HARDY MYERS
ATTORNEY GENERAL

PETER D. SHEPHERD
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400
TTY: (503) 378-5938

May 24, 2001

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 May 17, 2001, asks the Attorney General to order the Division of State Lands (DSL) to produce "the electronic version of the word documents associate[d] with Wetlands Permits for the last 5 years." As explained below, because DSL has not denied you access to records under the Public Records Law, we respectfully deny your petition as premature. As also noted below, a representative of DSL will contact you to discuss the cost and feasibility of producing the computer records that you are interested in obtaining.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. Any person who is denied the right to inspect or to receive a copy of any 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).

According to Assistant Attorney General (AAG) William Cook, you are currently involved in the discovery stage of a contested case hearing with DSL. In a letter to your attorney, John Shonkwiler,[1] dated March 8, 2001, AAG Cook references a conversation that you had on March 7, 2001, with DSL's database administrator, Eric Anderson, in which you requested "certain 'Word files' relating to DSL's permit work." Correspondence ensued between AAG Cook and Mr. Shonkwiler regarding your request and, by letter dated

[1] We understand that Mr. Shonkwiler does not represent you in relation to your petition for a public records order.

March 22, 2001, AAG Cook advised Mr. Shonkwiler that your request presented logistical problems for DSL and concluded that the hard copy permit files that the agency was in the process of gathering for your review "provide the best opportunity to review all permit-related correspondence."

DSL Assistant Director for Field Operations, Steve Purchase, has told AAG Cook and AAG Kelly Carlson that the March 7 request to Mr. Anderson for Word files related to DSL wetlands permits is the only request of its kind that he is aware that you have made.[2] Mr. Purchase also has explained that he considered your March 7 request to be a part of the discovery process for your contested case hearing, rather than a request for public records made under the Public Records Law. The only "denial" of your request of which Mr. Purchase is aware is AAG Cook's March 22 letter to your attorney, which both Mr. Purchase and AAG Cook considered to be a response to a discovery request. Mr. Anderson informed AAG Carlson that, while he spoke with you regarding your request, he did not deny the request. Based on the information provided by Mr. Purchase and Mr. Anderson, we find that no one in DSL denied your request for records under the Public Records Law.

ORS 192.430(1) requires a custodian of public records to provide "proper and reasonable opportunities for inspection and examination of the records in the office of the custodian." The Attorney General may order a state agency to disclose records only when the agency has denied a request for the records. ORS 192.450(1). Because DSL did not consider your March 7 request to be a request for records under the Public Records Law, and did not deny your request within that context, the Attorney General is without authority to compel disclosure. Therefore, we deny your petition as premature.

We note that Mr. Purchase is prepared to discuss with you DSL's ability to respond to your request under the Public Records Law. He will contact you shortly to explain the process DSL can use to search its Word files for records relating to wetlands permits, and the limitations of such a search. He will also be able to give you an estimate of the cost and time that responding to your request would involve.

Sincerely,

Peter D. Shepherd

PETER D. SHEPHERD
Deputy Attorney General

AGS07802
c: Steve Purchase, DSL

[2] Mr. Purchase supervises the work of DSL that most directly involves wetlands permitting and informs us that he or someone under his supervision would have been involved in responding to such a request.