



Oregon

Bureau of Labor and Industries

Brad Avakian
Commissioner

August 20, 2014

Ms. Chrys Martin
Davis Wright Tremaine LLP
1300 SW Fifth Avenue, Suite 2400
Portland, OR 97201-5610

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*
Project: Woodley Properties, Inc.'s Proposed Development of Lot 2/Phase 1 of Revised Proposal for Clackamette Cove
Requested by: Woodley Properties, Inc./Clackamette Cove LLC

Dear Ms. Martin:

On July 23, 2014, you submitted coverage determination requests on behalf of Woodley Properties, Inc. ("WPI") and Clackamette Cove LLC ("CCLLC"). The first request concerns WPI's development of Lot 2 of The Cove's project site area; the other concerns Phase 1 of CCLLC and the Urban Renewal Commission of Oregon City's ("URC") revised proposal for the development of The Cove site ("Revised Cove"). Given that an analysis of whether WPI's development of Lot 2 can be appropriately divided from Revised Cove requires consideration of the facts pertaining to each and results in mutual conclusions of law, the Commissioner is issuing one coverage determination that covers both determination requests. On August 11, 2014, you supplied information sufficient for a determination to be issued, and therefore, the Commissioner issues the following determination:

FINDINGS OF FACT:

1. Clackamette Cove LLC ("CCLLC") is a domestic limited liability company that registered with the Oregon Corporation Division on July 23, 2009; developer Edward Darrow is a member of CCLLC.
2. The Urban Renewal Commission of the City of Oregon City is a public agency that encourages the development and renewal of urban land with the goal of optimizing land use and creating economic opportunity.
3. Woodley Properties, Inc. is a domestic corporation that registered with the Oregon Corporation Division on January 29, 2010.
4. The coverage determination requests submitted on July 23, 2014 on behalf of WPI and CCLLC concern the same or substantially similar land as two prior coverage determination requests submitted by CCLLC. The land is an approximately 89.59-acre site in and around Clackamette Cove in Oregon City that includes Lots 1 through 7 and Tracts A through F and is referred to in planning documents as "The Cove."

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5. The two prior coverage determination requests concerning The Cove project site area were submitted by CCLLC in February 2013 and March 2014, respectively. CCLLC submitted information sufficient to issue a determination on each coverage determination request on February 26, 2013 and March 10, 2014, respectively.
6. BOLI issued coverage determinations for the two prior coverage determination requests on March 4, 2013 and March 18, 2014, respectively: both coverage determinations indicated that Oregon prevailing wage rate laws would apply to the respective projects. The March 18, 2014 coverage determination was amended on July 3, 2014 based on additional information submitted by CCLLC; the conclusion that the proposed project would be subject to Oregon prevailing wage rate laws did not change.
7. Grand Cove LLC is a foreign limited liability company based in Denver, CO that registered with the Oregon Corporation Division on July 3, 2014. July 3, 2014 is the day that BOLI published the amended coverage determination advising CCLLC that The Cove project would remain subject to Oregon prevailing wage rate law.
8. WPI's attorney, Chrys Martin, advises that Grand Cove LLC was formed by Don Simpson of Grand Peaks Properties in Denver, Colorado for the purpose of developing and building Lot 2.
9. The WPI proposed development's improvements will all be built on Lot 2 of The Cove site, which was formerly to be developed by CCLLC per the plans presented by CCLLC in the coverage determination requests submitted in February 2013 and March 2014. Lot 2 was the site of planned improvements pursuant to the 2007, 2008, and 2013 Master Plans and 2009, 2013, and 2014 Disposition and Development Agreements ("DDAs") between URC and CCLLC for the development of The Cove. The 2009, 2013, and 2014 DDAs indicate that URC's goal was for Lot 2 and the other land that comprises The Cove site to be "developed pursuant to the Downtown North End Urban Renewal Plan."
10. The WPI proposed development's planned improvements for Lot 2 include approximately 240 apartments, a leasing office, recreation facility, pool and spa, and approximately 8,000 square feet of commercial space within the apartment buildings. WPI's attorney, Chrys Martin, indicates that the apartments will be in buildings two and three stories tall and will be of wood frame construction.
11. Prior to commencing development of Lot 2, WPI intends to sell Lot 2 to Grand Cove LLC. Grand Cove LLC will own Lot 2 and its improvements and will administer its construction.
12. WPI advises that it is possible that Grand Cove LLC could rely on some of the architecture work CCLLC intended to use in building apartments on Lot 2 as part of the 2014 DDA.
13. Phase 1 work of the 2014 DDA included: (a) construction of 244 garden apartments and a recreation building on Lot 2 (including 8000 square feet of office space in the apartments); (b) construction of trail head parking and a monument sign on Tract A; (c) construction of a roundabout at the intersection of Main and Agnes Streets; and (d) improvements on a portion of Main Street adjacent to Lot 2, among other improvements. CCLLC's letter to BOLI of March 26, 2014 indicates that the 244 garden apartments planned in the 2014 DDA would be in buildings two and three stories tall.

