



November 4, 2013

Brian Craner, Capital Projects Manager
Lane County, County Administration
125 East 8th Avenue
Eugene, OR 97401

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*
Project: Market District LLC Mixed Use Development
Requested by: Lane County

Dear Mr. Craner:

On October 15, 2013, you submitted a request asking if the Prevailing Wage Rate laws would apply to the proposed mixed use development project that may result from an Option Agreement into which Lane County proposes to enter with Market District, LLC. Sufficient information to make a determination was received on October 31, 2013, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. Lane County, a public agency, owns two parcels of real property in Eugene, Oregon, known as Taxlot 3200 and Taxlot 2800, and referred to as the "Properties."
2. Lane County proposes entering into an Option Agreement with Market District, LLC ("Market District"), a domestic limited liability company. According to the Option Agreement, Market District desires to acquire an option to enter into long-term ground leases for the Properties for the purposes of developing, constructing and operating a mixed use commercial development, including market rate dwelling units, work force housing, and retail and office space. This proposed development is referred to as the "Project."
3. With the exception of the first six months, during the term of the Option Agreement, Market District will pay Lane County a monthly fee.
4. Lane County owns two additional parcels of land that are adjacent to the Properties. Housing and Community Services Agency of Lane County

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800 NE Oregon St. Suite 1045
Portland, OR 97232-2180
(971) 673-0761
Fax (971) 673-0762

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("HACSA"), a public agency, plans to lease these two parcels, referred to as the HACSA Development Property, from Lane County and construct a mixed-use affordable housing development. HACSA will contract for this project, and construction could begin within three to six years. The project will use funds of a public agency.

5. The Option Agreement between Lane County and Market District establishes Market District's right to lease the Properties within a four-year period if certain milestones are met. The milestones include:
 - a. At least three public forums that will provide the public the opportunity to comment on the Project. The public forums must be advertised and conducted in a manner Lane County finds acceptable, and Lane County must have the opportunity to participate in the forums.
 - b. Market District must work with HACSA to formulate design guidelines that will govern the development of both the Properties and the HACSA Development Property. Such guidelines will address site access and pedestrian, vehicular and bicycle circulation; building uses; compliance with appropriate code requirements, height restrictions, and setback requirements; common areas; compatibility of development aesthetics; parking counts and allocations; and public health and safety. Market District's development of the Properties must be consistent with the Design Guidelines.
 - c. Market District must submit the Design Guidelines to Lane County for approval. Lane County may approve the Design Guidelines as submitted, or may modify them as necessary to comply with applicable law and regulations.
 - d. Market District must submit a Use and Development Plan to Lane County that constitutes a complete concept for the development. Among other things, the Plan must identify whether Market District will seek public funds or offsite public improvements to support the Project.
6. At this time, Market District's pro forma is limited to private funding, and it is unknown if any public improvements will be necessary to support the project.
7. Lane County may terminate the Option Agreement if any milestones are not met.
8. If Market District successfully completes all milestones required in the Option Agreement, Lane County will enter into a 99-year ground lease for the Properties with Market District. The lease requires that the project be performed in accordance with all legal requirements, but does not require construction to occur. Title to the Project, including all future improvements made to the Project, will be and will remain in Market District. At the expiration of the Lease, title passes to Lane County.
9. At this time, it is unknown if any device, structure or mechanism that uses solar radiation will be constructed or installed on the Properties.

CONCLUSIONS OF LAW

1. Lane County will not have substantial control over the proposed mixed use development project, nor will Lane County enter into a binding agreement for construction for the Project. As such, the proposed project will not be carried on or contracted for by any public agency, and therefore does not meet the definition of “public works” under ORS 279C.800(6)(a)(A). However, if public improvements necessary to support the project are contracted for by a public agency and use funds of a public agency, such work would meet the definition of “public works” under ORS 279C.800(6)(a)(A). If such improvements were to occur, the factors listed in ORS 279C.827(1)(c) would need to be considered to determine if the proposed project could be divided from the public improvements.
2. Considering the factors listed in ORS 279C.827(1)(c), the proposed project will not be part of HACSA’s mixed-use affordable housing development project.
3. The proposed project will be privately owned, but at this time, it is expected that no funds of a public agency will be used on the project, and therefore, the proposed project does not meet the definition of “public works” under ORS 279C.800(6)(a)(B). If circumstances change and funds of a public agency will be used on the proposed project, this will need to be reevaluated.
4. No public agency will occupy or use any of the proposed project, and therefore the proposed project does not meet the definition of “public works” under ORS 279C.800(6)(a)(C).
5. At this time it is unknown if any device, structure or mechanism that uses solar radiation will be constructed or installed on the Properties, and therefore it cannot be determined whether the proposed project meets the definition of “public works” under ORS 279C.800(6)(a)(D).

DETERMINATION

Based on the foregoing, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will not apply to the proposed Market District LLC mixed use development project. However, if public improvements are necessary to support the proposed project, and if those improvements are carried on or contracted for by any public agency and use funds of a public agency, the Prevailing Wage Rate laws could apply to the proposed project. Additionally, if any device, structure or mechanism that uses solar radiation will be constructed or installed on the Properties, the Prevailing Wage Rate laws could apply to the proposed project.

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.

REQUEST FOR A RECONSIDERATION

After the commissioner issues a determination, the requestor or any public agency served with a copy of the determination may request that the commissioner reconsider the determination. A request for reconsideration must be submitted in writing to the Prevailing Wage Rate Unit, must include the reason or reasons for the request and any documents in support of the request, and must be received within 15 calendar days of the date the determination was mailed. A request for reconsideration does not toll the time period for requesting a contested case hearing on the 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

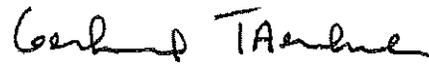
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: November 4, 2013

Brad Avakian, Commissioner
Bureau of Labor and Industries

A handwritten signature in black ink, appearing to read "Gerhard Taeubel". The signature is written in a cursive style with a horizontal line underneath it.

Gerhard Taeubel, Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On November 4, 2013, I mailed the Prevailing Wage Rate Determination for the proposed Market District LLC mixed use development project to the requestor, as follows:

Brian Craner, Capital Projects Manager
Lane County, County Administration
125 East 8th Avenue
Eugene, OR 97401



Susan Wooley
PWR Technical Assistance Coordinator
Wage and Hour Division
Bureau of Labor and Industries