



Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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STAFF REPORT

The Deschutes County Historic Landmarks Commission will hold a public hearing on December 12, 2016, at 10:00 a.m. in the Barnes and Sawyer Rooms of the Deschutes Services Center, 1300 NW Wall Street, Bend, to consider the following request:

FILE NUMBER: 247-16-000664-HS

APPLICANT/OWNER: Central Oregon Irrigation District
1055 SW Lake Court
Redmond, Oregon 97756

REQUEST: A demolition permit to remove historic structures (dam, penstock, and powerhouse) at the former Cline Falls Power Plant Facility.

LOCATION: The subject property is located at 300 NW 74th Street, Redmond and is further identified on Deschutes County Assessor's Map 15-12-11D as Tax Lot 1100 together with Tax Lot 900 on Map 15-12-14A.

STAFF CONTACT: Peter Gutowsky, Planning Manager

I. APPLICABLE CRITERIA:

Title 22, Deschutes County Development Procedures Ordinance

Title 2, Deschutes County Administration Ordinance

Chapter 2.28. Historic Preservation and Historic Landmarks Commission

Section 2.28.100. Demolition Permits and Condemnation Proceedings

II. BASIC FINDINGS:

- A. LOCATION:** The subject property is located at 300 NW 74th Street, Redmond and is further identified on Deschutes County Assessor's Map 15-12-11D as Tax Lot 1100 together with Tax Lot 900 on Map 15-12-14A.
- B. LOT OF RECORD:** Deschutes County has recognized the tax lots as one legal lot of record pursuant to County file number LR-92-10 as reconfigured through property line adjustment LL-01-102.

- C. **ZONING:** The subject property is zoned Exclusive Farm Use - Sisters Cloverdale Subzone (EFUSC) and Flood Plain (FP). The property is within the Landscape Management (LM) and Airport Safety (AS) Combining zones and is designated a Historic Site on the local historic resource list.

Note: If the demolition application is approved, the applicant will need to comply with the applicable sections of Deschutes County Code (DCC) 18.96, Floodplain Zone and DCC 18.128, Conditional Use, prior to obtaining a demolition permit from the Building Official for any work in a FEMA floodplain or mapped wetland. Excavation and filling associated with a structure located in the floodplain or mapped wetland likely requires a conditional use permit.

- D. **LAND USE HISTORY:** Ordinance No. 92-019 designated Goal 5 Cultural and Historic Resources in rural Deschutes County. The Cline Falls Power Plant is included in the inventory.

In 2013, the Community Development Department sought a declaratory ruling regarding the scope of the Cline Falls Power Plant historic designation (DR-13-6). The Historic Landmarks Commission determined that “the entire site of the Cline Falls Power Plant is the protected historic resource.” PacifiCorp appealed the decision to the Board of County Commissioners (Board).

In February 2014, the Board determined that the designated historic resource includes only the “dam, penstock and powerhouse.” The Board also found the “flume is part of the penstock, and thus, provides a complete historic resource from the dam, through the penstock, and ending with the powerhouse.” (DR-13-6 / A-13-3). PacifiCorp appealed the Board’s decision to the Land Use Board of Appeals (LUBA).

In August 2014, LUBA issued a Final Opinion and Order, remanding the case back to the County for the Board to further review the definition of “penstock” in relation to the open wooden flume.

- E. **SITE DESCRIPTION:** The subject property is approximately 8.10 acres and irregular in shape. It has a vegetative cover of native trees, grasses, and shrubs. The topography consists of steep east-facing slopes of the river canyon. The site contains the Cline Falls power generating facility, including powerhouse, dam, flume, and several other associated structures. Access to the property is from NW 74th Street, which abuts the property along its western boundary. The Deschutes River and Cline Falls abut the property along its eastern boundary.

- F. **PROPOSAL:** The applicant requests a demolition permit to remove historic structures (dam, penstock, and powerhouse) at the former Cline Falls Power Plant Facility.

- G. **PUBLIC NOTICE AND COMMENT:** The Planning Division sent notice of the application to all property owners within 750 feet of the subject property a minimum of twenty days prior to the hearing. The Bend *Bulletin* Newspaper posted the notification of public hearing on November 20, 2016. No public comments were received.

H. NOTICE REQUIREMENTS: The applicant complied with the posted notice requirements of Section 22.23.030(B) of DCC Title 22. The applicant submitted a Land Use Action Sign Affidavit, dated November 18, 2016, indicating the applicant posted notice of the land use action on November 17, 2016.

I PUBLIC AGENCY COMMENTS: The Planning Division mailed notice to several agencies and received the following responses:

1. Oregon Department of Land Conservation and Development (DLCD) – Amanda Punton, Natural Resource Specialist

The Goal 5 rule does not require a list of significant historic resources to live in the comp plan. OAR 660-23-200 (5) says, “Local governments shall adopt or amend the list of significant resource sites as a land use regulation.” Protections, of course, are in code as well. So plan amendments are not required by the rule.

