



November 23, 2021

VIA EMAIL (shareholderproposals@sec.gov)

SEC Division of Corporation Finance
Office of Chief Counsel
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Texas Pacific Land Corporation
Stockholder Proposal of The Michael Kelly and Marianne Paulsen Revocable
Trust 2016

Ladies and Gentlemen:

This letter is submitted by Texas Pacific Land Corporation, a Delaware corporation (the “Company”) pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, to request confirmation that the staff (the “Staff”) of the Securities and Exchange Commission (the “Commission” or the “SEC”) will not recommend enforcement action if, in reliance on Rule 14a-8, the Company excludes from the proxy materials for the Company’s 2021 Annual Meeting of Stockholders (the “Annual Meeting”) a proposal submitted by The Michael Kelly and Marianne Paulsen Revocable Trust 2016 (the “Trust”) represented by Michael A. Kelly, trustee of the Trust (the “Proponent”) and received by the Company on November 15, 2021 (the “Proposal”).

Pursuant to Rule 14a-8(j),

- (a) a copy of the Proposal is attached hereto as Exhibit A; and
- (b) a copy of this letter is being sent to the Proponent.

The Company filed its definitive proxy materials for the Annual Meeting on October 4, 2021. However, on October 29, 2021, the Company announced a postponement of the Annual Meeting to a new date of December 29, 2021. The postponement of the meeting will require the Company to file revised proxy materials and allow the Staff additional time to review this letter, given that the Proposal was submitted after the initial filing of the definitive proxy materials for the Annual Meeting. Due to the timing of receipt of the Proposal, the Company was unable to submit this letter prior to 80 calendar days before the Company filed its definitive 2021 proxy materials.

The Annual Meeting will be the Company’s first annual meeting following its reorganization in January 2021, as further described in Part II below. The Company did not hold an annual meeting in 2020. Pursuant to *Staff Legal Bulletin No. 14D* (Nov. 7, 2008), this letter and its exhibits are being submitted via email to shareholderproposals@sec.gov.

The Proposal and related supporting statement reads as follows:

PROPOSAL

Whereas our Board is comprised in the majority of individuals from or recommended by the former Trustees, and the former Trustees consistently opposed unitholder proposals that represented a majority of the unitholders, be it[.]

Resolved that The Texas Pacific Land Corporation Board require unanimous approval for all legal and professional fees or expenses associated with matters unrelated to the Company's day to day land royalty or water business operations.

SUPPORTING STATEMENT

The Board is in the majority comprised of individuals proposed and approved by the former Trustees, who themselves are also new Board members. The former Trustees strenuously opposed certain unitholder proposals, before agreement with the opposing unitholders was reached in 2020. The former Trustees spent the Trust's assets to support their interests, and today there can be no assurance that such expenditures would not reoccur as the former Trustees and their chosen appointees to the Board remain in the majority of the Board.

Legal and Professional Fees under the former Trustees were \$0.8 million in 2016; \$3.5 million in 2017; \$2.5 million in 2018; and during the time mentioned above, soared to \$16.4 million in 2019, and \$10.8 million in 2020 according to S&P Global IQ.

The nature of this proposal transcends the ordinary course of business, and does not in any manner seek to influence or micromanage the Company with respect to legal or professional fees pertaining to day to day decisions. It does seek to ensure the integrity of shareholder interests, and we ask that the Board support this resolution, in performance of their fiducial duty to shareholders. It is axiomatic that Board actions inure to the benefit of shareholders.

BASES FOR EXCLUSION OF THE PROPOSAL

The Company believes that it may omit the Proposal from its proxy materials for the 2021 Annual Meeting pursuant to:

- Rule 14a-8(e) because the Proposal was received by the Company after the submission deadline;
- Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations;
- Rule 14a-8(i)(3) because the Proposal is vague and indefinite; and
- Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal.

