

DEPARTMENT OF INDUSTRIAL RELATIONS

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January 9, 2026

Brian Fish

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Re: Public Works Case No. 2024-017
Oceanside Transit Center and 810 Mission Projects
North County Transit District

Dear Mr. Fish:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced projects under California's prevailing wage laws (PWL) and is made pursuant to California Labor Code section 1773.5¹ and California Code of Regulations, title 8, section 16001, subdivision (a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the Oceanside Transit Center and 810 Mission Projects of the North County Transit District have separate public and private components as summarized by the requesting party. Accordingly, the hotel, residential mixed-use, and residential legal parcels to be privately funded are not public work subject to PWL, so long as the funding sources, terms of the Ground Leases, construction plans and phasing, and parking arrangements are not subject to change.

Facts

Requesting party Toll Brothers, Inc. (Developer) submitted a request for coverage determination (Request Letter) detailing developments planned for certain properties in the City of Oceanside (City). These two areas of property are owned by North County Transit District (NCTD) and located on opposite sides of the South Coast Highway: (1) existing Oceanside Transit Center (OTC/Tremont Properties); and (2) NCTD's nearby (but not contiguous) existing headquarters (810 Mission Ave.). Altogether, these planned

¹ Unless otherwise indicated, all further statutory references are to the California Labor Code and all subdivision references are to the subdivisions of section 1720.

changes and developments will be referred to as the Oceanside Transit Center Redevelopment Project (OTC Redevelopment).²

Developer characterizes OTC Redevelopment as a single “Public Project” and four separate “Private Projects.” (Quotations here indicate Developer’s terms, adopted herein.) Developer concedes Public Project, which would include a new headquarters building for NCTD, public parking for transit services, amenities for NCTD staff and transit users, and other transit-oriented public improvements, is a public work subject to PWL. In contrast, Developer asserts that the four Private Projects, to include residential, mixed-use, and hotel developments on four separate legal parcels newly partitioned by City, are separate and independent from Public Project and not public works subject to PWL. Private Projects would involve ground leases between NCTD and Developer, reportedly for greater than fair-market value. Developer’s consideration for NCTD granting these leases to Developer reportedly includes Developer’s payment of certain costs for Public Project. Public Project and Private Projects are summarized herein.

A. Interested Parties and Relationship to the Properties.

1. Interested Parties

- North County Transit District (NCTD) and its properties. NCTD is a public transit agency operating pursuant to California Public Utilities Code sections 25000 et seq., providing transit services for North San Diego County since 1975. Today these services include COASTER commuter rail, SPRINTER hybrid rail, BREEZE bus system, FLEX on-demand, LIFT paratransit, NCTD+ on-demand shared rides services, and dozens of stations and transit centers connecting North San Diego County residents to the larger region. NCTD owns numerous properties, two of which are within City and subject of this coverage determination:
 - OTC/Tremont Properties. These currently comprise 19 contiguous legal parcels on 10.2 acres in City’s downtown, including the current Oceanside Transit Center on Tremont Street. The Oceanside Transit Center functions as a transit hub, serving roughly 11 million transit passengers via COASTER, SPRINTER, BREEZE, Metrolink, Amtrak, Riverside Transit Agency, and Greyhound bus operators.
 - OTC/Tremont Properties Parking: OTC/Tremont Properties currently includes surface parking for 556 transit riders and ticketing facilities for NCTD and other regional partners.

² OTC Redevelopment is also summarized on its website, <https://www.osidetransit.com/project-description>.

- 810 Mission Property. NCTD's current administrative office headquarters lies on approximately 1.42 acres about 0.5 miles north and east of the OTC/Tremont Properties and includes a 38,000 square foot (SF), four-story building and approximately 85 surface parking spaces, hardscape, and landscaping (hereafter 810 Mission Property). According to response documents, 810 Mission Property requires upgrades to meet current code requirements and accommodate current and future staffing levels.³
- Toll Brothers, Inc. (Developer)⁴ is a Pennsylvania corporation and FORTUNE 500 company. According to response documents, Developer is the nation's leading builder of luxury homes and one of the largest builders of residential and mixed-use developments. Developer became a public company in 1986, and as of July 31, 2020, had approximately \$11 billion in assets. As discussed in the following section, Developer was selected from a competitive bidding process largely "based on the significant capital investments that require no financial contribution from NCTD, the strong financial health of the proposer, and the determination that [Developer]'s proposal would provide the greatest community benefit." (See Request Letter at p. 4; see also NCTD Staff Report dated 9/17/2020, attached as Exhibit C to the Request Letter.)
- City of Oceanside (City). As of June 8, 2010, City operates as a charter city. According to City response documents, City is not providing any funding or financing for any aspects of the proposed developments (neither Public Project nor Private Projects) but serves as the land use authority and reviews discretionary permit applications. In June 2025, City's Planning Commission voted to advance OTC Redevelopment.⁵

2. Public Projects vs. Private Projects on the NCTD Properties

³ According to response documents, in approximately 2015, a consultant provided a cost estimate of \$8.8M to implement the required improvements, an amount that reportedly exceeded the fair market value of the 810 Mission Property building.

