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Comment #20

LORI K. AQUINO
ANNE I. YEN
NICOLE M. PHILLIPS
CONCEPCION E. LOZANO-BATISTA
CAREN P. SENCER
MANJARI CHAWLA
KRISTINA M. ZINEN
JANNAH V. MANANSALA
MANUEL A. BOGUES
KERRANNE R. STEELE
ANA M. GALLEGOS
CARY P. FROVENGHER

PATRICIA M. GATES, Of Counsel
ROBERTA D. PERKINS, Of Counsel
RICHARD T. DRURY, Of Counsel

• Also admitted in Arizona
•• Admitted in Hawaii
••• Also admitted in Nevada
•••• Also admitted in Illinois

November 12, 2008



VIA E-MAIL ATTACHMENT AND U.S. MAIL

Mr. Nelson Oliva, Executive Director
City of Hercules Redevelopment Agency
111 Civic Drive
Hercules, CA 94547
(noliva@ci.hercules.ca.us)

Mr. Steve Lawton
City of Hercules
111 Civic Drive
Hercules, CA 94547
(slawton@ci.hercules.ca.us)

Re: Applicability of Prevailing Wages at Hercules Market Town Project

Dear Messrs. Oliva and Lawton:

We are writing on behalf of Carpenters Union Local 152 to request your opinion concerning the applicability of prevailing wage requirements to the Hercules Market Town Project ("Project"). In our opinion, the City's Prevailing Wage Ordinance and state law both require payment of prevailing wages for construction of the Project.

A. Hercules Prevailing Wage Ordinance.

The City of Hercules ("City") adopted a Prevailing Wage Ordinance in January 2000 requiring the payment of prevailing wages for certain construction projects in the City. Pursuant to the Ordinance, construction projects are subject to prevailing wage requirements if total construction costs exceed the "threshold amount" of \$100,000 (adjusted according to the formula in section 2(f) of the Ordinance), and if they meet any *one* of the following criteria:

- a) The construction project is subsidized by public funds in an amount equal to or greater than the Threshold Amount pursuant to an agreement with the Agency; or
- b) A construction project is financed in whole or in part by the issuance of Agency bonds; or
- c) A construction project is on land owned by the Redevelopment Agency or City, or on land conveyed or leased to the landowner or developer by the Agency or City; or
- d) The construction project is the subject of a Development and Disposition Agreement; or
- e) The construction project is the subject of an Owner Participation Agreement and the project is also subject to any of the provisions of (a), (b), or (c) above.

LOS ANGELES OFFICE
3435 Wilshire Boulevard, Suite 620
Los Angeles, CA 90010-1907
TEL 213.380.2344 FAX 213.381.1088

SACRAMENTO OFFICE
428 J Street, Suite 520
Sacramento, CA 95814-2341
TEL 916.443.5630 FAX 916.442.0244

HONOLULU OFFICE
1099 Alakea Street, Suite 1602
Honolulu, HI 96813-4500
TEL 808.528.8880 FAX 808.528.8881

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If the construction cost exceeds the threshold amount and if any one of the above criteria is met, then prevailing wages apply, unless the project is exempt from the policy.¹

The Project is proposed to be located west of Interstate 80, near the intersection of San Pablo and Sycamore Avenues, on a parcel currently occupied by a “park and ride” facility operated by the Bay Area Rapid Transit agency (“BART”). The Project would include up to 400 residential units, 60,000 square feet of retail space, and 80,000 square feet of office space.

There is no question that construction costs will far exceed \$100,000. The Hercules Redevelopment Agency (“RDA”) has entered into a Development and Disposition Agreement (“DDA”) with the developer, Hercules New Town Center, LLC. (See, Draft Environmental Impact Report (“DEIR”) p. 1-2). For these reasons alone, the Prevailing Wage Ordinance applies to the Project pursuant to section “d” above.

In addition, the Project is to be located “on land owned by the Redevelopment Agency or City, or on land conveyed or leased to the landowner or developer by the Agency or City.” In particular, the RDA is acquiring the Park and Ride facility from BART for use by the Project. (DEIR, p. 2-1) This provides an independent basis for application of the Prevailing Wage Ordinance.

Finally, the RDA is providing substantial “financial incentives” to the developer for the Project, thus providing a third separate and independent ground for application of the Prevailing Wage Ordinance to the Project. (DEIR, p. 1-2.)

For all of the above reasons, the Hercules Prevailing Wage Ordinance requires the payment of prevailing wages for the Hercules Market Center Project.

B. California Prevailing Wage Law.

Prevailing wages are also required under State law. California Labor Code Section 1771 requires prevailing wages to be paid to all workers employed on “public works.” California Labor Code Section 1720(a)(1) defines public works as “construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds....” For purposes of this section, “paid for in whole or in part out of public funds” means all of the following:

- (1) The payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer.

