CALIFORNIA CONSERVATION CORPS
Legal Office
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March 25, 2010

BACKGROUND

Training and Services to be performed by the California Conservation Corps for CEC Grant for the EnergySmart Jobs Program

The EnergySmart Jobs program will train young, disadvantaged, and unemployed youth (Corpsmembers) hired by the California Conservation Corps (CCC) to use pre-programmed computer applications to perform energy assessments on commercial refrigeration systems to inform commercial establishments of their current energy usage. In addition, CCC corpsmembers will educate and recommend alternative energy equipment and devices to reduce current energy consumption. Private contractors participating in the EnergySmart Jobs program will then be referred to the commercial establishments to provide information on available cost saving rebates and estimates to perform the labor to install the energy saving equipment. CCC Corpsmembers will also perform post-audit energy assessments for commercial refrigeration establishments that have installed the energy saving devices.

FEDERAL PREVAILING WAGE REQUIREMENTS

Application of Davis Bacon Act / ARRA Funding

The American Recovery and Reinvestment Act of 2009 (ARRA) (Publ. 111-5, H.R.1, S.1) requires recipients of ARRA funding to pay federal prevailing wages as required by the Davis-Bacon Act (Title 40 U.S.C. Section 3140 et seq.). Federal regulations adopted by the Secretary of Labor set forth the requirements of the Davis-Bacon Act (Title 29, Code of Federal Regulations (CFR), Section 5.1 et seq.).

The Davis-Bacon Act requirements are only applicable when a contractor or subcontractor employs "mechanics and laborers" to perform "…construction, alteration, or repair" on a building or site. Title 29, CFR, Section 5.2(j) defines the terms construction, prosecution, completion, or repair (See Attachment 1). Title 29, CFR, Section 5.2(m) defines laborer or mechanic (See Attachment 1). The work to be performed by the CCC corpsmembers in the EnergySmart Jobs program does not fall within these definitions and therefore, federal prevailing wage requirements are not applicable to CCC Corpsmembers.

Non-application of the Davis Bacon Act affirmed by U.S. Department of Labor and the re-affirmed by the U.S. Department of Energy.

In a letter, dated June 1, 2009, the U.S. Department of Labor (USDOL) responded to an inquiry from the U.S. Department of Energy regarding the application of the Davis-Bacon Act as contained in ARRA. USDOL stated:

> "…repair crew performing the duties of laborers or mechanics for a Community Action Agency or its contractors' must be paid at least the Davis-Bacon prevailing wages. However, certain activities such as energy audits and inspection work are not usually viewed as construction work performed by laborers and mechanics within the meaning of the DBA and, thus, technicians conducting energy audits would not be subject to the Davis-Bacon requirements." (See Attachment 2).

This is reaffirmed by the U.S. Department of Energy (USDOE) on the Energy Efficient & Renewable Energy, State Energy Program (SEP) website in the "Frequently Asked Davis Bacon Questions and Answers, Question 11:

> "The DBA applies to laborers and mechanics employed at the work site. Auditors, inspectors, and other personnel not performing physical or manual work at the site of the work are not covered by DBA ." (See Attachment 3).

This also affirmed on the USDOE Weatherization Energy Program (WEP) website. The work to be performed by CCC Corpsmembers is not physical or manual work and therefore, the Davis Bacon Act requirements are not applicable.

STATE PREVAILING WAGE REQUIREMENTS

Public Resources Code Section 1720.4 exempts the CCC from state prevailing wage requirements (See Attachment 4).

For additional questions, please contact Ali Mansfield, General Counsel at (916) 341-3133 or ali.mansfield@ccc.ca.gov

ATTACHMENT 1

Content Last Revised: **4/29/83**
---DISCLAIMER---

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CFR Code of Federal Regulations Pertaining to ESA
↳ Title 29 Labor
↳ Chapter I Office of the Secretary of Labor
↳ Part 5 Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act
↳ **Subpart A** Davis-Bacon and Related Acts Provisions and Procedures

Source: 48 FR 19540, Apr. 29, 1983, unless otherwise noted.

