STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

DEPARTMENT OF INDUSTRIAL RELATIONS
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April 4, 2024

Andrea Matsuoka
Weinberg, Roger & Rosenfeld
431 I Street, Suite 202
Sacramento, California 95814

Re: Public Works Case No. 2021-009
350 Ocean Street Project
City of Santa Cruz

Dear Ms. Matsuoka:

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 Labor Code section 1773.5[1] and California Code of Regulations, title 8, section 16001, subdivision (a). Based on my review of the facts of this case and an analysis of applicable law, it is my determination that the 350 Ocean Street Project (Project) in the City of Santa Cruz is a public work subject to prevailing wage requirements.

Facts

A. The Project and the Various Related Entities.

The Project is a four-story mixed-use development project comprised of 63 affordable housing units, 6,860 square feet of commercial space, and ground level parking consisting of "an on-site podium style parking garage." The Project site covers four parcels and previously contained two detached single-family residences and twenty multi-family dwelling units. Santa Cruz Pacific Associates, a California limited partnership (Santa Cruz Pacific), is the owner of the four parcels.

According to a statement on its website, the "Pacific Companies is a privately-held group of firms dedicated to excellence in multifamily housing and charter school facilities. Under the leadership of president and CEO, Caleb Roope, our teams deliver across a continuum of real estate specialties including feasibility analysis, development, design, finance, construction, and asset management. Our companies include Pacific West

[1] Unless otherwise indicated, all further statutory references are to the California Labor Code and all subdivision references are to the subdivisions of section 1720.

Communities, Pacific Partners Residential, Strategic Growth Partners, Pacific West Builders, and Pacific West Architecture." Santa Cruz Pacific's partners are Roope LLC as the 99.98% limited partner, TPC Holdings V, LLC as the 0.01% general partner, and Central Valley Coalition for Affordable Housing (CVCAH) as the 0.01% managing general partner. CVCAH is a nonprofit established in 1989 by the Housing Authority of the County of Merced.

Pacific West Builders, Inc., which was retained by Santa Cruz Pacific to be the general contractor on this Project, stated that the developer of the Project, Pacific West Communities, Inc., "caused the formation of Santa Cruz Pacific . . . to own and operate the Project." Information obtained from the California Secretary of State's website reveals that Roope LLC, TPC Holdings V, LLC, Pacific West Builders, and Pacific West Communities all have as their business address 430 E State Street, Suite 100, Eagle, Idaho 83616. Santa Cruz Pacific has CVCAH's address as its business address but has the Eagle, Idaho address as its mailing address.

B. The Infill Infrastructure Grant.

In August 2013, Pacific West Communities and CVCAH applied for funding from Round 3 of the Department of Housing and Community Development's (HCD) Infill Infrastructure Grant (IIG) program.

The IIG program was initially funded by the Housing and Emergency Shelter Trust Fund Act of 2006 (Proposition 1C). (Health & Saf. Code, § 53545, subd. (b).) The statutory provisions to implement the program were enacted in 2007 by Senate Bill (S.B.) 96 (2007) and Assembly Bill (A.B.) 192 (2007) and have since gone through a number of amendments.[2] The primary objective of the IIG program is to promote infill housing development "by providing financial assistance for infrastructure improvements necessary to facilitate new infill housing development." (Round 3 IIG Guidelines, § 301.) HCD is required to issue guidelines for the IIG program. (former Health & Saf. Code, § 53545.13, subd. (g).)

In the version of the program (Round 3) in effect at the time Pacific West Communities submitted its application, the improvement eligible for funding, known as a "capital improvement project" (CIP), must be "an integral part of, or necessary to facilitate the development of, a qualifying infill project or a qualifying infill area." (former Health & Saf. Code, §§ 53545.13, subd. (b), 53545.12, subd. (a).) A qualifying infill project or QIP is "a residential or mixed-use residential project located within an urbanized area on a site that has been previously developed, or on a vacant site where at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses." (former Health & Saf. Code, § 53545.12, subd. (e)(1).)

