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April 19, 1995

RECEIVED
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GENERAL COUNSEL
DEPT. OF JUSTICE
SALEM, OREGON

Mel Stewart
5180 Zosel Avenue South
Salem, OR 97306

Re: ***Petition for Public Records Disclosure Order: Division of State Lands Records***

Dear Mr. Stewart:

This letter is the Attorney General's order in response to your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received April 14, 1995, requests the Attorney General to order the Division of State Lands to make available for inspection and to produce copies of "Data base files for all cut and fill permits applied for during 1994, identify[ing] permits relating to wetlands and status of permit." Your petition also refers to an attached sheet which asks that the agency "identify all permit applications that are considered incomplete, pending or withdrawn." You request these records in computerized form and offer to provide a diskette for that purpose.

Earle Johnson, the Division's Western Region Manager, informs us that when you called the agency on April 12 to request the records, Division staff did not refuse to make those records available. Rather, they asked you to transmit your request through your legal counsel, Mr. Shonkwiler, to the Assistant Attorney General who represents the Division. There are two reasons why the Division chose to route your request in this way:

(1) you have filed a lawsuit against the Division concerning the agency's denial of a removal-fill permit to fill a wetland on your property; and

(2) in the day or so prior to your request, you verbally intimidated a member of the staff in a confrontation at the Division's offices and had a similar confrontation in the offices of the Department of Justice.

Mr. Johnson informs us that he is making arrangements to provide records responsive to your request. You are entitled to a copy of the Division's computer data base for removal-fill permits, which displays permit applications applied for during 1994, and which

indicates the waterway affected by each application. However, from the listings on the data base, you may not be able to easily identify all permit applications that relate to wetlands. This is because the data base lists the affected waterway as it was described by the applicant on the permit application, and applicants are not always careful to identify a waterway as a wetland. As you know, the removal-fill law applies to many types of waterways: including rivers, streams, sloughs, ponds, canals and wetlands.

Because the Division has not denied your request, the Attorney General is not authorized to order the agency to disclose the records. *See* ORS 192.450. Accordingly, we respectfully deny your petition.

The Public Records Law authorizes an agency to charge a fee "reasonably calculated to reimburse it for the actual cost in making the records available," and to require payment in advance. ORS 192.440(3). The Division has established such fees by administrative rule. OAR 141-91-005 to 141-91-020. If you are still represented by Mr. Shonkwiler, please have him contact Assistant Attorney General Bill Cook, general counsel for the Division, at 378-6986 to arrange for delivery of the records. Otherwise, you should contact Mr. Cook yourself.

Sincerely,



THOMAS A. BALMER
Deputy Attorney General

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c: Earle Johnson, DSL
John W. Shonkwiler, Attorney at Law