ENERGY CORPORATION

February 27, 2023

Sent Via Email Only - clerkoftheboard@ventura.org

County of Ventura Board of Supervisors
Clerk of the Board
800 S. Victoria Avenue
Ventura, CA 93009

RE: Agenda Item No. 72 for February 28, 2023 Board of Supervisors Meeting
De Novo Hearing of Planning Division Case Nos. PL22-0152 and PL22-0153

Dear Chairman LaVere, Vice Chair Long, Supervisor Parvin, Supervisor Gorell, and Supervisor Lopez,

This correspondence is sent by ABA Energy Corporation ("ABA") in addition to our appeals to your Board in connection with PL22-0152 and PL 22-0153 (the "Appeals") and in addition to our December 14, 2022 letter tendered to the Ventura County Planning Commission ("Planning Commission") via Thomas Chaffee, Case Planner, which letter is attached hereto as **Exhibit A** and is incorporated herein by reference. ABA further adopts and incorporates by reference herein the oral and written comments and evidence submitted by and on behalf of those oil and gas industry groups, companies and mineral owners that support the Appeals of ABA which you are considering, including those submissions and comments provided to the Planning Commission in connection with its December 15, 2022 hearing on PL22-0152 and PL22-0153.

On September 22, 2022, the Planning Director issued two Zoning Clearances styled ZC22-0937 and ZC22-0938 ("Zoning Clearances") to ABA certifying that the re-drilling and subsequent operation on two existing oil wells located in the Oxnard Oil Field (Joseph Maulhardt #9 and the Dorothy Moon #2 wells) is duly authorized by ABA's existing Special Use Permit #672 ("SUP #672"). The February 28, 2023 Board Letter ("Board Letter") for Agenda Item No. 72 and supporting Planning Staff Report Hearing on December 15, 2022 ("Staff Report") correctly conclude that the 10 ministerial standards for issuing the Zoning Clearances have been met and that issuance of the Zoning Clearances were not in violation of law, including the County's General Plan as applicable to ministerial Zoning Clearances. We respectfully request that the Ventura County Board of Supervisors ("Board of Supervisors") affirm these conclusions and grant the Appeals.

On September 30, 2022, the issuance of the Zoning Clearances was appealed by Climate First: Replacing Oil & Gas ("CFROG") to the Planning Commission. On October 13, 2022, ABA emailed a letter to Planning Staff (which is included as an attachment to ABA's December 14, 2022 Letter, **Exhibit A hereto**) setting out the reasons why CFROG's appeals were defective and should not be considered (as discussed more fully later in this letter). The County responded to ABA's objections on October 20, 2022, explaining that the County would not dismiss the appeals despite CFROG's failure to explain on the appeal form how it is an "aggrieved person," which response is attached hereto as **Exhibit B** and is incorporated herein by reference. CFROG never corrected the error or otherwise explained how it is an "aggrieved person," such that the whole process that has led ABA to be before the Board of Supervisors now is not supported by the County's own NCZO.

In connection with the December 15, 2022 Planning Commission hearing on the CFROG appeals, the Planning Director issued the Staff Report detailing the legality of the County's issuance of the Zoning Clearances, including that ABA was in compliance with SUP #672 and the NCZO. Notwithstanding the Staff Report and the law, the motion to approve the Staff Report, and thereby affirm ABA's previously approved Zoning Clearances (and deny CFROG's appeals), failed on a 2 "yes" to 3 "no" vote. Thus, the Planning Commission rejected the Planning Director's Staff Report and findings, rejected ABA's testimony and evidence, and moreover, rejected the advice of County Counsel Jeff Barnes at the Planning Commission hearing that issuance of the Zoning Clearances was ministerial.[1] In sum, the Planning Commission ignored the law, including the ministerial nature of these Zoning Clearances under the County's own NZCO, and granted the CFROG appeals.

Given the actions of the Planning Commission, ABA was left with no choice but to file these Appeals to your Board to have the law, as confirmed by County Counsel and as set out in the County's own NCZO, upheld and followed by the County. ABA urges the Board of Supervisors to now affirm and accept the recommendations in the Board Letter and the Planning Director's Staff Report and uphold the County's issuance of the Zoning Clearances since they are in compliance with County, State, and Federal law, including the County's own NCZO and County Staff's findings relating thereto.

Although CFROG and others recently submitted letters attempting to raise additional arguments as to ABA's Appeals, those arguments should be given no weight and should be rejected outright because they ignore the fundamental issues before you, namely, that:

(a) The Board Report and Planning Director's Staff Report contain the sole objective findings germane to the Appeals and both recommend upholding the issuance of the Zoning Clearances to ABA.

[1] Video of the December 15, 2022 Planning Commission hearing ("Video Link") can be found at the following link and where applicable herein, time stamps are provided to the same: **https://www.youtube.com/live/SJ_-4_VoI7M?feature=share.**

(b) As further discussed below, the granting of the Zoning Clearances is, per Section 8111-1.1 of the NCZO, ministerial and is based solely on objective standards with little or no personal judgment. Since those objective standards have been met, as confirmed in the Staff Report, there is no legal basis to deny the Appeals and withhold issuance of the Zoning Clearances. If the Board of Supervisors engages in discretionary decision-making as was done by the Planning Commission, it would constitute a denial of due process and equal protection under the law and would be in violation of the County's own Ordinance and ABA's rights.

(c) Since the issuance of the Zoning Clearances are ministerial, they are not subject to CEQA and, instead, are subject to other modern environmental protections, including those discussed below that are in place by the Ventura County Air Pollution Control District, by CalGEM and by the County in its own NCZO.

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 "SUP #672." SUP #672 was issued by the 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 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. In addition to the subject Zoning Clearances, Ventura County has issued numerous other (~45) 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 ever denied or appealed and none of which ABA has ever violated.***

It is important to note that the Planning Staff is *not* "hands-off" in connection with ABA's operations under SUP #672. Quite to the contrary, they conduct site visits of ABA's operations so that the County can determine first-hand whether ABA complies with SUP #672. Planning Staff has never found such a violation and yet CFROG attempts to claim that ABA will not comply

now as to the Zoning Clearances. There are no facts to support such a claim and ABA hereby affirms that it will, as it has done with all operations in the past, comply with the conditions of SUP #672.

Lastly, it should be noted that the Maulhardt Ranch has been farmed by the Maulhardt Family since 1891; oil production then started in 1957 and has not ceased since. As explained by Planning Staff at the Planning Commission hearing, the development of homes in the area came much later based on zoning decisions that allowed those uses near historic farming and oil operations. Specifically, construction of homes in the Lemonwood development commenced 14 years after the oil operations in 1971 and the nearby school was built 24 years later in 1981. The NCZO limits its application when permits like ABA's SUP #672 are approved prior to homes and schools being constructed. (*See* NCZO Section 8107-5.6.26.) Nonetheless, ABA has many times over the past 12 years, on a voluntary basis, accepted permit conditions which were not required under this provision of the NCZO.

Zoning Clearances are Ministerial and Do Not Involve Exercise of Discretion

The issuance of ABA's Zoning Clearances are simply to certify that the proposed actions are authorized by a previously granted discretionary permit (in this case SUP #672) and that the operations otherwise comply with the 10 ministerial conditions for issuance of a zoning clearance set out in NCZO Section 8111-1.1.1.b. Section 8111-1.1 of the NCZO expressly states that issuance of a zoning clearance is ministerial as to whether all such conditions are met. 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 Clearances so long as they comply with SUP #672 and the 10 conditions for issuance of a zoning clearance in the NCZO**.

After field visits and a thorough analysis of ABA's applications for the Zoning Clearances pursuant Section 8111-1.1.1b of the NCZO (*see* Board Report as well as Staff Report), Planning Staff and the Planning Director found that all 10 requirements of Section 8111-1.1.1b were met, which includes the finding that ABA is in compliance with all 13 conditions of SUP #672 and that ABA's applications for the Zoning Clearances properly covered compliance with those conditions for the wells to be sidetracked under the Zoning Clearances. Accordingly, the issuance of the Zoning Clearances was, and is, proper, and ABA's Appeals should be granted.

During the December 15, 2022 Planning Commission Hearing, 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 Clearances. (*See* Video Link at 3:47:08.) County Counsel Barnes explained that those provisions of the General Plan Update applied to discretionary matters only "and [do] not lend itself to this ministerial decision that's before you today." (*Ibid.*) In other words, County Counsel explained that approval of the Zoning Clearances is ministerial and is not subject to various provisions of the General Plan Update (including those that CFROG argued were applicable) dealing with discretionary actions.

Planning Commissioner King further discussed how the County had amended the NCZO in 2020 to require discretionary permits instead of ministerial zoning clearances for the types of operations covered by the Zoning Clearances. Commissioner King then acknowledged that the amendment was voided through a referendum election in June of 2022 and confirmed that the voters have spoken, "we live in a democracy." (*See* Video Link at 3.54:45.) Commissioner King then affirmed the ministerial nature of approving the Zoning Clearances 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 applicant has property rights and 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." (*Ibid.*)

Planning Commission Discussion and Vote Was
Contrary to Ministerial Standards and Legal Advice from County Counsel

Since the definition of "ministerial" should have governed the Planning Commission's decision-making process and certainly governs the Appeals before your Board, we set out here the NCZO and CEQA definitions for ministerial standards with the pertinent text highlighted in yellow:

NCZO Sec. 8111-1.1 - Ministerial Entitlements and Modifications 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. Such will be issued by the Planning Director or his/her designee without a public hearing. (AM. ORD. 4377 – 1/29/08 – grammar)

CEQA DEFINITION IS SIMILAR TO 8111-1 (ABOVE); 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." (Emphasis added.)

While both the NCZO and CEQA definitions share the concept that such a ministerial decision shall have "little or no personal judgment," the NCZO definition clarifies that determinations must be arrived at "objectively" (i.e. zoning clearance approvals are based on compliance with a checklist as set out in Section 8111-1.1.1b of the NCZO). The CEQA definition has a few more words that perhaps best capture the test from a human standpoint and those words are that the "little or no personal judgment" appearing in both definitions, refers to the "*wisdom or manner of carrying out the project*." In other words, the Planning Commission's deliberations and decision-making should *not* have involved a review of the "*wisdom or manner of carrying out the project*". The Planning Commission, however, abdicated its responsibilities under the County's own ordinances and exercised discretion to deny issuance of the Zoning Clearances, all in violation of the law and ABA's rights.

Because elected officials are often encouraged to impart personal judgment in decision making, especially in considering the *wisdom and manner of carrying out a project*, it was not surprising to hear such issues being discussed at the Planning Commission hearing on December 15, 2022. What was surprising, however, was that no weight was given to the Planning Director's Staff Report, County Counsel's advice, and the County's own NCZO, let alone the evidence and comments provided by ABA. Of greatest importance, many of the stated concerns, recommendations, and heart felt angst of some of the Commissioners (*see* Video Link at time stamps ~3:43–3:57) were inappropriate given the County's obligations to follow the law and the ministerial nature of the approvals. Below are examples of statements made by Planning Commissioners during this ~14-minute period which reflect the discretion exercised by the Planning Commission:

- "just because its ministerial doesn't mean our hands are tied"
- "I don't think it sends the right message"
- "I'd like to see more studies"
- "I understand what we're doing but I don't feel good about it"
- "It's just not right"
- "just because going by the book means you don't have to (do more environmental studies), doesn't mean ABA shouldn't do them"

Concerns were also raised regarding environmental justice and that ABA had not studied it, even though the Planning Commissioners were informed that Lemonwood has *not* been designated as a Disadvantaged Community and analyzing environmental justice is not otherwise among the 10 standards to be reviewed in issuing a zoning clearance under the NCZO. (*See* Video Link at ~3:45.)

Listening to many of these statements certainly was uncomfortable for ABA, not just because it clearly violated the NCZO and State law, but additionally because they were in direct contravention of the information and advice provided by County Staff and County Counsel, as well as the facts and evidence provided by ABA. Simply put, three of the Planning Commissioners let their personal judgments and political beliefs guide a County decision, which first and foremost should be based on the law, the County's legal authority and the evidence. Instead, the County ignored its own laws to the damage of ABA. The 3 "No" votes were even cast against the advice of County Counsel Jeff Barnes. The decision to ignore that advice and the Planning Staff Report is what has led to these Appeals being presented to your Board. ABA urges your Board to refuse to go down the same path as the Planning Commission and respectfully requests that you, instead, follow the law as it is written in the County's own NCZO and confirm the findings reached by County Staff.