Pacific West Communities and CVCAH described the QIP in their IIG grant application as a 63-unit multi-family new construction project on an infill site situated on Ocean Street. "The type of construction will be wood frame built over concrete podium

[2] See Stats. 2010, ch. 390 (A.B. 2508), § 1; Stats. 2019, c. 159 (A.B. 101), § 19; Stats. 2019, ch. 660 (A.B. 1010), § 13; Stats. 2020, ch. 192 (A.B. 434), § 7.

parking," with the parking in the lower floor and the residential units on the second through fourth floors. The CIP is described as "the construction of an on-site podium style parking garage to provide vehicle parking for the proposed 63 unit multi family affordable rental project." The work is further described as encompassing "the construction of the podium parking, including the concrete, structural columns and the podium deck," and the associated grading, site work, and foundation work. "[R]equired public improvements on Ocean Street, bike parking space and facilities, street trees and undergrounding of utilities" are also included in the scope of work.

In February 2014, HCD awarded Pacific West Communities and CVCAH with an IIG grant of $2,963,800. After the award, Pacific West Communities and CVCAH entered into several grant agreements with HCD: a Standard Agreement in September 2014, a Disbursement Agreement in May 2019, and Standard Agreement - Amendment in March 2020 (collectively, IIG Grant Agreements). The IIG Grant Agreements all confirm that the CIP and QIP must be built according to the same scope of work as described in the IIG grant application.

C. The Deferred Development Impact Fees.

IIG proposals that are project ready, which is demonstrated by local support and funding commitments from non-IIG sources, rank higher and are therefore more likely to be awarded. (former Health & Saf. Code, § 53545.13, subd. (d)(1).) To show that the proposal was project ready and to improve their chances at receiving an IIG grant, Pacific West Communities and Santa Cruz Pacific sought financial assistance for the Project from the City. On July 23, 2013, the City approved up to $750,000 in financial assistance for the Project through a combination of development impact fee deferrals and an Affordable Housing Trust Fund loan. The amount of the assistance was deliberately set at 25 percent of the IIG grant amount. According to the City, Pacific West Communities and Santa Cruz Pacific specifically requested the financial assistance to come in the form of fee deferrals rather than fee waivers.

The deferred development impact fees were fees for traffic impact, water/sewer, general plan maintenance, green building, and parks and recreation. The City agreed to structure the financial assistance as a 30-year loan at 3 percent interest, to be paid annually with 30 percent of the Project's audited residual receipts, secured by a note and deed of trust recorded against the Project parcels.

In April 2019, the City and Santa Cruz Pacific signed several documents that finalized the City's $750,000 financial assistance for the Project: a Promissory Note, a Deed of Trust, a Fee Deferral Agreement, and an Affordable Housing Development Agreement and Regulatory Agreement. The Promissory Note memorialized the loan terms already agreed to by the City: 3 percent simple interest on the $750,000 principal, with principal and interest paid annually with 30 percent of the Project's audited residual receipts. Residual receipts are defined as "[a]ll rents, revenues, consideration or income (of any form) derived by [Santa Cruz Pacific] in connection with or relating to the ownership or operation of the Housing Project . . . ."

Once all the financing was secured, Santa Cruz Pacific contracted for the construction of the Project, including the QIP and CIP, for the estimated cost of over $21 million. In its invitation for subcontractors to bid, the Project is described as a "Concrete Podium + a 63-unit multifamily apartment complex consisting of 16-1 bedroom units, 18-2 bedroom units and 29-3 bedroom units." The invitation to bid stated that concrete and waterproofing work would be subject to prevailing wage requirements. Pacific West Builders is listed as the general contractor.

Contentions

Pacific West Builders argues that though CVCAH and Pacific West Communities jointly applied for, and are joint recipients of, the IIG grant, HCD's guidelines allow IIG funds to be received by one co-recipient, which may then lend the funds to the other co-recipient. Consequently, it insists that IIG funds are not public funds because the funds are being loaned from CVCAH to Pacific West Communities. Even if the loan is considered a grant, Pacific West Builders contends that only the construction of the on-site podium style parking garage is public work subject to prevailing wage requirements by operation of the exception in section 1720, subdivision (c)(2) (hereafter section 1720(c)(2)). Alternatively, Pacific West Builders argues that the QIP and CIP are separate projects and IIG grant funding only paid for CIP work.

The requester Carpenters Local 505 argues that the Project is a public work because CVCAH's loan of IIG grants constitutes public funds, that the City of Santa Cruz's deferral of development impact fees is a below market interest rate loan that qualifies as public funding, that the CIP parking garage is part of the same QIP mixed-use development that comprises the Project, and that none of the exceptions in section 1720, subdivision (c) apply. Specifically, section 1720, subdivision (c)(1) (hereafter section 1720(c)(1)) does not apply because there is a grant agreement with HCD, a state agency, for the IIG funding. Section 1720(c)(2) does not apply because the construction of the parking garage is not a public work of improvement required as a condition of regulatory approval. Finally, section 1720, subdivision (c)(5)(E) (hereafter section 1720(c)(5)(E)) does not apply because the existence of the IIG funding means that below market interest rate loans are not the only form of public funding for the Project.

