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CUP23-0016 Morton Bay CEC County Letter 092823

Additional submitted attachment is included below.



Imperial County Planning & Development Services Planning / Building

Jim Minnick
DIRECTOR

September 28, 2023

Mr. Eric Veerkamp
California Energy Commission
715 P Street
Sacramento, CA 95814

Imperial County Response to Data Request Set 1 (TN #252095) for the Morton Bay Geothermal Project (23-AFC-01)

Dear Mr. Eric Veerkamp:

In response to the California Energy Commission (CEC) Staff's Data Requests Set 1 for the Morton Bay Geothermal Project (MBGP) (23-AFC-01), this letter is intended to clarify Imperial County's (County) perspective on the potential project. Specifically, this letter addresses applicability of County development standards on the project's ancillary components, the County's perspective on potential findings for a variance to the maximum building height of 35 feet in the Open Space/Recreational (S-1-G) zone, and the County's perspective on potential findings for the issuance of Conditional Use Permits (CUP).

Applicability of Development Standards on Ancillary Components

MBGP Data Request #62 requests information on how the development of each ancillary facility is consistent with the development standards for each site's zoning designation. Ancillary facilities for the project include aboveground and underground production and injection wells, aboveground production and injection pipelines, generation tie-lines (transmission lines and poles), underground freshwater supply lines, and temporary laydown yards, parking areas, borrow pits, and construction camps.

The aboveground wells (injection), aboveground pipelines (injection), and construction camps require County review and approval of a Conditional Use Permit (CUP). During the CUP process, the County will determine applicable development standards (if any), including setbacks and maximum structure height, for the wells, pipelines, and construction camps. The County will require consistency with applicable development standards prior to the issuance of a CUP or as conditions of approval.

The generation interconnection transmission line (gen-tie) is under jurisdiction of the Imperial Irrigation District and is not subject to County development standards. The freshwater supply lines and connections are located underground and are not subject to County development standards. Due to the temporary nature of laydown yards, parking areas, and borrow pits, development standards are not applicable.

Variance to the Maximum Building Height at the Primary MBGP Site

MBGP Data Request #63 and # 64 requests material to support the statement that the County could make variance findings for multiple structures at the primary MBGP site which exceed the 35-foot maximum building height. The project proponent indicates the facility's design and engineering make it

infeasible to construct these structures at or below the 35-foot threshold. The project proponent also indicates some structures would reach heights of approximately 95 feet.

Land uses surrounding the MBGP site are shown in Table 1, below.

Table 1. Surrounding Land Uses at the MBGP Site

Location From Project Site	Current Use	Zoning
North of the Plant Site	Open Space; recreational	Open Space/Recreational with Geothermal Overlay (S-1-G)
East of the Plant Site	Open Space; Geothermal energy production	Medium Industrial Area with Geothermal and Pre-Existing Allowed/Restricted Overlays (M-2-G-PE)
South of the Plant Site	Open Space; recreational	Open Space/Recreational with Geothermal Overlay (S-1-G)
West of the Plant Site	Open Space; recreational	Open Space/Recreational with Geothermal Overlay (S-1-G)

In order to issue a variance, the County would need to make the following findings, pursuant to Section 90202.08 of the County’s Land Use Ordinance:

- A. Findings. Approval or conditional approval may be granted only if the director/commission/board of supervisors first determines that the variance satisfies the criteria set forth in Government Code Section 65906, and the following findings can be made:
 1. That there are special circumstances applicable to the property described in the variance application, that do not apply generally to the property or class of use in the same zone or vicinity;
 2. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such zone or vicinity in which the property is located;
 3. That because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of zoning laws is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classifications;
 4. That the granting of such variance will not adversely affect the comprehensive general plan.

MBGP Data Request #65 requests information on how the project could meet the required variance findings. A high-level informal review indicates the following:

Finding #1: Special circumstances exist at the MBGP site in the form of rare geothermal resources near the surface.

Finding #2: It is possible that the granting of such a variance would not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity.

Finding #3: It is possible that the strict application of zoning laws could deprive the MBGP facility of opportunities which are utilized by existing and similar geothermal facilities located nearby.

Finding #4: It is initially believed that granting of such a variance would not adversely affect the comprehensive general plan.

