

DEPARTMENT OF INDUSTRIAL RELATIONS

Katrina S. Hagen, Director

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February 7, 2023

Dennis B. Cook
Cook Brown, LLP
2407 J Street, 2nd Floor
Sacramento, CA 95816

Re: Public Works Case No. 2021-002
Post Carr Fire Hazardous Fuels Reduction Project
California Department of Forestry and Fire Protection

Dear Mr. Cook:

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). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the hazardous fuel reduction project (Post Carr Project or Project) is not public work and not subject to the requirements related to the payment of prevailing wages.

Facts

The 2018 Carr Fire caused extensive damage in and around Shasta County, burning more than 229,000 acres. Subsequent to the fire, the California Governor's Office of Emergency Services (Cal OES) administered the performance of extensive work related to the fire, including removal of burned ash, recyclable metals, concrete, contaminated soil, and trees. This work was funded by the Federal Emergency Management Agency (FEMA) and was completed in 2019.

The McConnell Foundation (McConnell) intends to carry out the Post Carr Project pursuant to a grant from California Department of Forestry and Fire Protection (CAL FIRE).² The Project will remove brush and vegetation on private property in the wildland-

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.

² The Project is funded through a \$12.6M grant from CAL FIRE and is limited to vegetation removal and management on private property. The grant program is variously identified as a "Greenhouse Gas Reduction Fund Grant Project" and a component of

urban interface west of Redding and is intended to increase fire resiliency and reduce impacts from future wildfires.

McConnell intends through the Project to engage in a process of reducing the hazardous fuels present within the footprint of the Carr Fire in the form of the removal of brush, vegetation, and trees. The Project is intended to reduce hazardous fuels and reduce the probability of “subsequent moderate - to high-severity reburns.” (Grant Agreement No. 5GG18119 - Post Carr Fire Hazardous Fuels Reduction, Dec. 10, 2020.) The Project will not overlap with any of the FEMA funded work previously overseen by Cal OES and is limited to vegetation and tree removal on private property.

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. Section 1720, subdivision (a)(8) also defines “public works” to include tree removal done in the execution of a project under subdivision (a)(1). Further, maintenance work is another type of public work, and the prevailing wage law expressly applies to “contracts let for maintenance work.” (§ 1771; *Reliable Tree Experts v. Baker* (2011) 200 Cal.App.4th 785, 795-796 (*Reliable Tree*).)

There is no dispute that the Project is done under contract and paid for out of public funds. McConnell contends that the work it intends to perform for the Project does not qualify as public work under California’s prevailing wage laws, arguing that the work is not covered under section 1720, subdivisions (a)(1), (a)(8), or section 1771.

A. The Project Does Not Involve Construction, Alteration, Demolition, Installation, or Repair Work.

Tree removal work done in the execution of a public works contract involving construction, alteration, demolition, installation, or repair work is public work. (§ 1720, subs. (a)(1) & (a)(8).)

The removal of brush, vegetation, and trees for the Project cannot be characterized as construction, alteration, demolition, installation, or repair work as those terms have been defined under section 1720, subdivision (a)(1). Nor will the work to remove brush, vegetation, and trees be done in the execution of a project involving construction, alteration, demolition, installation or repair work. (See § 1720, subd. (a)(8).)

“California Climate Investments.” (Grant Agreement No. 5GG18119, Post Carr Fire Hazardous Fuels Reduction, Dec. 10, 2020.)

Thus, the work to be performed as part of the Project is not covered under the provisions of section 1720, subdivision (a).³

B. The Project Does Not Entail Maintenance.

Section 1771 expressly requires the payment of prevailing wages for work performed under maintenance contracts. (*Reliable Tree, supra*, 200 Cal.App.4th at p. 788.) The Court of Appeal has held that work involving trees and their removal along state highways constituted maintenance for the purposes of the prevailing wage law. (*Ibid.*) Following *Reliable Tree*, the Department has found tree removal under certain circumstances to constitute covered maintenance work under the prevailing wage law. (PW 2020-008, *Camp Fire Tree Removal Work – California Department of Resources Recycling and Recovery* (Apr. 29, 2020) (*Camp Fire*); PW 2018-030, *Salinas Fairways Tree Removal - City of Salinas* (July 29, 2021) (*Salinas Fairways*).⁴)

Work may constitute maintenance under the Labor Code and related regulations if it is “[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.” (§ 1771, Cal. Code Regs., tit. 8, § 16000.) As such, to qualify as maintenance, the work performed must be intended to preserve, protect, or keep a publicly-owned or a publicly-operated facility. Here, the Project will take place exclusively on private property, none of which is operated by a public entity, and McConnell does not anticipate that any of the work will take place in proximity to public rights-of-way. Because the Project is not anticipated to preserve, protect, or take place on publicly-owned or publicly-operated facilities or other real property, the work cannot constitute maintenance as it is defined by the Labor Code and implementing regulations.

³ None of the other definitions of “public works” in section 1720, subdivision (a) appear to be applicable to the work at issue in the Project. (See § 1720, subds. (a)(2) - (a)(7).)

⁴ The removal of trees after 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, supra*, PW 2020-008 at p. 6.) The removal of trees damaged in a storm from a publicly owned golf course was found to constitute maintenance. (*Salinas Fairways, supra*, PW 2018-030 at p. 4.)

Conclusion

For the foregoing reasons, the Post Carr Project is not public work and not subject to the requirements related to the payment of prevailing wages.

I hope this determination satisfactorily responds to your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Katrina S. Hagen".

Katrina S. Hagen
Director of Industrial Relations