

Katherine Douglas

Public Comment

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From: Linda Krop <lkrop@environmentaldefensecenter.org>
Sent: Saturday, March 1, 2025 9:53 AM
To: sbcob
Cc: Jeremy Frankel; Tara Rengifo; Maggie Hall; Rachel Van Mullem; Plowman, Lisa; Briggs, Errin
Subject: EDC letter regarding effect of Board 2-2 vote re Sable applications
Attachments: EDC Ltr to BOS re Feb 25 Denial of Sable Appl_2025_03_01_FINAL.pdf

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Dear Board of Supervisors,

On behalf of our clients, the Environmental Defense Center submits the attached letter regarding the effect of the Board's 2-2 vote regarding Sable's application for a change of owner, operator, and guarantor for the Santa Ynez Unit, Pacific Offshore Pipeline Company Gas Plant, and Las Flores Pipeline System Final Development Plan permits.

Thank you for your consideration,

LK



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.

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March 1, 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: Board of Supervisors' February 25, 2025 "No Action" Vote is a Denial and Did Not Affirm the Planning Commission's Approval of Sable's 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"), writes to confirm the effect of the Santa Barbara County ("County") Board of Supervisors' ("Board") non-majority, 2-2 vote on the following staff recommendations:

- a) Deny the appeals, Case Nos. 24APL-00025 and 24APL-00026;
- b) Make the required finding for approval of the Sable Offshore Corporation's Change of Owner, Operator, and Guarantor for the respective Santa Ynez Unit, Pacific Offshore Pipeline Company Gas Plant, and Las Flores Pipeline System Final Development Plan Permits, including California Environmental Quality Act ("CEQA") findings;
- c) Determine the requests are not a "project" that is subject to environmental review under CEQA Guidelines Section 15378(b)(5), finding that the actions consist of administrative activities of government that will not result in direct or indirect changes to the environment; and
- d) Grant *de novo* approval of the Change of Owner, Operator, and Guarantor for the respective Santa Ynez Unit, Pacific Offshore Pipeline Company Gas Plant, and Las Flores Pipeline System Final Development Plan Permits as detailed in this Board Letter and subject to the Conditions of Approval. (Board of Supervisors Agenda Letter at 1 (February 25, 2025) (hereinafter "Board Letter").

For the reasons detailed herein, an affirmative vote by a majority of the Board was required to affirm, reverse, or modify the Planning Commission's decision, and where the Board heard the matter *de novo*, the tie vote constituted no action, which effectively resulted in **denial** of Sable Offshore Corp.'s ("Sable") applications for Change in Owner, Operator, and Guarantor of the Final Development Plan Permits for the Santa Ynez Unit, Pacific Offshore Pipeline Company Gas Plant, and the Las Flores Pipeline System.

I. The Tie Vote Was No Action Pursuant to County Resolution 91-333 and Well-Settled Case Law.

Section VI in the Procedural Rules Governing Planning, Zoning and Subdivision Hearings Before the Santa Barbara County Board of Supervisors and Planning Commission governs voting and confirms that (1) "[a]ny action taken by the Board of Supervisors must be by a majority of the Board of Supervisors," and (2) the Board takes no action if a motion on an item fails to carry by the affirmative vote of a majority of the Board. (Resolution 91-333 at 6) County Counsel affirmed these procedures at the February 25 Board hearing after the tie vote, stating that "...in order for the Board to take any action the Board needs a majority vote so every action we take it's at least three votes and sometimes it's four votes so **on a tie vote that's no action of the Board.**"¹

The Board's procedures and County Counsel's declaration regarding the effect of a tie vote is consistent with Government Code section 25005 ("No act of the board shall be valid or binding unless a majority of all the members concur therein.") and several California cases (*e.g.*, *Clark v. City of Hermosa Beach* (1996) 48 Cal. App. 4th 1152, 1176, *as modified on denial of reh'g* (Sept. 11, 1996) ("[A]s a general rule an even division among members of an administrative agency results in no action." [internal citations omitted]) (hereinafter, *Clark*); *Anderson v. Pittenger* (1961) 197 Cal. App. 2d 188, 194-95 ("The tie vote was no action..." (hereinafter *Anderson*)).

Therefore, no action was taken by the Board at the February 25 hearing as a result of the tie vote.

II. The Tie Vote Did Not Affirm the Planning Commission's Approvals.

Several California cases support the conclusion that "no action" after a tie vote at a *de novo* hearing constitutes a denial of an application and does not affirm the lower body's decision.

