



March 8, 2016

Scott Jay Bailey, Project Manager
Tillamook Estuaries Partnership
PO Box 493
Garibaldi, OR 97118

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: Mapes Creek Culvert Replacement Project
Requested by: Tillamook Estuaries Partnership

Dear Mr. Bailey:

On February 29, 2016, you submitted a request on behalf of Tillamook Estuaries Partnership asking whether the Prevailing Wage Rate laws would apply to the proposed Mapes Creek Culvert Replacement Project. Sufficient information to make a determination was received on March 7, 2016, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. Tillamook Estuaries Partnership (“TEP”) is a private, non-profit entity dedicated to the conservation and restoration of Tillamook County’s estuaries and watersheds. TEP is one of 28 National Estuary Projects working to protect and restore the health of the nation’s estuaries. TEP is often involved to some degree in construction, reconstruction and major renovation projects that occur in Tillamook county’s estuaries and watersheds.
2. TEP has determined that a 4.5-foot culvert, located where Kilchis River Road crosses Mapes Creek in Tillamook County, is currently undersized and partially filled with streambed materials that obstruct organism passage and impede stream processes. According to TEP, the culvert poses a serious threat to the survival of aquatic organisms.
3. In order to remedy the problems associated with the current culvert, TEP, in cooperation with the Tillamook County Public Works Department (“TCPWD”), has proposed the Mapes Creek Culvert Replacement Project (“the Project”). According to a Memorandum of Understanding (“MOU”) entered into by TEP and TCPWD in December 2015, the Project consists of two Phases. Phase I, referred to as the Design Phase, has already been completed; it included the development of 60 percent engineering designs, an outline of technical specifications, and a cost estimate for the Implementation Phase. Phase II, referred to in the MOU as the Implementation Phase, includes the completion of construction-ready designs, construction oversight, and construction itself.

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4. The total cost of the Project is estimated to be \$533,992. Phase I expenditures totaled \$65,000; Phase II is expected to cost \$468,992. Funding sources include federal funds from the United States Fish and Wildlife Service (“USFWS”) and the National Fish and Wildlife Foundation (“NFWF”); state funds from the Oregon Watershed Enhancement Board (“OWEB”), the Oregon Department of Fish and Wildlife (“ODFW”), and TCPWD; and private funds from Patagonia World Trout Initiative (“PWTI”) and Trout Unlimited/Orvis (“TU/Orvis”).
 - a. Funds of a Public Agency: \$342,634
 - i. OWEB - \$237,634
 - ii. ODFW - \$50,000
 - iii. TCPWD - \$55,000
 - b. Other funds: \$190,500
 - i. USFWS - \$125,000
 - ii. NFWF - \$50,000
 - iii. PWTI - \$8,000
 - iv. TU/Orvis - \$7,500
5. During Phase I of the Project, TEP contracted with the engineering firm ESA Vigil-Agrimis, Inc. (“ESA”), a domestic business corporation, for the development of 60 percent designs for the Mapes Creek Project and a different project involving another nearby culvert. TEP indicates the value of the 2014 ESA contract related to the immediate Project is \$65,000.
6. TEP recently entered into a new contract with ESA for the finalization of Phase II’s construction designs and specifications. Per the MOU between TEP and TCPWD as well as TEP’s letter to BOLI dated February 29, 2016, TEP plans to contract with a construction firm during April or May 2016 for completion of Phase II’s construction work, which will include the removal of the existing culvert, the construction of a new 32-foot long concrete bridge on Kilchis River Road, the construction of approximately 100 feet of stream simulation channel, and the construction and subsequent removal of a temporary vehicle bypass structure.
7. Per the MOU and information provided by TEP’s project manager, TEP will issue, track, and administer all Project contracts. TEP also will oversee construction, and will have authority to issue directions to the general contractor, select or amend construction design plans, control construction work schedules, and order corrections or changes to construction materials or design.
8. TCPWD, which manages Kilchis River Road where the Project is being conducted, will provide in-kind support for the Project through staff time and the use of its equipment to pave and stripe the new 32-foot concrete bridge once it is built. Per the MOU, TCPWD,

which ultimately owns all of the construction resulting from the Project, also will provide an estimated 120 hours of staff time for tasks ranging from attending meetings to construction inspection. The total value of TCPWD's in-kind contributions is estimated to be \$17,069.

CONCLUSIONS OF LAW

1. As proposed, the Project will not be carried on or contracted for by a public agency and is therefore not a "public works" under ORS 279C.800(6)(a)(A).
2. The Project does not use \$750,000 or more in funds of a public agency and is therefore not a "public works" under ORS 279C.800(6)(a)(B).
3. The Project will not be privately-owned. As such, the Project is not a "public works" under ORS 279C.800(6)(a)(C).

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 Mapes Creek Culvert Replacement 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

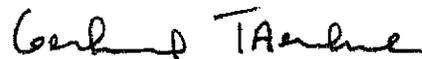
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived, this determination order will be final, and the agency file on this matter shall serve as the record for purposes of proving a prima facie case.

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: March 8, 2016

BRAD AVAKIAN, Commissioner
Bureau of Labor and Industries



GERHARD TAEUBEL,
Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

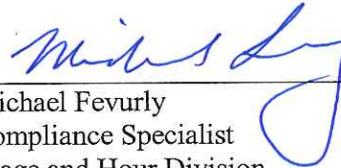
On March 8, 2016, I mailed the Prevailing Wage Rate Determination for the proposed Mapes Creek Culvert Replacement Project to the requestor and interested parties below:

Scott Jay Bailey, Project Manager
Tillamook Estuaries Partnership
PO Box 493
Garibaldi, OR 97118

Certified Mail – Return Receipt Requested
Article # 7015-1660-0000-2223-5446

Liane Welch
Tillamook County Public Works Department
503 Marolf Loop Road
Tillamook, OR 97141

Certified Mail – Return Receipt Requested
Article # 7015-1660-0000-2223-5439



Michael Fevurly
Compliance Specialist
Wage and Hour Division
Bureau of Labor and Industries