14. In a telephone conversation with Compliance Specialist Michael Fevurly on August 13, 2014, Ed Darrow referred to the WPI proposed development's apartments planned for Lot 2 as "garden apartments." Phase 1 of the 2014 DDA for development of The Cove included plans for the construction of garden apartments on Lot 2, to be owned by CCLLC, of which Ed Darrow is a member.
15. The WPI proposed development's construction is estimated to begin on Lot 2 in 1st Quarter 2015 and to end by 2nd Quarter 2016.
16. The WPI proposed development's contractors are not yet known.
17. The WPI proposed development's construction plans are not yet complete.
18. There is currently no DDA or other construction contract in place for the WPI proposed development.
19. WPI advises that the only sources of public funds disbursed by URC for the development of Lot 2 include disbursements to LRS Architects and WRG Civil Engineering. WPI advises that the public funds previously disbursed to LRS Architects, in the amount of \$67,345.10, are inapplicable to the current development due to the fact that LRS Architects worked on a plan to develop townhouses, not apartments. WPI advises that URC's disbursement for land surveying done on Lot 2 by WRG in 2008 does not total more than \$100,000, although total URC funds disbursed for WRG's work on The Cove was \$699,961.87. The total amount of public funds disbursed by URC for development of The Cove is \$1,176,799.
20. Revised Cove will be administered by CCLLC and URC. It is possible that CCLLC could form a partnership with another entity during the administration of Revised Cove, but CCLLC cannot identify whether that will happen or who that entity would be.
21. Although an official DDA has not yet been entered into for Revised Cove, CCLLC indicates that it intends to enter into a new DDA with URC for Revised Cove "for the development of the Cove Project without the WPI property or development." This will be at least the fourth DDA between URC and CCLLC for development of The Cove.
22. CCLLC indicates that Revised Cove will have four Phases.
23. CCLLC is requesting a coverage determination only for Phase 1 of Revised Cove.
24. Phase 1 of Revised Cove will include the construction of 195 waterfront residences and the associated leasing office, exercise facility, pool and spa, and commercial space within the residence buildings across Lots 3, 4, 6, and 7; additionally, Phase 1 will also include the construction of North Park and an amphitheater on Tract D, an Esplanade path on Tract C which traverses Lots 3, 4, 5, 6, and 7, trailhead parking and monument signage on Tract A, and full improvements to a new Agnes Street.
25. Phase 2 and Phase 3 of Revised Cove will include an office complex to be built on Lot 5 and a mixed-use building to be built on Lot 1; the office complex and mixed-used building will be considered separate phases but CCLLC is unsure which will be built first. Therefore, it cannot say which will be considered Phase 2 and which will be considered Phase 3.

