192.501(6)

THEODORE R. KULONGOSKI
ATTORNEY GENERAL

THOMAS A. BALMER
DEPUTY ATTORNEY GENERAL

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

December 2, 1994

Timothy M. Parks
Hershner, Hunter, Moulton, Andrews & Neill
P.O. Box 1475
Eugene, OR 97440

Re: *Petition for Public Records Disclosure Order: Department of Transportation*

Dear Mr. Parks:

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 November 25, 1994, asks the Attorney General to direct the Oregon Department of Transportation (ODOT) to make available an appraisal obtained by ODOT relating to property subject to a condemnation proceeding which has now been settled. For the reasons that follow, we respectfully deny your petition.

ORS 192.501(6) exempts from disclosure under the Public Records Law

> Information relating to the appraisal of real estate prior to its acquisition.

This is a conditional exemption, applicable "unless the public interest requires disclosure in the particular instance." You have not supplied any information to indicate there is any public interest that would require disclosure in this instance, and we are aware of none.

Your petition contends that ORS 192.501(6) does not apply because the appraisal deals with property that has already been acquired. You also contend that the fact the appraisal may be relevant to the acquisition of other property would not continue to exempt the material from disclosure, explaining that the legislature would

have ***expressly*** stated this to be the case if they so intended. Indeed, the language does so expressly state.

The exemption in ORS 192.501(6) is not limited to the appraisal of real estate prior to its acquisition. If that were all that was exempted, we might very well agree with your position; but it exempts "***information*** relating to the appraisal of real estate" before its acquisition. (Emphasis added.)

This is an important distinction, particularly as it may apply to acquisitions of real estate by ODOT. ODOT normally does not acquire discrete and independent pieces of property, which have little relationship to one another. Instead, ODOT acquires property along highways, and a project may require acquisition of a large number of contiguous property strips along either or both sides of the existing highway right of way. Those separate pieces normally have much in common, including proximity, topography, soil types, zoning and uses. Therefore, as those pieces are acquired, information pertaining to the appraisal of one piece is relevant to the appraisal of other pieces. An appraisal, and the information therein, relating to one acquisition may very well relate to the appraisal of a parcel of real estate yet to be acquired.

We have been informed by Dennis Matney, ODOT Acquisition Unit Supervisor, that this is the case here. There are a number of properties in the immediate area of the property subject to the appraisal in question that are being, or may be, acquired by ODOT as part of the highway project. John Brown, the appraiser used for the subject appraisal, has recently completed an appraisal for ODOT of another parcel in the immediate area. He is under contract to perform a third, and may also perform other appraisals for ODOT on this same project. Mr. Brown has informed us that the appraisal analysis and conclusion information in the subject appraisal is relevant to later appraisals of similarly situated properties, and does relate to those subsequent appraisals of real estate. We have independently reviewed the appraisal and reached the same conclusion.

Accordingly, we respectfully deny your petition as to all information in the subject appraisal that relates to the appraisal of real property yet to be acquired by

ODOT.[1/] That information is exempt from disclosure under ORS 192.501(6). Mr. Matney assures us that ODOT will be segregating any non-exempt information contained in the appraisal and disclosing it to you within five days of the date of this order. As to such information, we deny your petition as moot.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

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[1/] Although we have focused on ODOT's on-going acquisition of other properties in the immediate area, we also note that the subject appraisal contains appraisal information relating to a proposed acquisition by the Bureau of Land Management (BLM). This was a joint appraisal performed under an intergovernmental agreement between BLM and ODOT. BLM has not yet been able to acquire the property subject to the appraisal. ORS 192.501(6) does not, by its terms, appears to limit the exemption to real estate that is being acquired by Oregon public bodies.