October 14, 2019

Diane Linn, Executive Director
Proud Ground
5288 N Interstate Avenue
Portland, OR 97217

Re: Determination Whether Project is Subject to Prevailing Wage Rate Laws
Project: 5020 Condominiums
Requested by: Proud Ground

Dear Ms. Linn:

On October 11, 2019, the Bureau of Labor and Industries received the request you submitted asking if the Prevailing Wage Rate laws would apply to the 5020 Condominiums project. Sufficient information to make a determination was received on October 11, 2019, and therefore, the commissioner issues the following determination:

FINDING OF FACT

1. Proud Ground, a private non-profit entity, proposes to construct a new, six-story mixed-use building, referred to as 5020 Condominiums (the “Project”). The Project will include 64 condominium units that will be owned by families earning a range of incomes. The Project will also include 2,491 square feet of ground-floor commercial space, and 13 parking spots located in a surface, tuck-under parking area.

2. The property on which the Project will be built is currently owned by Portland Housing Bureau, a public agency under ORS 279C.800(5). During the construction closing process, Portland Housing Bureau will transfer ownership of the property to Proud Ground, at no cost. When construction is complete, Proud Ground will transfer ownership of the Project to the 5020 Condominiums homeowners association and the individual unit owners.

3. The Project will consist of 16 one-bedroom units, 23 two-bedroom units, and 25 three-bedroom units. Thirteen units will be available to families earning 35 to 60 percent of the area median income. Thirteen units will be available to families earning 60 to 80 percent...
of the area median income. Fourteen units will be available to families earning 80 to 100 percent of the area median income. The remaining 24 units will be sold as market-rate units.

4. The total cost for the Project is estimated to be $25,300,000. The Project will be funded through a combination of public and private sources. Funds of a public agency that will be used on the Project include:

   $ 5,000,000 Portland Housing Bureau Tax Increment Financing Loan
   $ 4,500,000 Portland Housing Bureau Mezzanine Loan
   $ 1,625,000 Oregon Housing and Community Services LIFT Funds
   $ 200,000 Metro Transit Oriented Development Funds

In addition, an unknown amount of funds of a public agency will be used when Portland Housing Bureau transfers the property on which the Project will be built to Proud Ground.

Other funds to be used on the Project include:

   $14,900,500 Unit Sales
   $10,039,196 Construction Loan
   $ 833,000 Deferred Developer Fee
   $ 720,000 Systems Development Charge Waivers
   $ 584,612 Commercial Space – Permanent Loan
   $ 315,000 Meyer Memorial Trust
   $ 260,000 Habitat for Humanity Subsidy
   $ 151,526 Building Permit Fee Waiver
   $  61,000 Collins Foundation
   $  50,000 Enterprise Community Partners
   $  32,702 Energy Trust of Oregon Incentives

CONCLUSIONS OF LAW

1. The Project will use $750,000 or more of funds of a public agency for constructing a building. Therefore, the Project meets the definition of “public works” under ORS 279C.800(6)(a)(B).

2. Under ORS 279C.810(2)(d), the Prevailing Wage Rate laws do not apply to projects for residential construction that are privately owned and that predominately provide affordable housing. To meet the definition of “residential construction” under ORS279C.810(2)(d)(D), a building may not be more than four stories in height. Because the Project will consist of a building that is over four stories in height, it does not meet the definition of “residential construction.” As such, the exemption from the laws for privately owned residential construction that predominately provides affordable housing will not apply to the Project.
3. No other exemptions from the Prevailing Wage Rate laws under ORS 279C.810 apply to the 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 the 5020 Condominiums 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 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, this determination order will be final, and the agency file on this matter shall serve as the record for purposes of proving a prima facie case.

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 order 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.

Date: October 14, 2019

VAL HOYLE, Commissioner
Bureau of Labor and Industries

Sonia Ramirez, Administrator
Wage and Hour Division
Bureau of Labor and Industries
Certificate of Service

On October 14, 2019, I mailed the Prevailing Wage Rate Determination for the 5020 Condominiums project to the requestor and interested parties, as follows:

Diane Linn, Executive Director
Proud Ground
5288 N Interstate Avenue
Portland, OR 97217

Kyle Anderson
LMC Construction
19200 SW Teton Avenue
Tualatin, OR 97062

Julie Proksch
Housing Development Center
847 NE 19th Avenue, Suite 150
Portland, OR 97232

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