

Which Projects are Covered by Prevailing Wage

PUBLIC WORKS COVERAGE DETERMINATIONS

I. NATURE AND PURPOSE OF PREVAILING WAGE REQUIREMENTS

A. Labor Code § 1771¹:

Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works. This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

B. Governing Law

Coverage determinations are governed by the law in effect when the public works project is advertised for bid, or where not advertised, by the date an agreement to construct a public work is executed. (See *City of Long Beach v. Dept. of Industrial Relations* (2005) 34 Cal. 4th 942; *Greystone Homes, Inc. v. Cake* (2005) 135 Cal.App.4th 1.)

¹All of the sections of the Labor Code and California Code of Regulations noted herein are available on DIR's website at www.dir.ca.gov. These sections represent only a portion of the entire statutory scheme governing public works and prevailing wages.

II. COVERAGE DETERMINATION PROCESS & PROCEDURES

A. California Code of Regulations, title 8, § 16001. Public Works Subject to Prevailing Wage Law.

(a) General Coverage. State prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, and 1771.

(1) Any interested party enumerated in Section 16000 of these regulations may file with the Director of Industrial Relations or the Director's duly authorized representative, as set forth in Section 16301 of these regulations, a request to determine coverage under the prevailing wage laws regarding either a specific project or type of work to be performed which that interested party believes may be subject to or excluded from coverage as public works under the Labor Code. If such a request is filed by any party other than the awarding body, a copy of the request must be served upon the awarding body, in accordance with the filing procedures set forth in Section 16302(d) of these regulations, when it is filed with the Director.

(2) Within 15 days of receipt of a copy of the request for a coverage determination, the awarding body shall forward to the Director or his/her duly authorized representative as provided for in Section 16301 of these regulations, any documents, arguments, or authorities it wishes to have considered in the coverage determination process.

(3) All parties to the coverage determination request shall have a continuing duty to provide the Director or his/her duly authorized representative as provided for in Section 16301 of these regulations, with relevant documents in their possession or control, until a determination is made. Where any party or parties' agent has a document in their possession, but refuses to release a copy, the Department shall consider that the documents, if released, would contain information adverse to the withholding party's position and may close the record and render a decision on the basis of that inference and the information received.

(b) Federally Funded or Assisted Projects. The application of state prevailing wage rates when higher is required whenever federally funded or assisted projects are controlled or carried out by California awarding bodies of any sort.

(c) Field Surveying Projects. Field survey work traditionally covered by collective bargaining agreements is subject to prevailing wage rates when it is integral to the specific public works project in the design, preconstruction, or construction phase.

(d) Residential Projects. Residential projects consisting of single family homes and apartments up to and including four stories are subject to payment of prevailing wages when paid for in whole or in part out of public funds, including federally-funded or assisted residential projects controlled or carried out by an awarding body.

Note: Such projects may require a special determination by the Director which should be requested by the awarding body at least 45 days before the commencement of advertising of the call for bids by the awarding body.

(e) Commercial Projects. All non-residential construction projects including new work, additions, alterations, reconstruction and repairs. Includes residential projects over four stories.

(f) Maintenance. Public works contracts for maintenance are subject to prevailing wage rate payment as set forth in Section 1771 of the Labor Code.

Note: See Article 1 for definition of term "maintenance."

B. California Code of Regulations, title 8, § 16002.5. Appeal of Public Work Coverage Determination.

(a) Those interested parties enumerated in Section 16000 of these regulations may appeal to the Director of Industrial Relations or the Director's duly authorized representative as set forth in Section 16301 of these regulations a determination of coverage under the public works laws (Labor Code Section 1720 et seq.) regarding either a specific project or type of work under Section 16001(a) of these regulations. Such notice of appeal must be served within 30 days of the issuance of the coverage determination. The party appealing the determination must, in accordance with the filing procedures set forth in Section 16302(d) of these regulations, give written notification to the awarding body and any other identifiable parties.

(b) The notice of appeal shall state the full factual and legal grounds upon which the determination is appealed, and whether a hearing is desired. The decision to hold a hearing is within the Director's sole discretion. The Director may appoint a hearing officer to conduct the hearing and propose a decision on the appeal. The Director shall make the final decision on the appeal.

(c) The authority of the Director to determine coverage of projects under the prevailing wage laws is quasi-legislative, and a final determination on any appeal is subject to judicial review pursuant to the Code of Civil Procedure, Section 1085.

III. SUBSTANTIVE COVERAGE ISSUES

A. "Public works" is defined in Labor Code § 1720:

(a) As used in this chapter, "public works" means:

(1) Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other

public authority. For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work. For purposes of this paragraph, "installation" includes, but is not limited to, the assembly and disassembly of freestanding and affixed modular office systems.

(b) 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.

(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.

B. "Maintenance" Is Public Work Under Labor Code § 1771.

Title 8, California Code of Regulations, § 16000: Maintenance. Includes:

(1) Routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.

(2) Carpentry, electrical, plumbing, glazing, [touchup painting,] and other craft work designed to preserve the publicly owned or publicly operated facility in a safe, efficient and continuously usable condition for which it was intended, including repairs, cleaning and other operations on machinery and other equipment permanently attached to the building or realty as fixtures.

EXCEPTION:1: Janitorial or custodial services of a routine, recurring or usual nature is excluded.

EXCEPTION:2: Protection of the sort provided by guards, watchmen, or other security forces is excluded.

(3) Landscape maintenance. See Public Contract Code Section 21002.

EXCEPTION: Landscape maintenance work by "sheltered workshops" is excluded.

C. Exceptions

Labor Code section 1720(c) contains exceptions for certain types of projects that otherwise meet the definition of public work.