26. Phase 4 of Revised Cove includes the construction of the marinas and the water sports center.
27. Per the 2014 DDA, Phase 2 work included (a) construction of 195 waterfront apartments and a leasing office, exercise area, swimming pool, and spa across Lots 3, 4, 6 and 7; (b) construction of the esplanade path and landscaping on Tract C; (c) construction of 1,800 square feet of restaurant space on each of Lots 4 and 6; (d) construction of North Park, an amphitheater, and a parking lot on Tract D; (e) development of a hiking path on the north peninsula; and (f) construction of Agnes Street to Oregon City standards.
28. Per the 2014 DDA, Phase 3 and Phase 4 included plans to build a mixed-use building on Lot 1 and an office building on Lot 5, respectively. Phase 5 included plans to build marinas and a water sports center.
29. CCLLC indicates that Phase 2 and/or 3 of Revised Cove may be built concurrently to Phase 1. CCLLC also advises that Phase 4 may be built at any time after the commencement of the construction of Phase 1.
30. As in prior DDAs, such as the 2014 DDA for development of The Cove, CCLLC indicates that Revised Cove will require URC and CCLLC to enter into an ongoing financial agreement concerning the maintenance and upkeep of publicly-owned land. Similarly, although there is not yet a formal agreement defining the relationship or cost-sharing, Revised Cove will require URC and CCLLC to have an ongoing relationship related to ensuring that dredging of The Cove is conducted and paid for as needed.
31. Prior to the commencement of Revised Cove's Phase 1, URC will contract and pay for infrastructure improvements to Lots 3, 4, 6, and 7. These infrastructure improvements are estimated to cost \$4,545,900. CCLLC indicates that infrastructure construction is estimated to begin 1st Quarter 2015 and expected to last six months.
32. URC acknowledges that its infrastructure work on Lots 3, 4, 6, and 7 is a public work and subject to Oregon's prevailing wage rate laws and advises that it will pay prevailing wage.
33. URC currently owns Lots 3, 4, 6, and 7. During 1st Quarter 2015, URC will sell Lots 3, 4, 6, and 7 to CCLLC for \$3,315,000, which, according to a May 2014 appraisal conducted by Colliers International and provided by CCLLC, is the value of Lots 3, 4, 6, and 7 once the \$4,545,900 in necessary infrastructure improvements has been completed on the Lots.
34. According to CCLLC's March 26, 2014 letter to BOLI, the origin of the \$4,545,900 infrastructure cost estimate is a third-party estimate dated October 31, 2013 and labeled "The Cove Development – Phase 2." CCLLC's March 26, 2014 letter advises that the third-party infrastructure cost estimate was used, at least in part, to set the \$10 purchase price for the Lots in the 2014 DDA for The Cove.
35. The third-party infrastructure cost estimate includes itemized anticipated infrastructure improvements and their estimated costs. Listed among the itemized anticipated infrastructure improvements is the construction of sewage systems, driveways, curbs, and sidewalks related to the waterfront residences expected to be built on Lots 3, 4, 6, and 7.

36. Concurrent to its purchase of Lots 3, 4, 6, and 7, CCLLC will pay back URC for the \$1,176,799 in funds of a public agency that URC disbursed for development of The Cove in January 2010 as required by the September 2009 DDA for The Cove.
37. CCLLC estimates that it will begin construction on Phase 1 of Revised Cove within two to three months after the start of URC's infrastructure work. In other words, Phase 1 is estimated to begin in 2nd Quarter 2015. Construction is estimated to last 12 to 14 months.
38. CCLLC does not yet know who the contractors will be for Revised Cove.
39. Construction plans for Revised Cove are incomplete.
40. Lot 2 is across the street from Lot 3. According to CCLLC's March 26, 2014 letter to BOLI, the street that separates Lot 2 from Lot 3 – Main Street – has a right of way of 60 feet. According to the same letter, the distance from the nearest building proposed for Lot 3 to the nearest building proposed for Lot 2 under the 2014 DDA was 160 feet.
41. Pacific Property Search, LLC ("PPS") is a domestic limited liability company that registered with the Oregon Corporation Division on July 28, 2005; Edward Darrow is a member of PPS.
42. According to CCLLC's March 4, 2014 letter to BOLI, PPS is the managing member of CCLLC.
43. According to Section 2.1 of the 2009 DDA for The Cove, Pacific Property Search ("PPS") became party to a Purchase and Sale Agreement ("PSA") for the Parker Phase 2 Parcel in August 2006 (the seller was Parker Pond LLC). Referred to as the "Parker Contract," this agreement also included Parker Phase 1 (Lot #2 in current development plans). PPS subsequently assigned its option to purchase Parker Phase 2 to CCLLC. According to Section 5.2.11 of the 2009 DDA, prior to construction of The Cove commencing, CCLLC was to have obtained partial assignment of the Parker Contract to URC, allowing URC to acquire the Parker Phase 2 Parcel. According to Section 8.1 of the 2009 DDA, URC was required to acquire the Parker Phase 2 Parcel pursuant to the Parker Contract once the pre-conditions in Contingency Period One had been satisfied.
44. According to Section 2.1.2 of the 2009 DDA, after PPS assigned its interest to purchase Parker Phase 1 to CCLLC, CCLLC intended to enter into a PSA with Slayden Construction Group, Inc. ("SCG") pursuant to which SCG would purchase the Parker Phase 1 Parcel (now referred to as Lot 2).
45. According to Section 8.1 of the 2009 DDA, upon the closing of the acquisition of the Parker Phase 1 parcel (presumably with SCG as the purchaser), CCLLC agreed to reimburse URC for its purchase of the Parker Phase 2 parcel. There is no evidence this reimbursement happened.
46. Slayden Construction Group, Inc. is a domestic corporation that registered with the Oregon Corporation Division on June 16, 2000. The current mailing address for SCG is PO Box 247, Stayton, OR 97383 and the current registered agent address is 500 Willamette Ave., Stayton, OR 97383.

