



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

November 23, 2021

Micheal Dobbs
Texas Pacific Land Corporation
mdobbs@texaspacific.com

Re: Texas Pacific Land Corporation
Incoming letter dated November 1, 2021

Dear Mr. Dobbs:

This letter is in response to your correspondence dated November 1, 2021 concerning the shareholder proposal (the "Proposal") submitted to Texas Pacific Land Corporation (the "Company") by Gabriel Gliksberg (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

The Proposal states that the Company's board should be declassified, allowing for each board member to stand for election on an annual basis.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(8)(ii) to the extent it could, if implemented, disqualify directors previously elected from completing their terms on the board. However, the Proponent could cure this defect by making clear that the Proposal will not affect the unexpired terms of directors elected prior to its implementation. Accordingly, unless within seven calendar days after receiving this letter, the Proponent provides the Company with a revised proposal that states that it will not affect the unexpired terms of directors elected prior to its implementation, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(8)(ii).

We are unable to concur in your view that the Company may exclude the Proposal under any of rule 14a-8(e)(2), rule 14a-8(i)(2), or rule 14a-8(i)(6). Accordingly, we do not concur that the Company may omit the Proposal from its proxy materials in reliance on any of rule 14a-8(e)(2), rule 14a-8(i)(2), or rule 14a-8(i)(6).

Sincerely,

Rule 14a-8 Review Team

cc: Gabriel Gliksberg
c/o Thomas E. Redburn, Jr.
tredburn@lowenstein.com



November 16, 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 Gabriel Gliksberg

Ladies and Gentlemen:

On November 1, Texas Pacific Land Corporation, a Delaware corporation (the “Company”), submitted a letter (the “Original Company Letter”) to the Securities and Exchange Commission (the “Commission”) notifying the Commission that the Company intends to omit from its proxy materials for its 2021 Annual Meeting of Shareholders (the “Annual Meeting”) a shareholder proposal (the “Proposal”) submitted by Thomas E. Redburn, Jr. of Lowenstein Sandler LLP on behalf of Gabriel Gliksberg (the “Proponent”).

On November 12, 2021, the Proponent submitted a response to the Commission regarding the Original Company Letter (“Proponent Letter”). The Company is submitting this letter to respond to the Proponent Letter and reaffirm its request for confirmation that the staff of the Division of Corporation Finance (the “Staff”) will not recommend that enforcement action be taken by the Commission if the Company excludes the Proposal from its Annual Meeting proxy materials for the reasons set forth below, in addition to the reasons set forth in the Original Company Letter.

Pursuant to Staff Legal Bulletin No. 14D (November 7, 2008), this letter and its exhibits are being submitted via email to shareholderproposals@sec.gov. A copy of this letter and its exhibits will also be sent to the Proponent.

RESPONSE TO PROPONENT LETTER

The Company notes that the Proponent Letter makes the following statements to refute the arguments set forth in the Original Company Letter:

1. “The Proposal Is Timely Under Rules 14a-8(e) and (f)”
2. “The Commission Should Conclude the Company May Not Exclude the Proposal Under Rule 14a-8(i)(2) or 14a-8(i)(6) Because the Proposal Does Not Violate Delaware Law and the Company Can Implement the Proposal”

3. “The Commission Should Conclude the Proposal May Not Be Properly Excluded Under Rule 14a-8(i)(8) Because the Proposal Would Not Disqualify Previously Elected Board Members From Completing Their Terms on the Board”

Regarding Items 2 and 3 above, the Company believes that the Original Company Letter provides adequate support for the conclusion that, as written, the Proposal would (i) violate Rule 14a-8(i)(2) because implementing the Proposal would cause the Company to violate state law; (ii) violate Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal; and (iii) violate Rule 14a-8(i)(8) because implementing the proposal would disqualify previously elected directors from completing their terms on the board. Please refer to the Original Company Letter for the required supporting analysis.

Regarding Item 1 above, the Company also believes that the Original Company Letter provides adequate support that the Proposal may be excluded under Rule 14a-8(e) because it was received by the company after the submission deadline. However, the Company would like this opportunity to respond to a few erroneous arguments made in the Proponent Letter.

Background

For the Staff’s convenience, a summary of the facts leading up to the Company’s Annual Meeting are repeated here. 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 the proxy materials for such Annual Meeting on Monday, October 4, 2021. The Proposal was received at 9:44 p.m. on Friday, October 1, 2021. Although the Company did not formally announce a deadline for Rule 14a-8 stockholder proposals in connection with the Annual Meeting, there are two reasons, as further detailed in the Original Company Letter, supporting the premise that Proponent would reasonably know that October 1, 2021, was not a reasonable time before the Company printed and sent its proxy materials, and for these reasons, the Company believes that the Proposal was not timely received and is therefore properly excludable under Rule 14a-8(e) and (f).

The Proponent Letter attempts to refute the Company’s untimeliness argument by stating that “the proper reference point for assessing reasonableness is the new December 29 meeting date . . . giving it ample time (and certainly a reasonable time) to include the Proposal” (Proponent Letter at 1). However, the measurement point under Rule 14a-8(e) is “a reasonable time before the company begins to print and send its proxy materials,” NOT a reasonable time before the applicable meeting. Prior to filing proxy materials, the Company needs time to consider any shareholder proposal received and potential responses, address any deficiencies through the usual process, which can take up to 28 days¹, and then, if appropriate, submit a notice to the Commission of its intention to omit the proposal 80 days prior to filing the definitive proxy statement, pursuant to the deadline established in Rule 14a-8(j).

Additionally, in this case the Company has already printed and sent its proxy materials for the Annual Meeting, which occurred on Monday, October 4, 2021, after receipt of the Proposal on Friday evening, October 1, 2021. Even if 120 days before printing the proxy materials is longer than “reasonable” for purposes of Rule 14a-8(e), as the Proponent Letter asserts, certainly *one business day* before the printing is not reasonable.

