



March 2, 2015

Lisa Drayton  
Luckenbill-Drayton & Associates, LLC  
1052 NW 17<sup>th</sup> Street  
Redmond, OR 97756

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*  
Project: Sunrise Vista Apartments - Amended  
Requested by: Luckenbill-Drayton & Associates, LLC

Dear Ms. Luckenbill:

On February 25, 2015, you submitted a request asking if the Prevailing Wage Rate laws would apply to the proposed construction project known as Sunrise Vista Apartments. Sufficient information to make a determination was received on February 27, 2015, and therefore, the commissioner issues the following determination:

## FINDINGS OF FACT

1. Luckenbill-Drayton & Associates, LLC ("Luckenbill") proposes to construct 48 units of affordable rental housing in Klamath Falls, Oregon. The apartment complex will be known as Sunrise Vista Apartments. The proposed plan includes 11 multi-family residential buildings. None of the buildings will be more than two stories tall. The project will not include any commercial or retail spaces.
2. All Sunrise Vista Apartment occupants' incomes will be no greater than 60 percent of the area median income.
3. Sunrise Vista Apartments will be owned by Sunrise Vista Apartments, LLC, a single-asset private entity. Sunrise Vista Apartments, LLC is currently solely owned by Luckenbill. Ownership will remain this way until the construction loan is closed in February 2016. At that time, Klamath Housing Authority and a to-be-named tax credit investor will be formally admitted to the partnership. Once admitted to the partnership, the tax credit investor will be 99.99 percent owner, the Klamath Housing Authority will be .003 percent owner, and Luckenbill will be .007 percent owner.

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4. Sunrise Vista Apartments, LLC will contract for all construction work to be done on the project.
5. The total project cost is estimated to be \$8,000,000, with approximately \$6,500,000 in construction-related costs. The project may be solely funded with tax credits issued through Oregon Housing and Community Services. It is possible the project will use funds of a public agency in the form of \$200,000 from Oregon Housing and Community Services' General Housing Assistance Program. No other funds of a public agency will be used for the project.
6. No public agency will occupy or use any square footage of the completed project.

### **CONCLUSIONS OF LAW**

1. The proposed project meets the definition of "residential construction" in ORS 279C.810(2)(d)(D), as the project includes the construction of apartment buildings not more than four stories in height, and does not include any commercial or retail spaces.
2. The proposed project meets the definition of "privately owned" in ORS 279C.810(2)(d)(C)(ii), as the project is owned by Sunrise Vista Apartments, LLC. Klamath Housing Authority will eventually become a member of this LLC, but will not be a majority owner in the limited liability company.
3. The proposed 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 proposed project will "predominately" provide affordable housing, as 100 percent 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 this proposed project met the definition of "public works" under ORS 279C.800(6)(a), it would 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 proposed construction project known as Sunrise Vista 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, 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 2, 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 March 2, 2015, I mailed the Prevailing Wage Rate Determination for the proposed construction project known as Sunrise Vista Apartments to the requestor and associated public agencies, as follows:

Lisa Drayton  
Luckenbill-Drayton & Associates, LLC  
1052 NW 17<sup>th</sup> Street  
Redmond, OR 97756

*Hannah Wood*

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Hannah Wood  
Compliance Specialist  
Wage and Hour Division  
Bureau of Labor and Industries