47. The mailing address listed on CCLLC's articles of organization filed on July 23, 2009 with the Oregon Secretary of State is c/o Slayden Construction Group, Inc., PO Box 247, Stayton, OR 97383. The register agent address listed is 500 Willamette Ave., Stayton, OR 97383.
48. On CCLLC's 2010 annual report, which was filed with the Oregon Secretary of State on October 11, 2010, the registered agent is listed as Todd Woodley and the registered agent address is listed as 500 Willamette Ave., Stayton, OR 97383. Cindy L. Woodley signed the annual report. There are two "Received" stamp markings on the document, dated July 9, 2010 and July 26, 2010, both bearing the name "Slayden Const. Inc."
49. According to the Oregon Corporation Division, WPI's registered agent and president is Todd Woodley.
50. An Advanced Person search run on Lexis-Nexis's Accurint on August 13, 2014 indicated that Todd William Woodley of WPI is related to Cindy Lou Woodley; Ms. Woodley is formerly associated with an address of PO Box 474, Stayton, OR 97383.
51. An Advanced Person search run on Lexis-Nexis's Accurint on August 13, 2014 indicated that addresses formerly associated with Todd William Woodley of WPI include PO Box 474, Stayton, OR 97383 and PO Box 625, Stayton, OR 97383.
52. According to CCLLC's letter to BOLI dated March 26, 2014, the Parker Phase 2 property was purchased by URC with the intention that Lot 2 could be used for construction of an office complex, as was intended by Kaiser Permanente.
53. The 2009, 2013, and 2014 DDAs for The Cove all include the language "the Commission desires to see the Project Site developed pursuant to the Downtown North End Urban Renewal Plan." The DDAs also each include the language "the public benefits from development include: turning a blighted, abandoned industrial area into an attractive mixed-use development; a substantial increase in property taxes; significant construction and permanent employment; and numerous on-site public amenities."
54. The 2007, 2008, and 2013 Master Plans all included plans for waterfront residences on Lots 3, 4, 6, and 7, an amphitheater, and an esplanade on Tract C. Those same Master Plans also included development plans for Lot 2, with the 2007 and 2013 plans including apartments (the 2008 plans included a medical office building in lieu of apartments).
55. In January 2010, pursuant to CCLLC satisfying the pre-conditions in Contingency Period One set forth in The Cove's DDA dated September 2, 2009, URC disbursed \$1,176,799 to pay for architecture, engineering, and planning services related to development of The Cove.

CONCLUSIONS OF LAW:

1. The work to be performed during WPI's proposed development and Phase 1 of Revised Cove constitutes one project pursuant to ORS 279C.827. According to ORS 279C.827(1)(c), considerations used to determine whether projects should be separated include:

- a. The physical separation of the project structures;
- b. The timing of the work on project phases or structures;
- c. The continuity of project contractors and subcontractors working on project parts or phases;
- d. The manner in which the public agency and the contractors administer and implement the project;
- e. Whether a single public works project includes several types of improvements or structures; and
- f. Whether the combined improvements or structures have an overall purpose or function.

A thorough application of the above factors to the WPI proposed development and Phase 1 of Revised Cove provides significant evidence against separating the proposed developments into two separate projects.

First, regarding factor (a), there is little physical separation between the two proposed developments' structures. The waterfront residences built in Phase 1 of Revised Cove will be built, in part, on Lot 3, which is across Main Street from Lot 2, where Grand Cove LLC will build apartments, a recreation/leasing office with a pool and spa, and commercial space within the apartments. In its March 26, 2014 letter to BOLI, CCLLC advised that, under the 2014 DDA for development of The Cove, the closest planned structures of Lot 2 and Lot 3 were 160 feet apart. BOLI acknowledges that it is possible the WPI proposed development and Revised Cove's structures may not be exactly the same distance apart as Lot 2's and Lot 3's structures planned under the 2014 DDA; nevertheless, the 160-foot measurement is still instructive on the likely proximity of project structures. The fact that WPI and Revised Cove's planned structures are across the street from each other, and very likely within hundreds of feet of each other, weighs heavily against separating the WPI and Revised Cove proposed developments into separate projects.

