



# Oregon

Bureau of Labor and Industries

Brad Avakian  
Commissioner

July 3, 2014

Edward Darrow  
Clackamette Cove LLC  
30460 SW Ruth St., 4801  
Wilsonville, OR 97070

Re: Amended *Determination Whether Project is Subject to Prevailing Wage Rate Law*  
Project: Phase 1 and Phase 2 of The Cove in Oregon City  
Requested by: Clackamette Cove LLC

Dear Mr. Darrow:

On March 4, 2014, you submitted a request on behalf of Clackamette Cove LLC ("CCLLC"), asking whether Phase 1 and Phase 2 of a proposed mixed-use development, referred to as The Cove in Oregon City ("The Cove"), will be subject to the Oregon prevailing wage rate law. BOLI issued a coverage determination on March 18, 2014 indicating that Phase 1 and Phase 2 of The Cove would be subject to Oregon prevailing wage rate law. On March 26, 2014, you submitted a Request for Reconsideration of the March 18, 2014 coverage determination. BOLI responded on April 4, 2014, asking for additional information related to your Request for Reconsideration. On May 23, 2014, you supplied the additional information necessary for BOLI to formally respond to your Request for Reconsideration, and therefore, the commissioner issues the following amended determination:

## FINDINGS OF FACT:

1. The Urban Renewal Commission of the City of Oregon City ("URC") is a public agency that encourages the development and renewal of urban land with the goal of optimizing land use and creating economic opportunity.
2. Clackamette Cove LLC ("CCLLC") is a domestic limited liability company that registered with the Oregon Corporations Division on July 23, 2009; Edward Darrow is a member of CCLLC.
3. Pacific Property Search, LLC ("PPS") is a domestic limited liability company that registered with the Oregon Corporations Division on July 28, 2005; Edward Darrow is a member of PPS.
4. According to CCLLC's March 4, 2014 letter to BOLI, PPS is the managing member of CCLLC.

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5. Developer Edward Darrow, along with PPS and/or CCLLC, has worked with URC on developing The Cove since at least 2007, and has been involved in the 2007, 2008, and 2013 Master Plans for The Cove.
6. The first Disposition and Development Agreement (“DDA”) for The Cove involving URC and CCLLC dates back to September 2, 2009 (“2009 DDA”). Since 2009, CCLLC and URC have entered into a 2013 DDA and a January 10, 2014 DDA (“current DDA”). Whether there were prior DDAs involving URC and PPS (as opposed to CCLLC) is unknown.
7. URC and CCLLC intend to develop The Cove’s 89.59-acre project area into a mixed-use development that will include 244 garden apartments, 195 waterfront apartments built to condominium standards, a large office building and parking lot, a mixed-use building with commercial space, a water sports center, an amphitheater, marinas, hiking trails, and the infrastructure necessary for each.
8. The current DDA, which is based on the 2013 Master Plan, contemplates that The Cove project may consist of five (5) phases. This determination is for Phase 1 and Phase 2 work only, which includes the infrastructure work, construction of apartments, an amphitheater, parks, trail head parking, hiking trails, and road infrastructure.
9. The current DDA requires that CCLLC begin Phase 1 construction first; however, Section 3.3 of the current DDA allows CCLLC to “exercise its option to construct Phase 2 at any time during the construction of Phase 1...so long as at the time of exercise of the option, CCLLC is not in default of this Agreement.”
10. Section 4.2.1 of the current DDA states that URC has approved current plans pertaining to infrastructure work involved in Phases 1 and 2.
11. Section 6.1 of the current DDA states that URC has determined that the Phase 1, Phase 2 and Phase 3 infrastructure work may meet the definition of “public works” under ORS 279C.800(6)(a)(B).
12. The current DDA contemplates construction of Phases 3, 4, and 5. Per Sections 13.3 and 13.4 of the current DDA, Phases 3 and 4 would involve publicly-owned land that will be sold or otherwise made available to CCLLC.
13. Per the current DDA, although the 2009 DDA was ultimately terminated, CCLLC satisfied the pre-conditions in Contingency Period One of the 2009 DDA, which resulted in a January 2010 disbursement of at least \$2,999,799 in URC funds for The Cove’s development.
14. URC’s 2010 disbursement included \$1,176,799 for architecture, engineering, and other planning services, and \$1,823,000 for the purchase of two tracts of land: (1) a 1.81-acre tract described in the 2009 DDA as the “Glacier Parcel” that URC purchased for \$500,000; and (2) a 1.62-acre tract described in the 2009 DDA as the “Parker Phase 2” property that URC purchased for \$1,323,000.

