

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



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Ethan Walsh, Esq.
McDonough Holland & Allen PC
555 Capitol Mall, 9th Floor
Sacramento, CA 95814-4692

Re: Public Works Case No. 2008-017
Rialto Municipal Airport
Redevelopment Agency of the City of Rialto

Dear Mr. Walsh:

You have requested a public works coverage determination as to whether your client's purchase of real property presently being used as the Rialto Municipal Airport ("Airport"), as well as certain adjacent property, from the Redevelopment Agency of the City of Rialto ("Agency") triggers the application of California's prevailing wage laws as to subsequent development of the property. Coverage determinations are made with regard to either "a specific project or type of work to be performed." (Cal.Code Regs., tit. 8, § 16001(a)(1).) Because the subsequent development is in its planning stages, your request lacks the information necessary to enable the Department to first identify the scope of the project or projects and, then, determine their coverage status. Under the circumstances, a coverage determination cannot issue. As to the narrow question of whether the real property transfer would be a factor in the public funds portion of the coverage analysis, based on the facts presented, the documents submitted¹ and an analysis of the applicable law, it is my conclusion that the transfer does not entail a payment in whole or in part out of public funds.

Facts

The Lewis-Hillwood Rialto Company, LLC ("Developer") contracted with Agency to purchase to Company several parcels of real property, which includes 437 acres occupied by the Airport and 54 acres located adjacent to the Airport. The Airport acreage is comprised of three parcels designated as Areas B, C, and D ("Airport Property"), while the adjacent acreage is comprised of parcels collectively designated as Area A. City has been operating the Airport pursuant to a lease of the Airport Property from Agency. Developer has tentative plans to eventually convert the Airport Property and Area A into a master-planned, mixed-use development including residential, commercial, industrial, and public uses. The Department has been informed that present development plans are fluid and expected to change due to the current volatility in the real estate market.

Development of the Airport Property first requires closure of the Airport. The procedure for closing the Airport is governed by federal legislation referred to as the Federal Closure Law.²

¹ These documents include the Retrospective Summary Appraisal Report; the Area A Contract of Sale; the First Amendment to Area A Contract of Sale; the First Amended and Restated Contract of Sale for Areas B, C and D; and the Agreement Regarding Transfer of Certain Aviation Assets.

² Public Law 109-59, § 4408.

Among other provisions, the Federal Closure Law requires City to pay the San Bernardino International Airport Authority ("SBIAA") 45 percent of the current fair market value of the Airport Property. City and SBIAA could not agree on a dollar figure that represented the fair market value of the Airport Property. Based on assumptions that the Airport was already closed, the tenants relocated and the property unencumbered, SBIAA contended that the fair market value of the Airport Property was \$120 million. SBIAA did not obtain an appraisal to support its valuation. To support City's position that a lesser amount was due, City argued for a fair market valuation based on the purchase price for the Airport Property previously agreed to by Agency and Developer. That price, \$63.58 million, was supported by an appraisal ("Initial Appraisal").³ Ultimately, the parties negotiated a settlement of their dispute, with City agreeing to pay SBIAA \$49.5 million, which amounts to 45 percent of \$110 million. According to Developer, City and SBIAA never did agree on the fair market value of the Airport Property. The sum agreed to represents a compromise intended to settle the dispute, satisfy the conditions of the Federal Closure Law, and remove this impediment to development.

Subsequent to City and SBIAA's settlement, an appraisal commissioned by Developer and performed by Michael F. Waldron and Christer Fiege-Kollman of Waldron & Associates, Inc. determined the fair market value of the Airport Property and Area A to be \$86.7 million based on the sales comparison method of valuation ("Waldron Appraisal"). Both appraisers are California Certified General Real Estate Appraisers, and Mr. Waldron is an MAI, Member of the Appraisal Institute.

On June 12, 2007, the same date of the valuation in the Waldron Appraisal, Developer and Agency negotiated a new purchase price for the Airport Property and Area A totaling a minimum of \$89,859,282.50 in its "as is, where is" condition. In addition to this sum, Developer is contractually obligated to pay an estimated \$31,237,670 to relocate the current tenants, and an estimated \$11,414,804 to demolish existing structures and perform environmental remediation. These expenditures are necessary to make the land suitable for development.

Discussion

Labor Code section 1771⁴ requires, with certain exceptions, that prevailing wages be paid to all workers employed on public works. Section 1720(a)(1) defines "public works" as "[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) provides in pertinent part:

(b) For purposes of this section, "paid for in whole or in part out of public funds" means all of the following:

* * *

(3) Transfer by the state or political subdivision of an asset of value for less than fair market price.

³ The Initial Appraisal put the fair market value of both the Airport Property and Area A at \$77.05 million.

⁴ Subsequent statutory references are to the Labor Code unless otherwise indicated.

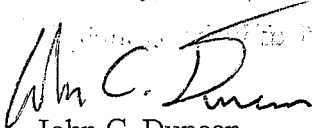
The issue presented is whether the real property transaction between Agency and Developer involving the Airport Property and Area A constitutes the transfer "of an asset of value for less than fair market price" within the meaning of section 1720(b)(3). The phrase "fair market price" is not defined by statute. Consistent with prior coverage determinations, the Department will accept that a property's "fair market value" is at least equal to its "fair market price."⁵

The Initial Appraisal determined the fair market value of the subject property to be \$77.05 million. Subsequently, Developer obtained the Waldron Appraisal. Based on the sales comparison methodology of valuation, the Waldron Appraisal determined the fair market value to be \$86.7 million. With the Waldron Appraisal in hand, the parties agreed to a final purchase price of \$89,859,282.50. The Waldron appraisal was performed by certified and experienced real estate appraisers and as such is considered credible. Absent a contrary credible appraisal, the Waldron Appraisal is presumed to be correct. As determined by both the Initial Appraisal and the Waldron Appraisal, the purchase price of the property exceeds its fair market value. The transfer of the property at that price, therefore, is not for "less than fair market price" within the meaning of section 1720(b)(3). For the foregoing reasons, under the definition of "public works" in section 1720(a)(1), I conclude that the real property transaction at issue here does not entail a payment in whole or in part out of public funds.

As stated above, this conclusion is based on the acceptance of the property's fair market value determined in an appraisal performed by certified appraisers as correct and the absence of a credible, contrary appraisal. SBIAA's valuation done for purposes of calculating its demand under the Federal Closure Law is not controlling, nor is the amount City ultimately agreed to pay to settle the dispute. Neither is based on a valid appraisal.

I hope this letter satisfactorily answers your inquiry.

Sincerely,


John C. Duncan
Director

⁵ See, for example, PW 2003-040, *Sierra Business Park, City of Fontana* (January 23, 2004) [a purchaser's acquisition of real property from a redevelopment agency at a price that exceeds the fair market value of the property as determined by a credible appraisal is not for "less than fair market price"].