DOE OFFICE OF INDIAN ENERGY

Tribal Roles in Renewable Energy Projects

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U.S. DEPARTMENT OF ENERGY | Office of Indian Energy

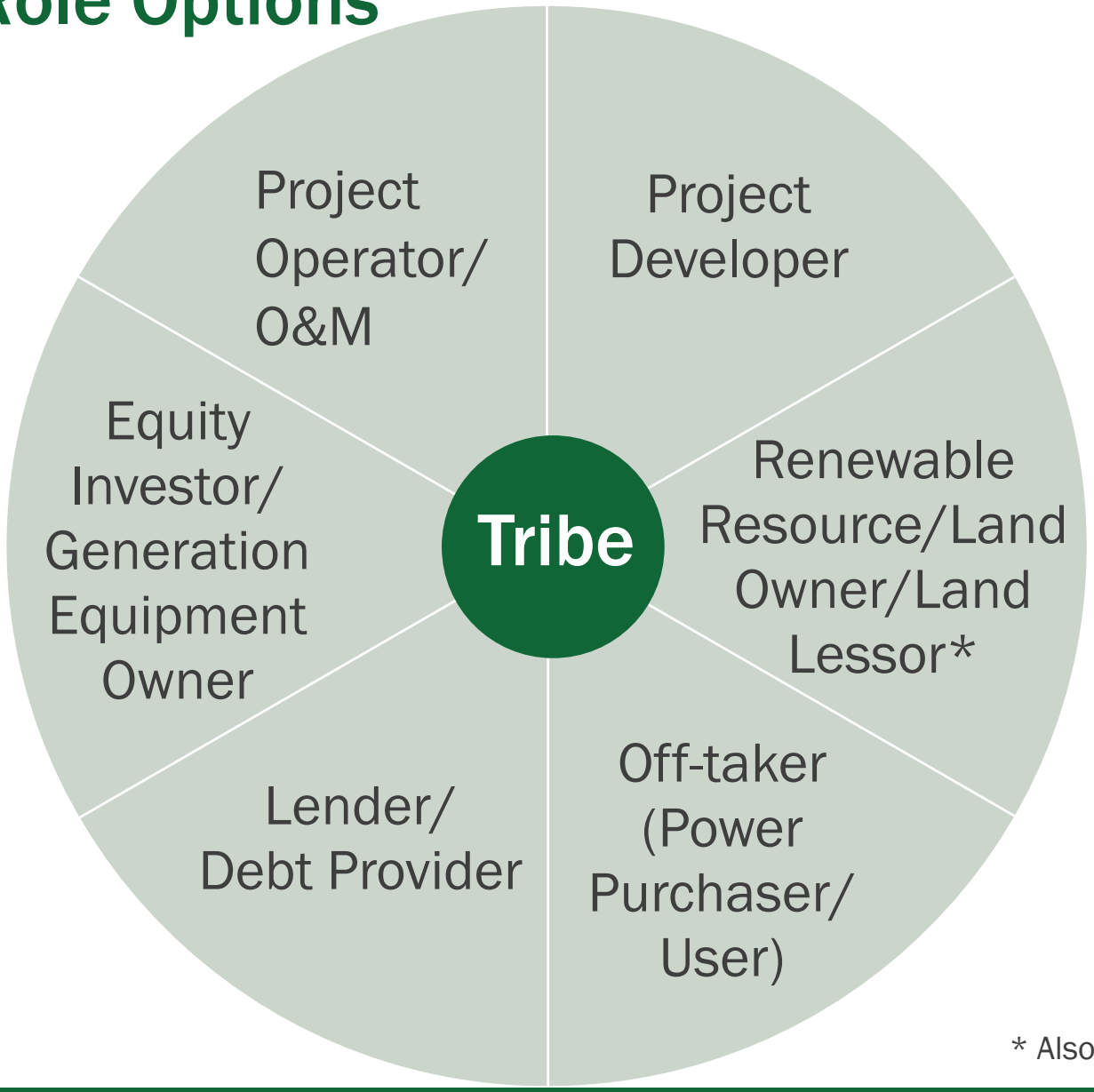
Federal Tax Incentives

- Production Tax Credit (PTC)
- Investment Tax Credit (ITC)
- Modified Accelerated Cost Recovery System (MACRS) and bonus depreciation

