



# Oregon

Bureau of Labor and Industries

Brad Avakian  
Commissioner

February 2, 2012

Dolly Bullington, OPBC  
Senior Contracts Office  
Oregon Parks & Recreation Dept.  
725 Summer St. NE, Suite C  
Salem, OR 97301-1266

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*  
Project: Lowell SRS Oregon Association of Rowers Building Construction  
Agreement  
Requested by: Oregon Parks & Recreation Department

Dear Ms. Bullington:

On January 3, 2012 you submitted a request on behalf of Oregon Parks & Recreation Department asking if the Prevailing Wage Rate law would apply to the Lowell SRS Oregon Association of Rowers Building Construction Agreement project ("project"). Sufficient information to make a determination was received on January 31, 2012, and therefore, the commissioner issues the following determination:

## FINDINGS OF FACT:

1. Oregon Parks & Recreation Dept. ("OPRD") leases two sites at Dexter Reservoir from the Army Corps. of Engineers. Dexter Reservoir is in Lane County, Oregon. OPRD has had a \$0.00 payment lease since January 1, 1998 and the lease agreement ends on December 31, 2022. OPRD is a public agency. Army Corps. of Engineers is a federal agency.

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2. Before OPRD entered into its lease with the Army Corps. of Engineers, the Oregon Association of Rowers (OAR) had a lease with the Army Corps. of Engineers and had built a boathouse on one of the sites. The site where the boathouse is located is called Lowell State Park. This site includes land around the lake and part of the lake.
3. When OPRD picked up the lease in 1998, the OAR signed over their ownership of the boathouse building to OPRD through an agreement which allows the OAR to still use the building. Pursuant to the agreement, OPRD pays the insurance and has use of the building; however, the OAR is responsible for repair and maintenance.
4. OAR wants to replace the old building at Lowell State Park with a new building. OAR plans to pay all associated costs, but OPRD will own the new building. OAR is a domestic non-profit that has been registered since 1988. OPRD will not be contributing any funds to this project.
5. OAR will be responsible for all aspects of the project, including demolition of the old building, legal disposal of the old building, design and engineering of the new building, contracting for the construction of the new building and construction contract administration.
6. OPRD will require approval of the design and engineering plans, provide review and input into the contractor selection, inspect and sign-off on the final construction and act as an advisor through the total process.
7. The total project cost is estimated to be \$280,000. Funding for the project includes the following sources:
  - a. Funds of a public agency: \$0.00
  - b. Other Funds: \$280,000
    - i. OAR fundraising

#### **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. However, even if OPRD's involvement in the project rises to the level of "carrying on" for the project, no funds of a public agency will be used

on the project, so the exemption from the prevailing wage rate laws under ORS 279C.810(2)(b) would apply.

2. The proposed project does not meet the definition of “public works” under ORS 279C.800(6)(a)(B) or (C) because the newly constructed boathouse building will be owned by OPRD; therefore, it is not a project for the construction of a privately owned building.

#### **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 Lowell SRS Oregon Association of Rowers Building Construction Agreement 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

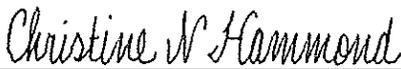
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: February 2, 2012

BRAD AVAKIAN, Commissioner  
Bureau of Labor and Industries

  
CHRISTINE N. HAMMOND,  
Administrator  
Wage and Hour Division  
Bureau of Labor and Industries

## Certificate of Service

On February 2, 2012, I mailed the Prevailing Wage Rate Determination for the Lowell SRS Oregon Association of Rowers Building Construction Agreement project to the requestor, as follows:

Dolly Bullington, OPBC  
Senior Contracts Office  
Oregon Parks & Recreation Dept.  
725 Summer St. NE, Suite C  
Salem, OR 97301-1266

Certified Mail – Return Receipt Requested  
Article #: 7011 2000 0000 5450 9565

Julie Whalen  
Park Manager  
Southern Willamette Management Unit  
PO Box 511  
Lowell, OR 97452

Certified Mail – Return Receipt Requested  
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Cristin Casey  
Compliance Specialist  
Wage and Hour Division  
Bureau of Labor and Industries