



Native Americans and the Low Income Housing Tax Credit Program:

Lessons from the California Tribal Pilot Program

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For many years tribes in California have struggled with drastically underfunded federal housing programs that have left them unable to meet even basic housing needs. Much tribal housing was built under older Bureau of Indian Affairs programs and regulations, resulting in homes that are 80 years old and need of substantial rehabilitation or replacement. With tribal housing budgets often as little as \$50,000 per year, tribes have had to face a devil's dilemma: either building very few new homes each year or carrying out wider band-aid rehab to keep aging homes barely functional. With little new housing being built on California's Native land, younger households face the dilemma of either leaving

their tribal homeland or remaining in deteriorating homes that sometimes house three generations in crowded conditions. It is out of these desperate circumstances that tribes are now searching for new funding sources to address these nearly third-world housing conditions.

The establishment of California's first Native American Low Income Housing Tax Credit (LIHTC) set-aside, in the form of a Tribal Pilot Program, was the culmination of efforts by tribal housing agencies, Native American housing coalitions, rural affordable housing advocates and state and federal housing agencies. The most immediate outcome of these efforts was the first LIHTC award to an Indian Tribe in California since the program

was first established in the state nearly thirty years ago. This first success portends even greater advancement of California's Native communities and their housing and economic development plans – some of which are already unfolding. It also offers important lessons for affordable housing advocates across the country on how to meaningfully address the consistently deteriorating and inadequate housing conditions within tribal communities, and the formal and informal exclusion of tribes from mainstay affordable housing programs and resources which tribes so desperately need.

The California LIHTC success also provides an example of how alliances can be formed with the mainstream affordable housing community, state and federal housing programs, and Native American Communities to begin to break down longstanding barriers of isolation and inaccessibility. In this article, we discuss how the key players in this alliance came together and the critical processes that proved decisive in establishing the program through the development of tangible resources, provision of technical assistance, and advocacy. We reflect on the importance of the progressive engagement of all parties in a process of mutual education, including the partnership of a proactive funding agency committed to outreach and responsiveness to tribal housing needs. Finally, we describe the design of a pragmatic program, informed by data and an understanding of tribal housing development, governance and organizational structures, and demonstrated need.

A Bitter Legacy of Marginalization and Need

The lessons learned from developing the Tribal Pilot Program are pertinent for other American regions because California's history of tribal decimation, land dispossession, social isolation, poverty, and substandard tribal housing conditions typify the challenges facing Native American communities throughout the United States. These conditions closely reflect those of other tribes within the U.S., even though California's Native population consists of over 100 smaller tribes that individually cover more limited land areas than those of larger tribes in other states. Tribes in California, like tribes across the country, were subjected to a tortured history of small-scale massacres and theft as the United States expanded and developed. Combined with economic stresses from surrounding incompatible land uses and pressures to culturally assimilate, Native peoples' systems of social organization, customs, and traditional economies were severely damaged and, in some cases, altogether obliterated.

Unlike large tribes in other states, however, such as the Hopi, Navajo, or Sioux, with large populations, natural or recreational resources, and large tracts of land, many California tribes have far greater difficulty than larger

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tribes developing large-scale economic resources, sizable housing projects, or a full range of services and facilities. Most California tribes' relatively small size and rural locations prevent them from achieving the efficiencies and economies of scale that underlie more cost effective strategies for housing development elsewhere.

