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Court of Appeal Decides that Publicly Financed Land Acquisition does not Subject Project Construction to Payment of Prevailing Wages

California's First District Court of Appeal held that the public financing of land acquisition within a redevelopment area did not constitute the payment of public funds for construction activities, and therefore did not require the payment of prevailing wages for later construction of the project by a private developer.

In this case, a redevelopment agency acquired several parcels of land within its redevelopment area. Under a Disposition and Development Agreement ("DDA"), the funds for the agency's acquisition were initially provided by the developer. However, these costs were to be reimbursed back to the developer from tax revenues generated by the completed redevelopment project.

California's prevailing wage law requires, among other things, the payment of prevailing wages for construction, installation, demolition or alteration work done under contract and paid for in whole or part with "public funds."

Several labor organizations claimed that the redevelopment agency's reimbursement

of project acquisition costs to the developer compelled the developer to pay prevailing wages for the construction of a 134 home residential development on the acquired parcels. The labor groups also contended that the reimbursement of acquisitions costs were really intended to offset the costs of constructing affordable housing required by the project.

The California Department of Industrial Relations ("DIR") agreed, stating that the acquisition activities were so "integrally connected to the construction of the project" that the construction was subject to the payment of prevailing wages.

The Court of Appeals disagreed, holding that land acquisition costs are not "construction" costs under the prevailing wage statute. The Court also stated that the public agency's motivation for financing the acquisition was irrelevant. Because, under the DDA, the reimbursement money was used for land acquisition, rather than "actual construction," the payment of prevailing wages was not required.

This case emphasizes the importance of properly drafting redevelopment documents, such as a DDA, to avoid the risk of unnecessarily exposing private projects to the payment of prevailing wages.

Greystone v. Cake (Case No. A107763, A107766; 1st Dist. Cal.; Dec. 22, 2005)

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