

DEPARTMENT OF INDUSTRIAL RELATIONS

Katrina S. Hagen, Director

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July 29, 2021

Dan Gildor, Hearing Officer
Office of the Director – Legal Unit
Department of Industrial Relations
1515 Clay Street, Suite 701
Oakland, California 94612

Re: Public Works Case No. 2018-030
Salinas Fairways – Tree Removal
City of Salinas

Dear Mr. Gildor:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California’s prevailing wage laws, and is made pursuant to California Labor Code section 1773.5¹ and California Code of Regulations, title 8, section 16001, subdivision (a). This matter has been referred to the Director for decision in relation to a civil wage and penalty assessment appeal proceeding wherein the question of coverage under the prevailing wage laws has been disputed. Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the work of removing trees and righting stumps at the Salinas Fairways Golf Course (Salinas Fairways) in the City of Salinas (City) is public work and therefore subject to the requirements related to the payment of prevailing wages.

Facts

Salinas Fairways is located on land owned by the City and managed by Sierra Golf Management. The City has established a proprietary fund for the operation of its golf courses and has funded renovations of Salinas Fairways. (City of Salinas, Basic Financial Statements, Fiscal Year Ended June 30, 2018, pp. F-31, and F-132.)

On or about February 17, 2017, more than fifty trees located at Salinas Fairways were felled by high winds. The City contracted with Thomas Wilton Grognet, an individual, and doing business as Thomas Grognet (Grognet) for the removal and disposal of the dead and damaged trees and tree limbs that were a consequence of the winds. Prior to performing the work, Grognet submitted a proposal to the City specifying, inter alia, the scope of work and that the work was being performed “in order to create a safe

¹ Unless otherwise indicated, all further statutory references are to the California Labor Code.

environment at the Salinas Fairways golf course.” (Grognet, Salinas Fairways Proposal, p. 1, § 2, Mar. 2, 2017.) The work involved the use of chainsaws, wood chippers, dump trucks, backhoes, and excavators. (*Id.*, § 3.) In addition to the removal and disposal of trees, Grognet agreed “to right stumps using heavy equipment and steps taken to mitigate damage to course caused by uprooted stumps.”² (*Ibid.*) The contract was funded through an allocation by the City for the “Reimbursable Disaster Events capital project 9260.” (Report to the City Council, City of Salinas, Mar. 21, 2017; Resolution No. 21141 of the City of Salinas, Mar. 21, 2017; Purchase Order No. 2017-00006191, Mar. 29, 2017.)

Discussion

All workers employed on public works projects must be paid at least the prevailing wage rates applicable to their work. (§ 1771.) Section 1720, subdivision (a)(1) defines “public works” to mean: construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds. Further, section 1771 specifically states that the section “is applicable to contracts let for maintenance work.”

The Department’s regulations define “maintenance” in relevant part as “[r]outine, 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.” (Cal. Code of Regs., tit. 8, § 16000; hereafter Regulation 16000.)

The fact that the contract was paid for out of public funds is not in dispute. Thus, the issue in this instance is whether the tree removal and disposal and the righting of stumps to mitigate damage to the golf course at Salinas Fairways are the types of work covered under the California prevailing wage law.

A. Tree Removal at Salinas Fairways is Routine, Recurring and Usual Work Performed on a Publicly Owned Facility in order to Keep the Facility in a Safe and Continually Usable Condition.

Section 1771 expressly requires the payment of prevailing wages for work performed under maintenance contracts. (*Reliable Tree Experts v. Baker* (2011) 200 Cal.App.4th 785, 788 (*Reliable Tree*.) The Court of Appeal found that work involving trees and their removal along state highways constituted maintenance. (*Ibid.*) In a recently issued determination, the Director of Industrial Relations also found tree removal constituting maintenance to be covered work under California prevailing wage laws. (PW 2020-008, *Camp Fire Tree Removal Work – California Department of Resources*

² Grognet was engaged in tree removal and disposal for twenty-one days from March 20, 2017, through April 18, 2017, and was engaged in work to “upright stumps’ and mitigate damage to [the] golf course” on only a single day, April 3, 2017. (Emergency Repair Project, Inspector’s Daily Reports, City of Salinas, Work Order No. 2017-000069, Mar. 20, 2017, through Apr. 18, 2017.)

Recycling and Recovery (Apr. 29, 2020) (*Camp Fire*).³ Separately, tree removal work done in the execution of a public works contract involving construction, alteration, demolition, installation or repair work is subject to the requirements related to the payment of prevailing wages. (§ 1720, subds. (a)(1) & (a)(8).)

The tree removal performed by Grognet at Salinas Fairways was not done in relation to any construction, alteration, demolition, installation or repair work under section 1720, subdivision (a)(1). Thus, the question in this instance is the extent to which the tree removal performed at Salinas Fairways constitutes maintenance under the Labor Code and related regulations. (§ 1771, Regulation 16000.)

1. Salinas Fairways is a Publicly Owned Facility Where Tree Removal was Performed to Maintain the Facility in a Safe and Continually Usable Condition.

Salinas Fairways is located on land owned by the City and managed by Sierra Golf Management. The City funded the construction and the installation of infrastructure at Salinas Fairways prior to the storm event of February 2017.⁴ Salinas Fairways is situated on real property and is a facility that was designed and constructed for use as a golf course. As such, it is a publicly owned facility as defined by Regulation 16000.

The work of tree removal, when it was required at Salinas Fairways prior to February 2017, was performed so that the facility would be safe and accessible for patrons of the golf course. The removal of trees from the golf course was performed in order to keep the facility safe and accessible for its intended purpose, golf; the purpose for which the facility had been designed and constructed.

