

December 2005

DIR Issues Two New Prevailing Wage Coverage Determinations Dealing with Habitat Restoration, Bank Stabilization, and Fire Protection

The California Department of Industrial Relations (“DIR”) recently issued two prevailing wage coverage determinations concerning habitat restoration and fire protection projects.

California’s prevailing wage law requires, among other things, the payment of prevailing wages for construction, installation, demolition or alteration work done under contract and paid for in whole or part with “public funds.”

In the first case, the DIR determined that a habitat restoration project performed under an agreement between the California Department of Fish and Game and a private landowner, and funded by a combination of private funds and public grants, is subject to the payment of prevailing wages. The agreement required the landowner to construct bank stabilization and protection alongside an adjacent stream. In addition to finding that installation of the bank stabilization improvements and related fencing were “construction and/or installation” under the prevailing wage statute, the DIR opined that the planting of trees was “alteration” under

the statute’s definition of a public work. The DIR reiterated that public “grants” fall within the definition of public funds.

Howe Ranch Habitat Restoration Project (DIR Case No. 2004-050)

Interestingly, the DIR has determined that the cutting down of trees on private property is not “alteration” under prevailing wage law. In this case, the county entered into contracts with timber companies to cut down dead or diseased trees that posed a fire danger. The distinction between planting trees, which the DIR considers “alteration,” and the cutting down of trees, which the DIR does not consider “alteration,” is that the latter does not involve the “digging into or disturbing the surface of the earth.” That it, is does not disturb the “characteristics of the land.” Tree removal is also not “demolition” under the statute because the removal of trees does not involve “tearing up and removing those things that were previously constructed.” Trees cannot be constructed and, thus, cannot be demolished.

Tree Removal Project - County of San Bernardino Fire Department (DIR Case No. 2005-026)

These determinations underscore the importance of evaluating programs funded in whole or in part by public funds to determine if the project falls within the scope of the prevailing wage laws.

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