In terms of project timing, factor (b), construction on the WPI proposed development's structures and Revised Cove's structures likely will take place concurrently. Construction of the apartments on Lot 2 is estimated to begin 1st Quarter 2015 and to continue until 2nd Quarter 2016. Construction of the infrastructure for Lots 3, 4, 6, and 7 is also expected to begin in 1st Quarter 2015, and last through 3rd Quarter 2015. Construction of Revised Cove's non-infrastructure improvements - including the waterfront residences - appears likely to begin 2nd Quarter 2015 and to last until 2nd or 3rd Quarter 2016. As such, it appears there will be significant concurrent construction occurring between WPI and Revised Cove. This factor weighs heavily against separating the WPI proposed development and Revised Cove.

On the issue of contractor continuity, factor (c), contractors working on the WPI and Revised Cove proposed developments are unknown at this time. As such, this factor does not hold much, if any, weight in determining whether the WPI and Revised Cove proposed developments should be separated.

Regarding the manner in which the public agency and the contractors administer and implement the project, factor (d), again, the contractors of the two projects are unknown. Unlike in Revised Cove, URC appears not to be directly involved in the administration and implementation of the WPI proposed development. On the contrary, WPI, and to a

greater extent, Grand Cove LLC, appear to be responsible for the administration and implementation of the project. Since URC appears not to play an immediate, active role in administering and implementing Lot 2's development, one could argue that this factor weighs in favor of separating the WPI proposed development from the Revised Cove development.

URC's historical involvement in the administration and implementation of Lot 2's development, however, may indicate otherwise. URC has been a party, along with CCLLC and its predecessor PPS, to the 2007, 2008, and 2013 Master Plans and the 2009, 2013, and 2014 DDAs which all included plans to develop Lot 2, often with the proposed developments for Lot 2 being quite similar to the WPI proposed development. Additionally, URC appears to have played a part in the actual acquisition of Lot 2. This is because URC bought a piece of land called Parker Phase 2 that was part of the same purchase and sale agreement as Lot 2 (then called Parker Phase 1), which was purchased by a private party. It appears that by purchasing Parker Phase 2, URC helped the private purchaser of Lot 2 to complete its acquisition of Lot 2 since, per the 2009 DDA, URC agreed to buy Parker Phase 2 with its own money and to wait to be reimbursed by CCLLC until the Lot 2 purchase transaction had closed.

Something else to consider when applying factor (d) is the fact that there is some uncertainty regarding WPI's relation to CCLLC. For example, according to the Oregon Corporation Division, the current registered agent and president of WPI is Todd Woodley. Todd Woodley was listed as the registered agent of CCLLC on its 2010 Annual Report. Although Woodley Properties, Inc. is the current owner of Lot 2, CCLLC had the right to purchase Lot 2 in the late-2000s pursuant to the Parker Contract, and CCLLC, as of 2009, planned to enter into a PSA with Slayden Construction Group, Inc., allowing Slayden to buy Lot 2. According to the Oregon Corporation Division, Slayden Construction Group, Inc.'s current registered agent address is 500 Willamette Ave., Stayton, OR 97383. The registered agent address on CCLLC's Articles of Organization filed on July 23, 2009 and its 2010 Annual Report was 500 Willamette Ave., Stayton, OR 97383. Further, according to an Accurint Advanced Person search performed on August 13, 2014, two addresses associated with Todd Woodley are PO Box 474, Stayton, OR 97383 and PO Box 625, Stayton, OR 97383. As such, it appears that WPI may have a financial relationship with CCLLC that may have played a role in WPI ultimately acquiring Lot 2.

Overall, it appears that factor (d) weighs slightly in favor of separating the project.

