May 2, 2019

Donna Holt, Executive Director
Linn-Benton Housing Authority
1250 Queen Avenue SE
Albany, OR 97322

Re: Determination Whether Project is Subject to Prevailing Wage Rate Laws
    Project: Garden View Apartments
    Requested by: Linn-Benton Housing Authority

Dear Ms. Holt:

On March 25, 2019, the Bureau of Labor and Industries received the request you submitted asking if the Prevailing Wage Rate laws would apply to the proposed Garden View Apartments project. Sufficient information to make a determination was received on May 1, 2019, and therefore, the commissioner issues the following determination:

FINDING OF FACT

1. Linn-Benton Housing Authority ("LBHA"), a public agency under ORS 279C.800(5), owns property located at 3011 South Main Road in Lebanon, Oregon. The property currently contains an unoccupied single family home and several accessory buildings. LBHA proposed to construct an affordable housing project for seniors, veterans, and seniors living with HIV/AIDS on the property. The project will be called Garden View Apartments (the "Project").

2. Prior to construction of the Project, ownership of the property will be transferred to a to-be-created limited partnership (the "Limited Partnership"). LBHA, or a limited liability company in which LBHA is the sole member, will be the General Partner in the Limited Partnership, with 0.01 percent ownership interest. The Limited Partner in the Limited Partnership will be US Bancorp Community Development Corporation, a private entity, with 99.99 percent ownership interest.

3. The Project will consist of one three-story building that will include 42 one-bedroom units and 6 two-bedroom units, one of which will be a manager’s unit.
The Project will also include a courtyard, pavilion, and garden beds. The building will include a multi-purpose room with a kitchen, resident services, laundry, and an office on the first floor. A lounge and laundry will be located on the second and third floors. The Project will not include any commercial space.

4. Of the Project’s 48 units, 47 will be restricted to occupants with incomes no greater than 60 percent of the area median. The manager’s unit is not income restricted.

5. The Project will use the following funds of a public agency:
   $820,000   Oregon Housing and Community Services (“OHCS”) HOME Loan
   $640,000   OHCS National Housing Trust Fund
   $200,000   OHCS General Housing Account Program Funds
   $110,000   OHCS Weatherization Funds
   $100,000   Seller Note (LBHA)

Other funds to be used for the Project include:
   $9,248,982   OHCS Low Income Housing Tax Credit Equity
   $1,066,052   Permanent Loan (NOAH)
   $6,561,932   Deferred Developer Fee

CONCLUSIONS OF LAW

1. The Project meets the definition of “residential construction” in ORS 279C.810(2)(d)(D), as the Project includes the construction of an apartment building not more than four stories in height, and does not include any commercial space.

2. The Project will be owned by a limited partnership in which the Linn-Benton Housing Authority, a public agency, is a minority member. The public agency will not be a majority owner in the limited partnership, and therefore, the project meets the definition of “privately owned” in ORS 279C.810(2)(d)(C)(ii).

3. The Project meets the definition of “affordable housing” in ORS 279C.810(2)(d)(A), as the Project will serve occupants whose incomes are not greater than 60 percent of the area median income. The Project will “predominately” provide affordable housing, as 60 percent or more of the units will be for affordable housing. ORS 279C.810(2)(d)(B).

4. Pursuant to 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. Even if the Project meets the definition of “public works” under ORS 279C.800(6)(a), it will be exempt from the prevailing wage rate laws.
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 Garden View Apartments 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: May 2, 2019

Val Hoyle, Commissioner
Bureau of Labor and Industries

Lois Johnson, Interim Administrator
Wage and Hour Division
Bureau of Labor and Industries
Certificate of Service

On May 2, 2019, I mailed the Prevailing Wage Rate Determination for the Garden View Apartments project to the requestor and interested party, as follows:

Donna Holt, Executive Director  
Linn-Benton Housing Authority  
1250 Queen Avenue SE  
Albany, OR  97322

Lynn Lindgren-Schreuder  
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