

**23<sup>RD</sup> JUDICIAL DISTRICT COURT  
PARISH OF ST. JAMES  
STATE OF LOUISIANA**

NO. 41903

DIVISION "B"

**BEVERLY ALEXANDER; RISE ST. JAMES; INCLUSIVE LOUISIANA; and  
MOUNT TRIUMPH BAPTIST CHURCH by and through their members**

VERSUS

**ST. JAMES PARISH**

FILED: \_\_\_\_\_

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DEPUTY CLERK

**KOCH'S OPPOSITION BRIEF**

Intervenor, Koch Methanol St. James, LLC ("Koch") respectfully submits this Opposition to Petitioners' Brief in support of Petition for Judicial Review.

The land use application at issue in this case concerns Koch's proposal to optimize methanol production equipment and to provide a backup oxygen supply at the existing Koch Methanol facility in St. James Parish ("Facility"). The Facility is sited on land designated Industrial, and its existing footprint was approved by prior Planning Commission land use approvals. The proposed projects are facility updates that:

1. do not constitute the establishment of new industry in St. James Parish;
2. allow the existing facility to remain competitive while confining construction to the existing facility footprint (with the exception of piping and an associated access road needed to tie into an existing third-party ethane pipeline);
3. maintain air emissions within standards protective of human health, based on voluntary and conservative permitting principles; and
4. provide public benefit to the community in terms of revenue and employment.

Petitioners exaggerate the length of the pipeline, sensationalize emissions percentages without the context of health standards, and downplay the public benefits of the Facility by picking and choosing those pieces of the record that serve their narrative. However, jurisprudence is crystal clear that the court must review *all* of the evidence in the record and may only interfere with the Council's decision if it is *without any relation* to public health, safety, or general welfare. Koch

presented ample, verifiable evidence to the Parish that supports the approval of the application. Petitioners ignore the burden imposed upon the challenger of a land use decision to demonstrate *no reasonable justification* for the decision. They instead create – apparently from thin air – a requirement that the Council memorialize a “thorough analysis” of their rationale “on the record.” This is simply not required, and, in any event, the record reflects that the Council articulated valid reasons for denying the appeal and sustaining the Planning Commission’s approval of Koch’s land use application.

Petitioners’ procedural arguments are additionally without merit. They overcomplicate the plain language of the written land use ordinance itself and fail to afford deference to the Parish’s reasonable and documented interpretation of that ordinance. Under the plain language of the ordinance, the Planning Commission properly approved Koch’s land use application and need not have referred the pipeline tie-in to the Council prior to approval.

**I. Facts**

**A. The Proposed Project**

Koch Methanol St. James, LLC (“Koch”) has for several years operated a methanol production facility in St. James Parish. On July 12, 2023, Koch submitted a land use permit application to the St. James Parish government, in accordance with Parish Ordinance Sec. 82-25, proposing the following two separate projects at Koch’s existing Facility: (1) the Optimization Project; and (2) the Oxygen Back Up Supply Project. R. 1.

The Optimization Project is proposed to optimize primarily existing plant equipment to increase the Facility's design production rate of refined methanol. Part of the optimization includes upgrading the raw material feed to add ethane into the natural gas feed stream. R. 12. In order to obtain the ethane, a pipeline needs to be installed from the Koch Facility to an existing third-party ethane line. R. 12, 323. This existing third-party ethane pipeline is located on land designated as Wetlands under the Parish Ordinance. R. 43. Additional pieces of the project include improvements to plant cooling capabilities and other equipment upgrades with the collective primary goal of increasing the utilization of existing assets. R. 1, 48.

The Oxygen Back Up Supply Project is a separate project proposed to increase reliability at the Facility by providing a backup supply of oxygen in the event the existing oxygen feed fails.

R. 1, 48, 531. This project is proposed to include storage tanks for oxygen and the equipment needed to vaporize oxygen for the feed. R. 1, 48. With this increased reliability, the flaring that accompanies the loss of the oxygen feed would be expected to be reduced. R. 48-50, 508, 531, 535.

The record reflects that the Planning Commission and Parish Council were aware of the objectives and need for each of the proposed projects, as well as the fact that the projects would be constructed within the existing footprint, except for the pipeline tie-in. R. 43, 390, 531

**B. Parish Approval of the Application**

On July 31, 2023, the Planning Commission approved Koch's land use application at a regular session meeting. R. 72-74. Public notice of the application was given, and Petitioners did not provide any comments or information to the Planning Commission prior to its approval of Koch's application. R. 73. On August 30, 2023, Petitioners Beverly Alexander, RISE St. James, Inclusive Louisiana, and Mt. Triumph Baptist Church filed a 100+ page appeal of the Planning Commission's decision with the Council, raising various issues for the first time. R. 75-190. On September 22, 2023, Koch submitted a revised land use application to the Council for review, providing additional details regarding the projects to address the issues raised by Petitioners' appeal. R. 191-371. Petitioners thereafter supplemented their appeal. R. 372-388. On September 27, 2023, the Council held a public hearing on the appeal, receiving presentations from Petitioners and Koch and general public comments, after which several councilmembers made statements on the record. R. 521-568. At the conclusion of the hearing, the Council voted to reject Petitioners' appeal. R. 567-68.

**C. Pipeline Tie-In for Optimization Project**

The existing third-party-owned ethane pipeline to which Koch proposed to connect is an underground pipeline that runs generally north-south along the west side of Hwy 3127. R. 7. It is the only existing ethane pipeline in the vicinity of the Facility and is located entirely within an area designated Wetlands. R. 531.<sup>1</sup> Accordingly, a portion of the land where Koch must connect to the

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<sup>1</sup> The transcript of the appeal proceedings incorrectly transcribed the word "ethane" as "methane." It is evident from the video/audio that the speaker, Mr. Wiggins, stated "there is only one existing ethane pipeline in the vicinity of the Koch Methanol Facility." R. 521 at 0:46:15.

existing ethane pipeline is necessarily designated as Wetlands as well. R. 8. The pipeline company constructing the pipeline will secure the necessary wetland permits for its work, and those permits will ensure wetlands are conserved by implementing mitigation measures. R. 279, 531-532.<sup>2</sup>

With respect to the length of the pipeline segment, the record is clear that the 1,000-foot segment addressed in the application is that portion of the pipeline that will be located in an area designated Wetlands. R. 43. While Petitioners attempt to create a factual discrepancy by citing to a different length of approximately 3,000 feet listed in the third-party contractor's coastal use permit application, the difference in length is to be expected. In applying for a coastal use permit, the applicant must indicate the entire length of the pipeline that will be installed in Louisiana's coastal zone, and not just the portion that falls within a particular parish land use designation.<sup>3</sup> A significant portion of the pipeline is not located in lands designated as Wetlands. *Cf.* R. 30 with R. 55.<sup>4</sup> The document cited by Petitioners so indicates, stating that the length runs from the existing pipeline to a valve site adjacent to the Koch Methanol Plant, and the permit plats attached to the application clearly demonstrate that the end point of the proposed pipeline lies well-within the Koch Methanol Plant existing boundaries (i.e., Industrial land use designation) to the east of Highway 3127. *See* Application for Coastal Use Permit No. 20230570, as cited in Petitioner's Brief at fn. 9 (permit plats available via links listed in Step 13 of 15 of the application); *see also* R. 30, noting "ethane metering point" well within boundaries of existing Facility.