IV. RECENT PUBLISHED COURT OF APPEAL DECISIONS

Oxbow Carbon & Minerals, LLC v. Department of Indus. Relations, 194 Cal.App.4th 538, 122 Cal.Rptr.3d 879, 2011 Daily Journal D.A.R. 5554 (Cal.App. 2 Dist. Mar 24, 2011) (NO. B219504)

Azusa Land Partners v. Dept. of Industrial Relations (2010) 191 Cal.App.4th 1

State Building and Construction Trades Council of California v. Duncan (2008) 162 Cal.App.4th 289

Plumbers and Steamfitters, Local 290 v. Duncan (2007) 157 Cal.App.4th 1083

Sheet Metal Workers Intern. Ass'n., Local Union No. 104 v. Rea (2007) 153 Cal.App.4th 1071

Reclamation Dist. No. 684 v. State Dept. of Industrial Relations (2005) 125 Cal.App.4th 1000

Housing Partners I v. Duncan (2012) 206 Cal.App.4th 1335



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- **Pre-qualification of design-build entities seeking to bid on community college and school facilities MS Word or .pdf version (238KB)**
- **Pre-qualification of design-build entities seeking to bid on the transit projects MS Word or .pdf version (366KB)**
- **The 1999 State Legislation and The Model Forms* created by the Department of Industrial Relations**
Pre-qualification of contractors seeking to bid on public works projects

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**CORRECTION OF THE
IMPORTANT NOTICE TO
AWARDING BODIES AND INTERESTED PARTIES
REGARDING
THE DEPARTMENT'S DECISION TO DISCONTINUE THE USE
OF PRECEDENT DETERMINATIONS**

"As part of the Department of Industrial Relations' ("DIR") continuing review of Office of Administrative Law determinations and Governor Schwarzenegger's Executive Order S-2-03, DIR will no longer rely on Government Code section 11425.60 and will no longer designate public works coverage determinations as "precedential." The determinations should be considered advice letters directed to specific individuals or entities about whether a specific project or type of work is public work subject to prevailing wage requirements. DLSR is in the process of redesigning the web page for public works coverage determinations but, in the interim, will leave previously posted determinations on the website as a source of information for the public until the replacement web page is available.

Posted public works coverage determination letters provide an ongoing advisory service only. The letters present the Director of DIR's interpretation of statutes, regulations and court decisions on public works and prevailing wage coverage issues and provide advice current only as of the date each letter is issued. In attempting to relate this advice to your own matter, care must be taken to ensure that the advice has not been superseded by subsequent legislative or administrative action or court decisions. Where there is an inconsistency between a statute, regulation or court decision and a public works coverage determination letter, statutory, regulatory or case law is controlling."



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▼ Prevailing wage determinations: 2015-2 important notices

General prevailing wage determinations made by the director of industrial relations

Pursuant to California Labor Code part 7, chapter 1, article 2, sections 1770, 1773, and 1773.1

E-MAIL SUBSCRIPTION SERVICE

January 21, 2016 (Important Notice Regarding Electronic Certified Payroll (eCPR) Reporting On Public Works Projects)

December 22, 2015 (Minimum Wage Effective January 1, 2016)

December 16, 2015 (Correction Notice for the Craft of Electrician: Sound Installer (All Shifts) in Kern County)

December 10, 2015 (Interim Determination for the Craft of Plumber: Plumber, Steamfitter, Refrigeration Fitter (HVAC), Service and Repair, and Construction Tradesman (Years 2-5) in San Benito and Santa Clara Counties)

December 9, 2015 (Correction Notice for the Craft of Electrician: Cable Splicer (3rd Shift) in Riverside County)

December 8, 2015 (Correction Notice for the Craft of Teamster in Southern California Counties Except San Diego County)

October 27, 2015 (Important Notice Concerning Fire Alarm Installation in Riverside County)

October 16, 2015 (Correction Notice for the Craft of Metal Roofing Systems Installer in Santa Barbara County)

October 12, 2015 (Interim Determination for the Craft of Tunnel Worker (Laborer) in Southern California Counties Except San Diego County)

October 8, 2015 (Important Notice Regarding the Craft of Light Fixture Maintenance in Imperial and San Diego Counties)

September 28, 2015 (Interim Determination for the Craft of Guniting Worker (Laborer) in Southern California Counties Including San Diego County)

September 23, 2015 (Correction Notice for the Craft of Laborer and Related Classifications (All Shifts) in Southern California Counties Except San Diego)

September 16, 2015 (Correction Notice for the Craft of Laborer (Construction-Fence Erector-Housemover) in All Localities within San Diego County)

September 15, 2015 (Correction Notice for the Craft of Iron Worker in All Counties Within the State of California)

September 11, 2015 (Important Notice Regarding Corrections to the Rates for the Crafts of Sheet Metal Worker and Sheet Metal Worker: For Service and Repair for Monterey, San Benito and Santa Cruz Counties)

September 1, 2015 (Important Notice Regarding the Craft of Light Fixture Maintenance in Northern California Counties)

September 1, 2015 (Summary of Important Notices Concerning Burglar Alarm and Fire Alarm Installation)

March 4, 2014 (Minimum wage effective July 1, 2014 and January 1, 2016)

December 24, 2012 (Important notice concerning a new amendment to Labor Code section 1720(a)(1))

September 1, 2012 (Important notice regarding the apprentice prevailing wage rates)

September 1, 2011 (Advisory scope of work for tunnel worker (laborer) in San Diego County)

March 4, 2011 (Advisory scope of work for laborers in San Diego County)

March 4, 2011 (Advisory scope of work for landscape/irrigation laborers/tenders in San Diego and southern California)

