

## DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR

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



February 2, 2004

Michael Lindeman, President  
Lindeman Brothers, Inc.  
9510 Jackson Road  
Sacramento, CA 95826

Re: Public Works Case No. 2003-044  
Off-Hauling of Fill Dirt Between Public Work Sites  
City of Dixon

Dear Mr. Lindeman:

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 Title 8, California Code of Regulations, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that workers hauling fill dirt from a public works construction site to a storage site for future use on another public works project are performing work in the execution of public work and are therefore entitled to the payment of prevailing wages.

The City of Dixon ("Dixon") is constructing a storm water retention and treatment pond facility in Dixon. As part of this project, approximately 360,000 cubic yards of dirt was excavated to allow the construction project to go forward. The City of Vacaville ("Vacaville") is going to construct an over-crossing at Leisure Town Road over Interstate 80 in Vacaville. As part of this project, Vacaville hired Mike Lowrie Transport ("Lowrie") to haul material from the Dixon project to a storage site for the new over-crossing. Under a written agreement with Vacaville, Lowrie transported approximately 200,000 cubic yards of fill dirt to the future site of Solano Community College, near the future Vacaville over-crossing project.

The question presented in this determination is whether the truckers in Lowrie's employ who transported the fill dirt from the Dixon site to the Vacaville site are entitled to prevailing wages for their work.

Labor Code<sup>1</sup> section 1720(a)(1) defines public works, in relevant part, as: "Construction, alteration, demolition, installation or

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<sup>1</sup> All subsequent statutory references are to the Labor Code unless otherwise indicated.

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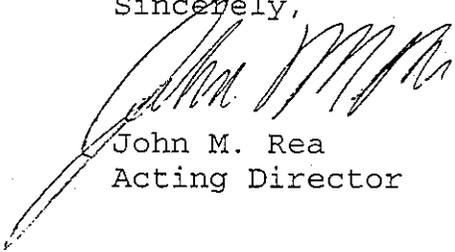
repair work done under contract and paid for in whole or in part out of public funds." Section 1772 states: "Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work."

The excavation of the dirt at the Dixon site constitutes alteration of a land surface. *Priest v. Housing Authority of the City of Oxnard* (1969) 275 Cal.App.2d 751, 80 Cal.Rptr. 145. The alteration was done under contract and paid for with Dixon public funds. As such, it was a public work. Similarly, the Vacaville over-crossing project is a public work because it is construction done under contract and paid for with public funds.

The fill-dirt was transported from the ongoing Dixon public works site to a storage site in anticipation of the future Vacaville public works project. As such, the workers transporting the dirt performed work in the execution of a contract for public work. Therefore, and consistent with a prior relevant precedential public works determination,<sup>2</sup> they are entitled to prevailing wages for the hauling work from the Dixon project to the Vacaville storage facility.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



John M. Rea  
Acting Director

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<sup>2</sup> Rosewood Avenue/Willoughby Avenue Sewer Interceptor, City of Los Angeles, PW No. 2000-078 (August 6, 2001).