Their smaller populations also significantly disadvantage them in accessing and utilizing the primary Indian housing funding programs due to the restructuring of these programs in the late 1990s. The Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA) reorganized the system of housing assistance provided to Native Americans through the Department of Housing and Urban Development (HUD), by consolidating existing programs into the formula-based Indian Housing Block Grant (IHBG) and the Title VI Loan Guarantee. The formulas used to allocate IHBG funds favor tribes with large populations, such as the Navajo or Sioux. While large tribes such as these might receive annual IHBG allocations in the millions of dollars, the much smaller tribes of California typically receive IHBG allocations between approximately \$50,000 and \$100,000 to operate and maintain their existing housing. This low level of funding must cover all expenses related to housing such as staff salaries, repairs, supplies, administration and new construction. By scrimping and saving small IHBG fund awards and perhaps securing a highly-competitive Indian Community Development Block Grant – which are capped at \$605,000 per award – tribes can sometimes slowly build a small number of homes every few years. This piecemeal, small-scale style of development is economically inefficient and, for the vast majority of tribes, will never enable them to catch up with housing need.

Additionally, despite the urgent need for affordable tribal housing, on the state and regional levels, Indian Tribes are barely recognized and almost never engaged in housing policy and program planning. Mainstay state affordable housing programs rarely make awards to tribes; for instance, in California only one HOME program funding award has ever been made to a tribal housing organization. Even programs that should be available to assist individual tribal households, such as First Time Homebuyer Programs or Homeowner Rehabilitation

Loans, are underutilized because of lack of outreach and administrative regulations that make the programs inaccessible to tribes and/or conflict with tribal sovereignty and governance systems. Until recently, California state agencies have conducted little outreach to tribes to encourage utilization of state resources and gather information on tribal housing needs.

Given these conditions, the larger affordable housing community would seem a natural ally for Native communities in working with various funding programs to improve outreach and accessibility to tribes. Unfortunately, much of the mainstream affordable housing world is largely separated from and unaware of Indian tribes in terms of their potential as project partners or needs as recipients of program services. All too often, this unfamiliarity leads to programs and funding resources being designed largely for their primary users, such as public housing authorities, nonprofit and profit-motivated developers, and faith-based organizations, without regulatory provisions for the unique systems and practices of tribal governments. As individual sovereign nations with laws, governance, languages, customs, cultures, and traditions distinct from those of other tribes and the United States, many tribes often have only limited engagement with and knowledge of affordable housing providers, programs, and agencies outside their traditional Indian funding sources. Little outreach from or engagement with the larger affordable housing world, has led to wariness, skepticism, and distrust among many Native American communities toward mainstream housing programs. Furthermore, tribes that have attempted to access such programs have been confronted with programmatic regulations, procedures, forms, and application rating systems that are at odds with their unique political, legal, and organizational status.

Bridging the Barriers

Although California's LIHTC Tribal Pilot Program began in 2014, the foundation was laid over the last 10 years by nonprofit organizations that reached across the divide between Native American communities and mainstream affordable housing communities to provide technical assistance, training, advocacy, and outreach to Indian tribes and housing organizations. Along with the California Coalition for Rural Housing (CCRH), groups such as the Rural Community Assistance Corporation (RCAC), the Enterprise Foundation, and the Housing Assistance Council (HAC) have proactively engaged and worked with Native communities on a long-term basis to build capacity, introduce new resources and catalyze programs and projects. Decisive investments from the U.S. Department of Agriculture (USDA)'s Rural Community Development Initiative (RCDI) program funded CCRH's Tribal Capacity Housing Development Program (THCDP) over the last

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eight years, which enabled CCRH to carry out intensive, customized and ongoing work with Indian Tribes.

This education and training steadily improved tribes' competitive status in vying for housing funds. California's first Native American community housing development organization was certified and the state also made its first Native American HOME funding award. Technical assistance Increased awards for housing and related infrastructure in Native Communities from many affordable housing funding sources including the Federal Home Loan Bank's Affordable Housing Program (AHP), USDA Rural Development programs, former California Redevelopment Agency local housing funds, and HUD Rural Housing and Economic Development funds. Housing counseling and foreclosure mitigation programs were funded and established through foundation grants new to Indian Country. Workshops, consultations and other types of training carried out during this period raised knowledge and skill levels of core competencies and introduced best practices for a full range of housing project and program functions. Subject matter ranged from grant writing, housing rehabilitation, development using manufactured housing, financial literacy, project management, site evaluation, and financial feasibility analysis.

