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LIFE OF AN LIHTC PROJECT IN 60 MINUTES

October 9, 2019
Southwest Tribal Housing Alliance

Political Support for the Project

- What is a Tax Credit?
- Training Needs on tax credits for Tribal Council members, Housing Board members & housing staff
- Buy-in for Tribal Council / Housing Board members & housing staff

Political Support for the Project

- Provide a Project Summary that includes an overview of the planned project & how, the budget, funding sources & construction timeline

- Explain the role that the Tribal Council / Housing Board will need to play to ensure the Project's success

- Plan Community Meetings to provide information about planned project

**Remember: Elected leadership changes over the life of a Project. Be prepared to take the time to educate new staff, Board, & Council members about your housing programs/projects*

- Develop a

- Prioritize Projects
  - Political
  - Importance
  - Difficulty
  - Logistics
  - Funding Programs
- Funding Application Cycles
- Use of Funds - Deadlines

Priorities & Timing

- Strategic Planning / Needs Assessments
- Training/Technical Assistance
- Networking
- Visit successful projects
- Revisit policies & procedures
- Bulk up the waiting list
  – *Community Outreach*
- Build confidence in staff
- Be specific on how the program(s) would impact YOUR housing authority & reservation

Planning Tools/Strategies

Planning Considerations:

Determine Housing Needs - Population

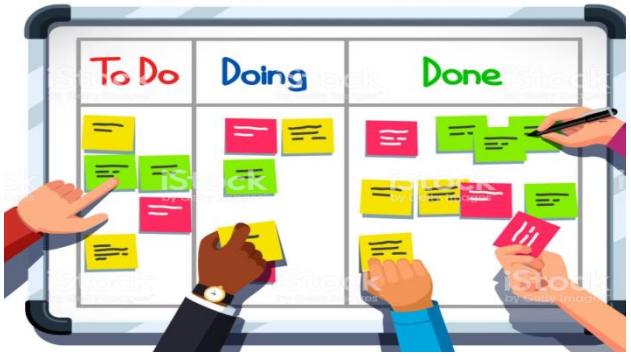
- Elderly
- Families
- New Households
- Veterans
- Disabled
- Students
- Homeowners
- Renters
- Supportive Housing
- Homeless
- Low / Moderate / High Income

Planning Considerations:

Define the Project

- ✓ Project Location(s)
- ✓ New Construction or Rehabilitation
- ✓ Number of Units
- ✓ Single Family, Duplex, or Apartments
- ✓ Rental or Homeownership
- ✓ Distribution of Bedroom Types
- ✓ Square Footages of each Bedroom Type
- ✓ Community Space
- ✓ Populations Served
- ✓ Amenities
- ✓ Green / Energy Efficient Components
- ✓ Primary Financing Source(s)
- ✓ Tribe or TDHE's Contribution up front
- ✓ Tribe or TDHE's Contribution after Completion

Additional Planning for the Project



- ❑ What funds are available to commit to the project?
- ❑ Have your annual audits been good?
- ❑ What training has your staff had to prepare for project?
- ❑ Have all essential staff been included in project planning?
- ❑ Did the community / prospective tenants have input?

Planning Considerations:

Determine Financing Programs

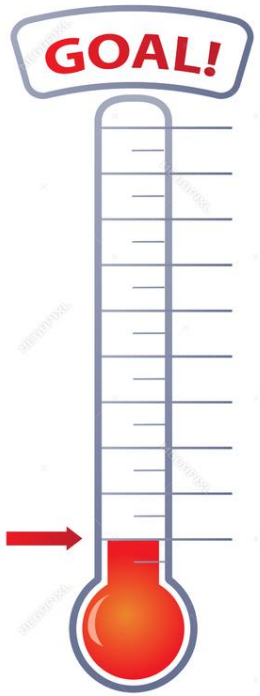
- Tribal
- NAHASDA
- ICDBG (grant)
- Low Income Housing Tax Credits (LIHTC) (equity)
- Housing Trust Funds (typically grant)
- HOME Funds (both)
- Affordable Housing Program (grant)
- Title VI (loan)
- Section 184 (loan)
- BIA / IHS (typically grant)
- Rural Development (both)
- New Markets Tax Credits (NMTC) (equity)
- Solar Tax Credits (equity)
- Other

Financing Strategies

- Money that doesn't have to be paid back – grants & equity
- Funding Available
- Compliance Requirements
- Competitiveness of Program
- Gap or Leverage Required
- Predevelopment &/or Bridge Funds
- Economies of Scale

Planning Considerations:

Realistic Goals & Timelines



- What are the deadlines for the funding sources you wish to apply for?
- What is a realistic construction schedule based on your local weather seasons?
- What is a realistic schedule for when you will need the actual funds?

