Oregon

Bureau of Labor and Industries
Brad Avakian
Commissioner

August 20, 2013

Steven Engler, Development Manager
Chrisman Development, Inc.
PO Box 490
Enterprise, OR 97828

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*
Project: Holiday Garden Apartments
Requested by: Chrisman Development, Inc.

Dear Mr. Engler:

On August 14, 2013, you submitted a request asking if the Prevailing Wage Rate laws would apply to the proposed project known as the Holiday Garden Apartments. Sufficient information to make a determination was received on August 20, 2013, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. The proposed project consists of the acquisition and rehabilitation of three apartment complexes in three cities around Oregon:
In Grants Pass, the Holiday Park Garden Apartments, currently owned by Holiday Park Gardens Limited Partnership, a private entity;
In Sandy, the Holiday Garden Sandy (Evans Street Senior) Apartments, currently owned by Evans Street Limited Partnership, a private entity; and
In Talent, the Holiday Garden Talent Apartments, currently owned by Holiday Garden – Talent, Limited Partnership, a private entity.

   The acquisition and rehabilitation of all three complexes is referred to as the "proposed project."

2. Holiday Garden Apartments, LLC, a domestic limited liability company, plans to acquire and rehabilitate the proposed project. Holiday Garden Apartments, LLC will be composed of Southern Oregon Affordable Housing II, Inc. as managing member, with 0.01 percent interest in profits, losses, gain and credits; and a to-be-named tax credit investor with 99.99 percent interest. No public agency will own the project or be part of Holiday Garden Apartments, LLC.

3. The proposed project consists of 36 one- and two-story apartment buildings, with a total of 208 units. The work to be done includes new roofs, siding, windows, and doors; repair and/or replacement of exterior stairs, railings and decks; site improvements/repairs for enhanced appearance and accessibility; and interior improvements as needed including new cabinets, countertops, flooring and appliances. The proposed project does not include any commercial space.

4. One-hundred percent of the units are to be made available to persons with incomes at or below 60 percent of the area median income.

5. The total project cost, including acquisition costs, development costs, and construction costs, is estimated to be $21,203,009. The proposed project will use the following public funds:

$95,506	Energy Trust from Oregon Department of Energy

Other funds to be used for the proposed project include:

$5,714,000	Adjusted Low Income Housing Tax Credit Equity
$7,990,000	USDA Rural Development 538 Loan
$6,456,000	USDA Rural Development Debt
$11,060,000	Short Term Tax Exempt Bonds
$691,713	Deferred Developer Fee
$255,690	Project Cash Flow

CONCLUSIONS OF LAW

1. The proposed project will not be carried on or contracted for by any public agency, and therefore does not meet the definition of "public works" under ORS 279C.800(6)(a)(A).

2. The proposed project will be privately owned and will use private funds, but it will not use $750,000 or more in funds of a public agency. Therefore, the proposed project does not meet the definition of "public works" under ORS 279C.800(6)(a)(B).

3. The prevailing wage rate laws do not apply to projects for residential construction that are privately owned and that predominately provide affordable housing. Therefore, even if the proposed project did use $750,000 or more in funds of a public agency, the exemption from the prevailing wage rate laws under ORS 279C.810(2)(d) would apply.

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 proposed project known as the Holiday Garden Apartments.

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.

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: August 20, 2013

Brad Avakian, Commissioner
Bureau of Labor and Industries

Gerhard Taeubel

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

Certificate of Service

On August 21, 2013, I mailed the Prevailing Wage Rate Determination for the proposed project known as the Holiday Garden Apartments to the requestor, as follows:

Steven Engler, Development Manager
Chrisman Development, Inc.
PO Box 490
Enterprise, OR 97828

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