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Counties)

August 22, 2010 (Advisory scope of work for the sheet metal workers' in Alpine, Calaveras, Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tuolumne Counties)

July 26, 2010 (Correction to the February 22, 2010 advisory scope of work for the southern california carpenters' regarding installation of solar and photovoltaic systems)

June 15, 2010 (Important notice regarding advisory scope of work for the raceways and conduit system work in San Francisco County)

February 22, 2010 (Advisory scope of work for the craft of sheet metal worker in Imperial and San Diego Counties regarding installation of solar and photovoltaic systems)

February 22, 2010 (Advisory scope of work for the craft of glaziers in Imperial and San Diego Counties regarding installation of solar and photovoltaic systems)

February 22, 2010 (Advisory scope of work for the craft of glaziers in Los Angeles County regarding installation of solar and photovoltaic systems)

February 22, 2010 (Advisory scope of work for the craft of plumbers in Imperial, Los Angeles, and San Diego Counties regarding installation of solar and photovoltaic systems)

February 22, 2010 (Advisory scope of work for the craft of laborers in San Diego County regarding installation of solar and photovoltaic systems)

February 22, 2010 (Advisory scope of work for the craft of teamster in Imperial and Los Angeles Counties regarding installation of solar and photovoltaic systems)

February 22, 2010 (Advisory scope of work for the craft of carpenter in Imperial and Los Angeles Counties regarding installation of solar and photovoltaic systems)

February 22, 2010 (Advisory scope of work for the craft of laborers in Imperial and Los Angeles Counties regarding installation of solar and photovoltaic systems)

February 22, 2010 (Advisory scope of work for the craft of iron worker in Imperial, Los Angeles, and San Diego Counties regarding installation of solar and photovoltaic systems)

February 22, 2009 (Important notice regarding the general prevailing wage determinations for the craft of driver (on/off-hauling to/from construction site))

January 26, 2009 (Important notice regarding prevailing wage determinations for residential projects)

July 1, 2008 (Important notice regarding the issuance and publication of the general prevailing wage apprentice schedules and apprentice wage rates)

September 4, 2007 (Important notice regarding the department's decision to discontinue the use of precedent determinations)

May 10, 2007 (Important notice regarding overtime on public works)

February 22, 2007 (Important notice regarding determinations for metal roofing systems installer - pages 2J - 2J-15)

April 13, 2005 (Enforcement of prevailing wage obligations for on-haul and off-haul trucking by owner-operators not employed by material suppliers)

March 11, 2003 (Telecommunications technician scope of work)

March 4, 2002 (Shift differential pay provisions)

February 8, 2002 (Clarification of inspection and soils and materials testing)

November 5, 2001 (Senate Bill 975)

DLSE debarments

Download all current important notices November 5, 2001 - January 21, 2016

2015-1 important notices, February 22, 2015- August 13, 2015

2014-2 important notices, August 22, 2014- February 11, 2015

2014-1 important notices, February 22, 2014- July 25, 2014


2013-2 important notices, August 22, 2013- February 10, 2014

2013-1 important notices, February 22, 2013- July 30, 2013

2012-2 important notices, August 22, 2012- February 26, 2012

2012-1 important notices, February 22, 2012- August 10, 2012
2011-2 important notices, August 22, 2011- February 14, 2012
2011-1 important notices, February 22, 2011- August 4, 2011
2010-2 important notices, August 22, 2010- February 1, 2011
2010-1 important notices, February 22, 2010- August 6, 2010
2009-2 important notices, August 22, 2009 - February 22, 2010
2009-1 important notices, February 22, 2009 - August 10, 2009
2008-2 important notices, August 22, 2008 - February 5, 2009
2008-1 important notices, February 22, 2008 - August 6, 2008
2007-2 important notices, August 22, 2007 - January 3, 2008
2007-1 important notices, February 22, 2007 - August 7, 2007
2006-2 important notices, August 22, 2006 - February 15, 2007
2006-1 important notices, February 22, 2006 - August 29, 2006
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2005-1 important notices, February 22, 2005 - August 1, 2005
2004-2 important notices, August 22, 2004 - February 1, 2005
2004-1 important notices, February 22, 2004 - July 21, 2004
2003-2 important notices, August 22, 2003 - February 10, 2004
2003-1 important notices, February 22, 2003 - August 1, 2003
2002-2 important notices, August 22, 2002 - January 27, 2003
2002-1 important notices, February 22, 2002 - May 22, 2002
2001-2 important notices, August 22, 2001 - February 8, 2002>
2001-1 important notices, December 29, 2000 - June 21, 2001

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206 Cal.App.4th 1335, 142 Cal.Rptr.3d 762, 12 Cal. Daily Op. Serv. 6703, 2012 Daily Journal D.A.R. 8014
 (Cite as: 206 Cal.App.4th 1335, 142 Cal.Rptr.3d 762)

C

Court of Appeal, Fourth District, Division 2, California.

HOUSING PARTNERS I, INC., Plaintiff and Appellant,

v.

John C. DUNCAN, as Director etc., Defendant and Respondent.

No. E052582.

June 15, 2012.

Background: Developer petitioned for writ of mandate challenging determination of Director of Industrial Relations that developer's low-income housing project was a public work subject to prevailing wage requirements. The Superior Court, San Bernardino County, No. CIVDS1007934, W. Robert Fawke, J., denied petition. Developer appealed.

Holdings: The Court of Appeal, Codrington, J., held that:

(1) project was not within an exception to the definition of a "public work" subject to the prevailing wage law, and

(2) Director did not create a vague legal framework in violation of due process in concluding the project was a public work.

Affirmed.