**D. Air Permitting for Optimization Project**

Koch took the most conservative approach in applying for the air permitting of its optimization project in order to reliably demonstrate that the project would not significantly

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<sup>2</sup> The transcript of the appeal proceedings incorrectly transcribed the phrase "mitigation measures" as "communicating measures." It is evident from the video/audio that the speaker, Mr. Wiggins, stated "those permits will ensure wetlands are conserved with implementation of appropriate mitigation measures." R. 521 at 0:46:32.

<sup>3</sup> The entirety of St. James Parish is located within the coastal zone boundary. The State and Local Coastal Resources Management Act of 1978 provides that "no person shall commence a use of state or local concern without first applying for and receiving a coastal use permit." La. R.S. § 49:214.30. "Use" means "any use or activity within the coastal zone which has a direct and significant impact on coastal waters. La. R.S. § 49:214.23.

<sup>4</sup> R. 30 depicts the third-party ethane pipeline segment and access roads, as labeled. By comparing this figure with R. 55, it is evident that a large portion of the pipeline will not encroach upon the Wetlands area, as much of the length resides to the east of La. Hwy. 3127, and Wetlands designated land use areas start to the west of La. Hwy. 3127 and expand westward.

deteriorate air quality. R. 533. Koch affirmatively and voluntarily asked LDEQ to undertake review of its air permit application under the Prevention of Significant Deterioration (PSD) program, even though such a review was not triggered by the project.

PSD review applies in an attainment or unclassifiable area such as St. James Parish<sup>5</sup> and only to the construction of new major stationary sources, to major modifications of existing stationary sources, and to modifications of existing minor stationary sources if the modification itself would constitute a major source. LAC 33:III.509.A. None of these conditions applied to Koch, but the company voluntarily asked LDEQ to apply PSD requirements as if the entire Facility was applying for a permit as new construction.<sup>6</sup> R. 60, 533.

PSD requires an air quality analysis and the installation of the “Best Available Control Technology” (BACT) on emission sources, among other requirements. LAC 33:III.509.J and M. The air quality analysis is required to demonstrate that new emissions from the proposed source in conjunction with other applicable emissions increases and decreases from existing sources, will not cause or contribute to a violation of any applicable National Ambient Air Quality Standards (NAAQS) or PSD increment. LAC 33:III.509.K. BACT is an emissions limitation which is based on the maximum degree of control that can be achieved. LAC 33:III.509.B.

Koch’s air quality analysis modeled not only the new proposed emissions, but the emissions from the entire Facility post-project. R. 260, 533.<sup>7</sup> Of the pollutants analyzed, four required an analysis of ambient air quality under the PSD program. R.260-62.<sup>8</sup> Of these four

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<sup>5</sup> EDMS Document No. 13920052, LDEQ Public Notice packet on Draft Permits, at 99, 172 (St. James Parish designated attainment). On February 9, 2024, Koch filed a Motion to Supplement the record with EDMS Document No. 13920052, hereinafter the “EDMS Document,” and asked in the alternative that the Court take judicial notice of the document. All references to the “EDMS Document” herein reference EDMS Document No. 13920052, which has been filed into the record as Exhibit 1 to the Motion to Supplement. The “EDMS Document” is also available via the hyperlink originally provided in Petitioners’ appeal at R. 80: <https://edms.deq.louisiana.gov/app/doc/view?doc=13920052&ob=yes&child=yes>.

<sup>6</sup> EDMS Document at 99-100 (“Although not required because the KMe Facility is not an existing major stationary source and because the changes proposed do not themselves constitute construction of a new major stationary source, Koch requested that PSD requirements be applied as if the facility has not yet been built and to all pollutants for which the post-project facility-wide potential to emit will exceed PSD Significant Emission Rates.”).

<sup>7</sup> EDMS Document at 431.

<sup>8</sup> Ammonia and methanol, which are Louisiana Air Toxics Pollutants, were also modeled. Modeling demonstrated that the applicable Louisiana Ambient Air Standards (LAAS) would not be exceeded for these pollutants. R. 62, 262; EDMS Document at 18-19, 380.

pollutants, all were below their respective PSD significant impact levels (SILs), except for NO<sub>2</sub> (1-hour). R. 62. Under PSD review, refined air modeling is not required for pollutants below their SIL and is required for pollutants above their SIL.<sup>9</sup> NAAQS modeling was thus only required for the 1-hour NO<sub>2</sub> NAAQS. R.67, 261.<sup>10</sup> Like the SIL analysis, the refined modeling for the 1-hour NO<sub>2</sub> NAAQS took into account the NO<sub>2</sub> emissions from the entire existing and proposed facility, not just from the optimization project, and additionally considered off-property NO<sub>2</sub> emissions as per EPA protocol. R. 67, 176, 261, 533.<sup>11</sup> The results showed that NAAQS were not exceeded.<sup>12</sup> R. 60, 67, 262, 533.

Based on the voluntary application of PSD, the entire Facility will utilize BACT for NO<sub>x</sub>, CO, VOC, PM, PM<sub>2.5</sub>, PM<sub>10</sub> and greenhouse gases following the completion of the optimization project. R. 60, 103, 169, 251, 533. LDEQ engaged in a thorough review of control technology to establish BACT for each emissions source. R.259.<sup>13</sup> The establishment of BACT is a conservative measure that Koch voluntarily undertook. R. 263.

#### **E. Air Toxics and Health Impacts**

Petitioners use increases in the quantity of emissions to make unsupported conclusions about health impacts. However, data in the record shows that the *total* emissions of the Facility post-projects, not just emission increases from the projects, were modeled and that modeled health impacts are all below applicable standards. Koch conducted, and LDEQ concurred in, analyses concluding that air emissions would meet NAAQS for criteria pollutants and that toxic air pollutants would meet the Louisiana Ambient Air Standards (“LAAS”), which standards are protective of human health.<sup>14</sup> R.69, 178, 257, 262-63, 515. Where health-protective standards are not exceeded, there is not an adverse impact. The modeling results showed that total off-property air toxics concentrations were well below the daily exposure LAAS and that potential cancer risks

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<sup>9</sup> EDMS Document at 151.

<sup>10</sup> EDMS Document at 151.