15. In its letter dated May 23, 2014, CCLLC advised that \$228,897.36 of URC's January 2010 disbursement of \$1,176,799 for architecture, engineering and other planning services applies to the current DDA.
16. According to the current DDA, Phase 1 work includes: (a) construction of 244 garden apartments and a recreation building on Lot 2; (b) soil removal and grading for North Park and an amphitheater on Tract D; (c) construction of trail head parking and a monument sign on Tract A; (d) construction of a roundabout at the intersection of Main and Agnes Streets; and (e) improvements on a portion of Main Street adjacent to Lot 2.
17. According to the current DDA, Phase 2 work includes (a) construction of 195 waterfront apartments and a leasing office, exercise area, swimming pool, and spa across Lots 3, 4, 6 and 7; (b) construction of the esplanade path and landscaping on Tract C; (c) construction of 1,800 square feet of restaurant space on each of Lots 4 and 6; (d) construction of North Park, an amphitheater, and a parking lot on Tract D; (e) development of a hiking path on the north peninsula; and (f) construction of Agnes Street to Oregon City standards.
18. Phase 1 and Phase 2 each have 24-month schedules for completion.
19. According to CCLLC's May 23, 2014 letter to BOLI, construction documents for Phase 1 and Phase 2 are incomplete, and contractors for Phase 1 and Phase 2 are unknown. However, CCLLC indicates that the contractors for Phase 1 and Phase 2 will be different.
20. According to Section 15.2 of the current DDA, the rights and obligations of the parties to proceed with the development of the project shall be conditioned on the City and CCLLC agreeing upon a plan for the periodic maintenance and upkeep of the Public Areas and agreeing upon the Public Areas Cost Agreement.
21. Section 9 of the current DDA includes provisions requiring that URC and CCLLC enter into a Dredging Agreement for the purpose of ensuring periodic dredging of The Cove. Section 9 also sets forth URC's and CCLLC's financial responsibility for each instance of dredging.
22. Prior to beginning construction of the garden apartments in Phase 1, CCLLC will purchase Lot 2 from a private third party, Woodley Properties, Inc., a domestic corporation, for \$2,800,000.
23. Under the current DDA, CCLLC shall have the option to purchase Lots 3, 4, 6 and 7 from URC for \$10. CCLLC may exercise this option prior to beginning construction of Phase 2 and after construction commences on Phase 1.
24. In an email dated March 7, 2014, CCLLC member Edward Darrow agreed that the "Parker Phase 2" property comprises part of what is now referred to as Lot 3 and Tract B in the current DDA.
25. In an email dated March 10, 2014, CCLLC member Edward Darrow indicated that both the "Glacier Parcel" and "Parker Phase 2" properties are "right in the middle of Project #2 making it necessary that they be assembled to make the contiguous overall Project #2 developable."

