

**Financing Tribal Energy Projects  
Northwest Tribal Energy  
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# Overview

- Stages of project development
- Potential sources of funding for each stage of project development
- Traditional structures for financing a renewable energy project
- Limitations on traditional structures when a tribe or tribal entity participates in a renewable energy project
- Alternative structures for tribal participation in a renewable energy project

# Stages of Project Development

- Stages of project development
  - Pre-construction development
  - Construction
  - Ownership and operation
- Financing needs and participants will likely evolve through each stage of project development

# Potential Funding Sources

- Equity investments by tribe
- Equity investments by other parties
- Tax equity investors
  - Production tax credits (“PTC”)
  - Investment tax credits (“ITC”)
  - Depreciation
- Debt
  - Commercial lender
  - Bonds (e.g., CREBs)
- State incentives (e.g., Oregon BETCs)
- Loan guaranties
- Renewable Energy Certificates (“RECs”)
- Other

# Pre-Construction Financing

- Pre-construction activities
  - Feasibility analysis
  - Permitting
  - Engineering
  - Procurement
  - Power sales agreement
- How does the tribe fund those activities?
  - Tribe
  - Grants
  - Loans
- Development partner? Could bring knowledge and capital.

# Construction Financing

- How does the tribe fund construction of the project?
  - Additional equity from the tribe or other investors
  - Sale of project
  - Construction loan
  - Bonds
    - Clean Renewable Energy Bonds (CREBs)
  - Other

# Post-Construction Financing

- Long-term, post-construction financing of the project?
  - Equity investors
  - Debt
    - Commercial lenders
    - Bonds
      - ❖ CREBs
      - ❖ Other
  - Tax equity investors
    - PTCs
    - ITCs
    - Depreciation
  - Section 1603 grants
  - RECs

# Production Tax Credit

- Production tax credit available upon the sale of electricity produced from certain qualified energy resources like wind, biomass, landfill gas, geothermal
- 10 year credit (5 years in some cases)
- 2.2 cents per kWh for wind, closed-loop biomass, and geothermal (2010)
- 1.1 cents per kWh for open-loop biomass, small irrigation, landfill gas, trash facilities, qualified hydropower facilities and marine and hydrokinetic renewable energy facilities (2010)
- Wind projects must be placed in service by December 31, 2012
- Other projects must be placed in service by December 31, 2013

