

# Real Estate & Land Use

June 20, 2012

## Affordable Housing Project Found to Be Subject to Prevailing Wages

Author: [Roger A. Grable](#)

In a decision filed on June 15, 2012, the Fourth Appellate Court of Appeal determined that an affordable housing project in San Bernardino was subject to the requirement for the payment of prevailing wages under Labor Code Section 1720 notwithstanding the fact that the individual sources of funds for the project would have otherwise fallen within the statutory exception to the prevailing wage requirements. *Housing Partners, Inc. v. Duncan* (2012 DJDAR 8014, June 19, 2012). The court acknowledged that each source of funding for the project, taken by itself, would fall within one of the exemptions set forth in Labor Code Section 1720(c)(4) and (c)(6) but that the exemptions cannot be combined as they operate independently from one another.

The project applicant strenuously argued that housing policy and legislative intent would be furthered by reading the exemptions together, but the court was not persuaded. According to the court, the language in Section 1720(c)(4) plainly states that the exemption under that section applies only when the project is funded by low and moderate income redevelopment set-aside funds and private funds. It does not contemplate funding that includes other sources of public funds such as low interest loan funds, which are addressed in the exemption in Section 1720(c)(6).

With the loss of a significant source of funding for affordable housing projects as a result of the demise of redevelopment, this decision will present significant challenges for affordable housing developers. Clearly the Legislature recognized the impediment prevailing wages create for affordable housing projects when it enacted the statutory exemptions for affordable housing projects. However, very few affordable projects can pencil with a single source of funding. In addition to the exemptions in subsections (c)(4) and (c)(6), the Legislature created a number of other exemptions for funding sources for affordable projects such as those for tax credits and certain bond measures (subsections (c)(5) and (d)). If these exemptions cannot apply to projects with multiple funding sources, their application will be severely limited, seemingly in conflict with the legislative policies favoring the development of affordable housing.

With the legislature already struggling with finding a way to address the loss of the low and moderate income set-aside funds, it would make sense for the Legislature to address the consequences of this decision. Given the even larger issues facing the state as a result of the economic downturn, when and if this will become a legislative priority is anyone's guess.

### Newsletter Editor

Roger A. Grable  
Counsel  
[Email](#)  
714.371.2537

### Practice Area Links

[Practice Overview](#)  
[Members](#)

### Awards



Recognized for Excellence in the Real Estate industry



Named a Top Practice for Real Estate and Construction, California (South): Land Use and Zoning



Practice leaders included among the prestigious Best Lawyers in the country

### Author



Roger A. Grable  
Counsel  
[Email](#)  
714.371.2537

This newsletter has been prepared by Manatt, Phelps & Phillips, LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.

ATTORNEY ADVERTISING pursuant to New York DR 2-101 (f)

Albany | Los Angeles | New York | Orange County | Palo Alto | Sacramento | San Francisco | Washington, D.C.

© 2011 Manatt, Phelps & Phillips, LLP. All rights reserved.

[Unsubscribe](#)