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OKTFC: January 2020

# Opportunity Zones as financing options for tribes



## Meet your presenter



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INTRODUCTION

# About Baker Tilly



Our 3,600 specialized professionals guide clients through an ever changing business world



We have grown to become one of the 15 largest accounting and advisory firms in the US



Member of Baker Tilly International, a worldwide network of independent accounting and business advisory firms in 145 territories, with 34,700 professionals





A WORLD OF RESOURCES

## About Baker Tilly Capital

Baker Tilly Capital is a boutique investment bank specializing in merger and acquisition (M&A), capital sourcing, project finance and corporate finance advisory services. Baker Tilly Capital is a registered broker-dealer, member FINRA and SIPC.

### **Comprehensive credits and incentives solutions**

Our team of 90 professionals has experience in municipal, state, federal and international incentives programs and negotiations. Our value of closed transactions is in excess of \$10 billion.

### **We can help you navigate your options, including:**

- New Markets Tax Credits (NMTC)
- State and local credits and incentives
- Job creation and retention credits
- Tax Increment Financing (TIF)
- Property Assessed Clean Energy (PACE)
- Historic Tax Credits
- **Opportunity Zones**

TRIBAL PRACTICE

# About Baker Tilly

## Risk and compliance

- External financial audit
- Internal audit advisory
- Single audit
- Cybersecurity
- Gaming compliance
- Regulatory compliance
- Employee benefit plan audit
- 8(a) contract compliance



## Strategy and operations

- Long-term financial planning
- Economic development advisory
- Productivity and cost reduction
- Capital planning
- Tribal utility formation
- Grant writing and advisory
- Business process reviews
- Outsourced accounting and bookkeeping



## Government contracts advisory

- Service Contract and Davis-Bacon Act
- Standard Form 1408 accounting system assessments
- Provisional billing and forward pricing rate development
- Incurred cost proposal preparation and review
- Indirect cost rate structuring
- GSA Federal Supply Schedule Contracts
- Contractor business systems



## Project development

- Comprehensive project finance
- Incentives advisory
- New Markets Tax Credits
- Low Income Housing Tax Credits
- Energy and infrastructure advisory
- Public private partnership facilitation
- Transaction advisory services
- EB-5 financing
- Opportunity Zones



