

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR
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October 29, 2003

Greg Feere, Chief Executive Officer
Contra Costa Building and Construction
Trades Council
935 Alhambra Avenue
Martinez, CA 94553

Re: Public Works Case No. 2003-020
Slatten Ranch Project
City of Antioch

Dear Mr. Feere:

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 construction of the Slatten Ranch Project ("Project") is a public work. For the reasons stated below, however, the requirement to pay prevailing wage is limited to the construction of the off-site improvements associated with the Project.

The Project involves the construction of a 440,000 square-foot regional retail shopping center on 42.5 acres located in the City of Antioch ("Antioch") on the north side of Lone Tree Way, west of Empire Avenue, as well as street and traffic improvements ("Improvements") to existing roadways, part of which are located in the City of Brentwood ("Brentwood"). Antioch maintains no proprietary interest in the shopping center, which is being constructed with private funds. As a condition of approval of the Project, Antioch required the Owner/Developer of the Project, Slatten Ranch Partners, LP ("Developer"), to construct the Improvements.

The total cost of the Improvements is approximately \$10.4 million. Of this, Brentwood is to pay Developer approximately \$4.28 million. Antioch is to contribute \$2 million.¹

¹ Developer may also receive up to an additional approximately \$1.3 million for the cost of the portion of the Improvements that benefits adjoining property. This additional amount may be paid to Developer either directly by the adjoining landowner or by Antioch through the creation of a public facilities benefit district (Antioch Municipal Code § 9-4.2101 et seq.), into which the adjoining landowner will deposit fees for the Improvements benefiting its property.

Labor Code section 1720(a)(1)² 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" Section 1720(b) defines "paid for in whole or in part out of public funds" to include "(1) (t)he payment of money ... by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor or developer."

The Project is construction done under contract. Pursuant to Section 1720(b), the payments by Brentwood and Antioch to Developer constitute the payment of public funds. As such, the Project is a public work.

Both Antioch and Developer, however, assert that the construction of the shopping center is exempt from the requirement to pay prevailing wages pursuant to the provisions of Section 1720(c)(2), which provides in relevant part as follows:

If the state or political subdivision requires a private developer to perform construction, alteration, demolition, installation, or repair work on a public work of improvement as a condition of regulatory approval of an otherwise private development project, and the state or political subdivision contributes no more money, or the equivalent of money, to the overall project than is required to perform this public improvement work, and the state or political subdivision maintains no proprietary interest in the overall project, then only the public improvement work shall thereby become subject to this chapter.

The elements of this Section appear to be met here. Antioch required Developer to construct the Improvements as a condition of Antioch's grant of regulatory approval for the Project. The amount of the public funds paid to Developer by Antioch and Brentwood is less than the cost to construct the Improvements.³ Further, the Project is otherwise a private project, and neither Antioch nor Brentwood maintains a proprietary interest in the overall Project. Accordingly, the Project falls within the

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

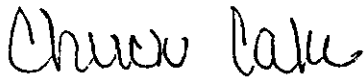
³ This is so even if Antioch pays up to the additional \$1.3 million because the total amount of the public funding of the Improvements would still be less than their approximately \$10.4 million cost.

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exemption provided by Section 1720(c)(2), and prevailing wages need only be paid in the construction of the Improvements.⁴

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Chuck Cake
Acting Director

⁴ Antioch acknowledges that Developer is required to pay prevailing wages in the construction of the Improvements. Should other public funds be provided to the Project in circumstances under which there is no prevailing wage exemption, or should the public funding ultimately exceed the cost of the Improvements, additional prevailing wage requirements may attach.