Katherine Douglas General Public Comment

LATE DIST

From:	Linda Krop <lkrop@environmentaldefensecenter.org>
Sent:	Friday, March 7, 2025 3:14 PM
To:	sbcob
Cc:	Rachel Van Mullem; Plowman, Lisa; Briggs, Errin; Jeremy Frankel; Jeremy Frankel; Tara Rengifo
Subject:	EDC letter responding to Sable's February 26letter re effect of SBC BOS vote
Attachments:	EDC Response to Sable letter re SBC BOS vote_2025_03_07_FINAL.pdf

Dear Chair Capps and Santa Barbara County Board of Supervisors,
Please see attached letter, submitted in response to Sable's February 26 letter regarding the effect of the Board's February 25 tie vote.
Thank you for your consideration,
LK

environmental DEFENSE CENTER

LINDA KROP (she/her/hers)
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We recognize that EDC sits on occupied, unceded, stolen lands of the Chumash Peoples, on Shmuwich Territory, who have called this area home for time immemorial. We commit today to make space to elevate indigenous voices and support our local Chumash and indigenous communities in our work to protect our environment.

environmental
DEFENSE CENTER

March 7, 2025

Chair Laura Capps
Santa Barbara County Board of Supervisors
105 East Anapamu Street
Santa Barbara, CA 93101
Via email to: sbcob@countyofsb.org

Re: EDC Response to Sable Offshore Corp. February 26 Letter Regarding Board of Supervisors' Tie Vote on the Change of Owner, Operator, and Guarantor (File No. 25-00144)

Dear Chair Capps and Honorable Supervisors:

The Environmental Defense Center ("EDC"), on behalf of its clients Get Oil Out! ("GOO!"), Santa Barbara County Action Network ("SBCAN"), and EDC (collectively, "Appellants"), provides this response to the letter dated February 26, 2025, submitted by counsel for Sable Offshore Corp. ("Sable" or "Applicant") to Director Lisa Plowman (hereinafter, "Sable Letter") regarding the effect of the Board of Supervisors' ("Board") tie vote at the February 25 hearing concerning the requested Change of Owner, Operator, and Guarantor. Appellants previously submitted a letter to the Board on March 1 demonstrating that a tie vote on a de novo appeal does not affirm the lower body's decision. The Sable Letter is unavailing and does not change this conclusion for the reasons set forth herein.

I. County Counsel is on Record Stating That "No Action" by the Board Neither Affirms nor Reverses a Planning Commission Decision.

The Sable Letter references a couple of news articles to support the unfounded allegation that the County has a "past practice" of leaving the Planning Commission's decision intact after a tie vote by the Board. (Sable Letter at 3) This is simply not true.

In particular, the Sable Letter misrepresents that the following statement in the Santa Barbara Independent was a direct quote of County Counsel, "The Planning Commission's denial of the project remains in place." (*Id.*) County Counsel did not make this statement. Rather, at the August 22, 2023 hearing, upon a 2-2 vote by the Board on a de novo appeal of the Planning Commission's April 26, 2023 denial of the Existing Oil Lines 901/903 Valve Upgrade Project

Amendment, **Santa Barbara County Counsel explicitly stated that "[t]his is no action by the Board so it neither affirms nor reverses the Planning Commission Decision."**[1] County Counsel further stated that "it is not a denial and it is also not an approval so that means that the applicant could try again...."[2]

II. *Grist Creek Aggregates, LLC* and *Today's Fresh Start, Inc.* are Not Instructive.

The Sable Letter relies on *Grist Creek Aggregates, LLC v. Superior Court* (2017) 12 Cal. App. 5th 979 and *Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2011) 128 Cal. Rptr. 3d 822, 839, *review granted and opinion superseded,* 262 P.3d 854 (Cal. 2011), *and aff'd,* (2013) 57 Cal. 4th 197, to support the contention that no action by the Board at the February 25 hearing affirmed the Planning Commission's decision. (Sable Letter at 2) Neither case supports Applicant's position.

First, the *Grist Creek Aggregates, LLC* case is distinguishable on several grounds. At the outset, the court emphasized that the issue in *Grist Creek Aggregates, LLC* was very narrow, i.e., "[w]hat was the legal effect of the Hearing Board's tie vote on Friends' challenge to the District's approval of the November [Authority to Construct permit]?" *Grist Creek Aggregates, LLC*, 12 Cal. App. 5th at 986. The court held that "*[i]n the statutory and procedural context presented here*, the tie vote meant that the Hearing Board effectively allowed the November ATC to stand, and the outcome of not setting aside the November ATC may be reviewed by way of a writ petition in the trial court." *Id.* at 992 (emphasis added). Critically, however, the parties in *Grist Creek Aggregates, LLC* "agree[d] that the effect of the tie vote was to affirm the issuance of the November ATC." *Id.* at 986. This is a substantially different situation from the present matter where the heart of the controversy *is* the effect of the tie vote.

Additionally, an important distinguishing feature is that the court in *Grist Aggregates, LLC* did not analyze the effect of a de novo hearing. 12 Cal. App. 5th at 990. Instead, the case here is analogous to *Clark v. City of Hermosa Beach* (1996) 48 Cal. App. 4th 1152, 1175, *Anderson v. Pittenger* (1961) 197 Cal. App. 2d 188, 194-95, and *REA Enterprises v. California Coastal Zone Com.* (1975) 52 Cal. App. 3d 596, 605-09, in which the courts held that a tie vote during a de novo hearing results in no action and does not affirm the prior decision of the lower body. The Sable Letter does not address the import of a de novo vote, and completely ignores the *REA Enterprises* decision, which held that by "failure to obtain a majority vote, the action taken by the State Commission *effectuated a denial* of the issuance of the development permit." 52 Cal. App. 3d at 607 (emphasis added). The court's analysis in *REA Enterprises* is directly on point here given that the present controversy concerns the effect of the Board's tie vote at a de novo hearing.