SUP #672 is Subject to Modern Environmental Protection

Over the years, ABA's SUP #672 has on occasion been described as being an "older permit which lacks any modern standards for environmental protection", a "cowboy permit", an "antiquated permit", and many other similar monikers. *These descriptions are patently false.* Due to the conditions of SUP #672, ABA adheres to the NCZO, CalGEM permit conditions/regulations, Ventura County Air Pollution Control District ("APCD") rules, CARB Standards, and numerous other laws and regulations affecting operations**,** *all of which are updated through time and are collectively and progressively more restrictive and result in protections for the environment.*

By definition, the NCZO (which applies to ABA's operations) is continuously updated and thereby, so are the standards. Currently, the NCZO dictates standards, which are routinely updated, for setback requirements, noise attenuation, dust controls, pumping unit and pad design, flood plain compliance, septic setback compliance, soils clearance, and APCD compliance.

ABA's compliance with the APCD regulations includes, but is not limited to, participation in the APCD program which provides for Emission Reduction Credits or "ERCs" participation (*which is a Ventura cap-and-trade program*), drilling rig emission review, production equipment approval, as well as an inspection protocol. All of these air quality regulations are constantly updated and tightened and are adopted by the APCD pursuant to CEQA. Compliance with all of these regulations is required by ABA's Ventura County APCD Permit to Operate ("PTO") #00066. In general, each piece of equipment an operator uses, the oil and gas flows for the lease, and the number of wells on the lease/permit are used to calculate what ABA refers to as an "Air Score." Each SUP is initially granted a limit of 5.0 tons of Reactive Organic Compound ("ROC") prior to commencing operations and in the course of development, if one's Air Score exceeds 5.0 tons, then ERC's must be purchased in the open market to fill the gap. Current costs for each ton of ROC is ~$75,000. ABA has purchased/posted ~ 7.97 tons of ROC to SUP #672, which were then added to the statutory 5.0 tons for a total Air Score of 12.97 tons of ROC. In addition to ABA's 7.97 tons of purchased ERCs, ABA has purchased an additional ~8.07 tons of ROC in reserve for future work. Sidetracks (such as the proposed operations under the Zoning Clearances) use a currently non-producing and/or existing wellbore and thus will have no effect on the Air Score since the original well (in the case of a sidetrack) will be deducted from the permit and the newly sidetracked wellbore will replace it. Per APCD's Air Quality Assessment Guidelines, "the emissions from equipment or operations requiring APCD permits are not counted towards the air quality significance thresholds. This is for two reasons. First, such equipment or processes are subject to the District's New Source Review permit system, which is designed to produce a net air quality improvement. Second, facilities are required to mitigate emissions from equipment or processes subject to APCD permit by using emission offsets and by installing Best Available Control Technology (BACT) on the process or equipment." Examples of ABA's compliance with the foregoing are:

1. ABA's use and application of acquired ERCs as discussed above.

2. ABA's installation of a BACT flare on the Maulhardt Lease (which reduced flare emissions by 92%).

3. ABA's Vapor Recovery System which has a robust mechanism to remove gases from the oil/fluid tanks and routes same to the flare system.

4. ABA's participation in the "LDAR" program which is a voluntary Leak Detection and Repair Program where ABA self-tests each potential source of fugitive emissions such as well and pipeline flanges, hatch seals, pipeline connections, tanks, etc., and when a leak is found, it is fixed within a prompt time protocol (~2-3 days). Every four quarters, the APCD inspection immediately follows the ABA final quarterly LDAR inspection, ensuring transparency and conformity with prior tests. In addition to the LDAR quarterly tests, ABA monitors the sources of potential leaks every day.

5. All engines used on drilling rigs now have to be CARB certified. This is yet another major improvement in air quality during drilling. *If the regulations were, as claimed by some, to be stuck in 1957, this improvement would not be in effect.*

6. Each year, the APCD calculates the effects of ABA's facilities on the air quality for the sensitive receptors near the Maulhardt Lease. The last data model was just run/calculated in early January based on 2021 production to the edge of the Lemonwood development. 2022 data will be available by ~ July 2023, which should actually make the current data run conservative as ABA's production was slightly down between 2021-2022. Because of ABA's compliance with the APCD Program Factors and ABA's vigilance on its wells and facilities, ABA's emissions were calculated by the APCD to be far below the threshold deemed to potentially result in significant health risks to exposed individuals and is deemed a "low priority" facility. In general, the APCD runs the model for carcinogenic effects, and non-carcinogenic effects, as well as chronic and acute affects. And for each of these risks, scores between 10-100 are considered as a High Priority, scores between 1-10 as Intermediate Priority, and scores of 0-1 as Low Priority, which is the only category that requires no annual health risk assessment report. The output from the recent data run for ABA' s operations is attached hereto as **Exhibit C** and is incorporated herein by reference. **Exhibit C** also includes excerpts from the CAPCOA Facility Prioritization Guidelines manual which, demonstrate the aforementioned scoring tiers and has a flow chart and tables.

As can be seen on Exhibit C, ABA's highest score for the risks stated above at the south edge of the Maulhardt Lease are **0.3619** and the lowest score is **0.0127**, with both scores being far below the top of the low priority range of 1.0. **As a result, ABA's operations do not even rise to the level of APCD requiring a health risk assessment report**. In contrast, CFROG submits no evidence of ABA's actual emissions and, instead, cites to general studies and reports from other areas, including reliance on a CalGEM report that was not in final form, did not analyze operations

in Ventura County, and was based for the most part on operations in other states relating to hydraulic fracturing. To be clear, ABA does not engage in those types of operations and thus studies relating to them are irrelevant as to ABA's operations.

The actual APCD evidence as to ABA's operations and scores, and not general studies from other areas and other operations, reflect what is actually occurring as a result of ABA's operations. Given that data, as well as the source of that data—Ventura County APCD—it would be improper to rely on general studies from other areas relating to different operations. In short, ABA has relied on a regulator to make these determinations, which regulator is an expert in air quality issues in, and for the benefit of, Ventura County. More to the point here, ABA is in compliance with the applicable environmental laws and as a result, there is no basis to withhold issuance of the Zoning Clearances.

California is the largest consumer of jet fuel in the country, and the second largest consumer of automobile fuel. California uses 1.8 million BPD of oil and produces less than 400,000 barrels/day. Therefore, each of the current 1.4 million barrels of imported oil comes from places where the oil is produced in a dramatically less healthy fashion as compared to those barrels produced in California. Worse, because there are no oil pipelines into California, the imported oil comes in by sea-going tankers which burn fuel with an incredibly unhealthy exhaust stream. It is well settled that as the amount of imported oil rises and California production declines, GHG will rise proportionately. Accordingly, producing oil in California benefits, not harms, the environment.

Finally, the most abundant GHG in our atmosphere is water and water vapor (~75%) followed by CO2 (~21%), the direct man-made contribution from the latter *comes from burning the oil, not producing it.* GHGs and the effects therefrom due to traffic on Rice Avenue and Wooley Road dwarf any effects from ABA's production. The hyperbole regarding energy production is unfortunate as it prevents the development of real energy/environmental solutions due to the chasm between the data sets and beliefs claimed by both sides of the issue. It is interesting that despite being confirmed in a host of government sponsored environmental impact documents, some will nevertheless question the relationship between imported oil and GHGs, but what is more alarming, is that the harm to the citizens living in the Disadvantaged Communities adjacent to the ports accepting the oil tankers are never considered. As Teddy Roosevelt once said:

> There is a delight in the hardy life of the open. There are no words that can tell the hidden spirit of the wilderness that can reveal its mystery, its melancholy, and its charm. The nation behaves well if it treats the natural resources as assets which it must turn over to the next generation increased and not impaired in value. *Conservation means development as much as it does protection*.

The Zoning Clearances Relate to Two Existing Wells for which ABA Previously Obtained Zoning Clearances for the Original Drilling Operations

The Zoning Clearances are for operations within previously drilled wells that also were authorized by the County via other zoning clearances (ZC13-0490 & ZC16-0425 attached as Exhibits 10 and 11 to the Staff Report). As a result, the County has already approved operations at these same locations and in these well bores. Moreover, the operations under the new Zoning Clearances will cause minimal impact as they will both be drilled from existing, already graded/graveled pads. (See Staff Report, Exhibit D of Exhibits 3 and 4 for pictures of each of the sites.) Additionally, all the required appurtenances are already in place such as pipelines, electric lines, separators, pumping units, etc., which also significantly minimizes surface impacts. To be clear, there will be no new facilities. Throughout ABA's development of the Maulhardt Lease via SUP #672, ABA has directionally drilled its wells from centralized pads to further minimize surface impacts. For the Zoning Clearances, this is even more pronounced as existing wellbores will be used for the operations.

CEQA Does Not Apply Because Of The Ministerial Nature of the Zoning Clearances

The issuance of the Zoning Clearances is *not* a discretionary act by the County. As discussed above, Section 8111-1.1 of the NCZO expressly states that issuance of the Zoning Clearances is ministerial. While the County amended the NCZO in 2020 to require discretionary permits instead of ministerial zoning clearances for the types of operations covered by the Zoning Clearances, the NCZO amendment was rendered void through a referendum election in June of last year.

It has been claimed by certain parties that an Initial Study and environmental review is required under CEQA for the Zoning Clearances, *but CEQA does not apply here*. CEQA is only triggered when there is a discretionary act. (Pub. Res. Code § 21080; Cal. Code Regs. Tit. 14 ("CEQA Guidelines") § 15268(a).) CEQA Guidelines § 15369 explains, as already discussed above, 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.)

Since the NCZO provides that issuance of the Zoning Clearances is ministerial and based on objective standards in the NCZO with little or no personal judgment, there is no legal basis to claim that CEQA applies to the subject Zoning Clearances or that the County improperly issued

the Zoning Clearances based thereon. As CEQA clearly does not apply, any assertion that piecemealing applies similarly fails. Piecemealing is only triggered if CEQA is triggered.[2]

Compliance with Conditions of ABA's Special Use Permit #672

It has been argued by CFROG and a few other commenters during the Planning Commission process that the County has not ensured ABA's compliance with the conditions of SUP #672, but that "creative" contention is simply false. The NCZO, SUP #672 and the Zoning Clearances all require compliance with the 13 conditions of SUP #672 and ABA stands prepared to ensure its compliance therewith. Despite claims to the contrary, ABA's applications for the Zoning Clearances are detailed and expressly state how ABA will comply with the Conditions of SUP #672 (and any other conditions of the Zoning Clearances) and also provide information on the proposed equipment to be used for the operations ***including, without limitation, the protections afforded by ABA's participation/cooperation with VAPCD as detailed above, for a ground watering program, setback compliance, and disposing of fluids/semi-fluids to approved dump sites within or without Ventura County***. The County has never had an issue with ABA's use of these same explanations on ~45 other Zoning Clearances. The County has enforcement mechanisms to ensure ABA's compliance with the Conditions of SUP #672, and it has never found that ABA has failed to comply. Similarly, no one has ever before, and does not now, contend that ABA has ever failed to so comply. Simply put, it is ridiculous for a party to claim ABA's non-compliance with a permit condition that simply cannot be complied with until the operations commence and for which ABA historically has never failed to comply with in the past. As a result, claims such as these are subterfuge to further the abuse of process and are not legitimate or truthful, and certainly do not provide bases for withholding issuance of the Zoning Clearances.

To the extent there exists questions as to the meaning of the word "bulk storage" in SUP #672, the word is used in connection with processing, refining and packaging, none of which occurs on the Maulhardt Lease: "… 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…"). This language has been updated in the current NCZO and has been replaced in Section 8102-0 as "*Oil and Gas Exploration and Production - The drilling, extraction and transportation of subterranean fossil gas and petroleum, and necessary attendant uses and structures, but excluding refining, processing or manufacturing thereof.*" In that same Section 8102-0, the term Petroleum Refining is also defined as "*Petroleum Refining - Oil-related industrial activities involving the processing and/or manufacture of substances such as: asphalt and tar paving mixtures; asphalt and other saturated felts (including shingles); fuels; lubricating oils and greases; paving blocks made of asphalt, creosoted wood and other compositions of asphalt and tar with other materials; and roofing cements and coatings.*" ABA does not engage in any such petroleum refining operations, including "bulk storage." County staff has conducted

[2] Additionally, a discretionary permit such as SUP #672, which was issued prior to September 5, 1973, is exempt from CEQA. (*See* CEQA Guidelines § 15261(b).)

numerous site inspections of ABA's operations and has never once found that ABA's operations include unauthorized "bulk storage."

