

DEPARTMENT OF INDUSTRIAL RELATIONS

Katrina S. Hagen, Director

Office of the Director

1515 Clay Street, Suite 2208

Oakland, CA 94612

Tel: (510) 286-7087 Fax: (510) 622-3265



November 1, 2022

Valerie Quinto
Executive Director
Sonoma Resource Conservation District
1221 Farmers Lane, Suite F
Santa Rosa, CA 95405

Re: Public Works Case No. 2022-003
Removal of Dominant Invasive Plant Species
Sonoma Resource Conservation District

Dear Ms. Quinto:

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 § 1773.5¹ and California Code of Regulations, title 8, section 16001, subdivision (a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the project for the Removal of Dominant Invasive Plant Species for the Sonoma Resource Conservation District is subject to prevailing wage requirements.

Facts

The October 2017 Nuns Wildfire (Nuns Fire) left a significant impact on the water quality in the Sonoma Creek Watershed, in Sonoma County. The Sonoma Creek Watershed is at a greater risk of erosion, and adjacent streams have experienced sedimentation and runoff of several pollutants. California Water Resources Control Board (CWRCB) awarded the "Post-Fire Management Practices in the Sonoma Creek Watershed Grant" (the Grant) to Sonoma Resources Conservation District (SRCD) to address the effects of the fire. The Grant is a federal grant originally funded by the federal Environmental Protection Agency and administered by CWRCB.

The Grant was intended to build off of emergency funding provided by CWRCB to SRCD in response to the Nuns Fire with the goal of minimizing nonpoint source pollution, including but not limited to sediment, nutrients, toxins, debris, and lead, from entering the Sonoma Creek Watershed streams by planning and implementing post-fire management practices on lands burned by the Nuns Fire. In its grant proposal, SRCD stated that the

¹ Unless otherwise indicated, all further statutory references are to the California Labor Code and all subdivision references are to the subdivisions of section 1720.

proposed management practices may include but are not limited to the following: riparian revegetation, invasive removal, mulching, and erosion control blankets. Under the proposal, SRCD would identify appropriate project sites and implement a minimum of 40 post-fire management practices on a minimum of 8 burned sites. CWCRB awarded \$400,000 to SRCD in addition to the emergency funding.

SRCD solicited local private landowners to apply for financial assistance for projects to prevent future erosion or water quality impacts on their properties. A landowner submitted a request for funding to restore the riparian corridor along the streambanks on his property. He noted that native plant and tree species were suppressed by several aggressive invasive species and sought funding to remove the invasive species, revegetate the land with California native plants, and perform erosion control to help stabilize the banks and provide habitat to the wildlife.

SRCD reviewed and approved the funding request and entered into an agreement with the landowner to implement a post-fire restoration project (the Project) on the property located in Sonoma County (the Property), in November 2020. SRCD contracted with Sonoma Ecology Center to perform the work on the Property. The contract between the SRCD and Sonoma Ecology Center specifically stated that the Project was subject to the requirements of Section 1720 et seq. of the California Labor Code requiring payment of prevailing wages.² The total estimated cost for the Project at the Property was \$49,680.00.

The Project requires Sonoma Ecology Center to perform the following tasks: 1) to identify and remove invasive species such as Silver Wattle Acacia, French Broom, and Poison Helmslock; 2) to revegetate the Property with 200 pieces of California native shrubs, vines, and trees; and 3) put down weed mats and browse guards (i.e. wire cages or tubes) around some plants and trees to reduce damage by browsing animals and weed competition to ensure better plant survival. The California native tree species to be planted at the Property would include Big Leaf Maple, Box Elder, California Buckeye, White Alder, Oregon Ash, Blue Elderberry, and Coast Live Oak. To perform this work, Sonoma Ecology Center expects to use equipment and tools such as truck-mounted winches, power auger drills, chainsaws, power pole saws, commercial-grade line trimmers, brush maulers, a 600-gallon water trailer, a 200-gallon spray rig, a 12-foot flatbed dump trailer, Pulaskis,³ shovels, and picks. The parties determined that the Project did not require erosion control on the Property after a field visit.

SRCD and Sonoma Ecology Center contend that removing invasive species, planting native species, and putting down weed mats and browse guards are not types of covered public work that require payment of prevailing wages.

² Contract between Sonoma Resource Conservation District and Sonoma Ecology Center For Riparian Revegetation, page 5.

³ A Pulaski is a tool often used to fight wildfires. The tool is a combination of an axe and an adze that allows firefighters to easily alternate between chopping and digging. U.S. Forest Service Ranger Ed Pulaski is credited with inventing the tool.

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.

