

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS

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DECISION ON ADMINISTRATIVE APPEAL  
RE: PUBLIC WORKS CASE NO. 2002-008  
REDDING HOTEL RENOVATION  
REDDING REDEVELOPMENT AGENCY/CITY OF REDDING

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The undersigned, having reviewed the joint administrative appeal filed by the Redding Redevelopment Agency ("Agency") and Christian Church Homes of Northern California, Inc. ("Developer")<sup>1</sup>, and except as set forth below, said appeal is hereby denied for the reasons set forth in the initial coverage determination ("Determination") dated September 11, 2002, which is incorporated by reference herein.

In their appeal, Agency and Developer request a hearing. Title 8, California Code of Regulations section 16002.5(b) provides that the decision to hold a hearing is within the Director's sole discretion. Because the issues raised in the appeal are purely legal ones and the material facts are undisputed, no factual issues need to be decided

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<sup>1</sup> The California Building Trades Council submitted a letter in support of the Determination. The California Tax Credit Allocation Committee, which is the state agency charged with allocating federal and state low-income housing tax credits to proposed affordable housing development, submitted a letter in support of the joint appeal.

and no hearing is necessary. This appeal is, therefore, decided on the basis of the evidence submitted, and the request for hearing is denied.

In the Determination, the Redding Hotel Renovation ("Project"), a low-income housing project, was deemed to be a public work covered by the prevailing wage laws because it involved construction paid for in part from various sources of public funds, including \$508,290 in federal low-income housing tax credits. That finding is not disturbed here. In this administrative appeal, however, Agency and Developer also argue that the Project is not subject to the prevailing wage laws because it falls within the exemption found in Labor Code<sup>2</sup> section 1720(d)(3) ("exemption") for low-income housing projects that are allocated federal or state tax credits before December 31, 2003. The specific question is whether projects receiving tax credits allocated prior to the effective date of the amendment fall within the exemption.

For the following reasons, we reverse the portion of the Determination concerning the exemption and hold that the Project is exempt from prevailing wage obligations.

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<sup>2</sup> All statutory references are to the Labor Code.

Labor Code section 1720(d) provides:

Notwithstanding any provision of this section to the contrary, the following projects shall not, solely by reason of this section, be subject to the requirements of this chapter:

- (3) Low-income housing projects that are allocated federal or state low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code, Chapter 3.6 of Division 31 (commencing with section 50199.4) of the Health and Safety Code, or section 12206, 17058, or 23610.5 of the Revenue and Taxation Code, on or before December 31, 2003.

The Project is a low-income housing project that was allocated federal low-income housing tax credits on September 17, 2001.<sup>3</sup> The Senate Bill 975 amendments to the Labor Code, which contained the exemption, became effective January 1, 2002. Ordinarily, a statute's effective date and its operative date are the same. A statute may, however, include operative dates that differ from the effective date. *Estate of Nicoletti* (1982) 129 Cal.App.3d 475, 181 Cal.Rptr. 137. See also *Bank of America v. Angel View Crippled Children's Foundation* (1999) 72 Cal.App.4<sup>th</sup> 451, 85 Cal.Rptr.2d 117 (amendment to Probate Code fixes an operative date prior to the effective date of the amending statute).

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<sup>3</sup> On October 10, 2001, Developer accepted the tax credits by signing the "Preliminary Reservation Letter" and returning it to the California Tax Credit Allocation Committee.

Here, the Legislature's use of the words "before December 31, 2003" indicates a deadline by which public works projects seeking to qualify for the exemption must be allocated the tax credits. They do not limit the operative dates of the exemption to a two-year period within which the tax allocation must occur. The word "before" reaches back indefinitely and operates prior to the effective date of the statutory amendment. See *Stanton v. Weinberger* 502 F.2d 315 (10<sup>th</sup> Cir. 1975). Read this way, the exemption may apply to otherwise qualified projects such as the instant one, which was allocated tax credits in 2001, and any time earlier.

In summary, the Determination's finding that the Project is a public work is affirmed; however, under section 1720(d)(3), the Project is exempt from prevailing wage requirements.

This decision constitutes the final administrative action in this matter.

Dated: 2-25-03

Chuck Cake  
Chuck Cake, Acting Director