Although the County is open to a variance to maximum building height at the primary MBGP site, it is critical to note that the County would require formal review to determine if the required findings, set forth in Section 90202.08 of the County's Land Use Ordinance, can be made.

Potential to Make Required Findings for Issuance of CUPs

MBGP Data Request #66 requests information on how the development of each project element, which would require a CUP if reviewed by the County, could meet the findings required for issuance of a CUP. The elements of the project, which would require permitting under a CUP if reviewed by the County, are as follows:

The MBGP components which would be subject to a CUP, if reviewed by the County, include the following:

- Primary powerplant: Per Section 90518.02 of the County's Land Use Ordinance, major facilities related to the generation and transmission of electrical energy are permitted as conditional uses.
- Injection wells and injection pipelines: Per Section 90508.02 and 90512.02 of the County's Land Use Ordinance, major facilities related to the generation and transmission of electrical energy are permitted as conditional uses.
- Temporary laydown yards and parking areas: Per Section 90509.02 and 90518.02 of the County's Land Use Ordinance, temporary contractor storage yards are permitted as conditional uses.
- Temporary construction camps: Per Section 90509.02 and 90518.02 of the County's Land Use Ordinance, labor camps are permitted as conditional uses.
- Temporary borrow pits: Per Section 90509.02 and 90507.02 of the County's Land Use Ordinance, mineral extraction and resource extraction are permitted as conditional uses.
- Gen tie-line: Per Section 90518.02, transmission lines are permitted as conditional uses.

In order to issue CUPs, the County would need to make the following findings, pursuant to Section 90203.09 of the County's Land Use Ordinance:

- A. The proposed use is consistent with the goals and policies of the adopted county general plan;
- B. The proposed use is consistent with the purpose of the zone or sub-zone within which the use will be located;
- C. The proposed use is listed as a use within the zone or sub-zone or is found to be similar to a listed conditional use according to the procedures of Section 90203.10;
- D. The proposed use meets the minimum requirements of this title applicable to the use and complies with all applicable laws, ordinances and regulations of the county of Imperial and the state of California;
- E. The proposed use will not be detrimental to the health, safety, and welfare of the public or to the property and residents in the vicinity;
- F. The proposed use does not violate any other law or ordinance;
- G. The proposed use is not granting a special privilege.

A high-level informal review indicates the following:

Finding A: There are no initial concerns regarding significant inconsistencies with the projects and the goals and policies of the adopted general plan.

Finding B: As shown in the bullet list above, the proposed uses appear to generally align with uses identified in the County's Land Use Ordinance as permitted conditional uses. If the proposed uses are consistent with the permitted conditional uses identified in the code, the proposed uses would be consistent with the purpose of the zone designation which they are located in.

Finding C: As shown in the bullet list above, the proposed uses appear to generally align with uses identified in the County's Land Use Ordinance as permitted conditional uses.

Finding D: With the approval of a variance for structure height at the primary MBGP site, the project does not appear to be inconsistent with applicable laws, ordinances, and regulations of the County or State.

Finding E: There are no initial concerns with the proposed uses being detrimental to the health, safety, and welfare of the public or to the property and residents in the vicinity.

Finding F: With the approval of a variance for structure height at the primary MBGP site, the proposed uses do not appear to violate any other law or ordinance.

Finding G: The project is similar to other existing geothermal powerplants in the area. There are no initial concerns regarding the granting of a special privilege if a CUP is issued.

In summary, based upon the information we have reviewed to date, we are presently aware of no facts that would prevent the County from issuing CUP(s) for the elements of the projects that would require a CUP if reviewed by the County. However, this is an informal and non-binding opinion. It is critical to note that the County would require formal review to determine if the required findings, set forth in Section 90203.09 of the County's Land Use Ordinance, can be made for each instance.

If the County's perspective on these land use issues requires further clarification, please feel free to contact me at 442-265-1736 or via email at jimminnick@co.imperial.ca.us.

Sincerely,



Jim Minnick, Director
Imperial County Planning & Development Services Director

CC: Michael Abraham, AICP, Planning & Development Services Assistant Director
Diana Robinson, Planning Division Manager
Files: 10.102; 10.101; 10.104
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