

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
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November 6, 2006

Jurg Heuberger, AICP, CEP, CBO
Planning & Development Services Director
Imperial County
801 Main Street
El Centro, CA 92243

Re: Public Works Case No. 2006-020
Heber Family Apartments
County of Imperial

Dear Mr. Heuberger:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to California Code of Regulations, title 8, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the construction of the Heber Family Apartments ("Project") is a public work, and is subject to the prevailing wage requirements of the California Labor Code.

The Project consists of construction of an 81 unit apartment complex in the unincorporated area of Heber in Imperial County. Pursuant to a regulatory agreement between Heber Family, L.P., a California limited partnership ("Owner") and the County of Imperial ("County"), for a period of 55 years, 24 units are to be restricted to tenants earning no more than 80 percent of the Area Median Income ("AMI"). This amounts to approximately 29.6 percent of the total number of apartments in the Project.

Project financing is from two sources. Initial financing comes in the form of a loan from County to Owner, funded with proceeds from a grant to County from the State of California's HOME Investment Partnership Program ("HOME Loan"). The principal amount of this loan is \$3.4 million, the loan term is 55 years and the interest rate is 1 percent simple interest. Permanent financing comes in the form of two loans from US Bank in the aggregate principal amount of \$6.35 million.

Labor Code section 1771¹ generally requires the payment of prevailing wages to workers employed on public works. Section 1720(a)(1) defines public works to include: "Construction,

¹ Subsequent statutory references are to the Labor Code unless otherwise indicated.

alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds "... ." This Project clearly will entail construction work done under contract. At issue here is whether the Project is "paid for in whole or in part out of public funds." Section 1720(b) provides in pertinent part:

(b) For purposes of this section, "paid for in whole or in part out of public funds" means all of the following:

(4) Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the state or political subdivision.

However, section 1720(c) provides that:

(c) Notwithstanding subdivision (b):

(6) Unless otherwise required by a public funding program, the construction or rehabilitation of privately owned residential projects is not subject to the requirements of this chapter if one or more of the following conditions are met:

(E) The public participation in the project that would otherwise meet the criteria of subdivision (b) is public funding in the form of below-market interest rate loans for a project in which occupancy of at least 40 percent of the units is restricted for at least 20 years, by deed or regulatory agreement, to individuals or families earning no more than 80 percent of the area median income.

Because the two loans from US Bank are privately financed, the only potential source of public funding is the HOME loan. The HOME Loan is being made by a political subdivision of the state, and its 1 percent simple interest rate is clearly less than fair market value within the meaning of section 1720(b)(4). The HOME Loan therefore meets that section's definition of "paid for in whole or in part out of public funds." Moreover, the HOME Loan does not qualify for the section 1720(c)(6)(E) exemption. This

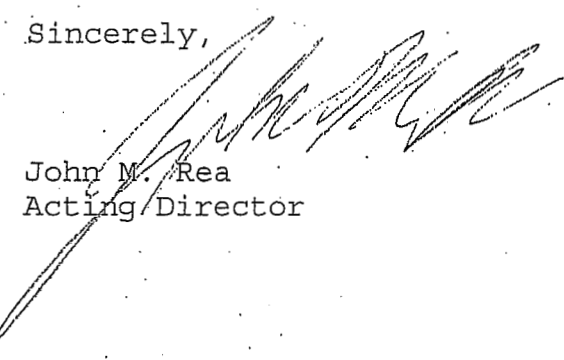
Letter to Jurg Heuberger
Re: Public Works Case No. 2006-020
Page 3

exemption only applies to a project in which occupancy of at least 40 percent of the units is restricted. Here, the regulatory agreement restricts occupancy of only 29.6 percent of the units, which is less than the minimum requirement.

For the foregoing reasons, the Project is a public work subject to the prevailing wage requirements of the Labor Code.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



John M. Rea
Acting Director