HARDY MYERS
ATTORNEY GENERAL

DAVID SCHUMAN
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DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97310-0506
Telephone: (503) 378-4400
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August 11, 1998

William Ghiorso
Suite 600
388 State Street
Salem, OR 97301

Dear Mr. Ghiorso:

Your client, Mr. Mel Stewart, has petitioned for disclosure of certain public records under the Oregon Public Records Law, ORS 192.410 to 192.205. At one point in his petition letter he asserts that he is representing himself in this matter; other indications are that he is represented by you. In order to avoid any possibility of engaging in a direct communication with a represented party in a matter relevant to the representation, I am sending this office's response to Mr. Stewart's petition in care of you. I will presume that doing so does not constitute a direct communication with Mr. Stewart, or that if it does, it is one that you consent to by forwarding the letter to him. Thank you for your cooperation in this matter.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

HARDY MYERS
ATTORNEY GENERAL

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DEPARTMENT OF JUSTICE
1162 Court Street NE
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August 10, 1998

Mel Stewart
5180 Zosel Ave. South
Salem, OR 97306

care of: William Ghiorso, Esq.
Suite 600
388 State Street
Salem, OR 97301

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 August 4, 1998, requests a list of compensatory mitigation plans approved by the Division of State Lands (division) in the last six months. As in the Attorney General's orders dated April 19, 1995, and December 8, 1997, regarding your two previous petitions, we respectfully deny your petition because the division did not deny your request.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. ORS 192.420. Upon receipt of a request to inspect public records, an agency must respond in a reasonable manner and within a reasonable time. The agency may consult with legal counsel before responding and may require the requestor to prepay the staff cost of making such records available.

The lawsuit you have filed against the division is being handled by Assistant Attorney General (AAG) Todd Ainsworth. On July 31, 1998, AAG Ainsworth discussed your public records request with your attorney, William Ghiorso. Mr. Ghiorso informed Mr. Ainsworth that you requested review of all compensatory mitigation plans approved by the division in the last six months. On August 3, 1998, after consulting with the appropriate division personnel, AAG Ainsworth informed Mr. Ghiorso that the documents you requested would be made available for your review at the Division of State Lands building at 9:30 a.m. on August 7, 1998. The next morning, August 4, 1998, you arrived at the Division of State Lands and requested a list of all compensatory mitigation plans approved by the division in the last six months.

The records custodian who spoke with you at that time, Annie Duffy, was aware that your public records request was being coordinated through your counsel and the Department of Justice, and that your review of requested documents had been scheduled for August 7, 1998. She was also aware of your history of confrontational and verbally intimidating behavior with division staff. Accordingly, Ms. Duffy reacted cautiously to your request and suggested that you discuss the matter with your attorney. After you left, Ms. Duffy generated the list you requested and forwarded it to AAG Ainsworth, who then forwarded it to your attorney later that day. The next day, August 5, 1998, you picked up a copy of the list that is the subject of the present petition from your attorney's office.

As in our order dated December 8, 1998, we conclude that the division proceeded reasonably in response to your request and did not deny you access to the public records you requested. Rather, the division was trying to respond to your request in compliance with advice from its legal counsel. Based on conversations with legal counsel regarding scheduling an appointment for your review of documents, the division made arrangements for a wetland mitigation specialist to be available on August 7, 1998, to assist you in identifying specific files that are relevant to your inquiry. The division also set aside staff time on the afternoon of August 6, 1998, to retrieve the 86 files on the list in anticipation of your arrival the next day. Given the fact that you are currently involved in litigation with the division, and given the history of difficulties arising out of your contacts with division staff, it is reasonable for the division to require you to schedule your review of documents in order to avoid disruption of the division's regular discharge of duties. *See* ORS 192.430(2).

We are informed by your attorney, Mr. Ghiorso, that he consents to your direct communication with legal counsel for the division regarding requests for public records. Accordingly, please make all future arrangements for review of documents through Roger A. Alfred, Assistant Attorney General. AAG Alfred can be reached at 378-4409.

For these reasons, we respectfully deny your petition.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

AGS00424
c: Steve Purchase, Assistant Director, Division of State Lands