When asked to offer an opinion on this matter, the City of Santa Cruz, through its City Attorney, focused its analysis on whether the deferral of development fees constituted public funds for the purposes of the prevailing wage law. The City cited the coverage determination in PW 2016-033, *Mayfield Place Housing Project – City of Palo Alto* (Oct. 18, 2017) that concluded that a local ordinance which set a lower development fee for affordable housing could not be considered a public subsidy, and by analogy, argued that the deferral of development fees was likely also not public funds because it was authorized by the Santa Cruz Municipal Code. Although another coverage determination (PW 2017-035 and 2018-005, *Springhill Suites – The Dunes at Monterey Bay - Fort Ord Reuse Authority* (Dec. 9, 2020/Sept. 6, 2022) involving a hotel project found that deferring development fees is akin to a loan, the City distinguished that determination because the Project is an affordable housing project. And even if the deferral of development fees could be characterized as a below market interest rate loan, the City argued that the exception in section 1720(c)(5)(E) applied.

Discussion

All workers employed on public works projects must be paid at least the applicable prevailing wage rates. (§ 1771.) Section 1720, subdivision (a)(1) (hereafter section 1720(a)(1)) defines "public works" to mean: "Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds . . . ." "There are three basic elements to a 'public work' under section 1720(a)(1): (1) 'construction, alteration, demolition, installation, or repair work'; (2) that is done under contract; and (3) is paid for in whole or in part out of public funds." (*Busker v. Wabtec Corporation* (2021) 11 Cal.5th 1147, 1157 (*Busker*).)

No party disputes that the first two elements to a public work under section 1720(a)(1) are met here, as the Project involves "construction" that is "done under contract." The only issues presented are whether the Project is "paid for in whole or in part out of public funds" and whether an exception applies.

A. The QIP and CIP Form a Single, Integrated Project.

Pacific West Builders argues that the QIP and the CIP are separate projects.[3] The argument holds significance due to the definition of public works in section 1720(a)(1), which requires that construction be "paid for in whole or *in part* out of public funds." If the CIP and QIP form a single integrated Project, and the IIG grant funded only the CIP, prevailing wage requirements would still apply to the entirety of the Project because the IIG grant paid for the Project *in part*. Conversely, if the CIP and QIP were separate projects, the IIG grant for the CIP would not pay for the QIP in any part.[4]

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[3] Alternatively, if the QIP and CIP were deemed to be part of the Project, Pacific West Builders contends that the exception in section 1720(c)(2) operates to exclude the construction of the QIP from the reach of the prevailing wage law. The section 1720(c)(2) contention is discussed below.

[4] Round 3 IIG Guidelines, which have since been extensively amended for subsequent IIG rounds, state that IIG funding is public funding for the CIP, but is not necessarily considered public funding of a QIP, "unless such funding is considered public funding under the State Prevailing Wage Law. It is not the intent of the Department in these regulations to subject Qualifying Infill Projects or Qualifying Infill Areas to the State Prevailing Wage Law by reason of Program funding of the Capital Improvement Project in those circumstances where such public funding would not otherwise make the Qualifying Infill Project or Qualifying Infill Area subject to the State Prevailing Wage Law." (Round 3 IIG Guidelines, § 314.) This guideline essentially states that HCD has no opinion on whether prevailing wages are required, and whether IIG funding is public funds for the purposes of the prevailing wage law is determined by the Department. (§ 1773.5.) The current version of the guidelines has eliminated this section altogether in favor of a section simply requiring certification of compliance with prevailing wage requirements. (See IIG-2019 Guidelines, § 300(c) (May 23, 2023).)

Appellate decisions have set forth the framework for analyzing whether constructed components form a "complete integrated object." (*Oxbow Carbon & Minerals, LLC v. Department of Industrial Relations* (2011) 194 Cal.App.4th 538, 549.) The determination of what constitutes a single, integrated project requires an examination of the "totality of the facts." (*Cinema West, LLC v. Baker* (2017) 13 Cal.App.5th 194, 212 (*Cinema West*).) This determination is often fact-intensive, and always fact-specific. In this case, it is hard to see how the QIP and CIP can be separate projects.