Editorial Note: Nomenclature changes to Subpart A appear at 61 FR 19984, May 3, 1996.

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CFR Code of Federal Regulations Pertaining to ESA
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Subpart A Davis-Bacon and Related Acts Provisions and Procedures

29 CFR 5.2 - Definitions.

- **Section Number:** 5.2
- **Section Name:** Definitions.

(a) The term Secretary includes the Secretary of Labor, the Deputy Under Secretary for Employment Standards, and their authorized representatives.

(b) The term Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.

(c) The term Federal agency means the agency or instrumentality of the United States which enters into the contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to the project subject to a statute listed in Sec. 5.1.

(d) The term Agency Head means the principal official of the Federal agency and includes those persons duly authorized to act in the behalf of the Agency Head.

(e) The term Contracting Officer means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency.

(f) The term labor standards as used in this part means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions of the other statutes listed in Sec. 5.1, and the regulations in parts 1 and 3 of this subtitle and this part.

(g) The term United States or the District of Columbia means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities.

(h) The term contract means any prime contract which is subject wholly or in part to the labor standards provisions of any of the acts listed in Sec. 5.1 and any subcontract of any tier thereunder, let under the prime contract. A State or local Government is not regarded as a contractor under statutes providing loans, grants, or other Federal assistance in situations where construction is performed by its own employees. However, under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of Federal-aid must pay these employees according to Davis-Bacon labor standards.

(i) The terms building or work generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a building or work within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(j) The terms construction, prosecution, completion, or repair mean the following:

(1) All types of work done on a particular building or work at the site thereof, including work at a facility which is deemed a part of the site of the work within the meaning of (paragraph (l) of this

section by laborers and mechanics employed by a construction contractor or construction subcontractor (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, all work done in the construction or development of the project), including without limitation--

(i) Altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site;

(ii) Painting and decorating;

(iii) Manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996 in the construction or development of the project);

(iv)(A) Transportation between the site of the work within the meaning of paragraph (l)(1) of this section and a facility which is dedicated to the construction of the building or work and deemed a part of the site of the work within the meaning of paragraph (l)(2) of this section; and

(B) Transportation of portion(s) of the building or work between a site where a significant portion of such building or work is constructed, which is a part of the site of the work within the meaning of paragraph (l)(1) of this section, and the physical place or places where the building or work will remain.

(2) Except for laborers and mechanics employed in the construction or development of the project under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, and except as provided in paragraph (j)(1)(iv)(A) of this section, the transportation of materials or supplies to or from the site of the work by employees of the construction contractor or a construction subcontractor is not ``construction, prosecution, completion, or repair'' (see Building and Construction Trades Department, AFL-CIO v. United States Department of Labor Wage Appeals Board (Midway Excavators, Inc.), 932 F.2d 985 (D.C. Cir. 1991)).

(k) The term public building or public work includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(l) The term site of the work is defined as follows:

(1) The site of the work is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (l)(3) of this section, job headquarters, tool yards, batch plants, borrow pits, etc., are part of the site of the work, provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and provided they are adjacent or virtually adjacent to the site of the work as defined in paragraph (l)(1) of this section;

(3) Not included in the site of the work are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier, which are established by a supplier of materials for the project before opening of bids and not on the site of the work as stated in paragraph (l)(1) of this section, are not included in the site of the work. Such permanent, previously established facilities are not part of the site of the work, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

(m) The term laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of part 541, are laborers and mechanics for the time so spent.

(n) The terms apprentice, trainee, and helper are defined as follows:

(1) Apprentice means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency

recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice;

(2) Trainee means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

(3) These provisions do not apply to apprentices and trainees employed on projects subject to 23 U.S.C. 113 who are enrolled in programs which have been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).