¹ Projects exempt from the City’s Prevailing Wage Ordinance include tenant improvements, projects where federal or state law prohibits imposition of prevailing wages, construction of four or fewer single family residences, any project constructed using public employees, or rehabilitation of multi-family housing of seven or fewer units financed by Community Development Block Grant Funds. (Ordinance, Section 3(a)-(e).)

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- (2) Performance of construction work by the state or political subdivision in execution of the project.
- (3) Transfer by the state or political subdivision of an asset of value for less than fair market price.
- (4) Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the state or political subdivision.
- (5) Money loaned by the state or political subdivision that is to be repaid on a contingent basis.
- (6) Credits that are applied by the state or political subdivision against repayment obligations to the state or political subdivision. (Labor Code § 1720(b).)

State law requires payment of prevailing wages for the Project. Based on available information, we understand the RDA will be purchasing the BART Park and Ride parcel for use for the Project, and will transfer that property for use for the Project at far below "fair market price," constituting a "transfer by the state or political subdivision of an asset of value for less than fair market price." The RDA will also be providing direct "financial incentives" to the developer. (DEIR, p. 1-2) This constitutes "the payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer." For either of these reasons, State law requires the payment of prevailing wages for construction of the Project.

C. Conclusion.

Please inform us at your earliest convenience whether you agree with our conclusion that prevailing wages must be paid for the construction of the Hercules Market Town Project. Please call us should you have any questions. Thank you for your attention to this matter.

Sincerely,



Patricia M. Gates
Roberta D. Perkins

RDP/jys
cc: Scott Littlehale
Richard Drury
Ted Franklin

102764/511852

Response to Comment #20, Weinberg, Roger & Rosenfeld

20-1. The comment does not address the content or adequacy of the Draft EIR. The City has provided the requested information.



Steve Lawton

From: Janet M. Laurain [jlaurain@adamsbroadwell.com]
Sent: Thursday, November 13, 2008 3:26 PM
To: Steve Lawton
Cc: Paul F. Foley
Subject: Hercules Town Center documents
Importance: High
Follow Up Flag: Follow up
Flag Status: Red
Categories: NTC

Comment #21

Dear Steve,

As a follow-up to the voicemail I left you today, we would like get a electronic copy of the *Disposition and Development Agreement* for the Hercules Town Center project emailed to me, if possible.

In addition, we would like to get copies of the following Phase I and Phase II reports:

Phase I Reports:

1. LFR Levine Fricke, February 12, 2002
2. Geocon, Inc., December 2004
3. AllWest, December 16, 2005
4. RBF, May 2007

Phase II Report:

1. Treadwell & Rollo, July 18, 2007

If the Phase I and II reports are available in PDF, we would prefer receiving them that way. If not, can they be made available for our copy service to scan to disk on Monday?

Please let me know as soon as possible so that I can make the appropriate arrangements.

Thank you.

Janet

Janet M. Laurain
Adams Broadwell Joseph & Cardozo
(650) 589-1660
jlaurain@adamsbroadwell.com

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11/17/2008

Response to Comment #21, Adams, Broadwell, Joseph & Cardozo

21-1. The comment does not address the content or adequacy of the Draft EIR. The City has provided the requested information.

Comment #22

Steve Lawton

From: SMSDelaware@aol.com
Sent: Tuesday, November 11, 2008 4:31 PM
To: Steve Lawton
Subject: Have you gone to a shopping area lately?/ ADD TO DECEMBER 3 COMMENTS

Major Store are going out of business
When you go into the major retail shops, they beg you to buy something even if you plan to go home and buy by mail.

Is this town center a 5 year OR 10 year plan? | **22-1**

What about the major stores in Pinole along the freeway? | **22-2**

In our community of Pinole and Hercules have we found a solution to the problem of not having an adequate waste disposal for the local toilets? | **22-3**

Water Water Water Will we be bringing in Bottle water for the new area? EMUD IS REQUESTING WATER | **22-4**
What if someone wants a swimming pool? Will we have enough water? RATIONING

Today I notice all the available buildings in our business park. Do we need more office space? Lease signs. | **22-5**

Today I drove by our waterfront restaurant? It only had a few people. Is it making a profit? | **22-6**

I drove across the Alaska bridge to no where! Tsushima Bridge is lovely! I cannot see a car going across it excepts to the few homeS in the area. (Accidents waiting to happen with the cross streets) Foreclosure signs in the neighborhood | **22-7**

Did you notice on our latest report of the current parking at the transit center that the license plate revealed that most people parked in the lot lived in walking distance? | **22-8**

What kind of walking paths will be use to the additional parking at the replacement parking center? | **22-9**
Will there be a walking bridge across the railroad tracks from the library and the Civic Center to the new replacement parking center ?