The Proponent Letter cites *U.S. Liquids Inc.* (March 22, 2002) as in support of Proponent’s position that the Proposal was timely submitted. However, in *U.S. Liquids*, the company stated its intent to print the proxy materials around April 12, 2002. The company received the proposal in question on March 11, 2002. The company submitted its no-action request to the Commission on March 22, 2002 and received a response on April 3, 2002. The Commission clearly accelerated its review process to accommodate this particular situation. In the Company’s case, it would have been impossible to submit a no-action request regarding the Proposal and receive a response from the Commission in one business day. Also, given the passage of nearly twenty years, *U.S. Liquids* does not necessarily reflect the views of the Commission on what is “a reasonable time before the company begins to print and send its proxy materials” in today’s environment.

¹ Upon receipt of a proposal, a company has 14 calendar days to notify a proponent of certain deficiencies, and the proponent has 14 days to respond. Rule 14a-8(f).

The Company has postponed the Annual Meeting for the purpose of responding to shareholder proposals received shortly before filing the proxy materials, including the Proposal, and to allow the Staff time to consider the Company's pending no-action requests. The postponement of the Annual Meeting, although it necessitates the filing of revised proxy materials, does not reopen the window for proponents to submit Rule 14a-8 shareholder proposals. The Company asserts that the deadline for submission of Rule 14a-8 shareholder proposals had already passed by October 1, 2021, the date of receipt of the Proposal, under any definition of reasonableness. In addition, the Original Company Letter sets forth two reasons why the Proponent would have known that October 1, 2021 was not a reasonable time before the Company printed its proxy materials for the Annual Meeting. For all these reasons, the Company continues to assert that the Proposal was untimely received and properly excludable under Rule 14a-8(e) and (f).

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 mdobbs@texaspacific.com or (214) 969-5530.

Sincerely,



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

cc: Gabriel Gliksberg
c/o Thomas E. Redburn, Jr.

November 12, 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 – Response to Company’s No Action Letter
Pertaining to Stockholder Proposal by Gabriel Gliksberg**

Ladies and Gentlemen:

This letter is submitted by Lowenstein Sandler LLP on behalf of Gabriel Gliksberg (“Mr. Gliksberg”) in response to a letter submitted by Texas Pacific Land Corporation (the “Company”) on November 1, 2021 (the “November Letter”) to the Securities and Exchange Commission (the “Commission” or the “SEC”). The Company requests that the Commission advise that it will not recommend enforcement action if the Company excludes a proposal submitted by Mr. Gliksberg (the “Proposal”) for inclusion in its proxy materials for the Company’s 2021 Annual Meeting of Stockholders (the “Annual Meeting”). For the reasons stated below, the Company’s bases for excluding the Proposal fail, and we respectfully submit the Commission should not concur with the Company’s position that it can exclude the Proposal.

The Proposal Is Timely Under Rules 14a-8(e) and (f)

The Company received Mr. Gliksberg’s Proposal on October 1, 2021, which was 47 days before the Annual Meeting originally scheduled for November 16, 2021 and 90 days before the adjourned date for the Annual Meeting of December 29, 2021. (*See* November Letter at 3.) Because the Company did not hold an annual meeting in 2020, both sides agree the deadline for Mr. Gliksberg to submit his shareholder proposal was “a reasonable time before the company begins to print and send its proxy materials.” 17 CFR § 240.14a-8(e)(2) (2020); (November Letter at 2-3.) Given the circumstances of this case, Mr. Gliksberg’s Proposal was timely under any conceivable definition of “a reasonable time.”

First, because the Company concedes it will be required to file revised proxy materials in light of its adjournment of the Annual Meeting, the proper reference point for assessing reasonableness is the new December 29 meeting date. The Company has had the Proposal since October 1, giving it ample time (and certainly a reasonable time) to include the Proposal within those revised proxy materials in advance of the December 29 meeting.

The Company does not dispute this point, but instead argues that Rule 14a-8(e)(2)’s “reasonable time” requirement for shareholder proposals submitted in connection with a

corporation's first annual meeting really means the same thing as the 120-day deadline for such proposals submitted where the company held an annual meeting the previous year. (November Letter at 3-4.) To state the proposition is to refute it, as the Company's interpretation cannot be squared with the regulation's actual text. Had the Commission intended what the Company argues here, there would have been no need within the text of Rule 14a-8(e)(2) for the Commission to differentiate between an express 120-day deadline applied in certain instances and a "reasonable time" deadline in others. The Commission simply would have written the regulation as imposing a rigid 120-day deadline for all shareholder proposals. Instead, the text of the regulation indicates the Commission intended to apply a more flexible deadline to shareholder proposals submitted in instances where, as is the case here, the company did not hold an annual meeting the previous year. Since the Company offers only its erroneous interpretation of the regulation in support of its position, and provides no factual basis for concluding that Mr. Gliksberg's October 1 submission failed to afford a reasonable time for including the Proposal as part of the revised proxy materials, it has failed to demonstrate the Proposal is untimely. Given the adjournment of the Annual Meeting by approximately 6 weeks, the October 1 Proposal is timely and complies with the reasonableness requirement of Rule 14a-8(e)(2). There is no prejudice to the Company. The Commission should find that the Company may not exclude the Proposal on timeliness grounds.

Second, even if one assesses reasonableness from the perspective of the original November 16 date for the meeting, the Proposal was still submitted "within a reasonable time." In certain circumstances, the Commission has found that as little as 30 days was reasonable for purposes of submitting a shareholder proposal. *See U.S. Liquids Inc.* (March 22, 2002) at *5 (the Commission advised that it did not concur with U.S. Liquids that it may exclude a shareholder proposal from its proxy materials in reliance on Rule 14a-8(e)(2) despite the shareholder submitting the proposal on March 5, 2002 for a May 14, 2002 annual meeting and the company having to "process the [p]roposal under the provisions of Rule 14a-8 in less than 30 days."). Here, the Company concedes (i) it did not formally announce a deadline for submission of shareholder proposals under Rule 14a-8, and (ii) the date of the Annual Meeting was only included in two documents instead of being publicly advertised to the Company's shareholders. Under these facts, an October 1 submission is reasonable. To the extent the Company relies on its erroneous legal argument that "a reasonable time" really means "the typical Rule 14a-8 deadline of 120 days," that argument fails for the same reasons discussed above. (*See* November Letter at 3-4.)

