

The Role of EB-5 Financing in Development

2016 Land Use Fundamentals
20th Annual Land Use Conference

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EB-5 Basics

- U.S. Citizenship and Immigration Services (UCSIS) administers the Immigrant Investor Program, also known as “EB-5” created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. (Immigration and Nationality Act § 203(b)(5) – Visa Allocation - Employment based, Fifth preference)
- Under the EB-5 program, eligible foreign investors may receive a conditional Green Card for themselves and family members



EB-5 Basics

- Required investment in a New Commercial Enterprise (“NCE”):
 - \$1,000,000
 - \$500,000 in a Rural or Targeted Employment Area (“TEA”) defined in 8 C.F.R. § 204.6
 - Rural = any area not within either a MSA or the outer boundary of any city having a population of 20,000 or more



3

EB-5 Basics

- TEA = Unemployment at 150% over the national average
- Geographic area described by census tracts or other descriptions such as blocks, etc.
- In Texas, can be certified by Mayor or County Judge
- Immigrant investor’s money must be “at risk” – guarantee is prohibited
- Immigrant investor must prove clean source of financial funds



4

EB-5 Basics

- Required job creation:
 - NCE investment must create 10 U.S. jobs
 - Direct Jobs – 10 new employees hired on payroll at least 35 hours a week for 2 years – evidenced by W-2s
 - Indirect Jobs - In an approved Regional Center, the jobs may be indirect jobs (preferred by immigrant investors)
 - Indirect jobs determined by construction hard costs through Economic/Jobs Analysis Report
 - Once the project has been constructed, the job creation requirement is met



5

EB-5 Basics

- Regional Center:
 - Created by regional center operator (public or private) - can be used by developers for multiple projects
 - Allows job creation to be indirect rather than direct
 - Approved for specific activities (North American Industry Classification System- NAICS codes)
 - Best NAICS code for development is:
NAICS 23 – Construction



6

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