Comparison of Tax Incentives

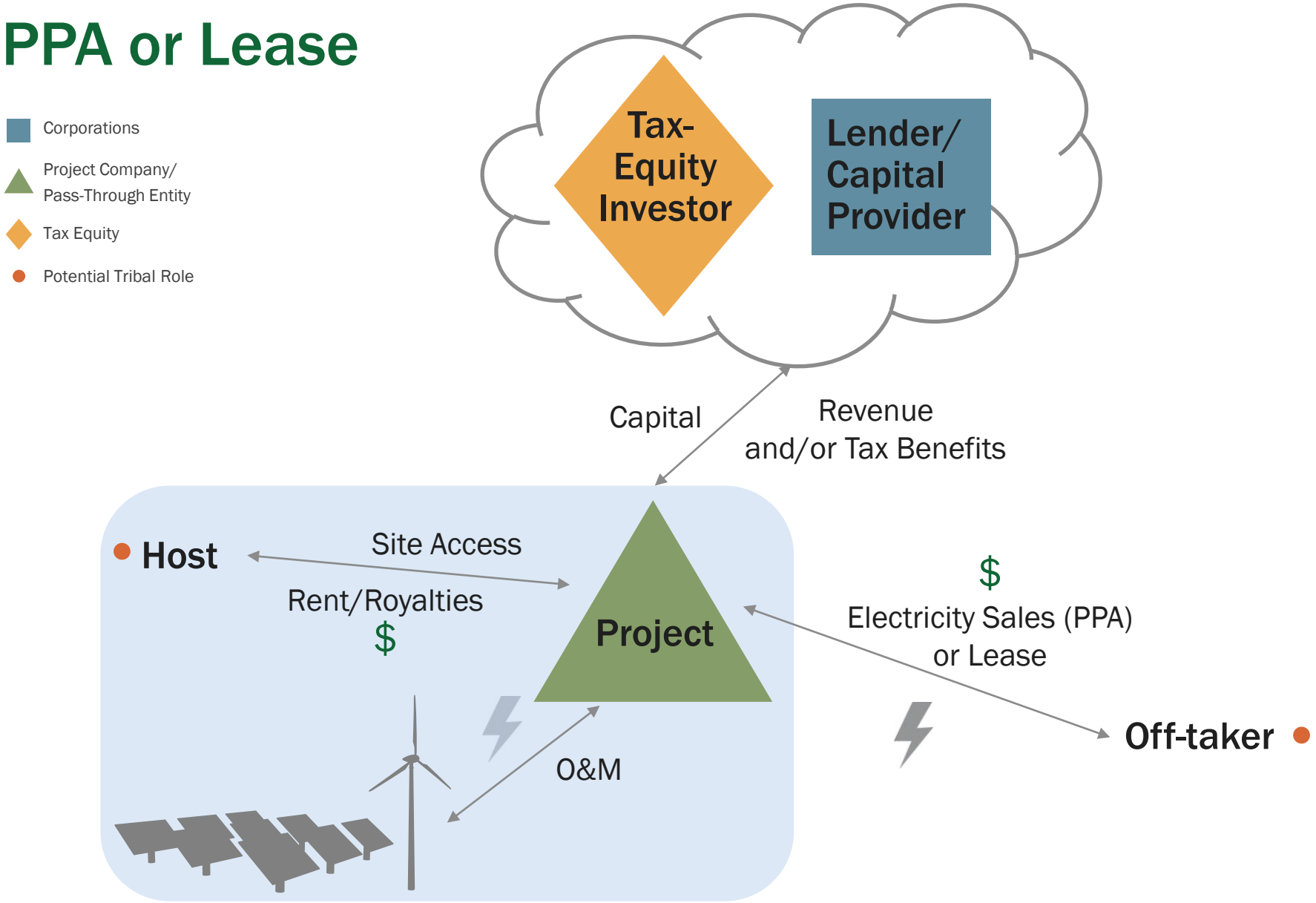
	PTC	ITC	Accelerated Depreciation
Value	Tax credit of 2.3¢/kWh or 1.1¢/kWh, depending on tech	Tax credit of 10% or 30% of project costs, depending on tech	Depreciation of eligible costs (not all project costs qualify)
Select Qualifying Technologies	• Wind • Geothermal • Biomass • Hydro	• Solar • Fuel cells • Small wind • Geothermal	Depreciation can be taken with either PTC or ITC
Basis	Energy produced over 10-year period. Can be combined with depreciation.	Eligible project cost. Credit taken at the time the project is placed in service. Can be combined with depreciation.	MACRS: 5-year depreciation schedule Bonus: 50% first year accelerated depreciation on equipment
Expiration	Start construction before 1/1/2014	Placed in service before 1/1/2017*	MACRS: None Bonus: 1/1/2014