<sup>11</sup> EDMS Document at 432-433; Koch Revised Air Quality Impact Assessment (May 31, 2023) (Doc. No. 13848626) at 15-16, available at <https://edms.deq.louisiana.gov/app/doc/view?doc=13848626>.

<sup>12</sup> EDMS Document at 152.

<sup>13</sup> EDMS Document at 103-150.

<sup>14</sup> EDMS Document at 18-19, 428.

from total facility emissions were at the lowest end of EPA's acceptable cancer range (or even below the range altogether), as follows:

As shown in Table D-10, the maximum off-property annual average concentrations of carcinogenic air toxics predicted by air modeling are all well below the LAAS, which are established at concentrations protective of daily exposure over a lifetime. . . .

Based on EPA methodology for modeling health risks, the potential cancer risk associated with KMe Facility total emissions ranges from 0.02 to 2 excess lifetime cancer cases in one million at the current residence with the highest modeled air toxics concentrations (Table D-11). This estimated cancer risk is near or below the lower threshold of EPA's acceptable cancer risk range of 1 to 100 in one million excess lifetime cancer cases.

R. 299. In addition, the non-cancer health impacts of the Facility emissions were evaluated. The Hazard Index (HI) for noncarcinogenic air toxics that was estimated for total Facility emissions was a low value of 0.04. When the Facility's estimated HI (0.04) was added to the preexisting HI estimated for the community within a 3.1 mile radius of the Facility (0.50), the resulting cumulative HI (0.54) was well below EPA's risk management threshold for noncancer health hazards, which is an HI of 1.0. R. 302-03. LDEQ agreed with the modeling and analysis of the health impacts, as evidenced by LDEQ's issuance of the draft permit<sup>15</sup> and final permit.<sup>16</sup>

Further, Petitioners' allegations regarding an alleged 3000% increase in toxicity of permitted emissions is a red herring. The basis for Petitioners' 3000% calculation is incorrect. The chart Petitioners created at R. 95-97 wrongly represents to the Council and this Court that certain metals were not emitted at the Facility prior to the proposed projects. However, these types of emissions are associated with the combustion of natural gas and thus have pre-existed the proposed projects at the facility. They were not "speciated" (i.e., listed in detail) in prior versions of the permit; because new LDEQ guidance now requires this speciation, this is the first time they are recorded individually in the air permit. R. 182-183 ("PM10 and VOC compounds classified as LAC 33:III.Chapter 51-regulated toxic air pollutants (TAP) are speciated below"); R. 535-36.

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<sup>15</sup> EDMS Document at 162-216.

<sup>16</sup> See LDEQ EDMS Database, Permit No. 2560-00295-V6 and PSD-LA-851 (Doc. Nos. 14103204 and 14103205), available at <https://edms.deq.louisiana.gov/app/doc/view?doc=14103205> and <https://edms.deq.louisiana.gov/app/doc/view?doc=14103204>. Petitioners agree that the court may take judicial notice of publicly available government documents accessible via a state-maintained database. Petitioner's Opening Brief, n. 9. Koch's seeks judicial notice of this and other LDEQ and LDNR documents cited throughout this brief on the same basis.

Further, LDEQ addressed this very same comment from Petitioners in its response to public comments on the permit, explaining that “[t]hese metals are not directly associated with the KMe Optimization Project or the chemistry involved in the production of methanol.”<sup>17</sup>

Even so, as discussed above, the toxicity that Petitioners characterize as a “3000%” increase was accounted for in the modeling of the total off-property air toxics concentrations, which concentrations were below the daily exposure LAAS, and which resulted in potential cancer risks from total facility emissions at the lowest end of EPA’s acceptable cancer range.

**F. Air Emissions Decreases and Monitoring**

Koch presented facts to the Council indicating that actual air emissions in St. James had significantly decreased over time. R. 532-33. LDEQ data, provided as part of the air permitting process, demonstrates that the overall level of air emissions in St. James Parish has decreased by significant amounts since 2015.<sup>18</sup> From 2015-2022, criteria pollutant emissions decreased by 30%, toxic air pollutant emissions decreased by 69%, and toxic release inventory pollutant emissions decreased by 28%. R. 532-33.

Additionally, mobile air monitoring conducted within the parish and within the vicinity of the Koch Methanol facility on three separate occasions recent to the Council meeting showed pollutant levels below the expected ambient air quality standards, which levels are set to protect human health and the environment. R. 61, 532-33. The Council agenda also reflects that LDEQ appeared at the same meeting as the appeal to discuss an air monitor device for the Welcome area. R. 390. The Council was therefore well-informed as to mobile air monitoring as an external check on the Facility’s emissions.

In conjunction with the projects, Koch has also voluntarily committed to installing a fence line monitoring system that will monitor volatile organic compounds (VOC) or methanol along the Facility perimeter, and this is incorporated in its air permit as an enforceable permit condition.

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<sup>17</sup> See LDEQ Public Comments Response Summary, Permit No. 2560-00295-V6, Permit PSD-LA-851 (Doc. No. 14103891), at 17-18, available at <https://edms.deq.louisiana.gov/app/doc/view?doc=14103891>.

<sup>18</sup> EDMS Document at 197.



R. 21, 535.<sup>19</sup> Koch's commitment to installing fence line monitoring was made in response to comments it heard during its engagement with the community leading up to its filing of the air permit application. R. 535.

**G. Environmental Justice**

Koch conducted an Environmental Justice (EJ) Analysis, which showed that toxic compounds would not have an adverse impact on the community. R. 60, 282-315. As part of that process, it engaged with the community and discussed health and the environment. R. 60, 309-315. The engagement also included joint training with local emergency services personnel, employee outreach through volunteer activities, participation with the St. James Citizens Advisory Panel, and focus group and community outreach meetings. R. 315.

Petitioners point to percentile statistics identified by EJScreen in that analysis that indicate that residents within a 3-mile radius of the Facility are above the 80<sup>th</sup> percentile statewide and nationally for certain environmental impacts. However, Petitioners fail to explain that EJScreen, as its name implies, is a screening tool that does not analyze impacts to the community. *See Rise St. James v. La. Dep't of Env't Quality*, 2023-0578, p. 47-48 (La. App. 1 Cir. 1/19/24); \_\_\_ So. 3d \_\_\_, 2024 WL 207859, at \*23, *reh'g denied*, (Feb. 15, 2024) (agreeing with LDEQ's reliance on EPA's guidance that "screening-level results of EJScreen do not, by themselves, determine the existence or absence of environmental justice concerns in a given location, do not provide a risk assessment, and have other significant limitations"). To determine impacts, further analysis of underlying data is required. Koch conducted these analyses which showed that air emissions would meet NAAQS for criteria pollutants and the LAAS for toxic air pollutants and would not pose unacceptable cancer and noncancer health risks, and LDEQ concurred.<sup>20</sup> R. 257, 262-63, 289-92, 299-303, 515. Such analyses form a legitimate basis to conclude adverse environmental impacts do not exist in a given area. *Rise St. James*, \_\_\_ So. 3d \_\_\_, 2024 WL 207859, at \*23. (LDEQ's issuance of permits was not arbitrary and capricious in terms of environmental justice where air

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<sup>19</sup> EDMS Document at 11, 94, 195; *see* Final Permit No. 2560-00295-V6 at 94, available at <https://edms.deq.louisiana.gov/app/doc/view?doc=14103205>.