Will the Bart extension go along the railroad tracks from Richmond? What is the proposed completion date for this phase of the development? | **22-10**

QUESTIONS EVERYWHERE WITH NO ANSWER IN SIGHT

**PLEASE LOOK FOR SOLUTIONS BEFORE DECEMBER 3 ,2008 SO OUR COMMUNITY CAN HAVE A
COMPLETION DATE THAT MEETS OUR NEEDS
THANKS STEVE**

AOL Search: Your one stop for directions, recipes and all other Holiday needs. [Search Now.](#)

11/17/2008

Response to Comment #22, SMS Delaware

- 22-1. The project sponsor anticipates that the Market Town project would be completed by 2012 and the remainder of the HNTC planning area built out by 2019.
- 22-2. The comment does not address the content or adequacy of the Draft EIR.
- 22-3. Section 4.12 (Public Services, Utilities and Service Systems) addresses wastewater service needs. According to Erwin R. Blancaflor, Director of Public Works for the City of Hercules, sewer flow and capacity has been allocated to serve the planning area. In addition, the cities of Pinole and Hercules are in the process of upgrading and planning future capacity. Thus, the project will be able to adequately service wastewater disposal needs.
- 22-4. As stated previously in Response 3-1, EBMUD has sufficient water supply and existing entitlements to provide water during normal or wet years.
- 22-5. The comment does not address the content or adequacy of the Draft EIR.
- 22-6. The comment does not address the content or adequacy of the Draft EIR.
- 22-7. Comment noted.
- 22-8. The comment does not address the content or adequacy of the Draft EIR.
- 22-9. The comment does not address the content or adequacy of the Draft EIR. However, a pedestrian and bicycle pathway is proposed as part of the BART Replacement Parking Lot project along the south side of Willow Avenue from the Sycamore Avenue intersection to the C-1 parcel. No walking bridge is proposed to cross the railroad tracks from the library and Civic Center to the BART Replacement Parking Lot.
- 22-10. The BART Extension is not analyzed as a part of this project and, therefore, this comment does not address the content or adequacy of the Draft EIR. The BART Replacement Parking Lot is scheduled to be completed in March 2009.

Comment #23

Steve Lawton

From: Steve Lawton
Sent: Wednesday, November 19, 2008 9:41 AM
To: 'Janet M. Laurain'; Paul F. Foley
Cc: Doreen Mathews; Dennis Tagashira; Rochelle Samuels
Subject: RE: Hercules Town Center documents
Attachments: FW: Hercules New Town Center > Your Request of 11/13

Janet:

Attached is Mr. Foley's acknowledgement of receipt of documents requested 11/13.

I am working on fulfilling your request for the WRA *Biological Assessment* and will advise soon of its availability.

Stephen Lawton
Economic Development Director
City of Hercules

From: Janet M. Laurain [mailto:jlaurain@adamsbroadwell.com]
Sent: Tuesday, November 18, 2008 9:33 AM
To: Steve Lawton; Paul F. Foley
Cc: Doreen Mathews; Dennis Tagashira; Rochelle Samuels
Subject: RE: Hercules Town Center documents

Dear Steve,

Thank you for your help.

In your email providing the instructions for accessing the FTP site, please reply to all in this email because I will be out of the office this afternoon. One document that I neglected to mention that we need is the Biological Assessment by WRA. If you have a PDF'd version of this document, could you please post it to the FTP site with the others? If not, please let me know so that we can arrange for a copy service to scan it to disk today.

23-1

Thank you again for your assistance.

Janet

From: Steve Lawton [mailto:SLawton@ci.hercules.ca.us]
Sent: Monday, November 17, 2008 8:06 PM
To: Janet M. Laurain
Cc: Doreen Mathews; Dennis Tagashira; Rochelle Samuels
Subject: RE: Hercules Town Center documents

11/19/2008

Janet:

I have obtained subject documents in PDF format. The files are large; I am uploading them to an FTP site.

By Tuesday afternoon I will advise you of the FTP site where you may download them.

Stephen Lawton
Economic Development Director
City of Hercules

From: Janet M. Laurain [mailto:jlaurain@adamsbroadwell.com]
Sent: Thursday, November 13, 2008 3:26 PM
To: Steve Lawton
Cc: Paul F. Foley
Subject: Hercules Town Center documents
Importance: High

Dear Steve,

As a follow-up to the voicemail I left you today, we would like get a electronic copy of the *Disposition and Development Agreement* for the Hercules Town Center project emailed to me, if possible.

In addition, we would like to get copies of the following Phase I and Phase II reports:

Phase I Reports:

1. LFR Levine Fricke, February 12, 2002
2. Geocon, Inc., December 2004
3. AllWest, December 16, 2005
4. RBF, May 2007

Phase II Report:

1. Treadwell & Rollo, July 18, 2007

If the Phase I and II reports are available in PDF, we would prefer receiving them that way. If not, can they be made available for our copy service to scan to disk on Monday?

