



July 30, 2013

Ross Cornelius  
Vice President, Development  
Guardian Real Estate Services, LLC  
710 NW 14<sup>th</sup> Ave., 2<sup>nd</sup> Floor  
Portland, OR 97209

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*  
Project: NAYA Generations Project  
Requested by: Guardian Real Estate Services, LLC

Dear Mr. Cornelius:

On July 17, 2013 you submitted a request on behalf of Guardian Real Estate Services, LLC asking if the Prevailing Wage Rate laws would apply to the NAYA Generations Project (the "project"). Sufficient information to make a determination was received on July 27, 2013, and therefore, the commissioner issues the following determination:

## FINDINGS OF FACT:

1. Native American Youth and Family Center ("NAYA") is a domestic nonprofit serving Native American families in the Portland Metro area. NAYA currently owns 53 units of affordable housing and is looking to expand their affordable housing holdings through acquisition and new development.
2. The NAYA Generations Project will be located at 5203 SE 82<sup>nd</sup> Avenue in Portland. The project site is approximately 2.1 acres of an old elementary school site owned by Portland Public Schools. Portland Public Schools has leased the land to the City of Portland, who in turn, has subleased the land to NAYA to develop the project. NAYA will have the option to purchase the land for \$1.00 after 15 years.

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3. The project will involve developing 40 units of affordable housing. These units will include 16 units for families agreeing to adopt or become permanent guardians for foster children and 24 units for seniors and elders providing support and mentoring for families and kids. The project will also include removal of the old school building on the project site.
4. The project housing units will comprise five buildings, all to be constructed below four stories in height.
5. The project will include a self-contained resident services program which will include a common gathering room, a reception area, office space for property operations and the non-profit resident service provider, counseling areas and a multimedia room for tutoring and computer learning.
6. Occupancy of 95% of the units will be restricted to households earning less than 60% of the median family income for Multnomah County.
7. NAYA and Guardian Real Estate Services will co-own the project through Limited Liability Corporations comprising membership in a Limited Partnership, which will include the tax credit investor as 99.99% owner. The Limited Partnership will own the development. Guardian Real Estate Services is an affordable housing developer.
8. The total project cost is estimated at \$10.85 million. Funding for the project will come from the following sources:
  - a. Funds of a public agency: In excess of \$780,000\*
    - i. Portland Housing Bureau Tax Increment Financing - \$500,000
    - ii. Oregon Housing & Community Services - \$280,000

\* Would include the difference between the purchase price and the value of land in 15 years if NAYA executes the option to purchase for \$1.00.
  - b. Other funds: \$9,171,000
    - i. Low Income Housing Tax Credits (LIHTC) - \$7,221,000
    - ii. Private Lender Loan - \$1,500,000
    - iii. Private Fundraising - \$1,050,000
    - iv. Deferred Developer Fees - \$300,000

## **CONCLUSIONS OF LAW:**

1. The NAYA Generations Project will be privately owned and will use more than \$750,000 in funds of a public agency. Therefore, the definition of “public works” under ORS 279C.800(6)(a)(B) will apply to this project.
2. The prevailing wage rate laws do not apply to projects for residential construction that are privately owned and that predominately provide affordable housing. ORS 279C.810(2)(d). The NAYA Generations Project will be privately owned by a limited partnership. The project will be a residential construction project and all five buildings will be not more than four stories in height. Finally, the project will predominantly provide affordable housing because 95% of the units will be restricted to households earning 60% of the area median income and below. Therefore, this exception applies and the prevailing wage rate laws will not apply to the NAYA Generations Project.

## **DETERMINATION:**

The Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will not apply to the proposed construction, reconstruction, major renovation and/or painting of the NAYA Generations 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 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, OR 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: July 30, 2013

BRAD AVAKIAN, Commissioner  
Bureau of Labor and Industries



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GERHARD TAEUBEL,  
Administrator  
Wage and Hour Division  
Bureau of Labor and Industries

## Certificate of Service

On July 30, 2013, I mailed the Prevailing Wage Rate Determination for the NAYA Generations Project to the requestor and associated agencies, as follows:

Ross Cornelius  
Vice President, Development  
Guardian Real Estate Services, LLC  
710 NW 14<sup>th</sup> Ave., 2<sup>nd</sup> Floor  
Portland, OR 97209

Certified Mail – Return Receipt Requested  
Article #: 7012 3050 0001 7255 2611

Bob Alexander  
Facilities and Asset Management  
Portland Public Schools  
501 N. Dixon  
Portland, OR 97227

Certified Mail – Return Receipt Requested  
Article #: 7012 3050 0001 7255 2628

Karl Dinkenspeil  
Housing Bureau  
City of Portland  
421 SW 6<sup>th</sup> Ave.  
Portland, OR 97204

Certified Mail – Return Receipt Requested  
Article #: 7012 3050 0001 7255 2635

Lynn Ward  
Director of Operations and Finance  
Native American Youth and Family Center  
5135 NE Columbia Blvd.  
Portland, OR 97218

Certified Mail – Return Receipt Requested  
Article #: 7012 1010 0001 2377 9829

Vince Chiotti  
Regional Advisor to the Department  
Oregon Housing & Community Services  
1600 SW 4<sup>th</sup> Ave., Suite 109  
Portland, OR 97201

Certified Mail – Return Receipt Requested  
Article #: 7012 3050 0001 7255 2994



Cristin Casey  
Compliance Specialist  
Wage and Hour Division  
Bureau of Labor and Industries