Planning Considerations:
Realistic Goals & Timelines

Develop a “real” budget to include all line items needed for your project-including:

- **Soft Costs** - Fees for: legal, accounting, architect, market study, environmental, capital needs assessment

- **Hard Costs** - Infrastructure & Construction Costs
  *NOTE: when developing estimates utilize recognized construction estimating resources as well as internal & local knowledge of current building costs

Planning Considerations:

Determine Housing Needs

New Construction

- ❑ Reduce your Waiting List
- ❑ Dem&
- ❑ Alleviate Overcrowding
- ❑ Homeownership
- ❑ Rental
- ❑ Green components
- ❑ Availability of L&
- ❑ Environmental Review
- ❑ Infrastructure
- ❑ Infill

Planning Considerations:

Determine Housing Needs

Rehabilitation

- ❑ Homeowner Rehab
- ❑ Rental Rehab
- ❑ Manage Maintenance Costs
- ❑ Improve Energy Efficiency
- ❑ Environmental Concerns
- ❑ Increase Space
- ❑ Increase Amenities
- ❑ Accessibility

Planning Considerations:

Determine Housing Needs

Community Space

- ❑ Fencing
- ❑ Housing Office
- ❑ Community Facility Building
- ❑ Playground / Basketball Court
- ❑ Walking Trails
- ❑ Social / Resident Services
- ❑ Swimming Pool
- ❑ Community Gardens
- ❑ Police/Fire Substation
- ❑ Resident Manager Unit

Low Income Housing Tax Credits

(LIHTC) - EQUITY

- Developed by Congress in 1986 to privatize affordable rental housing & allow the federal government to administer funding opportunities rather than manage housing IRS Program
- Treasury Department (IRS) program – Not HUD
- Section 42 of the Internal Revenue Code (IRC) defines the LIHTC Program
- Generates tax credits for investors
- Dollar for Dollar reduction in tax liability
- Partnership Structure

Low Income Housing Tax Credits (LIHTC) - EQUITY

- Additional guidance is provided through revenue rulings, Technical Advice Memorandums (TAMs), Notices, Private Letter Rulings (PLRs), etc.
- The LIHTC is a permanent part of the code – not subject to appropriation
- Primarily used by institutional investors
- Not a tax deduction
- The credits offset an investor's taxes over a 10-year period
- Recapture period is for initial 15 year period

LIHTC

- Apply through the state allocating agency
- Typically funds 80% or more of project costs
- Income & rent restrictions
  - Federal rule – Maximum of 60% AMI income & gross rent levels
  - Competition for tax credits may require lower income & rent levels - 30% - 50% AMI
  - Gross rents include an utility allowance
- Incomes must be certified at move-in but may increase after that time with no penalty
  - Must include 100% of the per cap income from gaming
  - The first $2,000 in per cap income generated trust assets is excluded

LIHTC

- There is a:
  - 15 year mandatory compliance period
  &
  -15 year extended use period

*NOTE: Extended use periods may be longer based on State HA requirements

- The tax credit project can be structured as either permanent rental or an eventual homeownership which requires rental for the first 15 years & then allows the tenants to purchase their homes

LIHTC - How does it Work?

- Developers compete for tax credits through their state allocating agency
- Investors purchase the credits & provide equity for the construction of the project
- The project is built with a limited amount of NAHASDA &/or other Tribal debt
- Allows for more units for less money & more units over less time

LIHTC - How does it Work?

- Credits are initially awarded based on the lower of the cost caps or the estimated construction costs

- Credits are reevaluated at final close out & the final allocation will be the lesser of the credits initially awarded or the final construction costs

- Credits are calculated depending on project type
  - 9% credits - New construction & rehabilitation
  - 4% credits - Bond projects or acquisition
    - Currently 3.23%

LIHTC - How does it Work?