26. The Glacier Parcel comprises part of Lots 3, 4, 5, 6, and 7, as indicated on the Plat Map for Glacier Parcel and Parker Phase 2 Parcel.
27. According to Section 2.1 of the 2009 DDA, PPS became party to a Purchase and Sale Agreement (“PSA”) for the Parker Phase 2 Parcel in August 2006 (the seller was Parker Pond LLC). Referred to as the “Parker Contract,” this agreement also included Parker Phase 1 (Lot #2 in current development plans). PPS subsequently assigned its PSA-granted option to purchase Parker Phase 2 to CCLLC. According to Section 5.2.11 of the 2009 DDA, prior to construction of The Cove commencing, CCLLC was to have obtained partial assignment of the Parker Contract to URC, allowing URC to acquire the Parker Phase 2 Parcel. According to Section 8.1 of the 2009 DDA, URC was required to acquire the Parker Phase 2 Parcel pursuant to the Parker Contract once the pre-conditions in Contingency Period One had been satisfied.
28. According to Section 2.2 of the 2009 DDA, PPS became a party to a Purchase and Sale Agreement for the Glacier Parcel in December 2007 (seller was Glacier Northwest, Inc.); this agreement is referred to in the DDA as the “Glacier Contract.” PPS subsequently assigned its interest in the PSA to CCLLC. According to Section 5.2.12 of the 2009 DDA, CCLLC was to have assigned the Glacier Contract to URC prior to the beginning of construction of The Cove. According to Section 8.1 of the 2009 DDA, URC was required to acquire the Glacier Parcel pursuant to the conditions of the Glacier Contract once the pre-conditions in Contingency Period One had been satisfied.
29. According to a summary provided by CCLLC via e-mail on 5/23/14, \$215,612.91 of the \$1,176,799 disbursed by URC in January 2010 for architectural, engineering, and planning services went to PPS. The summary indicates that none of this money is applicable to the current project.
30. Section 7.2.4 of the DDA dated January 2013 (“2013 DDA”) permitted CCLLC to purchase Lots 3, 4, 6, and 7 for \$2,750,000 through a combination of cash and credits.
31. Section 8.1 of the 2013 DDA indicated that URC agreed to pay up to \$7,000,000 toward the cost of infrastructure work for The Cove.
32. On March 4, 2013, BOLI issued a determination that Phase 1 of The Cove would be subject to Oregon’s prevailing wage rate law. This determination was made based on project information provided on February 12, 2013.
33. In its letter dated May 23, 2014, CCLLC wrote, in response to BOLI’s request in its April 4, 2014 letter for copies of all prior DDAs, “you will note that this prior DDA included significantly larger contributions by the URC and a resulting obligation to pay ‘prevailing wages.’ This prior plan was ultimately unfeasible, requiring that an entirely different approach be taken. The new approach has been carefully structured to make the current projects feasible and possible. In particular, the projects do not include additional funding from the URC, so that the projects will not be public works projects.”
34. In its March 26, 2014 letter to BOLI, CCLLC advised BOLI that URC had withdrawn its offer to reimburse CCLLC for \$745,000 in infrastructure costs during Phase 1 and Phase 2 of the current DDA.

35. An appraisal of Lots 3, 4, 6, and 7, performed by Colliers International in September 2012, resulted in a fair reuse value of \$2,750,000; however, in its March 4, 2014 letter to BOLI, CCLLC stated that Lots 3, 4, 6, and 7 have a negative value due to infrastructure costs it says are necessary to develop the Lots.
36. An appraisal of Lots 3, 4, 6, and 7 performed by Colliers International in May 2014 resulted in a fair market value of \$80,000 and fair reuse values of \$3,315,000 and (\$1,230,900). The negative fair reuse value factored in the cost of anticipated infrastructure costs.
37. Developer Edward Darrow and URC have been planning development of The Cove since at least 2007 when, according to Mr. Darrow's letter of March 4, 2014, URC chose him and his company, Pacific Property Search, LLC, to develop the site due to his history of successfully developing blighted areas.
38. There have been three Master Plans for The Cove thus far: the 2007 Master Plan, the 2008 Master Plan, and the 2013 Master Plan, and all included plans to develop Lots 3, 4, 6, and 7.
39. The 2007, 2008, and 2013 Master Plans all serve the purpose of developing The Cove into a vibrant, mixed-use development pursuant to URC's Downtown North End Urban Renewal Plan. Each of these Master Plans includes waterfront apartments (later to be sold as condominiums) to be built on Lots 3, 4, 6, and 7, an esplanade to be constructed on Tract C, a mixed-use building to be constructed on Lot 1, a commercial office, an amphitheater, a park, and hiking trails.
40. The current DDA does not indicate that URC has imposed any limitation, exclusive of zoning or land use regulations, on the development or use of Lots 3, 4, 6, and 7 as contemplated by ORS 279C.810(1)(a)(E).

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

1. The work to be performed during Phase 1 and Phase 2 of The Cove constitutes one project and BOLI will treat these Phases as one project pursuant to ORS 279C.827. According to ORS 279C.827(1)(c), considerations used to determine whether projects should be separated include:
  - a. The physical separation of the project structures;
  - b. The timing of the work on project phases or structures;
  - c. The continuity of project contractors and subcontractors working on project parts or phases;
  - d. The manner in which the public agency and the contractors administer and implement the project;
  - e. Whether a single public works project includes several types of improvements or structures; and
  - f. Whether the combined improvements or structures have an overall purpose or function.