Besides the value of the services brought into Indian Country, the continuity and extent of rural nonprofit organizations' work demonstrated the commitment needed to cross cultural barriers, establish credibility, and build strong relationships with Native American leaders and communities. Although hard to quantify, solidarity, trust, confidence, organizational relationships, collaboration and mutual support underlie the strength and effectiveness of the Native American affordable housing movement in California, whether at the state, regional, or local level. These kinds of relationships laid the foundation from which a Tribal Pilot Program could be established. Long term commitment is especially important in working with Native Americans, as their communities have long been subjected to ineffective and underfunded federal programs, unresponsive bureaucracies, and the unwanted interference of outside enterprises interested in economic advantage at the expense of tribes.



Tax Credit Allocation Committee: The Right Agency

To ensure this trust and commitment, it was crucial to the Tribal Pilot Program to have on board an agency that was receptive to tribal housing needs, willing to look at difficult historical tribal access issues, and committed to meaningful dialogue and change. California's Tax Credit Allocation Committee (TCAC) well fit this role. TCAC has a well-deserved reputation for being especially proactive and engaged with program users to fairly balance a highly competitive program with limited resources that must meet the extensive and complex affordable housing needs of a diverse state. To carry out this complex balancing act, TCAC has had to be responsive and even-handed without alienating sophisticated and passionate user constituencies across California.

Previous attempts to address the lack of tribal LIHTC awards and poor access to the program were unsuccessful largely because they were isolated, consultant-led efforts. TCAC had not been approached through a constituency-led effort, in the form of an alliance of Native American tribes and housing agencies with rural nonprofit housing organizations and advocates. Lacking data to show tribal housing needs or documentation of interest in the program also complicated these efforts. It became clear that a Native-led coalition would need to initiate and participate in an ongoing process of engagement that could put a face to the issue and demonstrate the larger extent and context of a widespread tribal problem, as opposed to the difficulties of an individual project.

Progressive Engagement

Extensive dialogue and education of all parties involved, along with the development of trust and mutual respect built over time, made this coalition possible. Over time, technical assistance catalyzed new forms of collaboration with Indian tribes which, in turn, lead to more intensive levels of tribal participation. Through workshops, state affordable housing conferences, roundtables, networking, and actual projects, staff from housing programs,

and other affordable housing advocates became increasingly engaged in formal and informal interactions with tribes. Mutual learning and understanding began to take place. Native Americans learned more about the inner workings of new programs and became acquainted with staff. At the same time, agency staff and affordable housing advocates developed a better understanding of the unique nature of Indian housing problems and the cultural, programmatic, legal, and institutional obstacles Native communities face in trying to access mainstream housing programs.

Before this process, tribes had been unable to effectively compete within California's LIHTC program. Although occasionally an individual tribe and their consultants would bring up programmatic obstacles for tribes, these interactions usually lacked any engagement and support from either the larger tribal or affordable housing communities.

However, as Native American communities learned more about resources outside of limited traditional sources such as NAHASDA, and grew more confident following increasing success in accessing nontraditional funding and programs such as HOME, the USDA 515 Rental Housing Program, and AHP. It was almost inevitable that the coalition's attention would turn toward the LIHTC program. The program is the most widely used in affordable housing development across the country; 90 percent of all subsidized housing developments in the U.S. are funded in part by LIHTC. Through workshops, CCRH board and organizational events, and statewide housing conferences such as Housing California and CCRH's Rural Housing Summit, tribal leaders learned about and became more interested in mainstay affordable housing programs that had long been underutilized by or inaccessible to Native Americans. These activities also provided the perfect venue for tribes to begin discussions with TCAC staff, who were receptive to tribal concerns and interest in the program. This dialogue led TCAC to formally consider addressing tribal LIHTC access and award issues in Native communities.