As described in the grant application, the QIP mixed-use residential is built on top of the CIP parking improvement and related infrastructure improvements. The QIP and CIP will be built in the normal course of construction as a single building by the same developer and same general contractor. For purposes of the IIG program, the CIP must be "an integral part of, or necessary to facilitate the development of, a qualifying infill project or a qualifying infill area." (former Health & Saf. Code, §§ 53545.13, subd. (b), 53545.12, subd. (a).) The IIG Grant Agreements and various other project-related documents echo this requirement. The CIP certainly meets this requirement, as the CIP is the foundation upon which the QIP is built. A project does not get more integral than that. Given these factual and legal grounds, the QIP and CIP form a single, integrated Project.

B. The IIG Grant Constitutes Public Funds.

Public funds for the purposes of the prevailing wage law include the "payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer." (§ 1720, subd. (b)(1).) The IIG program was initially funded by bond proceeds pursuant to Housing and Emergency Shelter Trust Fund Act of 2006 (Proposition 1C). (Health & Saf. Code, § 53545.) IIG funds are distributed by HCD, a state agency. There is no question that IIG grant funding is public funding.

Pacific West Builders insists that the IIG grant money was provided to CVCAH, which then *loaned* the money to Pacific West Communities. This method of disbursing IIG grant funds, Pacific West Builders argues, is contemplated by HCD and entirely consistent with HCD's guidelines for the IIG program. In fact, Pacific West Builders claims that HCD expressly allows for such lending of IIG grant moneys between co-recipients in both its guidelines (see Round 3 IIG Guidelines, § 305(f)) and in Exhibit D of its Standard Agreement.

Closer inspection of this claim, however, reveals that there are important details that Pacific West Builders appears to have overlooked. First, Section 305(f) of the Round 3 IIG Guidelines does indeed state that "Where the Qualifying Infill Project is receiving low income housing tax credits, the Recipient may provide Program funds to the developer of the Qualifying Infill Project in the form of a zero (0) percent, deferred payment loan, with a term of at least 55 years . . . ." However, Section 302 provides that "'Recipient' *means the public agency, private developer* or BID receiving a commitment of Program funds for an approved project." (Round 3 IIG Guidelines, § 302(t), italics added.) The word "means" is "a term accepted as one of limitation, not enlargement." (*State Building & Construction Trades Council of California v. Duncan* (2008) 162 Cal.App.4th 289, 309.) Usage of the term "means" in HCD's guidelines indicates that a recipient of IIG

grant funds can only be a public agency or a private developer.[5] Thus, CVCAH is either a public agency or a private developer. Since CVCAH is a nonprofit corporation, it cannot be a public agency, which means it is a private developer.

Language in Exhibit D is consistent with HCD's guidelines: "In the event of a joint application where the co-Recipient *Locality or public housing authority* and the co-Recipient developer have agreed in writing that the *Locality or public housing authority*, shall receive the Program funds as the primary Recipient in order to make a loan to the developer for tax credit purposes . . . ." Under Exhibit D, a loan between co-recipients is available only when one of the co-recipients is a public agency. (See also Round 3 IIG Guidelines, § 307(c)(1) ["For Qualifying Infill Projects, the nonprofit or for-profit developer of the Qualifying Infill Project is a required applicant, either by itself or as a joint applicant with a Locality, or public housing authority."]) When both recipients are private entities, as in this case, HCD's guidelines on loans between co-recipients do not apply.

Furthermore, even if HCD's guidelines did apply here, the fact that HCD contemplated loans between private co-recipients does not dictate whether the Project is paid for out of public funds. Public funds provided by HCD to a private entity for construction, which are then used to pay for construction, fall squarely within section 1720(a)(1), regardless of whether private entities employ complicated transactions to divvy up the public funds amongst themselves. To conclude otherwise would sanction an end-run around the statute. Pacific West Builder's interpretation – that IIG grant funds earmarked for construction could then be loaned between affiliated private entities to evade prevailing wage requirements – taken to its extreme would mean that if HCD provided a grant to a developer to build a housing project, the developer could then claim that the housing project is not subject to prevailing wage requirements because the developer "loaned," rather than "paid," those grant proceeds to the developer-affiliated general contractor that built the housing. This sort of clever financial structuring would "reduce the prevailing wage law to merely an advisory expression of the Legislature's view." (*Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 988.) "This cannot have been the Legislature's intent." (*Cinema West, supra,* 13 Cal.App.5th at p. 216.)