West Headnotes

[1] Mandamus 250 ↪ 172

250 Mandamus

250III Jurisdiction, Proceedings, and Relief

250k172 k. Scope of inquiry and powers of

court. Most Cited Cases

In mandamus review of determination of Director of Industrial Relations that developer's project was a public work subject to prevailing wage requirements, Court of Appeal was required to exercise its independent judgment in resolving whether the project at issue constituted a "public work" within the meaning of the prevailing wage law, taking into account and respecting the agency's interpretation of its meaning, since the facts were undisputed and the purely legal issues involved the interpretation of a statute the agency was responsible for enforcing. West's Ann.Cal.Labor Code § 1720.

[2] Administrative Law and Procedure 15A ↪ 431

15A Administrative Law and Procedure

15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents

15AIV(C) Rules, Regulations, and Other Policymaking

15Ak428 Administrative Construction of Statutes

15Ak431 k. Deference to agency in general. Most Cited Cases

(Formerly 361k219(1), 15Ak416.1)

An administrative agency's interpretation of a statute, whether embodied in a formal rule or less formal representation, does not bind judicial review but it is entitled to consideration and respect.

[3] Statutes 361 ↪ 1064

361 Statutes

361III Construction

361III(A) In General

206 Cal.App.4th 1335, 142 Cal.Rptr.3d 762, 12 Cal. Daily Op. Serv. 6703, 2012 Daily Journal D.A.R. 8014
(Cite as: 206 Cal.App.4th 1335, 142 Cal.Rptr.3d 762)

361k1062 Role, Authority, and Duty of
Construer or Interpreter

361k1064 k. Judicial construction; role,
authority, and duty of courts. Most Cited Cases
(Formerly 361k176)

It is the judiciary which has the ultimate authority
for determining the meaning of a statute.

[4] Labor and Employment 231H ↪ 2304

231H Labor and Employment

231HXIII Wages and Hours

231HXIII(B) Minimum Wages and Overtime
Pay

231HXIII(B)4 Operation and Effect of
Regulations

231Hk2304 k. Prevailing wages. Most
Cited Cases

Low-income housing project funded partly with
qualified housing funds and partly with below-market
interest rate funding was not within either the excep-
tion to the definition of a “public work” subject to the
prevailing wage law for a project receiving qualified
housing funds or the exception for a project receiving
below-market interest rate funding. West's
Ann.Cal.Labor Code § 1720(c)(4), (c)(6)(E).
See 3 Witkin, Summary of Cal. Law (10th ed. 2005)
Agency and Employment, § 386.

[5] Statutes 361 ↪ 1138

361 Statutes

361III Construction

361III(D) Particular Elements of Language

361k1138 k. Departing from or varying
language of statute. Most Cited Cases
(Formerly 92k2474)

Court of Appeal may not alter the words of a
statute to change its meaning.

[6] Constitutional Law 92 ↪ 4179

92 Constitutional Law

92XXVII Due Process

92XXVII(G) Particular Issues and Applica-
tions

92XXVII(G)7 Labor, Employment, and
Public Officials

92k4176 Regulation of Employment

92k4179 k. Wage and hour regula-
tion. Most Cited Cases

Labor and Employment 231H ↪ 2243

231H Labor and Employment

231HXIII Wages and Hours

231HXIII(B) Minimum Wages and Overtime
Pay

231HXIII(B)2 Persons and Employments
Within Regulations

231Hk2239 Public Employment; Public
Works

231Hk2243 k. Public contracts, work
under. Most Cited Cases

Director of Industrial Relations did not create a
legal framework that was vague and unintelligible in
violation of due process in determining that
low-income housing project funded partly with quali-
fied housing funds and partly with below-market
interest rate funding was a public work subject to
prevailing wage requirements, even though the Di-
rector's interpretation was fact-specific, where the
Director provided a thorough analysis of the facts and
reasonable interpretation of the law. U.S.C.A.
Const.Amend. 14; West's Ann.Cal.Labor Code §
1720(c)(4), (c)(6)(E).

****763** Atkinson, Andelson, Loya, Ruud & Romo,
Thomas W. Kovacich and Jennifer D. Cantrell, Cer-
ritos, for Plaintiff and Appellant.

206 Cal.App.4th 1335, 142 Cal.Rptr.3d 762, 12 Cal. Daily Op. Serv. 6703, 2012 Daily Journal D.A.R. 8014
(Cite as: 206 Cal.App.4th 1335, 142 Cal.Rptr.3d 762)

Vanessa L. Holton, Chief Counsel, Steven A. McGinty, Assistant Chief Counsel, and John L. Korbol, Staff Counsel, for Defendant and Respondent.

OPINION

CODRINGTON, J.

*1338 I

INTRODUCTION ^{ENL}

FN1. All statutory references are to the Labor Code unless stated otherwise.

Appellant Housing Partners I, Inc. (HPI) appeals from a judgment denying its petition for writ of mandate against respondent John C. Duncan, the Director of Industrial Relations for the State of California (Director). In administrative proceedings, the Director determined that a low-income housing project developed by HPI was a “public work” within the meaning of section 1720 and was not subject to a statutory exception to the usual requirement for payment of prevailing wages on a public works. The Director’s determination**764 could mean HPI would have to pay higher labor costs on its low-income housing project and possibly be “subject to a prevailing wage and penalty assessment, fines, lawsuits and disciplinary action, and ... barred altogether from bidding on future public works projects.” (20 No. 4 Miller & Starr, Real Estate Newsalert 1.)

HPI’s appeal involves two statutory exceptions to the requirement for payment of prevailing wage on a public works project and concerns the interplay of two important public policy goals, “encouraging the construction of low-cost housing and ensuring compliance with the prevailing wage requirements.” (State Building & Construction Trades Council of California v. Duncan (2008) 162 Cal.App.4th 289, 294, 76 Cal.Rptr.3d 507.)