2. Tree Removal at Salinas Fairways is Routine, Recurring and Usual Work.

In determining whether tree removal at Salinas Fairways was routine, recurring and usual, and may be properly characterized as maintenance, the focus of the inquiry “must be on the work in terms of the property being worked, not the terms of an individual contract.” (*Reliable Tree, supra*, 200 Cal.App.4th at p. 798.) Thus, when determining whether specific work constitutes maintenance, the analysis must look to whether the public agency performed such work on a routine, recurring and usual basis on the publicly-owned or operated facility.

³ The removal of trees subsequent to a massive fire was required in order to remove obstructions from public rights-of-way and maintain the public rights-of-way in a safe, efficient and continuously usable condition for public use, as well ensuring public safety and reducing the risk of future invasive insect infestations. (*Camp Fire*, at p. 6.)

⁴ The website for Salinas Fairways references a renovation of the course that specifies design, construction, alteration and installation which has taken place at the facility: “A complete redesign and renovation took place in 1998, investing over 3.1 million dollars in a new irrigation system, new lakes, improved practice facilities, cart paths, and parking lot.” (<<https://www.salinasfairways.com/>> [as of July 13, 2021].)

The tree removal at Salinas Fairways was performed in order to create a safe environment at the golf course after high winds felled many trees. The work was performed pursuant to a one-time contract entered into between Grognet and the City in response to this significant storm event. Whether the work constitutes maintenance is determined by the extent to which such work is performed on a routine, recurring and usual basis at the publicly owned or operated facility.

Certainly, more tree removal may be required at a facility such as Salinas Fairways after a significant storm, but when maintaining a public facility in a safe and continually usable condition, ongoing tree removal is likely to be necessary and can be reasonably anticipated to recur. Tree removal must be routinely and usually performed when maintaining a golf course, albeit to a lesser degree than was required in this instance. In fact, it would be unusual, even extraordinary, if tree removal were *not* routinely required on a public golf course situated in an area where trees are present in order to maintain the facility in a safe and continually usable condition. The Court of Appeal found in *Reliable Tree* that the Department of Transportation must maintain trees on state rights-of-way on a routine, recurring and usual basis, which it characterized as “an on-going task requiring multiple contracts to carry out.” (*Reliable Tree, supra*, 200 Cal.App.4th at p. 798.) Similarly, Salinas Fairways must continually remove trees to maintain the golf course in a safe and continually usable condition. This effort will require multiple contracts of which the contract with Grognet is but one.

Salinas Fairways is a publicly owned facility that was designed and constructed for use as a golf course. The removal of trees and disposal of trees was performed in order to keep the facility safe and allow the continued use of the golf course by patrons. Tree removal must be performed at Salinas Fairways on a routine, recurring and usual basis to preserve the facility in a continually usable condition. Thus, the tree removal and disposal performed by Grognet, which are the subject of this coverage determination, constitute maintenance under the Labor Code and the Department’s regulations.⁵

B. The Righting of Stumps and Mitigation of Damage to the Golf Course Constitute Repair of the Facility.

The work performed by Grognet in righting stumps and mitigating damage to the golf course at Salinas Fairways was performed in order to repair the facility. The term “repair” as it is employed in section 1720, subdivision (a)(1), has been defined in various coverage determinations.⁶ Additionally, dictionary definitions can aid in determining the

⁵ The Department makes no finding here regarding what classification the tree removal and disposal work falls under, nor has it had occasion to make such a finding, because the scope of a coverage determination is limited to determining “whether a specific project or type of work” is a public work. (§ 1775.5, subd. (b).) Determining which classification applies to the work at issue is a charge reserved for the factfinder in a separate proceeding. (*Division of Lab. Stds. Enforcement v. Ericsson Information Systems, Inc.* (1990) 221 Cal.App.3d 114, 129; § 1742, subd. (b).)

⁶ See, e.g., PW 2002-034, *Sacramento State Capitol Exterior Painting Project, Restoration and Hauling of Decorative Cast Iron Elements* (July 18, 2002); and PW 2011-

usual and ordinary meaning of a statutory term. (*McIntosh v. Aubry* (1993) 14 Cal.App.4th 1576, 1588.) According to Webster's New World Dictionary, the verb "repair" is defined as "to put back in good condition after damage, decay, etc.; mend; fix." (Webster's New World Dict. (college ed. 1957) p. 1233.) The California Supreme Court has stated that the "word 'repair' in its ordinary sense relates to the preservation of property in its original condition, and does not carry the connotation that a new thing should be made or a distinct entity created." (*Whalen v. Ruiz* (1953) 40 Cal.2d 294, 300.)

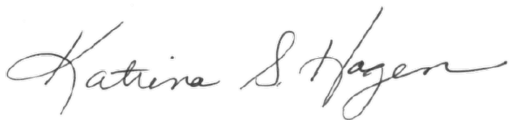
Here, the facility was damaged by a storm that felled many trees, causing damage in the form of cavities in the golf course that resulted from the uprooted trees. The righting, or repositioning, of tree stumps involved filling in the cavities left by the felled trees. The righting of stumps was intended to mitigate damage to the golf course and restore the golf course to a good condition approximating its condition prior to the storm, i.e., to preserve the property in its original condition. The work of righting stumps at Salinas Fairways constitutes repair under section 1720, subdivision (a)(1).

Conclusion

For the foregoing reasons, the work of removing trees and righting stumps at the Salinas Fairways Golf Course in the City of Salinas is public work and therefore subject to the requirements related to the payment of prevailing wages.

I hope this determination satisfactorily responds to your inquiry.

Sincerely,



Katrina S. Hagen
Director of Industrial Relations