

August 4, 2009

William R Lovelace
William Lovelace Construction, Inc.
910 NE D Street Suite 103
Grants Pass, OR 97526

Re: *Determination Whether Project is Subject to Prevailing Wage Rate*
Project: Astoria Gateway II Apartments
Requested by: William Lovelace Construction

Dear Mr. Manson:

On July 9, 2009, you submitted a request on behalf of William Lovelace Construction asking whether a proposed project is subject to the Prevailing Wage Rate law. Sufficient information to make a determination was received on July 31, 2009, and therefore, the commissioner issues the following determination:

FINDINGS OF FACT

1. Astoria Gateway II, LP is the owner of the Astoria Gateway II Apartments project to be located at Lot 47 in the Mill Pond Village in Astoria, OR.
2. The new residential construction will be four stories in height and is strictly for low-income rental units. The low income criteria are being based on 40% - 60% of the median income in Clatsop County.
3. Shelter Resource, Inc, which is privately owned, is the general partner of Astoria Gateway II. The limited partner will be the private investor (unknown at this time) who will be providing the low income housing tax credit (LIHTC) funding of this project.
4. The total project cost is \$7,249,992. To develop the project, \$5,324,817 will be from a private investor providing LIHTC, \$1 million from the US Department of Agriculture RD 515 loan, \$420,000 from OHCS HOME funds and \$100,000 from OHCS trust funds, \$225,000 loan from NOAH (private entity), and \$180,175 in deferred development fees.
5. The funds received through the US Department of Agriculture are being received directly from the federal agency.
6. No public agency will occupy or use any part of the completed project.

CONCLUSIONS OF LAW

1. The construction project is intended to be privately owned. Less than \$750,000 in funds of a public agency will support the project and no public agency will occupy or use the completed project. Therefore, the definition of a “public works” under ORS 279C.800(6)(a)(A)(B) and (C) does not apply to this project.
2. Funds contributed by the US Department of Agriculture are not considered public funds under OAR 839-025-0004(9).
3. If public funds exceed \$750,000, the project will be exempt under ORS 279C.810(2)(d). The project is for residential construction, is privately owned and predominately provides affordable housing.

DETERMINATION

Based on the foregoing, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, does not apply to the Astoria Gateway II Apartments 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 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: August 4, 2009

Brad Avakian, Commissioner
Bureau of Labor and Industries



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

Certificate of Service

On August 4, 2009, I mailed, by certified mail, the Prevailing Wage Rate Determination for the Astoria Gateway II Apartment project to the requestor and any public agencies identified by requestor as being associated with this project, as follows:

William Lovelace
William Lovelace Construction
910 NE D Street Suite 103
Portland OR 97526

Certified Article #: 7007 1710 0000 1610 0406

Aaron Walker
Umpqua Bank
675 Oak Street
Eugene, OR 97401

Certified Article #: 7007 0710 0000 1610 0413

Diana Chappell
USDA Rural Development
1201 NE Lloyd Blvd, Suite 801
Portland, OR 97232

Certified Article #: 7007 0710 0000 1610 0475

Mariana Negoita
Oregon Housing and Community Services
725 Summer Street, Suite B
Salem, OR 97301

Certified Article #: 7007 1710 0000 1610 0468

Tiffany D. Wirkus, Compliance Specialist
Wage and Hour Division
Bureau of Labor and Industries