, roads and bridges;
- ▶ telecommunications equipment as it relates to medical and educational telecommunications links;
- ▶ supplemental and supporting structures for other rural electrification or telephone systems (including facilities such as headquarters and office buildings, storage facilities, and maintenance shops) when not eligible for RUS financing,
- ▶ natural gas distribution systems; and
- ▶ acquisition of land needed for a facility, pay necessary professional fees, and purchase equipment required for its operation.

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## RD Community Facilities Program

- ▶ Grant assistance limited to the minimum amount sufficient to provide for facility operation and maintenance, reasonable reserves, and debt repayment.
- ▶ **Grants may be up to 75%** of the cost of developing essential community facilities.
- ▶ For the **loan component** of the program, which may also be a guarantee of a third-party loan, **interest rates are similar** to those under **the RUS utilities program**.
- ▶ **The maximum loan term is 40 years.**
- ▶ **Tax-exempt notes or bonds** may be used to secure direct loans but cannot be used for guaranteed loans.

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## Title VI Guarantee Program

- ▶ NAHASDA Title VI authorizes HUD to guarantee notes and other obligations issued by Indian tribes or TDHEs, with tribal approval, to finance affordable housing activities under NAHASDA.
- ▶ Proceeds from guaranteed loans or other obligations may be used for modernization or rehabilitation of existing 1937 Act housing, development of **new affordable housing** and model housing activities.
- ▶ The **guarantee covers 95%** of the outstanding principal balance and accrued interest due on the loan.

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## Title VI Guarantee Program

- ▶ The maximum Title VI commitment is the amount of a tribe's current NAHASDA block grant, less the amount required to maintain current assisted stock, multiplied by five.
- ▶ The tribe or TDHE must pledge its NAHASDA block grant to assure repayment of the loan.
- ▶ The tribe or TDHE must demonstrate experience in complex financial transactions, obtain tribal approval authorizing the obligation, and demonstrate an ability to repay the obligation without impairing its use of NAHASDA block grant funds.

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## NEW MARKETS TAX CREDITS

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Apple blossom

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## New Markets Tax Credit (NMTC) Program

- ▶ Enacted under the Community Renewal Tax Relief Act of 2000, P.L. 106-554.
- ▶ Encourages economic development and job creation in low-income communities by attracting private investment capital.
- ▶ US Treasury Department allocates a specified amount of tax credits annually to certified Community Development Entities (CDEs) through a competitive application process.
- ▶ Investors provide equity to the CDEs in return for federal income tax benefits over a seven-year period.
- ▶ The CDEs then provide capital to qualifying businesses in low-income communities.

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## What is a CDE?

A CDE is an entity that:

1. has as its primary mission serving, or providing investment capital for, low-income communities or low-income persons,
2. maintains accountability to residents of low-income communities through their representation on any governing board of the entity or on any advisory board to the entity, and
3. is certified by the Secretary for purposes of this section as being a qualified community development entity.

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## Who is an Eligible Borrower of NMTC Funds?

- ▶ A borrower must be a Qualified Active Low Income Community Business (QALICB).
- ▶ In order to qualify, at least 50% of the QALICB's income must be derived from the active conduct of a qualified business within a low-income community and a substantial portion of the QALICB's property and employee activity must be within the low-income community.

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## What is a “Low-Income Community?”

- ▶ Generally, a low-income community (LIC) for NMTC purposes is a census tract in which the poverty rate is at least 20% or the median income (in a non-metropolitan area) does not exceed 80% of statewide median family income, as well as certain target areas.

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## Uses of NMTCs

- ▶ NMTC funds may be used to finance new construction or rehabilitation of “any trade or business” including manufacturing, real estate development (i.e. development of property for commercial rental to third parties), retail, **health care, government facilities, schools, daycare centers, etc.**
- ▶ NMTC proceeds may not be used for farming, private or commercial golf courses, country clubs, massage parlors, hot tub facilities, suntan facilities, racetracks or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.
- ▶ NMTCs can be used to develop commercial properties for lease but **not for “residential rental property,”** a term defined to mean “any building or structure if 80 percent or more of the gross rental income from such building or structure for the taxable year is rental income from dwelling units.”

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## NMTCs

- ▶ NMTCs are complex.
- ▶ Because of the transaction costs, they are normally used for projects whose total cost exceeds \$5 million, although NMTCs can be used for transactions involving as little as \$1 million in simple direct bank loan structures.
- ▶ The borrower must be a QALICB.
- ▶ The lender is typically a limited liability company or partnership affiliate of the CDE formed for the purpose of making a specific loan to a specific QALICB for a specific project.
- ▶ Normally, the lender would be owned 99.9% by the investor seeking tax benefits and .1% by the CDE that received the allocation of tax credits from the Treasury Department.
- ▶ The Lender makes a market rate loan using funds provided by a primary lender and a low-interest or forgivable loan funded with the investor's equity.
- ▶ Because the sole asset of the QALICB is the project being financed, the lender normally requires a guarantee from the QALICB's owner or other related entity.

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## Financial Benefits of NMTCs

- ▶ Credits are equal to 5% of the investment during years one to three and 6% during years four to seven.
- ▶ Thus, the **total value of the credits over seven years is 39 cents per dollar invested.**
- ▶ This value is typically reduced to a **present value ranging from 25 to 28 cents** depending on current market conditions.
- ▶ While some CDEs use their credits to make equity investments, others instead make below-market loans.
- ▶ The structure **can result in a reduction in total development costs equal to 10-20%** where the investment is made in the form of equity.
- ▶ This level of subsidy significantly reduces project debt service, increases the level of hard debt the project can tolerate and may provide the cushion that makes an otherwise uneconomic project possible.

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## NMTC Allocations

- ▶ The Department of the Treasury's Community Development Financial Institutions (CDFI) Fund allocates NMTCs annually under a highly competitive application process.
- ▶ In the early years of the CDFI program, few awards were made in rural areas.
- ▶ Section 102(b) of the Tax Relief and Health Care Act of 2006 requires the CDFI Fund to ensure that non-metropolitan counties receive a proportional allocation.

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## Road Programs

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## BIA Tribal Transportation Program (TTP)

- ▶ Replaces Indian Reservation Road (IRR) Program
- ▶ Funded from Highway Account of the Highway Trust Fund
- ▶ Jointly administered by the Federal Highway Administration Office of Federal Lands Highway and the BIA under an MOU (25 CFR Part 170)
- ▶ Provides assistance for “a public highway, road, bridge, trail, or transit system that is located on or provides access to tribal land and **appears on the national tribal transportation facility inventory** described in section 202(b)(1).” 23 USC 101(31)

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## BIA TTP

- ▶ 25 C.F.R. 170.5 General criteria for inclusion in National Tribal Transportation Facility Inventory (or NTTFI);
- ▶ 25 C.F.R. 170.5 “Proposed road or facility means any road or facility, including a primary access route, that will serve public transportation needs, meets the eligibility requirements of the TTP, and does not currently exist.”
- ▶ 25 C.F.R. 170.443: Requirements for including a proposed transportation facility in the NTTFI

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## BIA TTP

- ▶ **Formula driven: 20%** based on **tribal shares percentages** of the IRR Program and the rest divided as follows:
  - ▷ **27% eligible road miles**, i.e. roads owned by BIA or tribal government
  - ▷ **39% tribal population**
  - ▷ **34% divided among BIA regions and distributed based on each tribe's proportion of FY 2005-2011 formula distribution**
- ▶ Tribes have option of working with BIA or entering into a Tribal Transportation Program Agreement with the Secretary of Transportation to work directly with the FHWA

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## BIA TTP

- ▶ Limited set asides from the TTP for:
  - ▷ Transportation planning
  - ▷ Tribal safety initiatives, described at 23 USC 148 2%
  - ▷ Improvement of deficient bridges 3%

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## Water & Waste Water Programs



Painted turtle

## Water & Waste Water Programs

- ▶ RUS Water & Environmental Program
- ▶ EPA Drinking Water Grants
- ▶ EPA Clean Water Set-Aside
- ▶ Department of Defense Water Resource Grants
- ▶ IHS Sanitation Grants

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## Rural Utilities Service (RUS) Water & Environmental Program

- ▶ Funds may be used for **water and waste disposal facilities, including water lines, pumping stations, wells, storage tanks, and sewage treatment facilities.**
- ▶ This program provides **grants and below-market loans** to public bodies, including tribes, as well as nonprofit corporations and associations in areas with a population of less than 10,000.
  - ▷ Up to **75% of project costs** may be covered by a grant where the median income in the service area is below either 80% of the state nonmetropolitan median income or below the federal poverty line.
  - ▷ Where the income in the service area is between 80% and 100% of AMI, the maximum grant is **45% of project costs.**
  - ▷ Grants are not available where the median income in the service area exceeds 100% of the state nonmetropolitan median income.
  - ▷ **Where funds are required to alleviate health risk, funds for tribes can fund 100% of project costs, up to \$1 million per project.**

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## RUS Water & Environmental Program

- ▶ Loan rates depend on the income levels of the tenant population served and are published quarterly.
- ▶ RUS normally requires that a loan to a tribe or TDHE be structured as a bond.
- ▶ Security, in the order of RD's preference, will be (1) the full faith and credit of the borrower when the debt is evidenced by general obligation bonds; and/or (2) pledges of taxes or assessments; and/or (3) pledges of facility revenue.

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## RUS Water & Environmental Program

- ▶ When it is the customary financial practice in the State, liens will be taken on the borrower's interest in land, easements, rights-of-way, water rights, water purchase contracts, water sales contracts, sewage treatment contracts, and similar property rights, including leasehold interests, used or to be used in connection with the facility.
- ▶ The RUS bond requirements are not as onerous as the requirements for issuance of most municipal bonds.

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## RUS Water & Environmental Program

- ▶ *Special Consideration Under SUTA.* The 2008 Farm Bill amended the Rural Electricity Act to add the “**Substantially Underserved Trust Area (SUTA)**” initiative. Tribal trust lands fall within the scope of trust lands covered by Section 306F.
- ▶ The SUTA initiative gives the Secretary of Agriculture certain discretionary authority in connection with electric, water and waste, and telecommunications, and broadband utilities programs.

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## RUS Water & Environmental Program

Under SUTA authority, the Secretary may:

- ▶ Make available to qualified applicants financing with an **interest rate as low as two percent**
- ▶ Extend repayment terms
- ▶ **Waive (individually or in combination) non-duplication restrictions, matching fund requirements**, and credit support requirements from any loan or grant program administered by RUS; and
- ▶ Give the highest funding priority to designated projects in substantially underserved trust areas.

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## RUS Water & Environmental Program

- ▶ SUTA “underserved” trust area is “an area or community lacking an adequate level or quality of service in an eligible program, including areas of duplication of service provided by an existing provider where such provider has not provided or will not provide adequate level or quality of service.”
- ▶ A “substantially underserved” trust area means “a community in trust land with respect to which the Administrator determines has a high need for the benefits of an eligible program.”

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## EPA Drinking Water Grants

- ▶ The Environmental Protection Agency (EPA) Drinking Water Infrastructure Grants Tribal Set-Aside (DWIG-TSA) program provides funds for drinking water infrastructure needs assessments and construction of facilities for water treatment, storage and distribution.
- ▶ Administered in collaboration with the Indian Health Service, which has used program funds to design and construct projects.
- ▶ Program funds may be used for investments necessary for the public water system to comply with the Safe Drinking Water Act, assistance that directly and primarily benefits the disadvantaged community on a per household basis and programs for water testing.

