



February 28, 2023

Board of Supervisors
County of Ventura
800 South Victoria Avenue
Ventura, CA 93009

SUBJECT: De Novo Hearing to Consider the Issuance of Two Ministerial Zoning Clearances to Certify that the Re-Drilling of Two Existing Oil Wells is Authorized by a Special Use Permit (SUP) Previously Granted by the County of Ventura and Consistent with the Ventura County Non-Coastal Zoning Ordinance; and Consideration of the Related Appeal of the Planning Commission Action to Decline to Issue the Requested Zoning Clearances. The Applicant and Appellant (ABA Energy Corporation) Requests that Your Board Issue the Requested Zoning Clearances. (Planning Division Case Nos. PL22-0152 and PL22-0153); Statutorily Exempt from the California Environmental Quality Act; Supervisorial District No. 3

A. RECOMMENDED ACTIONS:

1. **CERTIFY** that your Board has reviewed and considered this Board Letter and all exhibits thereto, and has considered all comments received during the public hearing process;
2. **ISSUE** Zoning Clearance ZC22-0937 pursuant to Section 8111-1.1.1.b of the Non-Coastal Zoning Ordinance;
3. **ISSUE** Zoning Clearance ZC22-0938 pursuant to Section 8111-1.1.1.b of the Non-Coastal Zoning Ordinance;
4. **GRANT**, in its entirety, the appeal of the Planning Commission's action to decline to issue Zoning Clearance ZC22-0937, and thus, direct that the Appellant's appeal fees be refunded;
5. **GRANT**, in its entirety, the appeal of the Planning Commission's action to decline to issue Zoning Clearance ZC22-0938, and thus, direct that the Appellant's appeal fees be refunded;

6. **DIRECT** the Planning Director to implement actions 2 and 3 above by re-issuing the subject Zoning Clearances with new expiration dates consistent with Non-Coastal Zoning Ordinance Section 8111-1.1.1c; and
7. **SPECIFY** that the Clerk of the Board is the custodian, and 800 S. Victoria Avenue, Ventura, CA 93009 is the location, of the documents and materials that constitute the administrative record of proceedings upon which the foregoing decisions are based.

B. FISCAL/MANDATES IMPACT AND APPEAL FEES:

On September 30, 2022, Climate First Replacing Oil and Gas (CFROG), submitted the required \$2,000 in appeal fees in accordance with the current Board-adopted Fee Schedule to appeal the two Zoning Clearances that were issued by the Planning Division. When the Planning Commission declined to issue the subject Zoning Clearances on December 15, 2022, the \$2,000 was refunded to CFROG.

On December 27, 2022, the Applicant timely appealed the decision of the Planning Commission and submitted the required \$2,000 in appeal fees. Thus, the County cost to process this appeal is funded by the \$2,000 appeal fee paid by the Applicant/Appellant. Processing costs in excess of \$2,000 will be funded out of the adopted budget of the Resource Management Agency.

If the appeal is granted in full, the Planning Division will refund all appeal fees for the appeal. If the appeal is granted in part, your Board shall determine at the time the decision is rendered what portion of the appeal charges should be refunded to the Applicant/Appellant. Therefore, should your Board uphold this appeal in part, your actions should include a determination regarding the appropriate refund to the Applicant/Appellant, if any.

As of the date of this letter, the County's costs to process the Applicant/Appellant appeal of the Planning Commission's decision to your Board (less the \$2,000 appeal deposit) is \$6,079. At this time, sufficient revenue and appropriations are available in the fiscal year (FY) 2022-23 Resource Management Agency (RMA)-Planning budget to cover costs associated with the appeal (Table 1). Should there be a need for general fund monies to offset the appeal costs and/or refunded fees, RMA will work with the CEO's office to recommend budget adjustments.

Table 1 –FY 2022-23 Budget Projection for Planning – Division 2910

	Adopted Budget	Adjusted Budget	Projected Actual	Estimated Savings/(Deficit)
Appropriations	\$ 10,382,005	\$ 10,668,288	\$ 9,900,539	\$ 767,749
Revenue	\$ 5,195,406	\$ 5,195,406	\$ 4,481,793	\$ 713,613
Net Cost	\$ 5,186,599	\$ 5,472,882	\$ 5,418,746	\$ 54,136

C. EXECUTIVE SUMMARY

This Board letter (1) provides an overview and brief background of the proposed action; (2) describes the Planning Director and Planning Commission actions; (3) summarizes the basis for why CEQA is inapplicable; and (4) provides the grounds for the Applicant/Appellant appeal of the Planning Commission's action along with staff's responses.

