

DEPARTMENT OF INDUSTRIAL RELATIONS

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



November 14, 2003

Michelle R. Justice, Director
CANDO Contract Compliance
P.O. Box 642
Buckeye, AZ 85326-0047

Re: Public Works Case No. 2003-032
Monte Vista Senior Apartments
City of San Pablo

Dear Ms. Justice:

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 upon my review of the facts of this case and an analysis of the applicable law, it is my determination that the construction of the Monte Vista Senior Apartments ("Project") is a public work, but it is exempt from prevailing wage obligations under the tax credit exemptions provided in Labor Code section 1720(d)(3).¹

The Redevelopment Agency of the City of San Pablo ("Agency") entered into an Owner Participation Agreement with San Pablo Housing Investors, L.P., which is developing the Project. The Project is an 82-unit affordable rental housing project in the City of San Pablo. It is financed, in part, by tax credits. Construction commenced in November 2001 and was completed in June 2003, with a total Project cost projected at \$13.2 million. Construction will be financed, in part, by a 8.6 percent federal tax credit in the amount of \$585,816 per annum for 10 years and a state tax credit in the total amount of \$2,043,546, both allocated by the California Tax Credit Allocation Commission on August 23, 2000. The housing units will be one and two bedroom units with rents set for those earning not more than 60 percent of the area median income and will be rented to individuals and families earning between 30 and 60 percent of the area median income. Pursuant to a regulatory agreement, these units will remain affordable for a period of 55 years.

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

Section 1720(a)(1) defines public works as "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) currently states:

(b) For purposes of this section, "paid for in whole or in part out of public funds," means all of the following:

(4) Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the state or political subdivision.

The Project involves construction to be performed under contract. The low income housing tax credits are public funds because they constitute the forgiveness of an obligation that would normally be required in the execution of the contract and are waived or forgiven. Therefore, as this Project is construction performed under contract and paid for in part out of public funds, it is a public work.

Labor Code section 1720(d), however, states in relevant part:

Notwithstanding any provision of this section to the contrary, the following projects shall not, solely by reason of this section, be subject to the requirements of this chapter:

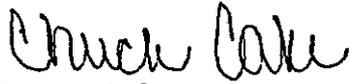
(3) Low-income housing projects that are allocated federal or state low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code, Chapter 3.6 of Division 31 (commencing with Section 50199.4) of the Health and Safety Code, or Section 12206, 17058, or 23610.5 of the Revenue and Taxation Code, on or before December 31, 2003.

Because the Project was allocated tax credits as discussed above, the exemption in Section 1720(d)(3) insulates the Project from the requirement to pay prevailing wages.

Letter to Michelle Justice
Re: Public Works Case No. 2003-032
Page 3

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Chuck Cake
Acting Director