A thorough application of the above factors to Phase 1 and 2 provides significant evidence against separating Phase 1 and Phase 2 into different projects.

First, regarding factor (a), there is little physical separation between Phase 1 and Phase 2 project structures. According to the current DDA, Phase 1 includes construction work on Lot 2, Tract D, and Tract A. Phase 2 includes construction work on Lots 3 and Tract D (among other parcels). The fact that Phases 1 and 2 include construction work on the same parcel, Tract D, and construction work on Lots 2 and 3, which are separated only by Main Street, shows that there is very little physical separation of the project structures constructed during Phase 1 and 2. In its letter dated March 26, 2014, CCLLC objects to BOLI's characterization of Phase 1, Tract D work as "construction" because, according to CCLLC (and in contradiction to its DDA), Phase 1, Tract D work only includes soil removal and not grading. Nevertheless, "work" occurs on Tract D during Phase 1 and Phase 2, and this work on the same Tract is, in this case, close in physical proximity.

In terms of project timing, factor (b), the current DDA permits CCLLC to begin Phase 2 construction work "...at any time during the construction of Phase 1 until 120 days after the Completion of Construction of Phase 1..." (p.9). As such, it appears the DDA permits Phase 1 and Phase 2 construction activities to take place concurrently or nearly concurrently. Nevertheless, CCLLC asserts in its letter to BOLI dated March 26, 2014 that Phase 2 will not begin until at least 14 to 18 months after Phase 1 begins for a variety of reasons. Since, according to CCLLC, Phase 1 has a 24-month schedule for completion, it appears possible that Phase 2 will be built concurrent to Phase 1.

Regardless, Phase 1 and 2 work will take place either concurrently or not more than 120 days apart.

Perhaps more relevant to the timing question is the fact that some of the construction work planned in Phase 1 is directly linked to the construction work in Phase 2. For example, Phase 1 construction work includes building a roundabout at the junction of Agnes and Main Streets. Phase 2 construction work includes the construction of Agnes Street to Oregon City standards. Building the roundabout in Phase 1 appears superfluous if the parties do not expect to build Phase 2.

On the issue of contractor continuity, factor (c), CCLLC advises in its May 23, 2014 letter to BOLI that Phase 1 and Phase 2 will include different project contractors and subcontractors and thus there is little contractor continuity. However, CCLLC has declined to identify anticipated contractors either in the current DDA or in its March 4, 2014 and May 23, 2014 letters to BOLI. In its May 23 letter, CCLLC writes, "Currently, the plans are not complete enough to be able to request bids and enter into construction contracts/agreements. The contractors will be different for each Phase, however." BOLI believes that this factor – the continuity of project contractors and subcontractors – cannot be given much weight in determining whether Phase 1 and Phase 2 are separate projects due to significant uncertainty regarding the contractors involved in the separate Phases.

The manner in which the public agency and the contractors administer and implement the project, factor (d), is also a factor that is somewhat difficult to apply to Phase 1 and Phase 2 of The Cove since CCLLC has not identified the contractors working on Phase 1 and Phase 2. Nevertheless, URC and CCLLC appear to administer Phase 1 and Phase 2 similarly. For example, Phase 1 and Phase 2 each include CCLLC-owned residential and/or commercial improvements on land owned by CCLLC, and URC-owned improvements on land owned by URC. In Phase 1, land involved includes Lot 2, which

will be owned by CCLLC (or another private party to which CCLLC conveys its interest), and Tracts A and D, which will continue to be owned by URC. Phase 2 land involved includes Lots 3, 4, 6, and 7, which will be owned by CCLLC (or another private assign), and Tracts C and D, which will continue to be owned by URC. Improvements that will be privately-owned in Phase 1 include the garden apartments; Improvements that will be publicly-owned in Phase 1 include Main Street infrastructure and trail head parking. Improvements that will be privately-owned in Phase 2 include the waterfront apartments; improvements that will be publicly-owned include North Park and the amphitheater.

