

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR
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October 22, 2003

William N. Stuckey
Bridge, Structural, Ornamental and Reinforcing
Iron Workers, Local Union No. 229
5155 Mercury Point
San Diego, CA 92111

Re: Public Works Case No. 2003-006
Union Square Condominium Project - San Diego

Dear Mr. Stuckey:

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 Union Square Condominium Project is not a public work.

On February 23, 2001, AP Western GP Corporation, as a Manager Member, LAMCO Housing, Inc. ("LAMCO"), as a Manager Member and Western Pacific Housing Development Limited Partnership ("WPH"), as an Investor Member entered into an Operating Agreement ("Agreement") to form a limited liability company for the purpose of acquiring property and engaging in land enhancement activities to develop single-family housing, townhouses and condominiums. (Agreement, pp. 1, 5).

One of the company's projects, the Union Square Condominium Project ("Project"), located in San Diego, is the subject of this determination. The Project consists of a 262-unit residential condominium project, located on Broadway and "C" Streets, crossing 14th and 15th Streets. It is being built under contract with principal LAMCO acting in the capacity of general contractor (Agreement, Section 6.1.2(a); Robert A. Levy, Esq. letter to DIR, dated March 24, 2003, p. 2.)

The land upon which the Project is being built is privately owned by Western Pacific Housing ("WPH"). (First American Title Insurance Company report, dated March 14, 2003; Declaration of Scot D. Sandstrom, Vice President of Development for WPH, dated March 24, 2003; Centre City Development Permit No. 41-0224, recorded on January 15, 2002; Centre City Development Permit No. 41-0224A, recorded on July 25, 2002.)

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Funding for the Project is provided directly to WPH by parent company D.R. Horton, Inc. The funding is all private, including revenues generated from D.R. Horton's homebuilding and financial services segments.

On or about February 26, 2002, the San Diego City Council passed two resolutions relating to the Project. The first, Resolution No. 296136, approved the building permit for a Phase II expansion of the Project consisting of an additional 41 condominium units. (Resolution No. 296136, approved on February 26, 2002.) The land upon which the additional units would be built is also privately owned by WPH. (Permit No. 41-0224A, recorded on July 25, 2002.)

The second resolution, Resolution No. 291637, approved a map of the parcel of land on which the Project was to be built, and an unnamed alley, which was vacated by the City. (Resolution No. 296137, approved on February 26, 2002.) An easement to the alley was initially granted at no cost to City by a predecessor owner of the property. The owner has maintained fee title throughout the duration of the alley easement.

Under what is now Labor Code section¹ 1720(a), (as amended by statutes of 2001, chapter 938, Section 2), "public work" is defined as "construction, alteration, demolition, installation or repair work done under contract and paid for in whole or part of out public funds"

Section 1720(b)(3) defines "paid for in whole or in part out of public funds" as "[T]ransfer by the state or political subdivision of an asset of value for less than fair market price."

The Project clearly constitutes construction, alteration and demolition done under contract. You raise the question whether the Project is being paid for out of public funds under Section 1720(c)(3) because the resolutions, which approved an increase in the number of housing units constructed, as well as the vacating by City of the alley easement, have brought "added value" to the Project. (January 3, 2003 letter of W.N. ("Bill") Stuckey.)

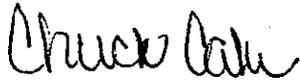
¹ Unless otherwise indicated, all statutory references are to the Labor Code.

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The actual Project financing provided by WPH's parent company are private funds. Under neither Section 1720(c)(3)² nor prior statutory language does the approval of additional units or the vacating of the easement in this case constitute the payment of public funds. A public entity's approval of the Project expansion here does not fall within any statutory definition of public funds. The vacation of the alley also does not constitute the payment of public funds. City did not transfer an asset of value for less than fair market price; it simply returned to the owner the use of a portion of its own property.

For the above reasons, the Project is not a public work for which prevailing wages are required to be paid. I hope this determination satisfactorily answers your inquiry.

Sincerely,



Chuck Cake
Acting Director

² Section 1720(b)(3) first became effective on January 1, 2002 as part of the Senate Bill 975 amendments.