There is no dispute that the work by Sonoma Ecology Center is done under contract paid for out of public funds, as the work to be performed is funded entirely by the Grant from CWRCB to SRCD. The issue is whether removing invasive species, revegetating the land with native plant species and trees, and putting down weed mats and browse guards under these particular circumstances are the types of work covered under the prevailing wage law.

“To ‘alter’ is merely to modify without changing into something else,” and that term applies “to a changed condition of the surface or the below-surface.” (*Priest v. Housing Authority of City of Oxnard* (1969) 275 Cal.App.2d 751, 756 (*Priest*)). “Alter” as defined by Webster’s Third New International Dictionary (2002) at page 63 is “to cause to become different in some particular characteristic (as measure, dimension, course, arrangement or inclination) without changing into something else.” Based on these definitions, prior coverage determinations have reasoned that, with regard to land, to engage in alteration under section 1720, subdivision (a)(1) is “to modify a particular characteristic of the land in question”. (PW 2008-015, *Land Clearing Project Selma-Kingsburg-Fowler County Sanitation District* (June 11, 2008).)

On-site planting work has previously been found to be covered work. (PW Case No. 2009-055, *Ecosystem Restoration and Flood Attenuation Project, San Joaquin River* (Oct. 5, 2010) (*San Joaquin River*)). In *San Joaquin River*, the planting of native plants for habitat restoration was found to be an alteration of the land under section 1720, subdivision (a)(1) because restoring the habitat by way of planting modified “a particular characteristic of the land.” Planting of native salt grass plugs onto a dry lakebed was found to modify the land, as the planting created “an area of vegetation where previously there was none.” (PW Case No. 2002-096, *Request for Proposals: Planting, Operation, Maintenance and Monitoring of Owens Lake Southern Zones Managed Vegetation Project – Los Angeles Department of Water and Power* (Dec. 16, 2005/June 1, 2005).)⁴

The Nuns Fire brought about a significant change to the characteristics of the land on the Property. The fire destroyed the habitat for wildlife and the dominant nonnative invasive species have taken over the Property, further reducing the Property’s ability to support wildlife. The tasks of removing invasive species, revegetating the land with native species, and putting down weed mats and browse guards to support the native species will restore the Property back to what it was before the Nuns Fire. The work will curb the

⁴ See also PW Case No. 2020-018, *Bryant Habert/Wait Ecological Restoration Project, Phase II – Resource Conservation District of Santa Cruz* (Dec. 6, 2021) [Revegetation of native plants as part of a project to restore wetlands previously leveled for agricultural use determined to be alteration subject to prevailing wages.]

invasive species from establishing and perpetuating on the Property and restore its ability to support wildlife as before.

SRCD and Sonoma Ecology Center contend that those types of work are not subject to prevailing wage laws. They rely solely on an informal letter dated February 9, 2015, regarding the Removal of Spartina from Marsh Land for the California Wildlife Foundation. In that informal letter, an attorney from the Department concluded that the treatment and removal of nonnative, invasive Spartina plant species from marshlands for the purpose of salt marsh restoration through mowing, grinding, rototilling, and spraying, did not constitute an alteration of the land because the land remained a salt marsh both before and after the work performed, and did not constitute maintenance because the work was not done on a routine, recurring, or regular basis.

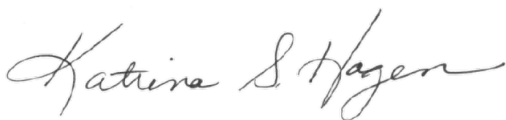
The facts in the informal letter are distinguishable from the facts here. Not only did the Nuns Fire result in a greater risk of erosion, sedimentation of adjacent streams, and runoff of several pollutants in the overall area, the fire allowed nonnative invasive species to take hold and perpetuate throughout the Property and destroyed the land's ability to support wildlife. The Property was transformed by the fire such that it was no longer the same as it was before the fire. Sonoma Ecology Center will be using equipment such as chainsaws, power pole saws, brush maulers, Pulaskis, and commercial-grade line trimmers to remove invasive species, flatbed dump trailers and trucks to transport the removed plants away, power auger drills, shovels, and picks to drill into the soil to plant native plants and trees, and place weed mats and wire cages to support the plants during their reestablishment period. Restoring the Property back to its original, pre-Nuns Fire state, through the removal of invasive species and reintroduction of native plants and trees constitutes alteration under section 1720, subdivision (a)(1) as it will "modify a particular characteristic of the land." (PW Case No. 2009-055, *supra*, *San Joaquin River*.)

Conclusion

For the foregoing reasons, the project for the Removal of Dominant Invasive Plant Species for the Sonoma Resource Conservation District is subject to prevailing wage requirements.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Katrina S. Hagen
Director of Industrial Relations