# Opportunity zones (OZ): program overview



OVERVIEW

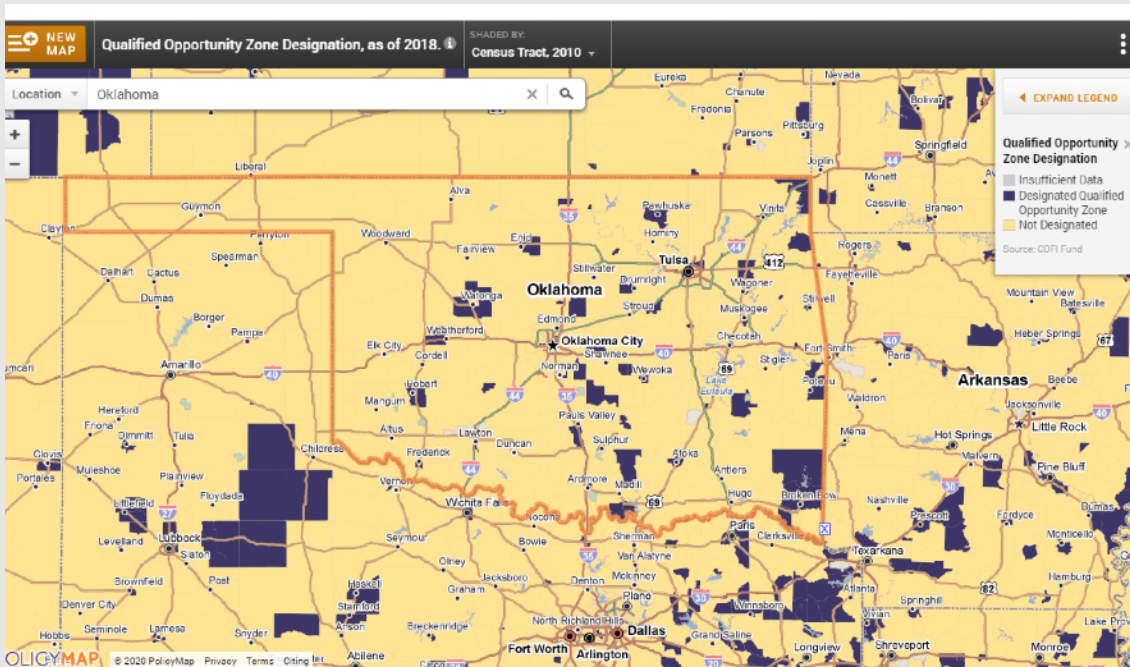
## Opportunity zones

What are opportunity zones (OZ) and where are they?

- An OZ is a population census that meets the definition of a “low-income” community as that term is defined in the Internal Revenue Code in the context of the NMTC
  - Eligible areas are based on low-income census tracts and tracts contiguous to these low-income census tracts
- There are now more than 8,700 certified qualified opportunity zones (QOZs) in all 50 states, D.C., Puerto Rico and the Virgin Islands
  - 11 percent of the country is designated as an OZ
  - Designated land includes various land in Indian Country
  - Currently, more than 50 percent of tribal census tracts are eligible for Opportunity Zone designation [per industry media reports]

IS MY PROJECT IN A QUALIFIED OPPORTUNITY ZONE?

# Opportunity zones mapping tool



**Qualified Opportunity Zone Designation** ✕

YEAR: 2018 ▾

VARIABLE: Status ▾

- Insufficient Data
- Designated Qualified Opportunity Zone
- Not Designated

Source: CDFI Fund ⓘ

Find eligible areas at [bakertilly.com/opportunityzones](https://bakertilly.com/opportunityzones)



OPPORTUNITY ZONES

What are the tax incentives for investment in a QOZ?





## Three potential tax benefits

1. A **deferral** of the tax on the original gain until the earlier (a) the date of the taxpayer sells or exchanges its investment in the QOF, or (b) December 31, 2026.
2. A **reduction** of the tax on the original gain: (a) 10 percent discount if the QOF investment is held for five years by Dec. 31, 2026 or the date of disposition, if earlier; (b) an additional 5 percent discount (15 percent total) if held for seven years by December 31, 2026.
3. **No taxable gains** on the QOF investment if held for 10 or more years

In effect, appreciation on the investment, but not the original deferred gain, is eliminated permanently. Depreciation losses are a permanent benefit with a 10-year hold with the investor sale of the QOF interest.



OPPORTUNITY ZONES

## What gain qualifies for tax benefits?

### **Participation in the OZ program begins with investing capital gain into an Opportunity Fund.**

- It includes long- and short-term capital gain, collectables gain, net section 1231 gains, capital gain dividend distributions, but gains that would generate ordinary income are ineligible
- The capital gain must originate from a sale or exchange with an unrelated party within the previous 180 days
- Investing other money alongside capital gain is permissible, but **only the capital gain portion of the investment qualifies for the tax benefits**
- When recognized, the deferred gain includes the same attributes in the year of inclusion that it would have had if tax on the gain had not been deferred