⁴ Toll Brothers is also known as Toll Brothers Apartment Living, according to OTC Redevelopment's website.

⁵ Response documents from City stated OTC Redevelopment included a general plan amendment, a zone amendment, approval of a specific plan, local coastal program amendments, a regular coastal development permit, development plans, and vesting tentative maps. City was also reportedly processing a California Environmental Quality Act (CEQA) exemption for the 810 Mission Project and had circulated a Draft Environmental Impact Report.

OTC Redevelopment involves City approval of a subdivision map establishing eight (8) separate legal parcels, in lieu of nineteen (19) parcels (twenty (20) parcels total including 810 Mission Property). NCTD would retain four of the eight parcels for Public Project, which is not at issue in this coverage determination because Developer concedes it is subject to PWL. City would retain one parcel for the existing public parking lot, OTC/Tremont Properties Parking, to be considered neither a Public nor Private Project component. Additionally, 2.06 acres would be dedicated for public right of way. The three remaining parcels would be used for three of the four Private Projects, and the fourth Private Project is proposed for the 810 Mission Property. (See, e.g., Request Letter Exhibits A and B.)

Developer summarized OTC/Tremont Properties' eight legal parcels as follows:

- Public Project Parcels/Lots on OTC/Tremont Properties
 - Lot 2 (Public Parking Structure Lot), 0.72 acres
 - Lot 5 (Public Bus Station Lot), 1.37 acres
 - Lot 6 (Public Train Platform Plaza Lot), 0.31 acres
 - Lot 7 (Public NCTD Office Lot), 0.71 acres
- Private Project Parcels/Lots on OTC/Tremont Properties
 - Lot 1 (Hotel Parcel), 1.10 acres
 - Lot 3 (Residential Mixed-Use Parcel), 2.03 acres
 - Lot 4 (Residential Parcel), 1.85 acres
 - 810 Mission Property as part of Private Projects. Another residential parcel is proposed for the 810 Mission Property.
- OTC/Tremont Properties Parking: Neither Public nor Private
 - Lot 8 (existing OTC public parking lot). Developer states City would retain the eighth parcel for the existing OTC/Tremont Properties Parking, which would not be a part of Public Project or Private Projects.
- In addition, 2.06 acres would be dedicated for public right of way.

Thus, planned Lots 1, 3, and 4, as well the 810 Mission Property, are the focus of this coverage determination.

B. Request for Proposal (RFP) and Competitive Bidding Process.

Developer was selected via a competitive bidding process summarized in various response documents. (See, e.g., Request Letter at pp. 3-4; and Exhibit D.) NCTD staff began assessing OTC Redevelopment in May 2019 and collaborated with City to draft a Request for Proposal (RFP) that met the needs of City and NCTD.⁶ On January 6, 2020,

⁶ NCTD requirements per the RFP included the following: (1) Long-term ground lease structure of 50-99-year ground lease with adequate provisions to generate a long-term revenue stream to support NCTD's transit operations (a core component of Private

CBRE, Inc. issued NCTD's RFP, inviting proposals from (1) Holland Partner Group, (2) National Community Renaissance (CORE), (3) Rhode Moore, LLC, and (4) Developer. A Source Selection Committee (SSC) comprised of six voting members (four NCTD employees, one City representative, and one representative from the San Diego North Economic Development Council) evaluated proposals over four phases.

On September 17, 2020, the NCTD Board authorized its Executive Director to enter into an Exclusive Negotiating Agreement (ENA) with Developer. According to the Staff Report, Developer was selected based largely on "the significant capital investments that require no financial contribution from NCTD, the strong financial health of the proposer, and the determination that [Developer] would provide the greatest community benefit." (See, e.g., NCTD Staff Report dated 9/17/2020, Agenda Item #23, attached as Exhibit D to Request Letter.) Other justification included "significant amount of additional office space for NCTD's administrative headquarters," parking structure for NCTD employees and transit patrons, and more affordable housing than another bidder had proposed. (*Ibid.*)

Projects); (2) Replacement of 556 parking spaces dedicated to current transit customers; (3) Inclusion of a 40,000 SF office building to relocate NCTD's existing office operations at 810 Mission Ave. to the new development; (4) Inclusion of a 3,000 SF ticket/customer service counters for NCTD, Greyhound, and Amtrak; (5) Relocation of the current bus island on the North End of the parcel to be relocated on-site to achieve improved rider experience by streamlining Bus and Rail connectivity; (6) Design concepts that improve the current rail platform operations including the existing passenger waiting areas and amenities (with items 2 through 6 forming the core of Public Project). (See Request Letter at p. 2.)

