

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
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June 11, 2008

David Michel, General Manager
Selma-Kingsburg-Fowler County Sanitation District
P.O. Box 158
Kingsburg, CA 93631-0158

Re: Public Works Case No. 2008-015
Land Clearing Project
Selma-Kingsburg-Fowler County Sanitation District

Dear Mr. Michel:

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 Code of Regulations, title 8, section 16001(a). Based on my review of the facts and analysis of the applicable state law, it is my determination that the land clearing work as described below ("Project") is a public work subject to prevailing wage requirements.

Facts

The Selma-Kingsburg-Fowler County Sanitation District ("District") provides for collection, treatment and disposal of wastewater emanating from residential, commercial, institutional and industrial dischargers in southern Fresno County. District owns a total of 550 acres east of Kingsburg. Forty-six acres are used for treatment and sludge drying, 130 for effluent disposal and 40 for storm water ponds. One hundred fifty-one acres are described by District as "open land." One hundred three acres are currently leased for active commercial agriculture. The remaining 80 acres are formerly-leased agricultural land and the subject of this determination.

These 80 acres are composed of four contiguous parcels located in Kingsburg, California. On November 29, 2006, tenant leases expired on the Helm North and Helm South parcels; orchards and vineyards remained. Fruit trees and vines on the Juarez parcel were in a severe state of deterioration when the lease on that parcel expired on February 8, 2007. On October 6, 2007, the Scarry parcel tenants discontinued vineyard tending and raisin production because of needed well repairs. In their untended state, these parcels became a community nuisance and required District attention.

On March 20, 2008, District entered into a contract on with ALW Enterprises/Randy Weaver ("Contractor") for \$35,833 to clear the four parcels. The contract allowed for an alternative sum of \$53,775 in the event that the Department of Industrial Relations determined the work to be subject to prevailing wage requirements. The scope of work entailed the removal of agricultural trees, nine to ten ornamental shade trees, grape vines, end posts, stakes, vine wires, debris and other obstacles, followed by ground disking. This work has been completed.

District intends to disk the cleared parcels twice yearly using District employees. While no immediate use for the parcels is scheduled, a number of future projects are contemplated, including a "mixing table" for County road repair materials on the Juarez parcel, a solar energy project on the Helm South parcel and future treatment plant expansion on the Scarry parcel.¹ On April 23, 2008, District issued three Requests for Proposals ("RFP") concerning the Scarry parcel. One RFP is for demolition of a single-family residence. The scope of work consists of demolition of the residence, septic tank, miscellaneous buildings, storage shed, asphalt pavement, foundation and basement; removal of existing shrubbery and trees; and backfilling and compacting. An alternate RFP contains the same scope of work except it requires removal, instead of demolition, of the same single-family residence. A third RFP is for abandonment of a domestic well and an agricultural well; the scope of work consists of the removal of concrete pads, all above-ground equipment and debris. Compliance with prevailing wage law is a requirement of all three RFPs.

Discussion

Labor Code section 1720(a)(1)² in relevant part 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"

The work described above is done under contract between District and Contractor/successful RFP bidders. The work is paid for out of public funds. The question presented is whether the work entails construction, alteration, demolition, installation or repair work within the meaning of section 1720(a)(1).

To demolish is to tear up and remove things previously constructed "whether on the surface face or below ground." (*Priest v. Housing Authority of City of Oxnard* (1969) 275 Cal.App.2d 751, 756.)

"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, supra*, 275 Cal.App.2d at p. 756.) "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." Thus, with regard to land, under these definitions, alteration under section 1720(a)(1) is to modify a particular characteristic of the land in question.

The work undertaken by Contractor and contemplated under the three RFPs entails the removal of orchards, vineyards, shade trees, end posts, stakes, vine wires, debris and other obstacles from the land; the tearing down of buildings, septic tank, storage shed, asphalt pavement, foundation and basement; the removal of concrete pads and above-ground equipment comprising the domestic and agricultural wells; and the backfilling and compacting of dirt. There is no question this work involves the tearing down and removal of things previously constructed under the definition of

¹The coverage status of projects such as these that may or may not be undertaken on the cleared parcels in the future is beyond the scope of this determination.

²All statutory references are to the California Labor Code unless otherwise indicated.

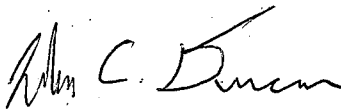
demolition. Also, through this work a particular characteristic of the land is being modified under the definition of alteration. The land was agricultural in nature. It is now cleared for other, different uses. As District notes in correspondence dated May 14, 2008, the 80 acres are now classified as "open land," not active commercial agricultural land. As such, the land clearing work undertaken by Contractor and contemplated in the three RFPs constitutes demolition and alteration within the meaning of section 1720(a)(1).

The facts here are similar to the facts in *Priest v. Housing Authority of City of Oxnard, supra*, 275 Cal.App.2d 751. In *Priest*, the land was cleared of a burned-down wartime housing development to make it suitable for farming. The work involved the removal of all surface and sub-surface concrete, blacktop and debris in the form of pavement, curbs, gutters, sidewalks, foundations, piers, trees, shrubs and underground pipe, followed by rough-grading. The court found the work to be both demolition and alteration under the definition of public works in then section 1720(a). Like *Priest*, this case involves demolition. Also like *Priest*, this case involves alteration in that the land is being modified. In *Priest*, a former housing development site was made suitable for agriculture. Here, a former agricultural site is now open land made suitable for other future, different uses.³

For the foregoing reasons, the Project undertaken by Contractor and contemplated in the three RFPs constitutes alteration and demolition, and thus is a public work subject to prevailing wage requirements.⁴

I hope that this determination satisfactorily answers your inquiry.

Sincerely,



John C. Duncan
Director

³As to requesting party's inquiry whether there is an "agricultural exemption" for the type of work involved in this case, no such exemption exists.

⁴Note that any work performed by District employees, such as the twice yearly ground disking, is not subject to prevailing wages under section 1771, which states that "[t]his 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."