The prevailing wage law requires that workers employed on public works projects be paid prevailing

wages. (§§ 1771, 1774.) Various exceptions to that rule are found at section 1720, defining the meaning of public works. The *1339 two exceptions which are the subject of this appeal are section 1720, subdivisions (c)(4) and (c)(6)(E). One exception, section 1720, subdivision (c)(4), applies to affordable housing projects that receive money from a redevelopment agency’s low and moderate income housing fund. Another exemption, section 1720, subdivision (c)(6)(E), applies to residential projects that receive below-market interest rate loans if the project dedicates a percentage of its units to low-income occupants. Because a combination of three kinds of funding sources was used for the subject project, the Director concluded that neither exemption under section 1720, subdivision (c)(4) or subdivision (c)(6)(E) could be satisfied. Instead, the project was subject to the requirement for payment of prevailing wages.

HPI argues this court should reverse the Director’s administrative decision for several reasons. First, HPI contends principles of statutory construction require statutes to be interpreted reasonably to avoid absurd results. Next, HPI asserts the legislative history of section 1720 establishes a clear legislative intent that the exemptions be harmonized together. Third, reading the exemptions in concert with each other furthers the public policy of providing affordable housing. Finally, the Director’s interpretation of section 1720 renders the statute so vague as to violate HPI’s right of due process.

In opposition, the Director counters that the exemption provided in section 1720, subdivision (c)(4) does not apply because it exempts affordable housing projects paid for solely with funding from a low and moderate income housing fund, or by a combination of such funds and private funds. The subject project did not qualify because, while some of its funding was obtained from a qualified fund, other funding was not. Similarly, the exemption stated in section 1720, subdivision (c)(6)(E) does not apply because it exempts certain affordable housing projects when the public

206 Cal.App.4th 1335, 142 Cal.Rptr.3d 762, 12 Cal. Daily Op. Serv. 6703, 2012 Daily Journal D.A.R. 8014
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funding element is limited to below-market interest rate loans. Here only part of the project's funding consisted of below-market interest rate loans, thus taking the project outside the scope of the section 1720, subdivision (c)(6)(E) exemption.

We agree with the Director that the project did not qualify for either of the claimed exemptions from the prevailing wage law. We affirm the judgment.

II

THE PREVAILING WAGE LAW

The Prevailing Wage Law, sections 1720-1861, is a comprehensive statute governing**765 the minimum wage standards on public works construction projects. (Lusardi Construction Co. v. Aubry (1992) 1 Cal.4th 976, 986, 4 Cal.Rptr.2d 837, 824 P.2d 643.) All workers employed on public *1340 works costing more than \$1,000 must be paid not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which public work is performed. (§ 1771.)

Under California law, a project is considered a "public work" if it is paid for, "in whole or in part out of public funds," among other requirements. (§ 1720, subd. (a)(1).) Whether a particular construction project constitutes a "public work" subject to the prevailing wage requirements is determined by reference to section 1720, Section 1720, subdivision (a)(1), defines "public works" to include: "Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds." Section 1720, subdivision (b)(1) defines the phrase "paid for in whole or in part out of public funds" to include, among other things, direct payments of money "or the equivalent of money by the state or political subdivision" and "loans, interest rates, or other obligations ... that are paid, reduced, charged at less than fair market value, waived, or forgiven by the state or political subdivision." (§ 1720, subd. (b)(1). (4).)

Section 1720, subdivisions (c) and (d) set forth a number of exemptions to the prevailing wage law for publicly-financed housing projects. One exemption, section 1720, subdivision (c)(4), applies to affordable housing projects receiving money from a redevelopment agency's low and moderate income housing fund. Another exemption, found in section 1720, subdivision (c)(6)(E), applies to low-income residential projects that receive public low-interest loans.

The Director of the Department of Industrial Relations is responsible for setting the general prevailing wage according to statutory criteria. (§ 1770.) The Director is also charged with issuing opinions regarding whether a specific project or type of work requires compliance with the prevailing wage law. (Cal.Code Regs., tit. 8, § 16001, subd. (a)(1); Lusardi Construction Co. v. Aubry, supra, 1 Cal.4th at pp. 988-989, 4 Cal.Rptr.2d 837, 824 P.2d 643.) Any interested party may file a request with the Director to determine whether a project is covered under the prevailing wage law. (*Ibid.*)

III

FACTUAL AND PROCEDURAL BACKGROUND

There is no material dispute between the parties about the facts.

A. The Senior Housing Project

The subject project, the Vista Del Sol Senior Complex, is an affordable senior housing development in Redlands, California. The project includes 71 *1341 rental housing units. Fifty-three units are designated for occupancy by low- and very low-income seniors. Seventeen units are rented to seniors at market rates and one unit is reserved for the property manager.

HPI is the owner and developer of the project. HPI is a nonprofit, tax-exempt public benefit corporation certified by the County of San Bernardino to

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develop, rent, sell, and manage affordable housing properties. In 2008, HPI purchased the project site from the Housing Authority for the County of San Bernardino (Housing Authority), a public entity separate from the county.

The project was not financed through a single source of funding. Instead, funding **766 for construction came from a combination of three kinds of loans from the County of San Bernardino, a redevelopment agency, and the Housing Authority. A below-market interest-rate loan from the County of San Bernardino (HOME Loan) is in the amount of \$1,702,591, with deferred interest of 3 percent, to construct the 11 units intended for very-low income seniors. A below-market interest-rate construction loan from the Housing Authority (Housing Authority Loan) is in the amount of \$6,150,000 at 3 percent interest. A no-interest loan (Agency Loan) is a \$4 million interest-free loan from the City of Redlands Redevelopment Agency, funded with moneys from a "Low- and moderate-income housing funds" established under Health and Safety Code sections 33334.2 and 33334.6.