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## EPA Clean Water Set-Aside

- ▶ Provides funding for the planning, design, and construction of wastewater treatment plant facilities that serve federally recognized Indian tribes.
- ▶ EPA uses sanitation deficiency system priority lists prepared by IHS to identify wastewater projects for funding.
- ▶ To get on the list, tribes need to meet with IHS area office representatives.

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## Department of Defense Water Resource Grants

The Tribal Partnership Program within the Water Resources Development Act, authorizes the Secretary of the Army to carry out **water-related planning activities, or activities relating to the study, design, and construction of water resources development projects**, that will substantially benefit tribes and are located primarily within Indian country.

Authorized activities include projects for flood damage reduction, environmental restoration and protection, and preservation of cultural and natural resources, as well as watershed assessments, planning activities, feasibility studies and “such other projects as the Secretary, in cooperation with Indian tribes and the heads of other Federal agencies, determines to be appropriate.”

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## IHS Sanitation Grants

- ▶ Indian Health Service (IHS) provide grants, as well as technical, engineering and construction management services, for the installation of sanitation facilities for Indian homes, communities and lands.
- ▶ Facilities include both water supply and waste disposal facilities.
- ▶ IHS provides technical assistance free of charge. Engineering services, including preparation of specifications, contracts, drawings, inspections, etc., are furnished for a fee equal to 2% to 5% of the project cost. A project may be administered directly by IHS or by a tribe under contract with IHS.

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## IHS Sanitation Grants

- ▶ IHS Sanitation Grants generally limited to (1) homes built or renovated with funds provided under the BIA HIP or (2) non-HIP homes that have been built or renovated within the past funding year or the previous year. HIP-related projects generally are given priority.
- ▶ A sanitation deficiency program addresses sanitation problems at older homes but funding is limited and the program is competitive.
- ▶ Can be combined RUS Water and Waste Facility Program, private loans, bonds or tribal contributions.

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## RUS Electric Programs

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## RUS Electric Programs

- ▶ RUS, through the Federal Financing Bank (FFB), offers **direct loans, loan insurance and loan guarantees** to nonprofit and cooperative associations, public bodies, and tribes.
- ▶ This financing may be used for the construction of **electric distribution, transmission, and generation facilities**, including system improvements and replacement required to furnish and improve electric service in rural areas, as well as **demand side management, energy conservation programs, and on-grid and off-grid renewable energy systems**.
- ▶ Funds may also be used for maintenance, upgrades, expansion, replacement of distribution, sub transmission and headquarters (service, warehouse) facilities, energy efficiency and renewable energy systems.
- ▶ The **FFB may guarantee up to 100% of loans**, including for construction. The FFB is a lending arm of the U.S. government.
- ▶ The FFB requires security interest in equipment or receivables.

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## RUS Electric Programs

- ▶ Generally, **repayment may not exceed the useful life** of the facility financed, with a maximum repayment schedule of 35 years.
- ▶ Loan Guarantees and Treasury Rate Loans: interest rates are based on rates established daily by the United States **Treasury plus 1/8 of 1%**. Hardship loan interest rates are fixed at 5% for up to 35 years.
- ▶ Borrowers must have legal authority to provide, construct, operate and maintain the proposed facilities or services and facilities receiving federal financing must be used for a public purpose.
- ▶ At the end of FY 2018, the FFB had an **unused surplus of about \$1.9 billion**.
- ▶ RUS General Field Representatives in each RD state office accept applications year-round. Contact information for the state offices is available at <https://www.rd.usda.gov/contact-us/state-offices>. Tribes can also contact the national Electric Program office at 202-720-1422.

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## Telecommunications Programs

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## RUS Telecom Program

The Community Connect Grant Program provides grants to service providers, including tribes, **to provide broadband service in a “Proposed Funded Service Area (PFSA)” where such service does not currently exist.**

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## RUS Telecom Program

Permissible uses of grant funds include

- ▶ construction, acquisition, or leasing of facilities, including spectrum, land or buildings, used to deploy service to all residential and business customers located within the PFSA and all participating Critical Community Facilities, which is defined as “the Community Center; ...
- ▶ improvement, expansion, construction, or acquisition of a Community Center and provision of Computer Access Points (not to exceed 10% of the requested grant amount) and
- ▶ costs of providing the necessary bandwidth for service free of charge to the Critical Community Facilities for two years.

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## RUS Telecom Program

In addition to its grant program, RUS offers a Rural Broadband Access Loans and Loan Guarantees Program. Direct loans are provided at “cost of money,” 4% or a combination. Loan guarantees may cover up to 80% of the principal amount of the loan.

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## RUS Telecom Program

- ▶ Grant funds may not be provided by others. Applicants are required to provide at least 15% of project costs from non-federal sources. Matching funds may be used for operating costs. Other than costs of leasing facilities to deploy broadband, operating costs are not permissible but may be covered with matching funds. Minimum and maximum grant requests were \$100,000 and \$3,000,000, respectively.
- ▶ RUS publishes a Notice of Solicitation of Applications (“NOSA”) periodically in the Federal Register. Additional information may be obtained by contacting RUS at (202) 720-0800 or Email: [community.connect@wdc.usda.gov](mailto:community.connect@wdc.usda.gov) or through State RD offices. Contact information for the state offices is available at <https://www.rd.usda.gov/contact-us/state-offices>.

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## Disaster/Security Programs

## Disaster/Security Programs

- ▶ FEMA Pre-Disaster Mitigation Grant Program
- ▶ Tribal Homeland Security Grant



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## Fiscal Year 2020 Building Resilient Infrastructure and Communities

- ▶ FEMA makes federal funds available through the new Building Resilient Infrastructures and Communities (BRIC) grant program to states, local communities, tribes and territories (SLTTs) for pre-disaster mitigation activities.
- ▶ BRIC is a new FEMA pre-disaster hazard mitigation program that replaces the existing Pre-Disaster Mitigation (PDM) program.
- ▶ The Disaster Recovery Reform Act, Section 1234; amended Section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) and authorizes BRIC.

[https://www.fema.gov/sites/default/files/2020-08/fema\\_bric\\_fy-2020\\_nofa\\_fact-sheet.pdf](https://www.fema.gov/sites/default/files/2020-08/fema_bric_fy-2020_nofa_fact-sheet.pdf)

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## FY2020 Available Funding

- ▶ State/Territory Allocation: \$33.6 million (up to \$600,000 per Applicant). All 50 states, the District of Columbia, and U.S. territories may apply under the State/Territory Allocation.
- ▶ Tribal Set-Aside: \$20 million. All Indian tribal governments (federally recognized) may apply under the Tribal Set-Aside - can be for capability and/or capacity building activities and/or mitigation projects.
- ▶ National Competition for Mitigation Projects: \$446.4 million (estimated). Remaining funds which are not awarded from the State/Territory Allocation or Tribal Set-Aside are included in the national competition.

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## Tribal Set-Aside Activity Caps

- ▶ The combined cost for any C&CB activities under the Tribal Set-Aside must not exceed \$600,000 federal cost share per Applicant. Additionally, the Applicant's highest ranked subapplication (C&CB activity) for the Tribal Set-Aside must not exceed \$600,000 federal cost share.
- ▶ Up to \$300,000 of the Tribal Set-Aside may be used for mitigation planning and planning-related activities per Applicant.
- ▶ Up to 10 percent of any subapplication may be used for information dissemination activities, including public awareness and education (brochures, workshops, videos, etc.) related to a proposed C&CB activity or mitigation project.
- ▶ In the event that more than \$20,000,000 in subapplications is submitted under the Tribal Set-Aside, the C&CB activities and highest-ranked mitigation project subapplications up to \$20,000,000 will be selected. Once the \$20,000,000 is selected, all remaining tribal mitigation project subapplications will be evaluated under the national competition.

[https://www.fema.gov/sites/default/files/2020-08/fema\\_fy20-bric-notice-of-funding-opportunity\\_federal-register\\_August-2020.pdf](https://www.fema.gov/sites/default/files/2020-08/fema_fy20-bric-notice-of-funding-opportunity_federal-register_August-2020.pdf)

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## Eligibility Information

- ▶ Have a current FEMA-approved Hazard Mitigation Plan at time of application and award.
- ▶ Tribes must have received a major disaster declaration under the Stafford Act in the seven years prior to the annual grant application period start date or be entirely or partially located in a state that received a major disaster declaration in the seven years prior to the annual grant application period start date.
- ▶ Tribes are eligible to apply for a grant either as an applicant or subapplicant. If a tribe requests to apply through the state, the state must meet the “seven year” declaration criteria.
- ▶ FEMA must apply this seven-year requirement for each BRIC grant cycle. As of January 1, 2020, all states, federally recognized tribes, and territories satisfy these criteria.

[https://www.fema.gov/sites/default/files/2020-08/fema\\_bric\\_fy-2020\\_nofa\\_fact-sheet.pdf](https://www.fema.gov/sites/default/files/2020-08/fema_bric_fy-2020_nofa_fact-sheet.pdf)

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## Cost Share

- ▶ Generally, 75 percent federal/25 percent non-federal.
- ▶ Small impoverished communities (economically disadvantaged with 3,000 or fewer individuals and residents having an average per capita annual income not exceeding 80 percent of the national per capita income) eligible for up to 90 percent federal/10 percent non-federal.
- ▶ For insular areas, including American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands, FEMA automatically waives the non-federal cost share for the Recipient when the non-federal cost share for the entire award is under \$200,000. The Recipient may request the waiver in its application.

[https://www.fema.gov/sites/default/files/2020-08/fema\\_bric\\_fy-2020\\_nofa\\_fact-sheet.pdf](https://www.fema.gov/sites/default/files/2020-08/fema_bric_fy-2020_nofa_fact-sheet.pdf)

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## BRIC Priorities

- ▶ incentivize public infrastructure projects;
- ▶ incentivize projects that mitigate risk to one or more lifelines;
- ▶ incentivize projects that incorporate nature-based solutions; and
- ▶ incentivize adoption and enforcement of modern building codes.

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## Application and Funding Deadlines

- ▶ Application Opening: September 30, 2020
- ▶ Eligible Applicants must apply for funding using the new FEMA Grants Outcome (FEMA GO), which is now the management system for BRIC.
- ▶ To apply, visit <https://go.fema.gov/>.
- ▶ Application Deadline: January 29, 2021 (3:00 p.m. Eastern Standard Time)

[https://www.fema.gov/sites/default/files/2020-08/fema\\_bric\\_fy-2020\\_nofa\\_fact-sheet.pdf](https://www.fema.gov/sites/default/files/2020-08/fema_bric_fy-2020_nofa_fact-sheet.pdf)

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## FY2020 Available Funding

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- ▶ Tribal Set-Aside: \$20 million. All Indian tribal governments (federally recognized) may apply under the Tribal Set-Aside - can be for capability and/or capacity building activities and/or mitigation projects.
- ▶ National Competition for Mitigation Projects: \$446.4 million (estimated). Remaining funds which are not awarded from the State/Territory Allocation or Tribal Set-Aside are included in the national competition.

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## Non-Financial Direct Technical Assistance

To build a community's capacity and capability to improve:

- ▶ its resiliency to natural hazards and to ensure stakeholders are capable of building and sustaining successful mitigation programs,
- ▶ submitting high-quality applications, and
- ▶ implementing new and innovative projects that reduce risk from a wide range of natural hazards.

[https://www.fema.gov/sites/default/files/2020-08/fema\\_bric\\_fy-2020\\_nofa\\_fact-sheet.pdf](https://www.fema.gov/sites/default/files/2020-08/fema_bric_fy-2020_nofa_fact-sheet.pdf)

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## Example of Tribal PDM Project

### Shoalwater Bay Indian Tribe Vertical Evacuation Tower

“The Pre-Disaster Mitigation Grant Program is a powerful tool for communities facing threats from tsunamis,” FEMA Regional Administer Mike O’Hare said. “The Shoalwater Bay Indian Tribe’s investment in a Vertical Evacuation Tower means that people will have someplace safe to go within minutes of a catastrophic Cascadia Subduction Zone earthquake.”

