



VAL HOYLE
Labor Commissioner

May 13, 2021

Jeffrey G. Condit, P.C.
Miller Nash Graham & Dunn LLP
111 SW Fifth Avenue, Suite 3400
Portland, OR 97204

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*
Project: Eugene Downtown Riverfront Development – Revised
Requested by: Miller Nash Graham & Dunn LLP on behalf of the City of Eugene

Dear Mr. Condit:

On May 28, 2019, the Bureau of Labor and Industries received a determination request submitted on behalf of the City of Eugene, asking if work done by the City of Eugene's local improvement district could be divided from work done by a private developer on a project in Eugene's downtown riverfront area. On January 8, 2020, the Bureau of Labor and Industries issued a determination that the local improvement district work could not be divided from the rest of the project, and the Prevailing Wage Rate laws would apply to the entire project.

On November 30, 2020, the Bureau of Labor and Industries received the request you submitted on behalf of the City of Eugene, asking if the Prevailing Wage Rate laws would apply to the project based on a revision to the fact situation for the project. Sufficient information to make a determination was received on April 27, 2021, and therefore, the commissioner issues the following revised determination:

FINDING OF FACT

1. The City of Eugene (the "City"), the City of Eugene Urban Renewal Agency (the "Agency"), and Eugene Water and Electric Board ("EWEB") are public agencies under ORS 279C.800(5). These public agencies have been working together to redevelop Eugene's downtown riverfront area ("Downtown Riverfront"), near the Willamette River.
2. The City adopted the Riverfront Urban Renewal District Plan (the "Plan") in 1985 and amended it in 2004. The goals and objectives of the Plan include:
 - To improve the function, condition, and appearance of the development area;
 - To eliminate existing blight and blighting influences;
 - To strengthen the economic and environmental conditions of the plan area and the metropolitan area;
 - To stimulate development activity and amenities near the new federal courthouse;
 - To stimulate appropriate redevelopment in the Riverfront area;



- To improve connections between the core of downtown, the Riverfront, and the University of Oregon; and
 - To protect or enhance the riparian area.
3. EWEB's Riverfront Master Plan (the "Master Plan") from 2010 states it is "a framework that builds certainty about the vision for the EWEB property, while being flexible enough to allow this vision to be realized in different ways." In July 2013, the Eugene City Council adopted the Master Plan, along with the Downtown Riverfront Special Area Zone, a set of land use policies to support implementation of the Master Plan.
 4. With the original determination request, the City representative noted, "The overall purpose of the Plan and Master Plan is to reconnect downtown with the river by turning a vacant and inaccessible riverfront area into a vibrant, active, and accessible neighborhood and community destination." As noted on the City's website, the "redevelopment of the Downtown Riverfront has been a part of the community's vision for decades, reinforced through numerous public engagement opportunities over several years."
 5. On June 16, 2017, the Agency entered into an Exclusive Negotiating Agreement with Williams/Dame & Associates, Inc. ("WDA"), for the redevelopment of portions of the Downtown Riverfront area. On January 31, 2018, WDA presented a formal proposal to the City Council relating to the transfer and development of portions of the Downtown Riverfront area. This proposal identified specific goals and an intent to "honor the spirit and objectives of the Master Plan."
 6. In April 2018, the Agency purchased approximately 16.6 acres of property from EWEB near the Willamette River (the "Agency Property"), for \$5,750,000.
 7. In 2018, the City initiated a local improvement district ("LID") to facilitate clearing and subdividing the Agency Property and installation of critical infrastructure, including streets, sidewalks, and utilities (the "LID Work").
 8. In December 2018, the City purchased approximately three acres of property from EWEB that borders the Willamette River and is adjacent to the Agency Property. The City paid \$1.00 plus escrow and closing costs for the property, and will continue to own this property. The City is contracting for the construction of a park, referred to as the Riverfront Park, on this property. Site preparation began in spring 2019, and included moving utilities, laying back the bank, and removing the bike path and other hardscape from the park site. Demolition of buildings finished in mid-June 2019, and riparian enhancement started in July 2019. The City has commenced construction of the Riverfront Park, and it is expected to be complete in the summer of 2021. The estimated cost of the Riverfront Park is \$14,000,000.