2. Oregon Parks and Recreation Department – Jean Jancaitis, Natural Resource Specialist

Thank you for the notification concerning the proposed removal of historic structures at the former Cline Falls Power Plant. While a disjunct piece of one of the subject tax lots is within a State Scenic Waterway, the proposed work is not. No further action is required to satisfy State Scenic Waterway regulations.¹

3. Redmond Fire and Rescue – Clara Butler, Deputy Fire Marshall

I wanted to let you know we have no comments on this project.

4. Deschutes County Sherriff’s Office – Captain Paul Garrison

In relation to the Cline Falls Hydroelectric Site Demolition Application please see attached July 22, 2016 letter written by myself. The information is still accurate and the current position of the Deschutes County Sheriff’s Office.²

5. Deschutes County Building and Safety Division – Randy Scheid, Building Official

The Deschutes County Building Safety Divisions code required Access, Egress, Setbacks, Fire & Life Safety, Fire Fighting Water Supplies, etc. will be addressed, when a specific structure, occupancy, and type of construction is proposed and submitted for plan review.

6. The following agencies did not respond or had no comments: State Historic Preservation Office, Oregon Department of State Lands (DSL), Department of Environmental Quality (DEQ), Oregon Department of Fish and Wildlife (ODFW), U.S. Fish and Wildlife Service, Upper Deschutes Watershed Council.

¹ Staff also spoke on the phone with Kuri Gill, Grants and Outreach Coordinator with the State Historic Preservation Office. She concurred with DLCD’s statements.

² See application. Page 38 of 41.

- J. **REVIEW PERIOD:** This application was submitted on October 31, 2016. The Planning Division deemed the application complete, accepting it for review on November 14, 2016. The 150th day on which the county must take final action on this application is April 13, 2017.

III. **CONCLUSIONARY FINDINGS:**

Title 2, Administration.

A. **CHAPTER 2.28 HISTORIC PRESERVATION AND HISTORIC LANDMARKS COMMISSION**

1. Section 2.28.020. Definitions.

As used in DCC 2.28 the following words and phrases are defined as set forth in DCC 2.28.020.

"Demolish" means to raze, destroy, dismantle, deface or in any other manner cause partial or total ruin of a designated structure.

FINDING: The applicant is requesting a demolition permit to remove historic structures (dam, penstock, and powerhouse) at the former Cline Falls Power Plant Facility. Compliance with the demolition requirements found in DCC 2.28.100 is addressed below.

2. Section 2.28.100. Demolition Permits and Condemnation Proceedings..

A. No demolition of any designated historical structure and/or building, or structure and/or building within an historic district or landmark shall be allowed except with the approval of the Landmarks Commission. A demolition or removal permit application shall be transmitted, before action is taken, to the Landmarks Commission.

FINDING: Central Oregon Irrigation District (COID) submitted a demolition permit application. A hearing before the Historic Landmarks Commission is scheduled for December 12, 2016.

B. Upon receipt of an application for a permit for demolition or removal, the Landmarks Commission shall notify the applicant in writing, and the owner of the property, if the owner is not the applicant.

FINDING: COID submitted a demolition permit application. The District is the owner of the subject property. This criterion does not apply.

C. The Landmarks Commission shall hold a public hearing within 30 days of receipt of the application. The applicant, the owner of the property and any interested parties shall be entitled to be heard.

FINDING: The application was submitted on October 31, 2016 and deemed complete on November 14. The first available date for the Historic Landmarks Commission, which typically meets quarterly, was December 12, 2016.

D. In determining whether to approve the demolition or removal

proposed in the application, the Landmarks Commission shall consider the following:

- 1. All plans, drawings and photographs as may be submitted by the applicant;**

FINDING: The applicant's burden of proof, attached to this staff report, provided a number of detailed plans, drawing and photographs for the Historic Landmarks Commission's consideration. COID submitted reports from JRP Historical Consulting, Inc., and Osprey Environmental, Inc.

- 2. Information presented at the public hearing;**

FINDING: The public hearing is scheduled for December 12, 2016.

- 3. The County Comprehensive Plan;**

FINDING: The Cline Falls Power Plant is included in Deschutes County's Goal 5 Inventory of Cultural and Historic Resources. The designated historic resource includes only the "dam, penstock and powerhouse." Staff coordinated with DLCD regarding whether a concurrent or subsequent plan amendment was required to remove the Cline Falls Power Plant from the County's Goal 5 inventory. It is not.

The Goal 5 rule does not require a list of significant historic resources to live in the comp plan. OAR 660-23-200 (5) says, "Local governments shall adopt or amend the list of significant resource sites as a land use regulation." Protections, of course, are in code as well. So plan amendments are not required by the rule.

According to the applicant, the JRP Historical Consulting report confirms that the site does not warrant inclusion in the Goal 5 inventory due to its original erroneous designation, and that it would be appropriate to remove it from the inventory.