(4) A distinct classification of ``helper'' will be issued in wage determinations applicable to work performed on construction projects covered by the labor standards provisions of the Davis-Bacon and Related Acts only where:

(i) The duties of the helper are clearly defined and distinct from those of any other classification on the wage determination;

(ii) The use of such helpers is an established prevailing practice in the area; and

(iii) The helper is not employed as a trainee in an informal training program. A ``helper'' classification will be added to wage determinations pursuant to Sec. 5.5(a)(1)(ii)(A) only where, in addition, the work to be performed by the helper is not performed by a classification in the wage determination.

(o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is employed regardless of any contractual relationship alleged to exist between the contractor and such person.

(p) The term wages means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan of program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(q) The term wage determination includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of Sec. 1.6 of this title.

[48 FR 19541, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983; 55 FR 50149, Dec. 4, 1990; 57 FR 19206, May 4, 1992; 65 FR 69674, Nov. 20, 2000; 65 FR 80267, Dec. 20, 2000]

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ATTACHMENT 2

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

June 1, 2009

Mr. Matthew Rogers
Senior Advisor for Recovery Act Implementation
Office of the Secretary
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Mr. Rogers:

This is in response to your inquiry concerning application of the Davis-Bacon Act (DBA) labor standards requirements contained in the American Recovery and Reinvestment Act of 2009 (ARRA) to the Department of Energy (DOE) Weatherization Assistance Program under part A of title IV of the Energy Conservation and Production Act (42 U.S.C. 6861 *et seq.*). You specifically request guidance as to whether laborers and mechanics employed by a Community Action Agency will be subject to the Davis-Bacon labor standards requirements when performing work on a DOE weatherization assistance project funded in whole or in part with funding appropriated by ARRA.

As you know, ARRA appropriates $5 billion for the DOE Weatherization Assistance Program, which was established by the Energy Conservation and Production Act in 1976. It is our understanding that DOE awards grants under the Weatherization Assistance Program to state-level government agencies, which then contract with local agencies, usually Community Action Agencies, to deliver weatherization services to eligible residents. Individuals and families apply for assistance through their local agencies. Once they are approved for services, professionally trained weatherization assistance program technicians perform on-site home energy audits to identify cost-effective measures that can be taken. Crews then make repairs and improvements to increase energy efficiency that will bring down the energy costs for the low-income resident. It is our understanding that the technicians conducting the weatherization audits are typically employees of the governmental or community action agencies while the repair crews often work for contractors.

Section 1606 of ARRA broadly applies Davis-Bacon labor standards to ARRA-funded construction projects by specifying that:

> Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at

> rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code [Davis-Bacon Act]. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (60 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.

The Department of Labor has long held that governmental agencies (such as States or their political subdivisions) are not considered "contractors" or "subcontractors" within the meaning of the Davis-Bacon Act when the construction is performed by their own employees on a "force account" basis. *See* 29 CFR 5.2(h). In essence, the governmental agency receiving the grant decides not to contract out the work but actually performs it with its own employees. It is our view that laborers and mechanics employed by a private, non-profit Community Action Agency cannot be considered as force account labor and will be covered under the Davis-Bacon labor standards requirements when performing ARRA-assisted weatherization work.

In addition, when a Community Action Agency contracts out work on a DOE weatherization project that is assisted with ARRA funding, the Community Action Agency must apply the Davis-Bacon labor standards – the contract clauses set forth at 29 CFR 5.5 and the appropriate Davis-Bacon wage determination – to the contracts for such work. Thus, repair crews performing the duties of laborers or mechanics for a Community Action Agency or its contractors must be paid at least the Davis-Bacon prevailing wages. However, certain activities such as energy audits and inspection work are not usually viewed as construction work performed by laborers and mechanics within the meaning of the DBA and, thus, technicians conducting energy audits would not be subject to the Davis-Bacon requirements.

Any request for further consideration of this matter should be accompanied with appropriate supporting documentation and sent to John L. McKeon, Deputy Administrator, Wage and Hour Division, 200 Constitution Avenue, N.W., Room S-3502, Washington, D.C. 20210.

