



**Bullet-point Summary of CFROG's 2.24.23
Amended Comment Letter in Opposition to ABA
Energy Corp.'s Board of Supervisors Appeal
Seeking Approval of Two Oil Drilling Zoning
Clearances (Agenda Item 72, Case #s: PL22-0152 & PL22-0153)**

Factual & Procedural Background:

- On August 19, 2022, oil operator ABA filed with the Planning Division two Zoning Clearance Applications to obtain authorization to redrill two separate oil wells through a technique called "sidetracking." ("Applications")
 - The new redrilling would extract oil from wells that are currently idle and abandoned.
 - Sidetracking drilling operations consist of drilling a secondary wellbore from an original wellbore to redrill the well to a new target.
 - The proposed operations "will include the sidetracked wellbore and the ancillary equipment used for the wellbore such as the pumping unit/pad, the electrical lines, the oil/gas scrubber, and the pipeline from the wellhead to ABA's existing facilities."
- ABA also submitted applications to redrill and sidetrack 21 additional wells and received Zoning Clearances by the Planning Director on November 18, 2022.
 - The project altogether amounts to a vast oil drilling expansion of 23 wells in an Environmental Justice community in Oxnard.
- The Planning Director granted both Applications and issued the Zoning Clearances for two (2) oil drilling projects (Case #s: PL22-0152 & PL22-0153).
- Upon, CFROG's appeal, the Planning Commission denied the Applications and the Zoning Clearances ("ZC") were nullified.
- ABA appealed to the Board of Supervisors ("BOS").

Legal & Determination by the Board of Supervisors:

- The BOS will review ABA's Applications for oil drilling Zoning Clearances *de novo*, as if ABA is submitting its Applications to the County for the first time.
 - The Supervisors therefore carry a heightened duty to undertake a faithful review and make a legal determination.
- ABA's Applications fail to satisfy long-standing, basic legal requirements.
- The BOS must uphold the rule of law and enforce the County Ordinance Code.
- The Oil Operator's Applications are substantially incomplete under the Ordinance Code and must be rejected and not processed.
 - The BOS therefore cannot proceed to undertake the required objective ministerial analysis and are precluded from making a finding of compliance.
- Even if the Applications are accepted, the information provided on the proposed drilling projects cannot objectively satisfy legal requirements and the County therefore cannot certify legal compliance.
 - **The issuance of Zoning Clearances would amount to a "rubber-stamping" of ABA's Applications, in violation of the County's duty.**

Analysis:

- A ministerial review under the Non-Coastal Zoning Ordinance requires the BOS to independently assess and decide if:
 - (1) the Oil Operator ZC Applications “contain[] in a full, true and correct form the required materials and information prescribed by the forms supplied by the Ventura County Planning Division” and “conform[] to the requirements of” the Code? (Sections 8111-2.1; 8111-2.3); and
 - (2) Applying the facts to the law, the ZC Applications objectively satisfy all requirements:
 - a. Comply with the terms and conditions of Special Use Permit #672;
 - b. Comply with the standards of Division 8, Chapter 1 and 2 of the Ordinance Code;
 - c. Are compatible with the policies and land use designations in the General Plan;
 - d. No violation exists on the land at issue;
 - e. Consistent with conditions and requirements established by specified County and federal water standards. (Section 8111-1.1.1(b))
- A ministerial decision requires the BOS to objectively ensure each requirement is met, there is no discretion to require less nor more.
- Because oil drilling operations inherently create health and safety risks, it is necessary for the County to conduct complete analysis and research to reach a substantiated determination.
 - “Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.” (Cal. Gov. Code § 815.6)
 - The Ordinance provides that while “Zoning Clearances applications may take up to 30 days to be processed and issued[,]” “[a]dditional time may be required if project information . . . requires further analysis or research[.]”
 - County staff may “refer any application [] to an independent and qualified consultant for review and evaluation of issues beyond the expertise or staffing capabilities of the County,” with “[t]he costs . . . borne by the applicant[.]” (Section 8111-2.1)

(1) Numerous Legal Deficiencies of ABA's ZC Applications Require they be Rejected:

- Oil operator ZA applications must “contain[] in a full, true and correct form the required materials and information prescribed by the forms[]” as “determined by the Planning Division[.]” (Sections 8111-2.1, 8111-2.3)
- The Ordinance Code requires the County to reject an application if it does not provide complete and full information and content as required by Application Instructions and Ordinance Code. (Sections 8111-2.1, 8111-2.3).
 - a. Permit Conditions: ABA fails to demonstrate compliance w/ permit conditions
 - **ABA is required to “demonstrate how the operator is in compliance with each condition[]”** of SUP 672. ABA instead provides promissory, ambiguous, non-responsive, and/or incomplete responses.

