



WASHOE COUNTY

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STAFF REPORT

BOARD MEETING DATE: November 10, 2020

DATE: October 1, 2020

TO: Board of County Commissioners

FROM: Dan Cahalane, Planner, Planning & Building Division, Community Services Department, 775-328-3628, dcahalane@washoecounty.us,

THROUGH: Mojra Hauenstein, Arch., Planner, Division Director, Planning & Building, Community Services Department, 328-3619, mhauenstein@washoecounty.us

SUBJECT: Public Hearing: Appeal of the Washoe County Planning Commission's denial of Orni 36, LLC's Special Use Permit Case Number WSUP20-0013 (Ormat Geothermal) for 1) the establishment of an Energy Production, Renewable use type including two 24MW geothermal power plants, 2) the establishment of a Hazardous Materials use, in the form of 720,000 lbs of flammable pentane gas (a refrigerant) for use as a turbine working fluid, 3) major grading for 194.9 acres of ground disturbance, including 300,000 cy of excavation, for well pads and access roads, and 4) a 120kV power transmission line that extends ± 21.6 miles over 20 parcels. The application also requests to vary landscaping, parking, and grading standards by waiving all landscaping requirements, waiving the paved parking requirement, and allowing grading height differentials of greater than 10ft from natural grade. This project meets the standard for a project of regional significance, because it will generate more than 5 MW of electricity, require construction of 2 substations, and require the construction of a new transmission line and will require approval by the regional planning authorities before any approval at the county level would take effect. The two substations will be located on APNs 071-070-13 and 071-030-06. The well pads will be located on APNs 071-030-07, 071-060-18, 071-070-09, 071-070-12, 071-070-16, 071-070-18, 071-070-19, 079-170-02. The Transmission line will be located on APNs 079-180-02, 079-180-12, 079-180-45, 079-570-01, 079-570-07, 079-570-13, 079-320-12, 079-320-18, 079-320-04, 079-170-39, 079-180-34, 079-180-37, 079-180-44, 079-320-42, 079-320-47, 079-320-52, 079-320-55, 079-570-02, 079-570-06, 079-570-12.

The Board of County Commissioners may review the record and take one of the following four actions:

1. Affirm the decision of the Planning Commission and deny Special Use Permit Case Number WSUP20-0013; or
2. Reverse the decision of the Planning Commission and approve Special Use Permit Case Number WSUP20-0013 as proposed by

AGENDA ITEM # _____

- the applicant, Orni 36, LLC, and as evaluated by staff in the Planning Commission staff report; or
3. Reverse the decision of the Planning Commission and approve Special Use Permit Case Number WSUP20-0013 with modifications; or
 4. Remand Special Use Permit Case Number WSUP20-0013 back to the Planning Commission with instructions.

If reversed and approved or if reversed and approved with modifications, authorize the chair to sign a resolution to that effect, including a recommendation to the regional planning authorities for an amendment to the Regional Utility Corridor Map to reflect this project for: (1) A 48 MW Geothermal energy center (containing two 24MW geothermal facilities and related substations on apns 071-070-13, 071-030-06) approximately 10 miles north of Pyramid Lake; and (2) A 21.6 Mile 120 kV overhead transmission line connection within an existing utility corridor approximately 10 miles east of the southern tip of Pyramid Lake south to the border of Washoe County. (Commission District 5.)

SUMMARY

The appellant, Orni 36, LLC, is seeking to overturn the Washoe County Planning Commission's denial on Sept 1, 2020. Planning staff was able to make all of the findings in support of approval within the staff report. The appellant has appealed the denial providing justification to support the 4th and 6th findings, which are the findings that the Planning Commission were unable to make.

Washoe County Strategic Objective supported by this item: Stewardship of our community.

PREVIOUS ACTION

On Sept 1, 2020, the amendment was heard publicly by the Planning Commission. The Planning Commission could not make the following findings:

- Finding 4 – Issuance Not Detrimental.
- Finding 6 – That the proposed development is not unduly detrimental to surrounding properties, land uses and the environment in general.

The proposed amendment was sent to both the Gerlach/Empire and East Truckee Canyon CABs for comment on worksheets as there were no regularly scheduled CAB meetings for either CAB during this review cycle. One CAB member from the Gerlach/Empire CAB provided written feedback on this application.

BACKGROUND

The Washoe County Planning Commission was unable to make two of the findings required by Washoe County Code (WCC) Section 110.810.30, 35, 40, & 42 specifically, the fourth and sixth findings for approval of the amendment of the Special Use Permit request as stated below:

- 4) Issuance Not Detrimental. That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area;
- 6) Development of Natural Resources That the proposed development is not unduly detrimental to surrounding properties, land uses and the environment in general.