NCTD staff reportedly worked with City and incorporated the following considerations: (1) Provide a mixed-use development that complements City's economic development and housing goals; (2) Enhance public transportation by incorporating elements such as bike racks/rental facilities and electric vehicle charging stations into the development and ensuring that the development concepts do not negatively impact present or future public transportation facilities and/or uses; (3) Include an Affordable Housing component that assists in addressing local housing needs, consistent with City's Inclusionary Housing Ordinance and adopted Housing Element; (4) Connect Cleveland Street as a pass-through route for development; (5) Consistency with local community policies, plans, and uses; (6) Create an economic benefit to the area through a vibrant mix of retail, office and residential uses, with a focus on job creation. (See Request Letter at p. 3; see also NCTD Staff Report, dated 9/17/2020, Agenda Item #23, attached as Exhibit D to Request Letter.)

General guidance in the RFP included the following: (1) Site could be developed at one time, or sequentially phased; (2) A fee simple sale comprised of multiple APNs that would accommodate residential housing or other uses may be considered; (3) NCTD's General Administrative Office (GAO) Building [810 Mission Property] could be considered as part of the offering if a capital contribution from NCTD is required; (4) The 3,000 SF ticket/customer service component may be included as part of the ground-level portion of the 40,000 SF office building. (See NCTD Staff Report, dated 9/17/2020, Agenda Item #23, attached as Exhibit D to Request Letter.)

The Option Agreement, summarized *infra*, allowed NCTD and Developer to conditionally pursue OTC Redevelopment upon completion of the entitlements and compliance with CEQA. The Option Agreement is consistent with Board Policy No. 33 – *Joint Use and Development of Real Property*, also summarized *infra*, and references Disposition and Development Agreement (DDA) and Ground Leases to be executed once entitlements and approvals are obtained.⁷

C. Project Phasing.

1. Public Project – Owned and Operated by NCTD

Developer states *NCTD would own and operate Public Project*, and that Developer's private funding of Public Project would be a form of early payment of ground rent for Private Projects' ground leases. Public Project would include the following, according to response documents:

- 113,500 gross SF building to include the 64,000 SF NCTD headquarters building, with 93 subterranean parking spaces,
- Multistory parking garage with 808 parking spaces (approximately 270,000 SF) (the new Lot 2),
- Right-of-way improvements,
- Transit staff/bus operator building,
- Station Plaza with transit customer service improvements/NCTD bus terminal improvements.

Estimated costs are projected to exceed \$95,000,000, and Developer reportedly intends to fund the cost of entitling and constructing Public Projects through equity contributions by Developer and private financing. Developer states construction for Public Project would comply with PWL. Architects for Public Project construction would differ from those working on Private Projects, and Developer would engage in a competitive bidding process to select contractors for Public Project improvements. According to response documents, the interested parties "expect" that Public Project contractors would differ from general contractors for Private Projects.

2. "Separate" Private Projects Funded Privately

Developer regards the four "Private Projects" as "separate and distinct" from Public Project. While conceding that Private Projects' details may evolve as part of the entitlement process, Developer steadfastly maintains that Developer will not use any

⁷ Entitlements for the OTC/Tremont Properties reportedly include the following: Development Plan, Specific Plan, Vesting Tentative Map, CEQA Compliance, General Plan Amendment, Zone Amendment, Coastal Development Permit, and Local Coastal Program Amendment; and entitlements for the 810 Mission Property reportedly include the following: Development Plan, Density Bonus, Vesting Tentative Map, and CEQA Exemption.

public funding, including rent credits or fee waivers, to construct Private Projects, comprised of the following:

- Private Hotel Project, a 170-key hotel with approximately 12,800 SF of retail space and 177 private parking spaces situated on the 1.10 acres (Lot 1),
- Private Mixed-Use Residential Project, a five-story, 250-unit apartment building, including 38 affordable units, approximately 16,400 SF of commercial space and 381 private parking spaces situated on the 2.03 acres (Lot 3),
- Private Residential Project, a five-story, 297-unit apartment building, including 45 affordable units, with 409 private parking spaces on the 1.85 acres (Lot 4), and
- Private 810 Mission Project, a 206-apartment unit building, including 31 affordable units, with 255 private parking spaces on the 1.42 acres (810 Mission Property).⁸

3. Proposed Phasing

Phasing plans were represented as follows:

- Phase I: 44,000 NSF NCTD headquarters office building in addition to 6,800 NSF of ground-floor retail; Stand-alone parking structure with 365 parking spaces; 228-unit residential apartment building with 9,325 SF of ground-floor retail and 739 parking spaces; Bus transfer center with 4 bus berths; 4,000 SF transit center; 10,000 SF community center; 18,000 SF public plaza with 8 NCTD bus berths,
- Phase II: 141-key limited-service hotel with 14,500 SF of ground floor retail and 165 parking spaces; 319-unit residential apartment building with 510 parking spaces and a public pocket park,

⁸ In slight contrast, OTC Redevelopment's website divides Project into two "features," *i.e.*, "Site I (Tremont), to include "(1) 50,000 gross square foot (SF) NCTD headquarter building to enable on-site management; (2) A modern intermodal transportation center for train and bus travelers with centralized customer service center and public plaza with mobility elements; (3) A new public parking structure, including replacement spaces for those currently located on the site and new public parking to accommodate the new retail components; (4) 165-key luxury boutique hotel and amenities; (5) Mixed-income residential apartments, including 15% designated affordable housing, and associated indoor and outdoor amenities; and (6) Existing parking structure (to remain). "Site 2 (Mission)" would be comprised of "(7) 206 Mixed-income residential apartments, including 15% designated for low-income households, and tenant-focused amenities." (See "Project Description" and "Project Location" at <<https://www.osidetransit.com/project-description>> (visited December 2024 through November 2025.) In other words, the website's "new OTC" overview offers no Public versus Private Projects distinction.

