

Jim Van Lente
Building Consulting Services
24025 SW Newland Road
Wilsonville OR

Re: *Determination Whether Project is Subject to Prevailing Wage Rate*
Project: Brookings Harbor Sports Practice Facility
Requested by: Jim Van Lente

Dear Mr. Van Lente:

On February 12, 2008, you submitted a request on behalf of the John G. Atkins Foundation (“Foundation”) and the Brookings Harbor School District (“District”), asking if the prevailing wage rate law would apply to a proposed project consisting of the construction of a sports practice facility at Brookings Harbor High School. Sufficient information to make a determination was received on March 6, 2008, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. It has been represented that the Foundation, a private, nonprofit entity, will both fund and contract for the construction of the practice facility, which will be a publicly owned improvement. Any costs related to this project that are not funded by the Foundation will be paid for with private donations.
2. It has been represented that no funds of a public agency will be used to finance the work, that no funds contributed by the Foundation or private donors for the project will be in the District’s custody or control, and that no government grant issued for the purpose of construction will be used in connection with the project.
3. It has been represented that the improvements are not part of a larger project that has been carried on or contracted for by a public agency.

CONCLUSIONS OF LAW

1. The project does not involve the construction, reconstruction, major renovation or painting of a privately owned road, highway, building, structure, or improvement that uses funds of a private entity and \$750,000 or more of funds of a public agency. ORS 279C.800(6)(a)(B) does not apply.
2. The project does not involve the construction, reconstruction, major renovation or painting of a privately owned road, highway, building, structure, or improvement that uses funds of a private entity and in which 25 percent or more of the square

footage of the completed project will be occupied or used by a public agency. ORS 279C.800(6)(a)(C) does not apply.

3. If the project is a public works under ORS 279C.800(6)(a)(A), the exemption applies for projects for which no funds of a public agency are directly or indirectly used. ORS 279C.810(2)(b).

DETERMINATION

Based on the foregoing, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, do not apply to the sports practice facility project at Brookings Harbor High School.

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.

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 HB 2140 Section 43 (Enrolled) OR Laws 2007. 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 13, 2008

Dan Gardner, 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 March 13, 2008, I mailed the Prevailing Wage Rate Determination for the Brookings Harbor Sports Practice Facility Project to the requestor and any public agencies identified by requestor as being associated with this project, as follows:

Jim Van Lente
Building Consulting Services
24025 SW Newland Road
Wilsonville OR

Administrator
Brookings Harbor School District 17C
629 Easy St
Brookings OR 97415

City of Brookings
Attn: Planning Department
898 Elk Drive
Brookings OR 97415

Gerhard Taeubel, Compliance Specialist
Wage and Hour Division
Bureau of Labor and Industries