- Tribal construction loan = total dev. cost (TDC) less investor equity
- Investor equity = annual credits x 10 x price per credit (i.e. $0.78 - $0.82)
- Tribal loan will typically consist of NAHASDA or other Tribal funds &/or the value of assets for a rehab project
- A developer' s fee is paid (typically to the tribe or housing authority) for completing the various tasks necessary to bring the project to fruition
- Usually paid 3 months after the project completes rent up
- Other gap financing sources may be available:
    - AHP, ICDBG, HOME, RD, other state housing funds, etc.

LIHTC - How does it Work?

- If your project is in a QCT or a DDA
  - then you receive 30% more credits

- Qualified Census Tract (QCT)
- Based on income levels – Defined by Census data

- Difficult Development Area (DDA)
- Based on costs of development – Designated by HUD

- The Housing & Economic Recovery Act (HR 3221) enacted in 2008 allows states to determine DDAs

LIHTC

Structure

- IRS requires tax credits to go through a partnership structure
- Credits & losses flow based on percentage of ownership
- Limited Partner is the investor & receives a 99.99% interest
- General Partner is the managing partner
  & receives an 0.01% interest

LIHTC

Structure

Limited Partner = Limited Liability

- Limited ability to direct – should only do so through the Limited Partnership Agreement (LPA) & Exhibits to the LPA
- Provides $ for development only
- Visits the property on an annual basis to ensure compliance with the program
- Collects documents quarterly & annually

LIHTC

Structure

Tribal Entity = General Partner = Managing Partner

Managing Partner = Decision maker

- Depended on for the day to day operations of the project (may contract out some of the work to a management agent or compliance consultant, but is ultimately responsible)
- Provides $ for development (fills the gap – also funds the pre-development phase) & helps fund the operations in the event that the rent collected is not enough to pay for the expenses
- Ensures compliance with the program by submitting quarterly & annual reports to the investor & state agency

LIHTC

Investor

- Willing to invest, but considers risk & return
- Provides $ for development phase, but receive their return over 15 years
- Have to predict that they will have a sizable tax liability for the next 10+ years
- Must depend on the capacity of the general partner to perform & comply with the program requirements
- Depends on guarantees from the Tribal Entity to alleviate risk

New Construction Example

	Your Project		TC Project		Difference
Cost	$ 4,050,000		$ 4,957,500		
Less: Ineligible Costs			$ (200,000)		
Equals: Basis			$ 4,757,500		
Basis Boost			$ 6,184,750		
Times: Credit Rate (9%) x 10			$ 5,566,275		
Cost from above	$ 4,050,000		$ 4,957,500		$ 907,500
Less Investor Equity @ $0.80	$ -		$ (4,453,020)		$ (4,453,020)
Less AHP or ICDBG					$ -
Equals: Tribal Contribution	$ 4,050,000		$ 504,480		$ (3,545,520)
Less: Developer Fee (15%)	$ -		$ (607,500)		$ (607,500)
Equals: Final Cost	$ 4,050,000		$ (103,020)		$ (4,153,020)
# of units	$ 30		$ 30		
Cost/Unit	**$ 135,000**		**$ (3,434)**		**$ (138,434)**

Rehabilitation Example

	Your Project		TC Project		Difference
Cost	$ 2,250,000		$ 4,387,500		
Less: Ineligible Costs			$ (200,000)		
Equals: Basis			$ 4,187,500		
Basis Boost			$ 4,993,750		
Times: Credit Rate (9%/3.2%) x 10			$ 3,624,375		
Cost from above	$ 2,250,000		$ 4,387,500		$ 2,137,500
Less Investor Equity @ $0.80	$ -		$ (2,899,500)		$ (2,899,500)
Less AHP or ICDBG					$ -
Less Value of CAS			$ (1,500,000)		$ (1,500,000)
Equals: Tribal Contribution	$ 2,250,000		$ (12,000)		$ (2,262,000)
Less: Developer Fee (15%)	$ -		$ (337,500)		$ (337,500)
Equals: Final Cost	$ 2,250,000		$ (349,500)		$ (2,599,500)
# of units	$ 30		$ 30		
Cost/Unit	**$ 75,000**		**$ (11,650)**		**$ (86,650)**

LIHTC

Steps

- ❑ Pre-Application
- ❑ Application
- ❑ Reservation
- ❑ Choose an Investor
- ❑ Due Diligence
- ❑ Legal
- ❑ Construction
- ❑ Lease Up
- ❑ Close Out
- ❑ Operations
- ❑ Post 15 Year
- ❑ Closing

