

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR
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September 11, 2002

John Mattera
Field Representative
United Brotherhood of Carpenters
and Joiners of America
Local Union No. 1599
900 Locust Street, Suite 4A
Redding, CA 96001

Re: Public Works Case No.2002-008
Redding Hotel Renovation
Redding Redevelopment Agency/City of Redding

Dear Mr. Mattera:

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 Title 8, California Code of Regulations, 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 Redding Hotel Renovation ("Project") is a public work subject to the payment of prevailing wages.

Christian Church Homes of Northern California, Inc. ("Developer") is presently renovating the historic Hotel Redding in downtown Redding. The purpose of the Project is to convert the hotel into affordable apartments for low-income seniors. Developer's estimate is that the Project will cost approximately \$6.6 million.

Initial financing for the Project occurred on March 10, 2000, when the Redding Redevelopment Agency ("Agency") granted Developer \$76,000 to determine the feasibility of the Project. Under the Pre-Development Funding Agreement, Developer used the grant to evaluate whether the existing structure should be rehabilitated or demolished to make way for the construction of a new building. The grant funded the following activities, among others: \$4,000 for surveying; \$4,000 for soil analysis; \$2,000 for environmental analysis; and \$30,000 for engineering and architectural services. As a result of the pre-development work, it was ultimately decided that the Hotel Redding would be renovated as affordable senior housing. Minutes, Joint Meeting

of City of Redding ("City") City Council and Agency, March 6, 2001.

In addition to the \$76,000 Agency grant, Developer obtained loans from Agency and City totaling \$2.6 million. Agency made an acquisition and pre-construction loan to Developer for \$1,010,000, a relocation loan for \$500,000 and a rehabilitation loan in the amount of \$390,000. City made a pre-construction loan to Developer for \$140,000 and a rehabilitation loan for \$560,000. The loans bear an annual 3 percent simple interest rate. A significant portion of Developer's acquisition and rehabilitation costs were financed by these low-interest loans.¹

The City and Agency loans were made pursuant to an Acquisition and Pre-Construction Funding Agreement ("Agreement") dated April 21, 2001 as well as an Owners Participation Agreement ("OPA") in February 2002. The stated purpose of the OPA is to effectuate the redevelopment plan for the Project, including the renovation of the Hotel and its post-renovation operation as senior affordable housing.

Tax credits are an additional source of financing for the Project. As of September 17, 2001, Developer was allocated federal low-income housing tax credits in the amount of \$508,290 per year for ten years.

What is now Labor Code section 1720(a)(1)² (as amended by statutes of 2001, chapter 938, section 2 (Senate Bill 975)) defines the term "public works" to include construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds. Senate Bill 1999 amended section 1720 by defining the word "construction" as follows: "For purposes of this paragraph, 'construction' includes work performed during the design and pre-construction phases of construction including, but not limited to, inspection and land surveying work."

While not effective until January 1, 2001, the legislative history of SB 1999 indicates the Legislature's intent to codify the Department's already-existing interpretation of "construction" to include such work as testing, inspection, surveying and other work done during the design and pre-

¹ Agency also advanced \$225,000 to Developer as an "operating loan." These funds are being used to operate the hotel during its renovation while efforts are made to relocate its tenants.

² Unless otherwise indicated, all statutory references are to the Labor Code.

construction stages of a project. Of particular relevance here is the fact that, since 1981, the Department has applied the prevailing wage laws to survey work "in the design, pre-construction or construction phase" of a construction project. See 8 Cal. Code Regs. §16001(c). Moreover, and prior to SB 1999, the Department had determined that geotechnical work including soils testing was construction under then-existing section 1720(a). *Precedential Public Works Coverage Determination Case No. 99-014, Family Services Building Geotechnical Work* (November 5, 1999); *Precedential Public Works Coverage Determination Case No. 99-070, Olivenhain Dam Project Soil Drilling and Testing* (February 23, 2000).

This Project falls within the definition of a public work under section 1720(a)(1). It is construction, alteration and demolition performed under contracts between and among the Developer, City and Agency. The Project is paid for in part by Agency's \$76,000 grant, which are public funds.³

Developer argues that this Project cannot be considered a public work under what is now section 1720(d)(3)⁴ because it is a low-income housing project that has been allocated federal low-income housing tax credits. This also appears to be the view of Agency and City, signatories to the OPA, wherein it is stated: "The project is subject to federal prevailing wages due to the use of HOME funds provided by the City; however, state prevailing wages will not be required for the use of Redevelopment funds, as recently adopted Senate Bill 975 exempts payment of prevailing wages and affordable housing projects receiving a tax credit allocation prior to December 31, 2003."

Here, the Developer entered into a Pre-Development Grant Agreement, under which it was given a \$76,000 grant, in February 2000. The tax credits were allocated in 2001. The amendments exempting tax credits were not effective until January 1, 2002.

³ The loans to Developer bear an annual 3 percent simple interest rate. Under some circumstances, we would find that loans for construction bearing a below-market interest rate would constitute payment for construction out of public funds. This issue need not be addressed here, however, in light of the finding that the Project is otherwise publicly funded. See also section 1720(b), effective January 1, 2002, although not applicable to this Project.

⁴ Section 1720(d)(3) provides, in pertinent part, "Low-income housing projects that are allocated federal or state low-income housing tax credits . . . on or before December 31, 2003" shall not be subject to the requirements of the prevailing wage laws.

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Consequently, the Project is not exempted from the prevailing wage laws.

For the above reasons, the Project is a public work for which prevailing wages must be paid.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Chuck Cake".

Chuck Cake
Acting Director