The foregoing demonstrates that the term "bulk storage" as used in the original exclusionary language to SUP #672 applies to refining operations only, which on its face seems logical, since there will be attendant and necessary uses and structures such as permanent and temporary tanks for exploration and production operations. The current NCZO language confirms that the term bulk storage refers to storage in connection with refined products.

Moreover, the County has continued to interpret SUP #672 as allowing ABA's tanks in connection with its production operations. Each and every time ABA has submitted a zoning clearance, the County has approved the use of the tanks in connection therewith. Given that history, estoppel would prevent a different interpretation of "bulk storage" that would now somehow prohibit that use. In short, the exclusion in the original SUP #672 language of "bulk storage" does not mean ABA cannot temporarily store oil and/or other liquid substances in its tank battery.

SB1137 is Currently Stayed Pending the November 2024 Election

It has been argued by some that the issuance of the subject Zoning Clearances is in violation of State law, but the only law cited in such argument (aside from CEQA claims which are not applicable as discussed above) is SB1137. SB1137 is stayed, however, due to a referendum thereon and thus, it cannot form the basis for denial of the Appeals.

ABA has Vested Rights in SUP #672

The original well drilled pursuant to SUP #672 in 1957 is still producing today. In the past twelve years of development on the Maulhardt Lease, ABA has discovered additional resources that require additional operations, like the redrilling operations covered by the Zoning Clearances, in order to properly recover the natural resources and develop the mineral rights for the mineral owners. While it has been asserted that "SUP #672 does not provide a vested right to new and expanded operations," SUP #672 applies to the ~127-acre Maulhardt Lease and all operations on that land, not an arbitrary well count. The County's granting of ~45 Zoning Clearances since ABA acquired the Property in 2010 would confirm the foregoing and any contrary position would amount to a taking of ABA's real property rights, as well as a taking of the real property rights of the Maulhardt Family.

The relevant legal authority when dealing with a vested right to extract minerals is *Hansen Brothers Enterprises v. Board of Supervisors* (1996) 12 Cal.4th 533 ("*Hansen*"). Other decisions have held that use permits confer vested rights. (*See HPT IHG-2 Properties Tr. v. City of Anaheim* (2015) 243 Cal.App.4th 188, 199 (where a CUP has been issued and the landowner has relied on it to its detriment, the landowner has a vested right.); *see also Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998) 67 Cal.App.4th 359, 367.) Additionally, the scope of the vested

rights is the scope of activity authorized under the permit. (*Santa Monica Pines, Ltd. v. Rent Control Bd.* (1984) 35Cal.3d 858, 865).

In the *Hansen* case, the California Supreme Court made the point that mineral extraction uses, unlike uses that operate within an existing structure or boundary, anticipate the extension of extraction activities into other areas of the property that were not being exploited at the time a subsequent zoning change is proposed. As the High Court explained:

> The very nature and use of an extractive business contemplates the continuance of such use of the entire parcel of land as a whole, without limitation or restriction, to the immediate area excavated at the time the ordinance was passed. A mineral extractive operation is susceptible of use and has value only in the place where the resources are found, and once the minerals are extracted it cannot again be used for that purpose.

(*Hansen, supra*, 12 Cal.4th at 553-554.) And even if one were to ignore the foregoing legal precedent, the County's historical practices regarding oil and gas operations within its jurisdiction and specifically in the case of SUP #672, repeatedly have confirmed the validity of these permits, time and time again.

As described above, the Ventura County Board of Supervisors issued a final discretionary permit (SUP #672) and in reliance on the permit and the repeated confirmation of its validity by the County, ABA has expended millions of dollars in building and expanding the infrastructure for the oilfield it continues to develop. For this reason, ABA does indeed have a vested property right in SUP #672 and any deprivation of that right would constitute an unconstitutional taking.

In addition to the foregoing, the equitable principle of estoppel prohibits a governmental entity from exercising its regulatory power to prohibit a proposed land use when a developer incurs substantial expense in reasonable and good faith reliance on some governmental act or omission so that it would be highly inequitable to deprive the developer of the right to complete the development as proposed. *(Patterson v. Central Coast Regional Com.* (1976) 58 Cal.App.3d 833, 844.) The theory of equitable estoppel simply recognizes that, at some point in the development process, a developer's financial expenditures in good faith reliance on the governmental entity's land use and project approvals should estop that governmental entity from changing those rules to prevent completion of the project. (*Toigo v. Town of Ross* (1998) 70 Cal.App. 4th 309, 321). ABA has been conducting oil and gas development in reliance on the rights granted in SUP #672 with the continual approval of the County for the last twelve years, and has invested millions in support of future development based thereon, such that it would be unlawful to deprive ABA of those vested rights.

CFROG's Appeals to the Planning Commission Are Incomplete and Thus Defective

ABA should not be before you with its Appeals as CFROG's appeals were defective on their face and should have been rejected by the Planning Commission on that basis alone. Section 8111-7.1 of the NCZO only allows an "aggrieved party" to file an appeal. There is nothing in the NCZO that allows the County to waive this requirement. CFROG's appeals to the Planning Commission, however, fail to explain how CFROG is an "aggrieved person" as *CFROG left the box which should have housed the basis for being an aggrieved person completely blank.* As such, the CFROG appeals forms are incomplete and therefore defective, and thus, no Planning Commission hearing should have ever taken place.

The Ventura County's website indicates that appeals must be filed on a certain Appeal Application Form. (See https://vcrma.org/en/appeals.) Page 2 of the Appeal Application Form requires the filing party (if not the applicant) to state the basis for filing the appeal as an "aggrieved person." (See https://vcrma.org/docs/images/pdf/planning/ordinances/Appeal-Form.pdf.)

CFROG failed to insert any information in the box as to the basis for it being an "aggrieved person." Indeed, there was no reference anywhere in the CFROG appeals as to why CFROG was aggrieved. For example, there was no assertion or evidence to support that CFROG members will be injured from ABA's proposed operations nor is there any indication that CFROG members even live in the area adjoining ABA's proposed operations. Parties like CFROG should not be allowed to abuse the process set forth in the NCZO by filing appeals when it cannot establish how it is an aggrieved party.

ABA also notes that in CFROG's comment letter in connection with Agenda Item No. 72, CFROG attempts to argue that your Board should take action on other zoning clearances issued to ABA even though the deadline in the NCZO for appealing the County's issuance of those zoning clearances has long since lapsed. CFROG itself did not file any such appeals, nor did any other parties claiming to be an "aggrieved person." It thus would be a violation of ABA's due process and equal protection rights, not to mention a taking of vested rights, to take any action as to zoning clearances that have not been properly appealed and are not even before your Board on Agenda Item No. 72.

In closing, ABA urges the Board of Supervisors to adopt the recommendations in the February 28, 2023 Board Letter and affirm the conclusions in the Planning Director's Staff Report for the December 15, 2022 Planning Commission Hearing, including, without limitation, taking the actions set out in items 1-7 of Section A of the Board Letter and taking any and all other actions required to grant ABA's Appeals and to uphold the approval of the Zoning Clearances.

Respectfully,

2-27-23

ABA ENERGY CORPORATION
Alan B. Adler, President

Enclosures

EXHIBIT "A"

To Clerk of The Board of Supervisors Letter regarding the February 28, 2023 Ventura County Board of Supervisors Meeting - Agenda Item No. 72, regarding Case Nos. PL22-0152 (ZC22-0937) and PL22-0153 (ZC22-0938).

(December 14, 2022 letter tendered by ABA to the Ventura County Planning Commission via Thomas Chaffee, Case Planner)

ABA ENERGY CORPORATION

December 14, 2022

Sent Via Email Only - Thomas.Chaffee@ventura.org

Thomas Chaffee, Case Planner
County of Ventura Resource Management Agency
Planning Division
800 S. Victoria Ave., L#1740
Ventura, CA 93009-1740

RE: December 15, 2022 Planning Commission Hearing Agenda Item No. 7A, Case Nos. PL22-0152 and PL22-0153

Dear Chairman McPhail and Members of the Ventura County Planning Commission:

We write regarding the September 29, 2022, appeals (the "Appeals") filed by Climate First: Replacing Oil & Gas ("CFROG or Appellant") of Zoning Clearances ZC22-0937 and ZC22-0938 issued by Ventura County on September 22, 2022, to ABA Energy Corporation ("ABA") for the sidetracking of the already existing Dorothy Moon #2 and Joseph Maulhardt #9 wells (the "Zoning Clearances"). ABA urges the Planning Commission to affirm staff's recommendation to deny the Appeals and to uphold the approval of the Zoning Clearances, in compliance with local, State, and federal law.

This letter is sent in addition to our comment letter to the Ventura County Planning Manager dated October 13, 2022 on this same topic, which is attached hereto as **Exhibit A** and incorporated herein by reference. ABA further adopts and incorporates by reference herein the oral and written comments and evidence submitted by and on behalf of those oil and gas industry groups, companies and mineral owners that oppose the Appeals.

ABA responds below to the "Grounds of Appeal" described in the Appeals. CFROG also submitted a letter dated yesterday, December 13, 2022 ("Appellant Letter"), wherein it attempts to raise additional arguments in support of denial of the Zoning Clearances. Any such additional arguments should be rejected outright since they were not identified in the "Grounds for Appeal" and thus cannot form the basis of the Appeals without constituting a denial of due process and the County's own Code. Nonetheless, and where practicable given the short period of notice, ABA also attempts to address some of those additional arguments below.

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"). Contrary to the unsupported assertions in Appellant's Letter, 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 . . ."

A true and correct copy of SUP #672 is included in **Exhibit B** and by this reference is made a part hereof.

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 with the conditions contained therein. Specifically, and prior to the issuance of the Zoning Clearances subject to the Appeals, the 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.

The Zoning Clearances Relate to Two Existing Wells for which ABA Previously Obtained Zoning Clearances for the Original Drilling Operations

The Zoning Clearances are for operations within previously drilled wells that also were authorized by the County via other zoning clearances (ZC13-0490 & ZC16-0425 attached as Exhibits 10 and 11 to the Staff Report). As a result, the County has already approved operations at these same locations and in these well bores. Moreover, the operations under the new Zoning Clearances will cause minimal impact as they will both be drilled from existing, already graded/graveled pads. (See Exhibit D to Staff Report Exhibits 3 and Exhibit 4 for pictures of each of the sites). Additionally, all the required appurtenances are already in place such as pipelines, electric lines, separators, pumping units, etc., which also significantly minimizes surface impacts. Throughout ABA's development of the Maulhardt Lease via SUP #672, ABA has directionally drilled its wells from centralized pads to further minimize surface impacts. For the Zoning Clearances subject to the Appeals, this is even more pronounced as existing wellbores will be used for the operations.

The Appeals Blatantly Ignore the County's Ordinances and Referendum History as to the Ministerial Nature of the Zoning Clearances to which CEQA does not apply

The Appeals deliberately misrepresent the County's NCZO by claiming that issuance of the Zoning Clearances is a discretionary act by the County. Section 8111-1.1 of the NCZO expressly states that issuance of the Zoning Clearances is ministerial. While the County amended the NCZO in 2020 to require discretionary permits instead of ministerial zoning clearances for the types of operations covered by the Zoning Clearances, the amendment was rendered void through a referendum election in June of this year.

CFROG certainly was aware of the referendum history and yet it is still claiming in its Appeals that the issuance of the Zoning Clearances is a discretionary act subject to CEQA. CFROG cannot alter

or otherwise ignore the referendum vote by filing the Appeals and turn a ministerial act into a discretionary one. Further, the NCZO as it exists at the time of the Appeals is what must be enforced.

CFROG claims that an Initial Study and environmental review is required under CEQA, but CEQA does not apply here. CEQA is only triggered when there is a discretionary act. (Pub. Res. Code § 21080; Cal. Code Regs. Tit. 14 ("CEQA Guidelines") § 15268(a).) 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.)

Since the NCZO provides that issuance of the Zoning Clearances is ministerial and based on objective standards in the NCZO with little or no personal judgment, there is no legal basis for CFROG to claim that CEQA applies to the subject Zoning Clearances or that the County improperly issued the Zoning Clearances based thereon.