Regarding factor (e), whether a single public works project includes several types of improvements or structures, the WPI proposed development includes apartments, a leasing/recreation building, a pool and spa, and some commercial space within the apartment buildings. Phase 1 of Revised Cove's proposed developments include 195 waterfront residences, with a leasing office, exercise facility, pool and spa on-site; commercial space alongside the waterfront residences; an Esplanade path traversing Lots 3, 4, 5, 6, and 7; North Park and amphitheater on Tract D; full improvements to a new Agnes Street; trailhead parking on Tract A; and monument signage on Tract A. The fact that the WPI proposed development includes not only residential construction but also commercial construction is indicative of the fact that Lot 2 is being developed for a mixed-use purpose, similar to the developments planned for Phase 1 of Revised Cove.

Phase 1 of Revised Cove does have recreational improvements such as an esplanade path and hiking trails that are not included among WPI's proposed developments. Nevertheless, on balance, this factor weighs somewhat against separating the WPI proposed development from Revised Cove.

Factor (f), whether the combined improvements or structures have an overall purpose or function, weighs strongly against separating the WPI proposed development and Revised Cove into different projects. The construction projects comprising the WPI proposed development and Revised Cove appear to have the overall purpose and anticipated outcome of transforming a vacant brown field into a vibrant, mixed-use development – a development that contributes to URC's Downtown North End Renewal Plan. URC has indicated in prior plans for the development of The Cove area, which has historically included Lot 2 from 2007 through 2014, that it "desires to see the Project Site developed pursuant to the Downtown North End Urban Renewal Plan" and identified the public benefits as "turning a blighted, abandoned industrial area into an attractive mixed-use development; a substantial increase in property taxes; significant construction and permanent employment; and numerous on-site public amenities."

Although Lot 2 will be owned by Grand Cove LLC, the improvements planned and contemplated by the proposed WPI development and Revised Cove all serve URC's purposes and represent "an undertaking devised to effect the reclamation or improvement of a particular area of land." *In the Matter of NW Housing Alternatives*, 33 BOLI 164, 171 (BOLI 2014). The area of land covered by the WPI proposed development and Revised Cove Phase 1 (and its subsequent Phases 2 through 4) represents the same area of land that URC, in cooperation with Ed Darrow and his companies CCLLC and PPS, have planned to develop since at least 2007 into an attractive mixed-use development. As demonstrated in CCLLC's letter of March 4, 2014, the 2007, 2008 and 2013 Master Plans for the Cove all included, like Phase 1 of Revised Cove does now, plans for waterfront residences on Lots 3, 4, 6, and 7, an amphitheater, and an esplanade on Tract C. All Master Plans also included, like the WPI proposed development does now, development plans for Lot 2, with the 2007 and 2013 plans including apartments (the 2008 plan included a medical office building in lieu of apartments). The WPI and Revised Cove proposed developments modify how URC's ultimate plan is achieved in two ways: (1) they change who the private owner and developer of Lot 2 is, replacing the prior DDA's choice of CCLLC with Grand Cove LLC; and (2) they separate the construction plans for Lot 2 and the adjacent Tract A between the WPI proposed development and Phase 1 of Revised Cove. Whereas Phase 1 of the 2014 DDA included not only the improvements built on Lot 2 itself but also the construction of improvements on the adjacent Tract A, including trailhead parking and the monument sign, the WPI proposed development and Revised Cove separate the Tract A construction from the Lot 2 construction by making it part of Revised Cove Phase 1. Ultimately, these changes appear largely cosmetic, and, regardless of how construction is allocated across proposed developments, URC's ultimate plan still appears to be achieved, with substantially similar circumstances.

Indeed, WPI has declined even to say whether Grand Cove LLC will ultimately build the apartments on Lot 2 that CCLLC planned to build pursuant to its 2014 DDA and whether Grand Cove LLC will use the architecture plans from Hill Architects that CCLLC intended to use to build Lot 2's apartments.

Finally, it should also be noted that URC is not the only party with the goal of turning The Cove into a vibrant mixed-use development. Edward Darrow and his associated companies, CCLLC, PPS, and possibly even WPI, have an interest in seeing The Cove developed in a manner largely consistent with recent proposals in order to protect their investment. Any significant departure from The Cove's prior plans likely would result in financial returns less favorable than projected. As such, it is more likely than not that even with separate owners and development plans, the aggregate project created by the WPI and Revised Cove proposed developments is substantially similar to prior DDAs and, like prior DDAs, represents an overall purpose or function of turning a blighted area into a vibrant, mixed-use development.

In sum, a careful consideration of the factors outlined in ORS 279C.827(1)(c) necessitates that the WPI proposed development and Revised Cove be treated as one project for purposes of prevailing wage rate law.