Plans include an adjacent one-acre Park Plaza, which will be constructed by the City on a portion of the Agency Property, after the Riverfront Park is completed. At some point,

the Agency will transfer the Park Plaza property to the City. The estimated cost for the Park Plaza is \$4,000,000, and will be paid with a combination of City and Agency funds.

The City representative stated the Riverfront Park work is being treated as a public works subject to the Prevailing Wage Rate laws, and the Park Plaza work will be treated as a public works subject to the Prevailing Wage Rate laws. The City representative also stated construction of the Riverfront Park and Park Plaza will occur regardless of whether the proposed Downtown Riverfront development goes forward.

9. On January 24, 2019, the Agency entered into a disposition and development agreement (the “Original DDA”) with WDA, which described the terms for the sale and lease of portions of the Agency Property to WDA, provided information about the LID Work to be done by the City and the allocation of the costs for that work, and specified certain sidewalk infrastructure requirements for which each party is responsible. The Original DDA also required WDA to develop certain vertical projects, including townhomes, market-rate apartments, affordable housing, a hotel, and retail space. The Original DDA was terminated on or around November 10, 2020.
10. On November 10, 2020, the Agency entered into an Agreement for Disposition and Development of Real Property (the “New DDA”) with DRND, LLC (“DRND”). The New DDA was amended March 1, 2021; the changes from the amendment have been included in this determination.
11. Recital F of the New DDA, as amended, defines the “DDA Property” as:
 - First Parcels – Parcels 3b, 3c, 4, 5, 9, the Viaduct Open Space (“VOS”), and Parcel A (or the substitutions listed in Section 2.2.1);
 - Second Parcels – Parcels 3a and 7 (or the substitutions listed in Section 2.2.2);
 - Third Parcels – Parcels 1 and 10, or the substitutions listed in Section 2.2.3;
 - GL Parcels – Parcels 6 and 8
12. Section 2.1 of the New DDA states the Agency agrees to sell or lease “Finished Lots” on the DDA Property to DRND. Exhibit A of the New DDA defines “Finished Lots” to mean:

. . . with respect to each Parcel purchased or leased by [DRND], that the Parcel is a legal lot of record and that the directly adjacent rights-of-way have been improved substantially consistent with Eugene Bid Document 800093, including add alternates 1 and 2, all issued addenda, and all approved change orders.
13. The Original DDA provided that street and utility infrastructure would be funded through the City-initiated LID, with the costs of the infrastructure allocated and assessed to each Parcel. The New DDA does not address the issue of street and utility infrastructure, and the City’s representative states there is no LID. Rather, the City is constructing infrastructure necessary to create Finished Lots which the Agency will sell to DRND. The City’s representative stated the City began construction of streets, sidewalks and utilities in the spring of 2020 and expects to complete the work in the summer of 2021.

The City's representative noted the City intends to complete the infrastructure work regardless of whether DRND acquires the property under the New DDA. The City's representative also noted:

[T]he Agency undertook the infrastructure work without any assurance or binding commitment from any private party to purchase lots on the larger property, after considering the public benefits of completing certain components of the infrastructure as soon as possible and regardless of future development (e.g., the riverfront park and connections to downtown) and the risks associated with selling shovel-ready lots to a third-party developer.

As noted in the original coverage determination issued on January 8, 2020, all infrastructure work contracted for by the City will be paid at prevailing wage rates. The updated estimated cost of the infrastructure work will be approximately \$16,500,000.

