

DEPARTMENT OF INDUSTRIAL RELATIONS

Christine Baker, Director
Office of the Director
1515 Clay Street, 17th Floor
Oakland, CA 94612
Tel: (510) 622-3959 Fax: (510) 622-3265



November 13, 2013

Jeffrey Cutler
Wohlner Kaplon Phillips Young & Cutler
16501 Ventura Boulevard, Suite 304
Encino, CA 91436

Fred Ramirez
City Clerk
San Fernando City Hall
117 Macneil Street
San Fernando, CA 91340

Elena Chavez - City Clerk
City of San Fernando
San Fernando City Hall
117 Macneil Street
San Fernando, CA 91340

Denice Wint
Los Angeles Housing Partnership, Inc.
1200 Wilshire Boulevard, Suite 307
Los Angeles, CA 90017

Pueblo Contracting Services, Inc
c/o Antonio Dupre
Padilla and Associates
211 East City Place Drive
Santa Ana, CA 92705

RE: Public Works Case No. 2013-008
Mid-Celis Apartments
City of San Fernando

Dear Interested Parties:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced projects under California's prevailing wage laws and is made pursuant to California Code of Regulations, title 8, section 16001(a). Based on my review of the facts of these

cases and an analysis of the applicable law, it is my determination that the Mid-Celis Apartments Project partially publicly funded and therefore subject to prevailing wage requirements.

Facts

The Mid-Celis Apartments Project (Project) is a low income housing project in the city of San Fernando which includes a related public park. The plans call for the apartment building to be a 29,370 square foot, three-story multi-family residential apartment building with a structured parking facility for 26 vehicles. The apartments are located on an approximate 15,000 square foot City-owned lot at 1422 San Fernando Road. The Project will incorporate "green building" design features that are designed to enhance resource efficiency and sustainability. It will include 8 one-bedroom units, 6 two-bedroom units, and 6 three-bedroom units affordable to very low-income renters.

The project also calls for the construction of a public park on a 5,000 square foot lot owned by the San Fernando Redevelopment Agency (Redevelopment Agency¹). This property is located 551 Kalisher Street, approximately 0.4 miles from the Mid-Celis Apartments. This portion of the Project is required to meet the open space requirement for the proposed affordable housing development.

In 1999 the City of San Fernando (City) purchased a parcel of property at 1422 San Fernando Road for \$200,000. At that time the City intended to develop the parcel for parking.

In 2000, Redevelopment Agency purchased a parcel of property at 551 Kalisher Street for \$141,567. At the time, the Redevelopment Agency intended to develop low to moderate income housing.

On May 3, 2010, the San Fernando City Council (City Council) and the Redevelopment Agency jointly approved a number of priorities for fiscal year 2010-2011. Among the priorities were several new affordable housing projects, including a project at 1422 San Fernando Road.

On June 21, 2010, the Redevelopment Agency adopted the Fiscal Year 2010-2011 Redevelopment Agency Budget which included resources to facilitate the development of an affordable housing project at 1422 San Fernando Road.

On July 14, 2010, City staff met with representatives of Los Angeles Housing Partnership (LAHP) to discuss a proposal to develop a 20-unit affordable housing project at 1422 San Fernando Road and a neighborhood park at 551 Kalisher Street.

On July 27, 2010, the City received a Site Plan Review application from Los Angeles Housing Partnership to develop an affordable housing project that included 20 units of affordable housing at 1422 San Fernando Road and a neighborhood park at 551 Kalisher Street.

¹ The Redevelopment Agency was abolished in 2012. Successor agency is the Successor Agency of the Former Redevelopment Agency of the City of San Fernando. It is the current owner of the park site.

On September 7, 2010, the City Council and the Redevelopment Agency held a public hearing to review the affordable housing development proposal by LAHP. At this meeting, the City Council and Redevelopment Agency voted to authorize staff to prepare an Exclusive Negotiation Agreement with LAHP.

On October 18, 2010, the Redevelopment Agency and the LAHP entered into an Exclusive Negotiation Agreement to Develop an Affordable Housing Project involving City and Redevelopment Agency owned Parcels at 1422 San Fernando Road and 551 Kalisher Street.

On March 9, 2011, the parties executed a Disposition and Development Agreement (DDA) and Ground Lease (Lease). Pursuant to the DDA, the City agreed to enter into a Ground Lease with Developer for the Housing Site in which the Developer would pay rent to the City in the amount of \$10 per year for 99 years. Developer agreed to construct 20 residential units on the Housing Site, which would be restricted to occupancy by Very Low and Low Income Households. The Developer also agreed construct the Park Site, which it will maintain for fifteen years. After that time, Developer will turn over those responsibilities to the City.

On March 26, 2012, construction commenced on the Project. The Park has been completed, but City has not issued a Notice of Completion. The apartments are still under construction, but are nearing completion.²

The project is funded with the following sources:

1. Wells Fargo Bonds Private Construction Loan (Bonds) \$3,219,930
2. Los Angeles Community Development Commission HOME and EEI Program Funds \$2,983,026
3. San Fernando Redevelopment Agency Public Land Donation via Capitalized Ground Lease \$1,300,000
4. California Community Reinvestment Corporation \$614,541
5. Bank of San Francisco Affordable Housing Program Loan \$240,000
6. City of San Fernando Housing Related Parks Program Grant \$40,459

The San Fernando Redevelopment Agency valued its Public Land Donation via Capitalized Ground Lease at \$1,300,000. This amount is specified in Exhibit A to the Ground Lease, Calculation of Public Land Valuation. This land is then leased to the developer, as discussed above, for a total of \$990.00 for 99 years. City has also issued a grant for the park in the amount of \$40,459.

