



VAL HOYLE
Labor Commissioner

January 21, 2021

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

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*
Project: 53rd Flats
Requested by: Commonwealth Development Corporation of America

Dear Mr. Murphy:

On November 19, 2020, the Bureau of Labor and Industries received the request you submitted asking if the Prevailing Wage Rate laws would apply to the 53rd Flats project. Sufficient information to make a determination was received on January 19, 2021, and therefore, the commissioner issues the following determination:

FINDING OF FACT

1. 53rd Flats, LLC, a private entity, proposes to purchase privately owned property in Corvallis, Oregon, and develop an affordable housing project on the site. The project is referred to as 53rd Flats (the "Project").
2. The Project will include the construction of five buildings with a total of 100 apartment units. None of the buildings will be more than three stories tall. The apartments will be a mix of two- and three-bedroom apartments. The Project will include a club house, raised gardens, and parking. The Project will not include commercial space.
3. All of the apartment units will be restricted to occupants with incomes no greater than 60 percent of the area median income.
4. The Project will use the following funds of a public agency:
 - \$ 9,300,000 Oregon Housing and Community Services ("OHCS") LIFT Funds
 - \$ 154,000 OHCS Multifamily Energy Program Funds

Other funds to be used for the Project include:

\$10,088,000 Permanent Loan
\$ 6,679,456 OHCS Tax Credit Equity
\$ 1,621,405 Deferred Developer Fee



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 space.
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 60 percent or more 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 Project meets the definition of “public works” under ORS 279C.800(6)(a), it will 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 53rd Flats 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

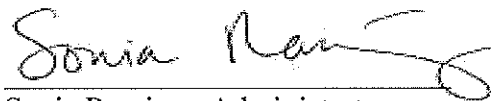
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived, this determination order will be final, and the agency file on this matter shall serve as the record for purposes of proving a prima facie case.

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 21, 2021

VAL HOYLE, Commissioner
Bureau of Labor and Industries




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

Certificate of Service

On January 21, 2021, I mailed the Prevailing Wage Rate Determination for the 53rd Flats project to the requestor and interested party, as follows:

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

Paula Anderson, Production Analyst
Oregon Housing and Community Services
725 Summer Street NE, Suite B
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Susan Wooley
PWR Technical Assistance Coordinator
Wage and Hour Division
Bureau of Labor and Industries