Tribal workshops with specific sessions on the LIHTC

program and additional meetings with TCAC soon followed. TCAC also began participating in statewide tribal events, and TCAC director William Pavão and Development Program Manager Gina Ferguson joined in planning meetings convened by the Nevada-California Indian Housing Association. In doing this, Nevada-California simultaneously took on the challenge of identifying elements of the LIHTC program that made it difficult for tribes to compete, and established a working committee for this purpose that also included CCRH, Northern Circle Indian Housing Authority, the Enterprise Foundation, Rural Community Assistance Corporation, representatives of individual tribes with potential tax credit projects and Northern Circle Indian Housing Association. This process was supported by two statewide tribal tax credit workshops with trainers from Northern Circle, CCRH, Burbank Housing, Self-Help Housing, Rural Communities Housing Development Corporation, Visionary Home Builders and consultants Travois and VitalSpirt.

As a result of this comprehensive process, a formal statewide tribal housing organization could now engage TCAC as a constituency with solid knowledge of the issues at hand and strong alliances and support from the larger rural nonprofit housing community.

Pragmatic Program Design

TCAC embraced the efforts of the new constituency working to advance the LIHTC tribal issue, and together the groups committed to making changes in the program to enable tribes to successfully compete for tax credits. At this point, by late summer of 2013, TCAC was up against its annual deadline to produce and circulate for public review proposed California LIHTC regulation changes before final adoption prior to the first 2014 round of credit allocations. Getting a tribal pilot program into these proposed regulations required the larger working group to take a pragmatic approach to a number of issues, in particular nailing down the specific barriers that prevented tribal access.

For example, to be awarded tax credits in California almost all LIHTC applications must secure a significant number of competitive points awarded to projects that meet set smart growth criteria, such as close proximity to transit, full service grocery stores, medical services, parks, libraries, and schools. Such scoring puts the vast majority of California tribes at disadvantage, as are situated in rural locations where it is nearly impossible to meet the amenity proximities called for in the smart growth criteria. In the general competitive LIHTC pool in California, an inability to maximize site amenity points can be easily fatal to a project application. Unfortunately, little documentation exists to show the unique difficulties around the proximity of site amenities in Indian Country, and TCAC needed to

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verify that tribes would continue to be consistently disadvantaged in the competition for credits due to these issues in their rural locations. CCRH therefore undertook a survey of all of California’s 108 tribes on this issue that demonstrated conclusively the need for some mitigation for these communities around site amenity scoring.

Assumptions within California’s tax credit regulations also complicated applications for tribal housing entities. As noted above, the LIHTC program was designed with the conditions facing affordable housing developers in more typical city or county land sites in mind, which assumes the presence of standard processes and conditions: privately owned land in the form of parcels, lots, or subdivisions, zoning, local government planning and building agency reviews, and approvals by the local governing body.

Since tribes are sovereign nations their governance, legal, and land use systems can be very different from those of city or county governments. All tribal land is held in common much like a land trust, for instance; a household can own a structure and have allotment rights to the parcel it sits on, but the land itself cannot be sold or possessed by an individual party or entity other than the tribe. This situation, in turn, makes it extremely difficult to appraise the value of an individual parcel of land. Tribal governments typically do not include a separate planning commission that handles building permits, zoning regulations, and other development concerns. Though many tribal governments have effective processes in place to approve new development, they use different terminology, review, and approval processes, which may be drafted and carried out by various tribal departments and officers of tribal governments. To remove these regulatory obstacles, tribal leaders, rural housing advocates, and TCAC staff undertook a painstaking review of tribal land use practices. Changes to TCAC regulations resulting from this review removed, adjusted, or expanded regulatory language so that no tribal application would be hindered by regulatory or administrative requirements that were impossible to meet within their systems of government, such as land appraisals, building permits and zoning.