- 4. The purpose of DCC 2.28;**

- A. Districts, buildings, structures and sites in Deschutes County which have special historic and prehistoric association or significance should be preserved as part of the heritage of the citizens of the County, and for the education, enjoyment and pride of the citizens, as well as for the beautification of the County and enhancement of the value of such property.**
- B. To that end, regulatory controls and administrative procedures are necessary.**

FINDING: The applicant addresses the purpose statements in their burden of proof:

The structures at Cline Falls do not possess special historic association or significance. As detailed in the report of JRP Historical Consulting, all of the original early 20th century structures at Cline Falls were destroyed and replaced by mid-century, and the newer structures do not possess any significant historic

association or value. Due to the remote location of the site in the river canyon, as well as the hazards presented by the dilapidated structures and environmental waste, the site does not provide any meaningful opportunities for public education, enjoyment, and pride of citizens.

The condition of the site and the environmental toxins located thereon detract from the beautification of the County and the value of the property. In contrast, removing a hydroelectric facility and dam will allow restoration of that stretch of the Deschutes River adjacent to Cline Falls park. The demolition and restoration project will, therefore, enhance the property value, the beautification of the County, the enjoyment of the public, and the habitat and environmental health of the land and river in that area.

5. The criteria used in the original designation of the historical structure, building or district;

FINDING: The applicant addresses this criterion in their burden of proof:

The Cline Falls site was originally designated based on the belief that it was an important example of early 20th century hydroelectric generation. As detailed in the report of JRP Historical Consulting, the original designation was based on erroneous information. In fact, the structures were built far more recently, and in fact the site would not have met the criteria for designation as an historic resource had accurate information been available at the time.

6. The historical and architectural style, the general design, arrangement, materials of the structure and/or building, its appurtenant fixtures, and the relationship of such features to similar features of other buildings within the County, and the position of the structure and/or building in relation to public rights-of-way and to other buildings and structures in the area;

FINDING: The applicant addresses this criterion in their burden of proof:

There is nothing significant or noteworthy about the architectural style of the dilapidated infrastructure at Cline Falls. The dam, radial arm gate, penstock, flume, trash rack, and powerhouse are common to mid-century design and there are numerous better examples within the County that are in far better condition and are located such that the public may actually enjoy and appreciate them. For example, the Mirror Pond dam and powerhouse in Bend are examples of earlier hydroelectric design in the County, and both offer the public the opportunity to view a functioning example of such an installation.

7. The effects of the proposed demolition or removal upon the protection, enhancement, perpetuation and use of the structure and/or building which cause it to possess a special character, or special historical or aesthetic interest or value;

FINDING: The applicant addresses this criterion in their burden of proof:

This factor asks the Commission to consider how the proposed activity will affect the structure and its special characteristics. As explained in the JRP Historical Consulting report, Cline Falls does not possess special characteristics in the first place. The site was erroneously included in the County's Goal 5 inventory based on a mistaken belief that the structures dated to the early 20th century. While there is no question that removal of the structures would destroy any special characteristics they may possess, the other factors set forth in DCC 2.28.100 tip strongly in favor of allowing demolition in this instance.

8. Whether the demolition or removal is proposed to abate a nuisance or a hazardous condition;

FINDING: The applicant addresses this criterion in their burden of proof:

As detailed in the cover letter from Applicant and in the supporting letter from the Deschutes County Sherriff, the Cline Falls site presents both a nuisance and a hazard. COID seeks to remove dangerous structures that are the site of frequent vandalism, and to remove environmental hazards that pose a threat human health and potentially to the resources of the adjacent Deschutes River. There can be no dispute that demolition and restoration of the site will abate a nuisance and remove a public safety hazard. Given the importance of the Deschutes River to the County and the entire region, these concerns should be paramount.

9. Whether delay of the demolition or removal will cause substantial hardship to the applicant.

FINDING: The applicant addresses this criterion in their burden of proof:

Delay will cause the Applicant substantial hardship in three ways:

- (a) Further delay will prevent COID from removing a public safety hazard. Despite its best efforts, COID cannot control trespass activity at the site and is concerned that someone will suffer a serious injury.*
- (b) The appropriate construction season for a project on this section of the Deschutes River should be during summer months while river diversions for irrigation reduce the flow of water by the site. Significant delay would impair COID's ability to retain a contractor and complete the work during this season. COID is also seeking to obtain public funding sources for the dam removal portion of this project, and further delay in obtaining the demolition permit could impair the Applicant's ability to obtain such funding.*
- (c) Delay tends to result in increased costs, as the prices for labor and equipment continue to increase.*

IV. NEXT STEPS

At the conclusion of the hearing, the Historic Landmarks Commission can choose one of the following options:

1. Continue the hearing to a date certain.
2. Close the hearing and leave the written record open to a date certain. Deliberations will be scheduled at a date to be determined.
3. Close the hearing and then allow a specified amount of time for a rebuttal period; and a specified time for final argument. Deliberations will be scheduled at a date to be determined.
4. Close the hearing, allowing the applicant a specified amount of time for final argument. Deliberations will be scheduled at a date to be determined
5. Close the hearing and begin deliberation.

Attachment: Applicant's burden of proof

DESCHUTES COUNTY PLANNING DIVISION

Written by: Peter Gutowsky, Planning Manager

Mailed this 29th day of November 2016