



June 11, 2015

Peter Hicks  
Ball Janik LLP  
15 SW Colorado Avenue, Suite 3  
Bend, OR 97702

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*  
Project: Burnham/Ash Mixed Use Multi-family Apartments and Retail Project  
Requested by: Ball Janik LLP for DIG Tigard LLC and Capstone – Green Light, LLC

Dear Mr. Hicks:

On May 19, 2015, we received your request on behalf of DIG Tigard LLC and Capstone – Green Light, LLC asking if the Prevailing Wage Rate laws would apply to the proposed mixed-use development to be located on SW Burnham Street and SW Ash Avenue in Tigard, Oregon. Sufficient information to make a determination was received on June 3, 2015, and therefore, the commissioner issues the following determination:

## FINDING OF FACT

1. The City Center Development Agency of the City of Tigard (“CCDA”) has agreed to convey three parcels of property located on SW Burnham Street and SW Ash Avenue in Tigard to DIG Tigard LLC and Capstone – Green Light, LLC, collectively referred to as the “Developer.” The Developer plans to build a mixed use multi-family residential and commercial development on this property.
2. The agreement between CCDA and the Developer (“Agreement”) stipulates that the consideration for the conveyance of the property by CCDA to Developer will be the greater of \$1,609,000 or “the fair market value of the Property as determined by an appraisal to be obtained by CCDA . . . . The parties agree that the purchase price is the fair market value of the Property.” The appraisal obtained by CCDA did not specify a “fair market value” for the property, but based on a sales comparison approach, the appraiser found the “as is market value” for the property to be \$1,650,000. At CCDA’s request, the appraiser valued the property using the hypothetical assumption that the site is vacant. However, one parcel has two buildings on it, which will need to be demolished for this project.

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3. In response to my questions about the “as is market value” of the property given in the appraisal, you stated in your letter of June 2, 2015, “Although the appraisal uses the shorthand term ‘market value,’ it is evident that this is the same as ‘fair market value.’” My understanding is that you are representing the “fair market value” of the property to be \$1,650,000. You also confirmed in your letter of June 2, 2015, that the purchase price the Developer will pay CCDA for this property is \$1,650,000.
4. CCDA will contract for the demolition of the existing buildings on the 12800 SW Ash Avenue property, and will also contract for the relocation of the existing dog park amenities located at 12770 SW Ash Avenue and 9020 SW Burnham Street to a new dog park site across the street. CCDA will pay for this work; the total cost will be approximately \$164,848.

### **CONCLUSIONS OF LAW**

1. Pursuant to ORS 279C.810(1)(a)(D), “funds of a public agency” does not include land that a public agency sells to a private entity at fair market value. The Developer will pay the CCDA an amount that has been represented as the fair market value for the property in question. If that is an accurate assessment of the fair market value, the amount of funds of a public agency that will be used on this project will be approximately \$164,848.
2. The proposed project will be a privately owned construction project that uses funds of a private entity, but it will use less than \$750,000 of funds of a public agency, and therefore the project does not meet the definition of “public works” under ORS 279C.800(6)(a)(B).
3. The proposed project does not meet any other part of the definition of “public works” under ORS 279C.800(6)(a).

### **DETERMINATION**

Based on the foregoing, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will not apply to the Burnham/Ash Mixed Use Multi-family Apartments and Retail Development 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

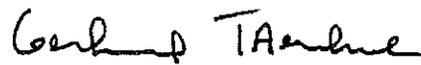
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived, this determination order will be final, and the agency file on this matter shall serve as the record for purposes of proving a prima facie case.

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: June 11, 2015

Brad Avakian, Commissioner  
Bureau of Labor and Industries



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Gerhard Taeubel, Administrator  
Wage and Hour Division  
Bureau of Labor and Industries

## Certificate of Service

On June 11, 2015, I mailed the Prevailing Wage Rate Determination for the Burnham/Ash Mixed Use Multi-family Apartments and Retail Development project to the requestor, as follows:

Peter Hicks  
Ball Janik LLP  
15 SW Colorado Avenue, Suite 3  
Bend, OR 97702



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