I. The Proposal May Be Excluded Under Rule 14a-8(e) Because It was Received by the Company After the Submission Deadline

Background

On January 11, 2021, the Company completed its reorganization from a business trust, organized under a Declaration of Trust dated February 1, 1888 (the “Declaration of Trust”), to a corporation (the “Corporate Reorganization”) and changed its name from Texas Pacific Land Trust (the “Trust”) to Texas Pacific Land Corporation. The Trust was a publicly-traded company for almost 100 years, and after the Corporate Reorganization, the common stock of the Company, continued trading on the New York Stock Exchange. However, pursuant to the Declaration of Trust, the Trust was not required to hold regular meetings of its stockholders and only held special meetings of stockholders when a new trustee was to be elected to replace a trustee who had resigned or died. The Trust did not hold a meeting of stockholders in 2020 and the upcoming Annual Meeting will be the Company’s first regular meeting of stockholders.

Rule 14a-8(e)

Rule 14a-8(e) addresses the deadline for submitting stockholder proposals. Rule 14a-8(e)(2) sets forth the method of calculation of the deadline for a regularly scheduled meeting as follows (emphasis added):

“The proposal must be received at the company’s principal executive offices not less than 120 calendar days before the date of the company’s proxy statement released to shareholders in connection with the previous year’s annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year’s annual meeting has been changed by more than 30 days from the date of the previous year’s meeting, **then the deadline is a reasonable time before the company begins to print and send its proxy materials.**”

As the Company did not hold an annual meeting last year, the deadline for the submission of a stockholder proposal for the Annual Meeting under Rule 14a-8(e) is “a reasonable time before the company begins to print and send its proxy materials.”

The Company originally scheduled the Annual Meeting for November 16, 2021 and filed its proxy materials for such Annual Meeting on Monday, October 4, 2021. On October 29, 2021, the Company announced a postponement of the Annual Meeting to a new date of December 29, 2021. The Proposal was received on November 15, 2021, *42 days after* the Company’s proxy materials were originally filed with the Commission and printed. Because the Proposal was received after the Company filed its proxy materials for the Annual Meeting, and during the Company’s ongoing solicitation period for the Annual Meeting, it could not have been received in a timely manner under the standards of Rule 14a-8(e), even though the Company will be providing revised proxy materials to stockholders in connection with the new meeting date.

This conclusion is consistent with prior Staff decisions. In *Greyhound Lines, Inc.* (Jan. 8, 1999) the Staff granted no-action relief where the registrant received a shareholder proposal 14 days after the filing of preliminary proxy materials while the company was in the final stages before commencing its proxy solicitation. Similarly, in *BioPharmX Corporation* (July 27, 2016), the Staff granted no-action relief where the registrant received a shareholder proposal 33 days after filing its proxy materials. In the Company's situation, the Proposal was received 28 days after the Company originally filed its proxy materials. Similar to the decisions above, the Proposal was not received "a reasonable time before the company begins to print and send its proxy materials," and the Proposal is properly excludable under Rule 14a-8(e). Furthermore, when the Proposal was submitted on November 15, 2021, the Proponent had full knowledge of the December 29, 2021 Annual Meeting date and the new record date for the Annual Meeting of November 29, 2021. The Proponent could expect that the revised proxy materials for the Annual Meeting would be filed with the SEC and printed shortly after the record date, giving the Company only a short time to consider the Proposal before revised proxy materials would be filed and printed. These additional facts further support the conclusion that the Proposal is properly excludable under Rule 14a-8(e).

II. The Proposal May Be Excluded under Rule 14a-8(i)(7) Because It Relates to Ordinary Business Operations.

Rule 14a-8(i)(7) permits a company to omit a proposal from its proxy materials if the proposal "deals with matters relating to the company's ordinary business operations." The purpose of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." See *Release No. 34-40018* (May 21, 1998) (the "1998 Release"). As explained by the Commission, the term "ordinary business" in this context refers to "matters that are not necessarily 'ordinary' in the common meaning of the word, and is rooted in the corporate law concept of providing management with flexibility in directing certain core matters involving the company's business and operations." *Id.*

