*Brownfields*

## Immigrant Investor Program Offers Financing For Redevelopment Projects, Lawyer Says

An immigrant investor program is an important new trend in financing brownfields redevelopment, an environmental lawyer said at a conference Oct. 8.

"This is an incredible program" that provides inexpensive capital, Larry Schnapf, principal of Schnapf LLC, said. "It's another whole market of people from whom you can get investment," he said at the conference on sustainable property transactions produced by RTM Communications Inc. Bloomberg BNA was one of the conference sponsors.

Schnapf said the EB-5 immigrant investor program, designed to attract foreign capital investments, has "exploded in New York and San Francisco, and is an important source of construction lending in other cities as well." Under the program, immigrants desiring U.S. citizenship are able to get a conditional two-year "green card," allowing them to live and work in the U.S. legally if they invest $1 million in a project that creates 10 full-time jobs, he said.

The program is popular in part because traditional forms of financing remain difficult to obtain, he said. It also is attractive to developers because they can obtain relatively inexpensive capital or lending with interest rates usually in the low single digits, with some projects offering only 1 percent, Schnapf said. Immigrants are willing to offer these low interests rates because their primary objective is in obtaining U.S. citizenship, he said.

### Path to U.S. Citizenship

If the funded project is successful after two years, the investor can apply for permanent resident status and then seek U.S. citizenship after five years, he said. Schnapf told the conference a number of his clients have used the visa program to redevelop complex brownfield projects.

Some developers are using funding from the program in combination with other sources of nontraditional or public-private financing, such as historical tax credits, new markets tax credits, and tax increment financing, according to material Schnapf provided Bloomberg BNA after his remarks.

Investments can be made directly to a business or project or through an approved regional center, according to Schnapf. In the program's direct investment approach, a business owner raises capital for a business project directly from foreign nationals who will take an equity position directly in a business. If using the direct investment approach, only full-time jobs (i.e., W-2 employees) directly generated by the business or project may be counted for EB-5 funding eligibility, Schnapf explained.

The direct approach is usually more appropriate for foreign nationals who are interested in buying or starting a business, or who want to control their investment and maximize profits, according to Schnapf.

### Majority of EB-5 Via Regional Centers

He went on to explain that 90 percent of the EB-5 investments are done through regional centers, rather than via the direct investment approach.

Projects that are sponsored by an approved regional center can include both direct and indirect jobs created within the designated geographic area of the project, Schnapf said. "For example, if a shopping center is built with a direct investment of EB-5 financing, only the direct employees of the entity constructing the center may be counted towards calculating the amount of eligible EB-5 funding. However, if the same project received EB-5 financing through a regional center, all of the employees of the tenants in the shopping center could be counted, along with any other employees who provide goods and services to the shopping center."

From a brownfield perspective, EB-5 investors are beginning to conduct more due diligence on environmental issues because the risks of delays from the remediation process could cause the project to not create the requisite jobs in the two-year window and result in costs that could undermine viability of project, Schnapf explained. If either of these occur, investors could have their permanent visa put at risk. Thus, investors need to consider environmental issues and developers/sponsors need to properly disclose the risks in the private offering memoranda.

It is important to note, Schnapf said, some government economic development agencies are working with regional centers to facilitate redevelopment. Furthermore, regional centers may specialize in a particular type of development (medical, hotels, industrial properties, etc.) or geographic area. There are more than 400 regional centers across the country.