Sincerely,

Timothy J. Helm
Chief, Branch of Government Contracts Enforcement
Office of Enforcement Policy

ATTACHMENT 3

Frequently Asked Davis-Bacon Questions and Answers

Here you can find answers to questions dealing with compliance with the Davis-Bacon Act (DBA) requirements of the 2009 Recovery Act for the U.S. Department of Energy (DOE) State Energy Program (SEP) and Energy Efficiency and Conservation Block Grant Programs (EECBG). You can find answers on the following topics:

Where do I go for more help with Davis-Bacon Requirements?

1. **Where to Obtain Additional Information:**
   For additional information, please visit the U.S. Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy Weatherization and Intergovernmental Program Web site.

   You may also visit the U.S. Department of Labor (DOL) Wage and Hour Division or call the DOL Wage-Hour Toll-Free Information and Helpline between 8 a.m. and 5 p.m. (in your time zone): 1-866-4US-WAGE (1-866-487-9243).

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General Questions

2. **Do the David-Bacon Act (DBA) requirements of the 2009 Recovery Act apply to SEP grants to Native American tribal governments?**
   Tribal governments are not considered by the Department of Labor to be contractors or subcontractors, and their workers are not covered by DBA. However, any contracts for energy efficiency, conservation, or renewable energy construction work awarded by the tribal governments must include DBA labor clauses and applicable wage determinations for contract workers.

3. **Why does the DBA apply to the DOE State Energy Program (SEP) and Energy Efficiency and Conservation Block Grant (EECBG) Program?**
   The American Recovery and Reinvestment Act (ARRA) of 2009 provided approximately $3.1 billion in funding for DOE's SEP and $3.2 billion in funding for DOE's EECBG program. Section 1606 of the Recovery Act specifies that laborers and mechanics employed by contractors and subcontractors on construction projects funded directly by or assisted in whole or in part under the Recovery Act, which includes the DOE-funded SEP, must be paid at least the wages rates prevailing in the locality in accordance with the DBA. State and local units of government are not considered contractors under the DBA when the construction is performed

by their own employees. Contractors and subcontractors of State and local units of government are also DBA-covered.

4. **Are prevailing wages going to be required for all projects using Recovery Act money, whether or not they are public sector projects?**
   Yes.

5. **Are local government providers employees subject to DBA?**
   Local units of government are not considered by the Department of Labor to be contractors or subcontractors, and their workers are not covered by DBA. Any contracts awarded by the local government, however, must include the DBA labor clauses and applicable wage determination(s) for work performed using SEP and EECBG grant funding under the Recovery Act.

6. **Is the $2,000 Davis-Bacon Act threshold based on the entire amount of the contract, including equipment costs, or only on the labor costs?**
   The $2,000 DBA threshold applies to the total cost of a contract; it is not based on contract labor costs alone.

7. **Can States use HUD Davis-Bacon forms?**
   No. Please use the standard U.S. Department of Labor (DOL) forms that are available on the DOL Wage Determinations page of its Web site. There you can find, for example, the Certified Payroll form (PDF 308 KB). Download Adobe Reader.

8. **Does the DBA apply to the Appliance Rebate Program?**
   No, the DBA does not apply to the Appliance Rebate Program. The DBA only applies to laborers and mechanics performing construction at the work site. The Appliance Rebate Program does not involve the use of Laborers and mechanics performing construction at the work site. Additionally, the DBA does not apply to workers of the material suppliers who deliver and set up energy efficient appliances such as refrigerators, because material suppliers only spend an incidental amount of time performing work at the site.

9. **If an award is being issued through either an SEP or EECBG program grant for solar panel installation on a building, what wage determination should be used?**
   With respect to solar installation, the described work would meet the description of residential construction if it is being performed on a single family residence or apartment or condominium, etc. of 4 stories or less, and the general wage determination for residential construction for the applicable county would apply. If the structure is more than 4 stories or is a building, not a residence, then the general wage determination for building construction for the applicable county would apply. All individuals performing this work should be paid at the most appropriate classification, possibly depending upon local code as to qualifications for solar installation (carpenter, electrician, etc.), in accordance with the residential or building construction wage determination.