The appellant's application (see Attachment A) addresses the Planning Commission's comments regarding Findings 4 and 6 with the following language from the appeal application. Below is an excerpt from the appellant's application that responds specifically to the two findings that the Planning Commission was unable to make:

Finding #4) Issuance Not Detrimental

- "The proposed conditions of approval and remaining state and federal permitting requirements mitigate the negative effects associated with operating the proposed facilities to the point of not being significantly detrimental to the public health, safety, or welfare." Staff Report, Page 20.
- "The questions raised by the Planning Commission that we assume informed their inability to make this finding were centered on contents of the Draft Environmental Analysis (EA), specifically underground water and geothermal resources. The Draft EA was provided for reference only, as the contents and decision regarding the Draft EA are the sole responsibility of the BLM. Staff noted this in their response to specific Planning Commission questions. Washoe County Code does not address environmental review, as they are detailed within the Draft EA. The contents of the Draft EA, are outside of the discretion of the Planning Commission's decision to make specific findings, so should not have provided the basis for their decision."
- "Questions raised by the Planning Commission relative to underground geothermal resources are not regulated by Washoe County, nor are they germane to the findings associated with a special use permit. Washoe County Code which does not address geothermal resource management. Rather, geothermal resources are regulated by the Nevada Division of Minerals and are outside the purview of the Planning Commission."
- "The contents of the special use permit reviewed by the Planning Commission contains the physical development and improvements to the land, as they pertain to Washoe County Code. The special use permit addresses the physical improvements, such as grading of roads/well pads, vertical construction of wells, transmission lines and power plants, and the overall operational parameters of the power plants (i.e. hazardous materials used in the operations of the plant). The special use permit does not address the underground geothermal resources, as this is a matter reserved to be regulated by other agencies, namely BLM and Nevada Division of Minerals."

- “No public testimony, nor questions or discussion (there was no discussion on this matter) by the Planning Commission disputed the physical development characteristics contained within the special use permit. Rather, the denial was based on topics outside of the Planning Commissions’ discretion. As such, this finding can be made in the affirmative, as outlined in the Staff Report and supporting special use permit application materials. “

Finding #6) Development of Natural Resources.

- “The applicant will provide revegetation to mitigate the impacts of dust and erosion from the construction of this facility. There will be no unduly detrimental effects to the surrounding environment.” Staff Report, Page 20.
- “Similar to Finding 4 discussed above, the Planning Commission appeared to make their decision based upon the contents of a Draft EA and comments associated with the underground geothermal resources that are outside of the Planning Commissioner’s discretion and are the sole responsibility of other State and Federal agencies.”
- “As noted by Staff, mitigation measures relevant to revegetation and dust/erosion control are addressed with the special use permit. These aspects are relevant to the physical development of the project (i.e. grading associated with roads/well pads and construction of the wells and power plant facilities) and not associated with the underground geothermal resources that were the basis of the Planning Commission’s decision.”
- “No discussion by the Planning Commission disputed the physical development and associated appropriate conditions to mitigate impacts on surrounding properties. Rather, the denial was based on information and/or project characteristics (i.e. geothermal resources) that are outside of the Planning Commission’s discretion when deliberation on the application. As such, this finding can be made as outlined in the Staff Report and supporting special use permit application materials.”

FISCAL IMPACT

No fiscal impact

BOARD OPTIONS

The Board of County Commissioners may review the record and take one of the following actions:

1. Affirm the decision of the Planning Commission and deny Special Use Permit Case Number WSUP20-0013; or
2. Reverse the decision of the Planning Commission and approve Special Use Permit Case Number WSUP20-0013 as proposed by the applicant, Orni 36, LLC., and as evaluated by staff in the Planning Commission staff report; or
3. Reverse the decision of the Planning Commission and modify Special Use Permit Case Number WSUP20-0013; or

4. Remand Special Use Permit Case Number WSUP20-0013 back to the Planning Commission with instructions.

And, if reversed or modified and reversed, authorize the chair to sign a resolution to that effect.

POSSIBLE MOTIONS

1) Should the Board agree with the Planning Commission's denial of Special Use Permit Case Number WSUP20-0013 (Ormat Geothermal), staff offers the following motion:

"Move to deny the appeal and affirm the decision of the Planning Commission to deny Special Use Permit Case Number WSUP20-0013 (Ormat Geothermal). The denial is based upon the inability to make the findings required by 110.810.30 and the additional findings in accordance with Washoe County Code Section 110.810.35, 40, & 42, *Findings*."

OR

2) Should the Board disagree with the Planning Commission's denial of Special Use Permit Case Number WSUP20-0013 (Ormat Geothermal), staff offers the following motion:

"Move to approve the appeal and reverse the decision of the Planning Commission and approve Special Use Permit Case Number WSUP20-0013 (Ormat Geothermal). The approval is based on the Board's ability to make all the findings required by WCC 110.810.30 and the additional findings in accordance with Washoe County Code Section 110.810.35, 40, & 42, *Findings*."

OR

3) Should the Board decide to reverse and modify the Special Use Permit Case Number WSUP20-0013 (Ormat Geothermal) without remanding it to the Planning Commission, staff offers the following motion:

"Move to approve the appeal and reverse the decision of the Planning Commission and modify Special Use Permit Case Number WSUP20-0013 (Ormat Geothermal). The modification is based on the Board's discretion under WCC 110.912.20(b)6(ii)."

OR

4) Should the Board decide to modify and remand back to the Planning Commission its denial of Special Use Permit Case Number WSUP20-0013 (Ormat Geothermal), staff offers the following motion:

"Move to remand Special Use Permit Case Number WSUP20-0013 to the Planning Commission with instructions. The ability to remand the application is based on the Board's discretion on WCC 110.912.20(b)6(iv)."

Attachments:

Attachment A: Appeal Application dated September 14, 2020

Attachment B: Planning Commission Action Order Dated September 4, 2020

Attachment C: Planning Commission Staff Report dated September 1, 2020

Attachment D: Planning Commission Minutes of September 1, 2020

Attachment E: BCC RZA Resolution

cc:

Appellant/Owner: Orni 36, LLC, 6140 Plumas St, Reno, NV, 89519