

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR
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October 22, 2003

Neil McGuffin
Director of Housing Development
Many Mansions
1459 East Thousand Oaks Boulevard, Building C
Thousand Oaks, CA 91362

Re: Public Works Case No. 2003-039
Hacienda De Feliz Townhouses
City of Thousand Oaks

Dear Mr. McGuffin:

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, it is my determination that the construction of the Hacienda De Feliz Townhouses ("Project") is a public work, but it is exempt from prevailing wage obligations under the exemptions provided in Labor Code section 1720(d)(1) and (3).¹

Many Mansions, Inc. ("Developer") is the developer of the Project, which consists of the construction of two separate two-story residential buildings containing 25 rental units. Sixteen of the units will have two bedrooms, and nine will have three-bedrooms. The units will be rented to families earning between 50 and 60 percent of the median area income. Pursuant to a regulatory agreement, these units will remain low-income for a period of 55 years. All of the units will be rented at below-market rates. The site will include 46 covered parking spaces, a community room in which to provide services for the resident families, a tot-lot and common laundry facilities.

The total Project cost is projected at approximately \$7.8 million, including the cost of the community room. Construction will be financed in part by tax-exempt bonds in the amount of \$3.94 million allocated by the California Debt Allocation Commission in July 2003, and a 3.5 percent federal tax credit of \$239,673 annually for 10 years allocated by the California Tax Credit Allocation Commission in July 2003. Other sources of

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

funds include HOME funds in the amount of \$3.35 million and a bank loan in the amount of \$1.44 million. - The Thousand Oaks Redevelopment Agency ("Agency") will assist with a \$600,000 loan and deferral of payment of \$543,476 in Developer fees.

The Owner Participation Agreement ("OPA") between Agency and Developer, which memorializes the Project, was entered into on July 15, 2003.

Labor Code section 1720(a)(1) defines public works as "[c]onstruction, 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:

(1) The payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer.

(2) Performance of construction work by the state or political subdivision in execution of the project.

(3) Transfer by the state or political subdivision of an asset of value for less than fair market price.

(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.

(5) Money loaned by the state or political subdivision that is to be repaid on a contingent basis.

(6) Credits that are applied by the state or political subdivision against repayment obligations to the state or political subdivision.

(Statutes of 2002, Chapter 1048, S.B. 972.)

The Project involves construction to be performed under contract. The bond funds are public funds because they are funds issued by the State of California Treasurer's Office. The federal 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.

Section 1720(d)(1) and (3), however, provide exemptions from prevailing wage requirements for housing projects allocated the above-referenced state bond funds and federal low-income housing tax credits on or before December 31, 2003.² As this Project was allocated both the state bond funds and federal low-income housing tax credits enumerated in the exemptions on or before December 31, 2003, it qualifies for these exemptions.³

It should be noted that section 1720(e) states: "If a statute, other than this section, or a regulation, other than a regulation adopted pursuant to this section, or an ordinance or a contract applies this chapter to a project, the exclusions set forth in Subdivision (d) do not apply to that project." According to you, there is no ordinance or contractual obligation requiring prevailing wages, nor there is an independent statutory obligation requiring the payment of prevailing wages. Accordingly, the exclusion from the exemption contained in section 1720(d) is not applicable to this project.

² These subsections provide:

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:

(1) Qualified residential rental projects, as defined by section 142(d) of the Internal Revenue Code, financed in whole or in part through the issuance of bonds that receive allocation of a portion of the state ceiling pursuant to Chapter 11.8 of Division 1 (commencing with section 8369.80) of the Government Code on or before December 31, 2003...

(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 sections 12206, 17058 or 23510.5 of the Revenue and Taxation Code, on or before December 31, 2003.

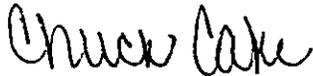
³ Projects are eligible for the exemptions contained in Section (d)(1) and (d)(3) when the bond or tax credit allocations fund the projects in whole or in part.

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For these reasons, this Project is a public work exempt from the prevailing wage laws under Section 1720(d)(1) and (3), which exemptions are not nullified by Section 1720(e).

I hope this determination satisfactorily answers your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Chuck Cake".

Chuck Cake
Acting Director