

1000 FRIENDS OF OREGON

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April 16, 1982

Kristine M. Gebbie
Assistant Director
Department of Human Resources
Administrator of Health
773 State Office Building
Portland, Oregon 97201

Re: Application of Rajneesh Neo-Sannyas International Commune
for Health Division Approval of Community Water System

Dear Ms. Gebbie:

I have discussed the above-named application with John Stoner, Manager of the Division's Drinking Water Section, and described to him our reasons for believing that approval of a community water system as proposed would be inconsistent with goals approved by the Land Conservation and Development Commission. Mr. Stoner informed me that the Health Division makes its decisions on community water systems without consideration of LCDC's goals. The Division's position, as stated by Mr. Stoner, is inconsistent with state law. For the reasons described below, I request that your agency not take further action on this application until you have adopted procedures which assure that Health Division actions with respect to programs affecting land use comply with LCDC goals.

1. The Proposal

The applicant, Rajneesh Neo-Sannyas International Commune, requests approval of a water system consisting of two 125,000 gallon reservoirs filled from three wells with pumps capable of producing 468,000 gallons per day. The distribution system would be served by a ten-inch main. The service area would be elongated and narrow; the main would be approximately two miles in length.

The initial use for the system would be to provide water for an outdoor mass gathering sponsored by the Commune, to be held between June 30 and July 10, 1982. The system is designed to have a capacity adequate to serve a population of 5,000 persons.

The service area for the proposed system is a portion of 64,000-acre Muddy Ranch, which is owned by Rajneesh Investment Corporation. Rajneesh Investment's ranch is zoned "exclusive farm use" by Wasco and Jefferson Counties. The proposed service area crosses the county line.

At present the service area contains 57 dwellings, with an estimated population of 300 persons. The area's residents, together with Chidvalis Rajneesh Meditation Center, have received approval from the Wasco County Court to hold an election to form a city, to be called Rajneeshpuram, which would include the Wasco County portions of the water system service area.

This proposal to establish a 5,000-person capacity water system would, if granted, constitute provision of an urban-level public service at the very time that the lawfulness of urban development at this location is being decided by the courts.

1000 Friends and area ranchers have appealed Wasco County's decision. Our appeal is now pending in the Court of Appeals. We have sought to enjoin a scheduled May 18, 1982 election to form the city. We contend that creation of a city on rural agricultural land would violate statewide planning goals.

2. Applicable LCDC Goals

The goals approved by the Land Conservation and Development Commission identify the proposed service area as rural agricultural land. Under LCDC's Agricultural Lands Goal (Goal No. 3), only those uses permitted in exclusive farm use (EFU) zones established pursuant to ORS 215.203 are allowed on agricultural land.

ORS 215.213(1)(d) permits only those "utility facilities necessary for public service" to be constructed in an EFU zone. Such facilities are further limited by LCDC Goal 11 (Public Facilities and Services) to those "appropriate for, but limited to" rural needs.

A community water system with the capacity to serve the needs of 5,000 persons clearly would exceed the limited needs of the existing 57-dwelling rural settlement. It would be an urban-scale facility and would be in violation of Goal 3 and Goal 11.

3. The Health Division Must Comply with LCDC Goals

ORS 197.180(1) provides in relevant part:

"Except as provided in ORS 527.722, state agencies shall carry out their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use:

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"(a) In compliance with goals adopted or amended pursuant to ORS 197.005 to 197.430 and 197.605 to 197.650;***."

The Health Division's program for review and approval of community water systems is one which affects land use. The construction of urban-scale public service facilities makes possible the development of urban-level uses. Local government land use decisionmakers frequently base decisions about land development proposals on the existence or nonexistence of public facilities, including water, adequate to serve the proposal. The establishment of an urban water system on rural ranchland would become an important consideration in justifying the subsequent approval of new land development on the ranch. LCDC's Goal 11 recognizes these effects, and explicitly requires that facilities and services in rural areas be limited to rural needs.

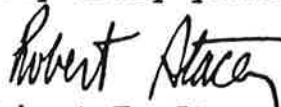
LCDL has established, by administrative rule, several procedures which LCDL believes state agencies may employ in order to assure that agency decisions are consistent with LCDL goals. See OAR 660-31-005 to 660-31-035.

I understand from conversations with Mr. Stoner and with Leonard Pearlman, Assistant Attorney General, that the Health Division has not adopted any of the procedures authorized by these rules, nor has the Division adopted alternative measures to assure goal compliance.

Conclusion

This organization and other plaintiffs in now-pending judicial proceedings over the incorporation of Rajneeshpuram wish to see the decision about creation of a new city made in accordance with the State's land use laws. The applicant for this community water supply system will escape all review for compliance with land use laws if your division issues approvals under its present, unlawful procedures. We would be greatly injured by such action. We respectfully demand that you suspend action on this application until appropriate review procedures are instituted, and provide us an opportunity to be heard under those procedures before taking further action on the application.

Very truly yours,



Robert E. Stacey, Jr.
Staff Attorney

cc: John Stoner
Leonard Pearlman

cc (continued):

James F. Ross, Director, DLCD
Bob Martin, Planning Director, Jefferson County
Dorothy Brown, Planning Director, Wasco County
Mr. & Mrs. James Perkins
Mr. & Mrs. David Dickson
Mr. & Mrs. Kelly McGreer
Ronald M. Somers