2. Pursuant to ORS 279C.827, URC's plan to contract and pay for infrastructure improvements on Lots 3, 4, 6, and 7 should not be separated from the project.

As indicated in the above findings of fact, URC intends to contract and pay for infrastructure improvements for Lots 3, 4, 6, and 7. URC intends to treat the infrastructure work as a separate project to which Oregon prevailing wage rate laws apply.

As in Conclusion of Law #1, it is necessary to apply the factors listed in ORS 279C.827(1)(c) to determine whether URC's plan to contract and pay for infrastructure work on Lots 3, 4, 6, and 7 should be divided from the project.

Regarding factor (a), the physical separation of the project structures, construction of the project's waterfront residences will, like the infrastructure work planned by URC, take place on Lots 3, 4, 6, and 7. Much of the infrastructure work planned by URC is designed to accommodate the waterfront residences, including the installation of sewage systems, curbs, driveways, and sidewalks. Not surprisingly, this infrastructure work often will be built in close physical proximity to the waterfront residences, sometimes actually connected to them. As such, factor (a) weighs heavily against dividing URC's infrastructure work from the project.

In terms of factor (b), which concerns the timing of the work on project phases or structures, URC's infrastructure work on Lots 3, 4, 6, and 7 is expected to begin 1st Quarter 2015 and to last six months. Construction on the waterfront residences is expected to begin within two to three months after the start of URC's infrastructure work and is expected to last 12-14 months. Construction on Lot 2 is expected to begin 1st Quarter 2015 and to last until 2nd Quarter 2016. As such, it appears likely that URC's infrastructure work, CCLLC's construction of the waterfront residences, and Grand Cove LLC's construction on Lot 2 will all occur concurrently, at least in part. As such, factor (b) weighs heavily against dividing URC's infrastructure work from the project.

Regarding factor (c), the continuity of project contractors and subcontractors working on project parts or phases, all project parties - URC, CCLLC, and Grand Cove LLC - indicate that no contractors have been selected. As such, this factor can be given little, if any, weight in determining whether URC's infrastructure work should be divided from the project.

On the issue of factor (d), the manner in which the public agency and the contractors administer and implement the project, again, URC, CCLLC, and Grand Cove LLC's contractors remain unknown. As such, the public agency's involvement appears determinative on this factor. Although CCLLC and URC indicate that URC will independently contract and pay for the infrastructure work on Lots 3, 4, 6, and 7, it appears that, as with other parts of the project involving infrastructure, CCLLC will also be involved. For example, URC's proposed infrastructure work appears to be based on the same plan and cost estimate that CCLLC intended to use pursuant to the 2014 DDA. Moreover, URC is contracting and paying for the proposed infrastructure for Lots 3, 4, 6, and 7 with the expectation that CCLLC will purchase the Lots for \$3,315,000, a purchase price that represents the land's value to CCLLC with precisely the infrastructure improvements URC is contracting and paying for - a price that, absent the infrastructure improvements, CCLLC appears unlikely to pay.

In the final analysis, the way that URC's infrastructure work is administered looks much like other infrastructure projects that comprise the project as a whole, such as the construction of Agnes Street, because of the mutual involvement of URC and CCLLC. Consequently, factor (d) weights significantly against dividing URC's infrastructure work from the rest of the project.

Regarding factor (e), whether a single public works project includes several types of improvements or structures, URC's infrastructure work, at first impression, appears to be solely and exclusively that - infrastructure work. Although other parts of the project include plans for infrastructure work, each also includes plans for non-infrastructure work ranging from apartment buildings to hiking trails to parks. Not surprisingly, one might conclude that URC's infrastructure work is distinguishable from other project parts or phases. However, given that URC's infrastructure work and CCLLC's non-infrastructure work may be built concurrently on the same parcels of land, attempting to distinguish the two may be easier in theory than in practice. As such, factor (e) weighs slightly in favor of dividing URC's infrastructure work from the project.

Regarding factor (f), it appears that URC's infrastructure work has the same overall purpose and function as the project: to transform a vacant brown field into a vibrant, mixed-use development. URC's infrastructure work was planned as part of a prior DDA to develop the entire project area. The infrastructure work was planned to support largely the same improvements as those in the current project - waterfront residences, an esplanade path, commercial space within the waterfront residence buildings, etc. - and the infrastructure work is necessary for large parts of the project to be built. The infrastructure is being built in reliance on the fact that development of the Lots by CCLLC is imminent. Given that the proposed URC infrastructure work appears to lay the groundwork for the project as a whole, it cannot be readily divorced from the project's overall function. Consequently, factor (f) weighs heavily against separating URC's infrastructure work from the project.

