January 23, 2019

Daryn Murphy, Vice President of Development
The Commonwealth Companies
2301 NW Thurman Street, Suite E
Portland, OR 97210

Re: Determination Whether Project is Subject to Prevailing Wage Rate Laws
Project: Surf View Village Apartments
Requested by: The Commonwealth Companies

Dear Mr. Murphy:

On January 14, 2019, the Bureau of Labor and Industries received the request you submitted asking if the Prevailing Wage Rate laws would apply to the Surf View Village Apartments project. Sufficient information to make a determination was received on January 18, 2019, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. Surf View Village, LLC (“Surf View Village”), a limited liability company, currently owns property located in Newport, Oregon. Surf View Village proposes to construct 110 units of affordable rental housing on the property. The project is referred to as Surf View Village Apartments (the “Project”).

2. The managing member of Surf View Village is Surf View Village MM, LLC (“Surf View Village MM”). The sole member of Surf View Village MM is Commonwealth Management Corporation, whose sole shareholder and President is Louie A. Lange III. The Project will be owned by Surf View Village, LLC.

3. The Project will include the construction of four three-story residential buildings comprised of 110 apartment units. There will be twenty-four one-bedroom units, forty-two two-bedroom units, and forty-four three-bedroom units. The Project will not include any commercial or retail spaces.
4. All units will be restricted to occupants with incomes no greater than 60 percent of the area median income.

5. The total project cost is estimated to be $23,696,160. Funds of a public agency to be used on the project include:
   $10,945,000 OHCS Local Innovation and Fast Track Housing Program (LIFT).

   Other funds to be used on the project include:
   $3,500,000 Permanent Loan
   $8,149,296 Tax Equity Credit
   $997,390 Deferred Developer Fee
   $104,474 Operational Cash Flow

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 apartment buildings not more than four stories in height, and does not include any commercial or retail spaces.

2. The Project will be owned by a private entity, and is therefore “privately owned” under ORS 279C.810(2)(d)(C).

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 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 the 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 Surf View Village 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: January 23, 2019

Val Hoyle, Commissioner
Bureau of Labor and Industries

Lois Johnson, Compliance Manager
Wage and Hour Division
Bureau of Labor and Industries
Certificate of Service

On January 23, 2019, I mailed the Prevailing Wage Rate Determination for the Surf View Village Apartments project to the requestor and interested party, as follows:

Daryn Murphy, Vice President of Development
The Commonwealth Companies
2301 NW Thurman Street, Suite E
Portland, OR 97210

Rebecca Isom, Loan Officer
Oregon Housing and Community Services
725 Summer Street NE, Suite B
Salem, OR 97301

Mike Kern
PWR Compliance Specialist
Wage and Hour Division
Bureau of Labor and Industries