



June 20, 2013

Phillip E. Grillo  
Davis Wright Tremaine LLP  
1300 SW Fifth Ave  
Suite 2400  
Portland, OR 97201-5610

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*  
Project: Urban Grange  
Requested by: Davis Wright Tremaine LLP on behalf of Zenger Farm

Dear Mr. Grillo:

On June 14, 2013 you submitted a request on behalf of Zenger Farm asking if the Prevailing Wage Rate law would apply to the proposed Urban Grange project (“project”). Sufficient information to make a determination was received on June 18, 2013, and therefore, the commissioner issues the following determination:

## FINDINGS OF FACT:

1. Zenger Farm is a domestic nonprofit organization dedicated to promoting sustainable food systems, environmental stewardship and local economic development through working urban farms. Zenger Farm, an urban educational farm, is proposing to construct the “Urban Grange.” The Urban Grange will help inform students, families and community members about the advantages of eating healthy food.
2. The proposed Urban Grange project will be located at 11741 SE Foster Road in Portland. The land upon which the project will be located is leased to Zenger Farm from the City of Portland. Zenger Farm’s lease with the City of Portland is for a term of 50 years, until 2051. Under the terms of the lease, Zenger Farms has two (2) twenty year options to extend the lease. Zenger Farm can assign their leasehold interest in the property, including their interest in any building on the

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

**EUGENE**  
1400 Executive Parkway, Suite 200  
Eugene, OR 97401-7103  
(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

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

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

Oregon Relay TTY:711

[www.oregon.gov/boli](http://www.oregon.gov/boli)  
AN EQUAL OPPORTUNITY EMPLOYER

**PENDLETON**  
Civil Rights  
1327 SE 3<sup>rd</sup> St.  
Pendleton, OR 97801-4101  
(541) 276-7884  
FAX (541) 276-5767



property, subject to the City's approval, which cannot be unreasonably withheld. However, if the lease is terminated, ownership of the new building would revert to the City of Portland upon termination.

3. Zenger Farm will not be entering into a contract with any public agency for the construction of the proposed project.
4. The proposed Urban Grange will be 7,760 square feet of new construction and will include office space, a classroom, an industrial kitchen and a basement cold storage and food processing area.
5. The project is estimated to cost \$1,900,000. Zenger Farm has raised \$700,000 of the \$1.9 million from individuals and private businesses. If Zenger Farm decides to request public funds to construct the proposed project, it will limit its use of public funds to \$300,000. Funding for the project includes the following sources:
  - a. Funds of a public agency: \$300,000 (tentative)
  - b. Other Funds: \$1,400,000 (private donations)

#### **CONCLUSIONS OF LAW:**

1. The proposed project does not meet the definition of "public works" under ORS 279C.800(6)(a)(A) because the project will not be carried on and contracted for by a public agency. Although the City of Portland owns the land upon which the project will be constructed, the project will be carried on and contracted for by Zenger Farm, a private entity.
2. The proposed project does not meet the definition of "public works" under ORS 279C.800(6)(a)(B). Although the project will use funds of a private entity and be privately owned by Zenger Farm, it will not use \$750,000 or more in funds of a public agency.

#### **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 Urban Grange 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

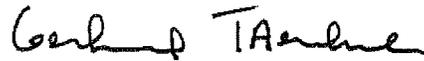
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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 20, 2013

BRAD AVAKIAN, Commissioner  
Bureau of Labor and Industries



---

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

## Certificate of Service

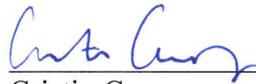
On June 20, 2013, I mailed the Prevailing Wage Rate Determination for the Urban Grange project to the requestor and associated agency, as follows:

Phillip E. Grillo  
Davis Wright Tremaine LLP  
1300 SW Fifth Ave  
Suite 2400  
Portland, OR 97201-5610

Certified Mail – Return Receipt Requested  
Article #: 7012 2210 0000 1197 7431

City Attorney's Office  
City of Portland  
Attn: Eric Shaffner  
1221 SW 4th Avenue, Rm 430  
Portland OR 97204

Certified Mail – Return Receipt Requested  
Article #: 7012 2210 0000 1197 7448



---

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