<https://www.fema.gov/news-release/2018/06/26/fema-approves-25-million-shoalwater-bay-indian-tribe-tsunami-vertical>

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## Example of Tribal PDM Project

### Shoalwater Bay Indian Tribe Vertical Evacuation Tower



An artist's rendering of the vertical evacuation structure that is under construction on the Shoalwater Bay Indian Reservation from WSDOT

Source: <https://www.king5.com/article/weather/earthquakes/washington-oregon-vertical-evacuation-structures-tsunami/281-22024c69-ced9-48aa-93e2-490cf7beba88>

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## FEMA PDM Eligibility

Local governments including cities, townships, counties, special district governments, and **Native American tribal organizations are considered Sub-applicants** and must apply to their state/territory.

Only one PDM grant application will be accepted from each state, tribe or territory.

**Applicants and Subapplicants must have a FEMA approved mitigation plan** as of the application deadline in order to apply for mitigation projects in accordance with Title 44 CFR Part 201.

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## FEMA PDM Funding Guidelines

The maximum federal share for PDM sub-applications is as follows:

- ▶ \$4 million for mitigation projects;
- ▶ Up to \$200,000 per Applicant for Advance Assistance;
- ▶ **\$10 million for Resilient Infrastructure projects;**
- ▶ **\$400,000 for new mitigation plans consistent with 44 CFR Part 201;**
- ▶ \$300,000 for State/territorial and multi-jurisdictional local or tribal mitigation plan updates consistent with 44 CFR Part 201;
- ▶ **\$150,000 for single jurisdiction local or tribal mitigation plan updates consistent with 44 CFR Part 201;**

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## FEMA PDM Funding Guidelines

- ▶ As directed by the appropriations language, FEMA will use the majority of PDM grant funding for mitigation projects.
- ▶ Federal funding is available for up to 75 percent of the eligible activity costs. Small, impoverished communities may be eligible for up to a 90 percent Federal cost share in accordance with the Stafford Act. The remaining eligible activity costs must be derived from non-Federal sources.
- ▶ Applicants must rank all of the subapplications included in their PDM grant application in the eGrants system, including their Management Costs subapplication for their proposed applicant management costs.
- ▶ To be eligible for the State/Territory allocation or Tribal set aside, the Applicant's highest ranked planning and/or project subgrant application must not exceed \$575,000 Federal share.

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## FEMA PDM

For Additional Information:

Please see the Notice of Funding Opportunity announcement posted on Grants.gov and the HMA Guidance available on the FEMA Internet: <https://www.fema.gov/hazard-mitigation-assistance> for more detailed information regarding eligibility.

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## Tribal Homeland Security Grant Program (THSGP)

- ▶ 2005 of the Homeland Security Act of 2002, as amended (Pub. L. No. 107-296), (6 U.S.C. § 606).
- ▶ Tribal Set-aside \$15 million in FY 2020 (up from \$10M in recent years)
- ▶ FY 2020 deadline was April 30, 2020
- ▶ Tribes that operate a law enforcement or emergency response agency “with the capacity to respond to calls for law enforcement or emergency services” are eligible if they “located on or near (50 miles) ... a coastline bordering an ocean” “within 10 miles of a system or asset included on the prioritized critical infrastructure list established under section.”

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## Tribal Homeland Security Grant Program (THSGP)

- ▶ Tribal application must be consistent with state plan
- ▶ In making awards FEMA administrator considers “its **relative threat, vulnerability, and consequences from acts of terrorism,**” including consideration of multiple factors and the presence of threats that are biological, chemical, cyber, explosives, incendiary, nuclear, radiological, suicide bombers or “such other types of threat determined relevant by the Administrator.”

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## Tribal Homeland Security Grant Program (THSGP)

FY 2018 awardees included

Tribe	Amount
Ak-Chin	\$247,242
Cocopah	\$972,500
Salt River Pima	\$350,000
Gila River	\$900,000
Fort McDowell Yavapai	\$954,000
Los Coyotes Cahuilla and Cupeno	\$120,000
San Manuel	\$677,000
Jicarilla Apache	\$525,000

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## Department of Defense IRT Program

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## Department of Defense IRT

- ▶ The Department of Defense's **Innovative Readiness Training (IRT) program** was established to “produce mission-ready forces through military training opportunities that provide key services for American communities.”
- ▶ **IRT projects must have both community value and military training value.** Projects must avoid competing with private section entities. The procedures for applying for assistance are set forth at <https://irt.defense.gov/>

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## DoD IRT

- ▶ Communities apply on-line
- ▶ Military units submit descriptions of their training needs
- ▶ IRT program matches community applications with the military training needs
- ▶ Community partner, i.e., the applicant typically finds other funding sources to acquire necessary materials
- ▶ IRT provides expertise and person power

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## DoD IRT

- ▶ Through IRT, the DoD has provided assistance for a broad variety of projects, including -
  - ▷ Relocation of an Alaska Native Village of Newtok to Mertarvik, including construction of access roads, evacuation shelter, runway and quarry
  - ▷ Post-hurricane reconstruction in Puerto Rico
  - ▷ **housing construction and health care on the Blackfeet, Crow, Rosebud, Pine Ridge and Navajo reservations**

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## PART III

### B. FINANCING RENTAL HOUSING

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## Sources of Financing

- ▶ Grants, including some of the same programs discussed in connection with infrastructure
- ▶ Loans
- ▶ Tax Credits

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## Grants

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## Grants

- ▶ NAHASDA Non-competitive IHBG
- ▶ Competitive IHBG
- ▶ ICDBG
- ▶ Federal Home Loan Bank Affordable Housing Program
- ▶ Section 202 Supportive Housing for Elderly
- ▶ HOME Program
- ▶ Housing for Persons with Disabilities: Section 811;
- ▶ Supportive Housing for Veterans.

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## Eligible Affordable Housing Activities under NAHASDA

- ▶ NAHASDA Indian Housing Block Grant (IHBG) funds may be used for:
  - a) modernization of, or operating assistance to, housing previously developed under a contract between HUD and a tribal housing authority
  - b) affordable housing development, including real property acquisition, site improvement, new construction, rehabilitation, utilities, infrastructure, conversion, demolition, financing, administration and planning, energy efficiency improvement, mold remediation, and related activities
  - c) ...

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## NAHASDA FUNDS

- ▶ Congressional appropriations have been stagnant
- ▶ Funds are typically required to cover administrative expenses and costs of operating units developed post-1998

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## Competitive IHBG Program

- ▶ Supplements NAHASDA formula-driven IHBG
- ▶ Introduced in 2018/2019 appropriations acts
- ▶ Triggered by 2017 HUD Needs Study showing an estimated shortage of 68,000 housing units in Indian country
- ▶ FY 2020 Consolidated Appropriations Act provides **\$100,000,000 of IHBG funds** for “competitive grants to eligible recipients. ... The Secretary **shall consider need and administrative capacity and shall give priority to projects that will spur construction and rehabilitation.**”

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## Competitive IHBG

FY 2020 NOFA Announced August 11, 2020:

- ▶ Awards based on five scoring factors with maximum of 102 points:

▷ Capacity	20 points
▷ Need/Extent of the Problem:	25 points
▷ Soundness of Approach	40 points
▷ Leveraging Resources	5 points
▷ Comprehensiveness and Coordination	10 points
▷ Opportunity* or Promise Zone**	2 points

\* (Many reservations)

\*\* (Choctaw, Pine Ridge, Spokane, Turtle Mtn. Reservations)

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## Competitive IHBG

- ▶ Maximum Grant: \$5 million
- ▶ **Deadline for applications December 10, 2020**

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## Indian Community Development Block Grants (ICDBG)

Unlike IHBG, primary focus is non-housing but grants may be used for a broad range of housing-related purposes, including:

- ▶ housing rehabilitation,
- ▶ installation of solar panels and energy efficiency improvements,
- ▶ land acquisition to support new housing construction,
- ▶ roads,
- ▶ water and sewer and
- ▶ community buildings.

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## ICDBG

ICDBG funds may be used for new construction of residential housing only as a last resort for relocation of displaced persons or for projects carried out by community based development organizations.

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## ICDBG

Federally recognized tribes are eligible to apply. In addition, tribal organizations, including TDHEs, may apply if authorized by tribal government resolution and if qualified under the Indian Education and Self-Determination Act of 1975.

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## ICDBG

### ► LMI Program requirements:

- ▷ (1) the project benefits all residents of an area in which at least 51% of the residents are low and moderate income persons (LMI)
- ▷ (2) the project benefits a limited clientele of which at least 51% are LMI persons
- ▷ (3) housing developed with program funds is occupied by LMI persons or, in case of multi-family housing, is at least 51% occupied by LMI persons; or
- ▷ (4) at least 51% of jobs to be created in a job creation project are designated for LMI persons.

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## ICDBG

An application announcement is made annually in accordance with a Notice of Funds Available.

[www.hud.gov/program\\_offices/public\\_indian\\_housing/ih/grants/icdbg](http://www.hud.gov/program_offices/public_indian_housing/ih/grants/icdbg)

FY 2019/20 Applications were due Feb 3, 2020

Awards, previously discussed, were announced June 4, 2020

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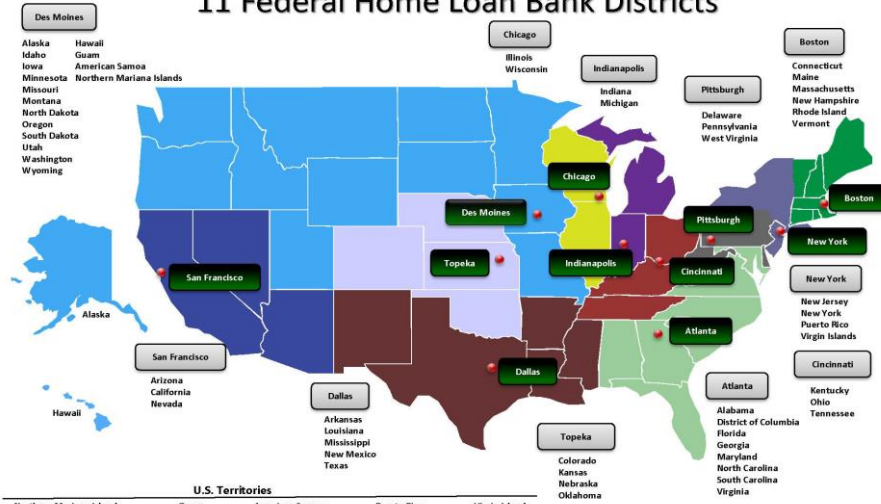
## FHLB Affordable Housing Program (AHP) Subsidy

- ▶ There are eleven regional Federal Home Loan Banks (FHLBs) nationwide, each responsible for a particular territory.
- ▶ Created by the Federal Home Loan Bank Act as a government sponsored enterprise to support mortgage lending and community investment.
- ▶ Each FHL Bank is a separate, government-chartered, member-owned corporation.

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### 11 Federal Home Loan Bank Districts



April 2019

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## FHLB AHP

- ▶ The Affordable Housing Program (AHP) offers subsidies, essentially **grants, for both rental and homeownership programs.**
- ▶ **Each regional FHLB is required to publish its “AHP Implementation Plan” on its website,** describing its program requirements relating to income standards, competitive application program requirements, homeownership set-aside programs, revolving loan funds (if applicable), loan pools (if applicable), monitoring requirements and retention agreement requirements.