- Phase III: 101-unit affordable residential apartment building with 50 parking spaces at 810 S. Mission Ave.

Developer states it cannot demolish the existing NCTD office building on 810 Mission Property⁹ until Public Project office building is complete. NCTD reportedly will have no facilities in the 810 Mission Property once Developer takes possession.

D. Project Funding and Financing.

Developer concedes Public Project, to be owned and operated by NCTD, is subject to PWL. In contrast, Private Projects' funding is "exclusively from private sources." (See, e.g., Developer's Response Letter dated 11/14/2024, at p. 1.) More specifically, Developer states it will utilize "internal capital, institutional equity and debt" and that at the time of its response had approximately \$2.7 billion of liquidity on its balance sheet. Developer cites recent Southern California projects developed with equity from Developer and third-party equity from PGIM Real Estate, EJF Capital, and/or Pondmoon Capital, and with debt financing provided by BNY Mellon, Wells Fargo, Santander Bank, and/or Capital One. (*Ibid.*; see also Exclusive Negotiating Agreement at p. 8.)

E. Applicable Agreements and Key Provisions.

Developer and NCTD entered into a binding Option Agreement dated March 18, 2021, subsequently amended at least four times (most recently August 9, 2024). This Option Agreement and other form agreements therein are summarized below, along with NCTD's Board policy addressing joint development principles, and responsive documents regarding parking agreements.

- Option Agreement dated March 2021, *subsequently amended to extend approvals periods*. The Option Agreement grants Developer option to enter separate ground leases for Private Projects subject to certain conditions. Articles IV and V specify that the timing for simultaneous closing on the separate ground leases for Private Projects' legal parcels and Disposition and Development Agreement (summarized below) is tied to date on which Developer secures all required discretionary entitlements for Public Project and Private Projects. Exhibit B summarizes the Phasing Schedule. Section 3.2 provides that Overall Base Rent may be adjusted. Section 4.1 requires Developer to pay costs of securing necessary approvals for both Public and Private Projects and provides that City Approvals Period and Agency Approvals period may be extended (as was done per the Amendments). Section 4.3 provides that NCTD has reasonable approval rights over final conditions and terms of entitlements for Public Project.

⁹ Demolition of the existing NCTD office building was not a part of Developer's request for coverage determination; therefore, no determination is made as to whether the PWL applies to the demolition. In general, however, demolition of a public building is usually a public work and subject to the PWL.

- Disposition and Development Agreement (DDA). Section 1.1 identifies DDA's purpose of requiring Public Project (called "NCTD Improvements" in DDA) at Developer's "sole cost and expense." Section 2 explains DDA remains in effect until completion of construction and acceptance by NCTD of Public components. Section 1.3 provides that Public Project will be constructed entirely on portion of OTC/Tremont Properties that NCTD will retain. Section 4 states the relationship between NCTD and Developer is neither that of partnership nor joint venture and that Developer does not lease or own any portion of Public Project; and Private Projects are *not* governed by the DDA.
- 99-Year Ground Lease (Form). Each Private Project would have its own separate Ground Lease, with similar terms. Covenants running with the land would be prepared when City approves construction plans, documenting airspace rights for a Private Project and tiebacks. Assignment and subleases of properties are allowed. Consideration for Ground Lease(s) includes annual fixed-fee ground rent, which adjusts every five years based on annual increases of 2.5% NNN. Developer's consideration for NCTD's Ground Leases also includes Developer's payment of costs of entitling and constructing Public Project. Section 6.1 grants NCTD reasonable approval rights over construction plans. Exhibit H grants NCTD no approval rights over interiors.
- NCTD Joint Development Policy, Board Policy No. 33. Director accessed via internet the NCTD's Board Policy No. 33, "Joint Use and Development of Real Property," last revised on October 17, 2024 (hereafter NCTD Joint Development Policy). Joint Development Policy conveys broad goal "to transform underutilized real property into active, inclusive, and vibrant spaces that prioritize transit connectivity and enhance the rider experience... [etc.]" In reviewing developments, staff shall take into balanced consideration overall portfolio value to NCTD through rent revenues, transit-serving features, land uses that support regional housing goals, value-enhancing amenities, and uses that benefit NCTD and surrounding communities.¹⁰

¹⁰ Joint use and development criteria include transit prioritization, financial policies (e.g., preference for Ground Lease instead of fee disposition), community outreach (e.g., engaging with community and considering art and landscaping components), sustainability, alignment with strategic goals, and state and federal policies, solicitation policies (competitive process), and acquisition policies. Relevant to PWL is "Process" Item #6, requiring PWL compliance for the joint development unless Director's coverage determination agrees the development "has both private and public components, which could be considered two separate projects, and that does not require the payment of prevailing wage on the private component(s)."