B. Determination of Prevailing Wage

In March 2009, an interested party known as CANDO Contract Compliance (CANDO) filed a request for determination with the Director, alleging the Vista Del Sol project was subject to the prevailing wage law. HPI and the Housing Authority filed a brief concerning CANDO's request for determination.

In November 2009, the Director issued a prevailing wage coverage determination (the Determination) pursuant to California Code of Regulations, title 8, section 16001, subdivision (a). (*Vista Del Sol Senior Housing Complex, City of Redlands*, PW 2009-010 (Cal. Dept. of Indus. Relations, Nov. 2, 2009).) The Director concluded that, even though the three sources of funding individually and separately satisfied the criteria for exemption, the project as a whole nevertheless required the payment of prevailing

wages. The Director's determination was based on the reasoning that the exemptions found in section 1720 could not be "combined" together on the project to qualify for exemption from the prevailing wage law.

More particularly, the Director determined the project was a public work subject to the prevailing wage law because it constituted construction done *1342 under contract "and paid for in whole or in part out of public funds" within the meaning of section 1720. The Director went on to determine that the two below-market rate loans (the Housing Authority Loan and the HOME Loan) qualified the project for the exception described under section 1720, subdivision (c)(6)(E). The Determination found the Agency Loan was funded through a qualifying low and moderate income housing fund, and therefore satisfied the requirements for exemption under section 1720, subdivision (c)(4). Nevertheless, the Determination held section 1720, subdivision (c)(4) did not apply because this funding source could not be combined with another funding source on the same project to qualify for an exemption. Therefore, the Director concluded the project was subject to the prevailing wage law.

HPI filed an administrative appeal. The Director denied HPI's appeal and upheld its prior determination that the exemptions under sections 1720, subdivision (c)(4) and (c)(6) could not be "combined," and the project was a public work subject to payment of prevailing wages.

HPI petitioned the trial court for a writ of mandate pursuant to Code of Civil Procedure section 1085. HPI's petition sought reversal of the Director's administrative finding on the grounds that the Director misinterpreted section 1720 and that the Determination violated HPI's due process rights. The trial court denied HPI's petition for writ of mandate. This appeal followed.

**767 IV

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DISCUSSION

HPI's central argument is that the two exceptions stated in section 1720, subdivision (c)(4) and subdivision (c)(6)(E) are ambiguous and must be harmonized. (*Mattice Investments, Inc. v. Division of Labor Standards Enforcement* (1987) 190 Cal.App.3d 918, 923, 235 Cal.Rptr. 502.) HPI offers a lengthy discourse about why the exceptions require interpretation. HPI calls on legislative history to support its position. Finally, HPI evokes public policy considerations in favor of affordable housing and due process concerns based on vagueness in statutory interpretation.

A. Standard of Review

[1] The issue of standard of review—specifically, how much deference is due the Director's determination—has been discussed exhaustively in *State Building & Construction Trades Council of California v. Duncan, supra*, 162 Cal.App.4th at pp. 302–305, 76 Cal.Rptr.3d 507. Although HPI argues the reviewing court should give no deference whatsoever to the Director's determination, the *1343 standard of review is more nuanced: “‘In conducting our review, we must exercise our independent judgment in resolving whether the project at issue constituted a “public work” within the meaning of the [prevailing wage law].’ [Citations.] Where, as here, the facts are undisputed, and the purely legal issues involve the interpretation of a statute an administrative agency is responsible for enforcing, we exercise our independent judgment, ‘taking into account and respecting the agency's interpretation of its meaning.’ (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7–8 [78 Cal.Rptr.2d 1, 960 P.2d 1031]; see *State Building & Construction Trades Council of California v. Duncan* (2008) 162 Cal.App.4th 289, 304 [76 Cal.Rptr.3d 507].)” (*Azusa Land Partners v. Department of Industrial Relations* (2010) 191 Cal.App.4th 1, 14, 120 Cal.Rptr.3d 27.)

[2] The agency's interpretation is “‘one of several interpretive tools that may be helpful. In the

end, however, ‘[the court] must ... independently judge the text of the statute.’” [Citation.] [Citations.]” (*Azusa Land Partners v. Department of Industrial Relations, supra*, 191 Cal.App.4th at p. 14, 120 Cal.Rptr.3d 27.) An administrative agency's interpretation does not bind judicial review but it is entitled to consideration and respect. (*Williams v. SnSands Corp.* (2007) 156 Cal.App.4th 742, 753, 67 Cal.Rptr.3d 606.)

[3] Nevertheless, it is the judiciary which has the ultimate authority for determining the meaning of a statute. (*Yamaha Corp. of America v. State Bd. of Equalization, supra*, 19 Cal.4th at pp. 11–12, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) “Courts must, in short, independently judge the text of the statute, taking into account and respecting an agency's interpretation of its meaning, of course, whether embodied in a formal rule or less formal representation. Where the meaning and legal effect of a statute is the issue, an agency's interpretation is one among several tools available to the court. Depending on the context, it may be helpful, enlightening, even convincing. It may sometimes be of little worth.” (*Yamaha, supra*, at pp. 7–8, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) “[W]hile we consider the Director's current interpretation of section 1720, we do not extend that interpretation any particular deference. Because there is no factual dispute, only the question of how that statute is to be construed and applied, we exercise our independent judgment. [Citations.]” **768(*State Building & Construction Trades Council of California v. Duncan, supra*, 162 Cal.App.4th at pp. 304–305, 76 Cal.Rptr.3d 507.)