As CEQA clearly does not apply, Appellant's tardy assertion in Appellant's Letter that piecemealing applies similarly fails. Piecemealing is only triggered if CEQA is triggered.[1]

The Appeals Misrepresent Compliance with Conditions of ABA's Special Use Permit

Appellant contends that somehow the County has not ensured that ABA will comply with Condition Nos. 5 and 8 of its Special Use Permit 672. ABA's applications for the Zoning Clearances are detailed. They expressly state how ABA will comply with these and the other Conditions and provide information on the proposed equipment to be used for the operations ***including, without limitation, the protections afforded by ABA's participation/cooperation with VAPCD as detailed above, ground watering program, setback compliance, and disposing of fluids/semi-fluids to approved dump sites within or without Ventura County***. The County, and Appellant, have never had an issue with ABA's use of these same explanations on past Zoning Clearances. The County has enforcement mechanisms to ensure ABA's compliance with the Conditions of SUP #672, and it has never found that ABA has failed to comply. Similarly, Appellant has never before, and does not now, contend that ABA has ever failed to so comply. Simply put, the Appeals claim non-compliance as to issues that cannot even be complied with until the operations commence. As a result, they are a subterfuge to further this abuse of process and are not legitimate bases for an appeal.

SB1137 is Not Yet in Effect, and Thus It Cannot Form the Basis of the Appeals

The Appeals claim that issuance of the Zoning Clearances is in violation of State law, but the only law cited in the Appeals (aside from CEQA which is not applicable as discussed above) is SB1137. SB1137

[1] Additionally, a discretionary permit such as SUP #672, which was issued prior to September 5, 1973, is exempt from CEQA. (See CEQA Guidelines § 15261(b).)

does not prohibit the operations covered by the Zoning Clearances; rather, it prohibits the State from issuing NOIs to engage in those operations starting January 1, 2023. NOIs issued prior to that date are not rendered ineffective by SB1137.

CFROG is attempting to advance SB1137's implementation date through the ruse of the County's appeal process. The County should reject CFROG's abuse of the County's process in this manner. The County cannot now deprive ABA of its rights under the Zoning Clearances based on SB1137. If it does, the County will unlawfully be preventing ABA from securing NOIs from the State prior to the January 1, 2023 and will be violating its own Ordinances.

SUP #672 is Subject to Modern Environmental Protection

CFROG describes ABA's SUP #672 as being an older permit which lack any modern standards for environmental protection, but that is simply not accurate. ABA has to comply with all conditions of the NCZO to which SUP # 672 and the Zoning Clearances are applicable. It also must comply with numerous other laws and regulations, including those of the State and the Ventura County Air Pollution Control District ("APCD").

In Appellant's Letter, CFROG misstates that ABA's Compliance with SUP #672 Condition 13 means that only the conditions existing in 1957 at the SUP #672 issuance will apply. The meaning of ABA's Compliance Statement was the opposite, in that ABA was simply acknowledging that per SUP #672 Condition 13, that ABA shall comply with all conditions of the Ventura County Ordinance Code applicable to this permit at the time each Zoning Clearance is granted. This should be obvious since it is an express condition of SUP #672, and moreover, the Project Description of the Zoning Clearances lists as a condition of acceptance that "All conditions of SUP 672 will apply. All conditions of SUP 672 have been reviewed, and the operation is in compliance with all applicable conditions at this time."

Accordingly, by definition, the NCZO (which applies to ABA's operations) is continuously updated and thereby, so are the standards. Currently, the NCZO dictates standards, which are routinely updated, for setback requirements, noise attenuation, dust controls, pumping unit and pad design, flood plain compliance, septic setback compliance, soils clearance, and APCD compliance.

APCD compliance includes, but is not limited to, ERC offset participation (which operates like a cap-and-trade program), drilling rig emission review, production equipment approval, as well as an inspection protocol. All of the foregoing air quality regulations are constantly updated, were adopted by the APCD pursuant to CEQA, and compliance with all of these regulations is required by ABA's Ventura County APCD Permit to Operate ("PTO") #00066. In general, each piece of equipment an operator uses, the oil and gas flows for the lease, and the number of wells on the lease/permit are used to calculate what ABA refers to as an "Air Score". Each SUP is initially granted 5.0 tons of Reactive Organic Compound ("ROC") prior to commencing operations and in the course of development, if one's Air Score is excess of 5.0 tons, then ERC's must be purchased in the open market to fill the gap. Current costs for each ton of ROC is ~$75,000. ABA has heretofore purchased/posted ~ 7.97 tons of ROC to SUP #672 which were then added to the statutory 5.0 tons for a total Air Score of 12.97 tons of ROC. In addition to ABA's 7.97 tons of purchased Emission Reduction Credits ("ERCs"), ABA has purchased an additional ~8.07 tons of ROC in reserve for future work. It should be noted that sidetracks which use a currently non-abandoned wellbore will have no effect on Air Score as the original well (in the case of a sidetrack) will be deducted

from the permit and the newly sidetracked wellbore will replace it. Per Ventura County APCD's Air Quality Assessment Guidelines, "the emissions from equipment or operations requiring APCD permits are not counted towards the air quality significance thresholds. This is for two reasons. First, such equipment or processes are subject to the District's New Source Review permit system, which is designed to produce a net air quality improvement. Second, facilities are required to mitigate emissions from equipment or processes subject to APCD permit by using emission offsets and by installing Best Available Control Technology (BACT) on the process or equipment". Examples of compliance with the foregoing are:

1. ABA's use and application of acquired ERCs as discussed above;

2. ABA's installation of a BACT flare on the Maulhardt Lease (which reduced flare emissions by 92%).

3. ABA's Vapor Recovery System which has a robust mechanism to remove gases from the oil/fluid tanks and routes same to the flare system.

4. ABA's participation in the "LDAR" program which is a voluntary Leak Detection and Repair Program where ABA self-tests each potential source of fugitive emissions such as well and pipeline flanges, hatch seals, pipeline connections, tanks, etc., and when a leak is found, it is fixed within a prompt time protocol (~2-3 days). Every 4th quarter, the APCD inspection immediately follows the ABA LDAR inspection ensuring transparency and conformity with prior tests.

5. All engines used on drilling rigs now have to be CARB certified. This is yet another major improvement in air quality during drilling. If the regulations were, as claimed by CFROG, stuck in 1957, this improvement would not be in effect.

6. Because of ABA's compliance with to the foregoing APCD Program Factors, ABA's emissions were calculated by the APCD to be below the threshold deemed to potentially result in significant health risks to exposed individuals. Accordingly, Appellant's claim that ABA's wells are stripper wells and by that designation, emit 6-12 times the national average of all oil and gas sites is baseless and flies in the face of the VAPCD programs as outlined above. For impact, when a well's flanges are tested and found to have no leaks (which is routine on ABA's Maulhardt Lease), there is zero emission therefrom, not a randomly assigned baseline value.

7. Finally, California uses 1.8 million BPD of oil and produces less than 400,000 barrels/day. Therefore, each of the current 1.4 million barrels of imported oil comes from places where the oil is produced dramatically less healthy than in California. Worse, because there are no oil pipelines into California, the imported oil comes in by sea-going tankers which burn fuel which has an incredibly unhealthy exhaust stream. It is well settled that as imports rise and California production declines, GHG will rise proportionately.

Contrary to CFROG's position, ABA has Vested Right in SUP #672

The original well drilled pursuant to SUP #672 in 1957 is still producing today. In the last twelve years of development of the Maulhardt Lease, ABA has discovered additional resources that require additional operations, like the redrilling operations covered by the Zoning Clearances, to properly recover

the natural resources and develop the mineral rights for the mineral owners. While CFROG asserts that "SUP #672 does not provide a vested right to new and expanded operations", SUP #672 applies to the ~127 acre Maulhardt Lease and all operations on that land, not an arbitrary well count. The County's granting of ~24 Zoning Clearances since ABA acquired the Property in 2010 would confirm the foregoing and any contrary position would amount to a taking of ABA's and its mineral owners' real property rights.

The relevant legal authority when dealing with a vested right to extract minerals is Hansen Brothers Enterprises v. Board of Supervisors, (1996) 12 Cal.4th 533 ("Hansen"). Other decisions have held that use permits confer vested rights. (See HPT IHG-2 Properties Tr. v. City of Anaheim (2015) 243 Cal. App. 4th 188, 199 (where a CUP has been issued and the landowner has relied on it to its detriment, the landowner has a vested right.); see also Malibu Mountains Recreation, Inc. v. County of Los Angeles (1998) 67 Cal.App.4th 359, 367.) Additionally, the scope of the vested rights is the scope of activity authorized under the permit. (Santa Monica Pines, Ltd. v. Rent Control Bd. (1984) 35Cal.3d 858, 865)

In the Hansen case, the High Court made the point that mineral extraction uses, unlike uses that operate within an existing structure or boundary, anticipate the extension of extraction activities into other areas of the property that were not being exploited at the time a subsequent zoning change is proposed. As the High Court explained:

The very nature and use of an extractive business contemplates the continuance of such use of the entire parcel of land as a whole, without limitation or restriction, to the immediate area excavated at the time the ordinance was passed. A mineral extractive operation is susceptible of use and has value only in the place where the resources are found, and once the minerals are extracted it cannot again be used for that purpose.

(Hansen, supra, 12 Cal.4th at 553-554.) And even if one were to ignore the foregoing legal precedent, the County's historical practices regarding oil and gas operations within its jurisdiction and specifically in the case of SUP #672, repeatedly confirm the validity of these permits, time and time again.

As described above, the Ventura County Board of Supervisors issued a final discretionary permit (SUP #672) and in reliance on the permit and the repeated confirmation of its validity by the County, ABA has expended millions of dollars in building and expanding the infrastructure for the oilfield it continues to develop. For this reason, ABA does indeed have a vested property right in SUP #672 and any deprivation of that right would constitute an unconstitutional taking.

In addition to the foregoing, the equitable principle of estoppel prohibits a governmental entity from exercising its regulatory power to prohibit a proposed land use when a developer incurs substantial expense in reasonable and good faith reliance on some governmental act or omission so that it would be highly inequitable to deprive the developer of the right to complete the development as proposed. *(Patterson v. Central Coast Regional Com.* (1976) 58 Cal.App.3d 833, 844.) The theory of equitable estoppel simply recognizes that, at some point in the development process, a developer's financial expenditures in good faith reliance on the governmental entity's land use and project approvals should estop that governmental entity from changing those rules to prevent completion of the project. (*Toigo v. Town of Ross* (1998) 70 CA4th 309, 321). ABA has been conducting oil and gas development in reliance on the rights granted in SUP #672 with the continual approval of the County for the last twelve years and has invested millions in support of

future development only to have CFROG now assert, without any evidence or valid reason, that ABA has no such rights.

The Appellant's Letter of December 13, 2022 Raising Tardy Claims

In addition to the several topics in Appellant's Letter that were addressed above, Appellant raises tardy arguments that were not addressed in the Appeals. Those should be rejected since they are untimely and were not among the "Grounds for Appeal". We further note the following regarding those arguments.

Appellant complains about zoning clearances that were issued well over a month after the filing of the Appeals and for which Appellant failed to file any timely appeals to the Planning Commission. The NCZO prohibits consideration of any arguments as to those additional 21 zoning clearances because no timely appeals have been filed. (See NCZO 8111-7.1 (requiring appeal to be filed within ten days after alleged decision-making error).) While Appellant complains about filing fees, the NCZO requires payment of those fees and thus they are required under the law. If Appellant desired to appeal the later zoning clearances and object to the filing fees on some purported lawful grounds, none of which have been asserted, it certainly could have done so. Having failed to do so, it has waived any legal arguments as to the issuance of the later zoning clearances and it would be a denial of ABA's due process rights to consider arguments relating to those later zoning clearances as part of the Appeals.

To the extent there exists questions as to the meaning of the word "bulk storage" in SUP #672 the word is used in connection with processing, refining and packaging, none of which occurs on the Maulhardt Lease: "… 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…"). This language has been updated in the current NCZO and has been replaced in Section 8102-0 as "***Oil and Gas Exploration and Production - The drilling, extraction and transportation of subterranean fossil gas and petroleum, and necessary attendant uses and structures, but excluding refining, processing or manufacturing thereof***". In that same Section 8102-0, the term Petroleum Refining is also defined as "***Petroleum Refining - Oil-related industrial activities involving the processing and/or manufacture of substances such as: asphalt and tar paving mixtures; asphalt and other saturated felts (including shingles); fuels; lubricating oils and greases; paving blocks made of asphalt, creosoted wood and other compositions of asphalt and tar with other materials; and roofing cements and coatings.***" ABA does not engage in any such petroleum refining operations, including "bulk storage."

