

DEPARTMENT OF INDUSTRIAL RELATIONS

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May 1, 2003

Diane Tadano
Project Development Analyst
Mercy Housing California
3120 Freeboard Drive, Suite 202
West Sacramento, CA 95691

Re: Public Works Case No. 2002-092
Countrywood Apartments/Mercy Housing California
County of Yuba Community Development Department

Dear Ms. Tadano:

This letter 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 on my review of the facts of this case and an analysis of the applicable law, I have concluded that the rehabilitation of the Countrywood Apartments ("Project") is a public work not subject to any exemption in the Labor Code.

Mercy Housing California is a non-profit organization involved in the development and rehabilitation of affordable housing in California. It has sponsored the Countrywood Housing Corporation, which plans to acquire and rehabilitate an existing 65-unit, low-income apartment project in Linda, California. The Project will consist of two-bedroom units that will be rented to individuals and families earning no more than 60 percent of the area median income. Pursuant to a regulatory agreement, these units will remain low-income for at least 30 years.

The total Project cost is \$1.3 million. Construction will be financed by a below-market interest rate loan extended to Mercy in the year 2002 from the California Housing Finance Agency through the County of Yuba Community Development Department. The Project is also receiving financial assistance in the form of a Department of Housing and Community Development HOME Partnership Program award (grant) passed through Yuba County in the amount of \$575,610, and a Federal Home Loan Bank loan under the Affordable Housing Program passed through Feather River State Bank in the amount of \$288,000. This second loan will be forgiven in its entirety if the property is held by Mercy Housing for a period of five years.

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In a July 3, 2002 letter from the California Department of Housing and Community Development regarding the HOME funds, the County was advised of prevailing wage requirements for the Project as well as the methods for demonstrating compliance with those requirements.

The rehabilitation work has not yet commenced.

Under Labor Code¹ section 1720(a)(1), "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... . 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.

The Project is construction done under contract. It is also paid for with public funds. Among the public funding are: the loan from the California Housing Finance Agency, which is extended at a below-market interest rate and therefore public funds under Section 1720(b)(4); and the grant funds from the Department of Housing and Community Development which, under Section (b)(1), are public funds as well.

You have requested from the Department an exemption under S.B. 972 (Statutes of 2002, Chapter 1048) for the Project. While you have not specified which exemption you claim is applicable, the only possible exemption related to your project might be Section (c)(6)(E). This section contains an exemption from the prevailing wage law when the "public participation in the project that would otherwise meet the criteria of subdivision (b) is public funding in the form of below-market interest rate loans for a project in which occupancy of at least 40 percent of the units is restricted for at least 20 years, by deed or regulatory agreement, to individuals or families earning no more than 80 percent of the area median income." This exemption is inapplicable for two reasons. First, the exemption became effective on January 1, 2003. Here, the funding was awarded in 2002, prior to the effective date of the exemption. Second, even

¹ All statutory references are to the Labor Code, unless otherwise indicated.

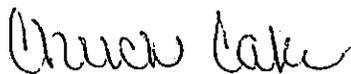
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if this exemption were available it requires that a project receive **only** below-market interest rate loans, which are otherwise public funding under Section 1720(b). Here, although the Project meets the occupancy element of this exemption, it receives funding from other sources.

For the above reasons, the Project is a public work not eligible for any exemption enumerated in the Labor Code and for which prevailing wages must be paid.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Chuck Cake
Acting Director

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