- **Parking and Applicable Agreements:** Developer represents that Public Project's and Private Projects' parking will be separate and provided a breakdown of required parking by Lot per Government Code section 65863.2 (parking requirements for projects located near public transit) and Specific Plan(s) and other applicable authority.¹¹ Lot 8 is regarded as a *separate parcel owned by City and NCTD* and not part of Public or Private Projects. Developer represents that neither City nor NCTD has granted Developer nor Private Projects "the right to use Lot 8 for any parking needed for the Private Projects." (See Developer's Response Letter dated 2/3/2025, at p. 3.) According to NCTD, the lot was governed by an MOU (involving shared costs) between NCTD and City dated 2001. This MOU had expired and NCTD was reportedly working with City on a new MOU.

Contentions

Developer contends PWL does not apply to Private Projects, because while these involve construction done under contracts with NCTD, the construction is not "paid for in whole or in part out of public funds." (See Request Letter at p. 8.) Developer emphasizes Private Projects will be entirely privately funded and that Developer will "pay above fair market value for the Ground Leases through a combination of annual ground lease payments and the *advanced payment of ground rent in the form of privately funding the construction of the Public Project.*" (Emphasis added.) (*Ibid.*) Both NCTD and City stated in responses that they would not contribute any funding for Private Projects. Developer's contention relies upon Developer's assertion that Public Project and Private Projects are separate and independent, because if these were considered a single project, then Private Projects as part of this single project would be funded "in part" by public funds.

The Director received various response documents from the interested parties including but not limited to parcel maps, NCTD staff reports, agreements and form agreements, and a 156-page Appraisal Report by Kidder Mathews dated March 2024 reflecting compliance with the current Uniform Standards of Professional Appraisal Practice (Kidder Mathews' Appraisal Report). Developer relied on the latter for its contentions regarding fair-market valuation, as it undertook to estimate the fair-market ground rental value of Private Projects' parcels, factoring airspace rights and tiebacks, and considering Developer's advance payment for Public Project construction, and concluded the effective total ground rent paid by Developer exceeds fair market ground rent for Private Projects. (See Kidder Mathews' Appraisal Report at pp. 5; 126-130, etc.)

¹¹ The Draft Specific Plan included the following provisions:

- **Parking Location:** Required parking for uses on a given parcel may be provided on another parcel within the Specific Plan Area.
- **Parking Reduction:** A reduction in parking may be approved by City Planner for shared parking and inclusionary dwelling units, subject to the findings of a parking study.

Discussion

All workers employed on public works projects must be paid at least the applicable prevailing wage rates. (§ 1771.) The standard and most common definition of “public works” is construction [which includes preconstruction and postconstruction phases], alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds. (§ 1720, subd. (a)(1) (hereafter section 1720(a)(1).) “There are three basic elements to a ‘public work’ under section 1720(a)(1): (1) ‘construction, alteration, demolition, installation, or repair work’; (2) that is done under contract; and (3) is paid for in whole or in part out of public funds.” (*Busker v. Wabtec Corp.* (2021) 11 Cal.5th 1147, 1157 (*Busker*).)

Section 1720(a)(1)’s phrase “paid for in whole or in part out of public funds” is further established in section 1720 subdivision (b). Potentially at issue here, subdivision (b)(1) includes “[t]he 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”; subdivision (b)(3) contemplates “[t]ransfer by the state or political subdivision of an asset of value for less than fair market price”; and subdivision (b)(4) contemplates “[f]ees, 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.” (§ 1720, subds. (b)(1), (3)-(4).)

“Political subdivision” *includes* (but is not limited to) “any county, *city*, district, public housing authority, or *public agency of the state*, and assessment or improvement districts.” (§ 1721, *italics added*.) Thus, City and NCTD are political subdivisions apt to trigger the public funding component. Developer appears to concede NCTD is a “political subdivision” by conceding Public Project, to be owned and operated by NCTD, is subject to PWL.

A. Public Project and Private Projects may be Deemed Separate and Independent.

Developer characterizes Public Project and Private Projects as separate, which is significant because the definition of public works in section 1720(a)(1) requires that construction be “paid for in whole or *in part* out of public funds.” (§ 1720, subd. (a)(1), *italics added*.) Thus, if Public and Private Projects form a single integrated Project, and the NCTD owns and operates Public Project (as Developer concedes), then PWL would apply to the so-called Private Projects because Projects together (as a single project) would be publicly funded in part. Conversely, if Public and Private Projects were indeed separate, then neither NCTD nor any other public funding source would pay for Private Projects in any part, assuming terms of the applicable agreements do not change, and subject to analyses under section 1720(b).

Appellate decisions have set forth framework for analyzing whether constructed components form a “complete integrated object.” (*Oxbow Carbon & Minerals, LLC v.*

Department of Industrial Relations (2011) 194 Cal.App.4th 538, 549.) The determination of what constitutes a “single and integrated object” (to use a similar phrase) requires an examination of the “totality of the facts.” (*Cinema West, LLC v. Baker* (2017) 13 Cal.App.5th 194, 210, 212 (*Cinema West*)). This determination is always fact-specific.