The foregoing demonstrates that the term "bulk storage" as used in the original exclusionary language to SUP #672 applies to refining operations only which on its face seems logical, since there will be attendant and necessary uses and structures such as temporary tanks for exploration and production operations. The current NCZO language confirms that the term bulk storage refers to storage in connection with refined products.

Moreover, the County has continued to interpret SUP #672 as allowing ABA's tanks in connection with its production operations. Each and every time ABA has submitted a zoning clearance, the County has approved the use of the tanks in connection therewith. Given that history, estoppel would prevent a different interpretation of "bulk storage" that would now somehow prohibit that use. In short, the exclusion in the original SUP #672 Language of "bulk storage" does not mean ABA cannot store oil and/or other liquid substances in its tank battery.

As to the claim in Appellant's Letter that re-entry-sidetracks pose issues with respect to re-abandonment and freshwater plugs, Appellant provides no technical support for that argument and thus there is no evidence to support it.

Appellant also attempts to argue that the Zoning Clearances altered the conditions of SUP #672, but there is no evidence to support that contention. The NCZO, SUP #672 and the Zoning Clearances all require compliance with those conditions and ABA stands prepared to ensure its compliance therewith. Appellant advances new arguments as to Conditions 10, 11 and 13 when it did not complain about those in the Appeals; Appellant thus waived any right to advance those arguments.

The Appeals Are Incomplete and Thus Defective

The Appeals are defective on their face and should be rejected on that basis alone. Section 8111-7.1 of the NCZO only allows an "aggrieved party" to file an appeal. There is nothing in the NCZO that allows the County to waive this requirement. The Appeals, however, fail to explain how CFROG is an "aggrieved party" as CFROG left the box which should have housed the basis for being an aggrieved person completely blank. As such, the Appeals form is also incomplete and therefore defective.

The Ventura County's website indicates that appeals must be filed on a certain Appeal Application Form. (See https://vcrma.org/en/appeals.) Page 2 of the Appeal Application Form requires the filing party (if not the applicant) to state the basis for filing the appeal as an "aggrieved person." (See https://vcrma.org/docs/images/pdf/planning/ordinances/Appeal-Form.pdf.)

CFROG failed to insert any information in the box as to the basis for it being an "aggrieved person." Indeed, there is no reference anywhere in the Appeals as to why CFROG is aggrieved. For example, there is no assertion or evidence to support that CFROG members will be injured from ABA's proposed operations. Nor is there any indication that CFROG members even live in the area adjoining ABA's proposed operations.

CFROG has failed to establish that it is an "aggrieved party" under NCZO Section 8111-7.1 who is entitled to file appeals of the County's issuance of the Zoning Clearances. As a result, the Appeals should be rejected outright since the ten-day time period for filing proper and complete appeals of the Zoning Clearances has lapsed.

In closing, ABA urges the Planning Commission to affirm Staff's recommendation to deny the Appeals and to uphold the approval of Zoning Clearances ZC22-0937 and ZC22-0938, in compliance with local, State, and federal law.

Respectfully,

12-14-22

ABA ENERGY CORPORATION
Alan B. Adler, President

Enclosures

EXHIBIT "A"

To Thomas Chaffee Letter regarding December 15, 2022 Planning Commission Hearing Agenda Item No. 7A, Case Nos. PL22-0152 and PL22-0153

(Letter to Mindy Fogg dated 10/13/22 regarding CFROG Appeals)

ENERGY CORPORATION

October 13, 2022

VIA EMAIL ONLY

Mindy Fogg
Ventura County Planning Manager
Commercial & Industrial Permitting Section
800 S. Victoria Ave.
Ventura, CA 93009
Email: mindy.fogg@ventura.org

Re: *September 29, 2022 Appeals filed by CFROG*

Dear Mindy:

We write regarding the September 29, 2022, appeals (the "Appeals") filed by Climate First: Replacing Oil & Gas ("CFROG") of the two Zoning Clearances issued by Ventura County on September 22, 2022, to ABA Energy Corporation ("ABA") for the sidetracking of the already existing Dorothy Moon #2 and Joseph Maulhardt #9 wells (the "Zoning Clearances"). ABA respectfully urges the County to immediately reject the fling of the Appeals since they are defective.

In addition to being defective, the Appeals blatantly misrepresent, or at best ignore, the County's own ordinances. They also ignore current state law and misstate the facts, all in an attempt to abuse the County's process so that ABA is deprived of its rights to move forward with obtaining approval from the State for these operations prior to January 1, 2023—the implementation date for SB1137.

Failure to reject the Appeals now will result in irreparable harm to ABA since it cannot await the time period identified by Planning Department for the Planning Commission to conduct a hearing on December 15, 2022. SB1137 prohibits issuance of notices of intent ("NOIs") by the State for these operations starting on January 1, 2023. A hearing on December 15, 2022 obviously will be too late.

The Appeals Are Incomplete and Thus Defective

The Appeals are defective on their face and should be rejected on that basis alone. Section 8111-7.1 of the Ventura County Non-Coastal Zoning Ordinance (NCZO) only allows an "aggrieved party" to file an appeal. There is nothing in the NCZO that allows the County to waive this requirement. The Appeals, however, fail to explain how CFROG is an "aggrieved party". Further, the Appeals form is incomplete and therefore defective.

The Ventura County's website indicates that appeals must be filed on a certain Appeal Application Form. (See https://vcrma.org/en/appeals.) Page 2 of the Appeal Application Form requires the filing party (if not the applicant) to state the basis for filing the appeal as an "aggrieved person." (See https://vcrma.org/docs/images/pdf/planning/ordinances/Appeal-Form.pdf.)

The Appeals filed by CFROG fail to insert any information in the box as to the basis for it being an "aggrieved person." Indeed, there is no reference anywhere in the Appeals as to why CFROG is aggrieved. For example, there is no assertion that CFROG members will be injured from ABA's proposed operations. Nor is there any indication that CFROG members even live in the area adjoining ABA's proposed operations.

CFROG has failed to establish that it is an "aggrieved party" under NCZO Section 8111-7.1 who is entitled to file appeals of the County's issuance of the Zoning Clearances. As a result, the NCZO does not authorize the County to accept the Appeals and they should be rejected outright since the ten-day time period for filing proper and complete appeals of the Zoning Clearances has lapsed.

The Appeals Blatantly Ignore the County's Ordinances and Referendum History as to the Ministerial Nature of the Zoning Clearances

The Appeals deliberately misrepresent the County's NCZO by claiming that issuance of the Zoning Clearances is a discretionary act by the County. Section 8111-1.1 of the NCZO expressly states that issuance of the Zoning Clearances is ministerial. While the County amended the NCZO in 2020 to require discretionary permits instead of ministerial zoning clearances for the types of operations covered by the Zoning Clearances, the amendment was rendered void through a referendum election in June of this year.

CFROG certainly was aware of the referendum history and yet it is still claiming in its Appeals that the issuance of the Zoning Clearances is a discretionary act subject to CEQA. CFROG cannot alter or otherwise ignore the referendum vote by filing the Appeals and turn a ministerial act into a discretionary one.

CEQA only is triggered when there is a discretionary act. (Pub. Res. Code § 21080.) Since the NCZO provides that issuance of the Zoning Clearances is ministerial, there is no legal basis for

CFROG to claim that CEQA applies or that the County improperly issued the Zoning Clearances.

SB1137 is Not Yet in Effect, and Thus It Cannot Form the Basis of the Appeals

The Appeals also claim that issuance of the Zoning Clearances is in violation of State law, but the only law cited in the Appeals (aside from CEQA which is not applicable as discussed above) is SB1137. SB1137 does not prohibit the operations covered by the Zoning Clearances; rather, it prohibits the State from issuing NOIs to engage in those operations starting January 1, 2023. NOIs issued prior to that date are not rendered ineffective by SB1137.

CFROG is attempting to advance SB1137's implementation date through the ruse of the County's appeal process since it knows that the Appeals will not be finalized prior to January 1, 2023. The County should reject CFROG's abuse of its process in this manner. The County cannot now deprive ABA of its rights under the Zoning Clearances based on SB1137. If it does, the County will unlawfully be preventing ABA from securing NOIs from the State prior to the January 1, 2023.

The Appeals Misrepresent Compliance with Conditions of ABA's Special Use Permit

The only other grounds claimed for the Appeals are that somehow the County hasn't ensured that ABA will comply with Condition Nos. 5 and 8 of its Special Use Permit 672. ABA's applications for the Zoning Clearances are detailed. They expressly state how ABA will comply with these and the other Conditions and provide information on the proposed equipment to be used for the operations. The County, and CFROG, have never had an issue with ABA's use of these same explanations on past Zoning Clearances. The County has enforcement mechanisms to ensure ABA's compliance with the Conditions of Special Use Permit 672, and it has never found that ABA has failed to comply. Similarly, CFROG has never before, and doesn't now, contend that ABA has ever failed to so comply. Simply put, the Appeals claim non-compliance as to issues that cannot even be complied with until the operations commence. As a result, they are a subterfuge to further this abuse of process and are not legitimate bases for an appeal.

The Appeals ignore that ABA already has secured rights through Special Use Permit 672, which underwent public and environmental review and of course permit the operations described in the Zoning Clearances. CFROG is misusing the County's appeals process with defective Appeals that are incomplete and based on misrepresentations as to the County's own ordinance, State law and the facts. ABA urges the County to reject the Appeals on these bases and send a message that it will not sanction a misuse of its appeals process to affect CFROG's agenda of a premature implementation of SB1137.

ABA appreciates the County's consideration of the matters raised in this letter and respectfully requests a response by October 21, 2022 as to whether the County will reject the Appeals, thereby preventing irreparable harm to ABA.

Sincerely,
ABA ENERGY CORPORATION

10-13-22

Alan B. Adler
President & CEO

EXHIBIT "B"

To Thomas Chaffee Letter regarding December 15, 2022 Planning Commission Hearing Agenda Item No. 7A, Case Nos. PL22-0152 and PL22-0153

(ABA SUP #672)

1.3.672

GRANTING **SPECIAL USE PERMIT TO TIDEWATER OIL COMPANY**
UNDER PROVISIONS OF VENTURA COUNTY ORDINANCE CODE

WHEREAS, **Tidewater Oil Company** in accordance with the provisions of Division 8 of the Ventura County Ordinance Code, did on the **2nd** day of **October**, 1**57**, file**their** application in writing with the Ventura County Planning Commission for a **Special Use Permit for oil and gas production on certain lands within Subdivisions 34 and 36, Rancho Colonia, located adjacent to and west of Rice Road and south of Wooley Road about 1/2 mile east of the City of Oxnard, and;**

WHEREAS, proof is made to the satisfaction of this Board, and this Board finds, that notice of the hearing of said application and petition has been regularly given in accordance with the provisions of said Division 8 of the Ventura County Ordinance Code, and said application and petition having come on regularly for hearing before said Commission, and said Commission having announced its findings and made its decision after hearing the evidence presented at said hearing; and,

WHEREAS, the findings and decision of said Commission have been transmitted to this Board for its action thereon; and,

WHEREAS, the Board has considered the application and petition of the applicant and the findings and decision of said Commission thereon,

NOW, THEREFORE, upon motion of Supervisor **Ax**, seconded by Supervisor **Appleton**, and duly carried,

IT IS ORDERED AND RESOLVED, that said application and petition be approved and allowed, and that a **Special Use Permit** be, and it is hereby, issued to said applicant for the following purposes, to-wit:

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,

and subject to the following conditions:

1. That the permit is issued for the land as described in the application.
2. That any derrick used in connection with the drilling of a well, and all machinery or equipment used to operate such derrick, shall be enclosed with fire-resistant and sound-proofing material, whenever such well or derrick is located within five hundred (500) feet of any dwelling not owned by the lessor or lessee.
3. That the use and purpose for which this permit is issued shall conform in all respects to the regulations and requirements of the California State Regional Water Pollution Control Board No. 4.
4. That no earthen sumps shall be constructed or maintained within 500 feet of any natural channel in which there is, or may be, flowing water.
5. That all oil drilling and production operations shall be conducted in such a manner as to eliminate, as far as practicable, dust, noise, vibration or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for and the production of oil, gas, and other hydrocarbon substances. Where economically feasible and where generally accepted and used, proven technological improvements in drilling and production methods shall be adopted as they may become from time to time, available, if capable of reducing factors of nuisance and annoyance.
6. That within ninety (90) days after the drilling of each well has been completed, and said well placed on production, the derrick, all boilers and all other drilling equipment shall be entirely removed from the premises unless such derrick and appurtenant equipment is to be used within a reasonable time limit determined by the Ventura County Planning Commission and the Board of Supervisors for the drilling of another well on the same premises.
7. That all sumps, or debris basins, or any depressions, ravines, gullies, barrancas or the like, which are used or may be used for the impounding or depositing of water, mud, oil, or any other fluid, semi-fluid, or any combination thereof, shall be fenced; when located more than one-half (1/2) mile from any school, playground or dwelling shall be entirely enclosed by a cattle fence in accordance with specifications adopted by the Planning Commission on January 11, 1954; and when located within one-half (1/2) mile of any school, playground or dwelling shall be entirely enclosed by a wire fence in accordance with specifications adopted by the Planning Commission on December 14, 1953.
8. That all water, mud, oil, or any other fluid, semi-fluid, or any combination thereof, which is removed from the limits of the land for which a Special Use Permit is issued for the purpose of disposal as waste material, shall only be deposited in an approved disposal site. If such disposal is done by other than the permittee, the permittee shall inform the hauling or disposal contractor or agent of the requirements of this condition.
9. That no wells shall be drilled within 150 feet of the centerline of the right of way of any public road, street or highway and that no permanent buildings or structures shall be erected within 100 feet of the centerline of any public road, street or highway.
10. That the permittee shall at all times comply with the provisions of Section 3220 and Section 3221 of the Public Resources Code of the State of California, relating to the protection of underground water supply.
11. That the permittee shall at all times comply with the provisions of Chapter 3, Article 3600, Public Resources Code of the State of California, regarding the proper location of wells in reference to boundaries and public streets, roads or highways.
12. That upon abandonment of any well or when drilling operations cease, all earthen sumps or other depressions containing drilling mud, oil or

other waste products from the drilling operation shall be cleaned up by removing such waste products or by consolidating all mud, oil or other waste products into the land by disking, harrowing and leveling to restore the land to the condition existing prior to the issuance of this permit as nearly as practicable so to do.