OPPORTUNITY ZONES

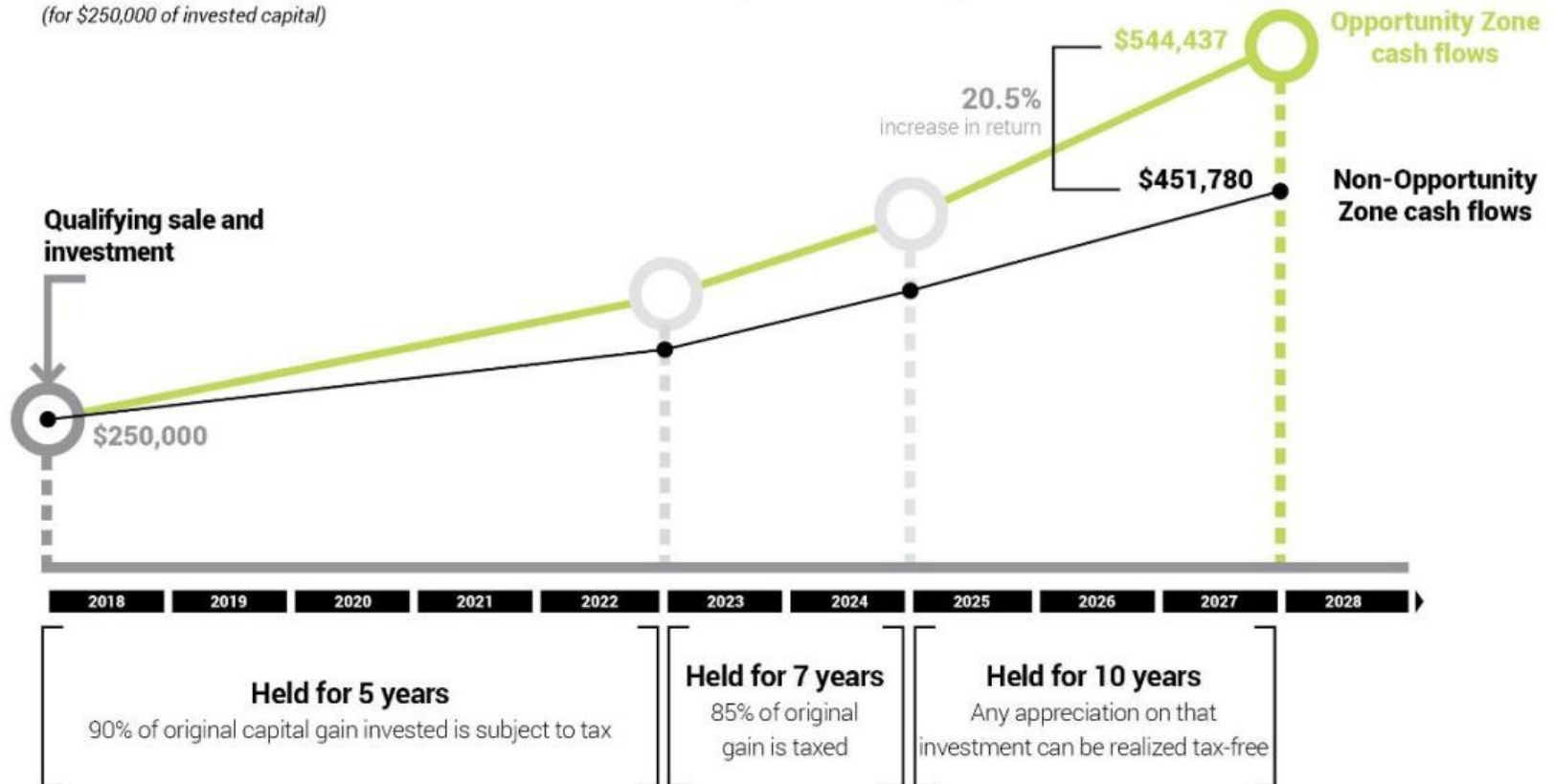
## How long is the designation?

- The designation of a census tract as a QOZ remains in effect until December 31, 2028
- Qualified gain must be invested in a QOZ before 12/31/2026 for the OZ benefits
- Recent regulations clarified that if an investment is made, and during the holding period of the investment the QOZ designation expires, the investor will obtain tax-free appreciation on a sale of their investment until a hard date of 2047

# Benefits of the OZ

## Opportunity Zones investment over 5-, 7- and 10-year horizon

(for \$250,000 of invested capital)



*\*\*This model assumes a 23.80% federal tax rate and state tax rate of 5.36%. This model is for illustration purposes only, and contains certain financial assumptions as to the possible future results that are inherently uncertain and subjective. We make no representation or warranty as to the attainability of those assumptions or whether future results will occur as illustrated.*



OPPORTUNITY ZONES

## What investment types does the OZ program favor?

- Commercial real estate
- New business startup in an OZ after Dec. 31, 2017
- Expanding an existing business into an OZ.
- Small business already in an OZ with large expansion



