



Appeal Form

County of Ventura • Resource Management Agency • Planning Division

800 South Victoria Avenue, Ventura, CA 93009 • 805 654-2488 • www.vcrma.org/divisions/planning

Appeal Number: **PL22-0152**

To: ☒ Board of Supervisors
☐ Planning Commission
☐ PWA Advisory Agency

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DEC 27 2022
BY: *Lusan Cort*

I hereby appeal the decision of the **VC Planning Commission**, which was given on
December 15, 20**22**.

The decision was as follows:

The Planning Commission **REJECTED** the Planning Director's Staff Report for the Hearing dated December 15, 2022, granted the appeal of CFROG and denied the approval of ABA's Zoning Clearance ZC22-0937, which was originally issued by staff (but held in abeyance by virtue of CFROG's appeal).

The grounds of appeal are (attach extra sheets as needed):

All of the reasons, justifications and grounds set forth in the Planning Director's Staff Report for and to the Planning Commission for their 12/15/22 Hearing regarding PL22-0152 (RE: ZC22-0937).

Also, please see the attached sheet titled "ADDITIONAL GROUNDS OF APPEAL" for a detailed explanation of ABA's additional grounds of Appeal.

I request that the appropriate decision making body take the following action:

Accept the Planning Director's Staff Report to the Planning Commission and based on same:

- Reaffirm the Planning Director's issuance of Zoning Clearance ZC22-0937 (or otherwise re-issue the same) with new expiration dates consistent with NCZO Section 8111-1.1.1c; and,
- To the extent applicable, deny in its entirety, the appeal by CFROG of the Planning Director's action to issue Zoning Clearance ZC22-0937; and
- To the extent applicable, render moot and void, the decision of the Planning Commission on 12/15/22 to deny the issuance of Zoning Clearance ZC22-0937 and grant the CFROG appeal.

Name of Appellant: **ABA Energy Corporation**

Address of Appellant: **7612 Meany Avenue Bakersfield, CA 93308**

Telephone Number of Appellant: **661-324-7500**

Is the appellant a party in the application? ☒ Yes . If not, state the basis for filing the appeal as an "aggrieved person."

N/A

Signature of Appellant

Date

Appeal and deposit fee of \$_____ (pursuant to fee schedule specified by Resolution No. 222 of the Ventura County Board of Supervisors) received by the Planning Division at _____ (time) on _____, 20_____.

Dave Ward, AICP
Director- Planning Division

By _____



ADDITIONAL GROUNDS OF APPEAL – ATTACHED TO AND MADE A PART OF THAT CERTAIN APPEAL FORM MADE BY ABA ENERGY CORPORATION (“ABA”) TO THE VENTURA COUNTY BOARD OF SUPERVISORS REGARDING PL22-0152 (RE: ZC22-0937) DATED AND EXECUTED BY ABA ON DECEMBER 22, 2022.

ABA Conducts Oil and Gas Operations Pursuant to a Valid and Existing Special Use Permit #672

In 2010 ABA became an owner of the lessee’s interest in, and the operator of, an oil and gas lease referred to as the “Maulhardt Lease” situated in the Oxnard oilfield that was and continues to be subject to Special Use Permit #672 (“SUP #672”). SUP #672 was issued by the Ventura County Board of Supervisors who voted in a noticed, public hearing to accept and approve a thoroughly considered, site-specific, detailed, and fully conditioned discretionary permit in accord with the recommendation of the Ventura County Planning Commission for the following purposes:

“Drilling for and extraction of oil, gas and other hydrocarbon substances and installing and using buildings, equipment, and other appurtenances accessory thereto, including pipelines, but specifically excluding processing, refining and packaging, bulk storage or any other use specifically mentioned in Division 8, Ventura County Ordinance Code, requiring review and Special Use Permit . . .”

The County has continuously acknowledged ABA’s status as a permittee under SUP #672 and has repeatedly acknowledged the validity of SUP #672 and ABA’s compliance therewith, including ABA’s compliance with all of the conditions contained in SUP #672. Specifically, prior to the issuance of the subject Zoning Clearance (ZC22-0937), Ventura County issued numerous other (~24) zoning clearances to ABA over the course of the last twelve years pursuant to SUP #672 for the drilling of new wells, redrills and construction of upgrades to its facilities, none of which were appealed.

