

STATE OF CALIFORNIA

Arnold Schwarzenegger, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR

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January 30, 2004

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Re: Public Works Case No. 2003-022
Chapman Heights
City of Yucaipa

Dear Mr. Donahoo:

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 public facilities and improvements ("infrastructure work") is public work subject to the payment of prevailing wages. This infrastructure work and the construction of the residential development known as Chapman Heights Planned Development ("Chapman Heights"), however, are not a single, interdependent and integrated project requiring the payment of prevailing wages in the construction of Chapman Heights.

Chapman Heights is a residential development consisting of some 2,118 residential units on more than 1,000 acres containing 33 planning areas. It is located in the City of Yucaipa ("City") and is developed by Yucaipa Valley Acres, a California Limited Partnership, and Communities Southwest Development and Construction Company, a Washington Corporation ("Developers"). Developers subdivided the parcels, contracted for the infrastructure work, and then sold the parcels to other builders who engaged in all the construction activities for the individual residential units. Developers did not accomplish the construction of the individual residential units.

As a condition of the approval of any residential development, City requires the payment of Development Impact Fees ("DIF") for each residential unit. Given the size of Chapman Heights and the fact that City would need to wait a long period of time as each individual residential lot was developed in order to accumulate sufficient DIF to fund the infrastructure construction, Developers

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and City entered into the agreements described below under which Developers would cause the infrastructure work to be constructed.

On January 25, 1999, Developers and City entered into the Yucaipa Valley Acres and Communities Southwest Development Impact Fee Reimbursement/Credit Agreement ("Agreement #1"). Agreement #1 provides for the construction of infrastructure improvements adjacent to Chapman Heights consisting of the expansion of existing drainage facilities and traffic related improvements. It specifies that "the improvements are of a type, size, and/or location that will benefit other lands within the City" Agreement #1 also provides that "[n]on-master planned street and drainage facilities constructed within or immediately adjacent to the project which are not oversized to serve other existing or future developments shall not be subject to reimbursement and/or credit."

Payment for the infrastructure improvements described in Agreement #1 was to be accomplished by crediting Developers for the DIF they would otherwise owe City if they had not agreed to construct the improvements. Consequently, the amount Developers would owe City is used as an offset against what City would otherwise be required to pay in order to fund the cost of the infrastructure improvements.

Agreement #1, however, was superseded by a February 1, 1999 Acquisition, Funding and Disclosure Agreement ("Agreement #2") between City and Developers. The funding for the infrastructure improvements originally contemplated in Agreement #1 and for additional infrastructure improvements specified in Agreement #2 was to be accomplished by Developers forming a community facilities district for the purpose of purchasing improvements that City would be required to fund through accumulated DIF. Developers funded the facilities district by payment of what otherwise would have been owed to City in DIF. In addition, a component part of the funding was accomplished through the issuance of bonds by Community Facilities District No. 98-1 ("District") pursuant to the Mello-Roos Community Facilities District Act of 1982. The District is also a party to Agreement #2.

The infrastructure work consisted of street improvements, traffic lights installation, installation and improvement of drainage and flood control facilities, domestic water facilities and reclaimed water and sewer facilities.

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This public works coverage request is to determine the following:

1. Whether the infrastructure work specified in Agreements #1 and #2 is public work; and,
2. If so, whether that makes the construction of Chapman Heights a public work.

Developers represent that prevailing wages with respect to the infrastructure work provided in Agreements #1 and #2 have been paid, and there does not appear to be any dispute as to this representation. It is also not disputed that payment for the infrastructure work encompassed in Agreements #1 and #2 is to be paid, in part, from public funds. Consequently, the infrastructure work encompassed in Agreements #1 and #2 is a public work because it meets the definitional requirements of Labor Code section 1720(a)¹ that:

As used in this chapter "public works" means:

- (a) Construction, alteration, demolition or repair work done under contract and paid for in whole or in part out of public funds ...

The remaining determination to be made is whether the public work of infrastructure and the Chapman Heights residential development constitute a single, interdependent and integrated project such that the payment of prevailing wages is also required in the construction of the residential development.