Section 15.2.1 of the current DDA requires that the City of Oregon City and CCLLC agree upon a plan “for the periodic maintenance and upkeep of the Public Areas...” Section 15.2.1 also requires URC and the owner(s) of the Apartment Site to establish a “Public Areas Cost Agreement.” Similarly, CCLLC (or, in the event the waterfront units or garden apartments built are sold as condominiums, the applicable unit owners’ association) is expected to enter into a “Public Areas Maintenance Plan” with the City. Section 9 of the DDA dated January 10, 2014 also includes provisions requiring that URC and CCLLC enter into a Dredging Agreement, providing for periodic dredging of The Cove. The DDA also sets forth URC’s and CCLLC’s financial responsibility for each instance of dredging.

Given that both a public agency (URC) and a private entity (CCLLC or its assign) will retain ownership interests in the land and improvements comprising Phase 1 and Phase 2 of The Cove, indefinitely, and the fact that the DDA requires that both parties negotiate a long-term land maintenance agreement, and potentially a dredging agreement, it appears that Phase 1 and Phase 2 are administered similarly, with each Phase including public and private improvements, public and private ownership, and ongoing agreements between public and private parties.

In terms of factor (e), Phase 1 and Phase 2 both include several types of improvements/structures. Each Phase includes privately-owned and publicly-owned improvements, on privately and publicly-owned land. That each Phase includes improvements designed for use by the general public and by private parties highlights the Phases’ similarity and contributes to the argument that Phase 1 and Phase 2 are one project.

A consideration of factor (f) weighs strongly against separating Phase 1 and Phase 2 into different projects. The construction projects of Phase 1 and Phase 2 appear to have the overall purpose and anticipated outcome of transforming a vacant brown field into a vibrant, mixed-use development – a development that contributes to URC’s Downtown North End Renewal Plan. In fact, in the current DDA, URC indicates that it “desires to see the Project Site developed pursuant to the Downtown North End Urban Renewal Plan” and identifies the public benefits as “turning a blighted, abandoned industrial area into an attractive mixed-use development; a substantial increase in property taxes; significant construction and permanent employment; and numerous on-site public amenities.”

The current Phase 1 and Phase 2 plans turn The Cove area into a vibrant, mixed-use development. Phase 1 work includes not only the construction of the garden apartments and resident amenities, but also the construction of a trail head parking lot and a path

connecting the trailhead parking to the sidewalk on Main Street. Phase 2 work includes not only the construction of waterfront apartment units, but also the construction of 3,600 square feet of potential restaurant space, an Esplanade path, a public parking lot, a hiking path, and an entire city street (Agnes). Current Phase 1 and Phase 2 plans embody the overall purpose and anticipated outcome of The Cove.

Finally, it should be noted that, as stated in CCLLC's letter dated March 4, 2014, The Cove has been in development since 2007. The 2009 DDA states that PPS (which is a managing member of CCLLC) "proposed to develop the area as a mixed-use master planned development." As demonstrated in CCLLC's letter of March 4, 2014, the 2007, 2008 and 2013 (current) Master Plans all included plans for waterfront residences on Lots 3, 4, 6, and 7, an amphitheater, an esplanade on Tract C, and a mixed-use building on Lot 1. In short: the current, and all prior, Master Plans work toward the same goal: to create a vibrant, mixed-use development pursuant to URC's Downtown North End Urban Renewal Plan."

In sum, a careful consideration of the factors outlined in ORS 279C.827(1)(c) necessitates that Phase 1 and Phase 2 be treated as one project for purposes of prevailing wage rate law.

2. The sale of Lots 3, 4, 6, and 7 in Phase 2 by URC to CCLLC for \$10 total constitutes at least \$1,822,990 in funds of a public agency contributed to the project.

Developer Ed Darrow and URC have been planning development of The Cove since at least 2007 when, according to Mr. Darrow, URC chose him and his company, PPS, to develop the site due to his history of successfully developing blighted areas.

The first Master Plan for The Cove dates back to 2007; that Master Plan, and the subsequent 2008 and 2013 Master Plans, all included plans to develop Lots 3, 4, 6, and 7.

URC bought two Parcels of land that comprise part of Lots 3, 4, 6, and 7 for \$1,823,000 in 2010, and the parties' history with these two Parcels dates back to 2006 and 2007.

CCLLC's managing member, PPS, became party to Purchase and Sale Agreements for the Parker Phase 2 Parcel and the Glacier Parcel back in 2006 and 2007, respectively.

