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November 19, 2014

Steven Smith
1224 NE Walnut Street #273
Roseburg OR 97470

Re: Petition for Public Records Disclosure Order
Oregon Department of Land Conservation & Development
DOJ File No. 660001-GA0105-14

Dear Mr. Smith,

This letter is the Attorney General's order in response to your petition under the Oregon Public Records Law, ORS 192.410 to 192.505. You ask our office to direct the Department of Land Conservation and Development (DLCD) to schedule an opportunity for you to inspect certain records without requiring you to pay a $25 deposit. For the reasons that follow, we respectfully deny your petition.

The Oregon Public Records Law provides that "[e]very person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 to 192.505." ORS 192.420(1). In making public records available, public bodies are authorized to "establish fees reasonably calculated to reimburse the public body for the public body's actual cost of making public records available, including costs for summarizing, compiling or tailoring the public records, either in organization or media, to meet the person's request." ORS 192.440(4)(a). We have opined that "[a] public body may require prepayment of its estimated charges before taking further action on a request." ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (2011) (MANUAL) at 15.

In this instance, DLCD has estimated that processing your request, and gathering the material you have requested in order to make it available for your inspection, will take approximately 26 hours of staff time. In your correspondence with DLCD, you dispute whether this is a reasonable figure. In general, our office does not have authority to review agency fee amounts, though our authority to enforce the inspection provisions of the Oregon Public Records Law may require our office to evaluate an agency's fee where the circumstances suggest that the purpose is not to recoup actual costs but to effectively deny the request. MANUAL at 17. In this

case, despite its 26 hour estimate, DLCD is asking that you prepay for less than 2 hours of staff time, with additional charges based on actual time expended. In those circumstances, it does not appear to us that the purpose of the 26 hour estimate is to effectively deny your request. Instead, it appears that DLCD merely wants to put you on notice that it expects that processing your request will entail a significant amount of time.

In short, agencies are generally able to require prepayment of public records fee amounts. And there is nothing about the $25 prepayment required by DLCD that suggests to us that it is intended to effectively deny your request, rather than to recoup DLCD costs. As a result, we respectfully deny your petition.

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

cc: via email only: Casaria Taylor, DCLD