LIHTC

Pre-Application

- The state housing agency creates a Qualified Allocation Plan (QAP) or similar document
- There are public comment periods & meetings
- QAP is adopted
- QAP, application documents, important dates, etc. are posted on the web

LIHTC Application

Planning

- Defining the project
- Development Team
- Cost Estimates

Application Submittal

- Threshold
- Scoring
- Required Exhibits
- Throw Away Documents

Wait

- Deficiency Corrections (if allowed)

LIHTC

Reservation

- Preliminary Award

- Final Award

  - ✓ Reservation Letter
  - ✓ Additional Documentation Submittals
  - ✓ Reservation Fees
  - ✓ State Reporting Requirements
  - ✓ Timelines & Milestones

LIHTC

Choose an Investor

- ❑ Provide updated numbers & schedules to multiple investors
  - Schedule needs to be more specific with a building by building breakdown of construction start, construction completion, & lease up

1 Receive Letters of Intent (LOI)

- Price
- Equity Schedule
- Fees
- Adjusters
- Report Requirements
- Other Terms

2 Select Investor or Syndicator

- Price
- Equity Schedule
- Indian Country Experience
- Fees

LIHTC Due Diligence Checklist

- ❑ Project Based Due Diligence
- ❑ ALTA Survey
- ❑ A & E
- ❑ Environmental Report
- ❑ TSR
- ❑ L& Lease / Sublease
- ❑ Insurance
- ❑ Development Team Due Diligence
- ❑ Capacity
- ❑ Background
- ❑ Financials / Insurance
- ❑ Construction Contract
- ❑ Sponsor Based Due Diligence
- ❑ Financials
- ❑ Capacity
- ❑ Policies / Procedures
- ❑ Questionnaires

LIHTC

Legal

- ☑ Attorneys
  - Investor's Attorney
  - Syndicator's Attorney
  - General Partner's Attorney
  - Partnership's Attorney
  - Special Counsel (if needed)

- ☑ Documents
  - Loan Documents
  - Management Agreements
  - Title Guaranty
  - Housing Assistance Payments
  - Resolutions
  - Acquisition Documents
  - Partnership Documents

LIHTC

Closing

- Due Diligence Materials
- Legal Documents
- Investor / Syndicator Internal Approvals
- Amended & Restated Limited Partnership Agreement
- Partnership Checking Account
- Attorneys' Opinions

LIHTC

Construction

- General Contractor vs. Subcontractors vs. Construction Management
- Monthly Draws
- Monthly Architectural Inspections
- Reporting to State Agency
- Communication with the Accountant
- Change Orders
- Contingency Account
- Placed In Service Requirements
  - Federal
  - Investor
- Certificates of Occupancy
- Internal Coordination with Occupancy & Resident Services

LIHTC

Lease Up

- Internal Coordination with Development / Construction Team
- Wait List
- Special Populations
- Selection of Tenants
- Pre-Leasing
- Paperwork
- Move-In Inspections

LIHTC

Close Out

- Punch List
- Accountant's Cost Certification
- Form 8609 Application
- As Built Surveys
- Other Documentation
- Final Pay (Developer's Fee)

LIHTC

Operations

- Partnership Annual reporting requirements
  - Tax Returns
  - Audited Financial Statements
  - State HA Reporting
  - Investor annual reports

- Budget preparation
- Insurance: coverage & claims
- Annual Tenant Re-Certifications
- Maintenance
- Inspections: Routine, State & Investor
- Compliance issues: Form 8823's

LIHTC Operations (Reporting)

- IRS:
- Annual tax returns prepared by a qualified LIHTC accounting firm
- No outstanding compliance issues as reported by State Housing Agency

- State:
- Annual Reporting
- Inspection of units & tenant files

- Investor:
- Annual Reporting & inspection of units
- Audited financial statements & tax returns
- Interim reporting - occupancy & finance

LIHTC

Post 15 Year

- Conversion to homeownership vs. long-term affordable housing units

- Closing out initial partnership
- Resignation of investor/limited partner
- Moving units back into HA books/inventory
- Termination of lease/sublease
- Reserve Account Funds

- Rehabilitation of units / Re-syndication using the LIHTC program

RTHAWK

HOUSING ALLIANCE

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