The Commission Should Conclude the Company May Not Exclude the Proposal Under Rule 14a-8(i)(2) or 14a-8(i)(6) Because the Proposal Does Not Violate Delaware Law and the Company Can Implement the Proposal

The Company argues the Proposal requires an amendment to its certificate of incorporation, which it claims can only be accomplished under its By-Laws through a "two-step" process that requires a shareholder vote following a Board resolution. In the Company's view, that means the Proposal, if implemented, would cause the Company to violate Section 242 of the

Delaware General Corporation Law. That is simply wrong, because the Company is misreading the Proposal.

The Proposal simply states the Company's Board "should be declassified, allowing for each Board member to stand for election on an annual basis." At most, that language can be construed as calling on the Board to take all steps necessary to declassify the Board – which would include following the two-step process to the extent required by Delaware law. What the Proposal does not do is either purport to enable the shareholders to accomplish declassification unilaterally without Board approval, or to allow the Board to amend the Company's certificate of incorporation unilaterally without shareholder approval. There is no way to reasonably interpret its language as achieving either of these results. To the contrary, the Proposal merely sets forth the desired outcome, *i.e.*, that the Board "should be declassified," without specifying how that outcome should be achieved or advanced. It gives the Company's shareholders the opportunity to express dissatisfaction with the Board's present classification structure and demand change in the name of greater shareholder democracy and better director responsiveness to shareholder concerns. The Commission has previously found proposals with similar language not to be in violation of either Delaware law or Rule 14a-8. *See AT&T* (January 31, 2009); *U.S. Bancorp* (February 8, 1998); *Cf. Pfizer Inc.* (March 7, 2008) (the Commission agreed with the Company that the proposal could be omitted under 14a-8(i)(2) because the shareholder proposal specifically sought for the board to adopt the measure, "Cumulative Voting Shareholders recommend that **our Board adopt** cumulative voting.") (emphasis added). Indeed, if the Company were correct, many more of the 699 proposals to declassify boards submitted for shareholder vote between 2000 and 2018 should have been excluded from proxy materials.¹ We cannot help but note the irony underlying the Company's invocation of Delaware legal principles concerning the two-step charter amendment process that are designed to give shareholders a meaningful voice in determining how corporate director elections should be structured in order to deny the Company's shareholders **any** voice here in how to structure elections for the Company's directors.

The same reasoning warrants rejecting the Company's argument that the Proposal should be excluded because the Company lacks power to implement it under Rule 14a-8(i)(6). Once again, the proposals relied upon by the Company include language materially different from the language used in the Proposal. For example, in *The Boeing Company* (Feb. 20, 2008), the proponent sought a resolution that the **board adopt** cumulative voting. Likewise, in *AT&T, Inc.* (Feb. 19, 2008) the proponent's resolution asked the **board to amend** the company's bylaws and governing documents. The Proposal here is silent as it pertains to specific actions by the Board or shareholders.

The Proposal does not violate either Section 242 of the Delaware General Corporation Law or Rule 14a-8(i)(6). However, if the Commission disagrees, the language of the Proposal

¹ Kosmas Papadopoulos, *ISS Discusses Role of Shareholder Proposals in Shaping U.S. Governance Practices*, COLUMBIA LAW SCHOOL: THE CLR BLUE SKY BLOG (February 15, 2019), <https://clsbluesky.law.columbia.edu/2019/02/15/iss-discusses-role-of-shareholder-proposals-in-shaping-u-s-governance-practices/>.

can easily be modified so as to cure the Company's concerns. The Commission readily permits shareholders to cure deficiencies of this type and such deficiencies are not a proper reason for exclusion of the Proposal. See *Unocal Corporation* (February 19, 1988); *Unocal Corporation* (February 5, 1990) (examples of the Commission permitting shareholders to modify the language of proposals).² Mr. Gliksberg respectfully requests the opportunity to do so here if deemed necessary.

The Commission Should Conclude the Proposal May Not Be Properly Excluded Under Rule 14a-8(i)(8) Because the Proposal Would Not Disqualify Previously Elected Board Members From Completing Their Terms on the Board

The Company argues the Proposal should be excluded because if the Proposal is implemented and the Board is declassified certain Board members would be removed before the expiration of their term. As discussed above, there have been hundreds of shareholder proposals to declassify company boards over the years. By the Company's logic, these votes violated Rule 14a-8(i)(8)(ii). The Proposal does not purport to remove any Board member from his or her seat before the conclusion of the applicable term of office. The Proposal makes no mention of premature removal; it simply sets forth that the Board should be declassified. The Commission regularly permits proposals for declassification of boards with the understanding they do not require companies to violate Rule 14a-8(i)(8)(ii) by removing board members prematurely. Again, to the extent the Commission believes that the Proposal as currently drafted violates 14a-8(i)(8), we respectfully request an opportunity to cure the issue through amendment.

Finally, it bears noting that, unlike a majority of board members in other companies who face declassification, the Company's shareholders here did not elect the current members of the Company's Board. Instead, in connection with a settlement resulting from a 2019 proxy contest and subsequent decision to change its corporate structure, the Company's current Board members effectively were appointed by its former trustees before the Company completed its conversion to a Delaware corporation from its previous Trust structure. Declassifying the Board would not disenfranchise the Company's current shareholders by removing directors they elected. Instead, once implemented, declassification will allow current shareholders to elect the Company's Board for the first time in a single election.

We appreciate the Commission's consideration and attention to this matter. Please do not hesitate to contact me if you have any questions.

² The Company sent a deficiency letter to Mr. Gliksberg that did not include any of the deficiencies it asserts in its letter to the Commission. Under 14a-8(f), the Company is required to notify the shareholder of any deficiencies. Since the Commission regularly permits shareholders to cure deficient language, the Company was required to notify Mr. Gliksberg of this curable deficiency.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Redburn, Jr.", with a stylized flourish at the end.

Thomas E. Redburn, Jr.

cc. Micheal Dobbs, Esq.
George J. Vlahakos, Esq.
Yolanda Garcia, Esq.
Gabriel Glikberg
Maya Ginsburg, Esq.