<sup>20</sup> EDMS Document at 18-19, 428.

emissions met NAAQS for criteria pollutants and the LAAS for toxic air pollutants and data indicated air emissions decreased over time, among other factors).

#### **H. Public Benefits**

The optimization project and oxygen backup project, valued at a total investment of approximately \$185 million, will bring an increase in tax revenue to Louisiana and St. James Parish in the form of property, inventory, franchise, and sales tax. R. 50, 103, 517, 533-34. Koch Methanol's investment in these projects will represent a revenue increase for the parish of approximately \$3.9 million of property tax over the next 10 years and approximately \$2.3 million in sales and use for machinery equipment purchase. R. 50, 517, 533-34. Because the proposed projects keep the Facility competitive, they ensure the retention of the existing 114 direct jobs. R. 12-13, 50, 534-35. The projects are expected to create 400 temporary jobs associated with construction and two new permanent direct jobs at the Facility. R. 12-13, 50.

#### **II. Standard of Review**

“Land use is subject to the police power of various governing bodies, and the courts will not interfere with the decisions of these bodies unless it is clear that their action is without any relation to the public health, safety, or general welfare.” *Yolande Schexnayder & Son, Inc. v. Par. of St. James*, 21-416, p. 9 (La. App. 5 Cir. 3/9/22); 337 So. 3d 534, 540, *writ denied*, 2022-00587 (La. 6/1/22); 338 So. 3d 491; *see Palermo Land Co., Inc. v. Plan. Comm’n of Calcasieu Par.*, 561 So. 2d 482, 491 (La. 1990); *see King v. Caddo Par. Comm’n*, 97-1873, p. 14 (La. 10/20/98); 719 So. 2d 410, 418.

“A challenge to a zoning decision in Louisiana is a *de novo* proceeding on the issue of whether *the result* of the legislation is arbitrary and capricious, and therefore a taking of property without due process of law.” *Palermo*, 561 So. 2d at 492 (emphasis added); *see also Toups v. City of Shreveport*, 2010-1559, p. 4 (La. 3/15/11); 60 So. 3d 1215, 1218 (citing this standard in reference to a challenge to a city zoning board’s special use exception decision). The terms “arbitrary and capricious” mean “willful and unreasoning action, absent consideration and in disregard of the facts and circumstances of the case.” *Toups*, 60 So. 3d at 1217. However, when there is room for two opinions, an “action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed [by some] that an erroneous

conclusion has been reached.” *Four States Realty Co., Inc. v. City of Baton Rouge*, 309 So. 2d 659, 664 (La. 1974). The action of a governmental body is arbitrary and capricious and unreasonable if it bears no relation to the health, safety, or general welfare of the public. *See King*, 719 So. 2d at 418.

Whether the decision “bears the requisite relationship to the health, safety, and welfare of the public is a factual question which must be determined **from the evidence in the record.**” *Toups*, 60 So. 3d at 1218; *see also Coogan v. Jefferson Par.*, 381 So. 2d 1320, 1322 (La. App. 4 Cir. 1980), *writ granted sub nom. Coogan v. Par. of Jefferson*, 385 So. 2d 786 (La. 1980), *and aff’d sub nom. Lambert v. Jefferson Par.*, 390 So. 2d 515 (La. 1980) (court is “obliged to sustain the [Council’s] conclusions unless **the weight of the evidence in its entirety** so strongly preponderates against such conclusions that it compels us to find an abuse of discretion on the part of the [Council]”). “Courts have recognized it is not within the province of the appellate court to second guess a zoning decision that appears to have been based on appropriate and well-founded concerns for the public.” *Toups*, 60 So. 3d at 1218. The Louisiana Supreme Court has cited with approval *Hernandez v. City of Lafayette*, 399 So. 2d 1179, 1182 (La. App. 3 Cir. 1981), wherein the court noted, “even where no competent evidence to support a zoning decision was adduced in front of the governing body, the resulting legislation will nevertheless be upheld if the result is supported by evidence adduced at trial.” *Palermo*, 561 So. 2d at 491-92.

From a judicial review perspective, *Toups*, 60 So. 3d 1215, is procedurally similar to the present case in that it involved a local board’s decision on a land use issue, which was then appealed by an aggrieved person to the city council. There, the local Zoning Board of Appeals approved a special exception use application to allow the sale of alcohol at a proposed store. Plaintiff appealed the decision to the city council, and, following a public meeting, the Council voted to overturn the ZBA’s decision. The reviewing courts considered whether the decision of the council was arbitrary and capricious. The Louisiana Supreme Court did not restrict its review to rationale articulated by the council, but looked at all of the evidence in the record to find what the Council *could have* reasoned in denying the special use exception. *Id.* at 1219. The Court then found that the evidence would support the conclusion that the denial was not arbitrary and capricious. *Id.*

Such an approach is in line with the applicable burden of proof. The party challenging the decision “has the burden to establish by a preponderance of the evidence that the decision by the governmental body ... has no substantial relationship to public health, safety, morals, or general welfare of the municipality.” *Id.* at 1218 (citing *Palermo*, 561 So. 2d at 493); *see also Yolande Schexnayder & Son, Inc.*, 337 So. 3d at 544 n. 8 (“The trial court, when reviewing the denial of a permit or other land use decision, must review the decision to determine if the landowner met its burden to prove that the governmental entity which denied the permit acted in an arbitrary and capricious manner.”). Thus, Petitioners, as challengers of the land use decision, have the burden to establish that the Council’s denial of the appeal *has no substantial relationship* to public health, safety, morals, or the general welfare.<sup>21</sup>

### III. Argument

#### A. The Parish Considered the § 82-25(h) Factors and Its Decision Was Not Arbitrary and Capricious.

Section 82-25(h) of the St. James Parish Code of Ordinances provides that the Planning Commission consider four factors when approving or denying a use under subsection (f), which use includes industrial development that requires an air permit. The four factors are as follows:

- (1) Whether the impacts of the proposed use would be substantially different from the impacts of allowable uses for the districts. Such impacts may include, but are not limited to, air and water emissions, noise, lighting, traffic (road and rail), effect on property values, and neighborhood.
- (2) The public benefits of the proposed use, such as job creation, expansion of the tax base, and enhancing the attractiveness of the parish for future development.
- (3) The physical and environmental impacts of the proposed use on the air, water, and land, with particular attention to whether the public benefits of the proposed use are commensurate with those impacts, and whether the environmental impacts may impair the ability of the parish to attract other beneficial development.
- (4) Vested property rights and other constitutional protections enjoyed by the proponent of the proposed use.