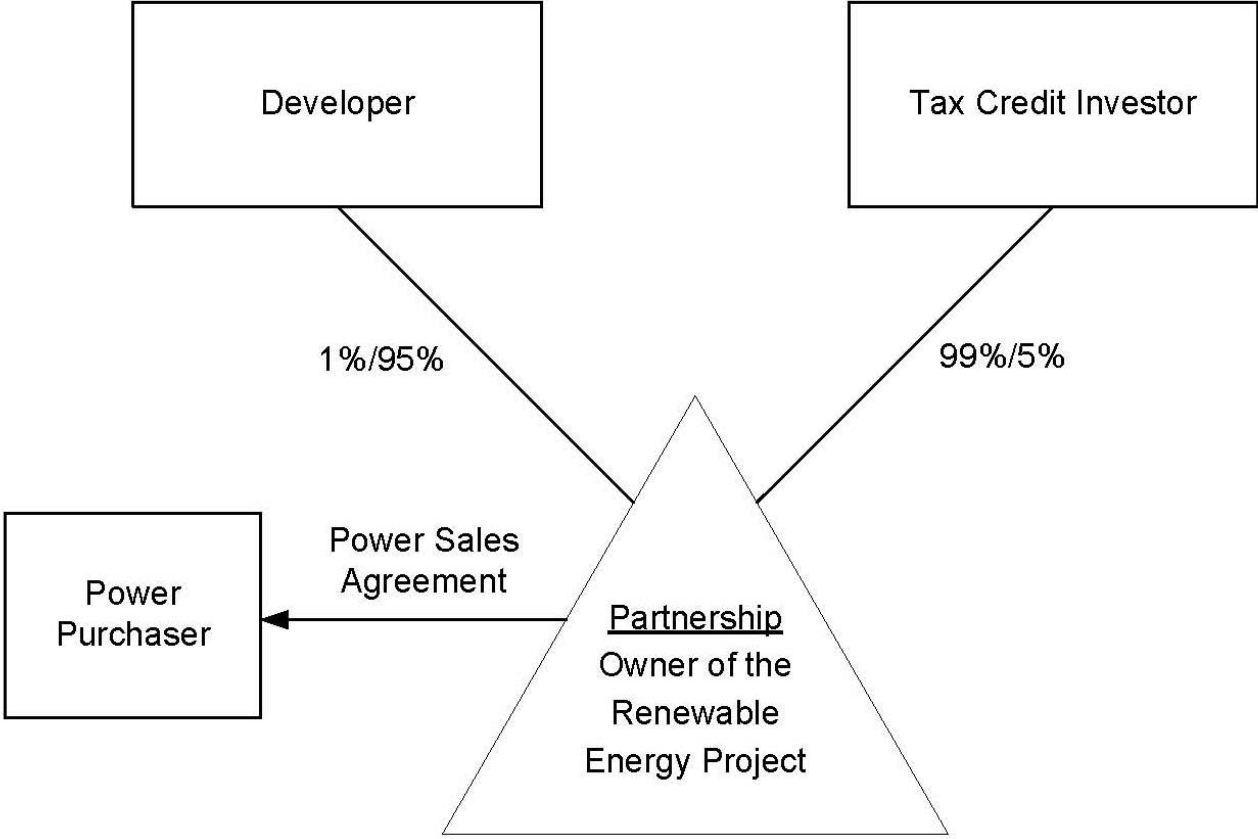
# Investment Tax Credit

- Investment tax credit equal to 30% of the cost basis in solar, wind and certain other renewable energy projects
- 10% credit with respect to combined heat and power system and certain other property
- Expires 12/31/2012 for wind; 12/31/2013 for biomass; 12/31/2016 for solar
- One significant difference between the ITC and the PTC is that the entire amount of ITC is available in the year the energy property is placed in service
- Recapture if the project is disposed of within the five-year period after the project is placed in service
- A project eligible for an ITC can be leased to another party, and the lessor can still qualify for the ITC
- If the project is leased to a tax-exempt party, then it will not qualify for the ITC

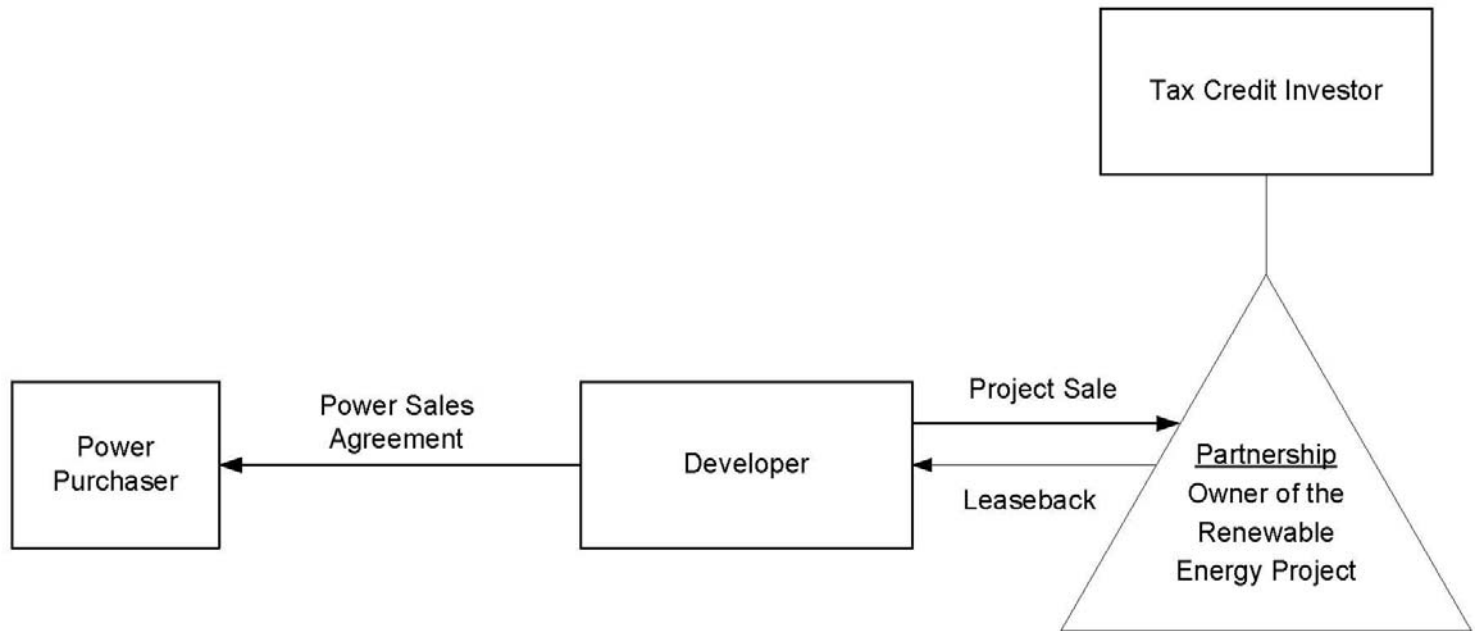
# Traditional Structures for Monetizing Tax Credits and Depreciation