The 1998 Release explains that there are two central components of the ordinary business exclusion. First, as it relates to the subject matter of the proposal, "[c]ertain tasks are so fundamental to management's ability to run a company on a 'day-to-day basis' that they are not a proper subject matter for shareholder oversight." *Id.* The Commission has differentiated between these ordinary business matters and "significant social policy issues" that "transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." *Id.* The latter is not excludable as pertaining to ordinary business matters, and in assessing whether a particular proposal raises a "significant social policy issues," the Staff will review the terms of the proposal as a whole, including the supporting statement. *Id.*

Second, as it relates to the implementation of the subject matter of the proposal, the ability to exclude a proposal "relates to the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* As stated in *Staff Legal Bulletin No. 14L* (Nov. 3, 2021), the Staff will "focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or

management” while considering “the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic.”

The Proposal requires “unanimous approval for ‘all legal and professional fees or expenses’” associated with matters “unrelated to the Company’s day to day land royalty or water business operations.” As an initial clarification, the Company notes that its day-to-day operations involve more than its land royalty and water business. The Company also derives revenues from pipeline, power line and utility easements, commercial leases, material sales and seismic and temporary permits principally related to a variety of land uses, including midstream infrastructure projects and processing facilities as hydrocarbons are processed and transported to market. The Company may engage advisers and consultants to provide services related to any part of its business. The Company also notes that the Proposal does not raise a significant policy issue, but instead deals exclusively with the management and operation of the Company.

The Proposal clearly infringes on the authority of the Board and management to engage advisers and consultants and to compensate such advisers and consultants as deemed necessary and appropriate. The decision to retain advisers and consultants, and the compensation to be paid for such services, is clearly a matter fundamental to management’s ability to run the company and is not proper subject matter for shareholder oversight.

For instance, it is well established, through a long series of precedents, that shareholder proposals relating to auditor selection and audit engagement management constitute ordinary business operations for the purposes of Rule 14a-8(i)(7). The Staff has repeatedly affirmed this position, stating on many occasions that proposals concerning “management of the independent auditor’s engagement” may be excluded in reliance on Rule 14a-8(i)(7). In *ACE Limited* (Jan. 7, 2016), the Staff allowed the exclusion in reliance on Rule 14a-8(i)(7) of a proposal that provides that “the board shall require that the audit committee request proposals for the audit engagement no less than every eight years.” According to the Staff, such proposal related to *Ace’s* ordinary business operations, noting that it related “to selection of independent auditors or, more generally, management of the independent auditor’s engagement.”¹ Similarly, the Staff consistently allowed the exclusion of proposals relating to policies or practices of periodically seeking competitive bids from other public accounting firms for audit engagement. For example, *CA, Inc.* (May 3, 2012), where in its response, the Staff noted that the proposal requested “information about the company’s policies or practices of periodically considering audit firm rotation, seeking competitive bids from other public accounting firms for audit engagement, and assessing the risks that may be posed to the company by the long-tenured relationship of the audit firm with the company,” and that proposals concerning...management of the independent auditor’s engagement...are generally excludable under rule 14a-8(i)(7).² These precedents are also more broadly applicable to the retention and compensation of outside advisors generally, which is the focus of the Proposal.

¹ See also *Colgate-Palmolive Company* (Jan. 19, 2016) (same); *Intel Corporation* (Jan. 21, 2016) (same); *Baxter International Inc.* (Jan. 19, 2016) (same); *3M Company* (Jan. 16, 2016) (same);

² See also, *Computer Sciences Corporation* (May 3, 2012, *recon. denied* June 26, 2012). Following these principles, the Staff has concurred in the exclusion of proposals to require shareholder ratification of the independent auditor, see, e.g., *Rite-Aid Corp.* (Mar. 31, 2006); *The Charles Schwab Corporation* (Feb. 23, 2005); *Dell Inc.* (May 3, 2012);