In sum, a thorough application of the factors in ORS 279C.827(1)(c) provides compelling evidence that URC's infrastructure work should not be separated from the project.

3. The \$4,545,900 URC intends to pay for the planned infrastructure improvements on Lots 3, 4, 6, and 7 constitutes \$4,545,900 in funds of a public agency used on the project.

According to OAR 839-025-0004(9)(a)(A), “directly used funds of a public agency” means revenue, money, or that which can be valued in money collected for a public agency or derived from a public agency’s immediate custody and control...

The \$4,545,900 URC intends to spend on infrastructure work for Lots 3, 4, 6, and 7 will be directly used funds of a public agency because URC will spend money that is in its immediate custody and control on the project.

Even if CCLLC believes its payment to URC in the amount of \$3,315,000 for the purchase of Lots 3, 4, 6, and 7 represents payment or reimbursement to URC for the \$4,545,000 URC spends on infrastructure, the \$4,545,900 remains funds of a public agency because it is within the custody and control of URC and allocated to the project by URC.

4. In January 2010, URC spent \$1,176,799 in funds of a public agency for architecture, engineering and other planning services related to the project. The funds cannot be unspent through subsequent reimbursement from CCLLC.

Per OAR 839-025-0004(9), “funds of a public agency” includes “revenue, money, or that which can be valued in money...derived from a public agency’s immediate custody and control.”

In January 2010, pursuant to CCLLC satisfying the pre-conditions in Contingency Period One set forth in The Cove’s DDA dated September 2, 2009, URC disbursed \$1,176,799 to pay for architectural, engineering, and planning services related to development of The Cove. This \$1,176,799 in funds was money in URC’s immediate custody and control.

Per ORS 279C.800(6)(a)(B), “public works” includes but is not limited to “A project that uses funds of a private entity and \$750,000 or more of funds of a public agency for constructing, reconstructing, painting or performing a major renovation on a privately owned road, highway, building, structure or improvement of any type.”

When this \$1,176,799, that was in URC’s immediate custody and control, was disbursed in January 2010, it was *used* on the project and cannot be unused by CCLLC subsequently reimbursing URC for the \$1,176,799 spent.

5. The sale of Lots 3, 4, 6, and 7 by URC to CCLLC for \$3,315,000 does not represent a contribution of funds of a public agency to the project because the sale is taking place pursuant to the exemption articulated in ORS 279C.810(1)(a)(D).
6. The project is a “public work” pursuant to ORS 279C.800(6)(a)(B) because the project will be privately owned, will use funds of a private entity, and will use \$750,000 or more of funds of a public agency. Funds of a public agency used on the project include the \$1,176,799 URC spent in January 2010 for architecture, engineering, and planning services and the \$4,545,900 that URC intends to spend on infrastructure improvements to Lots 3, 4, 6, and 7.

DETERMINATION:

Based on the foregoing, the prevailing wage rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will apply to the 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 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 of 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

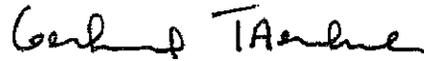
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived, this determination order will be final, and the agency file on this matter shall serve as the record for purposes of proving a prima facie case.

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 the 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.

Date: August 20, 2014

BRAD AVAKIAN, Commissioner
Bureau of Labor and Industries



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

Certificate of Service

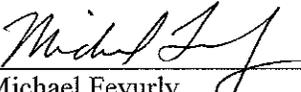
On August 20, 2014, I mailed the Prevailing Wage Rate Determination for WPI proposed development and Phase 1 of Revised Cove to the requestor and interested parties below:

Mr. Edward Darrow
Clackamette Cove LLC
30460 SW Ruth St., 4801
Wilsonville, OR 97070

Certified Mail – Return Receipt Requested
Article #: 7014-0510-0001-9850-4384

Ms. Chrys Martin
Davis Wright Tremaine LLP
1300 SW Fifth Avenue, Suite 2400
Portland, OR 97201-5610

Certified Mail – Return Receipt Requested
Article #: 7014-0510-0001-9850-4377


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