OPPORTUNITY ZONES

## What type of investment qualifies?

### **Qualified opportunity zone business property means:**

- Tangible property used in a trade or business
- Rental real estate is a qualifying trade or business
- Property acquired by purchase after Dec. 31, 2017
- The original use of such property **in the QOZ** commences with the qualified opportunity fund or the opportunity fund substantially improves the property
- Where the opportunity fund owns the property directly, substantially all of the use (70%) of such property occurs within a qualified OZ

OPPORTUNITY ZONES

## Original use or substantial improvement

**The original use of the opportunity zone property must commence with the fund or there must be “substantial improvement” to the property.**



- The opportunity fund has a 30-month window to improve the property, such that the basis of the property increases by an amount that exceeds the amount of the adjusted basis at the beginning of the 30-month period
- The basis of the land is excluded from the underlying calculation
- For example, an opportunity fund acquires a building for \$10 million, \$4 million attributable to the land and \$6 million attributable to the improvement; at the end of 30-month period, improvements of \$6 million + \$1 must be made



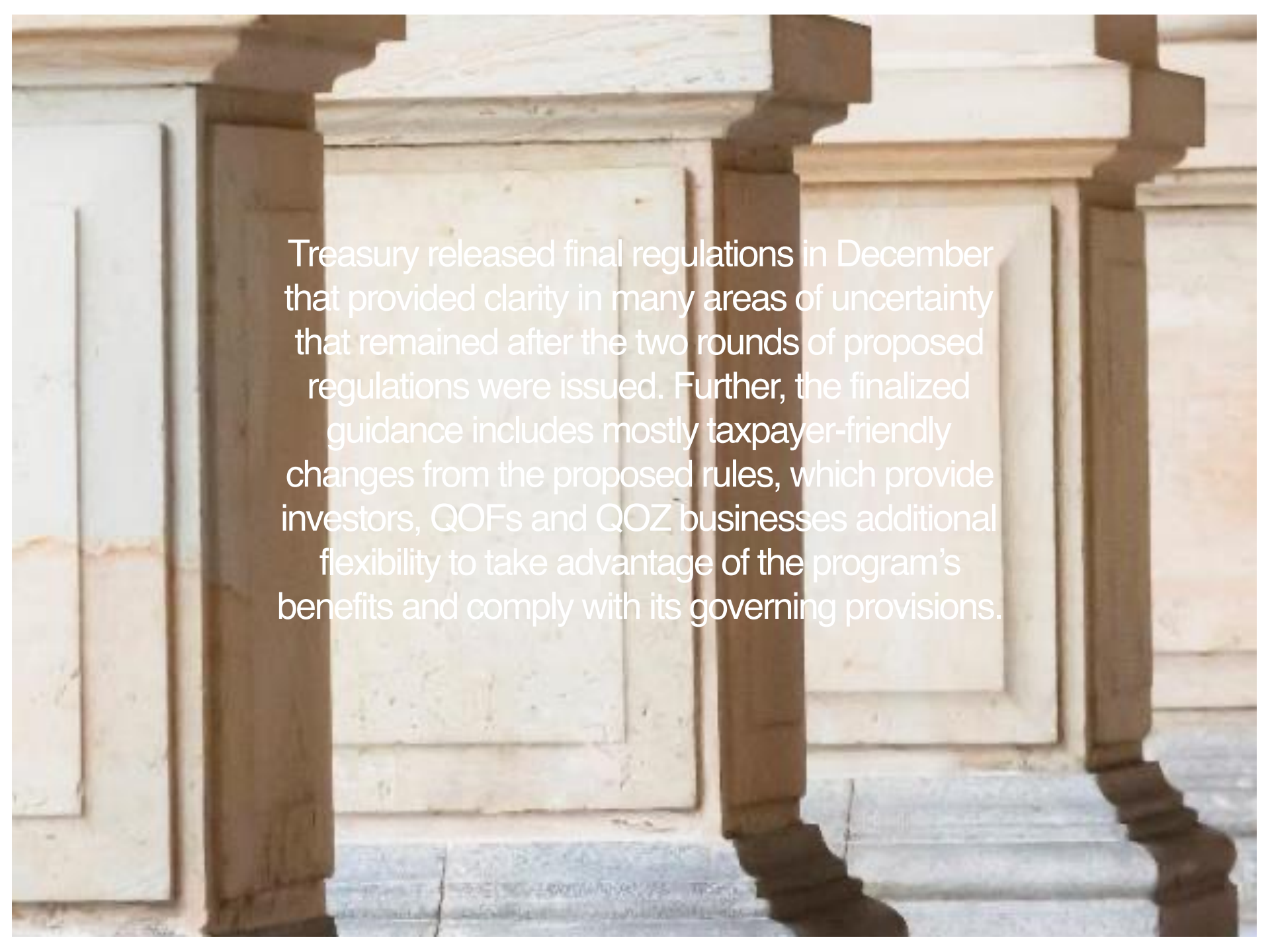


OPPORTUNITY ZONES

The April 2019 guidance incorporated the three recommendations of NAFOA OZ resource network

**IRS recently provided guidance regarding opportunity zone fund certification:**

- Clarified leases of land and buildings
- Clarified tribal governments are eligible entities for creating QOF corporations or partnerships
- Acknowledged the importance of tribal consultation with IRS and Treasury on gathering input directly from tribal governments to help ensure a successful program

A photograph of a classical building entrance. The image shows several stone columns with decorative capitals and a set of stone steps leading up to the entrance. The lighting is bright, casting shadows on the stone surfaces. The text is overlaid in the center of the image.

Treasury released final regulations in December that provided clarity in many areas of uncertainty that remained after the two rounds of proposed regulations were issued. Further, the finalized guidance includes mostly taxpayer-friendly changes from the proposed rules, which provide investors, QOFs and QOZ businesses additional flexibility to take advantage of the program's benefits and comply with its governing provisions.

OPPORTUNITY ZONES

## Fund certification

### IRS recently provided guidance regarding opportunity zone fund certification:

- To establish an opportunity fund, the IRS states that there is no formal approval or action required by the IRS
- **An eligible taxpayer “self-certifies” the investment**
- An informational form (Form 8996) is completed and attached to the taxpayer’s timely filed federal income tax return for the year in which the investment is made and annually thereafter
- This process appears to be very informal with no official IRS consent required for the opportunity fund investment



