

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
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August 7, 2006

Anthony S. Mischel
Hearing Officer
Office of the Director-Legal Unit
Department of Industrial Relations
320 West 4th Street, Suite 600
Los Angeles, CA 90013

Re: Public Works Case No. 2005-002
Golf Course Site, Northwest Golf Course Community
City of Oxnard

Dear Mr. Mischel:

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 rough grading of the golf course within the City of Oxnard's Northwest Golf Course Community is not a public work subject to the payment of prevailing wages.

SUMMARY OF FACTS

The Northwest Golf Course Community ("Development") within the City of Oxnard ("City") consists of 418 single-family houses, a public school, a golf course and 54 units of affordable housing on approximately 209 acres of land. The Development was completed pursuant to a Development Agreement ("Agreement") with an effective date of January 2, 2001. The Agreement is between City and several entities that owned the property: Coastal Ranch Properties, LLP; the Raymond E. Swift Trust; and the White Family Trust. The property owned by Coastal Ranch Properties, LLP was subsequently sold to the Valencia Division of the D.R. Horton Los Angeles Holding Company. The White Family Trust's portion of the property was subsequently sold to Western Pacific Housing.¹ Western Pacific Housing was then designated to act as the master developer ("Developer").

The Agreement requires Developer to construct certain off-site sewer, roadway and storm drain improvements. City agreed to

¹Western Pacific Housing is variously identified as "Western Pacific Housing, Inc." in a letter from its attorney, David K. Schneider; as "WPH - Oxnard Coastal, LLC" on the grading contract; and as both "WPH - Oxnard Coastal LLC" and "Western Pacific Housing River Ridge, LLC" on the grant deed that ultimately deeded the golf course to City in 2003.

reimburse Developer for the costs incurred in the engineering and construction of these improvements.

As part of the consideration for City's assent to the Agreement, Developer agreed to deed some land within Development ("Golf Course Site") to City for subsequent development by City as a new 9-hole public golf course. On January 14, 2003, Developer contracted with D&L Stines Construction Co. ("Contractor") for the rough grading of the Golf Course Site. The cost of the rough grading was \$345,450. When rough grading was completed, Developer deeded the Golf Course Site to City in July, 2003. City then hired a different contractor for the fine grading needed to build the golf course.

Although Developer used Contractor to rough grade other areas within the Development, such work was carried out under a separate contract. Developer hired other contractors under separate contracts to construct the off-site infrastructure and the residential development.

Per the Agreement, City is making annual payments to Developer as reimbursement for the costs of constructing the off-site infrastructure.² Private funding was used to pay for the remainder of the Development, including the rough grading of the Golf Course Site.

ANALYSIS

Labor Code section 1720(a), as it existed in 2001, generally defined "public works" to mean "Construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds"³ The above facts establish that the rough grading of the Golf Course Site involves alteration done under contract. The only issue is whether the work was paid for in whole or in part out of public funds.

²Over a 10-year period, City ultimately will reimburse Developer \$1,215,247.77 for oversized sewer improvements, \$1,200,794.36 for road and traffic improvements and \$250,836.51 for oversized storm drain improvements, all of which have been constructed.

³The Department determines the governing law by looking to the benchmark date - here, the date of the formative agreement. See, e.g., PW 2003-028, *Baldwin Park Marketplace Project, City of Baldwin Park* (October 16, 2003). In this case, the Agreement between City and Developer went into effect on January 2, 2001, so the law that existed at that time governs this coverage analysis. The definition of "public works" has been revised since 2001 and may be currently found in what is now Labor Code section 1720(a)(1).

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A Civil Wage and Penalty Assessment was served on Contractor by the Division of Labor Standards Enforcement ("DLSE") to enforce the payment of unpaid prevailing wages to workers employed in the rough grading of the Golf Course Site. At the hearing, Contractor disputed DLSE's contention that the Golf Course Site was a public work when the rough grading was performed. The Hearing Officer adjourned the hearing and referred the matter to the Director for this Determination. Developer argues that the rough grading of the Golf Course Site cannot be considered a public work because Contractor was paid entirely with private funds. DLSE has not responded with its own theory as to why the rough grading of the Golf Course Site should be considered a public work.