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## AHP

- ▶ The AHP provides subsidies (grants), typically in the range of \$200,000-\$600,000 for the purchase, construction and/or rehabilitation of rental housing.
- ▶ **At least 20% of the rental units must be occupied by and affordable for very low-income (not more than 50% of AMI) households.**
- ▶ Rents may not exceed 30% of adjusted household income.

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## FHLB AHP

- ▶ **The entities involved in an AHP application include:**
  - ▷ 1) **the regional FHLB**, which scores applications and makes awards,
  - ▷ 2) **the member bank**, which makes the application to the regional FHLB of which is a member, and
  - ▷ 3) **project sponsor**, which has an ownership interest in the project and is involved in development and management, for a rental project, or provides financing to individuals for the homeownership program.

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## FHLB AHP

- ▶ **The Tribe or TDHE typically acts as sponsor.**
- ▶ The Tribe must identify a bank that is a member of the regional FHLB and work with the bank in the preparation of the application.
- ▶ Often, the sponsor, or the sponsor's consultant, plays a major role in the preparation of the application.
- ▶ The websites of the regional FHLBs list the banks within each area that are FHLB members.
- ▶ **Most regional FHLBs have two application rounds annually.**
- ▶ **See regional FHLB websites for more information.**

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## FHLB AHP

- ▶ The **AHP application** must establish:
  - 1) **need**, including a complete description of proposed sources and uses of funds,
  - 2) a **project budget**, which must reflect reasonable project costs,
  - 3) **developmental feasibility**, based on development budget, market analysis, project sponsor experience and other factors,
  - 4) **operational feasibility** of rental projects, as demonstrated by the project's operating pro forma.
- ▶ **Donation of land** for less than fair market value, sponsorship by a tribe, and reservation of at least **60% of project units for families with income not exceeding 50% of AMI are positive scoring considerations** that often favor tribal applications.

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## FHLB AHP

- ▶ The **AHP grantee agrees to retain the project as affordable housing for 15 years** from completion in the case of rental units.
- ▶ The grantee must repay the subsidy amount if the agreement is violated.

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## Section 202 Supportive Housing for the Elderly

- ▶ Private nonprofit organizations and nonprofit consumer cooperatives are the only eligible applicants under this program.
- ▶ Neither a public body nor an instrumentality of a public body is eligible to participate in the program.
- ▶ Until 2012, the Section 202 program provided capital advances for new construction, rehabilitation or acquisition of housing for occupancy at least 40 years and by very low-income elderly persons.
- ▶ From 2012-2018, Congress appropriated funds only for rental assistance for existing Section 202-funded facilities.
- ▶ For FY 2018-20, capital advances were again budgeted.

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## Section 202 Supportive Housing for the Elderly (cont.)

- ▶ Section 202 has rarely been used in Indian Country because tribal governments and TDHEs are not eligible applicants.
- ▶ **Several tribes in recent years have teamed with nonprofits to meet the needs of tribal elders.**
- ▶ **In order to access the program, a tribe must grant a long-term lease to a nonprofit developer/applicant.**
- ▶ For Indian Country projects, applications are made by a nonprofit entity, with the tribe's support. An application announcement is made annually.

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## State Housing Programs under the Federal HOME Program

- ▶ HOME program, created by Title II of the National Affordable Housing Act of 1990 ("Cranston-Gonzalez Act")
- ▶ **Largest Federal block grant to state and local governments for housing for low-income households.**
- ▶ Primary purpose is to expand the supply of decent and affordable housing, with primary attention to rental housing for very low-income and low-income Americans.

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## HOME Program

- ▶ Affordable housing-related purposes, including acquisition, rehabilitation, and **new construction**, tenant-based rental assistance, **administrative and planning costs, and operating expenses of Community Housing Development Organizations (CHDOs)**.
- ▶ HOME funds may be used to assist multi-unit projects.

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## HOME Program

- ▶ Assistance may be in the form of loans, deferred payment loans, grants, equity investments, interest subsidies, guarantees of third-party loans and other forms of assistance approved by HUD.
- ▶ Public bodies, such as tribes or TDHEs, do not qualify as CHDOs but could form a CHDO, provided no more than one third of the CHDO's board members are officials or employees of the tribe.

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## HOME Program

- ▶ 2008 NAHASDA Reauthorization specifically allows for state to provide HOME funds to tribes and THDE's.
- ▶ Tribes and TDHEs should review their states' Consolidated Plans and meet with state housing officials to learn about their programs and educate state officials about the acute housing needs of Indian Country.
- ▶ Tribes should also consider forming CHDOs to supplement the housing activities of their TDHEs.

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## Housing for Persons With Disabilities: Section 811

- ▶ Section 811 of the National Affordable Housing Act of 1990:
- ▶ Capital advance that does not have to be repaid if the housing remains available for very low-income persons with disabilities for at least 40 years.
- ▶ Rental assistance covers the difference between the HUD-approved operating costs of the project and the tenants' contribution toward rent, usually 30% of adjusted income.
- ▶ The initial term of the project rental assistance contract is five years and can be renewed if funds are available. The program is limited to very low-income households whose income does not exceed 50% of area median income.

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## Housing for Persons With Disabilities: Section 811

- ▶ A “person with disabilities” is someone determined to have a physical, mental, or emotional impairment, which (1) is expected to be of long-continued and indefinite duration; (2) substantially impedes his or her ability to live independently; and (3) is of such a nature that such ability could be improved by more suitable housing conditions.
- ▶ Capital advances may be made only to private nonprofit organizations, which could include nonprofits serving tribal communities.
- ▶ Tribes may qualify as project sponsors for purposes of applying for rental assistance provided they meet the project sponsor criteria established by the state housing finance agency.

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## Supportive Housing for Vets

- ▶ HUD and the Veterans Administration established the HUD-VA Supportive Housing (“HUD-VASH”) program to serve homeless Veterans and their immediate families.
- ▶ The VA provides case management and eligibility screening services, while HUD allocates permanent housing subsidies.
- ▶ The allocation process for HUD-VASH relies on (i) HUD’s point-in-time data submitted by Continuums of Care (CoCs), (ii) VA Medical Center (VAMC) data on the number of contacts with homeless Veterans, and (iii) performance data from PHAs and VAMCs.
- ▶ There is at least one site in each of the 50 states, in the District of Columbia, Puerto Rico and Guam.

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## Supportive Housing for Vets

- ▶ For FY 2015, Congress authorized a rental demonstration Tribal HUD–VA Supportive Housing (Tribal HUD–VASH) program.
- ▶ Provided a total of \$5.9 million to 26 tribes for rental assistance for homeless American Indian or those at risk of homelessness, and living on or off tribal lands (within the authorized tribal/tribally designated housing entities (TDHEs) service areas.
- ▶ Grants ranged from \$123,288 to \$391,740. VA provides case management and supportive services.
- ▶ HUD rental assistance which may be tenant-based or project-based, is generally subject to all requirements of the NAHASDA and its regulations.
- ▶ The program is not managed under the Housing Choice Voucher program that applies to the non-tribal HUD-VASH program.
- ▶ **Per HUD July 16, 2020 conference call, additional VASH funding will be announced fall 2020.**
- ▶ **Included in NAHASDA Reauthorization S 4090 HR 5319**

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## Akwesasne Housing Supportive Housing

IHBG, HOME funds, NY Homeless Housing Funds

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### AHA Supportive Housing

IHBG, HOME Funds, NY Homeless Housing

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### Red Cliff New Hope

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## Loans

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## Loan Programs

- ▶ Title VI Guarantee Program;
- ▶ HUD Section 184 Loan Guarantee;
- ▶ Section 515 Rural Rental Housing Loans;
- ▶ Section 538 Guarantee Program.

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## Ho-Chunk HHEDA Title VI Project

Photo courtesy Ho-Chunk Housing and Community Development Agency

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## Title VI Guarantee Program

- ▶ NAHASDA Title VI authorizes HUD to guarantee notes and other obligations issued by Indian tribes or TDHEs, with tribal approval, to finance affordable housing activities under NAHASDA.
- ▶ Proceeds from guaranteed loans or other obligations may be used for modernization or rehabilitation of existing 1937 Act housing, development of **new affordable housing** and model housing activities.
- ▶ The **guarantee covers 95%** of the outstanding principal balance and accrued interest due on the loan.

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## Title VI Guarantee Program

- ▶ The maximum Title VI commitment is the amount of a tribe's current NAHASDA block grant, less the amount required to maintain current assisted stock, multiplied by five.
- ▶ The tribe or TDHE must pledge its NAHASDA block grant to assure repayment of the loan.
- ▶ The tribe or TDHE must demonstrate experience in complex financial transactions, obtain tribal approval authorizing the obligation, and demonstrate an ability to repay the obligation without impairing its use of NAHASDA block grant funds.

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## HUD Section 184 Loan Guarantee

- ▶ Section 184 of the Housing and Community Development Act of 1992 offers lenders a 100% guarantee of loans made to qualifying Indians.
- ▶ A loan guaranteed under Section 184 may be used to purchase or rehabilitate an existing house, purchase manufactured housing, purchase and rehabilitate an existing house, or construct new housing.
- ▶ The program is available only for single-family housing or one to four units located on tribal trust land, allotted trust land or fee simple land in an Indian area.

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## Section 184 Loan Guarantee

- ▶ The borrower may be an individual tribal member, tribe or TDHE.
- ▶ Although designed to facilitate home ownership for tribal members, the program may also be useful to tribes and TDHEs who wish to develop subdivisions of homes for sale to tribal members.

(Program description in Homeownership Section, below)

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## Section 184 Loan Guarantee

- ▶ Tribe first negotiates the loan with a HUD-approved lender.
- ▶ Lender submits the underwriting package to HUD, which either denies or approves the guarantee.
- ▶ Where the home to be financed is located on fee land, the lender takes a standard mortgage. Where the home is on tribal trust land, the lender takes a mortgage on the borrower's leasehold.
- ▶ Unless the Tribe has enacted a leasing law approved under the HEARTH Act, BIA must approve the lease and leasehold mortgage and provide title status reports.

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## Section 515 Rural Rental Housing Loans

- ▶ Under Section 515 of the 1949 Housing Act, 75 RHS can make loans to TDHEs at a 1% rate of interest for new, or rehabbed, low-income rental housing for families at or below 80% of area median income.
- ▶ In recent years, all appropriations have gone to preserve existing Section 515 projects – unclear when, if ever, Congress will fund new construction or rehab of non-Section 515
- ▶ HR 5319 (NAHASDA Reauthorization), Section 503 includes 5% Tribal Set-Aside of funds appropriated under Housing Act Sections 502, 504, 515, 533 and 538

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## Section 538 Guarantee Program

- ▶ The Section 538 Program finances the construction, acquisition, or rehabilitation of new and improved multifamily housing for low- and moderate-income households (i.e., incomes do not exceed 115% of area median income).
- ▶ A nonprofit developer, such as a TDHE, must first negotiate the terms of the loan with a private lender, which then applies for a guarantee.
- ▶ RHS guarantees 90% of the total development cost and will not pay more than 90% of the outstanding principal and interest in the event of default.
- ▶ For at least 20% of the loans guaranteed, RHS also offers interest credits to reduce the loan interest rate, but such reduction may not be lower than the applicable federal rate.

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## Section 538 Guarantee Program

- ▶ The lender must pay a 1% guarantee fee and there is a flat application fee of \$2,500 following proposal approval.
- ▶ **Selection criteria** include:
  - ▶ size of **population**,
  - ▶ **neediness** (based on median income),
  - ▶ **partnering and leveraging with local communities**,
  - ▶ **interest rate** with maximum points for interest rates, **percentage of three to five bedroom units** in the project,
  - ▶ location on **tribal lands**; and
  - ▶ **long commitment** to low-income housing.

