

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR
455 Golden Gate Avenue, Tenth Floor
San Francisco, CA 94102
(415) 703-5050



March 28, 2002

Alan N. Harvey
Board Representative
Dunsmuir Garden Club
P.O. Box 361
Dunsmuir, CA 96025

Re: Public Works Case No. 2001-054
Tauhindauli Park and Trail Project
City of Dunsmuir

Dear Mr. Harvey:

This constitutes the determination of the Director of the Department of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations (CCR), section 16001(a). Based upon my review of the facts of this case and an analysis of the applicable law, it is my determination that the Tauhindauli Park and Trail Project ("Project") is a public work and is therefore subject to the payment of prevailing wages.

In this case, the Dunsmuir Garden Club ("Club"), a private, non-profit organization, intends to enter into a contract with the successful bidder to construct the Project. The Project involves the development of an 8.7-acre site in the City of Dunsmuir ("City") with a community park and multi-use trail system. The draft of the construction contract contains a provision that requires the contractor to pay prevailing wages to the workers on the Project.

The Project consists of the following work: excavate and widen river floodplain; re-route a small creek; clear and excavate various sites; construct electrical substation improvements; install underground utilities; construct levees, raised trails and berms; construct sewage lift station improvements; realign Upper Soda Springs Road; pave the realigned road; install fences, gates and barriers; install signs and posts; construct portable toilet enclosure and bridge pier kiosk; install wooden benches with anchors; pave picnic areas; and install picnic tables and a bicycle rack with anchors.

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Funding for the Project includes a \$626,333 grant awarded by the Cantara Trustee Council ("Council"), and a \$9,800 Urban Streams Restoration Grant awarded by the Department of Water Resources. Several private organizations have also contributed funds or services. The Council awards grants from \$18,000,000 in funds created by a settlement of a lawsuit¹ filed by the State of California against Southern Pacific Railroad. Under a Memorandum of Agreement, the Department of Fish and Game administers the grant funds for the Council. City receives and maintains the particular grant funds for the Project on behalf of the Club. City will maintain the park in perpetuity with an endowment fund created from the grant funds.

The City of Dunsmuir, State of California, PacifiCorp, Union Pacific Company and John W. and Patricia W. Rhinesmith own the land on which the Project is being performed. The Club does not own any of the land but has leases and landowner agreements to proceed with the Project.

Labor Code section² 1720(a) defines "public works" in relevant part as: "Construction, alteration, demolition or repair work done under contract and paid for in whole or part out of public funds." The Project is construction and alteration being done under contract.

The Project is also paid for in whole or part out of public funds in that it is funded by state grant money. The fact that the Club, a private entity, will be the contracting party to the construction contract is of no consequence. Section 1720(a) does not require that a public entity be a party to a construction contract for a project to be deemed a public works. Therefore, and consistent with past precedential public works coverage determinations,³ this Project is a "public work" within the meaning of section 1720(a) and is subject to the payment of prevailing wages.

You have also asked for the applicable rates for the crafts typically involved in road and underground utility construction

¹ The lawsuit resulted from a toxic spill when a Southern Pacific Railroad train derailed at the Cantara loop of the Sacramento River.

² All statutory references are to the California Labor Code.

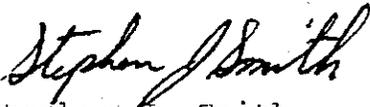
³ Precedential Public Works Coverage Determination No. 99-052, Lewis Center for Earth Sciences Construction (November 19, 1999).

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and excavation. This information can be obtained from the
Division of Labor Statistics and Research at (415) 703-4780.

I hope this determination letter satisfactorily answers your
inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Stephen J. Smith". The signature is written in black ink and is positioned above the typed name and title.

Stephen J. Smith
Director