

From: [Phil Goldstein](#)
To: [ShareholderProposals](#)
Subject: Exclusion of Shareholder Proposal
Date: Monday, October 04, 2021 10:53:38 PM
Attachments: [image001.png](#)
[TPL - No Action Request - Special Opportunities Proposal 2021 \(9-30-21\).pdf](#)

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Hi, Folks,

I would like to respond to the attached letter from Mr. Dobbs requesting that you concur with him that our proposal “Seeks to Micromanage the Company.” In his letter, he concludes that our proposal “transcend[s] the day-to-day business of the Company [and therefore] is properly excludable as an ordinary business matter pursuant to Rule 14a-8(i)(7).”

Clearly, our proposal says nothing about managing TPL’s day-to-day business or micromanaging TPL. It merely proposes that the board of directors establish a profitability goal of 95%, a level it has historically achieved but which has materially declined recently.

First, the proposal is not binding so the board is not required to do anything regardless of the outcome of the vote. Secondly, even if the proposal is approved by stockholders and the board determines to adopt the 95% goal (or an alternative goal selected by the board), it has complete discretion as to what measures to consider to attempt to meet it. In sum, our proposal has no impact on anything the board would otherwise do and absolutely no impact on TPL’s ordinary day-to-day business decisions, e.g., what prices to charge for its leases, how to market them, or what other products it should sell.

Therefore, we ask that you not concur with Mr. Dobbs’ request. Thank you.

Phillip Goldstein
Bulldog Investors

(914) 747-5262
Cell (914) 260-8248

From: Micheal Dobbs <mdobbs@texaspacific.com>
Sent: Thursday, September 30, 2021 12:48 PM
To: Phil Goldstein <PGoldstein@bulldoginvestors.com>
Subject: FW: Exclusion of Shareholder Proposal

Phillip,

Attached is a letter that was just submitted to the SEC. Chris Steddum will be in touch about setting up a Zoom meeting next week.

Micheal Dobbs
Texas Pacific Land Corporation

From: Micheal Dobbs
Sent: Thursday, September 30, 2021 11:34 AM
To: shareholderproposals@sec.gov
Subject: Exclusion of Shareholder Proposal

Attached is a letter regarding the exclusion of a stockholder proposal for Texas Pacific Land Corporation's 2021 annual meeting of stockholders.

Micheal Dobbs
Senior Vice President and General Counsel
Texas Pacific Land Corporation

1700 Pacific Avenue, Suite 2900 | Dallas, Texas 75201
O: (214) 969-5530 | **D:** (469) 453-1537
E: mdobbs@texaspacific.com | **W:** www.texaspacific.com



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September 30, 2021

By Email

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 Special Opportunities Fund, Inc.

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 a proposal submitted by Special Opportunities Fund, Inc. (the "Proponent") and received by the Company on September 16, 2021 (together with the supporting statement, 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 notify the Proponent of the Company's intention to omit the Proposal from its 2021 proxy materials.

The Company intends to file its definitive proxy materials for the 2021 Annual Meeting of Stockholders on or about October 6, 2021 *and initiate printing as soon as possible*, which has already been delayed. 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 intends to file its definitive 2021 proxy materials. The 2021 Annual Meeting of Stockholders will be the Company's first annual meeting following its reorganization in January 2021. 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 Company previously submitted a letter to the Staff on September 23, 2021 to request confirmation that the Staff would not recommend an enforcement action to the Commission if the Company excluded the Proposal from its 2021 proxy materials in reliance on Rule 14a-8(e)(2). On September 28, 2021, the Company was notified that the Staff was unable to concur that Rule 14a-8(e)(2) provides a basis to exclude the Proposal. The Company is now submitting this additional request on a different basis for exclusion (Rule 14a-8(i)(7)), as set forth below.

The Proposal reads as follows:

RESOLVED, The Board should establish a goal of achieving a 95% profit margin.

The supporting statement for such Proposal is set forth below:

Historically, the Company's business model relied on royalties and fixed fees for use of its land by oil and gas producers. That model required virtually no capital expenditures and minimal operating expenses. As a result, the Company's profit margin was consistently greater than 90%.

Recently, we have seen the Company's expenses balloon. We estimate that fixed overhead costs, comprised primarily of (1) salaries and related employee expenses, and (2) general and administrative expenses, now total more than \$40 million per annum. The result has been a decline in its profit margin to about 73%. Moreover, we fail to see that the increased operating expenditures have resulted in a commensurate increase in revenue.

Our concern is that the increased expenses are motivated not by a goal of increasing shareholder returns but by management's desire to transform the Company from a boring but highly profitable relatively passive business to a prestigious operating company with many employees. In sum, we believe that effort is misguided and contrary to the investment goals of most long-term investors who would prefer that the Company adhere to its historical low cost, high margin business model.

If you agree, please vote in favor of this proposal and send a message to the Board.

I. The Proposal May be Properly Omitted from the Company's Proxy Materials Under Rule 14a-8(i)(7) Because the Proposal Deals with Matters Relating to the Company's Ordinary Business Operations and Seeks to Micromanage the Company

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)*. 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 providing management with flexibility in directing certain core matters involving the company's business and operations." *Id.*

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 issue,” 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.* The Staff noted in *Staff Legal Bulletin No. 14K (Oct. 16, 2019)* that a proposal micromanages a company where it “seeks intricate detail or imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board.”

In this case, the Proposal asks the Company to “establish a goal of achieving a 95% profit margin.” This request clearly relates to an ordinary business matter and micromanages the Company by imposing a very specific profit margin strategy on the Board.

