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March 19, 2002

Mel Stewart
5180 Zosel Ave. So.
Salem, OR 97306

Re: Petition for Public Records Disclosure Order:
Division of State Lands Records

Dear Mr. Stewart:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on March 12, 2002, asks the Attorney General to direct the Division of State Lands (Division) to make available a tape of the public hearing held March 11, 2002, on the Division's proposed amendments to removal-fill rules. For the reason that follows, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exemptions and limitations. ORS 192.420. Any person who is denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.450(1). The Attorney General may order a state agency to disclose records only when the agency has denied a request for the records. *See* ORS 192.450(1).

Your petition states that you requested a copy of the hearing tape both on the day of, and on the day after, the March 11th hearing. You do not claim that your requests were denied on either day, but instead that no one responded to them. A state agency has a reasonable amount of time to respond to a request to inspect public records. *See* ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2001) at 9. We do not find the Division's failure to respond to your requests, each made within a day of the hearing, to be a constructive denial. Therefore, we find you petition to be premature.

Gail Lowry, Executive Assistant to the Division Director, has explained that at the times you made your requests the Division did not have copies of the original hearing tape. Because

the Division does not have the equipment necessary for making good copies, it sends hearing tapes outside the agency for copying. According to Ms. Lowry, the Division has agreed to provide you a copy of the March 11th hearing tape upon receipt of payment of its estimated costs for doing so.[1] The Division will notify you of those costs. Ms. Lowry estimates that it will take the Division approximately one week to copy the hearing tape following receipt of payment from you.

Because the Division has agreed to provide you a copy of the requested tape pending payment of fees, we deny your petition as moot.

Sincerely,

Pete Shepherd

PETER D. SHEPHERD
Deputy Attorney General

AGS09803
c: Gail Lowry, DSL

[1]A state agency may charge fees "reasonably calculated to reimburse it for its actual costs in making * * * records available." ORS 192.440(3). Moreover, the agency may require prepayment of estimated costs before responding to a request for records. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2001) at 14.