D. PROJECT DESCRIPTION

On September 22, 2022, the Planning Director issued two Zoning Clearances (Case Nos. ZC22-0937 and ZC22-0938, Exhibit 1.a at sub-exhibits 3 and 4) to certify that the re-drilling and operation of two existing oil wells located in the Oxnard Oil Field is authorized by existing SUP No. 672. On September 30, 2022, the issuance of the two Zoning Clearances was timely appealed by CFROG to the Planning Commission. At the December 15, 2022, Planning Commission public hearing, a motion to issue the requested Zoning Clearances failed on a 2-3 vote. Thus, the Planning Commission declined to issue the requested ministerial Zoning Clearances. (Exhibit 1.b). The Applicant, ABA Energy Corporation (ABA) filed a timely appeal of the Planning Commission's action to your Board (Exhibits 2 and 3). Table 2 below summarizes the information pertaining to the two Zoning Clearance appeals.

Table 2 – Summary of the Two Zoning Clearance (ZC) Appeals

	Appeal PL22-0152	Appeal PL22-0153
Well names and numbers	ABA Maulhardt #9 (API 0411122360)	ABA Dorothy Moon #2 (API 0411122233)
ZC Initial Well Installation	ZC16-0425	ZC13-0490
ZC for Redrill / Sidetrack	ZC22-0937	ZC22-0938
ZC Issuance date	September 22, 2022	
Appeal by CFROG	September 30, 2022	
PC Hearing of Appeal	December 15, 2022	
Appeal by ABA Energy	December 27, 2022	

E. DISCUSSION

History

On November 5, 1957, the Ventura County Board of Supervisors granted SUP No. 672 to the Tidewater Oil Company to authorize oil drilling and production operations in the Oxnard Oil Field. SUP No. 672 remains in effect and does not contain an expiration date or express limitation on the number or location of allowable wells and other production

facilities. A total of 29 wells have been drilled on the subject property under the authority of SUP No. 672. Of that number, 22 are in active or idle status. Seven have been plugged and abandoned. Drilling and other oil field operations are confined to five separate pads or islands on the subject property that encompass about 20 acres of the 126-acre site. The remainder of the property is utilized for row crop agriculture.

Background

The type of Zoning Clearances requested by the Applicant/Appellant do not constitute a new permit or other land use entitlement. They do not grant any new land use or development rights. They are issued by the County of Ventura solely to certify that a proposed action or development is consistent with the provisions of the Ventura County Non-Coastal Zoning Ordinance (NCZO) and with any applicable conditions of a previously issued discretionary entitlement such as a Conditional Use Permit or Special Use Permit. Section 8111-1.1 of the NCZO deems these Zoning Clearances “ministerial,” meaning that they “are granted based upon determinations, arrived at objectively and involving little or no personal judgment.” In contrast, a discretionary decision, which this is not, allows the decision-making body to apply broader subjective standards through the exercise of judgment and opinion.

Section 8111-1.1.1.b of the NCZO sets forth ten ministerial standards for the issuance of a Zoning Clearance. If the proposed use or actions meet or satisfy all ten standards, the NCZO states that the Zoning Clearance “shall be issued.” The ten ministerial standards, and staff’s discussion of how the subject Zoning Clearances meet those standards, are presented in Section C of the Planning Commission Staff Report (Exhibit 1.a).

The County cannot impose conditions of approval on the requested Zoning Clearances nor modify or revoke SUP No. 672 for which the Zoning Clearances are requested. Therefore, the issue before your Board is whether or not the proposed re-drilling of two existing oil wells, installed and operated under the authority of SUP No. 672, meets the ten ministerial standards provided in Section 8111-1.1.1.b of the NCZO. If your Board cannot make all ten findings, then the Zoning Clearances should not be issued. If your Board can make all ten findings, the County must issue the requested Zoning Clearances.