14. The City contracted for site preparation and demolition work on the property beginning in April 2019, and the work was largely finished by the end of October 2019. The site preparation included contouring all of the Agency Property except Parcel 1 and Parcel 2, to prepare for the construction of streets, utilities and buildings. The demolition included work on Parcel 3A, Parcel 4, Parcel 7, Parcel 9, the Park Plaza area, and what will be an extension of 5th Avenue. The City representative stated the cost of the site preparation was approximately \$1,500,000. This amount is included in the total infrastructure cost of \$16,500,000 noted above. The City representative indicated the site preparation and demolition work was paid at prevailing wage rates.
15. Section 4.4 of the New DDA, as amended, states the purchase price for the DDA Property is \$11,108,669, and notes DRND's acquisition or lease of the DDA Property will occur in multiple closings. Sections 4.5, 4.6 and 4.7 of the New DDA, as amended, provide the breakdown of the purchase price by Parcels, as follows:

	Purchase Price
First Parcels	\$4,709,641
Second Parcels	\$3,880,331
Third Parcels	\$2,518,697

16. Section 6.4 of the New DDA notes in no event will the purchase price for the DDA Property be lower than the appraised fair market value. The City is paying the cost of the necessary appraisal, which is estimated to be \$20,000. The appraiser has been instructed to value the lots as though all the public improvements are complete. The City's representative notes that selling the Parcels at not less than fair market value was designed to ensure that DRND will pay the value added to the property as a result of the infrastructure work done by the City.
17. Section 4.15.1 of the New DDA notes that certain closing costs will be shared by the Agency and DRND, including the Agency's share of the escrow fee, owner's policy title

insurance, and other fees. The representative for the Agency estimates the Agency's share of the closing costs will be \$26,527.

18. Under Section 4.8 of the New DDA, the Agency will ground lease to DRND Parcel 8 no later than December 31, 2023, and Parcel 6 no later than December of 2024. Schedule 4.8-B of the New DDA notes the fair market rental value for use as retail will be used. Section 7.1.4 of the New DDA requires DRND to develop retail space on these Parcels, and to make good faith efforts to include more than one restaurant on Parcel 8.
19. Schedule 12.3 of the New DDA, as amended, provides the construction commencement deadlines, as shown on the following tables.

First Parcels:

Parcel #	Proposed Use	Construction Commencement Deadlines
3B and 3C	Housing	September 15, 2021
4 and 5	Townhomes	None
9	Multi-family Housing	December 31, 2022
VOS	Public recreation space	June 30, 2023
Parcel A	Public recreation space	None

Second Parcels:

3A	Housing or Hotel	June 30, 2023
7	Multi-family Housing	December 15, 2022

Third Parcels:

10	Multi-family Housing	December 15, 2023
1	Townhomes	December 31, 2028

GL Parcels:

8	Restaurant	December 31, 2023
6	Commercial	December 31, 2024

20. Section 3.1 of the New DDA notes DRND will be allocated \$707,700 in System Development Charge ("SDC") credits.
21. Under Section 3.2 of the New DDA, the owner or lessee of each Parcel, in conjunction with construction of a building or buildings on such Parcel, will design and construct or install Sidewalk Infrastructure (i.e., final sidewalks; sidewalk fixtures, streetlights, and equipment; and street trees and landscaping).
22. Section 7.1.1 of the New DDA notes DRND may apply for the City's Multi-Use Property Tax Exemption program to obtain a 10-year abatement of property taxes.

23. The Original DDA provided that the Agency would carry a "Land Loan" of \$725,000 to be repaid by WDA over a term of 10 years. The Agency will not provide a loan of any amount under the New DDA.
24. The Original DDA noted the City would waive the collection of approximately \$831,000 in building permit fees from WDA. No waiver of any building permit fees will be made under the New DDA.
25. Schedule 2.2-B of the New DDA provides a depiction of the DDA property. As shown on the map, the Parcels to be purchased or leased by DRND will include only commercial and retail space. No space purchased or leased by DRND will be occupied or used by any public agency.

SUMMARY OF PROJECT

In the revised coverage determination request from the City, the representative for the City notes that no "public body is contributing \$750,000 or more of 'funds of a public agency' to the project in the aggregate," and therefore contends the project does not meet the definition of public works under applicable Oregon law. However, before this issue can be addressed, the question of what constitutes the "project" must be addressed, and then the question of whether the project is subject to the Prevailing Wage Rate laws can be analyzed.

In this case, the work being done by the City, including street, sidewalk and utility infrastructure, the Riverfront Park, and the Park Plaza, along with the work to be done by DRND constitute a single project. This determination refers to this work collectively as the "Eugene Downtown Riverfront Development project, as revised," or the "Revised Project".