In *Oxbow*, an amended air quality rule required open-air petroleum coke facilities to be enclosed, so the lessee of the coke facility planned to build a roof over it. However, the roof would render the existing conveyor system obsolete, thus requiring a new system. The City of Long Beach agreed to reimburse the lessee for the cost of constructing the new conveyor system, but the roof was built by a different contractor through a separate construction contract and was paid for with private funds. Ultimately, the *Oxbow* court declined to rely solely on the separate construction contracts and held that the roof and conveyor system were part of a “complete integrated object” and PWL applied to the entire project. (*Oxbow, supra*, 194 Cal.App.4th at p. 549.) Facts supporting this determination included a city memorandum referencing both the roof and conveyors, the work occurring at the *same site* at or near the same time, and that the contracts required the work on the two be coordinated. (*Id.* at p. 551.)

Cinema West relied on *Oxbow*’s construction analysis and considered whether a “theater, parking lot and related amenities were part of a ‘complete integrated object’ and thus constituted the ‘construction’ done under contract, which, if ‘paid for in whole or in part out of public funds,’ constitutes a public work subject to the [PWL].” (*Cinema West, supra*, 13 Cal.App.5th at p. 215.) Evidence included numerous public records referring to the parking lot as “necessary” to the theater and “for the theater” and an agreement that specifically called for the parking lot to be built with funding from the City of Hesperia; there was further evidence the theater and parking lot were constructed together at the same time and on the same vacant parcel of land (as in *Oxbow*). (*Id.* at pp. 212-213.) *Cinema West* considered the totality of the facts and found the theater and parking lot were both components of a single, integrated project. (*Id.* at p. 215.)

Coverage determinations have given weight to these and other factors, including but not limited to physical layout, including separateness of legal parcels (see, e.g., PW 2017-022, *Market Rate Residential Project - Hilltop & Euclid – City of San Diego* (Jan. 26, 2021) (*Market Rate*); PW 2012-041, *Volkswagen of Palm Springs – City of Cathedral City* (May 1, 2013) (*Volkswagen*); PW 2005-002, *Golf Course Site, Northwest Golf Course Community – City of Oxnard* (Aug. 7, 2006) (*Oxnard Golf Course*); whether component(s) of a project were “integral” or “essential” to another (see, e.g., PW 2021-009, *350 Ocean Street Project – City of Santa Cruz* (Apr. 4, 2024) (*350 Ocean Street*); PW 2014-041, *Site Work for New Modular Classroom Building at LPS Hayward Campus Leadership Public Schools* (Feb. 5, 2016); PW 2007-10, *Movie Theater Construction at Glendale Town Center – Glendale Redevelopment Agency* (Jan. 12, 2009) (*Glendale Town Center*)); oversight of the project, often by one or more public entities (see, e.g., *Oxnard Golf Course*, PW 2005-002); separate agreements governing the projects or construction thereof (see, e.g., *350 Ocean Street*, PW 2021-009; *Market Rate*, PW 2017-022; *Oxnard Golf Course*, PW 2005-002); coordination between the projects (see, e.g., *Market Rate*, PW 2017-022); and even the overall purpose of the project(s) (see, e.g., *Market Rate*, PW 2017-022; *Volkswagen*, PW 2012-041, etc.)

Market Rate is instructive, as the facts bear some resemblance. The City of San Diego solicited proposals, and the winner offered a “bifurcated development” of two mostly residential developments on the same site – a “Market Rate Development” on one side and an “Affordable Development” on the other. (*Market Rate, supra*, PW 2017-022 (Jan. 26, 2021), at p. 1.) During negotiations, the city and developer agreed the site would be developed per two separate agreements. (*Ibid.*) As an inducement to build Affordable Development, the city provided subsidies to developer, including a \$1.00 purchase price for the land and low-interest loans. Both parties conceded these public subsidies were public funds for PWL purposes. Beneficial to both Developments, developer would use some low-interest loan proceeds for predevelopment work (e.g., mass grading of the entire site, arroyo restoration, and public street, sewer, and utility improvements), some of which would “obviously” benefit Market Rate Development property area. (*Id.* at p. 2.) Market Rate Development was to be sold to a separate developer for what was determined to be slightly higher than fair-market price. (*Id.* at p. 3.).

