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DATE: October 14, 1984

TO: Gerry Thompson, Executive Assistant to the Governor

FROM: Edward J. Sullivan
Corinne C. Sherton

RE: Information Requested on LCDC Acknowledgment
Proceedings for the City of Rajneeshpuram

You have requested our comments on the above matter. Specifically, you have asked how LCDC can review the acknowledgment request of the City of Rajneeshpuram without identical urban growth boundaries (UGBs) having been adopted by the City and Wasco County. What follows are some of the alternatives open to LCDC.

Step One: LCDC Accepts Rajneeshpuram (and Wasco County)
Comprehensive Plan(s) for Acknowledgment Review

The City of Rajneeshpuram has submitted its Comprehensive Plan and implementing regulations to LCDC for acknowledgment review. The City's UGB has been amended to address LCDC's conclusion in Continuance Order 83-CONT-111 (June 14, 1983) that the prior UGB did not comply with Goal 14 UGB establishment factors 3, 4 and 5. LCDC had concluded in Order 83-CONT-111 that the City's plan complied with all other goal

requirements. Wasco County would also be requested to submit its adopted UGB for the City of Rajneeshpuram and its Comprehensive Plan and implementing measures that would apply to the area outside original city limits that has been included within the city's UGB.

There is nothing in ORS ch 197, the Statewide Planning Goals, or LCDC's "Review of Compliance Acknowledgment Request" administrative rules (OAR 660-30-005 through 660-03-033) that prohibits LCDC from conducting an acknowledgment review of city and county plans for an urban planning area when the city and county have adopted different UGBs for that area, or from conducting a review of a city's plan for the area within its adopted UGB alone (without a county plan and UGB having been submitted.)

ORS 197.251 states that "upon the request of a local government, the commission shall by order grant, deny or continue acknowledgment of compliance with the goals" (emphasis added). The statute contains no requirement that cities and counties must jointly submit plans for urban areas, or that such plans must include identical UGBs. The goals themselves say nothing about the prerequisites for conducting an acknowledgement review.

LCDC's Acknowledgment Procedures rule provides as follows:

660-03-010(1) When a local government has adopted a comprehensive plan and land use regulations, as provided by ORS 197.175 and

197.250, prepared corrections pursuant to a Commission's Continuance Order, or prepares a new acknowledgment request subsequent to a Commission's Denial Order, it may request the Commission to grant an Acknowledgment of Compliance. * * * (emphasis added)

Thus, this rule does not require that both city and county plans for an urban area must be submitted and reviewed simultaneously.

Subsection (2) of this rule lists those items which an acknowledgment request must include as follows:

(a) A list by ordinance number and adoption date and six (6) copies of the plans and implementing ordinances or land use regulations, inventories and other factual information to be reviewed, provided that two (2) additional copies shall be required by the director for counties and coastal jurisdictions;

(b) Six copies of a list of all supporting documents, including minutes and tapes which comprise the "record of proceedings" provided that two (2) additional copies shall be required by the director for counties and coastal jurisdictions. Those documents not included with each plan copy shall be briefly described as to content and where they can be examined;

(c) Six copies of a written statement setting forth the means by which a plan for management of the unincorporated area within the urban growth boundary will be completed and by which the urban growth boundary may be modified (unless the same information is incorporated in other documents submitted in the acknowledgment request), provided that two (2) additional copies shall be required by the director for counties and coastal jurisdictions.

(d) The name and address of the person representing the local government to receive notice of Commission consideration of the acknowledgment request and to receive a copy of

the Director's report required under rule 660-03-025;

(e) A list of all affected agencies and districts, including addresses, identified in the local government's agency involvement program;

(f) A list of the names and addresses of the chairperson of the Committee for Citizen Involvement and other citizen advisory committees, if any; and (sic)

There is no doubt that the City of Rajneeshpuram (and Wasco County, if it is willing to do so) could submit such materials to LCDC. Note that paragraph (c) of this subsection does not require that identical plans for management of the unincorporated area within a UGB, identical plans for amending a UGB, or even identical UGBs for an urban planning area, be submitted by both city and county.