Tribal Role Options

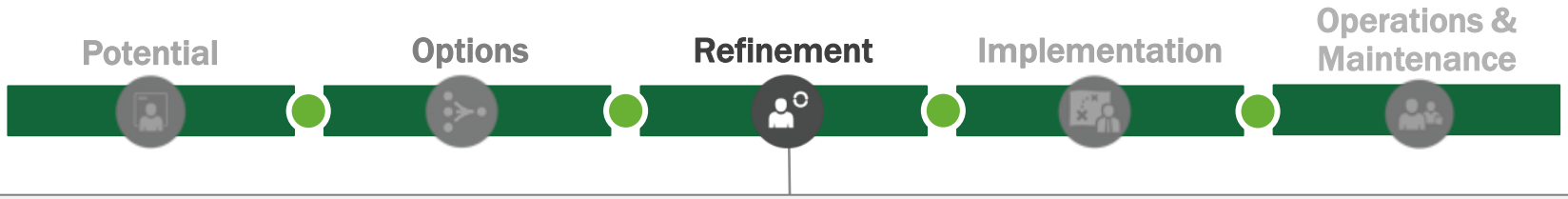


* Also called Tribal Host

PPA or Lease


Corporations
Project Company/
Pass-Through Entity
Tax Equity
Potential Tribal Role
Tax-
Equity
Investor
Lender/
Capital
Provider
Capital
Revenue
and/or Tax Benefits
Host
Site Access
Rent/Royalties
$
Project
$
Electricity Sales (PPA)
or Lease
Off-taker
O&M

Tribe as Host and/or Off-taker



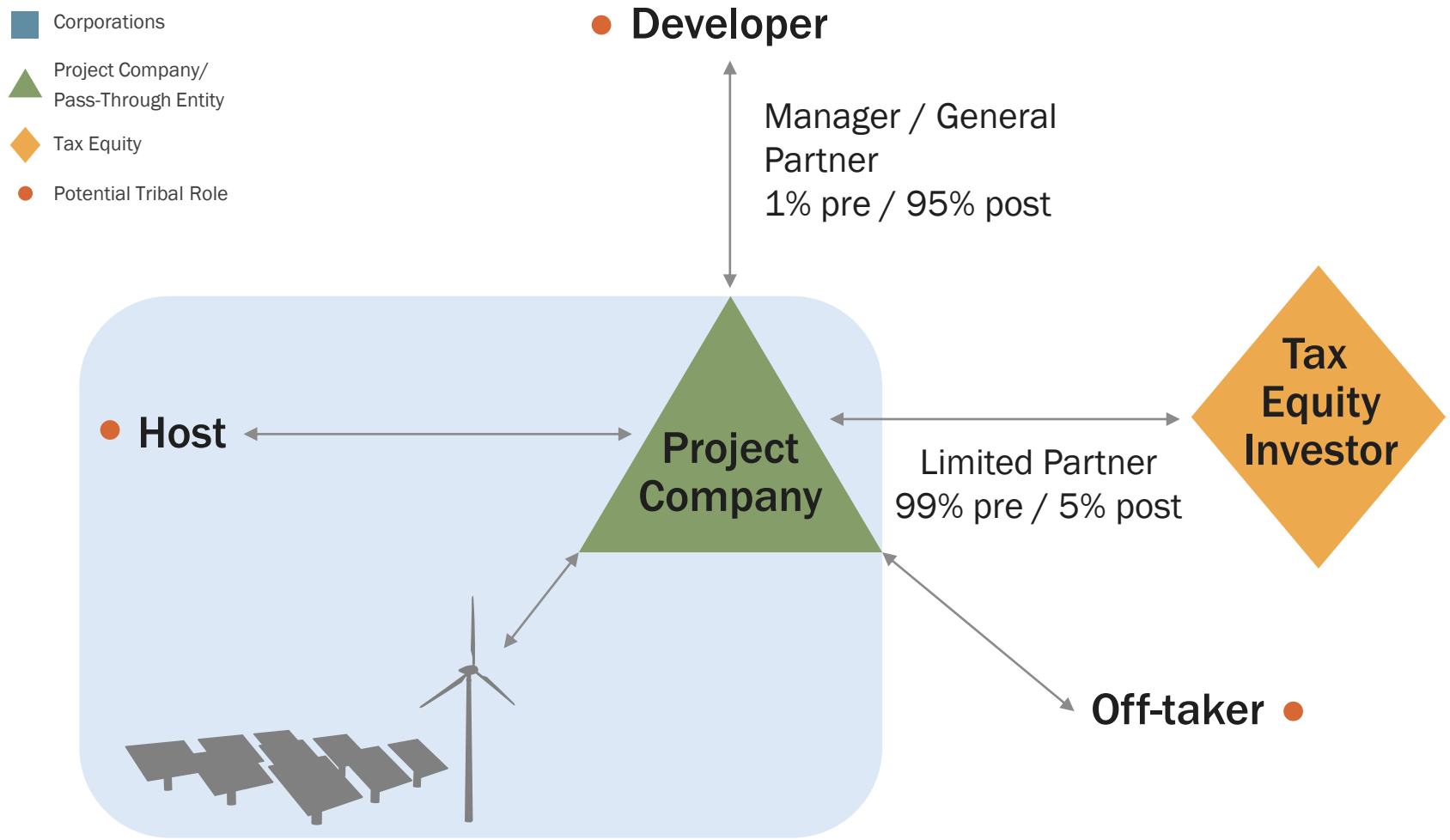
Advantages:

- No or Low up-front costs
- No O&M costs
- Save on electricity costs (as Off-taker) or gain revenue from rents and/or royalties (as Host)
- Likely purchase option at Fair Market Value at end of PPA/Lease

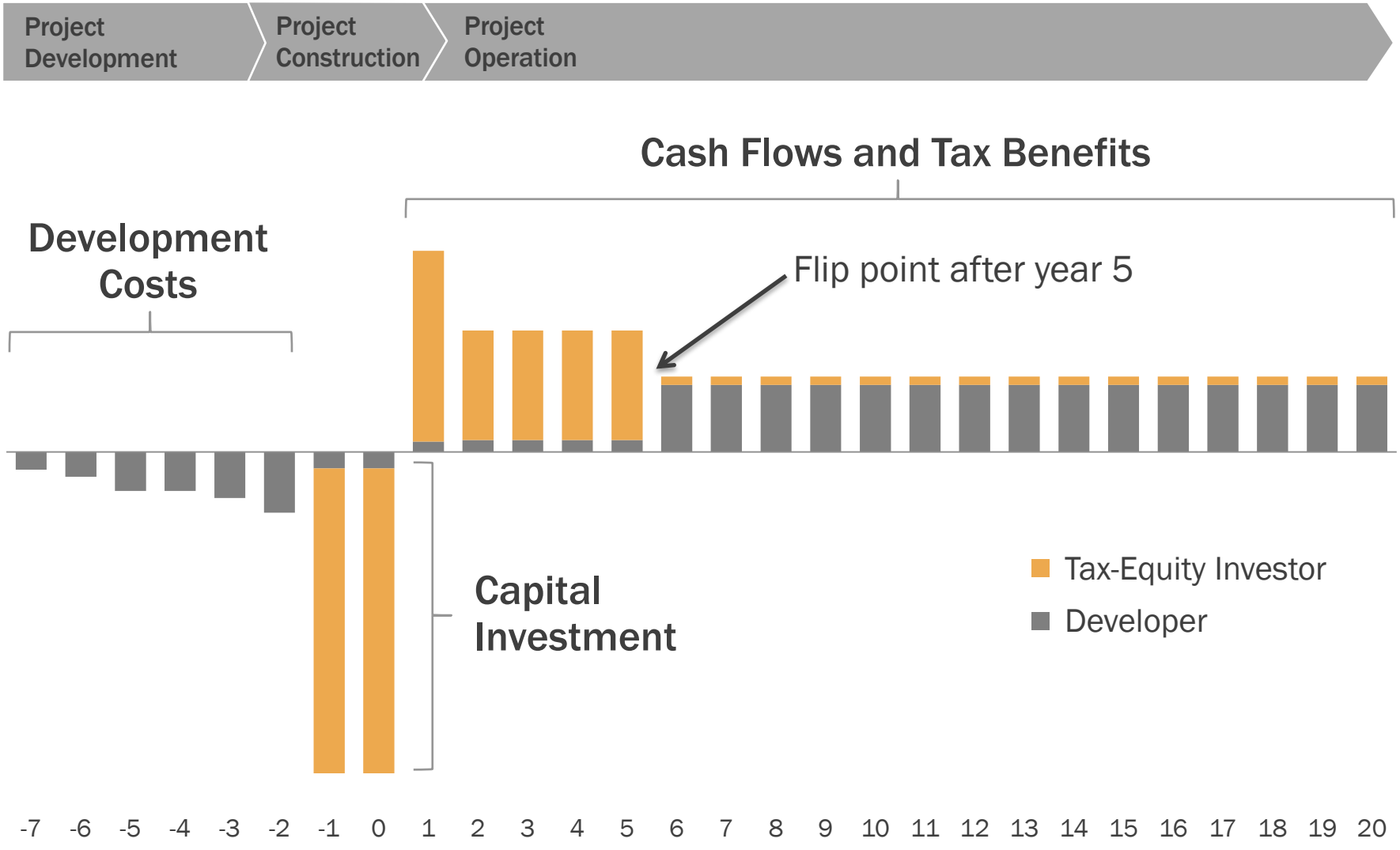
Challenges:

- No certain ownership role from beginning
- No control of asset during PPA/Lease term

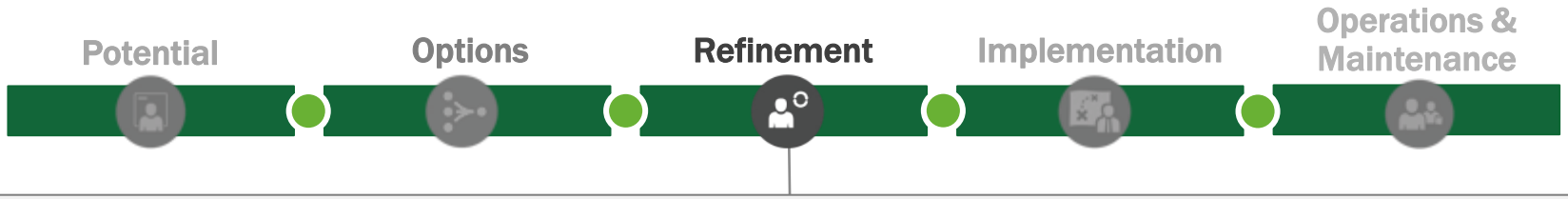
Partnership Flip



Partnership Flip Cash Flow, No Debt



Partnership Flip Tax-Equity Structure



Advantages:

- Tax equity provides most of the capital up front
- Easier way for Tribe/developer to own the project in the long run (than other advanced financing structures)
- Generally familiar structure for wind and solar industry, so many tax-equity investors have experience

Challenges:

- Limited distribution payments to Tribe/developer until later in project (e.g., year 6-7 for solar; year 10-11 for wind)
- Still requires up-front capital contribution from Tribe
- Developer must consult tax equity on major decisions

Sale Leaseback

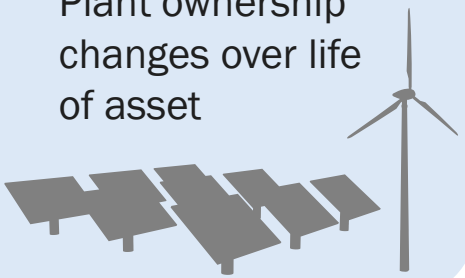
- Corporations
- Project Company/ Pass-Through Entity
- Tax Equity
- Potential Tribal Role

Tax Equity Investor

- Rental Income
- Depreciation
- Funding Deductions
- Residual Value
- Tax Credits

Host

Plant ownership changes over life of asset



Non-Recourse Lenders

Property

Principal and Interest

$

Landlord

Property

Rent

$

Off-taker

PPA

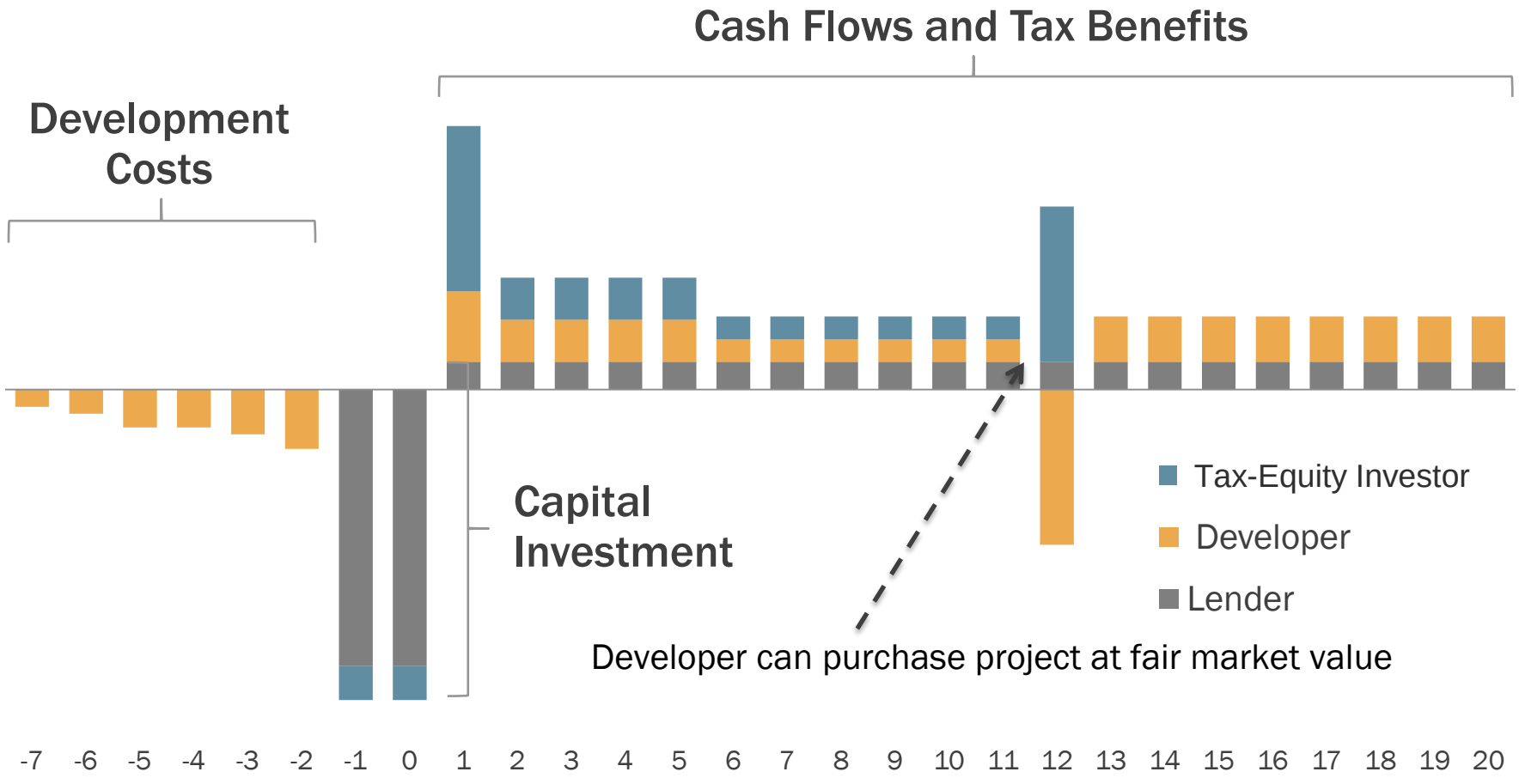
$

Developer/Tenant

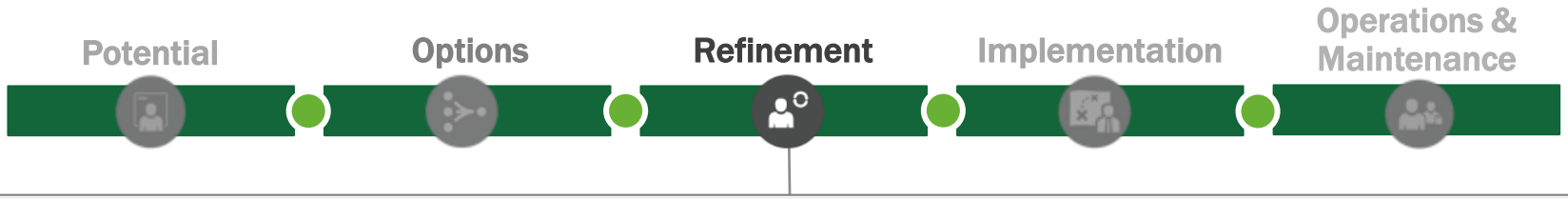
- Rental Deduction
- Gain or loss on sale

Sale Leaseback Cash Flow, With Debt

Project Development | Project Construction | Project Operation



Sale Leaseback Tax-Equity Structure



Advantages:

- Tax equity can provide 100% of the capital up front
- Developer gets large cash distribution upon sale of project
- Familiar and utilized structure among solar community

Challenges:

- Costly for Tribe/developer to acquire long-term ownership of project (large cash infusion ~ after year 7)
- Tribe/developer operates the project
- Requires largest equity contribution from tax-equity investor (could limit investment)
- Limited participation to developer/Tribe until buyout of project (~ year 10)
- Not possible for PTC-based project (e.g., wind)