November 1, 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 Gabriel Gliksberg

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 Thomas E. Redburn, Jr. of Lowenstein Sandler LLP on behalf of Gabriel Gliksberg (the “Proponent”) and received by the Company on October 1, 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, excluding the Proposal. 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. 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 below. The Company did not hold an annual meeting in 2020, resulting in some ambiguity regarding the deadline for Rule 14a-8 proposals in connection with the Annual Meeting. 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 reads as follows:

Resolved: [the Company]'s board should be declassified, allowing for each Board member to stand for election on an annual basis.

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) and (f) because the Proposal was received by the Company after the submission deadline;
- Rule 14a-8(i)(2) because implementing the Proposal would cause the Company to violate state law;
- Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal; and
- Rule 14a-8(i)(8) because implementing the proposal would disqualify previously elected directors from completing their terms on the board.

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 the proxy materials for such Annual Meeting on Monday, October 4, 2021. Printing commenced on October 4, 2021. The Proposal was received at 9:44 p.m. on Friday, October 1, 2021. Although the Company did not formally announce a deadline for Rule 14a-8 stockholder proposals in connection with the Annual Meeting, there are two reasons, as further detailed below, supporting the premise that Proponent would reasonably know that October 1, 2021, was not a reasonable time before the Company printed and sent its proxy materials, and for these reasons, the Company believes that the Proposal was not timely received and is therefore properly excludable under Rule 14a-8(e) and (f).

The Company had established a presumed date for the Annual Meeting as November 16, 2021 in its bylaws, and using that presumed date, the receipt of the Proposal on October 1, 2021 was not within a reasonable time before the Company printed and sent its proxy materials.

The bylaws of the Company state in Section 2.8(A)(2) (emphasis added):

For any nominations or any other business to be properly brought before an annual meeting by a stockholder pursuant to Section 2.8(A)(1)(c) of these Bylaws, (a) the stockholder must have given timely notice thereof in writing and in proper form to the Secretary of the Corporation at the principal offices of the Corporation To be timely, a stockholder's notice must be received by the Secretary of the Corporation at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day before the date of the one (1) year anniversary of the immediately preceding year's annual meeting (which anniversary, in the case of the first (1st) annual meeting of stockholders and solely for the purpose of this Section 2.8(A)(2), **shall be deemed November 16, 2021**) and not later than the close of business on the ninetieth (90th) day before the date of such anniversary[.]

This deemed annual meeting date was also disclosed in the Company's Information Statement filed with the SEC as an exhibit to a Current Report on Form 8-K on December 31, 2020, before the Corporate Reorganization.¹ Although this deadline was not directly associated with Rule 14a-8 proposals, a reasonable stockholder could presume that the Company planned to hold its 2021 annual meeting of stockholders on or about November 16, 2021. Using this assumed date, a stockholder could expect that the proxy materials would be filed and printed about 30 days prior to the meeting, meaning October 15, 2021 (given that October 16, 2021 was a Saturday). Under the typical Rule 14a-8 deadline of 120 days prior to the presumed printing and mailing of

¹ See page 66 of the Company's Information Statement filed as Exhibit 99.1 to the Company's Current Report on Form 8-K filed with the SEC on December 31, 2020 ("which anniversary [of the prior annual meeting of stockholders], in the case of the first annual meeting of stockholders, will be deemed to be November 16, 2021").

proxy materials, a reasonable deadline could be assumed as June 17, 2021. To allow the Company to comply with the requirement to submit a notice to the Commission of its reasons to exclude the Proposal under the deadline established in Rule 14a-8(j),² 80 days prior to the presumed date of filing the definitive proxy statement would have been July 27, 2021. Accordingly, the Proposal's receipt date of October 1, 2021 was well after what could be deemed a reasonable time before the Company printed and sent its proxy materials.

The Company is required to hold the Annual Meeting in calendar year 2021, and therefore the receipt of the Proposal on October 1, 2021 could not have been within a reasonable time before the Company printed and sent its proxy materials.

The Company's common stock is listed on the New York Stock Exchange, which requires that the Company hold an annual meeting of stockholders during each fiscal year. *See* Section 302 of the NYSE Listed Company Manual. Due to this requirement, a stockholder could be certain that the Annual Meeting would be held no later than December 31, 2021, the end of the Company's current fiscal year. Using this last date available for the Annual Meeting, a stockholder could expect that the proxy materials would be filed and printed no later than about 30 days prior to such last possible meeting date, meaning December 1, 2021. Under the typical Rule 14a-8 deadline of 120 days prior to the presumed printing and mailing of proxy materials, a reasonable deadline could be assumed as August 3, 2021. To allow the Company to comply with the requirement to submit a notice to the Commission of its reasons to exclude the Proposal under the deadline established in Rule 14a-8(j), 80 days prior to the presumed date of filing the definitive proxy statement would have been September 12, 2021. For this reason, The Proposal's receipt date of October 1, 2021 was well after what could be deemed a reasonable time before the Company printed and sent its proxy materials.

II. The Proposal May Be Properly Omitted from the Company's Proxy Materials Under Rule 14a-8(i)(2) Because its Implementation Would Cause the Company to Violate State Law.

Rule 14a-8(i)(2) permits a company to omit from its proxy materials a stockholder proposal if the "proposal would, if implemented, cause the company to violate any state, federal or foreign law to which it is subject." As further discussed in the opinion of the Company's Delaware counsel, Potter Anderson & Corroon LLP, which is attached hereto as Exhibit B (the "Delaware Counsel Opinion"), the Company cannot implement the Proposal without violating certain provisions of the Delaware General Corporation Law (the "DGCL").

Pursuant to Article V, Section 5.1(B) of the Company's Amended and Restated Certificate of Incorporation (the "Charter"), the Company's board of directors (the "Board") is divided into three classes. The initial term of office of the first class of directors expires at the Company's first annual meeting, the initial term of office of the second class expires at the Company's second annual meeting of stockholders, and the initial term of office of the third class expires at the

² Rule 14a-8(j) sets forth "If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission."

