

September 23, 2009

Jeff Parker  
Vista Construction, LLC  
184 East 11<sup>th</sup> Avenue, Suite 210  
Eugene, OR 97401

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws*  
Project: Waverly Assisted Living  
Requested by: Vista Construction, LLC

Dear Mr. Parker:

On September 14, 2009, you submitted a request asking for a wage rate determination on the proposed Waverly Assisted Living project, asking if the project would use the federal Davis-Bacon Act residential rates or the non-residential rates published by the Bureau of Labor and Industries (BOLI). However, before this question can be answered, the question of whether the project will be subject to Oregon's prevailing wage rate laws needs to be addressed. Sufficient information to make such a determination was received on September 22, 2009, and therefore, the commissioner issues the following determination:

#### **FINDINGS OF FACT**

1. The proposed Waverly Assisted Living project will be located in Albany, Oregon, and will consist of three floors of residential space. There will be no commercial space in the building. The project will not be for affordable housing, but will serve individuals who require assisted living. The owner of this proposed project is Waverly Assisted Living, LLC, a private company.
2. The U.S. Department of Housing and Urban Development ("HUD") will loan approximately \$12,000,000 under Section 232 to Waverly Assisted Living, LLC for this project. The remainder of the funding for the project consists of approximately \$2,500,000 in private investor equity to be raised through the sale of LLC equity interests.
3. No public agency will occupy or use any part of this project.

## **CONCLUSIONS OF LAW**

1. The proposed Waverly Assisted Living project is privately owned, and funds of a private entity will be used. Therefore, the definition of “public works” under ORS 279C.800(6)(a)(B) and (C) are potentially applicable to this project.
2. ORS 279C.800(6)(a)(B) provides that privately-owned construction projects are public works if they will use \$750,000 or more of funds of a “public agency.” ORS 279C.800(5) defines “public agency” as “the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any instrumentality thereof organized and existing under law or charter.” HUD does not meet this definition of “public agency,” and therefore no funds of a public agency will be used on this project. As such, the definition of public works under ORS 279C.800(6)(a)(B) does not apply to this project.
3. ORS 279C.800(6)(a)(C) provides that privately-owned construction projects are “public works” if the public agency will occupy or use 25 percent or more of the square footage of the completed project. No public agency will occupy or use any part of this proposed project. Therefore, the project will not meet the definition of “public works” in ORS 279C.800(6)(a)(C).

## **DETERMINATION**

Based on the foregoing, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, do not apply to the proposed Waverly Assisted Living project. Therefore, the question of whether the project should use non-residential rates published by BOLI is a moot point.

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. 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

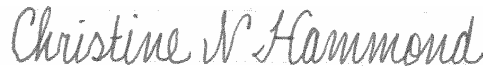
If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

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: September 23, 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 September 23, 2009, I mailed the Prevailing Wage Rate Determination for the proposed Waverly Assisted Living project to the requestor, as follows:

Jeff Parker  
Vista Construction, LLC  
184 East 11<sup>th</sup> Avenue, Suite 210  
Eugene, OR 97401

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