Petitioners allege that the Council is also obliged to also consider the foregoing factors when considering an appeal of the Planning Commission’s decision, that the Council did not comport with § 82-25(h) “on the record,” and that the Council’s decision on the appeal was arbitrary and

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<sup>21</sup> Petitioners side-stepped the burden of proof by failing to address it in their brief.

capricious.<sup>22</sup> Petitioners do not challenge the Council’s consideration of Factors 1, 2, and 4, but only take issue with the Council’s consideration of Factor 3.

Petitioners have both misconstrued the proper application of Section 82-25(h) and have failed to meet their burden of establishing that the Council’s denial of their appeal was arbitrary and capricious. With respect to the application of 82-25(h) to the appeal: (1) neither the Parish Ordinance nor jurisprudence require that the Council apply the 82-25(h) factors “on the record”; and (2) even if Factor 3 was not met, the Council was not required to grant the appeal on the basis of one factor alone. With respect to establishing that the Council’s denial of their appeal was arbitrary and capricious, Petitioners have failed to show the denial had no substantial relationship to public health, safety, morals, or the general welfare. The evidence in the record shows that approval of Koch’s land use application under the 82-25(h) factors was reasonable, and statements made by various councilpersons show they considered the factors.

**1. The Council Was Not Required to Apply the 82-25(h) Factors “On the Record.”**

Neither the Parish Ordinance nor jurisprudence require that the Council apply the 82-25(h) factors “on the record,” as Petitioners claim. Section 82-25(h) provides that “the Planning Commission” consider the four listed factors for approval or denial of uses under subsection (f). The Planning Commission did this, as reflected in its resolution approving Koch’s application:

**BE IT FURTHER RESOLVED** that the planning commission finds that approval is appropriate under ordinance Section 82-25, with specific reference to the factors described in Section 82-25(h) because: the impacts of the proposed use are common to industrial plants and would not be substantially different from the impacts of other allowable uses industrial areas; the project would retain existing jobs while providing new job opportunities, and would expand the tax base with the value of additional facilities. Such benefits outweigh the relatively modest physical and environmental impacts without impairing the parish’s ability to attract other beneficial development by virtue of the project’s location in an industrial area and its distance from potentially impacted uses.

R. 73-74. Section 82-25(f) provides that permits approved by the Planning Commission thereunder (e.g., industrial developments that require air permits) are subject to appeal to the Council. It

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<sup>22</sup> Petitioners have not sought this Court’s review of the Planning Commission’s consideration under § 82-25(h). Regardless, the Planning Commission did in fact undertake the § 82-25(h) analysis, as evidenced by its review of Koch’s application and consideration of Koch’s presentation at the July 31, 2023, Planning Commission meeting, which resulted in the resolution approving Koch’s application. *See generally*, R.1-74. The resolution explicitly states that the Planning Commission considered the application, presentation, and the applicable decision-making criteria, as well as the reasons it found § 82-25(h) to be satisfied. R. 73-74.

provides a timeline for the appeal, and provides that the Council, “in its discretion, may consider the appeal on the basis of the written record of the matter, or may convene a hearing concerning the appeal.”<sup>23</sup> However, that is the extent of the restrictions put upon the Council’s consideration of the appeal. Neither subsection (h) nor (f), as written, mandates that the Council consider the subsection (h) factors “on the record.”<sup>24</sup> Therefore, the Council made no procedural error. Petitioners simply seek to impose requirements on the Council that are above and beyond the Parish Ordinance.<sup>25</sup>

Petitioners attempt to liken the Council’s role on appeal of the Planning Commission decision to that of the Louisiana Department of Environmental Quality (“LDEQ”), or other state agencies, in granting a permit. However, these agencies are subject to detailed regulations under the administrative code in carrying out permitting actions. The primary case cited by Petitioners in support of their argument demonstrates this point. In *Oakville Cmty. Action Grp. v. Plaquemines Par. Council*, 2008-1286, p. 5 (La. App. 4 Cir. 2/18/09); 7 So. 3d 25, 27-28, *writ denied*, 2009-0621 (La. 5/1/09); 6 So. 3d 813, the parish council had stepped into the role of a “permitting body” in issuing a coastal use permit under the State and Local Coastal Resources Management Act, La. R.S. § 49:214.21. The council was therefore subject to a specific requirement in the Louisiana Administrative Code providing that “the permitting body shall prepare a short and clear statement explaining the basis for its decision.” Here, the Council was neither dealing with a coastal use permit application nor under an explicit mandate to prepare such a statement on its decision. The St. James Council acting in review of the Planning Commission’s decision is not subject to the

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<sup>23</sup> Any suggestion by Petitioners that the Council improperly considered additional evidence presented by Koch in its revised application is undercut by the discretion afforded to the Council in the basis upon which it considers the appeal. Petitioners had not presented any of the information in their appeal to the Planning Commission for consideration, and the Council had discretion to consider Koch’s response to Petitioners’ new and voluminous allegations. Indeed, Petitioners submitted a supplement to their appeal thereafter. R. 372.

<sup>24</sup> An ordinance must be applied as written, when it is clear and unambiguous and the application of the statute does not lead to absurd consequences. *Yolande Schexnayder & Son, Inc.*, 337 So. 3d at 540.

<sup>25</sup> Accordingly, *Kaltenbaugh v. Bd. of Supervisors*, 2018-1085, p. 12 (La. App. 4 Cir. 10/23/19); 282 So. 3d 1133, 1142, *writ denied sub nom. Kaltenbaugh v. Bd. of Supervisors, S. Univ.*, 2019-01871 (La. 1/28/20); 291 So. 3d 1061, cited by Petitioners for the proposition that failure to follow procedures is arbitrary and capricious is of no import. Further, it is not a land use case, and instead considers whether a university followed its due process procedure in furloughing employees.

Louisiana Administrative Code, and the Parish Ordinance does not mandate such specific procedures.<sup>26</sup>

Another case cited by Petitioners, *Herman v. City of New Orleans*, 2014-0891 (La. App. 4 Cir. 1/21/15); 158 So. 3d 911, *writ denied*, 2015-0354 (La. 4/24/15); 169 So. 3d 363, does not require a thorough analysis “on the record,” as Petitioners represent. There, the court found that the city council’s approval of the planning commission’s approval of a multi-use residential building design was not arbitrary and capricious. In reviewing the record, the court merely noted that the minutes reflected the city council had conducted a thorough analysis in approving the project despite it failing several historic design principles. However, the court’s description of the “thorough analysis” consisted only of short statements by two councilpersons and the testimony and written reports provided to the council – a body of evidence not much different than the record before the Court in this matter. The court did not state that the council analyzed each design principle in detail on the record, and the court certainly did not announce a mandate that such an analysis be reflected in the minutes for all parish councils in the state.

