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July 19, 2016

Item 12
Exhibit 2

VIA EMAIL ONLY

Jim Rue, Director
Oregon Department of Land Conservation and Development
Land Conservation and Development Commission
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Salem, OR 97301-2540
Email: jim.rue@state.or.us

Rob Hallyburton, Community Services Division Manager
Oregon Department of Land Conservation and Development
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Salem, OR 97301-2540
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RE: Agenda Item 12, July 21-22, 2016, LCDC Meeting

Dear Director Rue and Mr. Hallyburton:

This firm represents Matt and Suzanne Gadow, residents of unincorporated Deschutes County, Oregon, and fee simple landowners within the Pilot Butte Canal Historic District (“PCBHD”). For the past four years, Matt and Suzanne have been involved in various actions to maintain the integrity of their home and property in unincorporated Deschutes County, located on the outskirts of Bend. Central Oregon Irrigation District (“COID”), a quasi-municipal irrigation district, has proposed extending its hydropower facility onto the Gadow’s property by piping a section of the PCBHD. The National Park Service listed the PCBHD in the National Register of Historic Places in February of 2016 following intense opposition from COID.

What Agenda Item 12 appears to be focused upon as its primary purpose, is the reversal of the listing of the PCBHD by redefining “owner” to allow COID as an easement holder to object to historic preservation efforts. We recognize the impetus of the proposed rulemaking, and strenuously oppose this effort. We also do not support the commission beginning rulemaking on this topic. We do not support the effort to “highlight an alternate path for removing a local historic designation.” However, should the Commission bend to the will of a single irrigation district and its political allies, we have the following comments.



1. The “owner” objection issue was thoroughly vetted in the listing of the PBCHD, and the National Park Service correctly found that only the fee simple owner could object.

Through the course of the nomination process to the NRHP, as well as seeking Goal 5 protection for the PBCHD at the county level, the “ownership” issue has been thoroughly analyzed and argued regarding standing to object to nomination to the register of historic places. As a point of context, COID asserted that they have standing through the various local/state/federal provisions that allow the “owner” of the affected property to object to the listing of the property to the NRHP. However, COID holds an easement that allows for the transportation of irrigation water across my clients’ and other property owners’ land. The National Parks Service, after receiving voluminous briefing and argument, decided that only the fee simple owner has standing to object to nomination of a historic property to the NRHP. The National Park Service is correct.

Allowing only the fee simple owner of an affected property to object to nomination makes sense: allowing fractional owners of easements/leaseholds/lesser estates gives a minority interest holder in property a veto for the historic protection of the property. Moreover, a utility provider, such as a power, gas, or an irrigation district with wide-reaching easements and rights of way could veto historic protection to the detriment of the desire from the fee simple owner. Expanding the class of fractional property interest holders to object is against the spirit and intent of historic protection. We will provide additional briefing on this as necessary, but the concept of limiting potential objectors to the fee simple holder is pragmatic, and a common sense limitation.

2. RAC Committee Appointments should not include persons associated with Deschutes County or COID, should not include members of the irrigation community, and should not include Commissioner MacPherson.

Rules Advisory Committee (“RAC”) appointments are proposed to include a broad range of members including:

- Local government planners (two city, one county)
- Statewide advocacy organization representative
- Citizens (three)
- State Advisory Committee on Historic Preservation member
- Consultant experienced in National Register nominations
- Tribal representative(s)
- Commission member

If this rulemaking is a neutral and generally applicable statewide process to address a problem outside of COID’s specific objections, the members of the RAC must be divorced from the piping controversy in Deschutes County. Local government planners should not be from Deschutes County, or anywhere COID operates. Appointed citizens should not be associated with COID or irrigation



districts, as COID is actively involved in lobbying and advocating within the irrigation district community. Given the interests in piping the canal by the Confederated Tribes of Warm Springs, the tribal representative should not be associated with support of this particular piping project. The consultant should not have previously or currently work with COID, and finally Commissioner MacPherson should not serve on the RAC. Commissioner MacPherson is employed as an attorney at Stoel Rives, LLP in Portland. The Portland office of Stoel Rives currently represents COID, and has actively participated in the opposition of listing the PBCHD to the NRHP. *See Attachment 1.* Given the close relationship of the Commissioner and the benefiting party, the neutrality of the RAC would be better served with a different commission member serving.

These requests are done in an effort to maintain neutrality on the RAC for a contentious issue, which is easily apparent to the affected parties. We would also not request that proponents of the PBCHD serve on the RAC for similar self-interested reasons. If the RAC and rulemaking process is to remain a neutral policy creating body, vetting that excludes interested parties is of utmost importance.

3. We request notice of all upcoming RAC Meetings, Commission Agenda Meetings, and all other associated Department activity with actions proposed by Agenda Item 12.

Finally, we request that the following parties be added to the lists of interested persons for all activity associated with Agenda Item 12:

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We are dismayed that the continued attack on my clients' property continues through another state agency. COID is an irrigation district that delivers water to its patrons. COID is not a power company, and its continued efforts to maximize its power revenue at the expense of my clients' property values will be rigorously defended. We appreciate the Department's and Commission's time and consideration of our concerns.

Sincerely,

Brian R. Sheets
BRS Legal, LLC

Cc: Clients

Casaria Taylor by email at casaria.taylor@state.or.us



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August 6, 2015

VIA ELECTRONIC MAIL (ian.johnson@oregon.gov)

Mr. Ian Johnson
Interim Associate Deputy State Historic Preservation Officer
Oregon State Historic Preservation Office
725 Summer St. NE, Suite C
Salem, Oregon 97301

Re: Central Oregon Irrigation District's Response to Comment by Matt Gadow regarding the District's Ownership of the Pilot Butte Canal and Right to Object to the Canal's Inclusion in the National Register of Historic Places (15000397)

Dear Mr. Johnson:

Stoel Rives LLP represents Central Oregon Irrigation District ("COID") regarding the proposed nomination to include the Pilot Butte Canal and adjacent right of way in the National Register of Historic Places. On July 10, 2015, COID submitted to the National Park Service ("NPS") and Keeper of the National Register of Historic Places comments on the proposed nomination (the "COID Comments"). COID, as the owner of the Pilot Butte Canal, objected to the proposed nomination. After receiving COID's comments, the NPS informed Oregon's State Historic Preservation Office ("SHPO") that the NPS intended to return the proposed nomination to the SHPO. We understand that the NPS requested that the SHPO analyze whether COID is entitled to object to the proposed nomination as the owner of the canal, pursuant to 36 C.F.R. § 60.6(r).

On July 29, 2015, Schroeder Law Offices, P.C., on behalf of Matt Gadow, sent a letter to the SHPO regarding COID's ownership of the Pilot Butte Canal and COID's right to object as an owner under 36 C.F.R. § 60.6(r). Gadow asserts COID and Governor Brown¹ erroneously identify COID as the owner of the Pilot Butte Canal. As explained in this letter, Gadow is wrong. COID owns the Pilot Butte Canal. Gadow's assertion regarding ownership of the canal

¹ Governor Brown's position was explained in a letter dated July 10, 2015, from Gabriela Goldfarb, on behalf of Governor Brown, to Sally Jewel, Secretary of the Interior, and J. Paul Loether, Chief of the National Register of Historic Places.