STATE OF CALIFORNIA
Arnold Schwarzenegger, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
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August 16, 2004

Stephen J. Lantsberger
Economic Development Director
City of Hesperia
15776 Main Street
Hesperia, CA 92345

Re: Public Works Case No. 2004-009
The Village at Hesperia
City of Hesperia

Dear Mr. Lantsberger:

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 documents submitted and an analysis of the relevant facts, it is my determination that the construction of the Village at Hesperia ("Project") is exempt from prevailing wage obligations under the tax credit exemption provided in Labor Code section 1720(d)(3).[1]

The City of Hesperia ("City"), the Hesperia Community Development Agency ("Agency") and Opportunity Builders ("Developer") have entered into an Owner Participation Agreement ("OPA"), to construct senior low-income housing. The Project is a 68 unit low-income, affordable rental housing project in City. Construction is expected to commence in July 2004, with a total project cost projected at $8.9 million. Construction will be financed by a low-interest loan from the Department of Housing and Community Development Home Program, administered through City and Agency, Developer funds and a 4 percent federal and state tax credit allocated by the California Tax Credit Allocation Commission on October 9, 2003.[2] The housing units will be one and two bedroom units with rents for 54 units set for those seniors deemed low-income and 14 units for those seniors deemed very low-income. Pursuant to the OPA, these units will remain entirely for

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

[2] The Revised Reservation letter states that the federal tax credit is 3.5 percent, but the overall combined credit appears to be 4 percent.

rental to low-income and very low-income seniors for a period of 55 years.

Labor Code section 1720(d) 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:
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> . . .
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> (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 a state and federal tax credit from the California Tax Credit Allocation Commission, as described in Subsection (d)(3) above, the exemption in Section 1720(d)(3) insulates the Project from the requirement to pay prevailing wages.[3]

I hope this determination satisfactorily answers your inquiry.

Sincerely,

John M. Rea
Acting Director

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[3] An exception is contained in Section 1720(e), which 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." The Department is not aware of any local or contractual requirement to pay prevailing wages that would vitiate the exemption claimed here by City and Agency.