Company's third annual meeting of stockholders. Thereafter, at each annual meeting of stockholders, directors elected to succeed those directors whose terms then expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election, with each director to hold office until his or her successor shall have been duly elected and qualified, subject, however, to such director's earlier death, resignation, disqualification or removal.

As more fully explained in the Delaware Counsel Opinion, the DGCL requires a two-step process by the Board and the stockholders to amend the Charter. Pursuant to Section 242 of the DGCL, in order for a company to amend its charter, the board of directors must first adopt a resolution setting forth the amendment proposed, declare the advisability of the amendment and call a meeting at which the stockholders may vote on the amendment. Second, a majority of the outstanding stock entitled to vote on the amendment must affirmatively vote in favor of the amendment to the company's certificate of incorporation.³ Only if these two steps are taken in precise order does the Company have the power to file a Certificate of Amendment with the office of the Secretary of State of the State of Delaware to effectuate the amendment. The Delaware Supreme Court has required strict compliance with this two-step procedure:

*[I]t is significant that two discrete corporate events must occur in precise sequence to amend the certificate of incorporation under 8 Del. C. §242: First, the board of directors must adopt a resolution declaring the advisability of the amendment and calling for a stockholder vote. Second, a majority of the outstanding stock entitled to vote must vote in favor.*⁴

The Proposal seeks adoption of an amendment to the Charter by the stockholders unilaterally, in excess of the stockholders' authority under the DGCL, and without prior Board approval of such amendment as required by the DGCL. Furthermore, if the Proposal was interpreted as requesting the Board to amend the Charter, it would still be invalid under the DGCL, because the only way to validly amend the Charter under the DGCL is to follow the two-step procedure described above. This conclusion is supported by the Delaware Counsel Opinion.

The Staff has permitted the exclusion of proposals that involve either the unilateral action of stockholders or the board of directors to amend company charters when this action would be contrary to applicable state law that prescribes the approval of both the board of directors and stockholders in order to effectuate such amendments. For example, in *The Stanley Works* (Feb. 2, 2009), the Staff permitted the exclusion of a proposal that called for "the articles of incorporation

³ See 8 Del. Co. § 242(b)(1).

⁴ *Williams v. Geier*, 671 A.2d 1368, 1381 (Del. 1996); see also *Gantler v. Stephens* 2008 Del. Ch. LEXIS 20, at *45 n. 81 (Del. Ch. Feb. 14, 2008) ("A board must submit a proposed amendment of the certificate of incorporation to the shareholders for a vote, and it will not be effective unless 'a majority of the outstanding stock entitled to vote thereon' votes in favor of the amendment."); *Lions Gate Entm't Corp. v. Image Entm't Inc.*, 2006 Del. Ch. LEXIS 108, at *23-*24 (Del. Ch. June 5, 2006) ("Because the Charter Amendment Provision purports to give the...board the power to amend the charter unilaterally without shareholder vote, it contravenes Delaware law and is invalid."); *Kiang v. Smith's Food Drug Centers, Inc.*, 1997 Del. Ch. LEXIS 73, at *53-*54 (Del. Ch. May 13, 1997) ("Pursuant to 8 Del. Co. § 242, amendment of corporate certificate requires board of directors to adopt resolution which declares the advisability of the amendment and calls for shareholder vote. Thereafter in order for the amendment to take effect majority of outstanding stock must vote in its favor.").

to be amended to provide that directors shall be elected by the shares represented in person or by proxy at any meeting for the election of directors at which a quorum is present,” in reliance on Rules 14a-8(i)(2) and 14a-8(i)(6). *Stanley Works* argued that under the laws of Connecticut, its state of incorporation, *Stanley Works*’ charter may not be amended by action only of the stockholders and without the necessary prior approval of the board. This position was supported by an opinion submitted by *Stanley Works*’ Connecticut counsel. In a similar way, the Staff has permitted the exclusion of proposals that request the board to unilaterally amend the company’s charter, contrary to state law that requires stockholder action. For example, in *eBay Inc.* (Apr. 1, 2020), the Staff permitted the exclusion of a proposal to “reform the structure of the board of directors letting the employees to elect at least 20% of the board members.” Based on the opinion of eBay’s Delaware counsel, eBay could not implement such proposal without violating certain provisions of the DGCL. In *PayPal Holdings, Inc.* (Mar. 9, 2018), the Staff permitted the exclusion of a proposal that asked the board of directors to amend the Company’s proxy access bylaws and associated documents, noting PayPal’s Delaware counsel opinion that the implementation of the proposal would cause PayPal to violate state law. In *Fortune Brands, Inc.* (Jan. 6, 2010), the Staff permitted the exclusion of a proposal that required the board of directors to unilaterally amend the charter to remove a prohibition on stockholder action by written consent, noting the opinion of the company’s Delaware counsel that implementing the proposal would cause the company to violate Delaware law.⁵

As in *Stanley Works*, *eBay*, *PayPal* and *Fortune Brands*, the Proposal is asking for the unilateral amendment of the Charter in order to declassify the Board, in direct contravention of the two-step process required by Section 424 of the DGCL. As such, the Proposal, if implemented, would cause the Company to violate the DGCL; therefore, the Company believes the Proposal may be excluded in reliance on Rule 14a-8(i)(2).