To be more specific, PPS entered into a PSA with a private third party for the purchase of the Parker Phase 2 parcel in August 2006. PPS entered into a PSA with a private third party for the purchase of the Glacier Parcel in December 2007. According to the 2009 DDA, PPS assigned its interest in these PSAs to CCLLC, who then assigned its interest to URC, with URC being *required* by the 2009 DDA to purchase the Parker Phase 2 Parcel and Glacier Parcel once CCLLC met certain pre-conditions.

According to CCLLC, in January 2010, pursuant to CCLLC satisfying the pre-conditions in Contingency Period One, URC disbursed funds that it used to buy the Parker Phase 2 and Glacier Parcels for \$1,323,000 and \$500,000, respectively.

In an email dated March 10, 2014, CCLLC member Edward Darrow indicated that both the "Glacier Parcel" and "Parker Phase 2" property are "right in the middle of Project #2 making it necessary that they be assembled to make the contiguous overall Project #2 developable."

*It appears that URC ultimately purchased the two Parcels specifically because of its dealings with Ed Darrow, CCLLC, and PPS specifically for the purpose of making the parties' detailed plans for The Cove's development a reality.*

According to OAR 839-025-0004(9)(a)(A), "directly used funds of a public agency" includes "revenue, money, or that which can be valued in money...derived from a public agency's immediate custody and control." "Funds of a public agency" includes but is not limited to "public property or other assets used as payment for all or part of a project."

The Parker Phase 2 and Glacier Parcels can be valued in money – specifically the \$1,823,000 that URC spent to acquire them subject to the 2009 DDA for development of The Cove. URC currently owns the Parcels, so they are in URC's immediate custody and control. Although not necessary to meet the definition of "funds of a public agency," the Parcels are being sold by URC to CCLLC, along with the rest of Lots 3, 4, 6, and 7, for the small sum of \$10, as "payment for all or part of a project."

The 2009 and 2013 DDAs required URC to pay as much as \$7,000,000 of CCLLC's infrastructure costs, and, at the same time, required CCLLC to pay URC considerably more than \$10 for Lots 3, 4, 6, and 7 (\$2,750,000 per the 2013 DDA, through cash and credits). Under the current DDA (and after URC's March 26, 2014 withdrawal of \$745,000 in planned infrastructure reimbursement for Phase 1 and Phase 2), URC appears to be contributing no money for CCLLC's infrastructure costs, and URC is now selling the Lots for only \$10. URC's payment toward CCLLC's infrastructure costs has morphed from a cash payment in prior DDAs to "public property or other assets used as payment for all or part of a project" in the current DDA through the transfer of the Lots.

Further, since URC is selling Lots 3, 4, 6, and 7 to CCLLC for so much less than it paid for the Lots, it appears that URC ultimately bears the cost of part of the project as contemplated in OAR 839-025-0004(9)(a)(B), since it has borne the cost of acquiring the land to be developed. As such, at minimum, the \$1,829,990 difference between the sale price and the amount URC paid for the lots also constitutes "indirectly used funds of a public agency."

In conclusion, the \$1,823,000 URC paid for the Parker Phase 2 and Glacier Parcels constitutes funds of a public agency per OAR 839-025-0004(9), less the \$10 CCLLC will pay for the property during its sale, for a net amount in funds of a public agency of \$1,822,990, conveyed from URC to CCLLC in the sale of Lots 3, 4, 6, and 7.

3. URC has contributed \$1,176,799 in funds of a public agency for architecture, engineering and other planning services for The Cove.

As mentioned in Conclusion of Law #2 above, per OAR 839-025-0004(9), "funds of a public agency" includes "revenue, money, or that which can be valued in money...derived from a public agency's immediate custody and control."

In January 2010, pursuant to CCLLC satisfying the pre-conditions in Contingency Period One set forth in The Cove's DDA dated September 2, 2009, URC disbursed \$1,176,799 to pay for architectural, engineering, and planning services related to development of The Cove. This \$1,176,799 in funds was money in URC's immediate custody and control.