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## ▶ Housing Tax Credits

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## Low-Income Housing Tax Credits (LIHTCs)

- ▶ A major engine of affordable housing development in the United States, producing or preserving homes for an estimated 6.7 million low-income households since 1986.
- ▶ Many tribes have successfully used LIHTCs to develop new units or to rehabilitate existing units.
- ▶ **Competitive 9% program and non-competitive 4% program** allow investors to claim a credit equal to 9% or 4%, respectively, of their investment each year for ten years.

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## Red Cliff Oski Ombendaam (New Hope)

24 units, three buildings

6 supportive housing (veterans & homeless)

\$5.4 TDC

Low Income Housing Tax Credits

FLHB AHP

HOME Funds

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## New Hope

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## Red Cliff New Hope LIHTC

Photo courtesy Red Cliff Chippewa Housing Authority

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Red Cliff Housing Authority

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## Red Cliff Chippewa Rehab II

38 unit Rehab

34 single family

4 duplex assisted

LIHTC \$8.2M

FHLB AHP \$570k)

Tribal \$600k

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Red Cliff Rehab II LIHTC – AHP HOME

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BR Rehab II LIHTC

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Red Cliff Rehab II – LIHTC – AHP - HOME

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## LIHTCs

- ▶ Functions like a very complex grant.
- ▶ Depending on market conditions, the competitive 9% tax credits may provide up to 70% or more of the cost of new construction or rehabilitation.
- ▶ The 4% program is non-competitive, and the credits are typically awarded with an allocation of tax exempt multifamily housing bonds.
- ▶ Historically, tribes have focused on the 9% program because it delivers more equity.

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## LIHTCs

- ▶ Sources of financing that can be used with tax credits include NAHASDA IHBG, NAHASDA Title VI guaranteed loan, HUD Section 184 guaranteed loans, RD Section 515 loans, RUS water/sewer grant/loans, FHLB AHP, HOME funds, renewable energy investment tax credits, etc.
- ▶ A low-income household = income not more than 60% of Area Median Income (AMI).
- ▶ Income compliance is determined at the time a tenant moves into a unit.

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## LIHTCs

- ▶ A qualified low-income project is one in which either at least 20% of tenants have income under 50% of AMI or at least 40% of tenants have income under 60% of AMI.
- ▶ Congress in 2018 permanently authorized income averaging, which permits developers to apply the 60% ceiling to the average of all apartments.

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## LIHTCs

- ▶ Gross rents, including utilities, may not exceed 30% of the maximum qualifying income.
- ▶ May be used for multifamily or single-family housing.
- ▶ Single-family housing may be built as part of a subdivision or as a scattered site.
- ▶ Tenants can be given the opportunity to purchase their homes after the initial 15-year compliance period for the amount of the debt, if any, associated with their unit.

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## LIHTCs

State housing finance agencies allocate credits under their respect Qualified Allocation Plans:

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## Tax-Exempt Bonds

- ▶ Tribes that apply for an allocation of multifamily housing bonds automatically receive 4% tax credits.
- ▶ A Title VI guaranteed could secure repayment of the tax-exempt bonds up to five times the Tribe's IHBG needs portion.
- ▶ Additional sources of funding for 4% tax credit projects could include ICDBG, FHLB AHP.

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Bobcat

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## PART III

### C. FINANCING HOME OWNERSHIP

### Sources of Financing

Sources of financing to assist the tribal member in purchasing a home include:

- Grants
- Loans
- Tribal Programs

## Grants

- ▶ ICDBG
- ▶ FHLB AHP Home Ownership
- ▶ Community Development Financial Institutions (CDFI) Fund
- ▶ American Dream Down Payment
- ▶ BIA HIP Program

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## Indian Community Development Block Grants (ICDBG)

ICDBG funds can be used for homeownership assistance to low and moderate-income households, including down payment assistance, interest rate subsidization and guarantees.

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## FHLB AHP Homeownership

- ▶ FHLB's homeownership AHP program provides grants to finance the purchase, construction, or rehabilitation of an owner-occupied project by or for very low-income or low- or moderate-income households.
- ▶ The program can be used to fund a down-payment assistance program.
- ▶ Household income meeting the income targeting commitments in the approved AHP application at the time it is qualified by the project sponsor for participation in the project.

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## FHLB Homeownership

- ▶ Member bank must ensure that the home is subject to a deed restriction or other enforceable retention agreement requiring that, during the five-year retention period:
  - ▷ (1) the regional bank be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period, and
  - ▷ (2) in the case of a sale or refinancing of the unit prior to the end of the retention period,
- ▶ The grantee agrees to retain the project as affordable housing for at least five years from closing of the mortgage loan.
- ▶ The grantee must repay the subsidy amount if the agreement is violated.

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## FLHB Down Payment Assistance

- ▶ The tribal member borrower must identify a lender that is a member of the regional FHLB.
- ▶ The lender takes a mortgage on the principal loan and a junior mortgage to secure the down payment grant.
- ▶ **The grant is forgiven over a five-year period.**
- ▶ **If the borrower sells the home at a profit within five years, the home buyer must repay a pro-rata share of the grant.**

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## FHLB Down Payment Assistance

- ▶ Most programs require a matching contribution by the homebuyer and pre-purchase homebuyer counseling.
- ▶ The FHLB member bank determines income eligibility, arranges with the program administrator to reserve the grant funds, assures that the home buyer completes home buyer counseling and disburses funds at closing.

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## FHLB Down Payment Assistance Native American Set-Aside Program

- ▶ Regional FHLBs may establish non-competitive set-aside programs to assist low and moderate income homebuyers (i.e., up 80% of AMI), especially those purchasing a home for the first time.

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## Community Development Financial Institutions (CDFI) Fund

- ▶ U.S. Treasury Department administers “**Community Development Financial Institutions Fund.**”
- ▶ The Fund’s purpose is to promote economic revitalization and community development through investment and assistance to fund-certified CDFIs.
- ▶ The Fund **offers grants, loans, equity investments, and other forms of assistance on a matching funds basis to non-governmental lending entities serving a targeted low-income population.**

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## CDFI

- ▶ Native American CDFI Assistance (“NACA”) Program is specifically designed to assist CDFIs that focus at least 50 percent of their business activities on American Indians.
- ▶ In order to obtain funding from the Fund a CDFI must demonstrate its independence from tribal government and inclusion of its target population on its board of directors.
- ▶ HUD’s Office of Native American Programs (ONAP) will certify a tribal CDFI as an originator of Section 184 Guaranteed Loans.
- ▶ Rural Development (RD), a USDA agency, will pay tribal entities a fee for “packaging” loans made under RD’s Section 502 loan program.

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## American Dream Down Payment

- ▶ The American Dream Down Payment Initiative provides for down payment assistance to first-time homebuyers on terms similar to the program offered by the regional FHLBs.
- ▶ Participating jurisdictions must allocate 15% of their HOME funds to projects developed, sponsored, or owned by Community Development Housing Organizations (CHDOs), nonprofit 501(c)(3) entities that satisfy requirements set forth in federal regulations.

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## BIA HIP Program

- ▶ The Bureau of Indian Affairs (BIA) Housing Improvement Program (HIP) provides grants to repair, renovate, **replace or provide housing for the neediest Indian families.**
- ▶ **HIP grants may be for interim improvements (up to \$2,500), repairs and renovation (up to \$35,000) or replacement of housing (sufficient for a “modest dwelling”).**
- ▶ The program is administered by the BIA in cooperation with tribal governments or by a tribal government through a contract or self-governance contract.
- ▶ The program is coordinated with the Indian Health Service’s (IHS) Sanitation Facilities Program, which provides water and wastewater facilities for HIP homes.

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## BIA HIP Program

A member of a federally-recognized tribe who lives in an approved tribal service area is eligible if:

- 1) household annual income does not exceed 125% of poverty income guidelines;
- 2) present housing is substandard;
- 3) he or she has not received assistance after October 1, 1986 for repairs, renovation, replacement, housing or down payment assistance;
- 4) **the present home was not acquired through a federal housing program, such as the Housing Act of 1937 or NAHASDA;**
- 5) he or she is without alternative housing assistance; and
- 6) ownership requirements are met.

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## BIA HIP Program

- ▶ The individual tribal member applies by filing an application form, together with documentary evidence of membership, household income and land tenure.
- ▶ Applications are ranked by the HIP Servicing Office according to need.
- ▶ Funds are allocated based on information provided by tribes to their regional BIA offices under a competitive process that takes into account the number of members who meet age, income, disability and family size criteria.
- ▶ Funding has been low.

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## Loan Programs

- ▶ HUD Section 184 Loan Guarantee
- ▶ USDA Section 502 Rural Housing Direct Loans
- ▶ Section 502 Guaranteed Loan Program

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## HUD Section 184 Loan Guarantee

- ▶ Section 184 of the Housing and Community Development Act of 1992 offers lenders a 100% guarantee of loans made to qualifying Indians.
- ▶ A guaranteed loan may be used to purchase or rehabilitate an existing house, purchase manufactured housing, purchase and rehabilitate an existing house, or construct new housing.
- ▶ The program is available only for single-family housing of one to four units located on tribal trust land, allotted trust land or fee simple land in an Indian area.
- ▶ The borrower may be an individual tribal member, tribe or TDHE.
- ▶ Section 184 guarantees are not reserved for moderate- and low-income homebuyers.

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## HUD Section 184 Loan Guarantee

- ▶ Down payment of 1.25% on loans under \$50,000 or 2.25% if the loan exceeds that amount, from private funds or a gift from the tribe or TDHE. If the borrower's income is less than 80% of AMI, NAHASDA funds can be used to cover the down payment.
- ▶ HUD charges a 1.5% guarantee fee and a 0.15% annual loan guarantee premium and, for loans whose loan to value ratio exceeds 78%, an annual insurance premium equal to .25% of the loan balance.
- ▶ Lender must evaluate the ability to repay the loan, considering income history and stability, credit history and other factors.
- ▶ Generally, the borrower's total debt-to-income ratio may not exceed 41%, although HUD may make exceptions in appropriate circumstances.

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## HUD Section 184 Loan Guarantee

### Program Guidelines

[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/ih/homeownership/184/guidelines](https://www.hud.gov/program_offices/public_indian_housing/ih/homeownership/184/guidelines)

Tribes wishing to make the Section 184 program available for their members should contact the Office of Loan Guarantee, Office of Native American Programs, U.S. Department of Housing and Community Development, [Section184@hud.gov](mailto:Section184@hud.gov)

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## USDA Section 502 Rural Housing Direct Loans

- ▶ Under the Section 502 direct loan program, RHS provides loans at **below-market interest rates to home buyers whose household incomes do not exceed 80% of AMI.**
- ▶ **Loan terms are up to 33 years and, for households with income less than 60% of AMI, may extend longer.**
- ▶ The program offers subsidies, based on the home buyer's income, that reduce the **interest rate to as low as 1%.**
- ▶ Although the monthly payment rises as the homeowner's income rises, the note rate establishes a cap on monthly payments.
- ▶ **Loans may cover 100% of the cost of purchasing a new or existing home, as well as costs of appraisal, title insurance and other closing costs.**
- ▶ Funds may also be used to repair or relocate a home, prepare a site, or provide water and sewer facilities.

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## Section 502 Rural Housing Direct Loans

- ▶ Home buyers must show that they are unable to obtain financing from conventional sources on reasonable terms and can afford to repay the loan.
- ▶ Generally, a low-income applicant's repayment ability is demonstrated if principal, interest, taxes and insurance do not amount to more than 29% of income and total monthly debt does not exceed 41% of income.
- ▶ For low-income borrowers, the percentages are 33% and 41%.
- ▶ The home buyer must agree to refinance the home if the home buyer is able.
- ▶ Also retention agreement which, when title is transferred to a third party, requires the home buyer to repay the interest assistance or 50% of the value of the appreciation of the home, whichever is less.

