



March 4, 2013

Edward Darrow  
Clackamette Cove LLC  
30460 SW Ruth St, 4801  
Wilsonville, OR 97070

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*  
Project: Phase I of The Cove  
Requested by: Clackamette Cove, LLC

Dear Mr. Darrow:

On February 12, 2013, you submitted a request on behalf of Clackamette Cove, LLC, ("Clackamette Cove") asking whether Phase I of a proposed project, referred to as The Cove, will be subject to the Prevailing Wage Rate laws. Sufficient information to make a determination was received on February 26, 2013, and therefore, the commissioner issues the following determination:

## FINDINGS OF FACT

1. The Cove project as proposed will be an 89.59-acre, multi-phase, mixed-use project. The overall plan for the project includes infrastructure work, and the construction of waterfront and garden apartments, a recreation building for the apartment complex, an office building, a mixed-use building, marinas, and a water sports center. This determination is for Phase I of the project only, which includes infrastructure work and the construction of apartment buildings and a recreation building.
2. The Urban Renewal Commission of the City of Oregon City ("the URC") and Clackamette Cove originally entered into a Disposition and Development Agreement ("DDA") for this project on September 2, 2009, but Clackamette Cove did not meet certain conditions required under that DDA and the agreement was terminated on October 10, 2010. Clackamette Cove has now proposed a revised development plan, and the two parties propose to enter into a new DDA in early 2013.

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3. Under the new DDA, Clackamette Cove is obligated to construct the following: “the Infrastructure Work, the Public Amenities, the Waterfront Units, the 120 units of Garden Apartments and the Recreation Building, all pursuant to the terms of this agreement.” Clackamette Cove has the “option to elect to construct any or all” of the remaining phases of The Cove project.
4. According to Clackamette Cove’s Development Proposal, the infrastructure work will include “all roads, cut & fill grading, waterfront esplanade, parks, public parking, trails, utilities and landscaping.”
5. Under the new DDA, Clackamette Cove is required to prepare and submit to the URC design development level plans and specifications for the infrastructure work, the waterfront apartments, the garden apartments, and the recreation building. The URC “has the right, in its sole discretion, to approve, disapprove or approve with conditions the Design Development Plans in its proprietary capacity and not as a land use decision.”
6. Clackamette Cove will contract for and pay for the infrastructure work. Once the work is complete, the URC will reimburse Clackamette Cove up to \$7,000,000 for the cost of the infrastructure work.
7. The URC currently owns the lots on which the waterfront apartments will be built. The appraised value of the property is \$2,750,000. Prior to construction of the apartments, Clackamette Cove will acquire the property from the URC. Under the DDA, the URC will give Clackamette Cove two “Credits” toward the purchase price of the property:
  - i. \$1,200,000, which “represents value added to the Project Site and the Project, thereby increasing their maximum assessed values, by the several prior years of [Clackamette Cove’s] development efforts and risk taking.”
  - ii. An unknown amount for “consultants and third party work completed in the designing and entitlement of the 2012 Master Plan.” Such work includes civil engineering plans, architectural plans, traffic engineering, soil analysis, water resource evaluation, a market study, and an evaluation of trees. This “Credit” amount is unknown, but the DDA stipulates that “[i]n no event shall the purchase price for the Waterfront Property be less than zero.” Therefore, this credit will be between \$0 and \$1,550,000.
8. After Clackamette Cove acquires the waterfront lots from the URC, Clackamette Cove will contract for the construction of the apartment buildings and the recreation building.
9. The parcel of land on which the garden apartments will be built is currently owned by a private third party. Clackamette Cove has the right to acquire this parcel of land.

## CONCLUSIONS OF LAW

1. The Cove project is a privately-owned construction project. ORS 279C.800(6)(a)(B) states privately-owned construction projects are “public works” if they will use \$750,000 or more of funds of a public agency. Phase I of The Cove project will use up to \$7,000,000 in funds of a public agency through the reimbursement the URC will give to Clackamette Cove for the infrastructure work.
2. ORS 279C.810(1)(a)(D) states “funds of a public agency” does not include “[I]and that a public agency sells to a private entity at fair market value,” while ORS 279C.810(1)(a)(E) states “funds of a public agency” does not include the difference between:
  - (i) The value of land that a public agency sells to a private entity as determined at the time of the sale after taking into account any plan, requirement, covenant, condition, restriction or other limitation, exclusive of zoning or land use regulations, that the public agency imposes on the development or use of the land; and
  - (ii) The fair market value of the land if the land is not subject to the limitations described in sub-subparagraph (i) of this subparagraph.

The appraised value of the publicly-owned land Clackamette Cove will acquire from the URC is \$2,750,000. As a result of the credits the URC will give Clackamette Cove, the URC will not be selling the land at the fair market value. Additionally the credits to be given are not as a result of any requirements or restrictions the URC has imposed on the land. Therefore, the Cove project will use between \$1,200,000 and \$2,750,000 in funds of a public agency for the purchase of the land on which the waterfront apartments will be built.

3. Phase I of The Cove project will be a privately-owned construction project that will use private funds and \$750,000 or more of funds of a public agency. Therefore, the project will meet the definition of “public works” under ORS 279C.800(6)(a)(B).
4. No exemptions from ORS 279C.810(2) will apply to Phase I of The Cove project.

## 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 Phase I of the proposed project referred to as The Cove, which includes infrastructure work, and the construction of apartment buildings and a recreation building.

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.

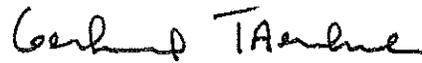
If you request a hearing, you will be notified of the date, time and place of the hearing. You have the right to be represented by legal counsel at a hearing. However, if you are a government agency, corporation, partnership, or unincorporated association, you must be represented by either legal counsel 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: March 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 March 4, 2013, I mailed the Prevailing Wage Rate Determination for the proposed project known as The Cove to the requestor and associated public agency, as follows:

Edward Darrow  
Clackamette Cove, LLC  
30460 SW Ruth St, 4801  
Wilsonville, OR 97070

Eric Underwood, Economic Development Manager  
City of Oregon City  
PO Box 3040  
Oregon City, OR 97045



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