In applying our independent judgment, we employ a narrow construction of the subject statute and the two statutory exceptions. (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 966, 91 Cal.Rptr.2d 66; *Board of Medical Quality Assurance v. Andrews* (1989) 211 Cal.App.3d 1346, 1355, 260 Cal.Rptr. 113.)

*1344 B. *The Operation of the Two Exceptions*

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[4] HPI proposes to consolidate the two statutory exceptions into one larger exception, to qualify for exemption from the prevailing wage law. According to HPI's suggested interpretation of section 1720, subdivision (c), if the funding for a project is composed of qualified housing funds combined with below-market interest rate funding, rather than one or the other, the project should qualify for an exception from the prevailing wage law. HPI asserts that "fidelity to the literal language of a statute cannot stand where, as here, a literal construction result in absurd and unintended consequences. (*People v. Broussard* (1993) 5 Cal.4th 1067, 1071 [22 Cal.Rptr.2d 278, 856 P.2d 1134].)" HPI maintains it is nonsensical that a project receiving both types of funding should not be exempt from the prevailing wage law.

Respondent contends that HPI's approach to statutory interpretation confuses the exception afforded to a project with the various kinds of public funding sources that qualify a project for an exception.^{FN2} HPI argues that only a project may qualify for exemption from the prevailing wage law under section 1720, subdivision (c)(4) and (c)(6)(E). (*Azusa Land Partners v. Department of Industrial Relations, supra*, 191 Cal.App.4th at pp. 36-37, 120 Cal.Rptr.3d 27.) Respondent urges that the two discrete exemptions cannot be joined to form a category of exemption that does not exist in the statutory language.

FN2. In light of our conclusions, as set forth below, we deem it unnecessary to analyze fully the parties' argument about whether the exceptions to the prevailing wage law are project-based or funding-based.

One difficulty with HPI's argument is the two exceptions are not demonstrably inconsistent with one another, necessitating reconciliation. Section 1720, subdivision (c)(4) applies to a project receiving money *solely* from a qualified housing fund or from a combination of housing funds and private funds. In contrast, subdivision (c)(6)(E) applies to a project re-

ceiving below-market interest rate public funding. The exceptions operate independently, neither expressly including nor excluding one another. Had the Legislature intended for the two exceptions to operate together, it would have been simple to draft the statute that way. As the statute currently exists, however, the two exceptions are distinct and operate separately.

1. Section 1720, Subdivision (c)(4)

Section 1720, subdivision (c)(4) plainly states that it provides an exception from the prevailing wage law for an affordable housing project financed by redevelopment money, alone or combined with private funds. Projects "that are paid for solely with moneys from a Low and Moderate Income Housing Fund established pursuant to *1345Section 33334.3 of the Health and Safety Code or that are paid for by a combination of private funds and funds available pursuant to Section 33334.2 or 33334.3 of the Health and Safety Code do not constitute a project that is paid for in whole or in part out of public funds." **769 Thus, section 1720, subdivision (c)(4) contemplates a project financed by housing funds alone or housing funds and private funds. Subdivision (c)(4) does not include a project supported by a combination of housing funds and public funds in the form of low-interest loans, which are the circumstances in the present case.

We reject HPI's strained effort to argue that low-interest public loans are the equivalent of private funds because they could also qualify a project for an exemption under section 1720, subdivision (c)(6)(E). HPI cannot rely on another non-precedential Director's determination, concluding that tax-exempt bonds and federal tax credits are private funds. (*Central Village Apartments, City of Los Angeles*, PW 2006-005 (Cal. Dept. of Indus. Relations, July 12, 2006).) In this instance, public loans are public funds, not private funds. Housing funds combined with low-interest public loans do not qualify for an exception from the prevailing wage law under section 1720, subdivision (c)(4).

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2. Section 1720, Subdivision (c)(6)(E)

HPI also essays the argument that, if an affordable housing project receives any funding from low-interest loans it qualifies for an exception from the prevailing wage law, even when the project has other funding sources. Section 1720, subdivision (c)(6)(E) provides: “(6) Unless otherwise required by a public funding program, the construction or rehabilitation of privately owned residential projects is not subject to the requirements of this chapter if one or more of the following conditions are met: [¶] ... [¶] (E) The public participation in the project that would otherwise meet the criteria of subdivision (b) is public funding in the form of below-market interest rate loans for a project in which occupancy of at least 40 percent of the units is restricted for at least 20 years, by deed or regulatory agreement, to individuals or families earning no more than 80 percent of the area median income.”

It is undisputed the Vista Del Sol residential project satisfies the occupancy requirements for affordable housing. Additionally, Vista Del Sol is partly financed by public loans at below-market interest rates. On the other hand, the project is also partly financed by the Agency Loan. HPI argues that part financing is sufficient, especially because the Agency Loan is from a qualified redevelopment housing fund.

[5] Although we understand the public policy appeal of HPI's position, it does not comport with the express language of the statute, which states nothing about a project being partly financed by public loans at below-market *1346 interest rates in combination with other financing. Had that been the legislative intent, it could have been accomplished much more easily, without requiring the circuitous interpolations to arrive at the statute's meaning as suggested by HPI's analysis. The Legislature could have drafted section 1720, subdivision (c)(6)(E) similarly to subdivision (c)(4) so that an exemption from the prevailing wage law would apply to projects financed solely by

low-interest public loans or by a combination of low-interest public loans and another kind of funding. The fact that the Legislature did not draft section 1720, subdivision (c)(6)(E) like subdivision (c)(4) “tips the scales.” (*State Building & Construction Trades Council of California v. Duncan, supra*, 162 Cal.App.4th at p. 327, 76 Cal.Rptr.3d 507.) This court may not alter the words of a statute to change its meaning. (*Community Development Com. v. County of Ventura (2007)* 152 Cal.App.4th 1470, 1482, 62 Cal.Rptr.3d 383.) The project did not qualify for an exemption**770 under section 1720, subdivision (c)(6)(E).