In short, notwithstanding Pacific West Builders' creative argument, two private entity co-recipients of a state grant for construction cannot agree amongst themselves to have one private recipient "loan" the grant proceeds to the other private recipient or another related party to evade the prevailing wage law. The HCD grant was provided to Pacific West Communities and CVCAH, paid for construction, and constitutes public funds within the meaning of section 1720.

[5] A BID has no relevance here because it is an "owners' association as defined in Section 36614.5 of the Streets and Highways Code, for a business or property improvement district." (Round 3 IIG Guidelines, § 302(d).)

C. The Deferral of Development Impact Fees Constitutes Public Funds Under Section 1720(b)(4).

Under the prevailing wage law, public funds include "[f]ees, 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." (§ 1720, subd. (b)(4).) Section 1720(c)(5)(E) exempts construction or rehabilitation of privately owned residential projects if the "public participation in the project . . . 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."

By invoking the section 1720(c)(5)(E) exception, Pacific West Builders appears to concede that the deferral of development impact fees, which was structured as a loan in the Fee Deferral Agreement and the Promissory Note, constitutes public funds, because it argues that there is "no doubt" that the fee deferral loan qualifies under the affordable housing exemption described in section 1720(c)(5)(E). In order for the exception to apply, one of the key conditions is that the "public funding is limited to below-market interest rate loans." (*Housing Partners I, Inc. v. Duncan* (2012) 206 Cal.App.4th 1335, 1339 (*Housing Partners I*).) If the fee deferral loan was not public funds, section 1720(c)(5)(E) would never come into play. Curiously, Pacific West Builders contends in a footnote that the fee deferral loan's 3 percent interest was not a below market rate of interest. But if the fee deferral loan was market interest rate loan, it would not be public funds and invoking section 1720(c)(5)(E) would be unnecessary.

The City questions whether the fee deferral loan constitutes public funds and attempts to distinguish a prior coverage determination concluding that deferring development impact fees is akin to a below market interest rate loan. (PW 2017-035 and 2018-005, *Springhill Suites – The Dunes at Monterey Bay - Fort Ord Reuse Authority* (Dec. 9, 2020/Sept. 6, 2022).) But the argument the City put forward – that the housing project in this case is different from the hotel project in the other determination – is unpersuasive. Nothing about the nature of the project changes the fact that the City elected to delay collection of a fee it was immediately entitled to collect for the sole purpose of providing financial support for the construction of a project. The City's other argument that deferral of impact fees is authorized by local ordinance also misses the mark. The ordinance permits deferral, but the choice to defer and make a low-interest loan remains with the City. Presumably there are ordinances that also allow the City to provide other direct financial funding to support development, but it would be inconceivable to conclude that the funding is not public funds simply because an ordinance allowed for the funding.

All of the facts support the conclusion that the fee deferral loan was a below market rate loan under section 1720(b)(4). Carpenters Local 505 provided unrebutted data to show that market rate interest hovered around 5 to 5.5 percent when the fee deferral loan was made. Moreover, market rate loans usually involve compound interest, whereas the fee deferral loan charged 3 percent *simple* interest. Finally, the City offered the fee deferral loan as financial assistance for the Project, which further suggests that

the loan was below market rate. A market rate loan would not normally be considered financial assistance. Accordingly, the fee deferral loan is public funds under section 1720(b)(4).

D. Section 1720(c)(5)(E)'s Exception Is Inapplicable Because Public Funding for the Project Is Not Limited to the Fee Deferral Loan.

Even if the fee deferral loan was a below market interest rate loan, the City argues that section 1720(c)(5)(E) operates as an exception to prevailing wage requirements for the Project. The City is correct that the prevailing wage law offers an exception for certain affordable housing projects if the enumerated conditions are met. But one of the conditions is that the affordable housing project's "public funding is limited to below-market interest rate loans." (*Housing Partners I, supra*, 206 Cal.App.4th at p. 1339.) In other words, to qualify for the exception, the affordable housing project generally cannot be receiving any public funding other than below market interest rate loans. The Project is receiving not only the below market rate fee deferral loan, but also IIG grant funding. The existence of the IIG grant funding nullifies the exception.

E. Section 1720(c)(2)'s Exception Is Inapplicable Because No Public Improvement Is Required as a Condition of Regulatory Approval.

