Oregon

Bureau of Labor and Industries
Brad Avakian
Commissioner

February 6, 2012

Ross Cornelius
Vice President, Development
Guardian Real Estate Services LLC
710 NW 14th Avenue, 2nd Floor
Portland, OR 97209

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: Viking Village I and Viking Village II
Requested by: Guardian Real Estate Services LLC

Dear Mr. Cornelius:

On January 27, 2012, you submitted a request on behalf of Guardian Real Estate Services LLC asking if the Prevailing Wage Rate law would apply to the Viking Village I and Viking Village II project ("project"). Sufficient information to make a determination was received on February 2, 2012, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT:

1. Guardian Real Estate Services LLC ("Guardian Real Estate") is planning a major renovation of Viking Village I and Viking Village II ("project"). Viking Village is an existing one to two story residential apartment complex built in 1969 and located at 3424 Fairhaven Drive NE in Salem, Oregon.

2. Guardian Real Estate is a privately held company. Guardian Real Estate will develop, own and operate the property.

3. Viking Village I consists of six buildings totaling 55 apartment units. It also has a property management office and a resident community room. There is no commercial space leased or operated within the property. Viking Village I includes nine studio apartments, 26 one-bedroom apartments and 19 two-bedroom apartments. All but one unit will be designated affordable housing, with resident incomes at or below 30% of the area median family income. The one unit that is not designated affordable housing will be the manager's unit.

4. Viking Village II consists of four buildings totaling 32 apartment units. It also has a property management office and a resident community room. There is no commercial space leased or operated within the property. Viking Village II includes 24 one-bedroom apartments, 4 two-bedroom apartments and 3 three-bedroom apartments. All but one unit will be designated affordable housing, with resident incomes at or below 30% of the area median family income. The one unit that is not designated affordable housing will be the manager's unit.

5. The project will involve a major renovation of Viking Village I and Viking Village II, including siding and roof replacement, window replacement, rebuilding of stairs and decks and replacement of outdated and worn interior components. The proposed work will also include some improvements to the landscaping and grounds.

6. The total project is estimated to cost $14,581,612. Funding for the project includes the following sources:

    a. Funds of a public agency: $820,168
        i. Oregon Housing and Community Services
            1. Housing Trust Fund Grant - $570,168
            2. Low Income Weatherization Loan - $250,000

    b. Other Funds: $13,761,444
        i. LIHTC (Low Income Housing Tax Credits) - $11,581,467
        ii. Commercial Bank Debt - $1,746,989
        iii. Deferred Developer Fee - $320,000
        iv. Net Income during Construction - $112,988

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 be carried on and contracted for by Guardian Real Estate. Guardian Real Estate is not a public agency.

2. The proposed project meets the definition of "public works" under ORS 279C.800(6)(a)(B) because the project will be privately owned and it will use $750,000 or more in funds of a public agency.

3. 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 proposed project is a project for residential construction because it is a project for construction of apartment buildings not more than two stories in height. Additionally, the project will be privately owned by Guardian Real Estate. Finally, the project will predominately provide affordable housing because the tenants will have incomes no greater than 30% of the area median. Therefore, this exemption will apply.

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 Viking Village I and Viking Village II 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 waited 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 6, 2012

BRAD AVAKIAN, Commissioner
Bureau of Labor and Industries

Christine N Hammond

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

Certificate of Service

On February 6, 2012, I mailed the Prevailing Wage Rate Determination for Viking Village I and Viking Village II project to the requestor, as follows:

Ross Cornelius
Vice President, Development
Guardian Real Estate Services LLC
710 NW 14th Avenue, 2nd Floor
Portland, OR 97209

Certified Mail – Return Receipt Requested
Article #: 7011 2000 0000 5450 9664

Dave Summers
Oregon Housing & Community Services
725 Summer Street NE, Suite B
Salem OR 97301-1266

Certified Mail – Return Receipt Requested
Article #: 7011 2000 0000 5450 9657

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