## Real Opportunity Zone Examples – Baker Tilly Capital



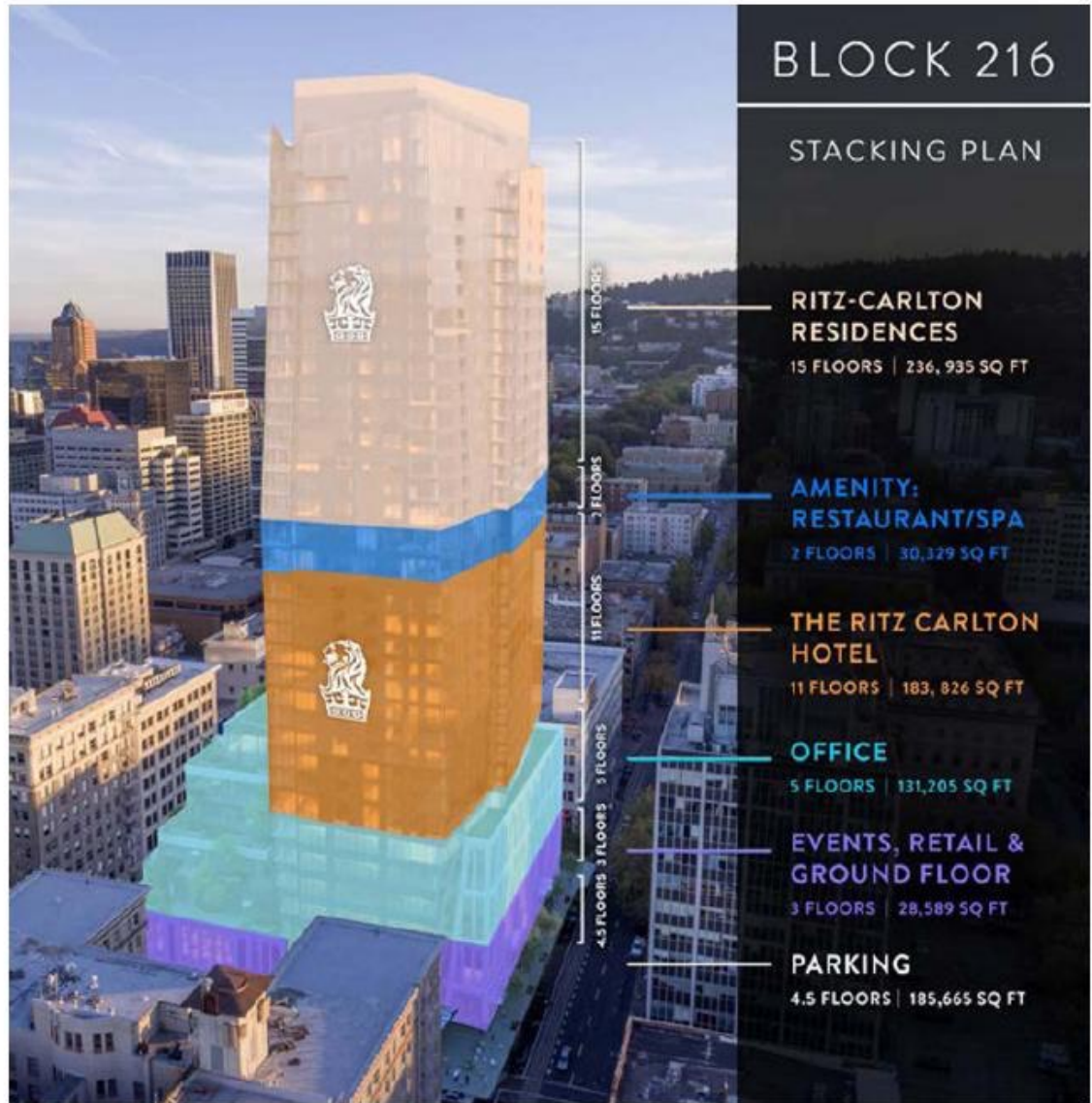
## Project overview

Block 216, featuring The Ritz-Carlton, Portland (the “Project”) is a 35 story, benchmark luxury mixed use project spanning over one million square feet in the heart of downtown Portland, Oregon. The Project consists of a Ritz-Carlton Hotel, Ritz-Carlton branded condominium residences, and Class “A” office and retail space.

### Project highlights include:

- Irreplaceable location in an urban core
- Peerless building design and amenities
- Steps away from shopping, entertainment, and nightlife
- Robust and rapidly growing local business climate
- Proximate to mass transit and Interstate 5 corridor that connects Portland to San Francisco and Seattle

Located in an Opportunity Zone, the Project offers investors the ability to enjoy substantial tax benefits while also investing in an institutional quality real estate investment.



**FUNDED!**

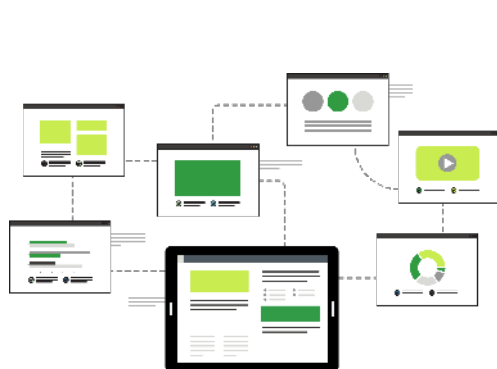
## The Arden

- Closed on Aug. 6, 2019 meeting minimum funding requirement of \$16M
  - under construction
- OZ fund founded by Steve Case (AOL founder) looking to top off with a \$10M investment for max. \$26M
- One of the first deals (that we know of) closed and funded with third party equity raised from OZ-motivated investors
- Initial investor group of 25 includes 11 clients and a bank



## Resources available for RIAs

- **Investor opportunity zones resource center**
- Tax updates for investors following final regulations
- Interactive calculator: OZ vs. non-OZ investment
- Investment offering brochures





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CONTACT INFORMATION

## Questions

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[bakertilly.com/opportunity-zones](http://bakertilly.com/opportunity-zones)  
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