⁵ See also *Bristol-Myers Squibb Company* (Mar. 14, 2008) (permitting the exclusion of a proposal that recommended that the board adopt cumulative voting under Rule 14a-8(i)(2) noting the company’s counsel’s opinion that implementing such proposal would cause the company to violate state law); *Exxon Mobil Corporation* (Mar. 24, 2008) (permitting the exclusion of a proposal that the company adopt cumulative voting under Rule 14a-8(i)(2) noting the company’s counsel’s opinion that implementing the proposal would cause the company to violate state law); *Time Warner Inc.* (Feb. 26, 2008) (permitting the exclusion of a proposal that urged the company to adopt cumulative voting under Rule 14a-8(i)(2) and Rule 14a-8(i)(6) noting the company’s counsel’s opinion that implementing the proposal would cause the company to violate state law); *The Boeing Company* (Feb. 20, 2008) (permitting the exclusion of a proposal that urged the board to adopt cumulative voting under Rule 14a-8(i)(2) and Rule 14a-8(i)(6) noting the opinion of the company’s counsel that implementing the proposal would cause the company to violate Delaware law); *AT&T, Inc.* (Feb. 19, 2008) (permitting the exclusion of a proposal for the company to amend its bylaws and any other appropriate governing documents to “lift restrictions on shareholder ability to act by written consent” under Rule 14a-8(i)(2) and Rule 14a-8(i)(6) noting the company’s Delaware counsel’s opinion that the board of the company cannot amend its certificate of incorporation without violating state law); *Xerox Corporation* (Feb. 23, 2004) (permitting the exclusion of a proposal requesting that “the company’s board of directors amend the company’s certificate of incorporation to reinstate the rights of the shareholders to take action by written consent and to call special meetings under Rule 14a-8(i)(2) because the board of directors cannot unilaterally amend the company’s certificate of incorporation under New York law); *Burlington Resources Inc.* (Feb. 7, 2003) (concurring that a company incorporated in Delaware may exclude a proposal that requested that “the board of directors amend the certificate of incorporation to reinstate the rights of shareholders to take action by written consent and to call special meetings”).

III. The Proposal May Be Excluded Under Rule 14a-8(i)(6) Because the Company Lacks the Power or Authority to Implement the Proposal.

Rule 14a-8(i)(6) provides that a company may properly omit a stockholder proposal from its proxy materials if the company lacks the power or authority to implement the proposal. As discussed above and in the Delaware Counsel Opinion, the Company cannot implement the Proposal by amending the Charter without violating Section 242 of the DGCL because stockholders cannot unilaterally amend the Charter. The same conclusion applies if the Proposal is read as a request for the Board to unilaterally amend the Charter. As a result, the Company cannot implement the Proposal without violating the DGCL, and therefore lacks the authority to implement the Proposal.

The Staff has consistently allowed stockholder proposals to be excluded under both Rules 14a-8(i)(6) and 14a-8(i)(2) when the implementation of the proposal would violate state corporate law and, accordingly, the company lacks the authority to implement the proposal. For example, in *The Boeing Company* (Feb. 20, 2008), the Staff permitted the exclusion of a proposal requesting that the board of directors adopt cumulative voting under Rule 14a-8(i)(2) and Rule 14a-8(i)(6), citing the opinion of the company's counsel that implementing the proposal would cause the company to violate the DGCL. In *AT&T, Inc.* (Feb. 19, 2008), the Staff permitted the exclusion of a proposal requesting the company to amend its bylaws and any other appropriate governing documents to "lift restrictions on shareholder ability to act by written consent" under Rule 14a-8(i)(2) and Rule 14a-8(i)(6), citing the opinion of the company's counsel that the board of directors of the company could not amend its certificate of incorporation without violating the DGCL.

Just as in the precedents cited above, implementation of the Proposal would cause the Company to violate the DGCL, and, the Company lacks the power or authority under Delaware law to implement the Proposal. Accordingly, the Company believes that the Proposal is excludable under both Rule 14a-8(i)(2) and Rule 14a-8(i)(6).

IV. The Proposal May Be Excluded Under Rule 14a-8(i)(8) Because Implementing the Proposal Would Disqualify Previously Elected Board Members From Completing Their Terms on the Board.

Rule 14a-8(i)(8)(ii) states that a stockholder proposal may be excluded from a company's proxy statement if it "[w]ould remove a director from office before his or her term expired." The purpose of Rule 14a-8(i)(8), according to the Commission, "is to make clear, with respect to corporate elections, that Rule 14a-8 is not the proper means for conducting campaigns or effecting reforms in elections of that nature" SEC Release No. 34-12598 (July 7, 1976). In 2010, the Commission amended Rule 14a-8(i)(8) to codify a long-standing position of the Staff pursuant to which the Commission permitted the exclusion of stockholder proposals that would have removed a director from office before his or her term expired. See SEC Release No. 34-62764 (Aug. 25, 2010) (stating that it amended the text of Rule 14a-8(i)(8) to "codify certain prior [S]taff

interpretations with respect to the types of proposals that would continue to be excludable pursuant to Rule 14a-8(i)(8)").

Pursuant to Article V, Section 5.1(B) of the Charter, the Board is divided into three classes. The initial term of office of the first class of directors expires at the Company's first annual meeting, the initial term of office of the second class expires at the Company's second annual meeting of stockholders, and the initial term of office of the third class expires at the Company's third annual meeting of stockholders. Thereafter, at each annual meeting of stockholders, directors elected to succeed those directors whose terms then expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election, with each director to hold office until his or her successor shall have been duly elected and qualified, subject to such director's earlier death, resignation, disqualification or removal.

Thus, under the Charter, in any given year, approximately one-third of the Board is up for election for a three-year term and two-thirds of the Board would have one or two years remaining in their terms. The Proposal would require their terms to end earlier, so that "each Board member [stands] for election on an annual basis." This functionally results in the removal of directors before his or her term expires. The Staff has repeatedly concurred that stockholder proposals that, like the Proposal, would have the effect of cutting short the terms of sitting directors are excludable under Rule 14a-8(i)(8). For example, in *Impinj Inc.* (July 11, 2019), where the Staff held that the proposal asking for the board to "take the necessary steps to reorganize the Board of Directors into one class with each director subject to election each year" was excludable because it could, if implemented, disqualify directors previously elected from completing their terms on the board.⁶ As in *Impinj*, the Proposal would remove directors from office before the expiration of their respective terms. As a result, the Company is entitled to exclude the Proposal from the proxy materials for the 2021 Annual Meeting in reliance on Rule 14a-8(i)(8).