Further, the Proposal appears to be an attempt to regulate the compensation of outside advisors and has no connection with the compensation paid to the Company's senior executives and directors. For this reason, prior Staff precedent related to the exclusion of proposals that concern the compensation of large classes of a company's employees under Rule 14a-8(i)(7) are instructive. For example, in *Apple Inc.* (Nov. 16, 2015), the Staff allowed the exclusion of a proposal requesting the company to "reform its compensation committee to include outside independent experts from the general public to adopt new compensation principles...such as unemployment, working hours and wage inequality" in reliance on Rule 14a-8(i)(7). In concurring, the Staff noted specifically that the proposal "related to compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors."³

Determining the compensation to be paid for legal and professional services rendered to the Company is a matter within the purview of the Company's ordinary business. Accordingly, and consistent with the precedents described above, the Proposal is excludable under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

III. The Proposal Is Excludable Under Rule 14a-8(i)(3) Because It Is Impermissibly Vague and Indefinite So as to Be Materially False and Misleading.

Rule 14a-8(i)(3) permits a company to exclude a shareholder proposal "if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." The Staff has determined that proposals may be excluded pursuant to Rule 14a-8(i)(3) where "the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders in voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." See *Staff Legal Bulletin 14B* (Sept. 15, 2004) ("SLB 14B"). The Staff has also noted that a proposal may be excludable when "any action ultimately taken by the Company upon implementation [of the proposal] could be significantly different from the actions envisioned by the stockholders voting on the proposal." See *Fuqua Industries, Inc.* (Mar. 12, 1991). In addition, the Staff has indicated that a proposal may be excludable under Rule 14a-8(i)(3) to the extent that that proposal fails to define key terms. See, e.g., *AT&T Inc.* (Feb. 21, 2014) (concurring in the exclusion of a proposal requesting a review of policies and procedures related to the "directors' moral, ethical and legal fiduciary duties and opportunities," where such phrase was undefined).

The Proposal is vague and misleading in several respects. First, it does not specify whose "unanimous approval" is being required for legal and professional fees associated with the matters

T. Rowe Price Group, Inc. (Jan. 19, 2016), and proposals requesting the company establish an audit firm rotation policy, see, e.g., *The Dow Chemical Company* (Jan. 4, 2012); *Prudential Financial, Inc.* (Jan. 4, 2012).

³ See also *McDonald's Corporation* (Mar. 18, 2015) (allowing exclusion of a proposal seeking to increase the minimum wage of employees to \$11.00); *Wal-Mart Stores, Inc.* (Mar. 15, 1999) (allowing exclusion of a proposal seeking a report on, among other things, policies to implement wage adjustments to ensure adequate purchasing power and a sustainable living wage); *Microsoft Corp.* (Sept. 17, 2013) (allowing exclusion of a proposal to "limit the average individual total compensation of senior management, executives and 'all other employees the board is charged with determining compensation for'"); *Prudential Bancorp, Inc.* (Nov. 12, 2009) (allowing exclusion of a proposal to prohibit the award of bonuses to any employee in any quarter in which the company loses money).

included in the Proposal. For example, it is unclear whether the “unanimous approval” is required of the Company’s board of directors (the “Board”) or any committee thereof, which as explained below, exercises oversight of certain of the Company’s consultants and advisors who render various legal and professional services to the Company. Under an alternate reading, the “unanimous approval” sought may even be understood to refer to the unanimous approval of stockholders.

Moreover, the Proposal explains no part of the phrase “all legal and professional fees or expenses associated with matters unrelated to the Company’s day to day land royalty or water business operations,” even though that phrase is the core of the Proposal. In particular, the Proposal provides no guidance as to what constitutes “legal and professional fees.” The vagueness is exacerbated by the failure of the Proposal to define the scope of individuals who renders what the Proponent considers “legal and professional” services to the Company. The Proposal also fails to explain what it considers to be fees paid for services “unrelated to the Company’s day to day land royalty or water business operations.” The Proposal provides no guidance as to how a shareholder might answer these questions.

