HARDY MYERS
ATTORNEY GENERAL

DAVID SCHUMAN
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97310-0506
Telephone: (503) 378-4400
TDD: (503) 378-5938

February 1, 2000

Robert U. Burch
P.O. Box 53
Beatty, Oregon 97621

Re: *Petition for Public Records Disclosure Order:*
Secretary of State Records
Oregon Department of Transportation Records
Bureau of Indian Affairs Records
Chief Justice of the Supreme Court Records

Dear Mr. Burch:

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 January 26, 2000, asks the Attorney General to direct the Secretary of State, the Oregon Department of Transportation (ODOT), the Bureau of Indian Affairs (BIA) and the Chief Justice of the Supreme Court of Oregon[1/] to produce a copy of the following records:

1. Plat map of the north side of Beatty and East side of Godowa Springs Road.
2. Deed showing easements in the area.

You also ask to view the following records:

1. Plat maps.
2. Dedications.
3. Agreements.
4. Petitions.
5. Contracts.
6. Treaties "which would include the train depot."
7. All easements shown.
8. Description of "the area that the depot would have been on."

[1/] Your petition technically asks the Attorney General to direct only the Secretary of State to disclose the records. However, because you state that you have requested the records from ODOT, the Bureau of Indian Affairs and the Chief Justice of the Supreme Court, we treat your petition as also requesting the Attorney General to direct each of those agencies to disclose the records.

For the reasons that follow, we respectfully deny your petition.

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. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. *Turner v. Reed*, 22 Or App 177, 186 n8, 538 P2d 373 (1975).

Roy Turnbaugh, State Archivist, informs us that the Secretary of State, Archives Division recently mailed you a copy of a microfilmed Highway Department plat map of the area noted in your request. Because the Secretary of State has provided you with a copy of that document, the portion of your petition requesting a plat map from that agency is moot. Mr. Turnbaugh informs us that the Secretary of State does not have copies of any of the other records that you seek. The Secretary of State is not the custodian of those records. *See* ORS 192.410(1). The Attorney General cannot order an agency to produce or permit inspection of records that it does not have. Accordingly, we deny your petition with respect to the Secretary of State.

Darlene Gowen, Mapping Geographic Information Systeming Specialist with the Oregon Department of Transportation, informs us that ODOT sent you an enlarged copy of a vicinity map showing the Beatty area. This document is the closest record that ODOT has to the documents you request. Ms. Gowen informs us that ODOT does not have any of the other records you request. The Attorney General cannot order an agency to produce or permit inspection of records that it does not have. Accordingly, we deny your petition with respect to ODOT.

The BIA is a federal agency. The Attorney General has no jurisdiction with respect to a federal agency. *See* ORS 192.450(1). Accordingly, we deny your petition with respect to the BIA for lack of jurisdiction.

Bradd Swank of the State Court Administrator's office informs us that the Chief Justice of the Supreme Court does not have copies of the records that you seek. The Chief Justice is not the custodian of those records. *See* ORS 192.410(1). The Attorney General cannot order an agency to produce or permit inspection of records that it does not have. Accordingly, we deny your petition with respect to the Chief Justice of the Supreme Court.

Sincerely,

HARDY MYERS
Attorney General

AGS04026
c: Roy Turnbaugh, State Archivist
Darlene Gowen, Mapping GIS Specialist, ODOT
Bradd Swank, Office of the State Court Administrator