

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



September 1, 2006

Philip Brand  
City of South Lake Tahoe  
Housing Division  
1901 Airport Blvd., Suite 107  
South Lake Tahoe, CA 96150

Re: Public Works Case No. 2006-015  
Sierra Garden Apartments  
City of South Lake Tahoe

Dear Mr. Brand:

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 rehabilitation and repair of the Sierra Garden Apartments ("Project") is not a public work, and therefore is not subject to prevailing wage requirements.

The Project entails the rehabilitation and repair of a 76-unit affordable housing complex built in the City of South Lake Tahoe ("City") in 1974. This work includes re-roofing; parking lot repaving; sidewalk repair; drainage and erosion control; landscaping; general signage; replacement or repair of exterior doors, walls and windows; replacement of bathroom fixtures; and domestic hot water, electrical and interior plumbing work.

In conjunction with the Project, the property is to be acquired by St. Joseph Community, LLC ("Owner"), an entity comprised of St. Joseph Community Land Trust, a nonprofit corporation, and Bucky Fong and David Michael, who are associated with the company currently managing the property.

The Project will be funded by a below-market interest rate loan from City to Owner ("City Loan"). The total loan amount is \$3.9 million. Initially, it is to be a Construction Loan, with a rate of 3 percent simple interest, and a term expiring July 31, 2008. At that time, the principal amount of the Construction Loan, together with all accrued interest, will be converted to a Consolidated Loan. This Consolidated Loan will bear 1.5 percent simple interest from July 31, 2008, for a term of 55 years from the date of completion, or July 31, 2063 (whichever comes first).

Pursuant to a Regulatory Agreement between Owner and City, for a period of 55 years, occupancy of 90 percent of the rental units will be restricted to tenants with annual incomes of no more than 60 percent of the Area Median Income ("AMI"), and the remaining units will be restricted to tenants with annual incomes of no more than 80 percent of the AMI.

Labor Code section 1771<sup>1</sup> generally requires the payment of prevailing wages to workers employed on public works. Section 1720(a)(1) defines public works to include: "Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds ... ."

The phrase "paid for in whole or in part out of public funds" is defined in detail in section 1720(b), with certain exceptions and exclusions set forth in subdivisions (c) and (d). Section 1720(b)(1) provides that "payment of money or the equivalent of money by the state or political subdivision" constitutes payment out of public funds. Section 1720(b)(4) defines "payment out of public funds" to include:

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.

Here, the Project involves construction and repair work done under contract. The sole question presented therefore is whether the City Loan constitutes a payment out of public funds.

The City Loan entails an interest rate "charged at less than fair market value," which in other circumstances could constitute payment of public funds within the meaning of section 1720(b)(4). However, section 1720(c)(6)(E) provides an exemption for such a loan for a "project in which occupancy of at least 40 percent of the units is restricted for at least 20 years, by deed or regulatory agreement, to individuals or families earning no more than 80 percent of the area median income." Here, a regulatory agreement imposes occupancy restrictions well in excess of the requirements of section 1720(c)(6)(E), and the exemption set forth therein applies.

For the foregoing reasons, the Project is not paid for in whole or in part out of public funds within the meaning of section 1720, and accordingly is not subject to prevailing wage requirements.

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<sup>1</sup>Subsequent statutory references are to the Labor Code unless otherwise indicated.

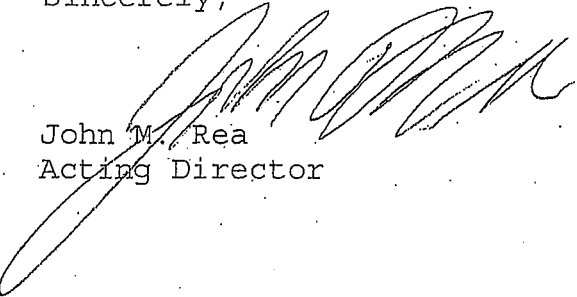
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I hope this determination satisfactorily answers your inquiry.

Sincerely,



John M. Rea  
Acting Director