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Davis-Bacon and Other Funding

10. **If an agency uses other non-Recovery Act funding on a job that includes the use of SEP funding, does the contractor have to pay DBA wages for all the work?**
    If the ARRA-funded work is done in conjunction with the non-ARRA funded work, so that all the work is ongoing at the same time, the whole project is subject to the DBA. The Recovery Act provides that "all laborers and mechanics . . . on projects funded directly by or assisted in whole or in part" with Recovery Act funding are subject to the DBA.

    If, however, the work is separated into two separate and distinct projects and not performed together (i.e., the work using non-Recovery Act funds is completed prior to or after the ARRA-funded work, the work crews are not working together, and separate contracts are used for the two types of work), the non-ARRA funded work would not be subject to the DBA. This separation of work answer assumes the non-ARRA funded work is not subject to DBA.

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Who is covered by the Davis-Bacon Act?

11. **Which workers are covered by DBA and which are not?**
    The DBA applies to laborers and mechanics employed at the work site. Auditors, inspectors, and other personnel not performing physical or manual work at the site of the work are not covered by DBA.

ATTACHMENT 4

CALIFORNIA LABOR CODE
1720. (a) As used in this chapter, "public works" means:

CALIFORNIA LABOR CODE
1720.4. (a) This chapter shall not apply to any of the following work:

(1) Any work performed by a volunteer. For purposes of this section, "volunteer" means an individual who performs work for civic, charitable, or humanitarian reasons for a public agency or corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, without promise, expectation, or receipt of any compensation for work performed.

(A) An individual shall be considered a volunteer only when his or her services are offered freely and without pressure and coercion, direct or implied, from an employer.

(B) An individual may receive reasonable meals, lodging, transportation, and incidental expenses or nominal nonmonetary awards without losing volunteer status if, in the entire context of the situation, those benefits and payments are not a substitute form of compensation for work performed.

(C) An individual shall not be considered a volunteer if the person is otherwise employed for compensation at any time (i) in the construction, alteration, demolition, installation, repair, or maintenance work on the same project, or (ii) by a contractor, other than a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, that is receiving payment to perform construction, alteration, demolition, installation, repair, or maintenance work on the same project.

(2) Any work performed by a volunteer coordinator. For purposes of this section, "volunteer coordinator" means an individual paid by a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, to oversee or supervise volunteers. An individual may be considered a volunteer coordinator even if the individual performs some nonsupervisory work on a project alongside the volunteers, so long as the individual's primary responsibility on the project is to oversee or supervise the volunteers rather than to perform nonsupervisory work.

(3) Any work performed by members of the California Conservation Corps or of Community Conservation Corps certified by the California Conservation Corps pursuant to Section 14507.5 of the Public Resources Code.

(b) This section shall apply retroactively to otherwise covered work concluded on or after January 1, 2002, to the extent permitted by law.

(c) On or before January 1, 2011, the director shall submit a written report to the Legislature that does both of the following:

(1) Describes the number and the nature of complaints received and investigations conducted involving the use of volunteers on public works projects subject to this chapter, that are projects as described in Section 21190 of the Public Resources Code.

(2) Provides an estimate of each of the following as they relate to public works projects that involve the acquisition, presentation, or restoration of natural areas, including parks or ecological reserves, or other public works projects that have one or more of the purposes, as described in Section 21190 of the Public Resources Code:

(A) The number of hours per year that volunteers work on public works projects.

(B) The cost per year of public works projects, that are projects as described in Section 21190 of the Public Resources **Code**, and the percentage of work performed by volunteers.

(C) The types of work done by volunteers on public works projects, that are projects as described in Section 21190 of the Public Resources **Code**.

(d) The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the Environmental License Plate Fund for the purposes of funding the report required pursuant to subdivision (c).

(e) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2012, deletes or extends that date.