Extensive precedent supports a conclusion that the Proposal is excludable as impermissibly vague and misleading. For example, the Staff has consistently allowed the exclusion of proposals that fail to provide any guidance on implementation and “would be subject to differing interpretation both by shareholders voting on the proposal and the [c]ompany’s board in implementing the proposal, if adopted, with the result that any action ultimately taken by the [c]ompany could be significantly different from the action envisioned by shareholders voting on the proposal.” *Exxon Corporation* (Jan. 29, 1992). *See, e.g., Apple, Inc.* (Dec. 6, 2019) (concurring in the exclusion of a proposal seeking to “improve [the] guiding principles of executive compensation” because “the Proposal lacks sufficient description about the changes, actions or ideas for the Company and its shareholders to consider that would potentially improve the guiding principles”); *Ebay, Inc.* (Apr. 10, 2019) (concurring in the exclusion of a proposal requesting that the company “reform the company’s executive compensation committee” because “neither shareholders nor the Company would be able to determine with any reasonable certainty the nature of the ‘reform’ the [p]roposal is requesting”); *Pfizer Inc.* (Dec. 22, 2014) (concurring in the exclusion of a proposal requesting that the chairman be an independent director whose only “nontrivial professional, familial or financial connection to the company or its CEO is the directorship,” because the scope of prohibited “connections” was unclear).

The Staff has also concurred in the exclusion of shareholder proposals that fail to define key terms. *See Moody’s Corp.* (Feb. 10, 2014) (concurring in the exclusion of a proposal when the term “ESG risk assessments” was not defined); *The Boeing Company* (Jan. 28, 2011, *recon. granted* Mar. 2, 2011) (concurring in the exclusion of a proposal because it failed to sufficiently explain the meaning of “executive pay rights”); *Dell Inc.* (Mar. 30, 2012) (concurring in the exclusion of a proposal that sought to provide proxy access to any shareholders who “satisfy SEC Rule 14a-8(b) eligibility requirements” because the eligibility requirements “represent a central aspect of the proposal” and were not adequately defined); *Exxon Mobil Corp.* (Mar. 21, 2011) (concurring in the exclusion of a proposal that failed to sufficiently explain “guidelines from the Global Reporting Initiative”).

Pursuant to the arguments and consistent with the precedents set forth above, the Proposal is excludable under Rule 14a-8(i)(3).

IV. The Proposal Is Excludable Under Rule 14a-8(i)(6) Because the Company Lacks the Power or Authority to Implement It.

Rule 14a-8(i)(6) allows exclusion of a proposal if the company lacks the power or authority to implement it. As discussed below, the Company lacks the power to implement the Proposal because, under certain interpretations of the Proposal, implementation would cause the Company to violate SEC rules relating to the duties of audit committees and compensation committees, as well as the listing standards of the New York Stock Exchange (the “NYSE”), where the Company’s shares of stock are traded.

Rules 10A-3 and 10C-1 of the Exchange Act require that the rules of each national securities exchange, including the NYSE, provide audit committees and compensation committees, respectively, of listed companies with certain authorities. Rule 10A-3 under the Exchange Act, as implemented by NYSE Listed Company Manual Section 303A.06, provides that the audit committee shall have the authority to appoint, *compensate*, and retain any registered public accounting firm. Rule 10C-1(b)(2), as implemented by NYSE Listed Company Manual Section 303A.05(c)(ii), provides that a compensation committee of a listed company “shall be directly responsible for the appointment, *compensation* and oversight of the work of any compensation consultant, independent legal counsel or other adviser retained by the compensation committee.” (emphasis added).