The Company is one of the largest landowners in the State of Texas with additional nonparticipating perpetual oil and gas royalty interests. The Company’s surface and royalty ownership allow steady revenue generation through the entire value chain of oil and gas development. Each of the Company’s revenue streams are complex¹ and require the unique expertise of management to manage the day-to-day operation of the business and to make decisions consistent with the Company’s goals. A September 24, 2021 CFRA Quantitative Stock Report on the Company provided by the Proponent lists the Company² operating margin in 2016 as 95.8% and the operating margin in 2020 as 71.9%. Prior to 2017, the Company operated under a passive business model as to its lands and other assets. Beginning around 2017, the Company undertook more active management of its lands and assets that involved the expenditure of capital and retention of a larger workforce. Thereafter, operating income based on the CFRA report provided by the Proponent went from \$63 million in 2016 to \$217 million in 2020. This profit margin strategy of the Company is certainly a matter fundamental to management’s choices relevant to its revenues and expenditures in the context of the broader strategy of the Company. The SEC has

¹ During the initial development phase where infrastructure for oil and gas development is constructed, the Company receives fixed fee payments for use of its land and revenue for sales of materials (caliche) used in the construction of the infrastructure. During the drilling and completion phase, the Company generates revenue for providing sourced water and/or treated produced water in addition to fixed fee payments for use of its land. During the production phase, the Company receives revenue from its oil and gas royalty interests and also revenues related to saltwater disposal on its land. In addition, the Company generates revenue 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.

² References to the Company prior to January 11, 2021 are as the Texas Pacific Land Trust.

clearly determined that matters related to the Company's general business plans and strategy are not appropriate for shareholder action. See, e.g., *Sears, Roebuck & Co.* (Feb. 7, 2000) (concurring with exclusion of a proposal seeking a change in the company's general business plans and strategy).

The Proponent seeks to micromanage the Company by mandating a very specific strategic goal – a 95% profit margin. As noted above, the profit strategy of the Company is a complex matter requiring a deep understanding of the Company's operations, growth opportunities and the industry as a whole. The ability of management to successfully weigh these considerations and reach an appropriate decision on profit strategy is critical to the operation of the Company's business. Imposing an arbitrary profit margin goal on the Company circumvents management's expertise and fiduciary duties to act in the best of interests of stockholders.

The Staff has consistently found that proposals that fix specific financial goals are excludable under Rule 14a-8(i)(7). See *Omeros Corporation* (April 20, 2021) (excluded proposal to “make the ongoing increase in share price and enhancing shareholder value a high priority in 2021 and beyond.”); *Ford Motor Co.* (Mar. 8, 2006) (excluded proposal requesting action to “enhance shareholder value” and “achieve stock performance equaling the top quartile of S&P 500 companies”); *Bimini Capital Management, Inc.* (Mar. 28, 2018) (excluded proposal requesting that the board take measures to close the gap between the book value of the company's common shares and their market price); *Tremont Corp.* (Feb. 25, 1997) (excluded proposal requesting a plan to narrow the gap between the value of the company's shares and the value of its underlying assets); *Rogers Corp. (Erley)* (Jan. 18, 1991) (excluded proposal requesting enumerated standards for financial performance). Similar to the proposals described above, the Proposal attempts to impose on the Company a specific decision with respect to a fundamental and ordinary business matter — the Company's profit margin strategy.

II. Conclusion

Based on the above, and also acknowledging that the Proposal does not present any significant policy issues that may transcend the day-to-day business of the Company, the Proposal is properly excludable as an ordinary business matter pursuant to Rule 14a-8(i)(7).

For the foregoing reasons, the Company requests your confirmation that the Staff will not recommend any enforcement action to the Commission if the Proposal is omitted 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.

shareholderproposals@secgov

September 30, 2021

Page 5

Sincerely,

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

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

Enclosures

cc: Special Opportunities Fund, Inc.
615 East Michigan Street Milwaukee, WI 53202
Attn.: Phillip Goldstein
pgoldstein@bulldoginvestors.com
(914) 747-5262

EXHIBIT A

Special Opportunities Fund, Inc. 615 East Michigan Street, Milwaukee, WI 53202

September 13, 2021

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

Attention: The Board of Directors

Dear Directors:

Special Opportunities Fund is the beneficial owner of shares of Texas Pacific Land Corporation with a value in excess of \$2,000.00. It has held these shares continuously for more than 12 months and plans to continue to hold them through the next meeting of shareholders.

We hereby submit the following proposal and supporting statement pursuant to rule 14a-8 of the Securities Exchange Act of 1934 for inclusion in management's proxy materials for the next meeting of stockholders for which this proposal is timely submitted.

RESOLVED: The Board should establish a goal of achieving a 95% profit margin.

SUPPORTING STATEMENT

Historically, the Company's business model relied on royalties and fixed fees for use of its land by oil and gas producers. That model required virtually no capital expenditures and minimal operating expenses. As a result, the Company's profit margin was consistently greater than 90%.

Recently, we have seen the Company's expenses balloon. We estimate that fixed overhead costs, comprised primarily of (1) salaries and related employee expenses, and (2) general and administrative expenses, now total more than \$40 million per annum. The result has been a decline in its profit margin to about 73%. Moreover, we fail to see that the increased operating expenditures have resulted in a commensurate increase in revenue.

Our concern is that the increased expenses are motivated not by a goal of increasing shareholder returns but by management's desire to transform the Company from a boring but highly profitable relatively passive business to a prestigious operating company with many employees. In sum, we believe that effort is misguided and contrary to the investment goals of most long-term investors who would prefer that the Company adhere to its historical low cost, high margin business model.

If you agree, please vote in favor of this proposal and send a message to the Board.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Phillip Goldstein". The signature is written in dark ink and is positioned above the printed name.

Phillip Goldstein
Chairman