With the regulatory cleanup completed, the group pressed forward on the final design of the program. A flexible and pragmatic compromise emerged that effectively

opened up the LIHTC program to tribes in time for 2014 application submissions. There were many issues to address in this effort. As noted, the creation of special tribal criteria that would enable competition in all LIHTC regional apportionments, housing goals, and set asides would simply be impossible to incorporate into the proposed regulations changes that would need to be drafted by September 2013 in order to allow for adequate public review. Further, the potential backlash likely to arise from different constituencies had to be minimized around the idea of opening up an already oversubscribed program. Due to the highly competitive nature of credit allocations in California, the program is constantly subjected to the appeals of applicants vying to secure more favorable apportionments and increases in set asides for their particular interests had to be minimized. Finally, TCAC and the Tribal/Affordable Housing alliance could not be sure how many applications would be submitted to a program that had been inaccessible and unused for 30 years once it had been opened up.

The result was a compromise – the Tribal Pilot Program. Because of the CCRH study documenting the rural location of the vast majority of California tribes, TCAC agreed to use a small portion of the LIHTC rural set-aside amounting to \$1 million in credits per year, to fund the Tribal Pilot Program. In the interest of getting a viable program in place for 2014, the program would be established as a tribal set-aside within the rural category, in which the site amenity/smart growth rating factors would still be in place but mitigated by limiting competition to only tribal applications. With tribes only having to compete within the Pilot Program, they would not have to necessarily hit maximum rating point ceilings – as is almost always required to receive credits in the general competition -to have a project funded. Further, TCAC and the tribal/rural housing alliance could use the 2014 experience to learn from the program's first year of operation and further refine the program. This would especially provide some time to document the impact of the site amenity/smart growth rating factors and identify viable tribal projects that could not successfully apply due to this factor. As the Tribal Pilot Program was being adopted, two Native American Tax Credit workshops were held in Central and Northern California to introduce both the new Pilot Program and also to provide training to tribes on the nuts and bolts of the program. TCAC participated in these workshops as trainers and also to receive feedback from tribes.

Now competitive tribal applications could be submitted to TCAC. The first year of the Tribal Pilot Program

successfully resulted in one tribal project award made on June 11, 2014, and a second project award is likely to be funded later in the year. The program is also yielding new information and experience that will help TCAC further refine the program for 2015.

Lessons from California

The California experience illustrates how housing practitioners and agencies together can begin to address entrenched poor housing conditions in Native communities by facilitating fair access for Indian tribes to crucial funding programs. To do this, housing agencies must be willing to invest the time and commitment to work with new Native American partners, to understand their needs, address program issues that block access, and make necessary adjustments in program regulations. The housing needs of battered women, people with AIDS, farmworkers, those with physical and mental health conditions, and veterans are all constituencies that have gone through similar struggles to illuminate their unique housing needs. The same kind of partnerships and outreach models that have focused resources and attention on these formerly overlooked constituencies are central to the success of tribal efforts. In the case of the Tribal Pilot Program, alliances formed as the affordable housing community demonstrated their commitment to addressing the needs of Native communities have endured as trusted relationships that can continue to address ongoing and future Native housing needs and concerns.

Additionally, the success of the drive to open up the LIHTC program to tribes has borne fruit in other areas. Newly empowered by the success of the LIHTC Tribal Pilot Program, tribal leaders have reached out to the California Department of Housing and Community Development to ensure that the 2015 State Housing Plan, for the first time, will document tribal housing needs and identify how state housing programs will be used to help address them. Productive meetings have already taken place with the Governor's Tribal Liaison and the Director of California's Housing Programs, establishing commitments to substantive tribal participation in the development of the plan. Rural housing advocates and tribal leaders are also planning the state's first summit solely dedicated to bringing together the state's affordable housing and tribal housing communities. Now more than ever, these alliances and efforts are needed to build and strengthen bonds and expand housing resources for long overlooked Native communities in this time of austerity. **CI**

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