Moreover, the court in *Grist Creek Aggregates, LLC* relied upon a depublished opinion, *Today's Fresh Start, Inc.* 12 Cal. App. 5th at 992. Besides being depublished, this case is

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[1] Board of Supervisors August 22, 2023, Hearing at 4:33:19-4:33:32.
[2] *Id.* at 4:34:11-4:34:40.

distinguishable because it did not involve de novo review. Instead, the role of the appeals board was to review the lower body's decision and determine whether its findings were supported by substantial evidence. Notably, the appeals board was *not* required to make independent factual findings. *Id.* at 839. In the Sable matter, however, the Board hearing was de novo and the Board was acting as an independent fact finder. Accordingly, this matter is more akin to *Clark,* in that the Board "does not merely review the commission's decision for error. Rather, the [Board] hears the matter de novo, takes additional evidence at a public hearing, and decides whether it should grant or deny the [application]." 48 Cal. App. 4th at 1175.

Based on the facts of the cases, *Grist Creek Aggregates, LLC* and *Today's Fresh Start, Inc.* are not applicable, and the County's de novo vote did not reinstate the Planning Commission's action.

III. The Board Appeal Hearing was De Novo, and the Board Had the Authority to Grant or Deny the Requested Transfer.

California courts have distinguished a judicial appeal, where a tie vote would leave the lower court's decision in place, from the administrative appeal context where the reviewing body can take evidence anew and *agree* on certain written findings. *Vedanta Soc. of S. California v. California Quartet, Ltd.* (2000) 84 Cal. App. 4th 517, 521. As noted above and in EDC's March 1 letter, several cases specific to the latter address situations where a de novo hearing was held on an administrative appeal, a tie vote resulted, and the courts held that the lower body's decision was not affirmed. *See Clark*, 48 Cal. App. 4th at 1176; *Anderson*, 197 Cal. App. 2d at 194-95; *REA Enterprises*, 52 Cal. App. 3d at 606-07.

The Sable Letter incorrectly analogizes the Board's role at the hearing with a "court of review," citing to *Vedanta Soc. of S. California.*[3] (Sable Letter at 2-3) This conclusion ignores the explicit language of the administrative appeal procedures under Chapter 25B-12: the administrative appeal "hearing shall be *de novo*...." (Santa Barbara County Code of Ordinances, Sec. 25B-12(b)(4) (emphasis added)) A de novo hearing in the administrative appeal context does not limit the appellate body to reviewing the lower body's decision for error. *Clark*, 48 Cal. App. 4th at 1175. Rather, the appellate body may take additional evidence, and it has the authority to grant or deny the application. *Id.*

Pursuant to the requirements of Chapter 25B-12, the Board was not asked by County Staff to uphold the Planning Commission's decision, but instead to grant de novo approval of the Change of Owner, Operator, and Guarantor and make the findings required under Chapter 25B *anew*. (Board Letter at 1) The Board was therefore reviewing the application anew without deference to the Planning Commission's decision. Consistent with *Clark, Andersen,* and *REA*

[3] Notably, the court in *Vedanta Soc. of S. California* determined that the statute at issue allowed the reviewing body to take evidence anew and agree on certain written findings, thereby requiring "conscious, affirmative action, not default adoption of the status quo by inertness." *Vedanta Soc. of S. California*, 84 Cal. App. 4th at 522.

Enterprises, the Board's tie vote constituted "no action" and was not an affirmance of the Planning Commission's decision.

The Sable Letter also erroneously claims that the Board had limited authority on review, citing to specific language in Chapter 25B-12 that "the board shall affirm, reverse, or modify the planning commission's decision at a public hearing." (Santa Barbara County Code of Ordinances, Chapter 25B-12(b)(4)) The court in *REA Enterprises* examined this exact language and determined "that the language 'affirm, reverse or modify' is broader in scope than 'grant or deny.'" *REA Enterprises*, 52 Cal. App. 3d at 609. The court reasoned that "affirm" could mean "either the granting or denial of the permit," "reverse" could "place in effect a contra-order of either a grant or denial," or "modify" could pertain to "conditions or extent of any grant of permit." *Id.* In doing so, the court determined "that the State Commission's jurisdiction [was] not limited to merely one of an appellate nature," and an affirmative vote to grant or deny the permit was required. *Id.* at 610. In failing to obtain a majority vote, the court concluded that "the action taken by the State Commission effectuated a *denial* of the issuance of the development permit." *Id.* at 607 (emphasis added).

Here, Chapter 25B-12 requires a de novo hearing by the Board, and the February 25 Board Letter recommended that the Board "grant de novo approval" of the transfer. (Board Letter at 1) Similar to *REA Enterprises*, the Board heard the matter de novo and a majority vote was required to grant approval of the transfer, which Sable did not obtain.

IV. Conclusion

Given the present circumstances, and consistent with long-standing case law, the Board's tie vote on a de novo appeal did not affirm the Planning Commission's decision.

Sincerely,

Linda Krop
Chief Counsel

Tara Rengifo
Senior Attorney

Cc: Rachel Van Mullem, County Counsel
Lisa Plowman, Director of Planning & Development
Errin Briggs, Energy, Minerals & Compliance Division Manager