At issue was whether Market Rate Development was paid for in part by the public subsidies, which required analysis of whether the two developments were part of a single integrated project (*Id.* p. 3.). Although *Market Rate* found several facts in common with *Cinema West* and *Oxbow* (e.g., performance under separate contracts with different contractors, a subdivided site) and facts in favor of a single integrated project (e.g., coordination between two developments, adjacency, an overarching role by city over both developments), it also found “other facts that militate against finding a single, integrated project.” (*Id.* at p. 5.). These facts included land subdivided into halves for the two developments, governed by separate agreements, and developed by two different, unrelated developers independently; construction to run on separate tracks at its own pace and of different styles (given the different agreements and developers); different components (i.e., Affordable Development combined commercial and retail components with residential (apartment only), whereas Market Rate was exclusively single-family); and different characterizations of the projects in applications for housing tax credits and bond funding. (*Id.* at p. 5.) Based on the foregoing, *Market Rate* concluded:

[I]t is not clear that there is a single, integrated project. While there are multiple facts suggesting that the two developments are coordinated and complement each other, there are other *equally compelling* facts described above that point to two separate projects. *On balance it appears that the overall purpose*, once [San Diego] accepted [developer’s] proposal, was to develop two separate projects. In this specific case, where there are *no clear indicia of a single, integrated project*, the two developments can be characterized as being two discrete projects.

(*Id.* at p. 5, italics added.)

Here, while Projects as presented by Developer include several facts consistent with a single integrated project, there are “equally compelling” facts to support the separateness of Public and Private Projects. Factors favoring singleness include one single Developer to conceptualize and coordinate Projects, certain cross-referencing among agreements (albeit largely for the purpose of Developer funding Public Project), coordinated phasing, and OTC Redevelopment’s website’s failure to distinguish between

Public and Private Projects.¹² On the other hand, a major factor favoring separateness is, as in *Market Rate*, an apparent “overall purpose” of two distinct projects, i.e., Public Project embodying a transportation hub, including new NCTD headquarters, bus station, train station, etc.; and Private Projects emphasizing retail, residential and mixed-use. Other separateness factors include distinct legal parcels and some lack of adjacency given the separateness of the 810 Mission component (unlike *Oxbow* and *Market Rate*), some separateness of agreements (e.g., DDA governing Public and separate Ground Leases governing Private Projects), and plans for different architects and construction teams.¹³ Because equally if not more compelling facts point to separateness, Developer’s Public and Private Projects may be characterized as such.

**B. Private Projects’ Funding Does not Conclusively Resemble
Subdivision (b) Subcategories.**

Developer contends that none of the applicable agreements (e.g., Option Agreement, DDA, Ground Leases) require public funding for Private Projects because Developer will *privately* fund Private Projects via a combination of annual ground lease payments and the “advanced payment” of ground rent by privately funding Public Project. (See, e.g., Request Letter at p. 8.) Thus, the following subdivisions appear to be at issue:

(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.

...

(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*.

(§ 1720, subd. (b), italics added.)

Based on the facts presented, neither City nor NCTD appears to be paying “money or the equivalent of money” to Developer (subdivision (b)(1)); and Developer has

¹² Rather, the website emphasizes inter-dependability among improvements and distinguishes only between the OTC/Tremont and 810 Mission Properties.

¹³ Importantly, *Market Rate* cautions, “separate developers and separate governing agreements alone is not dispositive,” because “if Department agreed that merely having separate governing agreements and developers was sufficient to transform two components of one project into separate projects, ‘it would encourage parties to contract around the prevailing wage law by breaking up individual tasks into separate [] contracts.’” (*Market Rate* at p. 5, n.7, citing *Oxbow, supra*, 194 Cal.App.4th at p. 550.)

provided a fair-market analysis to address transfers of assets (subdivision (b)(3)) and rents (subdivision (b)(4)).

1. Private Projects do not resemble subdivision (b)(1)'s "public funds" because NCTD is not paying any money or equivalent of money

Developer reiterates it was selected as the most qualified bidder based on the *absence of any financial contribution by NCTD* and long-term lease structure yielding greatest benefit to NCTD while minimizing risk. (See Request Letter at p.13; see also NCTD Staff Report dated 9/17/2020, Agenda Item #23, attached as Exhibit D to Request Letter.) Accordingly, subdivision (b)(1)'s "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*" does not resemble Private Projects because Developer intends to use private funding entirely.¹⁴

2. Subdivisions (b)(3) and (b)(4) invoke a "fair market" analysis

Developer primarily addresses subdivisions (b)(3) and (b)(4) in its "public funds" analysis. (See Request Letter at p. 9.)

Subdivisions (b)(3) and (b)(4) effectively require inquiry into whether Developer is paying fair-market (or greater) rent per Ground Leases. (See, e.g., *Hensel Phelps Constr. Co. v. San Diego Unified Port Dist.* (2011) 197 Cal. App. 4th 1020, 1039 [confirming public agency may pay for construction from public funds either by reducing rent or by charging rent at less than fair market value].) In other words, a lease for fair market value does not constitute a payment of public funds. (*Id.* at pp. 1040-41; see also *State Building & Construction Trades Council of California v. Duncan* (2008) 162 Cal.App.4th 289, 311.) Developer contends that the Department has relied upon two methods of making this determination: appraisal or competitive bidding process. (See Request Letter at p. 9.)