CONCLUSIONS OF LAW

1. The Revised Project includes construction, reconstruction, major renovation or painting that is being carried on and contracted for by a public agency to serve the public interest. Therefore, the Project meets the definition of "public works" under ORS 279C.800(6)(a)(A).
2. The Revised Project will use the following funds of a public agency (all amounts are estimated):

Infrastructure, sidewalks, utilities, and site work	\$16,500,000	
Riverfront Park	\$14,000,000	
Park Plaza	\$4,000,000	
Subtotal Costs for City Work		\$34,500,000
Appraisal for DDA Parcels	\$20,000	
Agency Share of Closing Costs for DDA Parcels	\$26,527	
Subtotal Agency Costs for DDA Parcels		\$46,527

Total Funds of a Public Agency		\$34,546,527

Other funds to be used include \$707,700 in SDC waivers. Pursuant to ORS 279C.810(1)(a)(B), these are not funds of a public agency. In addition, property taxes may be abated for 10 years through the City's Multi-Use Property Tax Exemption program. Pursuant to ORS 279C.810(1)(a)(C), tax abatements are not funds of a public agency.

3. The total cost of the Revised Project is not known; however, based on the information provided, the total project cost exceeds \$50,000; therefore, the exemption from the Prevailing Wage Rate law under ORS 279C.810(2)(a) will not apply to the Revised Project.
4. The Revised Project will use funds of a public agency. As such, the exemption from the Prevailing Wage Rate law under ORS 279C.810(2)(b) will not apply to the Revised Project.

The Revised Project meets the definition of "public works" and no exemptions from the Prevailing Wage Rate law apply to the Project. Therefore, the Revised Project is subject to the Prevailing Wage Rate law.

DIVISION OF PROJECT

Pursuant to ORS 279C.827(2)(b), if a project is a public works project of the type described in ORS 279C.800(6)(a)(B), the commissioner shall divide the project, if appropriate, after applying the considerations set forth in ORS 279C.827(1)(c), to separate the parts of the project that include funds of a public agency from the parts of the project that do not include funds of a public agency. However, the Revised Project is a public works project of the type described in ORS 279C.800(6)(a)(A), and therefore the allowance for division under ORS 279C.827(2)(b) is not appropriate.

Pursuant to ORS 279C.827(3), if a project includes parts that are owned by a public agency and parts that are owned by a private entity, the commissioner shall divide the project, if appropriate, after applying the considerations set forth in ORS 279C.827(1)(c) and ORS 279C.827(2)(b), to separate the parts of the project that are public works from the parts of the project that are not public works. The allowance for division under ORS 279C.827(2)(b) is to separate parts of the project that use funds of a public agency from the parts of the project that do not use funds of a public agency. However, all portions of the Revised Project use funds of a public agency, and therefore a division under ORS 279C.827(2)(b) is not appropriate.

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 the Eugene Downtown Riverfront Development project, as revised.

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

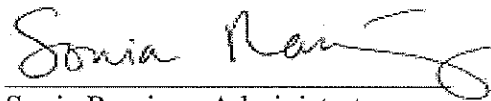
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived, this determination order will be final, and the agency file on this matter shall serve as the record for purposes of proving a prima facie case.

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: May 13, 2021

VAL HOYLE, Commissioner
Bureau of Labor and Industries

A handwritten signature in cursive script, appearing to read "Sonia Ramirez", written over a horizontal line.

Sonia Ramirez, Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On May 13, 2021, I mailed the Prevailing Wage Rate Determination for the Eugene Downtown Riverfront Development project, as revised, to the requestor and interested party, as follows:

Jeffrey G. Condit, P.C.
Miller Nash Graham & Dunn LLP
111 SW Fifth Avenue, Suite 3400
Portland, OR 97204

Glenn Klein and Amanda Nobel Flanner
Urban Renewal Agency, City of Eugene
99 West 19th Avenue
Eugene, OR 97401



Susan Wooley
PWR Technical Assistance Coordinator
Wage and Hour Division
Bureau of Labor and Industries