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## Section 502 Guaranteed Loan Program

- ▶ Section 502 authorizes RD to guarantee 30-year, fixed-rate mortgage loans made by commercial lenders to low- and moderate-income homebuyers for new construction or repairs of an existing home.
- ▶ Up to 100% loan-to-value financing, enabling tribal members who lack funds for a down payment to purchase a home.
- ▶ May be used to purchase and prepare sites and provide water and sewage facilities.
- ▶ RHS may provide payment subsidies to eligible borrowers, effectively reducing the rate of interest on their guaranteed loans and lowering their monthly debt payments.
- ▶ Not available for multifamily housing
- ▶ Available only to individuals, not to tribes or TDHEs.

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## Section 502 Rural Housing Direct Loans

- ▶ **Need Tribal court enforcement procedures, including foreclosure in the event of default.**
- ▶ The HUD/USDA/VA model lease, and mortgage foreclosure and eviction ordinances, developed through inter-agency the “One-Stop” Mortgage Initiative, also satisfy RD requirements.
- ▶ **The individual, rather than the tribe or TDHE, applies for a Section 502 loan at the local RD Office.**
- ▶ The TDHE can facilitate the Section 502 loan process by providing information and counseling to interested tribal members and by acting as “packager,” putting together home specifications, assisting in the hiring of a general contractor and helping to prepare applications.
- ▶ Section 502 permits the TDHE to receive a fee, funded from loan proceeds, for these services.

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## Section 502 Rural Housing Direct Loans

- ▶ Section 502 can also be used as part of a rent-to-own program.
- ▶ The TDHE develops and owns the homes initially, using other financing programs. Over a period of 12-24 months, tribal members who would otherwise not qualify for Section 502 loans create the necessary credit history through a program of payroll deduction and credit counseling.
- ▶ Once qualified, members purchase their homes from the TDHE with Section 502 mortgage loans.

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## Section 502 Guaranteed Loan Program

- ▶ The program is intended for moderate-income families whose household income does not exceed 115% of the AMI without adequate housing and unable to obtain financing at reasonable rates from conventional lenders.
- ▶ For tribal members living on trust land, tribe must enter into MOU with the USDA that provides for tribal court enforcement procedures.
- ▶ Mortgage payments, taxes and insurance, may not exceed 29%, total debt may not exceed 41% of gross income.
- ▶ The borrower must first negotiate the terms of a loan with a private lender.
- ▶ The lender then applies to the local office of RHS for the loan guarantee. Additional information is available at <https://www.offices.usda.gov>.

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## Grant and Loan Programs

- ▶ Section 502/523 Mutual Self-Help Housing Program

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## Section 502/523 Mutual Self-Help Housing Program

- ▶ Section 523 provides grant to a sponsor, including a tribe or TDHE, to:
- ▶ provide technical assistance to 5-10 participating families,
- ▶ cover TDHE's costs for construction supervisor and a case worker; office expenses; bookkeeping; purchase of tools; insurance; fees for training of grantee personnel, including board members;
- ▶ and consulting, accounting and legal fees required to administer the grant.
- ▶ TDHE's construction supervisor teaches participants to build their own, and each other's, homes.
- ▶ the home buyers learn building trade skills and, by investing "sweat equity" into home, reduce the cost of home and amount they must borrow.

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## Section 502/523 Mutual Self-Help Housing Program

- ▶ Home buyers are also eligible for Section 502 down payment assistance, significantly reducing monthly debt payments.
- ▶ Home buyer borrows money (at a subsidized rate of interest), signs a mortgage and note, takes legal title to the home immediately, subject only to the mortgage.

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## Section 502/523 Mutual Self-Help Housing Program

- ▶ Participants must have acceptable credit, but RHS will not apply standards as stringent as those of a commercial lender.
- ▶ The participating family is expected to perform 65% of the labor associated with construction of the home.
- ▶ Forty percent of the participating families must have income at or below 50% of AMI.

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## Section 502/523 Mutual Self-Help Program

- ▶ For tribal members living on trust land, tribes must enact tribal court enforcement procedures, including foreclosure in the event of default.
- ▶ The HUD/USDA/VA model lease, and mortgage foreclosure and eviction ordinances, developed through inter-agency the “One-Stop” Mortgage Initiative, also satisfy RD requirements.

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## Section 502/523 Mutual Self-Help Housing Program

- ▶ Rather than apply for assistance directly, a TDHE can also partner with an off-reservation applicant to administer the grant and provide related services while the TDHE focuses on identifying and assisting potential homeowners.
- ▶ RHS publishes a Notice of Funding Availability (NOFA) annually, usually in spring, in the *Federal Register*. Additional information is available at <https://www.offices.usda.gov>. Funding is limited and applications are scored competitively.

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## Tribal Programs

- ▶ Sources of Funding for Tribal Lending Programs
- ▶ Tax Considerations for Tribal Subsidy Programs
- ▶ Tribal Down Payment Assistance
- ▶ Tribal Forgivable Loans
- ▶ Tribal Loan Guarantees (Not Recommended)

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## Sources of Funding for Tribal Lending Programs

- ▶ Tribal mortgage loans do not necessarily need to cover tribal member's entire borrowing needs.
- ▶ Alternative sources:
  - ▷ U.S. Dept. of Housing and Urban Development.
  - ▷ U.S. Dept. of Agriculture Rural Development.
  - ▷ U.S. Treasury Dept.'s CDFI program.
  - ▷ The Federal Home Loan Bank.
  - ▷ Community Development Financial Institutions (CDFI)
  - ▷ Private foundations and Commercial banks.
- ▶ Banks may satisfy their obligations under the Community Reinvestment Act by making loans to tribal lending agencies in low-income areas.

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## Tribal Subsidy Programs – Tax Considerations

- ▶ Tribal General Welfare Exclusion Act of 2014 (“GWE Act”).
  - ▷ Provides that “**Indian general welfare benefits**,” defined to include services provided to or on behalf of a member of an Indian tribe (or any spouse or dependent of such a member) pursuant to an Indian tribal government program, are **not includible in gross income**, provided that the program is administered under specified guidelines, does not discriminate in favor of members of the governing body of the tribe, and the benefits are:
    - 1) available to any tribal member who meets such guidelines
    - 2) for the promotion of general welfare
    - 3) not lavish or extravagant, and
    - 4) not compensation for services.
- ▶ Tribal homeownership programs should be designed to assure compliance with the GWE Act.

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## Tribal Subsidy Programs – Down Payment Assistance Grants

- ▶ With down payment assistance, a grant is given to a member to finance a portion of the purchase price of a home.
- ▶ The remainder of the purchase price is often financed through a commercial mortgage lender, usually with a HUD Section 184 guaranteed loan.
- ▶ The result of the grant is lower monthly payments for the member.
- ▶ Federal and state down payment assistance programs require “recapture” of grants if the home buyer sells the home within a specified period of years, normally 15.
- ▶ Tribes administering down payment assistance should consider imposing a similar requirement, if the program’s purpose is to meet housing needs rather than to provide cash benefits.

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## Tribal Forgivable Loans

- ▶ Loan forgiveness programs typically forgive a percentage of tribal loans each year the member resides in home until loan is fully paid off.
- ▶ A forgivable loan program enforces residency requirement through forgiveness over time and by canceling the forgiveness upon sale or abandonment.

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## WHERE TO GO FROM HERE?

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## Where to Go From Here?

Near Term:

- ▶ Form Development Team
- ▶ Prepare Development Plan with several potential projects
- ▶ Work with tribal elected officials to enact legal framework, esp. HEARTH-compliant leasing ordinance, ROW ordinance
- ▶ Identify potential consultants, e.g. architect, grant writer, accountant, attorney
- ▶ Identify local bank that is FHLB member

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## Where to Go From Here?

- ▶ Pursue low-hanging fruit
  - ▷ Be prepared for the next ICDBG NOFA
  - ▷ Be prepared to apply for IHBG competitive funding if available
  - ▷ Apply for FEMA \$575,000 grant by 1/31/20 to prepare mitigation plan to be eligible for future mitigation grants or to obtain mitigation grant
- ▶ Form relationship with State housing finance agency in order to access its programs (e.g. LIHTCs, HOME, housing bonds)
- ▶ Consider application for LIHTCs with FHLB AHP for larger housing projects

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## Where to Go From Here?

- ▶ Sow seeds for longer term development
  - ▷ Establish relationships with RD, IHS, BIA to be aware of funding opportunities
  - ▷ Work with BIA to have needed highways, roads, bridges, trails, or transit systems included on the national tribal transportation facility inventory
  - ▷ Work with IHS to determine whether tribal wastewater facilities should be placed on EPA's sanitation deficiency system priority list
  - ▷ Work with USDA to determine whether reservation qualifies as a "Substantially Underserved Trust Area"

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spiderwort

## PART III D. FINANCING RENEWABLE ENERGY

## Strategy

1. Use tribal/housing energy consumption and energy efficiency opportunities as assets, rather than just liabilities;
2. Take advantage of Federal, State, utility and private grants and programs; and
3. Partner with taxpaying entities to take advantage of tax incentives.

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## Energy Consumption / Costs

- ▶ Actual energy costs depend on the local utility.
- ▶ High current energy costs can be *beneficial* for financing solar because the cost savings from the conversion are greater, increasing the potential return for investors, which translates into more investor money to finance the solar facilities.

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## Renewable Energy Basics: Wind and Solar Limitation

- ▶ Electricity is consumed not only during the day but also in the evening and at night.
- ▶ A solar array produces energy only during daylight.
- ▶ Wind produces energy only when the wind blows.
- ▶ Which means a key to renewable energy finance is ...

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## Renewable Energy Basics: Net Metering

- ▶ Net Metering: An arrangement by which the Tribe sells the renewable energy it produces, but does not consume itself, *into the grid* and receives a credit against the amounts it pays for energy purchased *from the grid*.
- ▶ Interconnection: Process of connecting energy generation system with utility grid.
- ▶ Net Zero: The goal of producing enough renewable energy to meet the Tribe's entire energy needs.