C. Legislative History

The parties engage in considerable debate about the applicability and meaning of the legislative history of the two subdivisions. HPI asserts the legislative history is essential to clarify the statute's ambiguities. Respondent counters there is “no need for the Court to resort to legislative history to understand or apply the (c)(4) and (c)(6)(E) exemptions, both of which are unambiguous and phrased in plain English.”

We do not perceive an ambiguity is created, as proposed by HGI, because section 1720, subdivision (c)(4) uses the term “solely” and subdivision (c)(6)(E) does not. Nor do we find there to be ambiguity in the introductory phrase to section 1720, subdivision (c)(6): “Unless otherwise required by a public funding program, the construction or rehabilitation of privately owned residential projects is not subject to the requirements of this chapter if one or more of the following conditions are met: ...” Instead, the two subdivisions are facially plain in their meaning, making it unnecessary to resort to legislative intent. (*People v. Gardelev (1996)* 14 Cal.4th 605, 621, 59 Cal.Rptr.2d 356, 927 P.2d 713; *Esberg v. Union Oil Co. (2002)* 28 Cal.4th 262, 268–269, 121 Cal.Rptr.2d 203, 47 P.3d 1069.) For that reason, we do not disregard the legislative history but we do not find it necessary to resolve the appeal.

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D. Public Policy

HPI invokes public policy supporting affordable housing as another reason to read the two subdivisions together. By exempting certain narrow categories of affordable housing projects from the prevailing wage law, the Legislature has already balanced the public policy favoring the payment of *1347 prevailing wages on public works projects against the public policy favoring the construction of affordable housing. In considering the adverse impact of extending the prevailing wage law, thereby reducing the willingness of developers to expand the stock of low-income housing, another court commented: “These are issues of high public policy. To choose between them, or to strike a balance between them, is the essential function of the Legislature, not a court. ‘Our role is confined to ascertaining what the Legislature has actually done, not assaying whether sound policy might support a different rule.’ [Citation.]” (*State Building & Construction Trades Council of California v. Duncan*, *supra*, 162 Cal.App.4th at p. 324, 76 Cal.Rptr.3d 507.) Like the Director, we decline to usurp the Legislature’s treatment of these competing interests.

E. Due Process

[6] In making a due process claim, HPI repeats its contention that the statutory exceptions are ambiguous, asserting that the Director’s determination creates a legal framework that is vague and unintelligible because it concluded “that the three otherwise exempt funding sources cannot be combined together on a project without triggering the prevailing wage requirements.” The trial court rejected the argument that the Determination rendered the exemptions so vague that HPI’s due process rights had been violated, finding that the criteria enunciated in *Garcia v. Four Points Sheraton LAX* (2010) 188 Cal.App.4th 364, 115 Cal.Rptr.3d 685 had been met:

“Our due process analysis is guided by two principles. A statute will pass constitutional muster, ‘if it (1) gives fair notice of the practice to be avoided, and

(2) provides reasonably adequate standards to guide enforcement. [Citations.]” [Citation.]’ [Citation.] In applying these two **771 principles, we respect ‘the strong presumption that legislative enactments ‘must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears. [Citations.] A statute should be sufficiently certain so that a person may know what is prohibited thereby and what may be done without violating its provisions, but it cannot be held void for uncertainty if any reasonable and practical construction can be given to its language.’ ” [Citation.]’ [Citation.] Moreover, because the Ordinance regulates business behavior, constitutional requirements are more relaxed than they are for statutes that are penal in nature.[] [Citation.]” (*Garcia v. Four Points Sheraton LAX*, *supra*, 188 Cal.App.4th at p. 386, 115 Cal.Rptr.3d 685.)

The Determination employed a narrow interpretation of the subdivision (c) exemptions, analyzed in the context of the project’s unique factual setting. Public works coverage determinations are, in essence, advice letters to individual persons or entities about a specific project or type of work. The statutory exemptions at issue in this case are not rendered unconstitutionally vague by the mere fact that they required a fact-specific interpretation. The *1348 Director’s thorough analysis of the facts and reasonable interpretation of the law defeats HPI’s due process challenge. (*Garcia v. Four Points Sheraton LAX*, *supra*, 188 Cal.App.4th at p. 387, 115 Cal.Rptr.3d 685.) Read together, the statutory exemptions and the Director’s determination provide fair notice to the public of the standards a project must meet for the exemptions to apply. The Director’s reasonable application of the statute did not deprive HPI of its right to due process.

V

DISPOSITION

The subject project failed to qualify for the section 1720, subdivision (c)(4) exemption from the prevailing wage law because its public funding did not consist solely of redevelopment housing funds, as

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required by the unambiguous words of the statute. The project failed to qualify for the section 1720, subdivision (c)(6)(E) exemption because it relied on public funding other than low-interest public loans, which is not allowed under the unambiguous words of the statute. It is unnecessary to resort to legislative history to interpret the statute's plain meaning. Considerations of public policy and due process are not persuasive. As a result, the project is a public work and subject to the prevailing wage requirements of the Labor Code.

We affirm the judgment of the trial court denying HPI's petition for writ of mandate. The parties shall bear their own costs on appeal.

We concur: RAMIREZ, P.J., and McKINSTER, J.

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