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

January 20, 1998

Thomas P. Kerr
Oregon Park Assets, Inc.
3807 Pasadena Ave., Suite 100
Sacramento, CA 95821

Re: *Petition for Public Records Disclosure Order; Construction Contractors Board*

Dear Mr. Kerr:

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 January 14, 1998, asks the Attorney General to direct the Construction Contractors Board (CCB) to make available "[a]ll writings relating to Judge Panner's decision in the matter of *In re Christensen* provided to the Construction Contractors Board by its legal counsel or that has been prepared by or for employees of the Board". For the reasons that follow, we respectfully deny your petition, in part because some of the materials are exempt from disclosure as confidential communications from a lawyer to a client and in part because your petition is moot.

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.

1. Privileged Communications

ORS 192.502(9) exempts from disclosure records or information "the disclosure of which is prohibited or restricted or otherwise made confidential or *privileged* under Oregon law." (Emphasis added.) Rule 503 of the Oregon Evidence Code, ORS 40.225, creates the

lawyer-client privilege. This privilege is incorporated into the exemption from disclosure in ORS 192.502(9).

Under ORS 40.225, confidential communications from a lawyer to a client made for the purpose of facilitating the rendition of professional legal services to the client are privileged. A client has the right to refuse to disclose such privileged communications.

The records that you request include a memorandum from Assistant Attorney General Daniel H. Rosenhouse to Lucy Ernst, a CCB Claims Examiner. This memorandum meets the requirements of ORS 40.225 and, therefore, is exempt from disclosure under ORS 192.502(9). Accordingly, we deny your petition to the extent that it seeks this record.

2. Mootness

With respect to the any records prepared by Board staff regarding the *In Re Christensen* decision, Mr. William J. Boyd, CCB Claims Manager, informs us that the CCB is currently reviewing its files for records responsive to your request and that he will provide you with a copy of the records if they exist.[1/] Because the CCB has agreed to provide those records to you, your petition is denied as moot with respect to these records.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

JAA02904
c: William J. Boyd, Claims Manager, Construction Contractors Board

[1/] The CCB may charge you a fee to reimburse it for its actual cost in making such records available, including its photocopy costs and the time spent by agency personnel in locating and reviewing the records.