13. That the permittee shall comply with all conditions of the Ventura County Ordinance Code applicable to this permit.

THIS IS TO CERTIFY that the foregoing is a full, true and correct copy of the resolution or order adopted by the Board of Supervisors of Ventura County, California, on the 5th day of Nov 1957, a majority of the members being present and voting for the adoption of the same.

Dated this 8th day of Nov, 1957.

L. E. HALLOWELL, County Clerk and ex-officio Clerk of said Board of Supervisors

By Bernice Klatt Deputy

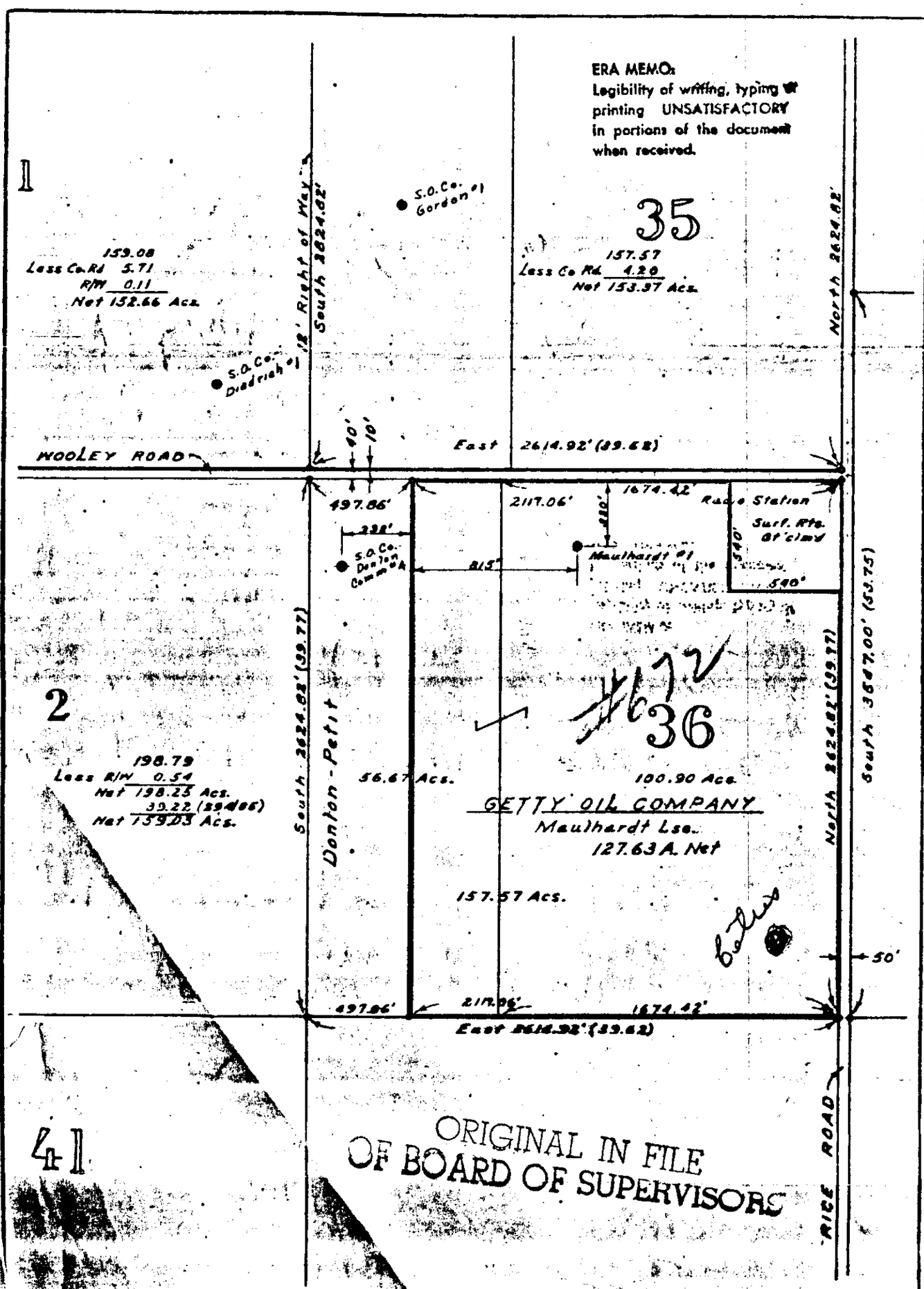
Copies to:
Tidewater Oil Co.
Planning
Calif.Reg.Water Pollution Control Board
United Water Conservation Dist
Calleguas Soil Conservation Dist.

File (2)
Item 6D
11/5/57

Appl. No. 672

12

ERA MEMO:
Legibility of writing, typing or printing UNSATISFACTORY in portions of the document when received.



ORIGINAL IN FILE
OF BOARD OF SUPERVISORS

TIDE WATER ASSOCIATED OIL CO.

SKETCH OF GETTY OIL CO's. Maulhardt Lease #3257
Oxnard District, Ventura County, Calif.
showing location of proposed Maulhardt Well #1

SCALE 1" = 600' = 1 FOOT
DATE October 2, 1957
FILE NO. V-01A-695

02

APPLICATION FOR SPECIAL USE PERMIT
(to be filed in duplicate with filing fee of $25.00)

NO. 672

RECEIVED
[illegible] 2 1957
VENTURA COUNTY
PLANNING COMMISSION

TO THE VENTURA COUNTY PLANNING COMMISSION:
56 North California Street, Ventura, California.

The applicant, being the owner/lessee of the land described below, requests a Special Use Permit, in accordance with provisions of Division 8, Ventura County Ordinance Code, for the use of said land for the purposes described herein or on attachments hereto:

Name of Applicant TIDEWATER OIL COMPANY Operator for Getty Oil Company

Address P. O. Box 811, Ventura, California

Name of owner of land Gustave H. Maulhardt and Evelyne M. Maulhardt

Address 1557 Rice Road, Oxnard, California

Zone: A-1

Area: 6 Acres

Inspected: 10/14/57

By: [signature]

Location of land All of Subdivision 36 and part of Subdivision 34 of Rancho El Rio de Santa Clara O'La Colonia, in Ventura County, California. Please refer to attached map and legal description.

An exact legal description of the land involved and a map or plot plan showing the land described and all other land located within 300 feet of the exterior boundaries of the land involved is attached hereto and made a part of this application.

Land was acquired by present owner on _____ 19____ and has the following deed restrictions affecting the use thereof _____

_____ which expire__ on _____ 19___

Present use of subject land: Agriculture

The Special Use Permit is requested for the use of subject land for the following purposes: To drill a well for oil and/or gas to be designated as Maulhardt #1

ERA MEMO: Legibility of writing, typing or printing UNSATISFACTORY in portions of the document when received.

(A comprehensive statement will facilitate action upon this application.)
(Attach properly identified additional sheets if required)

The applicant, or representative, has discussed this matter with the staff of the Planning Commission; has read the Ventura County Ordinance Code, or such portions as concern this application; and is aware of the requirements and conditions thereof.

See sheet No. 2

PC 11A; 7-54-500 trip. sets

ORIGINAL IN FILE
OF BOARD OF SUPERVISORS

Special Use Permit Application No. 672 Sheet No. 2

The following information is submitted for consideration and, in the opinion of the applicant, indicates that this application conforms to the intent and purpose of Ventura County Ordinance Code.

The drilling of a development well at this location and its production of oil and/or gas will in no way create a public nuisance. Fresh water sands will be protected by cement as required by Division of Oil and Gas.

(Explain briefly why this land is especially adapted to the uses intended; what effect, if any, such uses will have upon surrounding property or improvements; exceptional or extraordinary circumstances applicable to the land involved or to the intended use, etc.)

Where applicable, a favorable statement from adjacent property owners may assist in facilitating action upon this application.

ERA MEMO: Legibility of writing, typing or printing UNSATISFACTORY in portions of the document when received.

AFFIDAVIT

County of Ventura)
State of California) ss.

I, G. O. Suman, being duly sworn, depose and say that I am the owner/lessee, or representative thereof, of land involved in this application and that the foregoing statements herein contained and the information herewith submitted are in all respects true and correct to the best of my knowledge and belief, and further affirm that the applicant or those whom the applicant represents, has the right either as owner or lessee, to develop the land described in the application for the purpose stated therein.

Signed G. O. Suman
District Supt.
Telephone Miller 3-2154

Mailing Address Tidewater Oil Company
P. O. Box 811
Ventura, California
City State

Subscribed and sworn to before me this 2nd day of October 1957

A. Gayle Cassell
Notary Public
My Commission Expires January 4, 1961

Applicant not to write in this space

Application No. 672 Filed Oct. 2, 1957

Receipt No. 4672 Fee $25.00 Received Oct. 2, 1957

Filing Fee deposited with County Treasurer

on October 29, 1957
T. R. 3947

Secretary
Ventura County Planning Commission.

PC 11B; 7-54-500 sets in triplicate

VENTURA COUNTY PLANNING COMMISSION

Meeting of October 28, 1957

RESOLUTION NO. 1362

RECOMMENDING GRANTING SPECIAL USE PERMIT TO TIDEWATER OIL COMPANY (APPLIC. NO. 672) IN ACCORDANCE WITH VENTURA COUNTY ORDINANCE CODE, FOR THE PRODUCTION OF OIL AND GAS ON LAND LOCATED ABOUT 1/2 MILE EAST OF THE CITY OF OXNARD.

