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January 8, 2024

The Honorable Robert W. Ferguson
Attorney General
PO Box 40100
Olympia, WA 98504-0100

Re: Request for an Attorney General Opinion or Clarification on whether public works and prevailing wage laws are applicable to a construction project on publicly owned land by a private party, specifically a non-profit organization.

This request seeks clarification of whether public works and prevailing wage laws are applicable to a proposed sprint boat racecourse to be constructed at the Yakima County Fairgrounds by the Central Washington Fair Association (CWFA), a non-profit, 501(c)(3) organization. The course, presumably, will be similar in concept to the Extreme Sports Park and Sprint Boat Racetrack, in Port Angeles WA. It requires construction of what is essentially a tight maze consisting of a three-foot deep channel carved into the land, filled with water, and bordered by berms. In addition, it requires construction of paid public viewing areas and one or more concrete pads for launching the 14-foot, 600-horsepower, jet-propelled boats that race through the maze against the clock, one-at-a-time.

The CWFA has an existing lease on the County-owned Fairgrounds that expires in 2033. The lease expressly provides as follows:

All major alterations and extensions upon or to the buildings and grounds by CWF or its tenants shall require the prior written approval of the County, and all such alterations, additions and improvements made by CWFA or its subtenants shall become a part of the realty and revert to and become the property of the County and be surrendered with the premises upon termination of this lease.

The CWFA manages the County Fairgrounds and holds an annual county fair pursuant to RCW 36.37.010, which declares said fairs to be "a strictly county purpose." The project will be built using funds sourced solely by CWFA with no anticipated County financial contribution.

A formal opinion in this case is necessary because prior Attorney General Opinions have been limited to the legal issues presented in connection with such projects on a case-by-case basis. There does not appear to be a clear answer as to whether a project such as the one proposed by the CWFA is a public works project, and, therefore, subject to public works procurement and prevailing wage laws.

We look forward to your guidance on this matter as soon as reasonably possible.

Sincerely,

Joseph A. Brusich
Yakima County Prosecuting Attorney