Step Two: LCDC Conducts an Acknowledgment Review of the Rajneeshpuram (and Wasco County) Comprehensive Plan(s)

A. Wasco County Submits Its Plan

If Wasco County is willing to submit its plan for the Rajneeshpuram area for acknowledgment review, LCDC could simply review both the city and county UGBs and decide which complies with the Goal 14 UGB establishment factors. This is a decision LCDC has made in the past, such as when it conducted UGB mediation proceedings between the City of Hood River and Hood River County, or between the City of The Dalles and Wasco County.

If LCDC proceeds with its acknowledgment review in

this manner, it is extremely unlikely that it will find that the UGB adopted by the County for the City of Rajneeshpuram complies with Goal 14, as this is the same UGB which LCDC found deficient in its previous acknowledgement review proceedings.

What we believe will happen (and LCDC staff has informally stated their agreement) is that LCDC will find that the revised UGB adopted by the City of Rajneeshpuram (which excludes 893.5 acres previously within the UGB and adds only 606.8 acres to the UGB, resulting in a net reduction of 286.7 acres) complies with Goal 14. In that case, LCDC could issue an acknowledgment order for the City's portion of the urban area plan and issue a continuance order for the county's portion of the plan, directing the county to bring its plan into compliance with the City's. LCDC has in the past issued separate orders for city and county portions of an urban area plan (see, e.g., Orders 83-CONT-97 (City of Klamath Falls) and 83-CONT-100 (Klamath County) for the Klamath Falls Urban Area.)

Should LCDC find that neither the City nor the County's UGB is yet in compliance with Goal 14, it could simply identify those areas whose inclusion within the UGB has not yet been adequately justified, and make them the subject of a continuance order, issuing a limited acknowledgment order for the remainder of the UGB area, pursuant to ORS 197.251(6). LCDC took this course in reviewing the City of Ashland's plan (see Orders 83-ACK-218 and 83-CONT-219). ORS 197.251(8)

provides that limited acknowledgment orders may be issued for areas within UGBs and outside city limits after July 1, 1984.

Finally, LCDC could issue a limited acknowledgement order for the City's and County's plans for the undisputed urban area which is within both UGBs, and issue a continuance order for the area outside present Rajneeshpuram city limits (assuming the validity of Perkins v. City of Rajneeshpuram, 68 Or App 726, ____ P2d ____ (1984), review pending, which affirmed a LUBA Order reversing the City's annexation of approximately 119 acres) that is included within the City's UGB. Such orders were issued by LCDC for the City of Scappoose (Orders 84-ACK-021 and 84-CONT-022).

B. Wasco County Refuses to Submit Its Plan

If Wasco County refuses to submit its plan and implementing measures for the Rajneeshpuram urban planning area for acknowledgment review, LCDC could conduct a review of the City's plan alone. If it finds that the City's adopted UGB now complies with Goal 14 (the only deficiency previously identified by LCDC), it could simply acknowledge the City's plan. Such acknowledgment would be based on a conclusion that the Goal 14 requirement that UGB establishment and change be a "cooperative process" between city and county had either been met or was inapplicable in light of Wasco County's steadfast refusal, in spite of repeated efforts to coordinate by the City of Rajheeshpuram, to consider amendments to the original UGB in

response to LCDC's June 14, 1983, Continuance Order 83-CONT-111 and the County's refusal to submit its plan now for acknowledgment review. We note that in Perkins v. City of Rajheeshpuram, LUBA No. 83-094/095 (February 9, 1984), at page 21, the Land Use Board of Appeals held that the City could not "be cited for a violation of the coordination requirements in Goal 2 and the 'cooperative' directive in Goal 14 where the other necessary party declines to continue with the coordination process or simply disagrees with the other jurisdiction," and concluded that that was precisely what Wasco County had done.

Alternatively, in a review of the City's plan alone, LCDC could issue a limited acknowledgment order for the area within city limits which is within the current UGBs of both City and County, and issue an order continuing acknowledgment for that area outside presently recognized city limits but within the City's UGB at least until Wasco County agrees or is compelled to submit its plan for review or until the City's annexation of those areas is ultimately upheld in the courts.