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## Residential Average Electricity Consumption & Cost (2018)

US:	914	kWh @	12.87	cents per kWh =	\$117.65
AZ:	1,028	kWh @	12.77	cents per kWh =	\$131.31
CA:	546	kWh @	18.84	cents per kWh =	\$102.90
HI:	518	kWh @	32.47	cents per kWh =	\$168.13
NV:	947	kWh @	11.85	cents per kWh =	\$112.18
NM:	639	kWh @	12.68	cents per kWh =	\$ 81.08
NY:	572	kWh @	18.03	cents per kWh =	\$103.22
TX:	1,176	kWh @	11.20	cents per kWh =	\$131.63
WA:	1,023	kWh @	9.66	cents per kWh =	\$98.78
WI:	693	kWh @	14.02	cents per kWh =	\$97.09

\*Latest data available from U.S. Energy Information Agency

[https://www.eia.gov/electricity/sales\\_revenue\\_price/pdf/table5\\_a.pdf](https://www.eia.gov/electricity/sales_revenue_price/pdf/table5_a.pdf)

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## Commercial Average Electricity Consumption & Cost (2018)

US:	6,189	kWh @	10.67	cents per kWh =	\$660.32
AZ:	7,679	kWh @	10.64	cents per kWh =	\$817.02
CA:	5,627	kWh @	16.34	cents per kWh =	\$919.62
HI:	4,236	kWh @	29.90	cents per kWh =	\$1,266.63
NV:	6,124	kWh @	7.74	cents per kWh =	\$474.11
NM:	5,233	kWh @	10.02	cents per kWh =	\$524.47
NY:	5,779	kWh @	14.50	cents per kWh =	\$837.96
TX:	7,517	kWh @	8.16	cents per kWh =	\$613.53
WA:	6,373	kWh @	8.72	cents per kWh =	\$555.51
WI:	5,662	kWh @	10.67	cents per kWh =	\$604.31

\*Latest data available from U.S. Energy Information Agency

[https://www.eia.gov/electricity/sales\\_revenue\\_price/pdf/table5\\_b.pdf](https://www.eia.gov/electricity/sales_revenue_price/pdf/table5_b.pdf)

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## Financing: Key Sources

- ▶ Federal Grants
- ▶ Loan Programs
- ▶ State, Utility and Private Programs
- ▶ Renewable Energy Investment Tax Credits

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## Federal Grants

- ▶ Department of Interior Grants
- ▶ DOE Tribal Energy Program
- ▶ HUD Indian Housing Block Grant and Indian Community Development Block grant
- ▶ USDA Rural Energy for America Program (includes loan guarantee program)

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## Tribal Energy Development Capacity (TEDC) Grant

- ▶ The Division of Energy and Mineral Development (DEMD) annually provides tribes an opportunity to participate in the Tribal Energy Development Capacity (TEDC) grant program
- ▶ The purpose of the TEDC grant program is to develop tribal managerial, organizational and technical capacity needed to maximize the economic impact of energy resource development on Indian land
- ▶ The TEDC grant gives tribes the ability to develop or enhance their business and regulatory environment for energy resource development.

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## TEDC Provides Financial Assistance for Tribes to:

- ▶ Establish business entity structures and/or organizational structures related to energy resource development; and/or
- ▶ Develop or enhance key regulatory activities.

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## Eligible Business Entity Formation Activities

- ▶ Developing legal infrastructure for business formation;
- ▶ Establishing tribally chartered corporations under tribal corporation codes with an energy resource development focus;
- ▶ Establish tribal business charters under federal law (IRA Section 17 corporation).

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## Eligible Regulatory Activities

- ▶ Developing or enhancing tribal policies, codes, regulations, or ordinances related to regulating and developing energy resource(s). Include land lease regulations enacted under the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act for energy development purposes or for business purposes attendant to an energy project.
- ▶ Adopting secured transaction codes and subsequent joint power agreement with the tribe's respective state.

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## Energy and Mineral Development Program (EMDP) Grant

- ▶ Each year DEMD provides tribes an opportunity to participate in a grant program known as the Energy and Mineral Development Program (EMDP).
- ▶ Provides financial assistance to tribes and Indian allottees on trust lands in evaluating their energy and mineral resource potential on their lands.

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## Resources Eligible for Funding

- ▶ Minerals
- ▶ Biomass – Woody and Waste
- ▶ Hydro
- ▶ Solar
- ▶ Wind
- ▶ Geothermal
- ▶ Oil, Natural Gas & Coal

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## Activities Eligible for Funding

- ▶ Resource Assessment
- ▶ Exploration Studies
- ▶ Feasibility Studies
- ▶ Market Studies
- ▶ Engineering Studies
- ▶ Economic Evaluation
- ▶ Defining Potential Targets for Development

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## Grants: ICDBG

- ▶ Objective is “development of viable Indian and Alaska native communities, including decent housing, a suitable living environment, and economic opportunities, principally for persons of low and moderate income” (i.e., < 80% of area median income). 24 CFR 1003.2

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## Grants: ICDBG

- ▶ Tribes can apply or pass resolution permitting TDHE to apply
- ▶ 2019/20 NOFA published November 11, 2019
- ▶ Awards announced June 4, 2020

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## Grants: ICDBG

- ▶ Eligible Uses include:
- ▶ Housing rehabilitation, including improvements to increase energy efficiency through installation of storm windows and doors ...[etc.] and modification or replacement of heating and cooling equipment, including the use of solar energy equipment."
- ▶ 1003.202(b)(4).

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**Ho-Chunk HHCD Indian Heights ICDBG Solar Project**  
Photo courtesy Ho-Chunk Housing and Community Development Agency

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**Spokane Tribe Administration Building**  
Photo courtesy Spokane Indian Housing Authority

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## Grants: ICDBG

### Eligible Uses (cont.)

- ▶ Public facilities and improvements
- ▶ Private utilities
- ▶ Technical assistance to increase capacity to “carry out eligible neighborhood revitalization or economic development activities”

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## ICDBG

### Maximum Grants 2019/20 Round

Eastern Woodlands	\$900,000
Southern Plains	\$900,000
Northern Plain	\$1,500,000
Northwest	\$750,000
Alaska	\$800,000

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## ICDBG

SWONAP Maximums 2019/20 round:

50,001+	\$7,000,000
10,501-50,000	\$4,000,000
7,501-10,500	\$3,000,000
Below 7,500	\$1,500,000

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### AHA Solar Farm

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## DOE EERE Tribal Energy Grant

Energy Infrastructure Deployment on Tribal Lands issued under the Indian Tribal Energy Development and Self Determination Act of 2005 25 USC § 3501 et seq.

The 2020 FOA was issued on March 27, 2020, and was modified 3 times.

Source: <https://www.energy.gov/articles/department-energy-announces-15-million-tribes-deploy-energy-technology>

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## DOE 2020 Grant: FOA Summary

Tribes, Intertribal Organizations, and Tribal Energy Development Organizations can apply for funds to:

1. install energy generating system(s) and energy efficiency measure(s) for Tribal Building(s) (Topic Area 1); or,
2. deploy community-scale energy generating system(s) or energy storage on Tribal Lands (Topic Area 2); or,
3. install integrated energy system(s) for autonomous operation (independent of the traditional centralized electric power grid) to power a single or multiple essential tribal facilities during emergency situations or for tribal community resilience (Topic Area 3); or,
4. deploy energy infrastructure and integrated energy system(s) to electrify Tribal Buildings (Topic Area 4).

Source for DOE 2020 Grant information is <https://eere-exchange.energy.gov/FileContent.aspx?FileID=40dd6414-d8aa-41e4-9db7-0ce5d6b1479c>

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## DOE Grant: Award Amounts

DOE anticipates making awards that range from:

- ▶ no less than \$50,000 to maximum of \$1,000,000 for Topic Area 1 (install energy generating systems and energy efficiency measures for tribal buildings),
- ▶ no less than \$250,000 to a maximum of \$2,000,000 for Topic Area 2 (deploy community-scale energy generating systems or energy storage on tribal lands),
- ▶ no less than \$50,000 to a maximum of \$1,000,000 for Topic Area 3.a. (powering essential tribal facilities),
- ▶ no less than \$250,000 to a maximum of \$2,000,000 for Topic Area 3.b. (tribal community resilience), and
- ▶ no less than \$250,000 to a maximum of \$2,000,000 for Topic Area 4 (electrification of tribal buildings)
- ▶ AVAILABLE WITHOUT REGARD TO INCOME LEVELS OF PERSONS BENEFITTED.

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## DOE Grant: Cost Share Requirement

- ▶ A **50% cost share** of the total allowable costs of the project (i.e., the sum of the DOE share, and the Recipient share of allowable costs equals the total allowable cost of the project) is required. All cost share must come from non-federal sources unless otherwise allowed by law.
- ▶ **NOTE: See next slide.**

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## DOE 2020 Grant Modification 0003

DOE's announcement for Modification 0003 dated July 20, 2020, indicated that:

- ▶ the application deadline has been extended to August 27, 2020,
- ▶ and the cost-sharing requirement has been adjusted

However, the revised FOA as of July 20, 2020, did not show a change to the cost-sharing requirement.

Source for Modification 0003: <https://eere-exchange.energy.gov/FileContent.aspx?FileID=40dd6414-d8aa-41e4-9db7-0ce5d6b1479c>

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## Larger Grant Amounts and Declining Price of Solar

- ▶ Especially for larger installations.
- ▶ Consider ability to take advantage of economies of scale.
- ▶ Especially if community solar or other similar options are available.
- ▶ Serve larger buildings or groups of buildings.

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## Tribal Solar Accelerator Fund

- ▶ In late 2018, GRID announced the launch of the Tribal Solar Accelerator Fund to provide capital to accelerate the development of new solar projects in tribal communities across the country. Wells Fargo, a major supporter of GRID since 2012, is supporting the launch of the fund with a commitment of \$5 million over three years.
- ▶ The Tribal Solar Accelerator Fund is a tribal-led initiative that provides new funding to tribes to support their renewable energy projects. The fund awards grants for projects that clearly focus on building renewable energy infrastructure, particularly new solar energy projects in tribal communities, that are feasible, cost-effective, and engage broad tribal community participation.

Source: <https://tribalsolaraccelerator.org/about/>

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## TSAF 2020 Tribal Solar Funding

- ▶ Due to the number of highly qualified applicants in 2019, the TSAF has made the decision to restrict new applications in 2020 and move forward into the Year-3 grant cycle by an “Invite Only” application process.

Source: <https://tribalsolaraccelerator.org/>

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## Spokane Tribe Administration Building

Photo courtesy Spokane Indian Housing Authority

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## State Incentives

- ▶ State incentives for Renewables and Efficiency can be very significant and should be thoroughly explored. NC Clean Energy maintains a database:
- ▶ <http://www.dsireusa.org/>
- ▶ **WARNING:** The site is not always current, but it gives a good idea about how to look at incentives in a state.

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## Renewable Energy Investment Tax Credits

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## Key Tax Credit for Renewable Energy: the ITC

The Renewable Energy Investment Tax Credit (“ITC”):

- ▶ Available for solar and small wind
- ▶ Potentially available for battery storage installed with new solar facilities subject, however, to restrictions that may be less attractive to investors.
- ▶ Source of funds that don’t need to be repaid - like a grant from the tribal perspective
- ▶ Delivers up to 30% of cost of development
- ▶ Survived the “Tax Cuts and Jobs” Act of 2017, Public Law 115-97

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## Key Timing Issues

Beginning in 2020, the **30% ITC** will phase down per IRC Section 48(a)(2) and (6):

- ▶ **26%** for projects whose construction begins January 1 - December 31, 2020, if placed in service by January 1, 2024, otherwise 10%;
- ▶ **22%** for projects whose construction begins January 1 – December 31, 2021, if placed in service by January 1, 2024, otherwise 10%.
- ▶ **10%** for projects whose construction has not begun by January 1, 2022.

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## Tax Credits: Key Business Terms

- ▶ Depreciation: The right to deduct capital costs, over time, from taxable income
- ▶ Tax Credit: A dollar for dollar credit against income taxes otherwise due
- ▶ LLC: Limited Liability Company: A partnership-like structure that allows for allocation ownership interests for tax purposes of profits and losses

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## How Tax Credits Work in Indian Country

- ▶ Tribes and TDHEs don't pay income tax so they have to partner with the investors who do.
- ▶ The Tribe/TDHE forms a partnership with the investors for a limited period of time.
- ▶ Tribe contributes grant; investor contributes remaining costs.
- ▶ The investor owns 99% of the partnership so that it can claim 99% of the tax credits that the Tribe/TDHE can't use. The investor also gets 99% of the depreciation tax deductions on the equipment it funds.

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## How Tax Credits Work in Indian Country

- ▶ The investor exits the LLC and goes away once the IRS rules have been satisfied (minimum five years control) and the project has been paid off (normally after 5-10 years assuming substantial grant funds).
- ▶ Investor right to sell for as low as 5% of its investment amount.
- ▶ If investor does not exercise, Tribal right to purchase interest at fair market value.