- Most developers and tribes don't need tax credits (like PTCs or ITCs) or depreciation deductions
- Current rules do not allow project developer to simply transfer or sell tax credits or depreciation in exchange for cash payments
- Structures available where an investor with a tax appetite makes an investment in a project in exchange for tax benefits arising from the project (e.g., partnership flip and sale leaseback structures)
- Depending on the market, federal tax incentives can fund in excess of 50% of the cost of certain renewable energy projects
- Proposed legislation to permit tribes to transfer credits; would not solve depreciation issue

# Partnership Flip Structure



# Sale Leaseback Structure



## Section 1603 Grants

- Section 1603 of the American Recovery and Reinvestment Act provides for payment of cash grants in lieu of PTCs or ITCs.
  - Eliminates need for a tax credit investor
  - Does not provide payment for depreciation
  - 30% cost basis grant for wind, biomass, solar and other
  - Construction on the project must begin by 12/31/2010
  - Facility must be placed in service by dates to qualify for PTCs or ITCs
  - Grant is not available to projects owned by any federal, state or local government, ***including an Indian tribal government***, a tax-exempt organization described in IRC § 501(c), or any partnership or other pass-through entity of which any of the foregoing is a partner or holder of an equity interest
  - Limitation on tax-exempt participants can be eliminated through a blocker corporation
  - Proposed legislation to extend grant program

# Limitations on Participation by a Tribe in Certain Structures

- Tax-exempt use property
  - Property leased to a tax-exempt entity
  - Property leased to or owned by a partnership with a tax-exempt partner
- Tax-exempt entity includes an Indian tribal government, tribal enterprise or other tribal entity not subject to tax
- Tax-exempt use property is not eligible for accelerated depreciation. Instead depreciated over a longer period of time under the alternative depreciation system.
- Makes depreciation deductions less attractive to tax equity investors

# Limitations on Participation by a Tribe in Certain Structures Continued

- Sale leaseback transactions
  - Under federal tax rules if a project is leased to a tribe or other tax-exempt entity the project will not qualify for investment tax credits
  - This often precludes a sale leaseback transaction directly with a tribe or other tax-exempt entity
  - Consider using a taxable blocker corporation--see requirements and possible election under IRC Section 168(h)(6)(F)
- Section 1603 grants
  - Grant is not available to projects owned by any federal, state or local government, ***including an Indian tribal government***, a tax-exempt organization described in IRC § 501(c), or any partnership or other pass-through entity of which any of the foregoing is a partner or holder of an equity interest
  - Consider using a blocker corporation

# Alternative Structures (Sale of the Project)

- Pre-construction development by the tribe followed by a sale of the project prior to being placed in service
  - Tribe recovers development costs, plus a profit and/or development fee
  - Purchaser is able to take advantage of PTCs, ITCs or grants, and depreciation
  - Possible option to repurchase project by tribe

# Alternative Structures (Section 1603 Grant)

- Tribe could establish a wholly owned taxable subsidiary (“blocker corporation”) for purposes of holding its interest in the project
- Project company then eligible for Section 1603 grant
- Remaining portion of project funded with debt and equity

# Alternative Structures (Land Lease and Royalty)

- Tribe could lease land to project owner for a wind, solar or other project
- Payment for land could be structured as a percentage of payments received by the project owner under a power sales agreement
- Owner of the project would be eligible for PTCs, ITCs or 1603 grant and depreciation
- Tribe may be able to negotiate an option to purchase the project after certain number of years
- Tribe may be able to negotiate fees for other services provided to the project owner

## Alternative Structures (Loan by the Tribe to Project Owner)

- Tribe could loan funds to project developer and receive interest payments during term of the loan
- Project developer would be eligible for PTCs, ITCs or 1603 grants and depreciation
- Tribe could negotiate right to purchase project after period of years, possibly in exchange for cancellation of principal amount of note

# Alternative Structures (Tribal Ownership of the Project)

- Forgo the benefits of ITCs, PTCs or Grants and depreciation and finance the project with debt and equity
- Possible source of debt - CREBs
  - Indian tribal governments are eligible to issue CREBs to finance qualified renewable energy facilities (e.g., wind, biomass, geothermal, solar, landfill gas)
  - Federal government effectively pays a portion of the issuer's interest expense through a federal tax credit available to the bondholders in lieu of interest
  - The ARRA increased the cap on CREBs by \$1.6 billion, with one third of that increase allocated to state, local and Indian tribal governments
  - The application for the most recent allocation of CREBs was due August 4, 2009
  - The 2010 Hiring Incentives to Restore Employment Act ("HIRE Act") permits issuers of CREBs to receive a cash payment from the federal government in lieu of a tax credit

# Alternative Structures (Other)

- A tribe could combine some of the alternative structures discussed
  - e.g., sell the project and negotiate land lease for royalties or other payments
- A tribe could also enter into a power purchase agreement with the owner of the project giving the tribe or a tribal enterprise the right to purchase all or part of the power generated by the project
  - IRC section 7701—certain powers sales agreements treated as leases.

# Contact Information

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