



# Oregon

Bureau of Labor and Industries

Brad Avakian  
Commissioner

October 21, 2011

Dolly Bullington, OPBC  
Contracts Officer  
Oregon Parks & Recreation Dept.  
725 Summer Street NE, Suite C  
Salem, OR 97301-1266

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*  
Project: First Order Fresnel Lens Stabilization Project at the Cape  
Meares Lighthouse  
Requested by: Oregon Parks & Recreation Department

Dear Ms. Bullington:

On October 10, 2011, you submitted a request on behalf of the Oregon Parks & Recreation Department asking if the Prevailing Wage Rate law would apply to the First Order Fresnel Lens Stabilization Project at the Cape Meares Lighthouse ("project"). Sufficient information to make a determination was received on October 14, 2011, and therefore, the commissioner issues the following determination:

## FINDINGS OF FACT:

1. Oregon Parks & Recreation Department plans to stabilize the First Order Fresnel Lens in the Cape Meares lighthouse located at 4108 Highway 101 N. in Tillamook, Oregon. The property, lighthouse and lens are owned by the United States Coast Guard and have been leased to the Oregon Parks and Recreation Department since July 12, 1968.
2. The Oregon Parks and Recreation Department is a public agency.

**PORTLAND**  
800 NE Oregon St. Suite 1045  
Portland, OR 97232-2180  
(971) 673-0761  
Fax (971) 673-0762

**EUGENE**  
1400 Executive Parkway, Suite 200  
Eugene, OR 97401-7103  
(541) 686-7623  
FAX (541) 686-7980

**BEND**  
Apprenticeship and Training  
Worksource Bend  
1645 NE Forbes Rd, Ste 106  
Bend, OR 97701-4990  
(541) 322-2435  
FAX (541) 389-8265

**MEDFORD**  
Apprenticeship and Training  
119 N Oakdale Ave.  
Medford, OR 97501-2629  
(541) 776-6201  
FAX (541) 776-6284

**SALEM**  
3865 Wolverine St. NE; E-1  
Salem, OR 97305-1268  
(503) 378-3292  
FAX (503) 373-7636

Oregon Relay TTY:711

[www.oregon.gov/boli](http://www.oregon.gov/boli)  
AN EQUAL OPPORTUNITY EMPLOYER

**PENDLETON**  
Civil Rights  
1327 SE 3<sup>rd</sup> St.  
Pendleton, OR 97801-4101  
(541) 276-7884  
FAX (541) 276-5767



3. The lens is inside of a 121-year-old lighthouse that was extensively damaged by vandals in 2010. The lighthouse was originally built in 1889. The lens was manufactured in Paris, France and then shipped to Oregon for installation. The lens is attached to the lighthouse for stability purposes and will not be removed for this project because removal before stabilization could cause further damage.
4. Work on the lens will include the following tasks:
  - a. Wet clean the lens to remove particulate matter and prepare the surfaces for repair.
  - b. Treat all putty, using a four step process to clean, consolidate, repair/replace and seal.
  - c. Repair fractured lens prisms by migrating an adhesive into the damaged area.
  - d. Design and fabricate braces to stabilize missing annular glass rings.
  - e. Design and fabricate braces to stabilize glass elements damaged by gunshots.
  - f. Reverse selected temporary repairs, realign, brace and apply adhesive.
  - g. Join damaged glass elements where possible.
5. The total project is estimated to cost over \$50,000. All of the project funding will be funds of a public agency. Oregon Parks and Recreation Department will initially fund the project, and then be reimbursed for one hundred percent of the project funding by way of a grant from the Friends of Cape Meares Lighthouse & Wildlife Refuge, Inc. Friends of Cape Meares Lighthouse & Wildlife Refuge is a Domestic Non-Profit Corporation.

#### **CONCLUSIONS OF LAW:**

1. The definition of “public works” under ORS 279C.800(6)(a)(A) includes “roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest.” The First Order Fresnel Lens Stabilization project meets this definition of public works because it is a project for the construction, reconstruction, major renovation and/or painting of a building, structure or improvement that is being carried on or contracted for by the Oregon Parks & Recreation Department, a public agency.
2. The definition of “public works” does not include “the reconstruction or renovation of privately owned property that is leased by a public agency.” ORS 279C.800(6)(b). The property here is owned by the U.S. Coast Guard, a federal agency. Therefore, it is not privately owned property and this exclusion does not apply.

3. ORS 279C.800 to 279C.870 do not apply to projects for which the contract price does not exceed \$50,000 or to projects for which no funds of a public agency are used. ORS 279C.810(2)(a), (b). Here, Oregon Parks and Recreation Department expects the project cost to exceed \$50,000. All funds used will be funds of a public agency because Oregon Parks and Recreation Department will initially fund the project, to be reimbursed by a grant from Friends of Cape Meares Lighthouse & Wildlife Refuge. Therefore, neither of these exemptions will 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 apply to the proposed construction, reconstruction, major renovation and/or painting of the First Order Fresnel Lens Stabilization Project at the Cape Meares Lighthouse if the total project cost exceeds \$50,000.

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 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, OR 97232

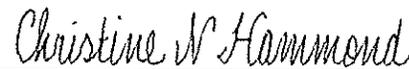
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: October 17, 2011

BRAD AVAKIAN, Commissioner  
Bureau of Labor and Industries



CHRISTINE N. HAMMOND,  
Administrator  
Wage and Hour Division  
Bureau of Labor and Industries

## Certificate of Service

On October 21, 2011, I mailed the Prevailing Wage Rate Determination for the Oregon Parks and Recreation Department to the requestor, as follows:

Dolly Bullington  
Sr. Contracts Officer  
Oregon Parks and Recreation Department  
725 Summer Street NE, Suite C  
Salem, OR 97301-1266

Certified Mail – Return Receipt Requested  
Article #: 7009 2820 0001 4829 2251

  
Cristin Casey  
Compliance Specialist  
Wage and Hour Division  
Bureau of Labor and Industries