Planning Commission Hearing

The issuance of the subject Zoning Clearances by the Planning Director was appealed to the Planning Commission by CFROG primarily based on their contention that the re-drilling of existing wells under the authority of an existing SUP/CUP is (or should be) a discretionary decision subject to environmental review pursuant to CEQA. For important context, the Board of Supervisors enacted amendments to the NCZO in 2020 consistent with this concept, that would have required discretionary review with accompanying environmental review of new oil and gas development, including re-drilling of existing wells. However, these amendments did not go into effect, as they were subject to a

referendum on the countywide election ballot as Measures A and B on June 8, 2022, and rejected by a vote of the people. As such, the governing standard for review of the well re-drilling subject Zoning Clearances remains ministerial and not discretionary, without environmental review under CEQA, and solely subject to the ten ministerial requirements set forth in NCZO Section 8111-1.1.1.b. Absent the identification of an inconsistency in the Zone Clearance application with any of the ten requirements set forth under NCZO Section 8111-1.1.1.b, the NCZO mandates that such a Zoning Clearance “shall be issued” by the County of Ventura.

At the December 15, 2022, public Planning Commission hearing, the commissioners primarily focused on two assertions made by the appellants: (1) that the subject Zoning Clearances are inconsistent with General Plan Policies, and (2) that the subject Zoning Clearances affect a Designated Disadvantaged Community.

In response, staff reiterated that the ministerial Zoning Clearances do comply with the General Plan. Most oil and gas development policies in the General Plan expressly state that they only apply to *discretionary* development, and therefore not ministerial development. Representative examples of General Plan policies for oil and gas development include:

COS-7.1 Minimum Site Area - The County shall only approve discretionary development for oil and gas development if the area of ground disturbance constitutes the minimum necessary to accomplish the project objectives.

COS-7.2 Oil Well Distance Criteria - The County shall require new discretionary oil wells to be located a minimum of 1,500 feet from residential dwellings and 2,500 from any school.

COS-7.8 Gas Collection, Use, and Disposal - The County shall require that gases emitted from all new discretionary oil and gas wells shall be collected and used or removed for sale or proper disposal. Flaring or venting shall only be allowed in cases of emergency or for testing purposes.

Because these Zoning Clearances seek ministerial and not discretionary approvals, they do not fall within the purview of most of the General Plan policies regarding oil and gas development. To date, there has been no evidence identified that the subject Zoning Clearances are inconsistent with the General Plan, the NCZO, or SUP No. 672.

In addition, the subject Zoning Clearances are not within or in close proximity to a County Designated Disadvantaged Community (DDC). CFROG and other members of the public raised concerns that the proposed re-drills would occur in proximity to a DDC since they would be located within 1,700 feet of the nearby community of Lemonwood in the City of Oxnard. However, the community of Lemonwood is not a designated Disadvantaged Community. In 2020, the County adopted the 2040 General Plan which included newly

designated Disadvantaged Communities pursuant to the requirements of Senate Bill 1000 (2016). The only DDC's designated thus far are within the boundaries of the El Rio-Del Norte Area Plan, Saticoy Area Plan and Piru Area Plan. Importantly, the General Plan policies relevant to Disadvantaged Communities only refer to *designated* Disadvantaged Communities. Thus, to the extent an area has not been formally designated as a DDC, the General Plan policies relating to Disadvantaged Communities are inapplicable. The Planning Division is currently working on General Plan Program LU-Q which may lead to identifying additional DDCs in Oxnard and Ventura Planning Areas. This program includes the preparation of a study of the Oxnard Planning Area and Ventura Planning Area to identify additional potential DDC's for inclusion in the General Plan; and Planning Division will bring that item to your Board later this year. Actual designation of any new DDC would require a subsequent amendment to the General Plan. Regardless, it is important to note that the community of Lemonwood is located within the *City* of Oxnard's boundaries, and thus the authority to designate the community as a DDC would lie exclusively with the City, not the County. At present, this community is not a designated Disadvantaged Community, nor is Planning staff aware of any plans by the City of Oxnard to so designate it. Thus, in sum, the subject Zoning Clearances are not within or in proximity to any County *designated* Disadvantaged Community, and therefore there is no conflict with any General Plan policies relevant to Disadvantaged Communities.

