

Charles E. Freeman  
City Manager  
City of Coos Bay  
500 Central Ave  
Coos Bay OR 97420

Re: *Determination Whether Project is Subject to Prevailing Wage Rate*  
Project: City of Coos Bay Skate Park  
Requested by: City of Coos Bay

Dear Mr. Freeman:

On April 4, 2008, you submitted a request on behalf of the City of Coos Bay (“City”) asking whether a proposed project is subject to the Prevailing Wage Rate law. Sufficient information to make a determination was received by April 14, 2008, and therefore, the commissioner issues the following determination:

#### **FINDINGS OF FACT**

1. The City intends to design, construct, own, and operate a skate park on a City-owned property located at the northwest corner of 8<sup>th</sup> and Commercial. It is anticipated that the skate park will be built over a period of several years, as funding becomes available. The initial improvements, which are expected to be constructed within the next 15 months, include grading, installation of utilities, and the construction of one or more concrete skate ramps and bowls, along with related apparatus.
2. The City estimates that the cost to complete the initial improvements is \$71,477.00. Of this amount, \$46,377 represents payroll costs for work performed by temporary City employees, who will design the project and act as project managers. The remaining amount of \$25,100 represents the cost of materials, which the City will purchase using funds donated to it and maintained in a special account.
3. Construction of the skate park will be performed by volunteers.

#### **CONCLUSIONS OF LAW**

1. The construction project will be carried on by a public agency. Therefore, the definition of a “public works” under ORS 279C.800(6)(a)(A) will apply to this project.

2. The total price for the initial improvements is less than \$50,000. Pursuant to ORS 279C.810(2), the prevailing wage rate law does not apply to projects for which the contract price does not exceed \$50,000. Pursuant to ORS 279C.810(1)(a)(F) and (G), staff resources of the public agency used to manage a project, to provide a principal source of supervision, coordination or oversight of a project, or to design or inspect one or more components of a project are not “funds of a public agency.” If the price of the project eventually exceeds \$50,000, the prevailing wage rate law will apply.
3. Pursuant to ORS 279C.840(1), the prevailing rate of pay must be paid by any contractor or subcontractor to workers on a public works project. Therefore, bona fide volunteers and employees of a public agency are not required to receive the prevailing rate of pay.

## **DETERMINATION**

Based on the foregoing, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will apply to the City of Coos Bay Skate Park project if the contract price exceeds \$50,000.

This determination is based on the agency’s file as of the date of this determination. The commissioner may make a different determination if any of the project information is incorrect, or if the project or project documents are modified or supplemented after the date of this determination.

## **RIGHT TO A HEARING**

The requestor and any person adversely affected or aggrieved by this determination are entitled to a hearing as provided by the Administrative Procedures Act (ORS 183.413 to 183.470) and ORS 279C.817. If you want a hearing, the Bureau of Labor and Industries, Wage and Hour Division must receive your written request for hearing within 21 days from the date this notice was mailed. Hearing requests should be addressed and delivered to:

Administrator  
Wage and Hour Division  
Bureau of Labor and Industries  
800 NE Oregon St., Suite 1045  
Portland, Oregon 97232

If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

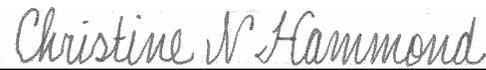
If you request a hearing, you will be notified of the date, time and place of the hearing. You have the right to be represented by legal counsel at a hearing. However, if you are a government agency, corporation, partnership, or unincorporated association, you must be represented by either legal counsel or an authorized representative. If you request a hearing, you

will receive information on Contested Case Rights and Procedures before the hearing. After the hearing, an order confirming, modifying, or reversing this determination will be issued. This determination shall remain in effect until the final order is issued.

If you request a hearing, but fail to appear at any scheduled hearing, you will have waived your right to hearing, and the commissioner may issue a final order by default. If the commissioner issues a final order by default, the agency file on this matter shall serve as the record for purposes of proving a prima facie case. You are not entitled to judicial review of this determination order unless you have made a timely request for a hearing.

Date: April 21, 2008

Dan Gardner, Commissioner  
Bureau of Labor and Industries

A handwritten signature in cursive script that reads "Christine N. Hammond".

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Christine N. Hammond, Administrator  
Wage and Hour Division  
Bureau of Labor and Industries

## **Certificate of Service**

On April 21, 2008, I mailed, by certified mail, the Prevailing Wage Rate Determination for the City of Coos Bay Skate Park project to the requestor and any public agencies identified by requestor as being associated with this project, as follows:

Charles E. Freeman  
City Manager  
City of Coos Bay  
500 Central Ave  
Coos Bay OR 97420

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Gerhard Taeubel, Compliance Specialist  
Wage and Hour Division  
Bureau of Labor and Industries