Petitioners additionally misrepresent the totality of the facts in *Clark v. City of Shreveport*, 26,638 (La. App. 2 Cir. 5/10/95); 655 So. 2d 617. There, the applicant challenged a denial of a special use exception to operate a daiquiri shop, where the ordinance provided that sale of alcohol was a special use exception subject to approval of the zoning board and any specified terms and conditions. The court was thus applying the standard that “[w]here permits are granted in similar situations and refused in others, the refusal to grant a permit may constitute nonuniform application of zoning ordinances that is arbitrary and unreasonable.” *Id.* at 622. The record indicated that the board’s report stated the request complied with all guidelines except for parking, and the plaintiff thereafter submitted a revised plan meeting the parking requirements. On these facts, the court found there was no reasonable basis, based on the entirety of the record before the court, to deny the special use exception. Petitioners quote a portion of the opinion where the court is simply discounting the city’s argument that the council had expressed concerns regarding traffic impact

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<sup>26</sup> Similarly, Petitioners’ reference to La. R.S. 49:978.1(G) is of no event, because it is a citation to the Administrative Procedure Act which is only applicable to state agencies. Political subdivisions (e.g., parish or municipality), including any board, commission department, agency, officer, or entity thereof, are explicitly excluded from the definition of “agency.” *See* La. R.S. 49:951(3).

and parking, noting that “such an articulation does not appear in the record.” Petitioners take this quote out of context, as it does not establish an affirmative obligation that the Council articulate reasons for its decisions. The court stated “[f]rom the record there appears to be *no reasonable justification* for the action.” *Id.* In other words, not only did the Council not articulate the reasons for its decision, but no other evidence in the record indicated any reasonable basis for the decision.

*Lake Terrace Prop. Owners Ass’n v. City of New Orleans*, 567 So. 2d 69 (La. 1990), also cited by Petitioners, stands in contrast to these cases. There, the Louisiana Supreme Court considered whether the city’s finding that property was no longer needed for public purposes was arbitrary and capricious. The Court did not analyze any statements made by the council members on the record, but determined from the evidence in the record that the decision was not arbitrary and capricious. *Id.* at 74-75.

None of the case law cited by Petitioners creates a duty that the Council apply the 82-25(h)(3) factor “on the record.” Indeed, the Louisiana Supreme Court has clearly announced that judicial review as to whether a local government zoning decision is arbitrary and capricious is to be determined from the evidence in the record, and not a statement “on the record” by the governing body. *Toups*, 60 So. 3d at 1218 (existence of requisite relationship is “a factual question which must be determined from the evidence in the record.”); *Palermo*, 561 So. 2d at 492 (same).

## **2. The Council Was Not Required to Grant the Appeal Based on Factor 3 Alone.**

Section 82-25(h) provides that the Planning Commission consider four factors for approval or denial of industrial developments that require air permits. It does not provide the weight that is to be applied to each factor, and it does not provide that a single factor is controlling of the ultimate decision. Accordingly, Petitioners’ focus on Factor 3, to the exclusion of the other factors, is inadequate. The plain language definition of “factor” is “a circumstance, fact, or influence which *contributes* to a result.”<sup>27</sup> By definition, a single factor would not be dispositive of an issue. The Parish had discretion to consider and weigh all of the factors, and there is no basis to argue that Factor 3 controls. *See Waste Mgmt. of La., L.L.C. v. Consol. Garbage Dist. No. 1 of Par. of*

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<sup>27</sup> See Oxford English Dictionary, <https://www.oed.com/search/dictionary/?scope=Entries&q=factor>. (emphasis added).



*Jefferson*, 12-444, p. 13 (La. App. 5 Cir. 3/13/13); 113 So. 3d 243, 250 (holding council did not violate its ordinance in exercising its discretion to consider and weigh factors during RFP process and finding “no basis to argue that price, although a relevant factor in the RFP, is the controlling factor”).

Petitioners fail to acknowledge the consideration of Factors 1 and 2, which the Planning Commission discussed in the resolution. The Planning Commission found with respect to Factor 1 that “the impacts of the proposed use are common to industrial plants and would not be substantially different from the impacts of other allowable uses [in] industrial areas” and, with respect to Factor 2, that “the project would retain existing jobs while providing new job opportunities and would expand the tax base with the value of additional facilities.” R. 74. With respect to Factor 3, the Commission also found, “Such benefits outweigh the relatively modest physical and environmental impacts without impairing the parish’s ability to attract other beneficial development by virtue of the project’s location in an industrial area and its distance from potentially impacted uses.” R. 74. Factor 1 considers air impacts in a different manner than Factor 3, asking whether those impacts substantially differ from the allowable uses of an industrial area. So, in addition to balancing air impacts against public benefits under Factor 3, the Parish considered those air impacts in the context of what is normal in an Industrial use area.

**3. Based on the Evidence in the Record, the Council’s Decision to Deny Petitioners’ Appeal Was Not Arbitrary and Capricious.**

As discussed above in Section II, the standard for determining whether the Council’s decision was arbitrary and capricious is whether it bears no “relation to the health, safety, or general welfare” of the public, and Petitioners bear the burden of proof.<sup>28</sup> *See King*, 719 So. 2d at 418. The relationship of the decision to health, safety, and public welfare is a factual question to be determined from the evidence in the record. *Toups*, 60 So. 3d at 1218. The Court is not restricted

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<sup>28</sup> Petitioners have misstated the standard. They create a new standard on p. 23 of their brief, stating the Council must “clearly balance the mandated factors in a manner that has a substantial relation to the public health, safety, or general welfare,” citing *Cuny Fam., LLC v. Par. of Jefferson*, 19-269, p. 8 (La. App. 5 Cir. 12/26/19); 288 So. 3d 235, 241. However, *Cuny Family* does not require a Council to “clearly balance” or to establish a “substantial relationship.” There, the Fifth Circuit reiterated the established Louisiana zoning maxim that “courts *will not interfere* with [legislative body] prerogative unless the action is palpably erroneous and *without any* substantial relation to the public health, safety, or general welfare.” *Id.*

to looking solely to statements of the Council but must consider the entire record as a whole. The record herein is replete with information, addressing all of the 82-25(h) factors, that supports the Council's decision to deny Petitioners' appeal and allow Koch's project.