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## Loan Programs

- ▶ RUS Rural Electric
- ▶ Title VI Guarantee Program
- ▶ USDA Rural Energy for America Program (“REAP”) (Grant and Loan Guarantee)

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## RUS Electric Programs

- ▶ RUS, through the Federal Financing Bank (FFB), offers **direct loans, loan insurance and loan guarantees** to nonprofit and cooperative associations, public bodies, and tribes.
- ▶ This financing may be used for the construction of **electric distribution, transmission, and generation facilities**, including system improvements and replacement required to furnish and improve electric service in rural areas, as well as **demand side management, energy conservation programs, and on-grid and off-grid renewable energy systems**.
- ▶ Funds may also be used for maintenance, upgrades, expansion, replacement of distribution, sub transmission and headquarters (service, warehouse) facilities, energy efficiency and renewable energy systems.
- ▶ The **FFB may guarantee up to 100% of loans**, including for construction. The FFB is a lending arm of the U.S. government.
- ▶ The FFB requires security interest in equipment or receivables.

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## RUS Electric Programs

- ▶ Generally, **repayment may not exceed the useful life** of the facility financed, with a maximum repayment schedule of 35 years.
- ▶ Loan Guarantees and Treasury Rate Loans: interest rates are based on rates established daily by the United States **Treasury plus 1/8 of 1%**. Hardship loan interest rates are fixed at 5% for up to 35 years.
- ▶ Borrowers must have legal authority to provide, construct, operate and maintain the proposed facilities or services and facilities receiving federal financing must be used for a public purpose.
- ▶ At the end of FY 2018, the FFB had an **unused surplus of about \$1.9 billion**.
- ▶ RUS General Field Representatives in each RD state office accept applications year-round. Contact information for the state offices is available at <https://www.rd.usda.gov/contact-us/state-offices>. Tribes can also contact the national Electric Program office at 202-720-1422.

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## Title VI Guarantee Program

- ▶ NAHASDA Title VI authorizes HUD to guarantee notes and other obligations issued by Indian tribes or TDHEs, with tribal approval, to finance affordable housing activities under NAHASDA.
- ▶ Proceeds from guaranteed loans or other obligations may be used for modernization or rehabilitation of existing 1937 Act housing, development of **new affordable housing** and model housing activities.
- ▶ The **guarantee covers 95%** of the outstanding principal balance and accrued interest due on the loan.

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## Title VI Guarantee Program

- ▶ The maximum Title VI commitment is the amount of a tribe's current NAHASDA block grant, less the amount required to maintain current assisted stock, multiplied by five.
- ▶ The tribe or TDHE must pledge its NAHASDA block grant to assure repayment of the loan.
- ▶ The tribe or TDHE must demonstrate experience in complex financial transactions, obtain tribal approval authorizing the obligation, and demonstrate an ability to repay the obligation without impairing its use of NAHASDA block grant funds.

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## Grants: USDA Rural Energy For America Program (REAP)

- ▶ Renewable Energy Systems & Energy Efficiency Improvement Loans And Grants
- ▶ Competitive Small Grants of \$20,000 or less available at specific times
- ▶ Competitive Unrestricted Grants (up to \$500,000) available at specific times
- ▶ Competitive Loan Guarantees are available continuously throughout the year

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## Grants: USDA REAP

- ▶ Funds may also be used for the purchase, installation and construction of energy efficiency improvements, such as:
  - ▶ High efficiency heating, ventilation and air conditioning systems (HVAC)
  - ▶ Insulation
  - ▶ Lighting
  - ▶ Cooling or refrigeration units
  - ▶ Doors and windows
  - ▶ Electric, solar or gravity pumps for sprinkler pivots
  - ▶ Replacement of energy-inefficient equipment

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## Grants: REAP

- ▶ Who may apply for this program?
  - ▷ Agricultural producers with at least 50% of gross income coming from agricultural operations, and
  - ▷ Small businesses (including tribal businesses) in eligible rural areas.
- ▶ What is an eligible area?
  - ▷ Businesses must be in an area other than a city or town with a population of greater than 50,000 inhabitants and the urbanized area of that city or town.
  - ▷ Agricultural producers may be in rural or non-rural areas.

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## Grants: REAP

- ▶ Projects greater than \$200,000 require a technical report.
- ▶ Energy efficiency projects require an energy audit or assessment.
- ▶ Loan guarantees on loans up to 75% of total eligible project costs.
- ▶ Grants for up to 25% of total eligible project costs
- ▶ Combined grant and loan guarantee funding up to 75% of total eligible project costs

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## REAP Loan Guarantee

- ▶ Loan Guarantee Terms
- ▶ \$5,000 minimum, \$25 million maximum loan amount;
- ▶ Up to 85% loan guarantee
- ▶ Rates and terms negotiated with the lender and subject to USDA approval. Maximum term of
  - ▷ 30 years for real estate
  - ▷ 15 years for machinery and equipment
  - ▷ 7 years for capital loans
  - ▷ 30 years for combined real estate and equipment

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## Grants: REAP

### ▶ Renewable Energy System Grants:

- ▷ \$2,500 minimum
- ▷ \$500,000 maximum

### ▶ Energy Efficiency Grants:

- ▷ \$1,500 minimum
- ▷ \$250,000 maximum

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## Renewable Energy Example Projects

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## AHA High Energy Efficiency Initiative

- ▶ Energy efficiency measures at 97 homes
- ▶ Evaluations of sample homes under NYSERDA program
- ▶ \$600,000 ICDBG
- ▶ Combined with NYSERDA incentives
- ▶ Meets 25 percent leveraging and allowed expanded project

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## AHA Solar Farm Serving Sunrise Acres and more than 100 homes

- ▶ 1,247 kw DC
- ▶ Pre-payment of PPA with DOE and HUD grant
- ▶ Option to purchase after year 6 for FMV which is likely to be less than remaining PPA amount
- ▶ Value of Distributed Energy Resources (“VDER”) Billing credits at approximately 10¢ per kWh
- ▶ LMI Tribal member subscribers
- ▶ Subscribers pay small percentage of value of credits

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### AHA Solar Farm

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## Spokane Indian Housing Authority “Children of the Sun Solar Initiative”

- ▶ About 650 kW
- ▶ Serving 22 total buildings (9 Tribal buildings, 12 homes and 11 duplex units)
- ▶ Total of 32 buildings and homes
- ▶ Fully paid for with \$1 million DOE grant, tax credits worth about \$600,000 plus Wells Fargo grant of about \$500,000.
- ▶ \$80,000 to tribal entity that is being trained to maintain systems.

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## Children of the Sun Solar Initiative

Type of Building	Size of PV System (kW)	Projected Energy Annual Production (kWh)
9 Tribal Buildings	456.6	562,003.0
12 Homes	133.2	165,537.0
11 Duplex Units	62.7	80,972.0
<b>22 Total Buildings</b>	<b>652.5</b>	<b>808,512.0</b>

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### AHA Solar Farm

Photo courtesy Akwesasne Housing Authority

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### AHA Solar Farm

Photo courtesy Akwesasne Housing Authority

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### Spokane Tribe Sockeye Housing

Photo courtesy Spokane Indian Housing Authority

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### Spokane Tribe Senior Housing

Photo courtesy Spokane Indian Housing Authority

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### Spokane Tribe Fish Hatchery

Photo Courtesy Spokane Indian Housing Authority

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## Spokane Tribe Administration Building

Photo courtesy Spokane Indian Housing Authority

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## Spokane Tribe Sockeye Housing

Photo courtesy Spokane Indian Housing Authority

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### Spokane Tribe Senior Housing

Photo courtesy Spokane Indian Housing Authority

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### Spokane Tribe Fish Hatchery

Photo Courtesy Spokane Indian Housing Authority

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## Spokane Tribe Administration Building

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## AGREEMENTS THAT MAKE IT WORK

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## ITC: LLC Operating Agreement

- ▶ Provides rules for Tribe's partnership relationship with investor.
- ▶ Capital contributions by Tribe and investor.
- ▶ Covers both construction and operation & maintenance.
- ▶ Sets cash flows to investor and Tribe.
- ▶ Rights to sell and purchase investor's interests.

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## ITC: Documenting LLC's Ownership and Access

- ▶ Monetizing tax credits requires a lease or permit to establish the LLC's control of the wind or solar facility for tax purposes.
- ▶ Lease: BIA Part 162 Leasing Regulations
  - ▷ Include Special Provisions for Wind and Solar Resource Leases.
  - ▷ Still Require BIA approval of all leases.
  - ▷ Leave in doubt whether agreements for installation and access are "permits," "rights of way" or leases.

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## ITC: Documenting LLC's Ownership and Access

- ▶ Permits avoid BIA approval process. According to 25 C.F.R. 162.007, they generally:
  - ▶ Do not grant a legal interest in Indian land;
  - ▶ Are of shorter terms than leases;
  - ▶ Give permittee has a non-possessory right of access, not a right of possession or right to "limit or prohibit access by others;"
  - ▶ Are revocable "at any time."

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## ITC: Tribe's Deal with the Design-Builder

- ▶ The LLC, owned by the Tribe (1%) and the Investor (99%), enters into a contract with the Design-Builder to install the system
- ▶ May be an AIA A141 Standard For of Agreement Between Owner and Design-Builder.
- ▶ Issues include:
  - ▷ Federal Procurement Requirements
  - ▷ Subcontracting, employment and training opportunities for tribal members
  - ▷ Warranties

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## ITC: Procurement Strategy to Maximize Benefit to Tribe

- ▶ Procurement may seek design-builder who can not only install facilities but also bring ITC investor who could potentially help finance up-front installation and transaction costs, reducing Tribe's out-of-pocket costs

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## ITC: Power Purchase Agreement

The Power Purchase Agreement (“PPA”)

- ▶ Determines what the Tribe/TDHE will pay to the LLC for energy during the payback period.
- ▶ Could some be less than what the Tribe/TDHE currently pays to state-regulated utility.
- ▶ Will constitute part of the investor's “return on investment.”

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## Interconnection and Net Metering Agreements

- ▶ Agreements with the utility that allow the LLC to
- ▶ connect to the grid and
- ▶ receive retail credit for the energy produced by the solar facility when the Tribe isn't using the energy
- ▶ If no net metering, important to use all energy on site. (FCPC did this for larger systems.)

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## Tribal Utility Ordinances

- ▶ A tribal ordinance may play an important role
- ▶ Exercise of sovereignty
- ▶ Authorizes sales of energy from wholly-owned Tribal entities to wholly-owned Tribal entities on Reservation lands
- ▶ Strengthens the Tribe's case if the state should seek to impose restrictions on the LLC, Tribe or utility under state law. (Cf. White Mountain Apache v. Bracker cases)

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## Take Aways

- ▶ There are significant federal and state incentives for renewable energy and energy efficiency
- ▶ These incentives can often be combined with investment tax credits and depreciation benefits to dramatically reduce the cost of renewable energy and energy efficiency development
- ▶ Any remaining costs can normally be financed through energy savings

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## Next Steps / Strategies

- ▶ Identify priority project(s)
- ▶ Identify federal, state utility and other grants and other incentives that best match the priority project(s)
- ▶ Confirm tax credits that apply to the priority projects
- ▶ Pursue federal and state grants and incentives
- ▶ Identify partners, e.g., installer and investor

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## Getting Help Getting Going

HUD ONAP Training/Technical Assistance Process:

- ▶ The TDHE sends regional coordinator a Request for Training/Technical Assistance. To get the form, go to [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/ih/codetalk/training](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/codetalk/training) and click on the link “Technical Assistance Request Form”
- ▶ HUD contacts one of the authorized T/TA providers.
- ▶ G&K is a subcontractor in the area of renewable energy finance and development.

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