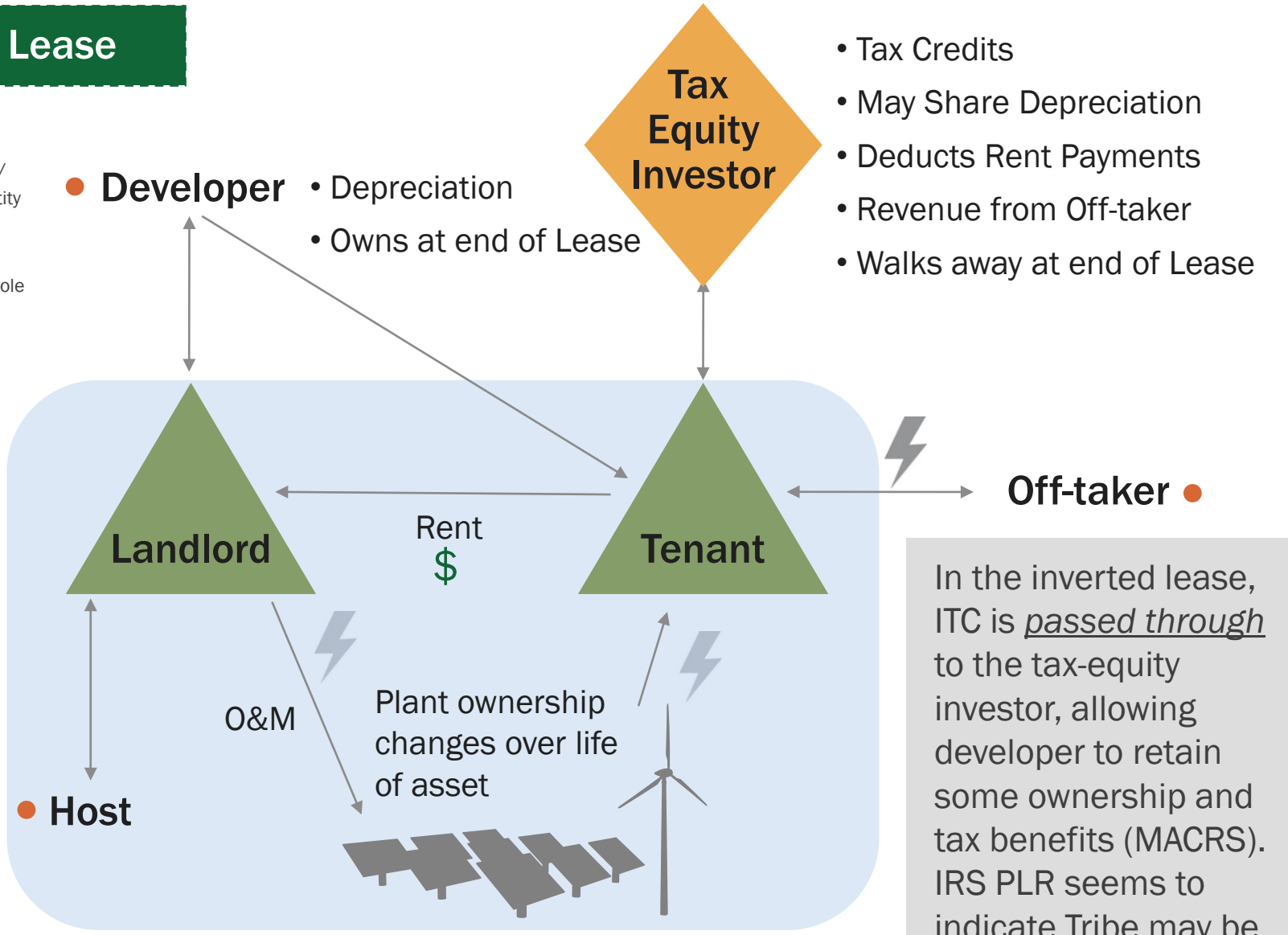
Inverted Lease

Corporations

Project Company/ Pass-Through Entity

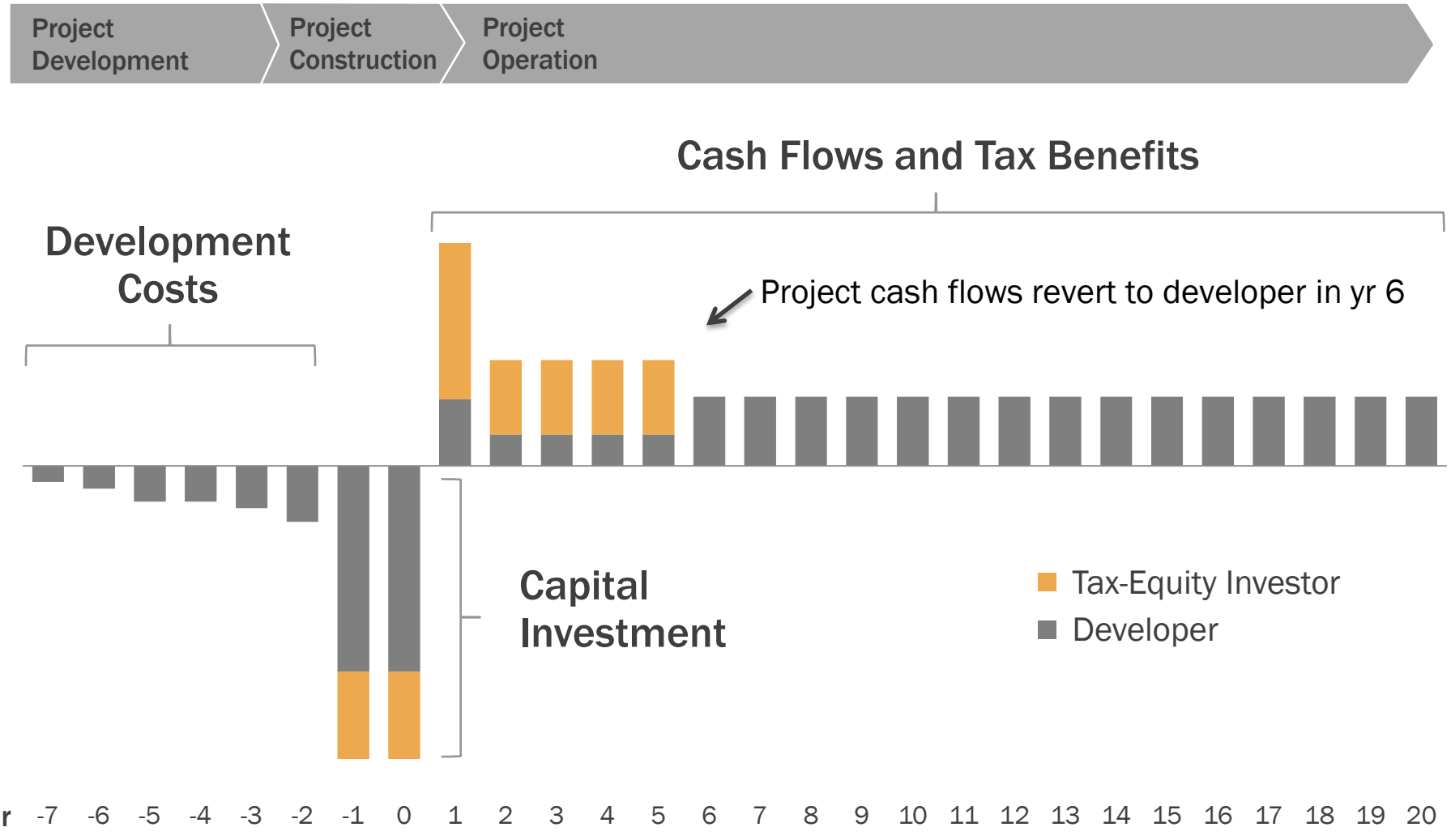
Tax Equity

Potential Tribal Role

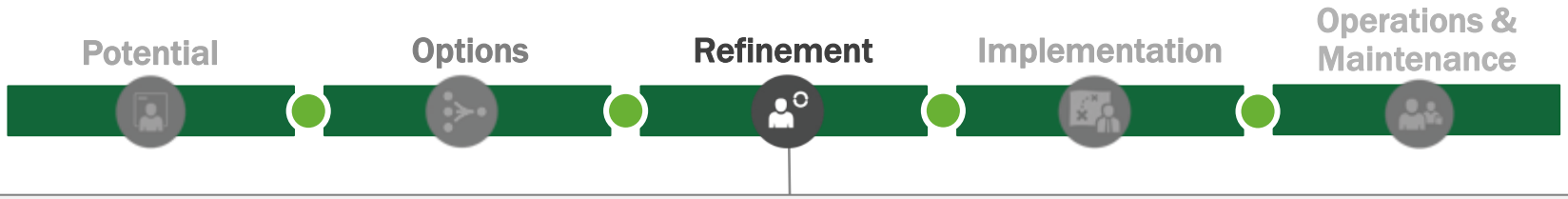


In the inverted lease, ITC is *passed through* to the tax-equity investor, allowing developer to retain some ownership and tax benefits (MACRS). IRS PLR seems to indicate Tribe may be developer; legal opinion required.

Inverted Lease Cash Flow, No Debt



Inverted Lease Tax-Equity Structure



Advantages:

- Tribe/developer maintains controlling interest and ownership in project
- Cash flows to Tribe/developer from beginning
- Limits risk to tax-equity investor, possibly increasing availability of investment
- The developer owns the project after the expiration of the lease term

Challenges:

- Most complicated of all three tax-equity structures
- Developer must contribute significantly to up-front capital investment
- Not possible for PTC-based project (e.g., wind)
- Limited upside for tax-equity investor

March 8, 2013 IRS Private Letter Ruling – 111532-11