V. 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 mdobbs@texaspacific.com or (214) 969-5530.

⁶ See also *United Therapeutics Corporation* (Apr. 4, 2019) (concurring in the exclusion pursuant to Rule 14-8(i)(8)(ii) of a substantially similar proposal requesting the reorganization of the board of directors into one class with each director subject to election each year); *Tekla Life Sciences Investors* (Mar. 1, 2019) (same); *Paycom Software, Inc.* (Feb. 1, 2019) (same); *Kellogg Company* (Jan. 31, 2019) (same); *Illumina, Inc.* (Feb. 1, 2018) (same); *Simpson Manufacturing Co., Inc.* (Jan. 25, 2017) (same); *NeuStar, Inc.* (Mar. 19, 2014) (same); *The Brink's Company* (Jan. 17, 2014) (same); *Kinetic Concepts, Inc.* (Mar. 21, 2011) (same).

shareholderproposals@sec.gov

November 1, 2021

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Sincerely,

A handwritten signature in black ink, appearing to read "Michael Redburn". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Senior Vice President, General Counsel and
Secretary

Enclosures

cc: Gabriel Gliksberg
c/o Thomas E. Redburn, Jr.
tredburn@lowenstein.com

Exhibit A
The Proposal

Resolved: TPL's board should be declassified, allowing for each Board member to stand for election on an annual basis.

Supporting Statement

There seems to be virtually unanimous consensus in the institutional investment world that declassified boards are the preferred governance structure.

Per the Harvard Law School Forum on Corporate Governance website¹;

declassified boards highlight how annual elections can increase accountability and responsiveness to shareholders. Over the past five years, corporations have seen a strong migration away from classified boards to annually elected boards with no director classes. Indeed, almost 90% of large-cap companies now have declassified boards, up from about two-thirds in 2011.

Per Institutional Shareholder Services' (ISS) guidelines²;

General Recommendation: Vote against proposals to classify (stagger) the board.

Vote for proposals to repeal classified boards and to elect all directors annually.

¹ <https://corpgov.law.harvard.edu/2017/08/15/declassified-boards-are-more-likely-to-be-diverse/>

² <https://www.issgovernance.com/file/policy/active/americas/US-Voting-Guidelines.pdf>

Exhibit B

Delaware Counsel Opinion

November 1, 2021

Texas Pacific Land Corporation
1700 Pacific Avenue, Suite 2900
Dallas, Texas 75201

Re: Stockholder Proposal Submitted by Gabriel Gliksberg

Ladies and Gentlemen:

We have acted as special Delaware counsel to Texas Pacific Land Corporation, a Delaware corporation (“TPL” or the “Company”), in connection with a proposal (the “Proposal”) submitted by Thomas E. Redburn, Jr. of Lowenstein Sandler LLP on behalf of Gabriel Gliksberg (the “Proponent”) on October 1, 2021 that the Proponent intends to present at the Company’s 2021 annual meeting of stockholders. In this connection, you have requested our opinion as to certain matters under the General Corporation Law of the State of Delaware (the “General Corporation Law”).

For purposes of rendering our opinion as expressed herein, we have reviewed the following documents, all of which were supplied by the Company or were obtained from publicly available records: (i) the Amended and Restated Certificate of Incorporation of the Company, as filed with the Secretary of State of the State of Delaware on January 7, 2021 and effective at 1:01 a.m. Eastern Time on January 11, 2021 (the “Amended and Restated Certificate of Incorporation”); (ii) the Amended and Restated Bylaws of the Company, effective as of January 11, 2021; and (iii) the Proposal.

With respect to the foregoing documents, we have assumed (i) the authenticity of all documents submitted to us as originals and the conformity with authentic originals of all documents submitted to us as copies or forms, and (ii) that the foregoing documents, in the forms submitted to us for our review, have not been and will not be altered or amended in any respect material to our opinions as expressed herein. For purposes of rendering our opinion as expressed herein, we have conducted no independent factual investigation of our own, but have relied exclusively upon the documents listed above, the statements and information set forth therein and the additional matters related or assumed therein, all of which we have assumed to be true, complete and accurate in all material respects. Our opinion is limited to Delaware law. We have not considered and express no opinion on the laws of any other state or jurisdiction, including federal laws regulating securities or any other federal laws, or the rules and regulations of stock exchanges or of any other regulatory body.

The Proposal

The Proposal reads as follows:

Resolved: TPL's board should be declassified, allowing for each Board member to stand for election on an annual basis.

The correspondence containing the Proposal also sets forth the following supporting statement (excluding footnotes and links):

Supporting Statement

There seems to be virtually unanimous consensus in the institutional investment world that declassified boards are the preferred governance structure.

Per the Harvard Law School Forum on Corporate Governance website;

declassified boards highlight how annual elections can increase accountability and responsiveness to shareholders. Over the past five years, corporations have seen a strong migration away from classified boards to annually elected boards with no director classes. Indeed, almost 90% of large-cap companies now have declassified boards, up from about two-thirds in 2011.

Per Institutional Shareholder Services' (ISS) guidelines;

General Recommendation: Vote against proposals to classify (stagger) the board.

Vote for proposals to repeal classified boards and to elect all directors annually.

Discussion

You have asked for our opinion as to whether the Proposal, if adopted by the stockholders, would violate the General Corporation Law and whether the Company has the power and authority to implement the Proposal.

The Proposal, if adopted by the stockholders, would be invalid under Delaware law, because it would require the Company to amend the Amended and Restated Certificate of Incorporation without first receiving approval of such amendment by the Board of Directors of the Company (the "Board"). The Proposal seeks stockholder action to declassify the Board, so that each member of the Board can stand for election on an annual basis. Under Section 141(d) of the General Corporation Law, a Delaware corporation may adopt a classified board of directors, dividing the directors into 1, 2 or 3 classes, in either the corporation's certificate of incorporation or bylaws. 8 Del. C. § 141(d). The Company has adopted a classified board of directors in its Amended and Restated Certificate of Incorporation. Article V, Section 5.1(B) of the Amended

and Restated Certificate of Incorporation provides that the Board shall be comprised of three classes of directors, with each class of directors serving a three-year term (the “Board Classification Provision”). The Board Classification Provision reads as follows:

The directors, other than those who may be elected by the holders of any series of Preferred Stock as specified in the related Preferred Stock Designation, shall be divided, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as is reasonably possible, with the initial term of office of the first class to expire at the first annual meeting of stockholders following the effective date of this Amended and Restated Certificate of Incorporation, the initial term of office of the second class to expire at the second annual meeting of stockholders following the effective date of this Amended and Restated Certificate of Incorporation, and the initial term of office of the third class to expire at the third annual meeting of stockholders following the effective date of this Amended and Restated Certificate of Incorporation, with each director to hold office until his or her successor shall have been duly elected and qualified, subject, however, to such director’s earlier death, resignation, disqualification or removal, and the Board shall be authorized to assign members of the Board, other than those directors who may be elected by the holders of any series of Preferred Stock, to such classes. At each annual meeting of stockholders, directors elected to succeed those directors whose terms then expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election, with each director to hold office until his or her successor shall have been duly elected and qualified, subject, however, to such director’s earlier death, resignation, disqualification or removal.