Parting ways with the City, Pacific West Builders takes a different approach. Likely recognizing that section 1720(c)(5)(E) is inapplicable as a result of the IIG grant, Pacific West concedes that only the CIP is subject to prevailing wage requirements, but asserts that the construction of the QIP is exempt due to the partial exemption afforded by section 1720(c)(2).[6] The Court of Appeal explained the rationale for this partial exemption: "Prior to [section 1720(c)(2)], once a project was determined to be covered, all work on the project was subject to the payment of prevailing wages. At the same time, public entities required private developers to build public infrastructure in order to develop private projects. In enacting [section 1720(c)(2)], the Legislature intended to reduce, but not eliminate, the prevailing wage obligation for private development projects where the public funds paid do not exceed the cost of required construction." (*Azusa Land Partners v. Department of Industrial Relations* (2010) 191 Cal.App.4th 1, 31 (*Azusa Land Partners*).)

Section 1720(c)(2)'s partial exemption for otherwise private development projects "applies if four requirements are met: (1) the public improvement work is required as a condition of regulatory approval; (2) the project is an otherwise private development; (3) the public entity must not contribute more money, or the equivalent of money, to the overall project than is required to construct the public improvement work; and (4) the public entity must not maintain any proprietary interest in the overall project." (*Azusa Land Partners, supra,* 91 Cal.App.4th at p. 29 [citing § 1720, subd. (c)(2).])

Both Carpenters Local 505 and Pacific West Builders address each condition in detail, but the Department need not repeat that task, because the Project fails the first

[6] In order to make this argument, Pacific West Builders necessarily concedes that the QIP and CIP form a single, integrated project.

element. Nothing in the record shows any public improvement work is required as a condition of regulatory approval.

The Court of Appeal determined that the phrase "public work of improvement" as used in section 1720(c)(2) "refers to all *public* infrastructure, improvements or construction required as a condition of regulatory approval." (*Azusa Land Partners, supra,* 191 Cal.App.4th at p. 32, italics added.) While HCD requires the construction of the CIP in order to provide IIG grant funding to the Project, regulatory approval of the construction of the Project is not contingent on HCD providing IIG grant funding.

Despite this fact, Pacific West Builders claims that "the City's Zoning Regulations and Conditions of Approval for the Project require off-street parking for vehicles and bicycles for commercial and residential tenants." That may be true, but a parking garage located on the lower levels of the Project that is reserved for tenants of the Project can hardly be characterized as a "public work of improvement." (§ 1720, subd. (c)(2); see *Azusa Land Partners, supra,* 191 Cal.App.4th at p. 31 [public works of improvement include "a school, parks, freight under-crossings, sanitation district facilities and backbone and in-tract street, bridge, storm drain, sewer, water/reservoir, dry utilities, park and landscaping improvements."]) Pacific West Communities and Santa Cruz Pacific were required to build a parking garage for its housing project, which is conceptually not that different from being required to build bathrooms or other amenities that serve its residents. HCD provided IIG grant funding to build parking. The IIG funding for the parking garage does not trigger the partial exemption for the rest of the Project.[7]

In sum, none of Pacific West Builders' asserted exceptions are applicable.[8] The IIG grant funding and the fee deferral loan are public funds that paid for the construction of the Project, which will be performed by Pacific West Builders and other contractors.

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[7] It should be noted that the partial exemption kicks in only if the public funding does not exceed the cost of the required public improvements, because once the public funding is more than what it costs to build the public improvements, the "excess" funding pays for the otherwise private development *in part,* thus triggering prevailing wage requirements for the overall project. (*Azusa Land Partners, supra,* 191 Cal.App.4th at p. 34.) Assuming that the cost of the CIP equals the amount of the IIG grant, the fee deferral loan would cause the total public funding to exceed the cost "required to perform this public improvement work." Thus, even if the CIP was considered a "public work of improvement," the Project fails to satisfy the third element. (§ 1720, subd. (c)(2).)

[8] It is unnecessary to discuss section 1720(c)(1). Carpenters Local 505 argued that section 1720(c)(1)'s exception does not apply. Neither Pacific West Builders nor the City raises the exception or presents any facts that indicates the exception is applicable.

Conclusion

For the foregoing reasons, the 350 Ocean Street Project in the City of Santa Cruz is a public work subject to prevailing wage requirements.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

Katrina S. Hagen
Director of Industrial Relations