In addition to the above issues raised by the appellants, the Planning Commission questioned whether there were potential stormwater issues at the ABA facility since surface water was depicted in staff's photos of the site. Staff explained that the site visit occurred immediately following recent rainy weather and the water was not related to the facility operations. Since the Planning Commission hearing, Planning Division staff have gathered further information and confirmed with the Public Works Agency (PWA), Watershed Protection Division, that the ABA facility is in compliance with current stormwater regulations (see Exhibit 4 to this Board Letter).

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The issuance of a Zoning Clearance under the NCZO involves a ministerial action that is not subject to environmental review pursuant to CEQA. Public Resources Code Section 21080(b)(1) states that CEQA does not apply to "*ministerial projects proposed to be carried out or approved by public agencies.*" Section 15369 of the CEQA Guidelines defines a "ministerial" decision as one that involves little or no personal judgement by the public agency or official about the wisdom or manner of carrying out the project. The agency or official merely applies the particular law or regulation to the facts. CEQA Guidelines Section 15268(a) likewise states that "*ministerial projects are exempt from the requirements of CEQA,*" and that each public agency can determine what actions are ministerial in its implementing regulations.

The requested issuance of two Zoning Clearances to certify that proposed developments are in conformance with a previously granted discretionary permit (SUP No. 672) does

not involve the exercise of discretion. Rather, it entails ensuring that the Applicant's proposed uses and structures conform to the conditions of approval of the previously granted discretionary permit and the requirements of the NCZO Section 8111-1.1.1.b (see discussion in Section C of the Planning Commission Staff Report in Exhibit 1.a). Furthermore, NCZO Section 8111-1.1 expressly deems these types of Zoning Clearances to be ministerial, and to be evaluated "based upon determinations, arrived at objectively and involving little or no personal judgment." This is therefore a ministerial determination to which CEQA does not apply.

G. ZONING ORDINANCE COMPLIANCE

The subject Zoning Clearances meet all applicable requirements of the NCZO. Compliance with the requirements of the NCZO is discussed above and evaluated in Section C of the Planning Commission staff report (Exhibit 1.a) for the December 15, 2022, hearing.

H. GROUNDS OF APPEAL AND STAFF RESPONSES:

The Grounds of Appeal provided by the Applicant/Appellant are attached as Exhibits 2 and 3 of this Board letter. A summary of each appeal point is presented below along with a staff response. Note that the same grounds of appeal are cited for both appeal No. PL22-0152 and No. PL22-0153.

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

Staff Response: The appellant correctly identifies that the oil and gas operations conducted under the authority of SUP No. 672 have not been cited for any violation of the terms of the permit or any ordinance provision. The existing wells that are proposed to be re-drilled were certified to be in conformance with, and authorized by, SUP No. 672 with the issuance of Zoning Clearances ZC16-0425 and ZC13-0490. There is no difference in surface land use between the previous authorized action to initially drill the subject wells and the current proposal to re-drill (re-use) the same wells.

Based on the above discussion, this ground of appeal has merit.

2. Zoning Clearances are Ministerial

Staff Response: The Applicant/Appellant is correct that the issuance of a Zoning Clearance to certify conformance with an existing permit (e.g. SUP No. 672) is a ministerial action that is not subject to discretionary review or environmental review pursuant to CEQA.

The issuance of a Zoning Clearance to certify that the proposed actions are authorized by a previously granted discretionary permit does not constitute the granting of a new entitlement. Section 8111-1.1.1 of the NCZO states:

*“A Zoning Clearance **certifies** that a proposed use of land or structures, or construction or demolition of structures, **is consistent with** the provisions of this Chapter and **any applicable conditions of any previously issued entitlement**, and the use or structure may be inaugurated. Where no other Planning Division issued entitlement is required, a Zoning Clearance also serves as an entitlement granted for as long as the subject use or structure is in compliance with the applicable requirements of this Chapter.” [emphasis added]*

The two Zoning Clearances under appeal were issued to certify that the proposed re-drillings of two existing oil wells are consistent with, and authorized by, SUP No. 672, and consistent with the ten ministerial requirements of NCZO Section 8111-1.1.1.b. They do not authorize any new land use.

The Applicant/Appellant’s request that the two Zoning Clearances be issued is a ministerial matter determined by applying objective requirements of NCZO Section 8111-1.1.1.b (see above discussion and Section C of the Planning Staff Report in Exhibit 1.a).