- An Indian Tribal government is not considered a "governmental unit" or "tax-exempt organization" for purposes of solar energy tax subsidies
- This presumably could permit Tribal governments to enter into an inverted lease structure ***without*** jeopardizing access and use of federal tax incentives (***potentially BIG change***)
- Yet to be executed in the market; perhaps only applicable to the Tribe that applied; it would be wise to seek legal counsel

IRS Private Letter Ruling (PLR): http://www.irs.gov/pub/irs-wd/1310001.pdf

Potential Tribal implications:
http://www.renewableenergyworld.com/rea/news/article/2013/05/solar-tax-credit-opportunity-for-indian-Tribes

Project Financing Structures: Comparison

Structures	Overview	Characteristics	Tax-Equity Returns
Partnership Flip	Common to wind/solar deals, two participants (tax-equity and developer).	Typically 99%/1% allocations until flip (approx. 6 years), then 5%/95%	8%–12%
Sale Leaseback	Extensive use in solar deals, at least two participants (1. tax-equity investor/lessor, 2. developer/lessee)	Developer sells completed project to tax-equity, leases it back (10–15 years)	10%–15%
Inverted Lease/ Lease Pass-Through	More complex and less common, at least two participants (1. tax-equity investor/lessee, 2. developer/lessor)	Project majority owned by developer, leases to investor, (7–10 years)	10%–15%

Financing Structures and Tribal Implications

	Direct Ownership	Partnership Flip	Sale Leaseback	Inverted Lease/Lease Pass-Through
Financing	User self-finances system and consumes power on-site	Investor can provide up to 99% financing. Debt can also be part of capital stack.	Investor provides 100% financing. Debt can also be part of capital stack, commonly at developer level.	Investor provides partial financing. Debt is a common part of capital stack.
Up-front Tribal Capital Req.	$$$$	$	$, potentially $0	$$–$$$
Ownership	User-owned	Co-ownership by developer and investor	Developer has option to purchase assets at lease term	Assets revert to developer at the lease term
Tax Credit	NA	PTC or ITC, and MACRS	ITC and MACRS	ITC and MACRS
Investor Preference	Certain firms have preferences for/familiarity with particular structures and/or technologies. Project specifics may also dictate financial structure selected.			