STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
455 Golden Gate Avenue, Tenth Floor
San Francisco, CA 94102
(415) 703-5050

GRAY DAVIS, *GOVERNOR*

January 6, 2003

Donald C. Carroll, Esq.
Law Offices of Carroll & Scully, Inc.
300 Montgomery Street, Suite 735
San Francisco, CA 94104-1909

Re: Public Works Case No. 2002-059
Improvements to Real Property
Lucia Mar Unified School District

Dear Mr. Carroll:

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 improvements work to be performed in connection with the purchase of property by the Lucia Mar Unified School District are a public work subject to the payment of prevailing wages.

On August 10, 1999, Village Glen Homes, LLC ("Developer") and Lucia Mar Unified School District ("District") entered into a School Site Purchase and Sale Agreement ("Agreement") for the sale by Developer to District of approximately nineteen acres of property on which an elementary school is to be built within a larger subdivision being developed by Developer. (Agreement, p. 5, § 2.2). The original sale price was $ 1,544,404.

Subsequent to the Agreement, the City of Arroyo Grande ("City") required that certain improvements be performed on the property pursuant to an Environmental Impact Report and the City's Conditions of Approval. Developer's Project Manager provided District with a list of the scope of the improvement work and indicated that Developer's cost in performing the improvements would "necessitate An (sic) increase in the purchase price for the land..." (March 7, 2000 letter from Developer's Project Manager to District.) In order to pay Developer for the improvements work, the District proposed an amendment to the Agreement that increased the purchase price of the property to $ 2,444,404. (Lucia Mar Unified School District Board of Education April 11, 2000, Agenda F-2.)

On April 12, 2000, Developer and District entered into Amendment No. 1 ("Amendment") to the Agreement. Its Recitals indicate that the purpose of the Amendment is to provide for the completion of the improvements required by City prior to the sale of the property. (Amendment No. 1, p. 1, § 2.3.) The Amendment sets forth the improvements to be made to the property by Developer including, but not limited to, removal of existing trees on the property, grading of the property, construction of storm drains, a fire access road, and a water booster pump to provide water pressure to the property, and landscaping and erosion control. Pursuant to the Amendment, the purchase price of the property was increased to $ 2,444,404.00. (Amendment No. 1, p. 3, § 3.4 (amending § 2.2)).[1]

Under what is now Labor Code section[2] 1720(a), (as amended by statutes of 2001, chapter 938, § 2), "public work" is defined as "construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds …."

The above-described improvements clearly constitute construction, alteration, and demolition of the property. The work is being performed under contract. The issue in dispute is whether the improvement work was paid for with public funds.

Developer asserts that the transaction is a sale of real property and not a public works contract. Developer's assertion is incorrect. In the Amendment the "sale" price was increased by at least $ 900,000 in order to pay for the improvements required by City.

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[1] In addition to the increase in purchase price to compensate Developer for the required improvement work, Section 3.4 of Amendment No. 1 also allows for "reasonable costs, not to exceed Two Hundred Fifty Thousand Dollars ($250,000) incurred for any additional unforeseen improvements not contemplated by the plans and specifications to be approved by the District as defined in Section 2.5 below, that are necessary to complete the Property Improvements…"

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

When a public entity, through a real estate purchase agreement, contracts with a seller to pay for construction out of public funds, the project constitutes a public work.[3] Here, through the Agreement and its Amendment, District and Developer have contracted for the performance of construction, alteration and demolition work. That such an arrangement is entered into within a purchase and sale contract for real property is irrelevant; we look not at the name of the agreement but at its true nature. Thus, there is no question that public funds are being used for the improvements work in this case. Accordingly, the improvements work performed by Developer and paid for by District constitutes a public work for which prevailing wages must be paid.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

Chuck Cake
Acting Director

[3] *Monterey Peninsula Water District*, PW 99-054 (November 1, 1999).