

Memorandum

*Making Conservation
a California Way of Life.*

To: DEPUTY DISTRICT DIRECTORS, Construction
DEPUTY DIVISION CHIEF, Structure Construction
CONSTRUCTION MANAGERS
SENIOR CONSTRUCTION ENGINEERS
RESIDENT ENGINEERS

Date: December 17, 2018

File: Division of Construction
CPD 18-8



From: BOB FINNEY, Acting Chief
Division of Construction

Subject: **WILDFIRE EFFECTS ON CONSTRUCTION PROJECTS**

Wildfires in California may have affected some on-going construction contracts. This directive seeks to clarify contract administration concerning losses of construction work or materials, or contract time because of the fires.

Under Section 5-1.37, "Maintenance and Protection," of the *Standard Specifications* (2018), the contractor maintains and protects work until the California Department of Transportation (Caltrans) has granted relief from maintenance or accepted the contract. Pursuant to Section 5-1.39, "Damage Repair and Restoration," of the *Standard Specifications*, the contractor must restore damaged work to the same state of completion as before the damage. If portions of the work received relief from maintenance and protection under Section 5-1.37, the contractor is not responsible for damage to a relieved work part, except for damages caused by their own activities or negligence. Section 5-1.39B, "Damage Caused by an Act of God," of the *Standard Specifications*, limits contractor responsibility if the damage was caused by an "act of God" as defined by Public Contract Code (PCC) Section 7105; however, wildfires do not meet this definition.

Contractors may seek recovery of their losses through their insurance companies.

Days on which the contractor could not perform at least 50 percent of the scheduled work with at least 50 percent of the scheduled labor and equipment because of an unanticipated fire event, including resulting air quality, not caused by either contractual party are non-working days (reference Section 1-1.07B, "Glossary," of the *Standard Specifications*). In addition, record non-working days for restorative work that is on the critical path as supported by a revised schedule.

If you have questions or comments regarding this directive, please contact Ken Darby, Division of Construction, at Ken.Darby@dot.ca.gov or (916) 653-2032.