² Section 5.5 of the Disposition and Development Agreement states under the heading "Prevailing Wages:"
"The Parties and their legal counsel have reviewed the applicable Laws, and determined that payment of Prevailing Wages is required for the completion of the Development. Developer shall comply with all requirements of the Prevailing Wage Law. To the extent required by any of the funding sources for the Development, Developer shall also comply with the requirements of the Davis-Bacon Act (Public Law 74-403, 40 USC 276a through 276a-7) and applicable regulations. The Parties hereby acknowledge and agree that any increase in costs as a result of such requirements shall be at the sole financial risk of Developer."

Discussion

Labor Code section 1771³ generally requires the payment of prevailing wages to workers employed on public works. Section 1720, subdivision (a)(1) defines "public works" generally under a three pronged definition: [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) states: "[f]or purposes of this section, paid for in whole or in part out of public funds" includes the "[t]ransfer by the state or political subdivision of an asset of value for less than fair market price." (Subdivision (b)(3).) Title 8, California Code of Regulations section 16000 also defines public funds to include "state, local and/or federal monies."

It is undisputed that the Project meets the first and second requirements for public works coverage, in that it constitutes "construction, alteration, demolition, installation, or repair work" and it is "done under contract." The last requirement is that it is "paid for in whole or in part out of public funds" is the one at issue in this case.

The Project is a Public Work under Labor Code Section 1720
Because the Land Transfer is for Less Than Fair Market Price

In LAHP's April 25, 2012 letter, it states that the "Partnership acquired the real property on which the Project will be constructed for fair market price within the meaning of section 1720(b)."

In LAHP's May 3, 2013 letter, it stated that the property was leased subject to regulatory and other restrictions which caused the underlying appraised value of the land to be \$1.00 at the time of closing.

The Housing Site was purchased by City for parking, and was acquired with funds from City's Parking In Lieu Fund. Subsequently, City determined that a more appropriate use of the Housing Site was for affordable housing. The Housing Site was recently appraised with a fair market value of \$900,000; the Park Site was recently appraised and determined to have a fair market value of \$60,000. As a condition to the Close of Escrow, City and the Redevelopment Agency shall enter into an agreement whereby the Agency agrees to pay to City the sum of \$840,000. City will use the proceeds of that payment to repay the Parking In-Lieu Fund. It shall be a further condition to the Close of Escrow that the Agency transfer title to the Park Site to the City. The DDA states: "Developer and City agree that ... City and Developer shall enter into the Ground Lease, granting Developer a leasehold interest in the Housing Site ..."

Where the transfer of real property is involved, "fair market price" is "synonymous with fair market value." (Public Works Case No. 2003-040, Sierra Business Park/City of Fontana (January 23, 2004), p. 3.) Fair market value is defined as "the value of the land at its highest and best use as determined by a bona fide appraisal." (Public Works Case No. 2004-035, Santa Ana Transit Village/City of Santa Ana (December 5, 2005), p. 2.) In contrast, "fair reuse value" is "a term unique to redevelopment projects ... [and] assumes the proposed restrictions in the disposition and

³ All citations are to the California Labor Code; all subdivision references are to the subdivisions of Section 1720 unless otherwise specified.

development agreement on the use of the property, and thereby distorts the property's value such that a market-based appraisal is not possible." (Id. at p. 5.) In the context of public works coverage determinations, "fair reuse value" is not mentioned anywhere in the Labor Code.

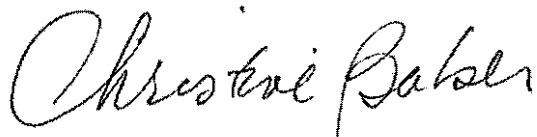
In Public Works Coverage Determination No. 2004-34, *Lake Piru Recreation Area Concessionaire Improvements/United Water Conservation District* (March 15, 2005), DIR discussed the definition of fair market value within the context of Labor Code section 1720(b)(4). "Fair Market Value" is based on the highest and best use for which a property is geographically and economically adaptable."

Similarly, in Public Works Coverage Determination No. 2004-008, *Bakersfield Affordable Senior Apartment Complex - City of Bakersfield* (October 12, 2004), DIR found that state prevailing wages applied in part because "the transfer of City-acquired property for no cost constitutes, under Section 1720(b), a transfer for less than fair market price" (Page 2). This project is a public works project because the land transfer is for less than fair market price.

For the foregoing reasons, the Mid-Celis Apartments in the City of San Fernando is a public work within the meaning of section 1720. Therefore, the Project is a public work subject to California prevailing wage requirements.

I hope this letter satisfactorily answers your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Christine Baker".

Christine Baker
Director

cc: Ana Maria Johnson
California Advanced Services Fund
505 Van Ness Avenue
San Francisco, CA 94102

Jan Dubiakova
CVIN, LLC dba Vast Networks
9479 N. Fort Washington Ave. Suite#105
Fresno, CA 93730

Zenida Tapawan-Conway
California Advanced Services Fund
505 Van Ness Avenue
San Francisco, CA 94102

Jerry McClain Jr.
Deputy Labor Commissioner I
Department of Industrial Relations
Division of Labor Standards Enforcement
2031 Howe Avenue, Ste. 100
Sacramento, CA 95825