

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR
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January 31, 2003

Marc Stice, General Counsel
Joseph Zawidski, Vice-President Foundation Planning
Signature Properties, LLC
4670 Willow Road, Suite 200
Pleasanton, CA 94588-2710

Re: Public Works Case No. 2002-015
The Abella Project
Redevelopment Agency of the City of San Pablo

Dear Messrs. Stice and Zawidski:

This constitutes the determination of the Director of the Department 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 upon my review of the facts of this case and an analysis of the applicable law, it is my determination that the Abella Project ("Project"), a residential and commercial mixed-use development in the City of San Pablo, is not a public work subject to the payment of prevailing wages.

Signature at Abella, LLC ("Developer"), a real estate developer and homebuilder, purchased the San Pablo International Marketplace ("Property") for the purpose of the redevelopment of the Property into a mixed-use residential and commercial development. Developer entered into a Second Amended Disposition and Development Agreement ("DDA") with the Redevelopment Agency of the City of San Pablo ("Agency") on May 6, 2002. The terms of the DDA provide for the Agency's acquisition of leasehold interests of existing commercial retail tenants on the Property and the payment of relocation benefits to these tenants. To finance the leasehold acquisitions and relocation benefits, Agency has loaned Developer \$2.6 million. Developer is obligated to repay the loan to Agency at seven percent interest in accordance with the terms of a promissory note over ten years secured by a deed of trust against a portion of the Project property and by the corporate guarantees of entities affiliated with Developer.¹

¹ An original DDA, dated November 30, 2001, provided for an Agency payment of \$2.6 million for the leasehold interests acquisition and tenant relocation benefits, which sum was to be repaid by Developer along with a share of the Project's net profits if certain net profit thresholds were met. The amended DDA restructured the repayment terms as a loan.

The DDA also provides for Agency's acquisition of two adjacent parcels of land (the Rosine and USA properties) and the relocation of those tenants. Developer is to reimburse Agency for the full costs associated with these activities.² Developer has also secured a loan from Wells Fargo Bank in the amount of \$15,555,000 for the construction of the Project.

Labor Code section 1720(a)(1)³ generally 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... ." The Project is construction. It is being done under contract between Developer and Agency.

Labor Code section 1720(b) generally defines "paid for in whole or in part out of public funds" as "payment of money or the equivalent of money by a state or political subdivision directly or on behalf of the...Developer...in execution of the project, transfer of an asset of value for less than fair market price, fees, costs, rents, loans, interest rates or other obligations that would normally be required in the execution of the contract, which are paid, reduced, charged at less than fair market value... ."

Under Title 8, California Code of Regulations, section 16000, "public funds do not include money loaned to a private entity where work is to be performed under private contract, and no portion of the work is supervised, owned, utilized or managed by an awarding body."

The Project has multiple funding sources, none of which constitute public funds. Under both section 1720(b)⁴ and the above-referenced regulation, the loan from Agency does not constitute public funds. It is a bona fide loan in that the promissory note requires that Developer, a private entity, repay the principal and seven percent market rate interest. Agency will not supervise, own, utilize or manage the Project. The property acquired by Agency will not be written down in the sale

² Counsel for Developer advises that, of the two additional parcels, the Rosine property was purchased through direct negotiations between Developer and the seller, and the USA property will be obtained through Agency's initiation of eminent domain proceedings. Developer will pay Agency the full acquisition costs, with no "write-down" in the purchase price of the USA property.

³ Unless otherwise indicated, all "section" references are to the Labor Code.

⁴ The amendments to the prevailing wage laws under Senate Bill 975, effective January 1, 2002, are applicable to this Project because the material terms of the Project were set forth in the Second Amended DDA signed on May, 2002.

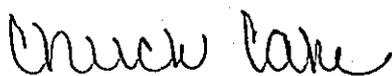
Letter to Marc Stice & Joseph Zawidski
Re: Public Works Case No. 2002-015
Page 3

to Developer. The balance of the funding for the Project comes from private sources not associated with Agency.

For these reasons and consistent with prior precedential public works determinations⁵, I find that the Project is not a public works project subject to the payment of prevailing wages.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Chuck Cake
Acting Director

⁵ Silverado Creek Apartments/Napa Community Redevelopment Agency, PW 99-074 (September 27, 2000).