

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR
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March 6, 2003

Laura E. Innes
Simpson, Garrity & Innes
651 Gateway Boulevard, Suite 1050
South San Francisco, CA 94080

Re: Public Works Case No. 2002-080
Andante Redevelopment Project
City of Emeryville

Dear Ms. Innes:

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 state law, it is my determination that the Andante Redevelopment Project in the City of Emeryville ("Project") is not a public work and therefore not subject to the payment of prevailing wages.

The Project involves the redevelopment of 1.83 acres of land in the City of Emeryville, pursuant to a Disposition and Development Agreement ("DDA") entered into on April 13, 2001 between the Emeryville Redevelopment Agency ("Agency") and SNK Development Inc. ("Developer"). Under the DDA, Agency is to sell the land to Developer for \$2 million, which appears to be fair market value.¹ Developer is to develop the property for mixed commercial and residential use. Improvements contemplated under the DDA include construction of retail and office space, residential units (80 percent at market rate and 20 percent at affordable rates for low- and moderate-income households), a parking structure, transit stop amenities and off-site public improvements.

Under the DDA, Developer is to pay for all costs associated with development of the Project, including demolition and disposal of existing improvements and new construction. Attachment 4 to the DDA, Scope of Development, further specifies that Developer is to

¹ Note that under some circumstances prior to the operation of the Labor Code amendments of Senate Bill 975, the Department would find that a below fair market value sale of public property would constitute payment of public funds for construction.

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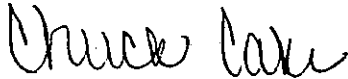
pay for all off-site public improvements required for development of the on-site improvements.²

Under what is now Labor Code section 1720(a)(1) (as amended by statutes of 2001, chapter 938, section 2 (Senate Bill 975)), a public work is defined as "[c]onstruction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds." The Project involves construction, alteration, and demolition. The work is also to be performed under contract. The construction is being paid for entirely with Developer's private funds; therefore, the public funds element of a public work is not met.

In conclusion, the Project is not a public work and the payment of prevailing wages is not required.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Chuck Cake
Acting Director

² Conditions of Approval for the Project, attached to the DDA, indicates that Developer is to pay its proportionate share to install on- and off-site storm water improvements. Should this language mean that a public entity contributes a portion of the funding for such improvements, the Project might thereby constitute a public work.