

January 26, 2010

Diana Otero, Executive Director  
Klamath Housing Authority  
1445 Avalon St.  
Klamath Falls, OR 97603

Donna Bowman, Executive Director  
Klamath & Lake Community Action Services  
403 Pine St.  
Klamath Falls, OR 97601

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Law*  
Project: Trails View Apartments  
Requested by: Klamath Housing Authority and Klamath Lake Community Action Services

Dear Ms. Otero and Ms. Bowman:

On January 11, 2010, you submitted a request asking if the Prevailing Wage Rate law would apply to the proposed Trails View Apartments construction project, located in Klamath Falls, Oregon. Sufficient information to make a determination was received on January 26, 2010, and therefore, the commissioner issues the following determination:

#### **FINDINGS OF FACT**

1. Klamath Housing Authority (“KHA”), a public agency, and Klamath & Lake Community Action Services (“KLCAS”), a public benefit non-profit corporation, have formed an Oregon limited liability company known as Trails View, LLC (“LLC”). KHA owns a 30 percent minority interest in the LLC, and KLCAS owns a 70 percent majority interest in the LLC. KHA is the managing member of the LLC.
2. KHA currently owns the land on which the proposed Trails View Apartments will be built. KHA will lease the property to the LLC, pursuant to a long-term ground lease with a term of 50 years. The LLC will own the improvements to be constructed, and will operate the project as a low-income housing project.

3. The Trails View Apartments will consist of four one-story buildings, with a total of eight apartments. The buildings will not include any commercial or retail space. One hundred percent of the occupants' incomes of these apartments will be less than 60 percent of the area median income.
4. Oregon Housing and Community Services has tentatively awarded funds for this project as follows:

\$720,000	Housing Plus Funds
\$115,252	Housing Development Grant Funds

**CONCLUSIONS OF LAW**

1. The proposed Trails View Apartments construction project will be privately owned, and funds of a public agency in excess of \$750,000 will be used on the project. Therefore, the proposed project is a “public works” under ORS 279C.800(6)(a)(B).
2. The proposed project is for residential construction that will be privately owned<sup>1</sup> and that predominantly provides affordable housing. Therefore, the exemption from the prevailing wage rate law provided for in ORS 279C.810(2)(d) will apply to this 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 not apply to the proposed Trails View Apartments construction 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.

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<sup>1</sup> “Privately owned” under ORS 279C.810(2)(d)(C) includes affordable housing provided on real property owned by a public agency if the real property is leased to a private entity for 50 or more years, and affordable housing owned by a limited liability company in which a housing authority is a managing member and is not a majority owner in the company.

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

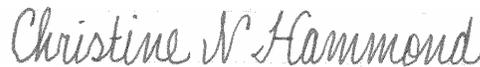
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: January 26, 2010

Brad Avakian, Commissioner  
Bureau of Labor and Industries



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

## Certificate of Service

On January 26, 2010, I mailed the Prevailing Wage Rate Determination for the Trails View Apartments construction project to the requestors, public agencies and other entities associated with this project, as follows:

Diana Otero, Executive Director  
Klamath Housing Authority  
1445 Avalon St.  
Klamath Falls, OR 97603

Donna Bowman, Executive Director  
Klamath & Lake Community Action Services  
403 Pine St.  
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725 Summer St. NE  
Salem, OR 97301

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Susan Wooley  
PWR Technical Assistance Coordinator  
Wage and Hour Division  
Bureau of Labor and Industries