In *Vineyard Creek Hotel and Conference Center, Redevelopment Agency of Santa Rosa*, PW 2000-016 (10/16/00), the Director found that the determination whether there are several projects or one project must be made on a case-by-case basis. The Director found that five factors have to be considered:

- (1) the manner in which the construction is organized in view of, for example, bids, construction contracts, and workforce; (2) the physical layout of the project; (3) the oversight, direction and supervision of the work; (4) the financing and administration of the construction funds; and (5) the general

¹ Section 1720 as amended in 2000 recites this definition in subsection (a)(1) and adds "[f]or purposes of this paragraph 'construction' includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work."

interrelationship of the various aspects of construction ... In making this finding, it is the analysis of the above factors, not the labels assigned to the various parts by the parties, which controls. Under Labor Code section 1720(a), if there is a single project involving the payment of public funds, prevailing wages will apply to the entire project; if there are multiple projects, prevailing wages may apply to one project but not another, depending on the circumstances.

With respect to the first factor, there is no single agreement unifying or defining the relationship between the infrastructure work and the residential development. The infrastructure work and the residential development are being undertaken independent of each other and do not share a common design or function. The infrastructure work is being contracted for by Developers pursuant to Agreements #1 and #2. The residential work is being contracted for by builders removed from the original transaction between Developers and City, who purchase subdivided improved lots from Developers at fair market value in arms-length transactions for construction of the residential units under separate contracts and with different workforces than those involved in the infrastructure work.

As to the second factor - the physical layout of the project - an analysis of Vineyard Creek as well as subsequent determinations reveals that projects considered integrated are those where there is in reality a single development. In Vineyard Creek, for example, the conference center and hotel complex constituted one integrated design and, in fact, represented a single development. Here, by necessity the infrastructure work and the residential development are physically proximate to each other. The infrastructure work in this situation, however, is a stand-alone construction project, not dependent on the construction of any single residential unit to be completed and viable. That the infrastructure work and the residential development are to some degree physically connected does not create the level of integration necessary to find a single project. In some cases, physical integration between the infrastructure and the actual building construction may be, and often is, sufficient to find a single project. Here, however, the relationship between the two is far too attenuated, especially when viewed in light of the other factors.

As to the third factor, City exercises no apparent control, oversight, supervision or approval apart from the typical

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permitting and inspection requirements with respect to the residential development. City exerts control over design and construction of the infrastructure work only.

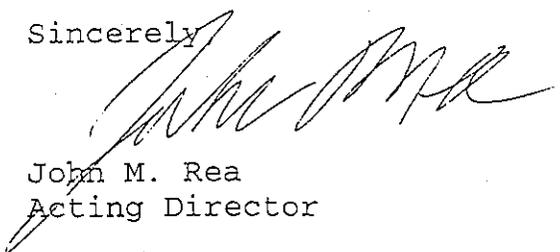
With respect to the fourth factor, there is no apparent interconnected financial relationship between the infrastructure work and the residential development. The infrastructure work is paid for, at least in part, by public funds. No part of those funds subsidizes the privately-funded residential development. Without a showing that the public funds are somehow redirected or linked to the private development, the necessary financial relationship does not exist. The payment of public funds for the infrastructure work does not in and of itself transform the privately funded residential development into public work.

Finally, as to the fifth factor - the general interrelationship of the various aspects of construction - the infrastructure work is intended to mitigate regional infrastructure problems that extend well beyond the scope of the residential development. While the residential development derives a benefit from the infrastructure work, it is no different from the benefit any private home derives from the existence of necessary public infrastructure supporting that home, for example, streets and sewers.

Accordingly, in weighing and analyzing the above five factors, I find that there is insufficient basis to find the infrastructure work and the residential development to be a single integrated and interdependent project. In conclusion, even though the infrastructure work is public work subject to the payment of prevailing wages, the relationship between the infrastructure work and Chapman Heights is not of such a nature as to transform Chapman Heights into public work as well.

I hope this determination satisfactorily answers your inquiry.

Sincerely



John M. Rea
Acting Director

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