



Oregon

Bureau of Labor and Industries

Brad Avakian
Commissioner

March 18, 2014

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

Re: *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 Laws. Sufficient information to make a determination was received on March 10, 2014, and therefore, the commissioner issues the following 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. 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, 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. This determination is for Phase 1 and Phase 2 work only, which includes the construction of apartments, an amphitheater, parks, trail head parking, hiking trails, and road infrastructure.
3. The Disposition and Development Agreement ("DDA") dated January 10, 2014 requires that CCLLC begin Phase 1 construction first; however, the 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."
4. 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.

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

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

EUGENE
1400 Executive Parkway, Suite 200
Eugene, OR 97401-2158
(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

Oregon Relay TTY:711

www.oregon.gov/boli
AN EQUAL OPPORTUNITY EMPLOYER

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



5. 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.
6. URC will reimburse CCLLC for infrastructure construction costs in the amount of \$745,000 over the course of Phase 1 and Phase 2, providing \$372,500 in reimbursement within 30 days of the completion of each Phase.
7. 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.
8. Prior to beginning construction of Phase 2, CCLLC will purchase Lots 3, 4, 6, and 7 from URC for \$10 total.
9. An appraisal of Lots 3, 4, 6, and 7, performed by Colliers International in September 2012, resulted in a fair reuse valuation of \$2,750,000.
10. In its letter requesting a coverage determination dated March 4, 2014, CCLLC states that Lots 3, 4, 6, and 7 have a negative value due to infrastructure costs. CCLLC also references a 2008 appraisal performed by PGP Valuation Inc. covering the formerly 109-acre The Cove site, which resulted in a negative valuation of (\$12,070,000). The 2008 appraisal used a valuation method referred to as "land residual analysis."
11. The DDA dated January 10, 2014 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.
12. URC and CCLLC previously entered into a DDA for the development of The Cove on September 2, 2009. Although that DDA was ultimately terminated on October 20, 2010, CCLLC satisfied the pre-conditions in Contingency Period One that resulted in a January 2010 disbursement of at least \$2,999,799 in URC funds for The Cove's development. This 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 original DDA as the "Glacier Parcel" that URC purchased for \$500,000; and (2) a 1.62-acre tract described in the original DDA as the "Parker Phase 2" property that URC purchased for \$1,323,000.
13. 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 current development plans.
14. 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."

15. In its letter requesting a coverage determination dated March 4, 2014, CCLLC advised that \$227,314.19 of the January 2010 disbursement of \$1,176,799 for architecture, engineering, and other planning services applies to the current development plan for the The Cove.

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 work provides significant evidence against separating Phase 1 and Phase 2 into different projects.

First, there is little physical separation between Phase 1 and Phase 2 project structures. 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 terms of project timing, the DDA permits CCLLC to begin Phase 2 construction work "...at any time during the construction of Phase 1..." As such, the DDA permits Phase 1 and Phase 2 construction activities to take place concurrently. Some of the construction work planned in Phase 1 is directly linked to construction work in Phase 2. For example, Phase 1 construction work includes soil removal and grading for North Park and the amphitheater on Tract D. Phase 2 construction work includes the actual construction of North Park and the amphitheater that the soil removal and grading of Phase 1 makes possible.

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. 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). Construction of parking lots open to the general public, public hiking trails, new street infrastructure that meets city standards, an amphitheater, and an esplanade path all serve URC's overall purpose of transforming an unused, blighted area into a mixed-use community that serves a large population in varied ways.

In sum, a careful consideration of the factors outlined in ORS 279C.827(1)(c) necessitates that Phase 1 and Phase 2 be combined into one project.

2. 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. URC already contributed \$227,314.19 in funds of a public agency in January 2010 for architecture, engineering, and other planning services related to the project. URC will contribute \$745,000 in funds of a public agency when it reimburses CCLLC for infrastructure costs incurred during Phases 1 and 2 of the project. URC will also contribute funds of a public agency when it sells Lots 3, 4, 6, and 7 to CCLLC for \$10 because the value of Lots 3, 4, 6, and 7 significantly exceeds \$10.

The Value of Lots 3, 4, 6, and 7

Although CCLLC maintains that Lots 3, 4, 6 and 7 have a negative valuation, available evidence suggests that the Lots have significant value. Such evidence includes the September 2012 appraisal performed by Colliers International that resulted in a fair reuse valuation of \$2,750,000; URC's purchases of the "Glacier Parcel" and "Parker Phase 2" property in 2010 for \$500,000 and \$1,323,000, respectively; the fact that the "Glacier Parcel" and "Parker Phase 2" properties comprise parts of Lots 3, 4, 6, and/or 7; and the fact that CCLLC negotiated a purchase price of \$2,800,000 for Lot 2, which is across the street from Lot 3, and will be used for a similar purpose.

In conclusion, the combination of the \$227,314.19 URC paid for architecture and engineering services, URC's plan to reimburse CCLLC for \$745,000 in infrastructure construction costs, and its proposed sale of Lots 3, 4, 6, and 7 to CCLLC for \$10, represents more than \$750,000 of funds of a public agency to be used in the project.

3. 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: March 18, 2014

BRAD AVAKIAN, Commissioner
Bureau of Labor and Industries



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

Certificate of Service

On March 18, 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 #: 7012-3460-0001-3059-8951

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

Certified Mail – Return Receipt Requested
Article #: 7012-1010-0001-2377-8051



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