Although the particulars of the Master Plans issued in 2007, 2008, and 2013 and the DDAs issued in 2009, 2013, and 2014 differ somewhat, the Master Plans all represent the same thing: a partnership between URC and CCLLC to turn The Cove into a vibrant, mixed-use development that meets the goals of the Downtown North End Renewal Plan. As such, the current Master Plan, and the prior ones, represent an “undertaking devised to effect the reclamation or improvement of a particular area of land.” *In the Matter of NW Housing Alternatives*, 33 BOLI 164, 171 (BOLI 2014). In this case, the particular area of land being improved is Clackamette Cove.

CCLLC argues that because the Master Plans changed somewhat between 2007, 2008, and 2013, only a portion, if any, of the \$1,176,799 URC spent on architectural, engineering, and planning services applies to the current project as funds of a public agency.

BOLI concludes that all \$1,176,799 constitutes funds of a public agency applicable to the current project. This is because during the seven or more years that The Cove has been in development, URC and Ed Darrow’s companies, PPS and CCLLC, have been the parties involved. The land to be developed has remained the same. The goal to create a vibrant, mixed-use development on previously-blighted land has remained the same. And the Master Plans have remained, largely, the same.

For example, the 2007, 2008, and 2013 Master Plans all include waterfront apartments on Lots 3, 4, 6, and 7. Each Master Plan includes an esplanade to be constructed on Tract C, a mixed use building to be constructed on Lot 1, a commercial office, an amphitheater, a park, and hiking trails.

There are slight differences between the Master Plans. For example, Lot 2 was intended for a medical office building in the 2008 Plan. The location of the amphitheater was different in the 2007 Plan. The height of the waterfront apartments on Lots 3, 4, 6, and 7 changed slightly.

Nevertheless, URC and the same developer, Edward Darrow, have worked together for seven years and the \$1,176,799 URC spent has shaped what has become the 2013 Master Plan and 2014 DDA for The Cove.

Evidence against CCLLC’s argument that only \$228,897.36 of the \$1,176,799 is applicable to the current project includes the fact that CCLLC attributes zero percent of the \$215,612.91 paid to PPS as applicable to the current project. PPS is a managing member of CCLLC, and Edward Darrow is a member of both. If anything, all of the \$215,612.91 URC paid to PPS is applicable to the current project, since CCLLC in general, and Edward Darrow in particular, has been involved in the development of every Master Plan and DDA of The Cove in its seven-plus year history.

In conclusion, it is BOLI’s position that all of the \$1,176,799 contributed by URC is funds of a public agency applicable to the Clackamette Cove project. The fact that project documents are later modified does not change the fact that in 2010 URC contributed \$1,176,799 in funds of a public agency to the project.

4. The project is a “public work” pursuant to ORS 279C.800(6)(a)(B) because the project will be privately owned, will use funds of a private entity, and will use \$750,000 or more of funds of a public agency.

5. No exemption from ORS 279C.810(1) or ORS 279C.810(2) applies to the project.

**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 Phase 1 and Phase 2 of The Cove.

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 of 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

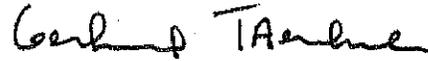
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived, this determination order will be final, and the agency file on this matter shall serve as the record for purposes of proving a prima facie case.

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 the 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.

Date: July 3, 2014

BRAD AVAKIAN, Commissioner  
Bureau of Labor and Industries



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GERHARD TAEUBEL,  
Administrator  
Wage and Hour Division  
Bureau of Labor and Industries

**Certificate of Service**

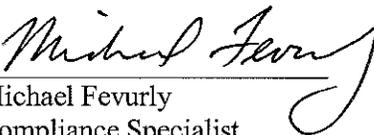
On July 3, 2014, I mailed the Prevailing Wage Rate Determination for Phases 1 and 2 of The Cove to the requestor and interested parties below:

Mr. Edward Darrow  
Clackamette Cove LLC  
30460 SW Ruth St., 4801  
Wilsonville, OR 97070

Certified Mail – Return Receipt Requested  
Article #: 7012 3460 0001 3059 8937

Ms. Chrys Martin  
Davis Wright Tremaine LLP  
1300 SW Fifth Avenue, Suite 2400  
Portland, OR 97201-5610

Certified Mail – Return Receipt Requested  
Article #: 7012 3460 0001 3059 8920

  
Michael Fevurly  
Compliance Specialist  
Wage and Hour Division  
Bureau of Labor and Industries