PW 2020-009, *University Glen 32-Acre Development – California State University Channel Islands* (May 26, 2021) (*University Glen*) is somewhat analogous to the instant facts in that a CBRE appraisal report provided factual support that ground sublease payments were fair-market value. In addition, the fact that the winning bidder's RFP proposal was chosen from three qualified bidders was further "indication that there were *competitive forces at play to bolster the fair market valuation.*" (Emphasis added.) (*University Glen*, at p. 5.) The winning bidder, like Developer, also purported to draw exclusively from private funding sources to develop the private components of the project, and similarly provided some advance payments in addition to ongoing lease payments to a public entity. (*Id.* at p. 3.) Concluding that no other forms of potential public subsidy

¹⁴ Public Project, in contrast, is initially funded via "advanced payment" to NCTD by Developer and thus funded arguably "on behalf of" NCTD given the advance-rent arrangement; however, such arrangement would subject *Public* Project to PWL, something Developer has already conceded, while contending that Public Project and Private Projects are separate and independent.

were present, *University Glen* determined that the construction was not paid for out of public funds. (*Id.* at p. 6; see also PW 2018-04, *Multi-Family Residential Development – Glendale Unified School District* (Dec. 17, 2018) (*Multi-Family Residential*), at p. 3, finding no transfer at “less than” fair-market value under subdivision (b)(3) where materials submitted for appraisal likely resulted in greater-than fair-market valuation based on “highest and best use” rather than actual building on property.)

In contrast to *University Glen* and *Multi-Family*, PW 2020-017, *Fort Ord Medical Officer’s Barracks, Parker Flats Cutoff Road – City of Seaside* (Dec. 30, 2021) (*Fort Ord*) determined that purchase price was “not derived from competitive market forces” where (1) inaccuracies were identified in the appraisal report; and (2) no RFPs were issued, despite two unsolicited offers and recommendations from city staff and public comments that RFPs be issued. (*Fort Ord* at pp. 7-8.) However, absent credible evidence to the contrary, the Director will generally accept a bona fide appraisal performed by an independent and certified appraiser as determinative of fair-market value. (See PW 2003-042, *East Campus Student Apartments – University of California-Irvine* (Jul. 28, 2006) (*East Campus*), at p. 5, citing PW 2004-035, *Santa Ana Transit Village, City of Santa Ana*. (Dec. 5, 2005); PW 2003-040, *Sierra Business Park, City of Fontana* (Jan. 23, 2004).) In *East Campus* specifically, “the appraisals were performed using accepted methodologies by state certified appraisers with an MAI [Member of the Appraisal Institute] and therefore are considered bona fide appraisals,” and no contrary evidence was presented. (*East Campus* at p. 5.)

As in *University Glen* and *Multi-Family*, information used in the 156-page Appraisal Report by Kidder Mathews appears to support a fair-market or greater-than-fair-market valuation for Ground Leases. The appraisal report was prepared by a MAI who “made a personal/physical inspection of the subject property.” (See Kidder Mathews’ Appraisal Report at pp. 2; 6.) The appraisal considered air space encroachment and temporary construction tieback, as well as Developer’s advance payment in the form of Developer privately funding Public Project construction. (*Id.* at pp. 5; 126-130, etc.) Before the 2024 appraisal, Developer’s RFP proposal was chosen from among four qualified bidders, providing further evidence of competitive forces at play. Thus, Developer provided evidence that Ground Leases are at least fair-market value. (See also *Market Rate, supra*, PW 2017-022 (Jan. 26, 2021), at p. 3 (accepting Summary Report finding of estimated fair market value of property at highest and best use as evidence of fair-market purchase price).)

Lastly, subdivision (b)(4) (“other obligations ... paid, reduced, charged at less than fair market value, waived, or forgiven by the state or political subdivision”) prompts analysis beyond the Ground Leases, especially in light of entitlements or approvals required as condition of Private Projects. Here, however, Developer and applicable agreements provide that Developer “is responsible for all the Private Projects’ construction costs and all operation, maintenance, and repair, of the Private Projects including taxes, assessments, and charges related to operations.” (Request Letter at p. 8; see also Option Agreement Section 4.1.) Developer is also to pay the costs of entitling and constructing *Public Project* improvements, as consideration for NCTD’s Ground

Leases. “[O]ther obligations” could also refer to parking, with some concern raised by the Specific Plan language allowing for parking flexibility across parcels within the Specific Plan. However, Developer’s responses stated that no parking for Public Project would be used for Private Projects, and vice-versa. (See, e.g., Response from Developer dated 2/3/2025, at p. 3.) Similarly, there is no indication the OTC/Tremont Properties Parking (considered neither Public nor Private) would be used for Private Projects. Thus, Private Projects’ funding does not trigger subdivision (b)(3) or (b)(4). Private Projects do not appear to involve public funds and are not subject to PWL.

This determination is based on the facts presented. “If the assumed facts concerning this project change, a different result may obtain.” (PW 2003-014, *Phase II Residential Development Victoria Gardens – City of Rancho Cucamonga* (July 20, 2005).)

Conclusion

For the foregoing reasons, Private Projects as presented by Developer are not public work subject to PWL provided that the funding sources, terms of the Ground Leases, construction plans and phasing, and parking arrangements are not subject to change. I hope this determination satisfactorily answers your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Osborn", with a long horizontal flourish extending to the right.

Jennifer Osborn
Director of Industrial Relations