To the extent that the Proposal requests unanimous approval by the Board for certain compensation paid for legal and professional services, then it would require a body different from the audit committee or compensation committee to decide on matters relating to the compensation of the Company’s independent auditors or compensation consultant, independent legal counsel, or other adviser, and the implementation of the Proposal would cause the Company to violate Rules 10A-3 and 10C-1 of the Exchange Act and NYSE Listed Company Manual Sections 303A.06 and 303A.05(c)(ii). The Staff has previously allowed exclusion of proposals in reliance on Rule 14a-8(i)(6) where implementation of the proposal would cause the company to be in violation of the listing standards of the exchange on which the company’s securities are listed. In *3M Co.* (Mar. 19, 2007), for example, the staff agreed that the company could exclude a proposal “requir[ing] that four of the nine (non-Chair) members of the Board of Directors of 3M shall current or former employees of the company with at least twenty years of service...” In its request for a no-action letter, *3M Co.* explained that, because the company’s chair was non-independent, implementation of the proposal would cause the company’s ten-member board to have five non-independent directors, resulting in “a clear violation of the New York Stock Exchange Listing Standards.” The Staff agreed that the proposal was excludable under Rule 14a-8(i)(6).

For the reasons discussed above, the Company should be able to exclude the Proposal because the Company lacks the power and authority to implement the Proposal.

CONCLUSION

The Company requests your confirmation that the Staff will not recommend any enforcement action to the Commission if the Proposal is excluded from the Company's 2021 proxy materials for any of the reasons described in this letter.

We would be happy to provide any additional information and answer any questions regarding this matter. Should you have any questions, please contact the undersigned at mdoobbs@texaspacific.com or (214) 969-5530.

Thank you for your consideration.

Sincerely,



Micheal W. Dobbs
Senior Vice President, General Counsel and
Secretary

Enclosures

cc: Michael Kelly and Marianne Paulsen Revocable Trust 2016
Attn: Michael Kelly

PII



EXHIBIT A

Micheal W Dobbs
Sr V.P., General Counsel
Texas Pacific Land Corporation
1700 Pacific Avenue
Dallas, TX 75201



Sir,

The Michael Kelly and Marianne Paulsen Revocable Trust 2016 have been shareholders in Texas Pacific Land Corporation since May 27, 2016. We appreciate the opportunity in the past to we have had to communicate with one or more of the now Board members with respect to a change to a C corporation, which we supported.

Please accept this as notice of our intention to file the enclosed shareholder proposal, which we submit for inclusion in the proxy statement for consideration and action at the next stockholders meeting in accordance with Rule14-a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. I, Michael Kelly, as Trustee or my designated representative will attend the annual shareholders meeting to move the resolution. I can be reached at [REDACTED] PII or by mail at [REDACTED] PII.

Verification of the Trust as beneficial owners is enclosed in the form of a letter from Janney Montgomery Scott LLC.

Cordially

Michael A. Kelly, Trustee

It is my understanding that the books prepared for shareholder proposals, I have copied the PBT.

SUPPORTING STATEMENT

The Board is in the majority comprised of individuals proposed and approved by the former Trustees, who themselves are also new Board members. The former Trustees strenuously opposed certain unitholder proposals, before agreement with the opposing unitholders was reached in 2020. The former Trustees spent the Trust's assets to support their interests, and today there can be no assurance that such expenditures would not reoccur as the former Trustees and their chosen appointees to the Board remain in the majority of the Board.

Legal and Professional Fees under the former Trustees were \$0.8 million in 2016; \$3.5 million in 2017; \$2.5 million in 2018; and during the time mentioned above, soared to \$16.4 million in 2019, and \$10.8 million in 2020 according to S&P Global IQ.

The nature of this proposal transcends the ordinary course of business, and does not in any manner seek to influence or micromanage the Company with respect to legal or professional fees pertaining to day to day decisions. It does seek to ensure the integrity of shareholder interests, and we ask that the Board support this resolution, in performance of their fiducial duty to shareholders. It is axiomatic that Board actions inure to the benefit of shareholders.

Whereas our Board is comprised in the majority of individuals from or recommended by the former Trustees, and the former Trustees consistently opposed unitholder proposals that represented a majority of the unitholders, be it

Resolved that The Texas Pacific Land Corporation Board require unanimous approval for all legal and professional fees or expenses associated with matters unrelated to the Company's day to day land royalty or water business operations.