



June 28, 2013

Jonathan Trutt  
Housing Director  
Northwest Housing Alternatives  
2316 SE Willard Street  
Milwaukie, OR 97222-7740

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*  
Project: Northwest Housing Alternatives (NHA) Campus  
Requested by: Northwest Housing Alternatives

Dear Mr. Trutt:

On June 24, 2013, you submitted a request on behalf of Northwest Housing Alternatives asking if the Prevailing Wage Rate law would apply to the proposed Northwest Housing Alternatives (NHA) Campus project. Sufficient information to make a determination was received on June 27, 2013, and therefore, the commissioner issues the following determination:

## FINDINGS OF FACT:

1. Northwest Housing Alternatives ("NHA") is a domestic non-profit corporation that develops and owns affordable housing throughout Oregon. NHA's campus is in Milwaukie and currently consists of a shelter for homeless families (the Annie Ross House), two office buildings, and nine units of rental housing. These buildings are located on contiguous parcels of land totaling approximately 1.75 acres. NHA plans to redevelop its campus.
2. Beginning in 2016, NHA plans to demolish all buildings on the NHA campus and replace them with a single office building, a new homeless shelter for families and approximately 40 units of affordable rental housing. All rental housing units will be restricted to households with incomes at or below 60% of the area median income.

### PORTLAND

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

### SALEM

3865 Wolverine St. NE; E-1  
Salem, OR 97305-1268  
(503) 378-3292  
FAX (503) 373-7636

### EUGENE

1400 Executive Parkway, Suite 200  
Eugene, OR 97401-2158  
(541) 686-7623  
FAX (541) 686-7980

### BEND

Apprenticeship and Training  
Worksource Bend  
1645 NE Forbes Rd, Ste 106  
Bend, OR 97701-4990  
(541) 322-2435  
FAX (541) 389-8265

Oregon Relay TTY:711

### MEDFORD

Apprenticeship and Training  
119 N Oakdale Ave.  
Medford, OR 97501-2629  
(541) 776-6201  
FAX (541) 776-6284



3. The campus redevelopment project will involve three components – the office, the shelter and the affordable housing. Each of the three components will be:
  - a. Privately owned,
  - b. Four stories or less,
  - c. Completely physically distinct from the others,
  - d. Located on separate lots,
  - e. Separately financed,
  - f. Designed by the same architect under three separate contracts, one for each component, and
  - g. Built over the course of 18 months by the same general contractor under three separate contracts, one for each component.
  
4. The estimated total project cost is \$12,782,680, \$1,400,000 of which is funds of a public agency. Each component has a different funding source.
  - a. New Office - \$2,558,331
    - i. Funds of a public agency: \$0
    - ii. Other funds: \$2,558,331
      1. NHA fundraising: \$2,558,331
  
  - b. New Homeless Shelter - \$586,759
    - i. Funds of a public agency: \$300,000
      1. Community Development Block Grant (CDBG) from Clackamas County: \$300,000
    - ii. Other funds: \$286,759
      1. NHA fundraising: \$286,759
  
  - c. New Affordable Housing - \$9,637,590
    - i. Funds of a public agency: \$1,100,000
      1. HOME funds from Clackamas County: \$800,000
      2. General Housing Account Program (GHAP) from Oregon Housing & Community Services: \$100,000
      3. Low Income Weatherization Program from Oregon Housing & Community Services: \$200,000
    - ii. Other funds: \$8,537,590
      1. Low Income Housing Tax Credits (LIHTC): \$6,217,373
      2. Mortgage (including Oregon Affordable Housing Tax Credit): \$2,120,217
      3. Deferred Development Fee: \$200,000

## CONCLUSIONS OF LAW:

1. The definition of “public works” under ORS 279C.800(6)(a)(B) applies to projects that are privately owned, use funds of a private entity and \$750,000 or more in funds of a public agency. The Northwest Housing Alternatives (NHA) Campus project is a privately owned project that uses funds of a private entity and \$1,400,000 in funds of a public agency; therefore, the definition of “public works” under ORS 279C.800(6)(a)(B) applies.
2. The exemption under ORS 279C.810(2)(d) for residential construction projects that are privately owned and predominately provide affordable housing will not apply because the project involves commercial space as well as residential construction.
3. The three project components (New Office, New Homeless Shelter, New Affordable Housing) would be considered one project for the purposes of compliance with the prevailing wage rate laws because ORS 279C.827 prohibits the division of a public works project into more than one contract for the purpose of avoiding compliance with ORS 279C.800 to 279C.870.
4. If a project is a public works of the type described in ORS 279C.800(6)(a)(B) or (C), the commissioner shall divide the project, if appropriate, to separate the parts of the project that include funds of a public agency from the parts of the project that do not include funds of a public agency. Considerations used in making a determination of whether a project can be divided include:
  - a. The physical separation of the project structures,
  - b. The timing of the work on project phases or structures,
  - c. The continuity of project contractors and subcontractors working on project parts or phases,
  - d. The manner in which the public agency and the contractors administer and implement the project,
  - e. Whether a single public works project includes several types of improvements or structures,
  - f. Whether the combined improvements or structures have an overall purpose or function, and
  - g. Other relevant matters as may arise in any particular case.

A consideration of the factors weighs against dividing the components into three separate projects. The funding source for the new office space is all funds of a private entity and the funding sources for the new homeless shelter and the new affordable housing include funds of a private entity and funds of a public agency. However, all three components are located on contiguous parcels of land and all three components are slated for redevelopment beginning in 2016. NHA plans to use one architect to design all three components and plans to use one general

contractor to construct all three components. NHA develops and owns affordable housing and all three campus components will assist in this purpose. That there are different funding sources and different types of structures is insufficient to weigh in favor of dividing the project into separate components.

**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 proposed construction, reconstruction, major renovation and/or painting of the Northwest Housing Alternatives (NHA) Campus 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: June 28, 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 June 28, 2013, I mailed the Prevailing Wage Rate Determination for the Northwest Housing Alternatives (NHA) Campus project to the requestor and affected agencies, as follows:

Jonathan Trutt  
Housing Director  
Northwest Housing Alternatives  
2316 SE Willard Street  
Milwaukie, OR 97222-7740

Certified Mail – Return Receipt Requested  
Article #: 7012 1010 0001 2377 9775

Vince Chiotti  
Oregon Housing & Community Services  
1600 SW 4th Avenue, Suite 109  
Portland, OR 97201

Certified Mail – Return Receipt Requested  
Article #: 7012 1010 0001 2377 9751

Chuck Robbins  
Clackamas County  
Community Development  
2051 Kaen Road, Suite 245  
Oregon City, OR 97045-1284

Certified Mail – Return Receipt Requested  
Article #: 7012 1010 0001 2377 9768



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