

## Your Subdivision May Be a 'Public Work' Subject to Prevailing Wage Laws

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A recent appellate decision considered whether Mello-Roos financing constitutes "public financing" under the Labor Code such that the prevailing wage laws apply to a project receiving such financing and, if so, whether a safe harbor was available so the entire project was not subject to them. In *Azuza Land Partners v. Department of Industrial Relations* (2010) 191 Cal.App.4th 1, the court determined that an entire planned community was a "public work" because it received partial public funding to construct **some** of the public improvements required as a condition of approval. The obligation to pay prevailing wages, however, fell within an exemption in the statute so that only the public improvements were subject to prevailing wage laws, which included those that were to be **privately** funded.

Azuza Land Partners (ALP) was the owner of the Rosedale master planned community that involved the potential development of more than 1,200 homes plus commercial space and significant public improvement work. The latter included construction of a public school and adjoining park, freight under-crossings, sanitation district facilities, and backbone and in-tract street, bridge, storm drain, sewer, reservoir, dry utilities, park and landscaping improvements for the cities of Azuza and Glendora. The City of Azuza agreed to provide partial funding of required public facilities through Mello-Roos tax bonds. It established a community facilities district (CFD) to sell the bonds and a special tax was levied against the parcels for the indebtedness. The specific public facilities that were to be built using Mello-Roos funds were identified after the bonds were issued. The total cost of construction of all public facilities was approximately \$146 million. The CFD issued approximately \$71 million

in Mello-Roos bonds and the remaining public improvements were to be constructed at private expense.

ALP took the position that the **only** work subject to prevailing wage laws was the subset of public improvements financed through Mello-Roos bonds. The court disagreed. It explained that Mello-Roos bonds are a form of public financing that constitute "public funds" under the Labor Code and subject a development to the prevailing wage laws. Under Labor Code section 1720, subdivision (a)(1), the entire planned community was therefore a "public work," since it was construction done under contract and "paid for in whole or in part out of public funds."

The court noted that absent an exemption, prevailing wage laws would apply to the project in its entirety. However, the court found that in enacting Senate Bill 975, the Legislature intended to reduce the prevailing wage obligations for private development projects where public funds paid do not exceed the cost of required construction. That exemption is found in section 1720, subdivision (c)(2), which applies if four conditions are met: (1) the public improvement work is required as a condition of regulatory approval; (2) the project is an otherwise private development; (3) the public entity must not contribute more money, or the equivalent of money, to the overall project than is required to construct the public improvement work; and (4) the public entity must not maintain any proprietary interest in the overall project. The court determined that the exemption applied to the Rosedale project because the city required APL to construct public improvements that cost far more than the funds provided by the city and the city maintained no proprietary interest in the project. As a result, the court held that under the exemption, the obligation to pay prevailing wages was limited to **all public improvement** work required as a condition of approval, regardless of whether the improvements were publicly funded through the Mello-Roos bonds or privately funded.

Although not key to its holding, the court also indicated that a Mello-Roos CFD was an "improvement district" under section 1720, subdivision (a)(2), which also requires that prevailing wages be paid for work done for an improvement district and other similar districts. Such work qualifies as a "public work," but unlike subdivision (a)(1), there is no requirement that work for a district be paid for by public funds.

The California Supreme Court recently denied review of the Azuza decision. Therefore, developers who receive any public funds for private developments should closely examine the extent to which their project may be deemed a "public work" and whether any exemption applies for purposes of prevailing wage laws.

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