The language of the NCZO relative to the issuance of zoning clearances has not changed since Zoning Clearances ZC13-0490 and ZC16-0425 were issued by the County to certify that the drilling and operation of the subject oil wells is in conformance with, and authorized by, SUP No. 672.

Based on the above discussion, this ground of appeal has merit.

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

Staff Response: The Applicant/Appellant is correct. The issuance of a zoning clearance under the NCZO involves a ministerial action that is not subject to environmental review pursuant to CEQA. (See Section F above.)

Based on the above discussion, this ground of appeal has merit.

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

Staff Response: Senate Bill (SB) 1137 (Gonzalez, Chapter 365, Statutes of 2022) added Public Resources Code sections 3280 through 3291, which generally set forth new setback restrictions for the issuance of oil drill permits from the California Geologic Energy Minerals Division (CalGEM). SB 1137 and its implementing regulations (approved on

January 6, 2023) direct CalGEM to withhold issuance of Notices of Intent (i.e. permits to drill) for proposed oil wells located within 3,200 feet of sensitive land uses, such as a residential community.

While SB 1137 went into effect on January 1st of this year, it is now on hold since enough voter signatures were gathered to put a referendum on the Nov. 5, 2024, general election ballot. Thus, this law is not in effect, and has no bearing on whether the Applicant/Appellant is currently entitled to the requested Zoning Clearances under the County's NCZO.

Based on the above discussion, this ground of appeal has merit.

I. NOTICE AND PUBLIC COMMENTS

The Planning Division provided public notice of the Board hearing on this matter in conformance with the requirements of Government Code Section 65091 and Ventura County NCZO Section 8111-3.1. On February 17, 2023, the Planning Division mailed notice to owners of property within 300 feet of the property on which the project site is located, posted a notice on the Planning Division website and placed a legal ad in the *Ventura County Star*. Notice was also sent, by email correspondence and regular mail, to interested persons who previously notified the Planning Division of their desire to be notified of County actions regarding the subject Zoning Clearances. In total, 44 postcards and 48 emails were sent.

This Board item was reviewed by County Counsel and the County Executive Office. If you have any questions regarding this matter, please contact Thomas Chaffee at (805) 654-2406 or Thomas.Chaffee@ventura.org.



Dave Ward, AICP, Director
Ventura County Planning Division

Attachments:

Exhibit 1.a – Planning Commission Staff Report dated 12-15-22 including sub-exhibits 2 through 19

- Sub-Exhibit 2 Location Maps
- Sub-Exhibit 3 Zoning Clearance ZC22-0937 and attachments
- Sub-Exhibit 4 Zoning Clearance ZC22-0938 and attachments
- Sub-Exhibit 5 PL22-0152 Appeal form and attachments (for ZC22-0937)
- Sub-Exhibit 6 PL22-0152 Appeal form and attachments (for ZC22-0938)
- Sub-Exhibit 7 County Staff Responses to the Grounds of Appeal (for ZC22-0937)
- Sub-Exhibit 8 County Staff Responses to the Grounds of Appeal (for ZC22-0938)

Sub-Exhibit 9 Special Use Permit No. 672
Sub-Exhibit 10 Zoning Clearance ZC13-0490
Sub-Exhibit 11 Zoning Clearance ZC16-0425
Sub-Exhibit 12 Correspondence Between Applicant and Staff Regarding Appeals
Sub-Exhibit 13 Public Comments
Sub-Exhibit 14 Errata Correcting Sub-Exhibit 8
Sub-Exhibit 15 Public Comments2
Sub-Exhibit 16 Appellant (CFROG) Letter dated 12-13-22
Sub-Exhibit 17 Appellant (CFROG) Corrected Comment Letter dated 12-14-22
Sub-Exhibit 18 Applicant Letter dated 12-14-22
Sub-Exhibit 19 Public Comments3

Exhibit 1.b – Planning Commission Minutes dated 12-15-22
Exhibit 2 – PL22-0152 Appeal form and attachments (for ZC22-0937)
Exhibit 3 – PL22-0153 Appeal form and attachments (for ZC22-0938)
Exhibit 4 – Letter from Public Works, Watershed Protection