Zoning Clearances are Ministerial

Section 8111-1.1 of the NCZO expressly states that issuance of zoning clearances is ministerial. Since the NCZO provides that the issuance of zoning clearances is ministerial and based on objective standards with little or no personal judgment, there is no legal basis to deny issuance of the subject Zoning Clearance (ZC22-0937). After a field visit and a thorough analysis of ABA’s Zoning Clearance application pursuant Section 8111-1.1.1b of the NCZO (see Staff Report to Planning Commission), Planning Staff found that all requirements of Section 8111-1.1.1b were met. Specifically, Staff found that ABA was in full compliance with all 13 conditions of SUP #672, including, without limitation, conditions 5 and 8 thereto, and that the Zoning Clearance (ZC22-0937) properly covered compliance with those conditions. As a result, issuance of the Zoning Clearance (ZC22-0937) was proper and should be upheld.

During the 12/15/22 Ventura County Planning Commission Hearing on this matter, County Counsel Jeff Barnes was asked by Commissioner Garcia about the applicability of certain provisions of the General Plan Update to the approval of the Zoning Clearance (ZC22-0937). Mr. Barnes explained that

those provisions of the General Plan Update applied to discretionary matters “and [do] not lend itself to this ministerial decision that’s before you today.” In other words, County Counsel agrees that approval of the Zoning Clearance is ministerial.

Planning Commissioner King further acknowledged the ministerial nature of approval of the Zoning Clearance when he moved to recommend approval of the Planning Director’s Staff Report (including approval of the subject Zoning Clearances and denial of the CFROG appeals): “The law is the law, we have limits. This is not a discretionary matter it is a ministerial matter and as such, all the bases of the appeal simply do not hold water. With those comments, I am gonna place on the table a motion to approve staff recommendations. Even though I wish it could be otherwise; I think we have a legal obligation to follow the laws as they are written today.”

While the County amended the NCZO in 2020 to require discretionary approvals instead of ministerial zoning clearances for the types of operations covered by Zoning Clearance ZC22-0937, the amendment was rendered void through a referendum election in June 2022. The NCZO as it exists now is what must be enforced which, as stated above, declares that zoning clearances are ministerial.

Because of the Ministerial Nature of Zoning Clearance Approvals, CEQA Does Not Apply

Pursuant to NCZO Section 8111-1.1 et seq., the issuance of a zoning clearance to certify that a proposed activity is in conformance with a previously granted discretionary permit (such as SUP # 672) is a ministerial action. Ministerial actions are not subject to environmental review pursuant to CEQA. (See, e.g., CEQA Guidelines Section 15268(a) [“ministerial projects are exempt from the requirements of CEQA.”]; see also Public Resources Code Section 21080(b)(1) [CEQA does not apply to “ministerial projects proposed to be carried out or approved by public agencies.”].) CEQA Guidelines § 15369 explains that, “‘Ministerial’ describes a governmental decision involving *little or no personal judgment* by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of *fixed standards or objective measurements . . .*” (Emphasis added.) NCZO 8111-1.1 follows much of this language as to issuance of zoning clearances by stating that, “These entitlements, and modifications thereto, are granted based upon determinations, arrived at *objectively and involving little or no personal judgment*, that the request complies with *established standards* set forth in this Chapter . . .” (Emphasis added.) Accordingly, issuance of the Zoning Clearance (ZC22-0937) was ministerial and CEQA does not apply.

SB1137 is Not Yet in Effect, and Thus It Cannot Impact Issuance of the Zoning Clearance

In CFROG’s Appeal of the issuance of the Zoning Clearance (ZC22-0937), it was claimed that issuance of the subject Zoning Clearance was in violation of State law, but the only law cited by CFROG (aside from CEQA which is not applicable as discussed above) is SB1137. SB1137 does not prohibit the operations covered by the subject Zoning Clearance; rather, it prohibits the State from issuing NOIs starting January 1, 2023. NOIs issued prior to that date are not rendered ineffective by SB1137.



Handwritten signature and date: 12-22-22