



December 16, 2015

Lisa Drayton  
Luckenbill-Drayton & Associates, LLC  
1052 NW 17<sup>th</sup> St.  
Redmond, OR 97756

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*  
Project: Victory Commons Affordable Housing  
Requested by: Luckenbill-Drayton & Associates, LLC

Dear Ms. Drayton:

On December 7, 2015, you submitted a request on behalf of Luckenbill-Drayton & Associates, LLC requesting a determination of whether the Victory Commons affordable housing project is subject to the Prevailing Wage Rate laws. On December 8 and 9, 2015, you responded to emails responding to some questions I had regarding the project.

Sufficient information to make a determination was received on December 10, 2015, and therefore, the commissioner issues the following determination:

#### **FINDINGS OF FACT:**

1. Luckenbill-Drayton & Associates, LLC ("Luckenbill-Drayton") is a domestic limited liability company that consults with non-profit organizations to develop affordable housing.
2. The Klamath Housing Authority ("KHA") is a public agency as that term is defined in ORS 279C.800(5).
3. Luckenbill-Drayton and KHA own Victory Commons, LLC, a domestic limited liability company. Luckenbill-Drayton currently owns 60% of Victory Commons, LLC, with KHA owning the other 40%. Victory Commons, LLC will build ten units of affordable rental housing for Veterans in Klamath Falls, Oregon (the "Victory Commons Project" or "Project"). Full ownership of Victory

**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](http://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



Commons, LLC will transfer to KHA five year after the completion of construction.

4. The ten units of affordable rental housing will be made up of five single-story duplex residential buildings plus one single-story building which will house the manager's unit, a community room, laundry room and resident services office. It will contain no commercial or retail space.
5. Of the proposed ten units, seven units will be occupied by persons with incomes no greater than 30% of the Area Median Income ("AMI"). Two units will be occupied by persons with incomes no greater than 60% of the AMI. One unit will be occupied by a person with income no greater than 80% of the AMI.
6. Construction is expected to begin April 1, 2016.
7. KHA will primarily be handling construction. KHA's executive director, Diana Otero, will be sitting in on monthly meetings with the general contractor and architect, and will be the point person for any change orders. KHA is also in charge of the Victory Commons bank account and will use that to pay for construction costs.
8. Both Luckenbill-Drayton and KHA are authorized to sign contracts for construction, but they will mostly be signed by Luckenbill-Drayton because it is maintaining the project files. KHA's director reviews all contracts prior to signature.
9. The total project cost is expected be \$2,052,318. Funding for the project includes the following sources:
  - i. Funds of a Public Agency: \$2,052,318
    - A. Oregon Housing and Community Services General Housing Account Program - \$2,058,318
    - B. Klamath Housing Authority - \$24,000

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

1. The Victory Commons Project is a building, the construction of which is carried on or contracted for by a public agency to serve the public interest. Therefore, the definition of "public works" in ORS 279C.800(6)(a)(A) applies.
2. The Victory Commons Project is a privately-owned project that will use more than \$750,000 in funds of a public agency but will not use any funds of a private entity. Therefore, the definition of "public works" in ORS 279C.800(6)(a)(B) does not apply.
3. The exemption for residential projects that predominately provide affordable housing in ORS 279C.810(2)(d) applies.

- a. The Project meets the definition of a project for “residential construction” under ORS 279C.810(2)(d)(D), as it will be made up of buildings not more than four stories in height and will contain no commercial space.
- b. The Project meets the definition of “affordable housing” in ORS 279C.810(2)(d)(A), as the project will serve occupants whose incomes are no greater than 60 percent of the area median income.
- c. The Project will “predominately” provide affordable housing, as 90% of the units will be for affordable housing. ORS 279C.810(2)(d)(B).
- d. The Project meets the definition of “privately owned” in ORS 279C.810(2)(d)(C)(ii), as the affordable housing project is owned by Victory Commons, LLC. The Klamath Housing Authority is a member, but is not a managing member, of Victory Commons LLC. KHA is not a majority owner in the limited liability company at this time nor will it be during construction.

NOTE: Beginning January 1, 2016, the definition of “public works” in ORS 279C.800(6)(a)(B) will change. The new definition of “public works” will include any project for constructing, reconstructing, painting or performing a major renovation on a road, highway, building, structure or improvement that uses \$750,000 or more in funds of a public agency, regardless of whether the project is publicly or privately owned and regardless of whether funds of a private entity are involved. If KHA advertises or solicits bids on this Project, or if KHA does not advertise or solicit bids and enters into a contract for work on this Project, after January 1, 2016, then the definition in ORS 279C.800(6)(a)(B) may apply.

**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 Victory Commons 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 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

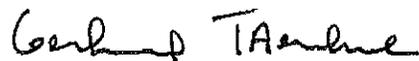
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived, this determination order will be final, and the agency file on this matter shall serve as the record for purposes of proving a prima facie case.

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: December 16, 2015.

BRAD AVAKIAN, Commissioner  
Bureau of Labor and Industries



---

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

Luckenbill-Drayton & Assoc.  
Victory Commons Project  
Coverage Determination

**Certificate of Service**

On December 16, 2015, I mailed the Prevailing Wage Rate Determination for the Victory Commons Project to the requestor via email to Lisa Drayton and as follows:

Lisa Drayton  
Luckenbill-Drayton & Associates, LLC  
1052 NW 17<sup>th</sup> St.  
Redmond, OR 97756

Certified Mail – Return Receipt Requested  
Article #: 7015 0640 0006 1574 9427



---

Rachel Diamond  
Compliance Specialist  
Wage and Hour Division  
Bureau of Labor and Industries