- i. *Condition 5:* "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."
 - Rather than demonstrate compliance, ABA only *promises* to comply by stating that it "will" do these things
 - It also states that "drilling and production operations will be conducted using good oil field practices."
 - "Good" is a less stringent standard than what is required: "best accepted practices" and "proven technological improvements."
 - ii. *Condition 8:* "all water, mud, oil, or any other fluid, semi-fluid, . . . which is removed from 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."
 - ABA again simply promises that it "will" comply
 - iii. *Condition 10:* ABA "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."
 - Rather than show compliance, ABA identifies CalGEM as the state authority charged with implementing state laws. This non-responsive statement.
 - iv. *Condition 1:* ABA "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."
 - Rather than show compliance, ABA's' non-responsive statement asserts that "CalGEM will not issue the necessary approval and regulatory clearance for the drilling of said well until permittee has demonstrated" compliance.
 - v. *Condition 13:* ABA "shall comply with all conditions of the Ventura County Ordinance Code applicable to this permit."
 - ABA fails to show compliance, and instead that it will *only* comply with those Code conditions that "existed at issuance of SUP 672."
 - This response: (1) indicates that ABA does *not* comply with the terms of Condition 13, (2) is an improper attempt to unilaterally modify Condition 13 to narrow its legal obligations; (2) fails to demonstrate compliance with the Code conditions it claims to comply with.
- b. *Site Plans: fail to provide required site plans.*
- ABA's Applications include hypothetical diagrams and photos of the "rig layout" and "pumping unit layout," so compliance cannot be found

- ABA states it will decide the actual plans “just prior to the actual time of operational commencement.”
 - ABA *does not know* its actual plans because it will decide at some unknown future point, and “just prior” to commencing the proposed operations.

c. General Plan: complete omission, cannot find compliance

(2) The County must deny the requested Zoning Clearances because ABA's Applications cannot objectively satisfy mandatory legal requirements.

- Because the Applications are substantially incomplete, the BOS cannot assess the given set of facts/required information against the legal requirements in the “prescribed manner in obedience to the mandate of legal authority[.]” (Section 8102-0)
 - a. *ZC Applications fail to objectively comply with Permit Conditions.*
 - ABA's incomplete, non-responsive, promissory, and vague responses to demonstrate compliance with permit conditions necessarily preclude an objective assessment and determination of compliance.
 - A certification of compliance will not be substantiated.
 - b. *ZC Applications fail to objectively comply with Site Plan requirements.*
 - Because the Applications state that the site plans are undetermined and will be known “just prior to” commencing operations, the BOS cannot objectively assess and determine site plan compliance.
 - c. *ZC Applications fail to objectively comply with County Ordinance Code requirements.*
 - The BOS must reject:
 - ABA's improper attempt to unilaterally limit required Ordinance Code compliance. The BOS does not have the authority to change or limit the language of the SUP 672 Conditions via a zoning clearance review; and
 - ABA's promissory statement that it “will comply.”
 - d. *ZC Applications fail to objectively ensure compliance with General Plan requirements.*
 - The proposed oil operation must be “compatible with policies and land use designations specified in the General Plan.”
 - The oil operations (and the 21 Zoning Clearances) are inconsistent with GP, including with many Environmental Justice policies.

Requested Relief:

- Deny ABA's Appeal;
- Direct the Planning Director to faithfully discharge its duty to ensure that all oil and gas ZC applications comply prior to accepting them, and to completely assess and ensure compliance with each legal requirement, and refer assessments to expert consultants; and
- Direct the Planning Commission to reevaluate ABA's 21 other drilling applications and ensure their compliance as stated above.