Please let me know as soon as possible so that I can make the appropriate arrangements.

Thank you.

Janet

11/19/2008

Response to Comment #23, Adams, Broadwell, Joseph & Cardozo

23-1. The comment does not address the content or adequacy of the Draft EIR. The City has provided the requested information.

Comment #24

Steve Lawton

From: Mike Bowermaster [mkbower@yahoo.com]
Sent: Tuesday, December 02, 2008 4:37 PM
To: Steve Lawton
Subject: New Town Center - EIR - Concerns

Dear Mr. Steve Lawton and the City of Hercules:

After reviewing the Environmental Impact Report (EIR) and following the New Town Center project for some time now I still can find no accommodation for pedestrian access to the project site once completed. The EIR even states the need for good pedestrian access, "...the importance of providing adequate pedestrian connectivity through the HNTC planning area (2-10)." The 2000 Clean Air Plan states the need as well, "TCM9: Improve bicycle access and facilities...TCM19: Promote pedestrian travel (4.4-33)."

24-1

Despite this, the project appears to be designed such that a user must drive to the site and then walk around.
This obviously is bad planning.

Specially how would one walk from a Sycamore Downtown store (Sycamore at South Front Street) to a Market Town store (Sycamore at San Pablo Avenue)? Crossing San Pablo Avenue is not pedestrian friendly and needs severe improvement. This is especially true if auto traffic volumes increase as predicted by the project, "The analysis indicates that the addition of traffic from the HNTC program would exacerbate congestion through the local street system... (2-11)." The report even states that there will be an even stronger pedestrian demand trying to cross that intersection, "Development of the Market Town project would increase pedestrian and bicycle activities adjacent to and within the site (2-64)." If pedestrian access to the site (especially across the Sycamore and San Pablo intersection) is not improved the report cautions the negative outcome, "Pedestrians and Bicycles: A significant pedestrian or bicycle impact would occur if the project: -discourages use of bicycle or pedestrian facilities - results in unsafe conditions for bicycles or pedestrians (4.14-21)."

24-2

My basic concern is that the New Town Center Project has excellent pedestrian and bike access to the area. This would encourage people to walk or bike and not to drive which would in-turn help with our traffic problems in this crucial part of Hercules. On a side-note all these same concerns apply to the Hilltown project as well. Will one be able to easily walk next door from Hilltown to Market Town?

Other than the above concerns this project is nicely designed and will be a good "Emeryville-style" addition to Hercules.

24-3

Thank you for your time,

Mike Bowermaster
1238 Promenade Street
Hercules, CA 94547
510.964.0624

12/5/2008

Response to Comment #24, Mike Bowermaster

24-1. The proposed amendments to the General Plan and Zoning Ordinance would create an NTC land use designation and zoning district and establish allowable uses and development intensities for the HNTC planning area. A central component of the NTC land use designation is its relationship to existing transit service. Furthermore, the uses and design of the area would promote transit use, reduce the need for vehicle trips and encourage the use of non-motorized transportation, including the development of an interconnected network of pedestrian-oriented streets, blocks and publicly accessible open spaces. Future developments within the HNTC planning area would be required to be consistent with the proposed NTC land use designation and zoning. As such, potential projects would be developed with the specific purposes of developing a pedestrian friendly NTC District, which includes accommodation for pedestrian access. As there are no specific projects planned for the HNTC planning area (except for the Market Town project) there are no current plans for pedestrian access. However, projects in the HNTC planning area will be reviewed by the City for consistency with the NTC design standards, which includes the development of a pedestrian friendly environment.

24-2. A central component of the NTC land use designation is its relationship to existing transit service (e.g. the BART Park and Ride Lot). Furthermore, the uses and design of the area would promote transit use, reduce the need for vehicle trips and encourage the use of non-motorized transportation, including the development of an interconnected network of pedestrian-oriented streets, blocks and publicly accessible open spaces. Although specific pedestrian paths have yet to be identified, they will be integrated into the NTC District as it is developed.

The City is planning to improve the existing sidewalks and pedestrian/bicycle paths to accommodate the anticipated increase in pedestrian traffic, particularly on major streets like Sycamore Avenue and San Pablo Avenue. The City has allocated funding for a new pedestrian path (e.g., sidewalks and crosswalks) from the Waterfront District to the NTC District. Possible improvements include: a new sidewalk on the west side of San Pablo Avenue between Sycamore Avenue and John Muir Parkway, and the extension of sidewalks on John Muir Parkway to the new train station. These improvements would enhance pedestrian mobility in the area and connect the NTC District to other areas of the City, including the Hilltown project.

24-3. Comment noted.