

Marcy Black  
Deputy Director – Administration  
Jackson County Airport Authority  
3650 Biddle Road  
Medford OR 97504

Re: *Determination Whether Project is Subject to Prevailing Wage Rate*  
Project: Air Cargo Facility at Rogue Valley International—Medford Airport  
Requested by: Jackson County Airport Authority

Dear Ms. Black:

On February 28, 2008, you submitted a request on behalf of the Jackson County Airport Authority, a subdivision of Jackson County (“County”), asking whether a proposed project is subject to the Prevailing Wage Rate law. Sufficient information to make a determination was received by March 13, 2008, and therefore, the commissioner issues the following determination:

#### **FINDINGS OF FACT**

1. Sky Air Cargo, LLC (“Developer”) has entered into a 30-year lease with the County for certain unimproved property located at the airport. The Developer intends to construct and operate an air cargo facility consisting of two air freight and warehouse buildings on the site.
2. The County intends to rehabilitate an existing aircraft parking apron and to expand an air cargo apron and taxiway at the airport using grant funds obtained through the *Connect Oregon II* program. The County will treat these improvements as a public works. The County intends to use the costs of constructing the air cargo facility to satisfy the program’s requirement that grant recipients pay for at least 20 percent of the project costs.
3. It has been represented that neither the County nor any other public agency will contribute funds for construction of the air cargo facility, which will be owned by the Developer for the term of the lease.

#### **CONCLUSIONS OF LAW**

1. The County entered into its lease agreement with the Developer after July 1, 2007. Therefore, the prevailing wage law as amended on July 1, 2007, applies to this project.

2. The construction project is intended to be privately owned. No funds of a public agency will support the project and no public agency will occupy or use the completed building. Therefore the definition of a “public works” under ORS 279C.800(6)(a)(B) and (C) do not apply to this project.
3. If the project is a public works under ORS 279C.800(6)(a)(A), the exemption applies for privately owned projects for which less than \$750,000 of funds of a public agency are used and less than 25 percent of the square footage will be occupied or used by a public agency. ORS 279C.810(2)(c).

## **DETERMINATION**

Based on the foregoing, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, do not apply to the construction of the air cargo facility.

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 HB 2140 Section 43 (Enrolled) OR Laws 2007. 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 8, 2008

Dan Gardner, Commissioner  
Bureau of Labor and Industries

*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 8, 2008, I mailed, by certified mail, the Prevailing Wage Rate Determination for the Air Cargo Facility at Rogue Valley International—Medford Airport project to the requestor and any public agencies identified by requestor as being associated with this project, as follows:

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Jackson County Airport Authority  
3650 Biddle Road  
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Gerhard Taeubel, Compliance Specialist  
Wage and Hour Division  
Bureau of Labor and Industries