In *Clark*, a city planning commission approved the plaintiff property owners' application for permits related to a building project, but the city council denied the permits by a three-to-two vote. 48 Cal.App.4th at 1159. However, the court determined that one councilmember had a conflict of interest, which deprived the Clarks of a fair hearing, among other things. *Id.* at 1173. The Clarks argued that without that councilmember's participation at the hearing, the vote would

¹ Board of Supervisors February 25, 2025, Hearing at 5:47:16-5:47:44.

have been 2-2 and affirmed the planning commission's decision to approve the project. *Id.* at 1175. The court disagreed, holding that pursuant to the city's municipal code, the city council did not review the commission's decision for error but instead "hears the matter de novo, takes additional evidence at a public hearing, and decides whether *it* should grant or deny the permit." *Id.*, emphasis in original. The court concluded that a tie vote by the city council would not affirm the underlying decision of a planning commission, citing *Anderson*, 197 Cal.App.2d at 194-95 and *REA Enterprises v. California Coastal Zone Com.* (1975) 52 Cal.App.3d 596, 605-09 (hereinafter *REA Enterprises*).²

In *Anderson*, the court held that the city council's tie vote constituted "no action" and "was not an affirmance of the order of the commission" on appeal from the planning commission's decision to grant a zoning variance. 197 Cal.App.2d at 194-95. There, the planning commission granted the requested zoning variance. *Id.* at 190. The city council, on its own motion, appealed the decision of the planning commission and ultimately denied the application for a variance. *Id.* The plaintiff petitioned the superior court for a review of the proceedings before the council and the lower court found that the council had exceeded its jurisdiction. *Id.* The city council appealed the trial court's judgment, contending "(1) That the council was not bound by the findings of fact made by the commission, but was entitled to hear the matter de novo. (2) That the 'tie vote' of the council on July 27, 1959, was not a decision upon the appeal and was not an affirmance of the decision of the commission," among others. *Id.* at 190. The court agreed with the city, reasoning that "[u]nder the provisions of the ordinance the council may hear the matter de novo and make its own determination as to whether the facts are such as to require, under the provisions of the zoning ordinance, the granting of the variance." *Id.* at 195. The court concluded that the council's tie vote constituted no action, and did not affirm the planning commission's prior decision.

Similarly, in *REA Enterprises*, the court found that the state commission's *de novo* tie vote on appeal from a regional commission's decision to issue a development permit did not meet the requirement of an affirmative majority vote to approve the permit. The court pointed out that "[b]y 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, followed in *Clark*, 48 Cal.App.4th at 1176.

Here, the Board's tie vote at the February 25 hearing constituted "no action" and did not affirm the Planning Commission's previous decision. Because the Board hearing was held *de novo*, the failure to approve Sable's application by affirmative majority vote effectively constitutes a denial. These conclusions are supported by the County's own Code and Board Letter.

Chapter 25B-12 in the County's Code expressly states that an appeal of a decision by the Planning Commission to approve an application is *de novo*. Chapter 25B-12(b)(4). The Board

² The court noted in a footnote that the lack of an affirmative vote can be construed as a denial. 48 Cal.App.4th at 1176, fn. 24.

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was therefore required to hear the matter without deference to the Planning Commission's findings, to review additional evidence, and to affirm, reverse, or modify the Planning Commission's decision at a public hearing. *Id.* The Board Letter, which contained Staff's recommended actions to the Board, asked the Board to make the required findings for approval and grant *de novo* approval of the Change of Owner, Operator, and Guarantor for the Santa Ynez Unit, Pacific Offshore Pipeline Company Gas Plant, and Las Flores Pipeline System Final Development Plan Permits. (Board Letter at 1) The Board Letter expressly states that these approvals must be made by majority vote. *Id.*

The scope of the Board's review was not whether to let the Planning Commission decision stand. The Board was required to reconsider all aspects of the application as if reviewing it for the first time and an approval required an affirmative majority vote, regardless of the action below. *See* Government Code section 25005; *Clark*, 48 Cal. App. 4th at 1176; *Anderson*, 197 Cal. App. 2d at 194-95; *REA Enterprises*, 52 Cal. App. 3d at 606-07.

III. The Board's Tie Vote Was Not an Affirmative Majority Vote to Approve the Change of Owner, Operator, and Guarantor and Therefore Constituted a Denial.

Accordingly, without a majority vote, the Board did not have the ability to approve the requested Change of Owner, Operator, and Guarantor and make the requisite findings on a *de novo* basis. A tie vote on a *de novo* appeal does not reinstate or affirm the lower body's decision.

In failing to obtain a majority vote, the Board's vote effectuated a denial of Sable's application for Change of Owner, Operator, and Guarantor.

Sincerely,



Linda Krop
Chief Counsel

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

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