Article V, Section 5.1(B) of the Amended and Restated Certificate of Incorporation.

Because the Board Classification Provision is contained in the Amended and Restated Certificate of Incorporation, any change to the Board Classification Provision, including a change to “declassify” the Board, would require an amendment to the Amended and Restated Certificate of Incorporation. Under the General Corporation Law, the stockholders of the Company may not unilaterally amend the Amended and Restated Certificate of Incorporation. Any such amendment could only be effected through an amendment adopted in accordance with Section 242 of the General Corporation Law. Section 242 of the General Corporation Law requires that any amendment to a corporation’s certificate of incorporation be approved by the board of directors, declared advisable, and then submitted to the stockholders for adoption thereby. Section 242 provides, in pertinent part:

Every amendment [to the Amended and Restated Certificate of Incorporation] . . . shall be made and effected in the following manner: (1) If the corporation has capital stock, its board of directors shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and either calling a special meeting

of the stockholders entitled to vote in respect thereof for the consideration of such amendment or directing that the amendment proposed be considered at the next annual meeting of the stockholders. . . . [I]f a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class has been voted in favor of the amendment, a certificate setting forth the amendment and certifying that such amendment has been duly adopted in accordance with this section shall be executed, acknowledged and filed and shall become effective in accordance with § 103 of this title.

8 Del. C. § 242(b)(1). Accordingly, an amendment to the Amended and Restated Certificate of Incorporation, in order to be validly adopted under the General Corporation Law, would first require the Board to adopt a resolution approving the amendment and declaring its advisability prior to submission of the amendment to the Company's stockholders for their approval. The Delaware courts require strict compliance with this two-step procedure:

[I]t is significant that two discrete corporate events must occur, in precise sequence, to amend the certificate of incorporation under 8 *Del. C.* § 242: First, the board of directors must adopt a resolution declaring the advisability of the amendment and calling for a stockholder vote. Second, a majority of the outstanding stock entitled to vote must vote in favor.

Williams v. Geier, 671 A.2d 1368, 1381 (Del. 1996). As a result, "stockholders may not act without prior board action." Id.; see also Gantler v. Stephens, 2008 Del. Ch. LEXIS 20, at *44 n. 81 (Feb. 14, 2008) ("A board must submit a proposed amendment of the certificate of incorporation to the shareholders for a vote, and it will not be effective unless 'a majority of the outstanding stock entitled to vote thereon' votes in favor of the amendment.") rev'd on other grounds 965 A.2d 695 (Del. 2009); Lions Gate Entm't Corp. v. Image Entm't, Inc., 2006 Del. Ch. LEXIS 108, at *23 - 24 (June 5, 2006) ("Because the Charter Amendment Provision purports to give the . . . board the power to amend the charter unilaterally without a shareholder vote, it contravenes Delaware law and is invalid[.]"); Klang v. Smith's Food & Drug Ctrs., Inc., 1997 Del. Ch. LEXIS 73, at *53 (May 13, 1997) ("Pursuant to 8 *Del. C.* § 242, amendment of a corporate certificate requires a board of directors to adopt a resolution which declares the advisability of the amendment and calls for a shareholder vote. Thereafter, in order for the amendment to take effect a majority of outstanding stock must vote in its favor.") aff'd, 702 A.2d 150 (Del. 1997).

Contrary to the provisions of Section 242 of the General Corporation Law, the Proposal seeks adoption of an amendment to the Amended and Restated Certificate of Incorporation by the stockholders unilaterally, in excess of the stockholders' authority under the General Corporation Law, and without prior Board approval of such amendment as required by the General Corporation Law. Accordingly, the Proposal, if adopted by the stockholders, would be invalid under the General Corporation Law. Additionally, because the Proposal, if adopted by the stockholders, would violate the General Corporation Law, the Company lacks the authority to implement the Proposal.

Furthermore, if the Proposal was interpreted as requesting the Board to declassify the Board, it would be invalid under the General Corporation Law for essentially the same reasons. Under the Proposal, as so interpreted and if adopted by the stockholders, the Board would be required to unilaterally amend the Amended and Restated Certificate of Incorporation to implement the Proposal. Under the General Corporation Law, the Board may not unilaterally amend the Amended and Restated Certificate of Incorporation. Any such amendment could only be effected through an amendment to the Amended and Restated Certificate of Incorporation adopted in accordance with Section 242(b) of the General Corporation Law, which requires that any such amendment be approved by the board of directors, declared advisable, and submitted to the stockholders for approval. Accordingly, because implementation of the Proposal would require the Board to exceed its authority under Delaware law, the Proposal, if adopted by the stockholders and implemented by the Board, would violate the General Corporation Law. Additionally, because the Proposal, if adopted by the stockholders and implemented by the Board, would violate the General Corporation Law, the Company lacks the power and authority to implement the Proposal.

Based upon and subject to the foregoing, and subject to the limitations stated herein, it is our opinion that (i) the Proposal, if adopted by the stockholders, would be invalid under the General Corporation Law, and (ii) the Company lacks the power and authority to implement the Proposal.

This opinion is rendered solely for your benefit in connection with the foregoing and may not be relied upon by any other person or entity or be furnished or quoted to any person or entity for any purpose, without our prior written consent; provided that this opinion may be furnished to or filed with the Securities and Exchange Commission in connection with your no-action request relating to the Proposal.

Sincerely yours,

A handwritten signature in cursive script that reads "Potter Anderson & Corroon LLP". The signature is written in dark ink and is positioned to the right of the "Sincerely yours," text.

Potter Anderson & Corroon LLP