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March 21, 2001

Mr. Jeff Kelley
605 NW Kings Blvd. #1
Corvallis, Oregon 97330

RE: *Petition for Public Records Disclosure Order*
Oregon Division of State Lands

Dear Mr. Kelley:

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. We received your petition on March 14, 2001. Your petition asks the Attorney General to direct the Oregon Division of State Lands to make available the following records:

> All records, current and historical, held by the Division of State Lands pertaining to the former Willamette Industries mill site and log pond site near Philomath.

You also provided two tax lot numbers to further identify the sites: T12S-R5W Section 7, tax lot 101; and T12S-R5W Section 6, tax lot 401. For the reasons that follow, we respectfully deny your petition as premature.

The Public Records Law confers a right to inspect public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. Any person denied the right to inspect or to receive a copy of a public record may petition the Attorney General to determine whether the record may be withheld from inspection. ORS 192.450(1).

You state that you previously asked the Division of State Lands for the above-described records on February 26, 2001, and that your request was denied by Ann Hanus, Director, Division of State Lands. We infer from your petition that Ms. Hanus did not deny your request, but that you consider Ms. Hanus, as the head of the agency, to be responsible for the agency's failure to permit you to inspect or copy the records as of the date of your petition.

On March 20, 2001, Assistant Attorney General J. Kevin Shuba spoke with Earl Johnson, Western Region Manager for the Division of State Lands, concerning your records request. Mr. Johnson informed Mr. Shuba that the Division of State Lands has received your request and is currently gathering the requested records and calculating the actual cost of providing those records to you. Mr. Johnson further informed Mr. Shuba that the Division of State Lands' response to your request will be sent to you shortly.

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). "The Public Records Law clearly contemplates that agencies have the opportunity to review the requested records and to act on the request before the Attorney General or the courts can review the matter." *Morse Bros., Inc. v. ODED,* 103 Or App 619, 622, 798 P2d 719 (1990) (citing ORS 192.430(2)). Whether the time that an agency takes to review records and act on a particular request is reasonable will depend on factors such as the volume of the records requested, the staff available to respond to the records request, and the difficulty in determining whether any of the records are exempt from disclosure. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1999) at 7-8 (MANUAL). "The public records custodian acts reasonably even if the custodian does not comply with timelines imposed by the requestor, so long as the custodian provides access to the nonexempt records within a reasonable period of time." MANUAL at 8.

According to Mr. Johnson, the Division of State Lands is in the process of responding to your request. We do not find that the delay in responding to your records request amounts to a constructive denial of your request. Since the Division of State Lands has not denied your request for records, we deny your petition as premature.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS07320
c: Earl Johnson
Western Region Manager
Division of State Lands