As of the effective date of the Agreement, January 2, 2001, the pertinent precedential determinations were PW 93-012, *Wal-Mart Shopping Center, Lake Elsinore* (July 1, 1994), a Decision on Appeal affirming the determination of March 28, 1994, and PW 94-034, *Factory Outlet Center, Pismo Beach* (February 28, 1995), a Decision on Appeal affirming the determination of September 19, 1994. In each of those cases, the requesting party argued that publicly funded off-site infrastructure improvements were integral to the overall project and caused the entire shopping center to constitute a public work. The Department concluded, however, that under the facts of each case the infrastructure improvements constructed off-site and under separate contract constituted a separate project from the privately funded construction of the shopping center, and that only the off-site infrastructure improvement work was a public work subject to prevailing wage requirements.

The guidance provided by the *Wal-Mart* and *Factory Outlet Center* cases is through the use of concepts such as "integral" and "severable." The employment of these terms leads to a consideration and a determination whether the various undertakings under the Agreement - the off-site infrastructure, the rough grading of the Golf Course Site and the remaining residential development - are collectively a single project or a series of separate projects, some publicly funded and others privately funded. The following facts are pertinent to the inquiry.

The provisions of the Agreement point in the direction of finding that the off-site infrastructure, the rough grading of the Golf Course Site and the residential development are each severable from one another and should be considered separate projects. City's interest in the Development was confined to the off-site improvements, which City paid for, and the Golf Course Site, which City would eventually develop into a 9-hole public golf course. City did not reserve rights of oversight, direction or supervision over the residential development. Section 10.7 of the Agreement

provided, "the City has no interest or responsibility for or duty to third parties concerning any improvements until such time as City accepts the same."⁴ Under section 5.7, Developer had sole discretion as to the timing and completion of construction, with the exception of the golf course.

Contractor was not hired by City to do any of the fine grading on the Golf Course Site once the rough grading had been completed. Although Contractor graded other areas within the residential development, such grading was done under a separate contract with Developer. Contractors hired to construct the off-site infrastructure and other contractors hired to build the remaining residential development worked under separate contracts.

All property used for the Development was provided by Developer and the other signatories to the Agreement. The only parcel of land held by City is the Golf Course Site, and that land was dedicated to City after the rough grading was completed. This fact points toward severability because the rough grading of the Golf Course Site was paid for with private funds while the land was still privately owned. City funds were not expended to further develop the golf course until after the Golf Course Site became the property of City. Further, the physical layout of the parts does not support a finding that this was a single, integrated construction project. The Golf Course Site in its finished state is physically separate from the housing units. The infrastructure improvements paid for by City are off-site. Consistent with the results of the *Wal-Mart Shopping Center and Factory Outlet Center* determinations, *supra*,⁵ the mere existence of publicly-funded infrastructure adjacent to privately-funded housing is insufficient to support a finding that the parts are integrated in the absence of other countervailing factors.

CONCLUSION

Taken together, the facts indicate that both the rough grading of the Golf Course Site and the remaining residential development are severable projects from the publicly funded off-site improvements. Because the rough grading of the Golf Course Site was not paid for in whole or in part out of public funds, it is not a public work subject to prevailing wage requirements.

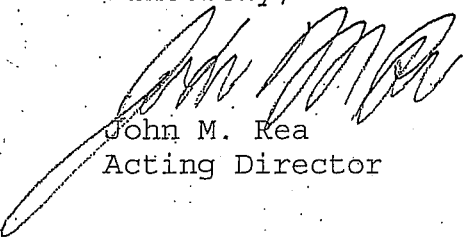
⁴City represents that all of its obligations under the Agreement were satisfied by City's having finished the construction and landscaping of the golf course on the Golf Course Site.

⁵See also PW 2003-014, *Chapman Heights, City of Yucaipa* (January 30, 2004).

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I hope this determination satisfactorily answers your inquiry.

Sincerely,



John M. Rea
Acting Director