Petitioners cite two cases to argue that the Council did not engage in a sufficient balancing analysis under Factor 3: *Herman v. City of New Orleans* and *Save Ourselves, Inc. v. La. Env't. Control Comm'n*. However, neither case imposes upon the Council the heightened standard that Petitioners seek. As discussed in Section III.A, *supra*, *Herman*, 158 So. 3d 911, does not obligate the Council to conduct a "thorough analysis" of the factors "on the record." In *Save Ourselves, Inc. v. La. Env't Control Comm'n*, 452 So. 2d 1152, 1156-57 (La. 1984), the Louisiana Supreme Court announced a constitutional public trustee duty applicable to *state* agencies that requires a balancing formula different than that of Factor 3. The duty and balancing formula has not been applied to local governments. *See id.* (interpreting Art. IX, § 1 of the Louisiana Constitution to "impose[] a duty of environmental protection on all state agencies and officials"); *see also* La. R.S. § 30:2014 (enshrining LDEQ's role "as the primary public trustee of the environment" and mandating LDEQ "consider and follow the will and intent of the Constitution" in making permit decisions).

Petitioners improperly upsell the environmental impacts and downplay the public benefits of the project to argue that the record does not support a finding that they are commensurate. Petitioners sensationalize air impacts by focusing on the numerical increases of emissions outside of the context of established air quality and health standards. The record shows that impacts from total Facility emissions after the project is complete are still well below national and state standards established to be protective of human health. R. 257, 258-59, 515, 533-34. The environmental justice analysis in the record also shows that the Facility's emissions do not pose unacceptable cancer and noncancer health risks. R. 289-292. Further, Petitioners' reference to a 3000% increase in the toxicity of permitted emissions is not only inaccurate, but misleading, as discussed in Section I.E, *supra*. In addition, Petitioners neglect to acknowledge that Koch affirmatively and voluntarily asked LDEQ to undertake review of its air permit application under the PSD program, even though such a review was not triggered by the project. That review resulted in the implementation of the Best Available Control Technology for each emissions source. R. 533.

On the other hand, the record presents several positive environmental facts that Petitioners fail to point out. Facts indicate that actual air emissions in St. James had significantly decreased over time. R. 532-33. The record reflects both mobile air monitoring and fence line monitoring will serve as a check on emissions.<sup>29</sup> R. 21, 390, 532-533, 535. The record also reflects an environmental benefit of the Oxygen Backup Supply Project that Petitioners fail to mention. That project increases the reliability of oxygen flow, which will reduce instances of flaring that accompanies the loss of the oxygen feed. R. 1, 12, 43, 48-50; 531, 534-535. Flaring “emits combustion pollutants, including NO<sub>x</sub>, CO, PM<sub>10</sub>, PM<sub>2.5</sub>, VOC, and GHG[,]” and thus reducing flaring will lead to reductions in associated emissions.<sup>30</sup> In addition, Petitioners ignore the benefits that accompany the optimization of an existing facility, already located and operating in industrial-designated land, as opposed to a new facility on unoccupied land.

Petitioners complain that wetlands impacts were not considered, but allowable uses in Wetlands designated land is subject to coastal use permitting by ordinance as per 82-25(c), and such permitting will ensure wetlands are conserved by implementing mitigation measures. R. 279, 532.<sup>31</sup> Petitioners point to past noncompliance with ammonia emissions limitations but fail to mention that the issue has been rectified by the permitting of ammonia emissions, which are within applicable standards.<sup>32</sup>

The record also evidences more public benefit than Petitioners represent. The proposed projects are a total investment of approximately \$185 million and will bring consequential increases in property, inventory, franchise, and sales tax revenue for the state and parish even after considering the ITEP exemption. R. 50, 103, 517, 533-34. This includes a revenue increase for the parish of approximately \$3.9 million of property tax over the next 10 years and approximately \$2.3 million in sales and use for machinery equipment purchase, and these revenues are not diminished by ITEP. R. 50, 517, 533-34. With respect to jobs, Petitioners minimize that the projects enable

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<sup>29</sup> Fence line monitoring is incorporated into Koch’s final air permit as an enforceable air permit condition. *See* fn. 18.

<sup>30</sup> EDMS Document at 127.

<sup>31</sup> *See* fn. 2, *supra*.

<sup>32</sup> *See* LDEQ EDMS Database, Permit No. 2560-00295-V4 (Doc. No. 13435665), available at <https://edms.deq.louisiana.gov/app/doc/view?doc=13435665>.

the continued operation of the Facility through upgrades and optimization. Therefore, retention of the existing 114 direct jobs should not be discounted. R. 12-13, 50, 534-35. The creation of 400 temporary jobs for construction and two new permanent jobs also inure to the benefit of the Parish. R. 103.

The record is not devoid of *any* reasonable justification for the Council’s denial of the appeal. Ample facts in the record support a balancing of environmental impacts with public benefits such that 82-25(h) was satisfied by the Council.

**4. The Council Considered the 82-25(h) Factors Prior to Voting on the Appeal.**

Petitioners allege that the Council did not consider the environmental impacts of the projects or balance those impacts with the benefits of the projects. Petitioners also allege that the “considerations the Council did take into account did not pertain to public safety, health, or general welfare[.]”<sup>33</sup> However, the record demonstrates otherwise.

Councilperson St. Pierre considered that the Facility air emissions would be monitored, both with mobile air emissions monitoring and Koch’s fence line monitoring. R. 555. Councilperson Bland summarized what he heard, noted that he “read [] all the details,” and noted that the air impacts were well-within EPA standards and that it was in the welfare interest of the parish in allowing existing facilities to make improvements:

From my perspective, I heard new state of the art project, optimization, state of the art backup monitoring tank, fence-line monitoring, increased tax base, not extending footprint. Obviously, in a land use industrial zone area, well below 1% of the EPA standards. . . . It's important for facilities who we already have here to continue to improve and figure out ways to modernize, continue to find ways to reduce emissions or to, like they said, lower the flares for the community. I think it's very important. And I think it's important for the parish and us as a council to continue to approve these kind of land use changes so that industry, that we have already established as been approved, continues to make updates to their facilities, and we don't stop them from doing that. After a reading of all the details, one more takeaway that's clear is that clear and accurate communication is crucial for addressing environmental issues.

R. 560. Councilperson Cooper clearly communicated that he heard and understood the concerns of commenters and that he needed to “balance” those with other considerations. R. 562. He stated that Koch engages with the community and is transparent. R. 563-64. He stated that he “read over

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<sup>33</sup> Petitioners’ Opening Brief at 3.

the notes,” which indicated that LDEQ found the Facility to be “beneath all of the thresholds of emissions.” R. 564-65. He pointed out that this proposed project is “not the same as a new industry coming in,” because the facility is already in existence. R. 565. He was knowledgeable that the Facility had past violations and announced that he believed in holding the Facility accountable for violations. R. 565. He stated that the parish does not ignore environmental and cancer concerns, that those concerns cannot be blamed on one situation, and that he had looked at the air emissions standards and this project was below those standards. R. 566-67.