WHEREAS, in accordance with the provisions of Ventura County Ordinance Code, an application was filed October 2, 1957, by Tidewater Oil Company, Ventura, California, for a Special Use Permit for oil and gas production on certain lands within Subdivisions 34 and 36, Rancho Colonia, located adjacent to and west of Rice Road and south of Wooley Road, about 1/2 mile east of the City of Oxnard, as set forth in legal description attached to said application and shown on the map attached thereto, and

WHEREAS, a public hearing on this matter was held by the Planning Commission at Oxnard, California, on October 22, 1957, and notice of said public hearing was published, pursuant to law, as shown by affidavit of publication and notices have been mailed or posted as shown by certificate of public notice as filed with this application, therefore be it

RESOLVED, that as a result of investigation caused to be made by the Planning Commission and testimony given at the public hearing, the Commission finds as follows:

1. That the land involved is located adjacent to and west of Rice Road and adjacent to and south of Wooley Road, about 1/2 mile east of the City of Oxnard, is in a level area, and is generally unimproved and being used for citrus production and row crops.
2. That the land involved is located in an area which is remote from any intensive residential use and adjacent to an oil producing area for which Special Use Permits have been previously granted.
3. That the land involved is located in the "A-1" Agricultural (unrestricted) Zone.
4. That under certain conditions stated hereafter, the production of oil and gas would not constitute any material detriment to existing or probable surface uses of other lands in the same zone and vicinity, and it is

FURTHER RESOLVED, that the Ventura County Planning Commission finds and declares that under the conditions cited herein, the granting of the Special Use Permit would conform to the general purpose of Division 8, Ventura County Ordinance Code, and therefore recommends to the Honorable Board of Supervisors that the permit be granted 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,

and subject to the following conditions:

1. That the permit is issued for the land as described in the application.
2. That any derrick used in connection with the drilling of a well, and all machinery or equipment used to operate such derrick, shall be enclosed with fire-resistant and sound-proofing material, whenever such well or derrick is located within five hundred (500) feet of any dwelling not owned by the lessor or lessee.
3. That the use and purpose for which this permit is issued shall conform in all respects to the regulations and requirements of the California State Regional Water Pollution Control Board No. 4.
4. That no earthen sumps shall be constructed or maintained within 500 feet of any natural channel in which there is, or may be, flowing water.
5. That all oil drilling and production operations shall be conducted in such a manner as to eliminate, as far as practicable, dust, noise, vibration or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for and the production of oil, gas, and other hydrocarbon substances. Where economically feasible and where generally accepted and used, proven technological improvements in drilling and production methods shall be adopted as they may become from time to time, available, if capable of reducing factors of nuisance and annoyance.
6. That within ninety (90) days after the drilling of each well has been completed, and said well placed on production, the derrick, all boilers and all other drilling equipment shall be entirely removed from the premises unless such derrick and appurtenant equipment is to be used within a reasonable time limit determined by the Ventura County Planning Commission and the Board of Supervisors for the drilling of another well on the same premises.
7. That all sumps, or debris basins, or any depressions, ravines, gullies, barrancas or the like, which are used or may be used for the impounding or depositing of water, mud, oil, or any other fluid, semi-fluid, or any combination thereof, shall be fenced; when located more than one-half (1/2) mile from any school, playground or dwelling shall be entirely enclosed by a cattle fence in accordance with specifications adopted by the Planning Commission on January 11, 1954; and when located within one-half (1/2) mile of any school, playground or dwelling shall be entirely enclosed by a wire fence in accordance with specifications adopted by the Planning Commission on December 14, 1953.
8. That all water, mud, oil, or any other fluid, semi-fluid, or any combination thereof, which is removed from the limits of the land for which a Special Use Permit is issued for the purpose of disposal as waste material, shall only be deposited in an approved disposal site. If such disposal is done by other than the permittee, the permittee shall inform the hauling or disposal contractor or agent of the requirements of this condition.
9. That no wells shall be drilled within 150 feet of the centerline of the right of way of any public road, street or highway and that no permanent buildings or structures shall be erected within 100 feet of the centerline of any public road, street or highway.
10. That the permittee shall at all times comply with the provisions of Section 3220 and Section 3221 of the Public Resources Code of the State of California, relating to the protection of underground water supply.
11. That the permittee shall at all times comply with the provisions of Chapter 3, Article 3600, Public Resources Code of the State of California, regarding the proper location of wells in reference to boundaries and public streets, roads or highways.
12. That upon abandonment of any well or when drilling operations cease, all earthen sumps or other depressions containing drilling mud, oil or

other waste products from the drilling operation shall be cleaned up by removing such waste products or by consolidating all mud, oil or other waste products into the land by disking, harrowing and leveling to restore the land to the condition existing prior to the issuance of this permit as nearly as practicable so to do.
13. That the permittee shall comply with all conditions of the Ventura County Ordinance Code applicable to this permit.

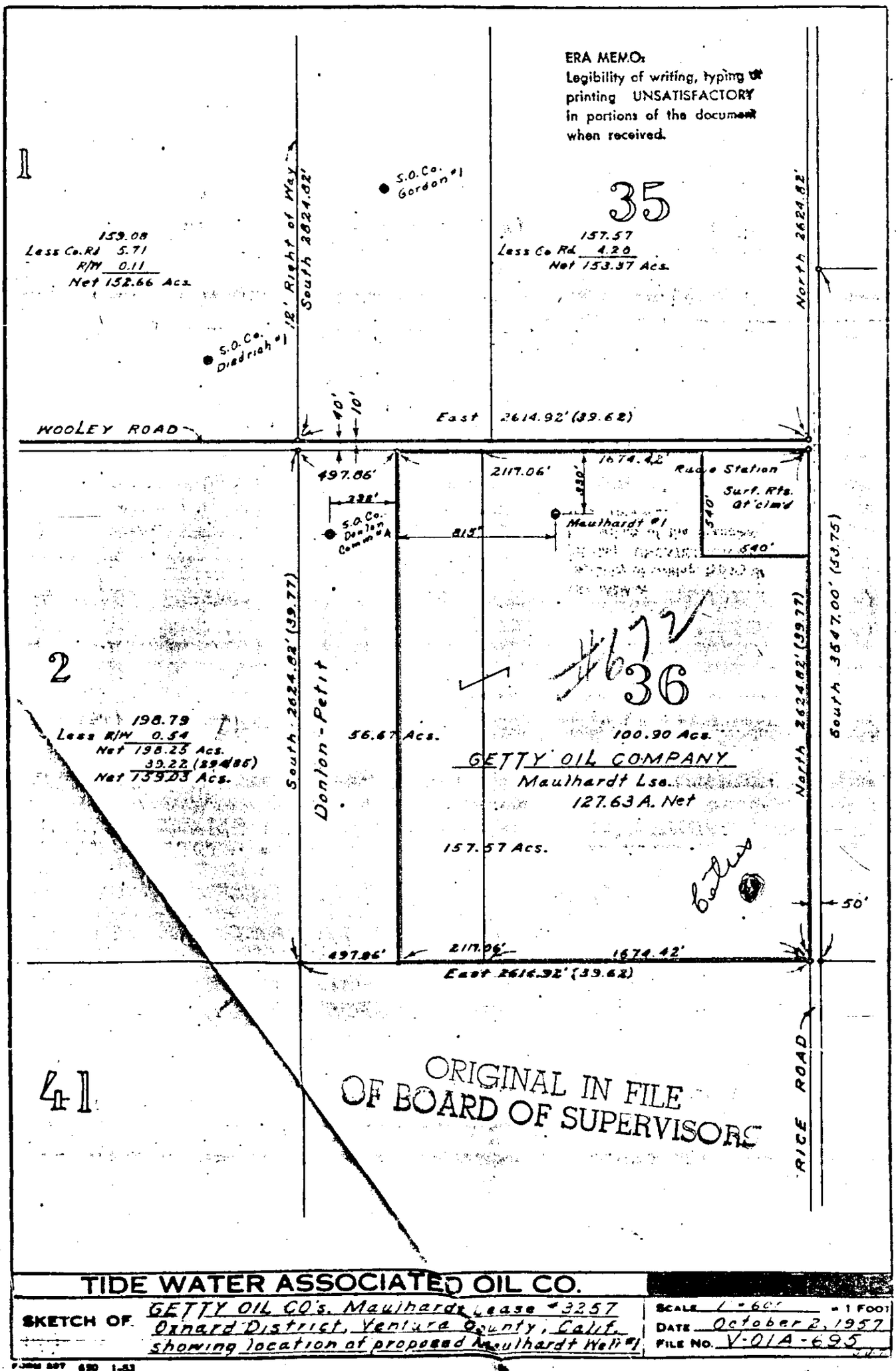
This is to certify that the foregoing is a full, true and correct copy of Resolution No. 1362, adopted by the Planning Commission of Ventura County, California, on the 28th day of October, 1957, the required number of members being present and voting for the adoption of the resolution.

Dated this 29th day of October, 1957.

L. J. BORSTELMANN, Secretary

cc to:
Tidewater Oil Company
Commissioner Sweetland
Supervisor Carty
Board of Supervisors
County Surveyor
County Health Officer
County Fire Warden
City of Oxnard
Calif. Regional Water Pollution Control Board
United Water Conservation District
Calleguas Soil Conservation District

Appl. No. 672



TIDE WATER ASSOCIATED OIL CO.

SKETCH OF GETTY OIL CO's. Maulhardt Lease #3257
Oxnard District, Ventura County, Calif.
showing location of proposed Maulhardt Well #1

SCALE 1 - 600' = 1 FOOT
DATE October 2, 1957
FILE NO. V-01A-695

FORM 207 600 1-53

EXHIBIT "B"

To Clerk of The Board of Supervisors Letter regarding the February 28, 2023 Ventura County Board of Supervisors Meeting - Agenda Item No. 72, regarding Case Nos. PL22-0152 (ZC22-0937) and PL22-0153 (ZC22-0938).

(October 20, 2022 letter sent to ABA by Mindy Fogg, Planning Manager, Commercial and Industrial Permitting Section, Ventura County Planning Division)

COUNTY of VENTURA

RESOURCE MANAGEMENT AGENCY
DAVE WARD
Planning Director

SUSAN CURTIS
Assistant Planning Director

October 20, 2022

Mr. Alan B. Adler
President & CEO
ABA Energy Corporation
7612 Meany Avenue
Bakersfield, CA 93308

Via email to: aba@abaenergy.com

SUBJECT: Appeals filed by CFROG for ZC22-0937 and ZC22-0938

Dear Mr. Adler:

This letter is the County of Ventura's (County) response to your letter dated October 13, 2022, regarding the appeals filed by Climate First: Replacing Oil & Gas (CFROG) of two Zoning Clearances (ZC22-0937 and ZC22-0938) issued by Ventura County. County staff has carefully reviewed the concerns outlined in your letter. However, we do not find that the issues raised therein warrant summarily dismissing these appeals. Jurisdiction over the appeals now rests with the County of Ventura Planning Commission, and you may raise the same issues set forth in your letter to the Planning Commissioners for their consideration at the appeal hearing.

Please contact me at 805-654-5192 or at mindy.fogg@ventura.org if you have any additional questions about this process.

Sincerely,

_____
Mindy Fogg, Planning Manager
Commercial & Industrial Permitting Section
Ventura County Planning Division

c: Haley Ehlers, Climate First: Replacing Oil & Gas

EXHIBIT "C"

To Clerk of The Board of Supervisors Letter regarding the February 28, 2023 Ventura County Board of Supervisors Meeting - Agenda Item No. 72, regarding Case Nos. PL22-0152 (ZC22-0937) and PL22-0153 (ZC22-0938).

(Prioritization scores modeled by Wunna Aung, Air Quality Engineer for VCAPCD, sent to ABA on 2-15-23, plus CAPCOA Air Toxic Hot Spots Program excerpts)

Facility Data Entry Screen

File Edit Previous Record Next Record Go To Settings Help

Editing Facility - ID: 66 | ABA ENERGY CORP MAULHARDT LEASE OXNARD OILFIELD | Year: 2021

- Facility ID
- Facility Address & Location
- Contact & Employee Info
- Building & Property Dimensions
- Release Data (10)
- Device Data (10)
  - Process Data (11)
    - Emission Data
      - Toxics (127)
      - Criteria (49)
      - Other (0)
- Area Designation
- Supplemental Data (0)
- Priority Calculation
- Fees & Reporting
- Additional Info
- Last Updated

