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December 12, 2023

The Honorable Nohelani U'u-Hodgins, Councilmember  
County Council  
County of Maui  
200 S. High Street  
Wailuku, Hawaii 96793

Dear Councilmember U'u-Hodgins:

This responds to your letter dated November 27, 2023, requesting an interpretation on whether Chapter 104, Hawaii Revised Statutes (HRS), Wages and Hours of Employees on Public Works Law, applies to the Pulelehua Affordable Housing Project (herein project) for which the developer received \$18 million from Maui County's Affordable Housing Fund. You specifically asked whether the contractor or contractor's subcontractors are required to pay Chapter 104, HRS, prevailing wages to all laborers and mechanics performing work on the project, including the grading and grubbing work.

In general, Chapter 104, HRS, covers all laborers and mechanics performing work on a State or county public works construction job site. Under Section 104-1, HRS, "public works" means any project, including development of any housing pursuant to section 46-15 or chapter 201H and development, construction, renovation, and maintenance related to refurbishment of any real or personal property, where the funds or resources required or used to undertake the project are to any extent derived, either directly or indirectly, from public revenues of the State or any county, or from the sale of securities or bonds whose interest or dividends are exempt from state or federal taxes.

Additionally, under Section 12-22-1, Hawaii Administrative Rules, the definition of "construction of public work" includes without limitation new construction, reconstruction, development, improvement, alteration, repair, renovation, painting, decorating, dredging, shoring, simultaneous sewer inspection and repair, and any other activity performed by a laborer or mechanic employed at the site of a public work or at any property used by the contractor, dedicated for the performance of the contract, such as batch plants, borrow pits, fabrication plants, mobile factories, job headquarters, and tool yards.

Equal Opportunity Employer/Program  
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TDD/TTY Dial 711 then ask for (808) 586-8842

Correspondence from Councilmember U'u-Hodgins  
Received at DRIP meeting on 10-30-2024 (DRIP-2(24))

As used in this definition, "other activity performed by a laborer or mechanic employed at the site" includes the following if the activity is an integral part of or is in conjunction with a construction contract, or if there is substantial construction activity involved in a supply, service, or other type of non-construction contract:

- (1) Manufacturing or furnishing of materials, articles, supplies, or equipment on the job site;
- (2) Warranty work;
- (3) Demolition or excavation;
- (4) Landscaping;
- (5) Termite treatment; and
- (6) Installation at the construction site of items or articles fabricated off-site, such as shelving, drapery, and communications equipment.

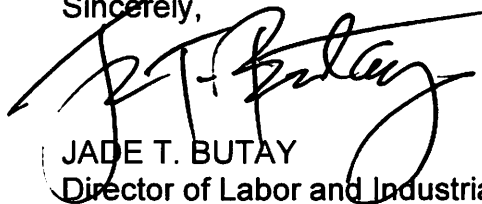
"Public work" shall have the same meaning as in section 104-1, HRS, and includes without limitation:

- (1) Any building, structure, road, or real property, the construction of which is undertaken:
  - (A) By authority of; and
  - (B) Through the use of funds, grants, loans, bonds, land, or other resources of the State or any county, board, bureau, authority, commission, or other agency or instrumentality thereof, to serve the interest of the public, regardless of whether title thereof is held by a state or county agency. However, subsequent construction to fixtures or appurtenances attached to the assigned space of an individual occupant, lessee, or tenant of the building or structure, contracted by other than a state or county agency or instrumentality thereof, shall not be subject to chapter 104, HRS...

Based on the information provided in your letter, the grading and grubbing work is an integral part of or is in conjunction with a public works construction contract, therefore, subject to the requirements of Chapter 104, HRS, including payment of prevailing wages to all laborers and mechanics performing work on the project.

Should you have any questions, you may contact the Wage Standards Division at 808-586-8777.

Sincerely,



JADE T. BUTAY  
Director of Labor and Industrial Relations