Arbitrary and capricious means “willful and unreasoning action, absent consideration and in disregard of the facts and circumstances of the case.” *Toups*, 60 So. 3d at 1217. The aforementioned statements indicate there was consideration of the facts and circumstances presented to the Council.<sup>34</sup> Petitioners’ opinions differ from that of the Council; however, differing opinions do not make an action arbitrary or capricious. *Id.* Where Petitioners are dissatisfied with the result of the reasonable actions of the Council, their recourse is the ballot, not the courts. *Palermo*, 561 So. 2d at 491.

As noted, several councilpersons stated that they considered that LDEQ found the air emissions to be within the acceptable thresholds for emissions. This is a reasonable justification for considering air impacts to be outweighed by other factors. LDEQ is “vested with jurisdiction over matters affecting the regulation of the environment within the state, including ... air quality[.]” *Matter of BASF Corp., Chem. Div.*, 538 So. 2d 635, 638 (La. App. 1 Cir. 1988). The legislature designated the LDEQ as “the primary state agency concerned with environmental protection and regulation[.]” as well as “the primary public trustee of the environment” in making permit decisions. *Matter of Am. Waste & Pollution Control Co.*, 93-3163, p. 8 (La. 9/15/94); 642 So. 2d 1258, 1262 (citing La. R.S. § 30:2014). Because LDEQ is the primary state agency with air

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<sup>34</sup> The evidence in the record herein is distinguishable from the dearth of supportive evidence in the cases cited by Petitioner. In *Christopher Estates, Inc. v. E. Baton Rouge Par.*, 413 So. 2d 1336, 1340 (La. App. 1 Cir. 1982), the court found the Planning Commission had acted arbitrarily and capriciously because there was an “**absolute dearth of evidence** in the record to show that the disapproval of the proposed plat was based on reasons relating to the public safety, health, or general welfare[.]” (emphasis added). There, “[t]he only reason given for disapproval dealt with property values and aesthetics[.]” and evidence in the record contradicted a decrease in property values and the court found aesthetics could not take precedence over public health and safety. *Id.* Similarly, in *Clark*, 655 So. 2d at 622, the court found that “[f]rom the record there appears to be **no reasonable justification** for the action by the ZBA and the City Council[.]” (emphasis added).

quality expertise, the Council made a logical decision to rely on their emissions thresholds in evaluating the impacts of the Facility air emissions.

**B. The Planning Commission’s Approval of the Pipeline Tie-In Was Lawful.**

Petitioners also challenge the procedure the Planning Commission used to approve the pipeline tie-in in the Wetlands designated area. The St. James Parish Land Use Plan divides the Parish into land use categories as set forth in Section 82-25(c), and each land use category is assigned “Allowable Uses” under a table in that section. For land use categories such as Industrial, “allowable uses” are listed in terms such as “petrochemical operations” and “manufacturing.” For a few land use categories, however, the “allowable uses” are governed by other jurisdiction or law. These land use categories are “shown for information only,” and include Water, Wetlands, Lutcher, and Gramercy. For Wetlands, allowable uses are those that are “unique situations requiring a location in the water, subject to any permits required under article V, chapter 18.” Article V, chapter 18 references the Coastal Zone Resource Management Program. For comparison, the Water designation has a similar allowable use, and the Lutcher and Gramercy allowable uses are uses governed by the respective town’s ordinances.

Petitioners ignore the plain language of the ordinance and assert that “Subsection (c) does not specifically list any allowable uses in Wetlands” – when subsection (c) clearly has an entry under the “Allowable Uses” column for Wetlands indicating that “unique situations requiring a location in the water” are allowable uses so long as they comply with coastal use permitting. In taking this position, Petitioners suggest that approval was required under Section 82-25(e), which provides a different procedure for approving “uses not specifically listed as allowable in a use category in subsection (c).” However, Petitioners’ reasoning is flawed. “Unique situations requiring a location in the water” and “subject to any coastal use permitting” is as specific as the Parish could get when the Coastal Zone Resource Management Program governs which “uses” are allowed.<sup>35</sup> Because the definition of a coastal “use” is so broad and the permitting body under the

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<sup>35</sup> The entirety of St. James Parish is located within the coastal zone boundary. The State and Local Coastal Resources Management Act of 1978 provides that “no person shall commence a use of state or local concern without first applying for and receiving a coastal use permit.” La. R.S. § 49:214.30. “Use” means “any use or activity within the coastal zone which has a direct and significant impact on coastal waters. La. R.S. § 49:214.23. The permitting body, whether it is the parish or state, determines which uses have a direct and significant impact on coastal waters.

coastal use program determines which “uses” impact coastal waters, there is not a scenario where the Parish could know in advance that a particular pipeline, structure, or development would be allowed under the Coastal Zone Resource Management Program to be constructed in Wetlands. In essence, what the plain language says, is that should the Planning Commission determine that the proposed Wetlands use is a unique situation requiring a location in the water, it is an “allowable use,” but subject to approval under the Coastal Zone Resource Management Program.

Further, the Planning Commission sought advice from Parish legal counsel on application of the land use ordinance to Koch’s project. R. 73. Parish legal counsel opined that because the “pipeline connection is such a unique situation requiring a location in a Wetlands area because the existing ethane pipeline to which the connection will be made is already located there,” “the circumstances here make the pipeline an allowable use under ordinance Section 82-25(c)(11).” R. 73. The Commission also directly addressed this issue in the resolution, stating “The commission concurs that the pipeline connection is an allowable land use in the Wetlands in this circumstance.” R. 73. The Parish’s application of its own ordinance was reasonable, and to the extent other interpretations exist, the Parish’s should be given deference. “Whenever the propriety of a zoning decision is debatable, it will be upheld.” *Palermo*, 561 So. 2d at 493.

Section 82-25(d) provides that allowable uses described in subsection (c) shall be permitted as a matter of course through the parish’s customary building permit process, except that 82-25(f) requires Planning Commission approval for certain uses otherwise permitted if the activity satisfies certain criteria. Because the Koch project is an allowable use in the Industrial category that requires an air permit and is unique situation requiring connection to an existing pipeline located in the Wetlands category, Planning Commission approval of the project pursuant to Section 82-25(f), and not Section 82-25(e) is required.

The Planning Commission determined that the pipeline connection to an existing permitted pipeline in the Wetlands was such a unique situation requiring location in the water as expressly provided for by Ordinance. Accordingly, approval of Koch’s application under Section 82-25(f) rather than 82-25(e) was lawful.

**IV. Conclusion**

Based on the foregoing reasons, Koch respectfully requests that this Court render a decision affirming the Parish's decision to approve Koch's land use application.

Respectfully submitted,



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Attorneys for Koch Methanol St. James, LLC

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the above and foregoing has this day been served upon all known counsel of record by electronic mail.

New Orleans, Louisiana, on this 8th day of March, 2024.

