

Edwin L. Case  
Purchasing & Risk Manager  
Eugene Water and Electric Board  
PO Box 10148  
Eugene OR 97440-2148

Re: *Determination Whether Project is Subject to Prevailing Wage Rate*  
Project: Quail Run Site Restoration  
Requested by: Eugene Water and Electric Board

Dear Mr. Case:

On February 22, 2008, you submitted a request on behalf of the Eugene Water and Electric Board ("EWEB"), asking if the prevailing wage rate law would apply to a proposed project consisting of the removal of non-native plant species and the establishment of site vegetation. Sufficient information to make a determination was received on February 27, 2008, and therefore, the commissioner issues the following determination:

#### **FINDINGS OF FACT**

1. EWEB will contract for work consisting of the removal of all invasive weedy species and black cottonwood seedlings, the installation of native plantings and seeds, the watering and maintenance of the plantings, and the replacement of failed plantings and cuttings over a period of time.
2. It has been represented that the work of restoring the site vegetation will not be performed as part of a larger project involving construction, reconstruction, major renovation or painting carried on or contracted for by a public agency.

#### **CONCLUSIONS OF LAW**

1. EWEB proposes to contract for the removal of invasive plant species and the planting and establishment of native plant species at the project site. The landscape activities are not part of other construction work being performed at the site. The project does not involve the construction, reconstruction, major renovation or painting of a road, highway, building, structure, or improvement. ORS 279C.800(6)(a)(A) does not apply.
2. The project does not involve the construction, reconstruction, major renovation or painting of a privately owned road, highway, building, structure, or improvement

that uses funds of a private entity and \$750,000 or more of funds of a public agency. ORS 279C.800(6)(a)(B) does not apply.

3. The project does not involve the construction, reconstruction, major renovation or painting of a privately owned road, highway, building, structure, or improvement that uses funds of a private entity and in which 25 percent or more of the square footage of the completed project will be occupied or used by a public agency. ORS 279C.800(6)(a)(C) does not apply.

## **DETERMINATION**

Based on the foregoing, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, do not apply to the Quail Run Site Restoration 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.

## **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 HB 2140 Section 43 (Enrolled) OR Laws 2007. 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.

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: March 4, 2008

Dan Gardner, Commissioner  
Bureau of Labor and Industries

*Christine N. Hammond*

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Christine N. Hammond, Administrator  
Wage and Hour Division  
Bureau of Labor and Industries

## **Certificate of Service**

On March 4, 2008, I mailed the Prevailing Wage Rate Determination for the Quail Run Site Restoration Project to the requestor and any public agencies identified by requestor as being associated with this project, as follows:

Edwin L. Case  
Purchasing & Risk Manager  
Eugene Water and Electric Board  
PO Box 10148  
Eugene OR 97440-2148

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Gerhard Taeubel, Compliance Specialist  
Wage and Hour Division  
Bureau of Labor and Industries