Priority Calculation

Calculation Procedures

☑ Emissions and Potency Procedure ☑ Dispersion Adjustment Procedure

Receptor Prioximity

Receptor Proximity (m): 600 Help

Proximity Method: Proximity manually edited by user as 600

Advanced Options

☑ Apply Priority, Proximity, and Noncancer Adjustments Edit

☐ Apply Noninhalation Adjustments (Multipathway Pollutants) Edit Help

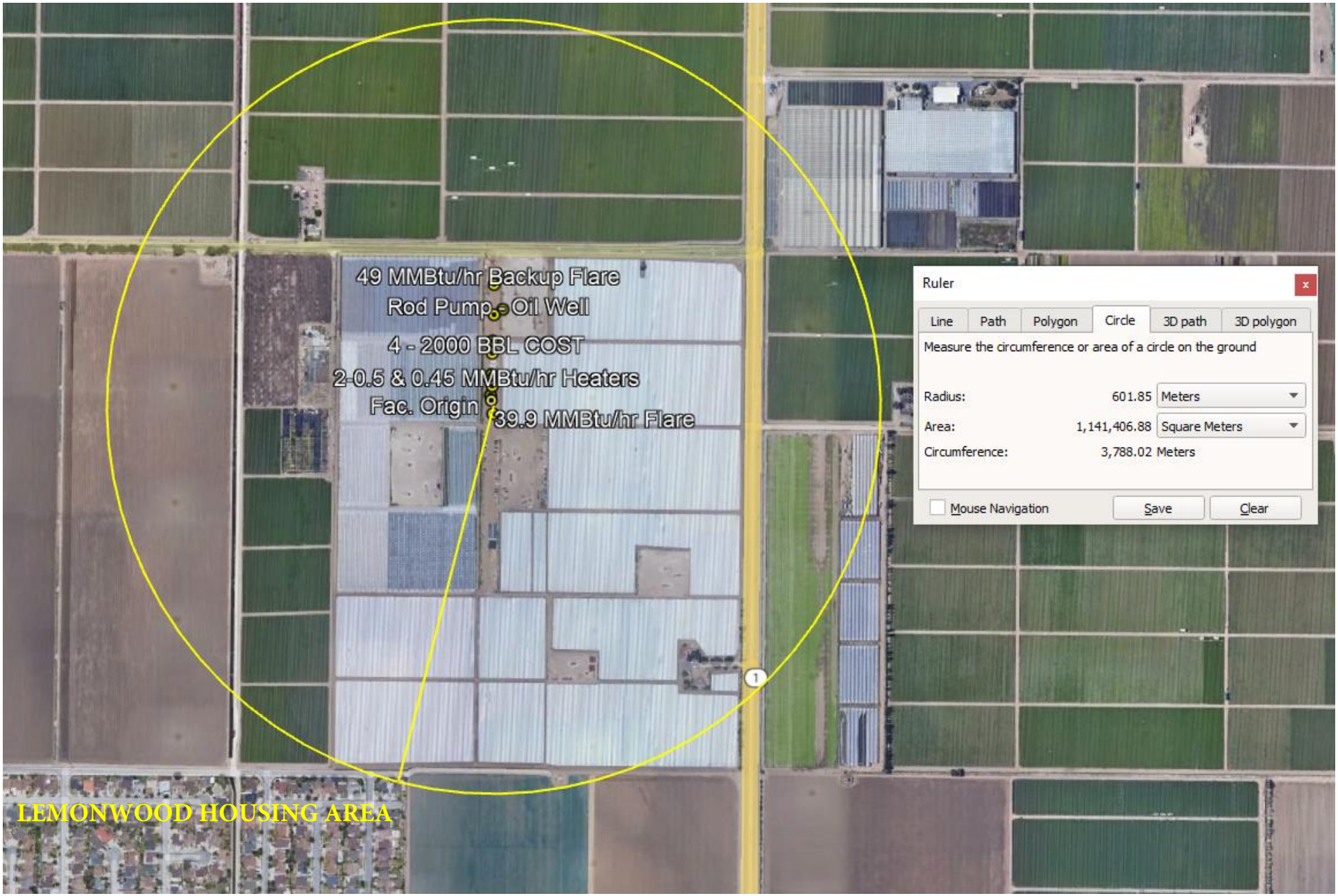
Priority Score

Calculate

Highest Score 0.3619

Score Breakdown

Cancer Priority Score, Emissions and Potency Procedure	0.3619
Noncancer Priority Score, Emissions and Potency Procedure	0.3375
Acute Priority Score, Emissions and Potency Procedure	0.3366
Chronic Priority Score, Emissions and Potency Procedure	0.0127
Cancer Priority Score, Dispersion Adjustment Procedure	0.3609
Noncancer Priority Score, Dispersion Adjustment Procedure	0.3375
Acute Priority Score, Dispersion Adjustment Procedure	0.3366


49 MMBtu/hr Backup Flare
Rod Pump
Oil Well
4 - 2000 BBL COST
2-0.5 & 0.45 MMBtu/hr Heaters
Fac. Origin
39.9 MMBtu/hr Flare
LEMONWOOD HOUSING AREA
Ruler
Line
Path
Polygon
Circle
3D path
3D polygon
Measure the circumference or area of a circle on the ground
Radius: 601.85 Meters
Area: 1,141,406.88 Square Meters
Circumference: 3,788.02 Meters
Mouse Navigation
Save
Clear

CAPCOA
Air Toxic "Hot Spots" Program

Facility Prioritization Guidelines

CAPCOA
CALIFORNIA AIR POLLUTION CONTROL OFFICERS ASSOCIATION

Prepared by:

California Air Pollution Control Officers Association (CAPCOA)

Air Toxics and Risk Managers Committee (TARMAC)

August 2016

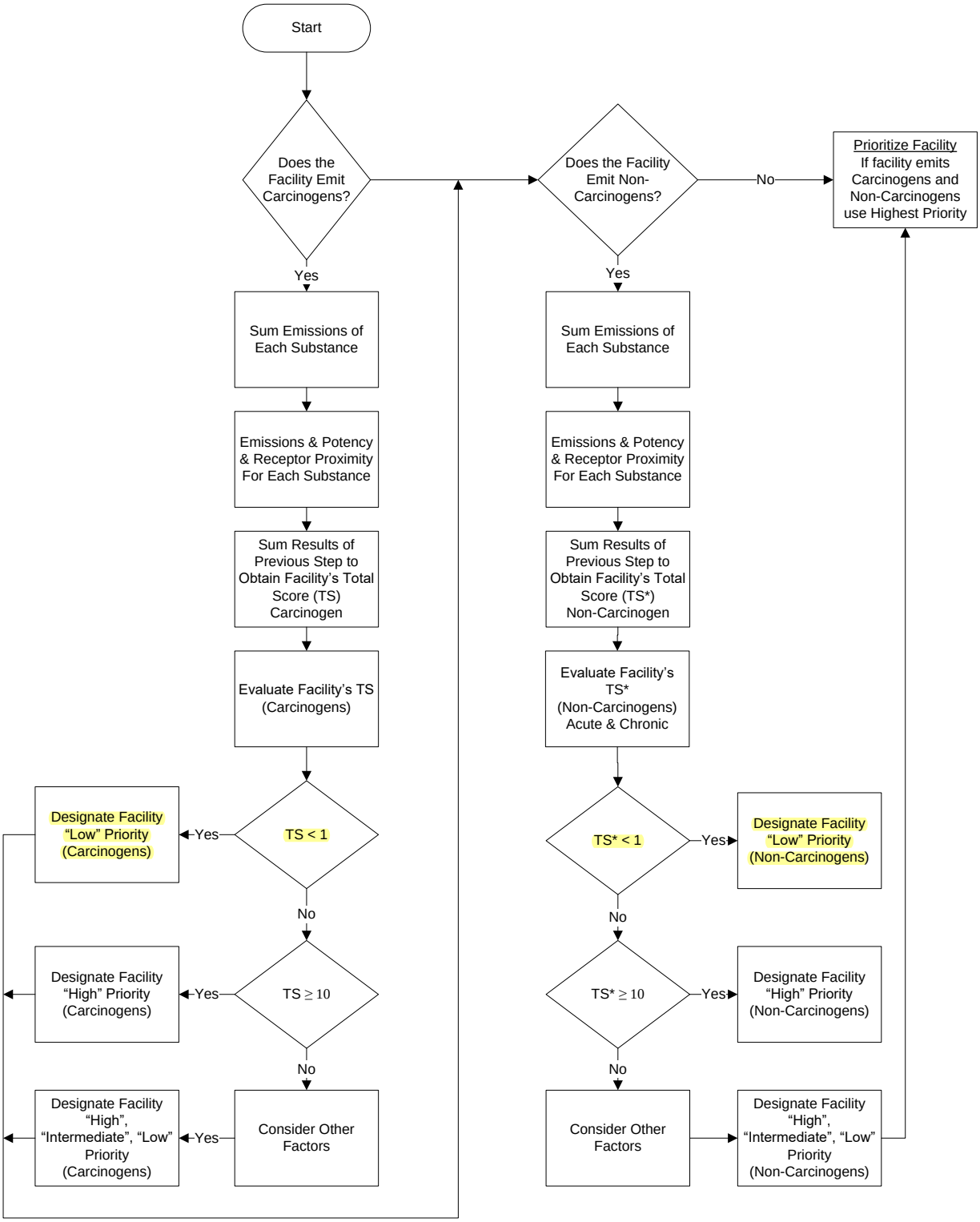


Figure II-1 The Emissions and Potency Procedure [a]

a - The thresholds used in this figure are examples. The district may select thresholds that vary from those presented.

1 are expected to represent the lower end of the spectrum in terms of receptor impacts. However, because the low priority threshold is based on a conservative scenario, it is possible that facilities with higher scores than the threshold may not significantly impact receptors.

c. Evaluate the facilities that have not been designated as high or low priority. Because there may be facilities that: 1) have scores between 1 and 10; and 2) may impact receptors, it is necessary to consider other factors for prioritization. The factors that are provided below, as well as any additional factors identified by the district, may be used to determine if any of the remaining facilities should be designated as high priority. The factors to consider may include:

- population density near the facility
- proximity of sensitive receptors to the facility
- receptor proximity less than 50 meters
- elevated receptors/complex terrain
- frequency of nuisance violations
- importance of non-inhalation pathway for substance(s) emitted by the facility
- presence of non-stack (fugitive) emissions

Determine if any factors or combination of factors justify designating the facility as high priority. The basis for designating such facilities as high priority is provided by the district. The remaining facilities are designated as intermediate priority.

Table II-1
Evaluation of Facility Scores (Carcinogenic Effects) [a]

Facility Score	Facility Designation
TS ≥ 10	High Priority
TS < 1	Low Priority
1 ≤ TS < 10	Consider Other Factors/Intermediate Priority

a - The thresholds in this table are presented as examples. The district may select thresholds that differ from those presented.

D. Step 3 - Score Facilities (Non-carcinogenic Acute & Chronic Effects)

If substances, as listed in Appendix B (list of substances for emission quantification), with non-carcinogenic effects are not emitted from the facility, go to step 5. For each facility, divide total emissions for each substance by the appropriate reference exposure level. The result of this calculation is then multiplied by the receptor proximity and normalization factors. Express emissions in maximum pounds per hour (max. lbs/hr) for substances associated with acute toxicity and average pounds per hour (lbs/hr) for substances associated with chronic toxicity. There are two options for calculating the total score (TS^*).

Determine if any factors or combination of factors justify designating the facility as high priority. The basis for designating such facilities as high priority is provided by the district. The remaining facilities are designated as intermediate priority.

Table II-2
Evaluation of Facility Scores (Non-Carcinogenic Effects) [a]

Facility Score	Facility Designation
TS* > 10	High Priority
TS* < 1	Low Priority
1 < TS* < 10	Consider Other Factors/Intermediate Priority

a - The thresholds in this table are presented as examples. The district may select thresholds that differ from those presented.

F. Step 5 - Prioritize Facilities

Each facility is prioritized as either high, intermediate or low. If a facility emits only substances with carcinogenic or non-carcinogenic effects, the priority of the facility is that determined during step 2 or 4, respectively. If a facility emits a substance(s) with carcinogenic and non-carcinogenic health effects, the facility is prioritized with the highest of the three priorities received from steps 2 and 4.

As part of the evaluation of facility scores, these procedures suggest a high priority threshold on the order of 10 to 100. However, the district may select a high priority threshold that is lower than 10 or greater than 100. The bases for the suggested thresholds are provided in Appendix D. As an example of how the procedures are to be used, the priority designation suggestions a, b, and c as well as Table II-2 and Figure II-1 use a low priority threshold of 1 and a high priority threshold of 10.

a. If the facility's TS* (acute or chronic) is equal to or greater than 10, designate the facility as high priority. Because the threshold for high priority is based on a conservative modeling scenario, it is possible that facilities with higher scores than the threshold may not significantly impact receptors.

b. If the facility's TS* (acute and chronic) is below 1, designate the facility as low priority. Because the threshold is based on a conservative modeling scenario, facilities with TS*s below 1 are expected to represent the lower end of the spectrum in terms of receptor impacts. However, because the low priority threshold is based on a conservative modeling scenario, facilities with higher scores may not significantly impact receptors.

c. Evaluate the facilities that have not been designated as high or low priority. Because there may be facilities that: 1) have scores between 1 and 10; and 2) may impact receptors, it is necessary to consider other factors for prioritization. The factors that are provided below, as well as any additional factors identified by the district, may be used to determine if any of the remaining facilities should be designated as high priority. The factors to consider may include:

    - population density near the facility
    - proximity of sensitive receptors to the facility
    - receptor proximity less than 50 meters
    - elevated receptors/complex terrain
    - frequency of nuisance violations
    - importance of non-inhalation pathway for substance(s) emitted by the facility
    - presence of non-stack (fugitive) emissions