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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF TULARE

PIXLEY RESIDENTS FOR ENVIRONMENTAL JUSTICE, Petitioner, v. COUNTY OF TULARE and DOES 1-10, Respondents. PROTEUM ENERGY, LLC; 3R LAND & DEVELOPMENT, LLC; and DOES 11-20, Real Parties in Interest.	CASE NO.: **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** (CALIFORNIA ENVIRONMENTAL QUALITY ACT, STATE PLANNING AND ZONING LAW, TULARE COUNTY ZONING ORDINANCE)

INTRODUCTION

1. This action challenges the unlawful January 30, 2024 decision of the County of Tulare and its Board of Supervisors (collectively, "County" or "Respondent") to approve the Golden State Hydrogen Plant ("Project") in reliance upon its erroneous determination that the Project was exempt from review under the California Environmental Quality Act ("CEQA").

2. The Project, proposed by Real Party in Interest Proteum Energy, LLC ("Proteum"), includes the construction and operation of a 1.22 million square-foot hydrogen plant to produce, store, and transfer large quantities of hazardous, volatile, and explosive materials and poisons. The nearest residence is approximately 300 feet away from the Project site.

3. The County improperly found that the Project is statutorily exempt from review under CEQA as an approved use based on the Light Manufacturing (M-1) zoning designation and the building permits being ministerial.

4. Because the Project was approved through the use of an exemption and without the preparation of an environmental impact report ("EIR"), there are few details about the Project and no analysis of the Project's potential impacts to nearby residents and the community. Nor is there an analysis of potential mitigation measures or the consideration of alternatives.

5. Petitioner Pixley Residents for Environmental Justice supports and advocates for the transition away from fossil fuels, polluting industries, and hazardous fuels. The Project application indicates that the Project poses a danger to the community and the Project's additional documentation does not corroborate Proteum's claim of a "renewable clean hydrogen production hub." As residents of a disadvantaged community that is already suffering from pollution exposures, it is imperative that adequate environmental review be performed to analyze the Project's potential health and environmental impacts and to ensure the Project will not further exacerbate poor environmental conditions.

6. The County's review and approval of the Project violated CEQA because the County approved the Project based on exemptions from CEQA despite the fact that the Project does not qualify for any CEQA exemption.

7. The County's review and approval of the Project also violated California Planning and Zoning Law, as the Project is inconsistent with the Pixley Community Plan and the Tulare County Zoning ordinance.

8. For these reasons, the County's determination that the Project is statutorily exempt from CEQA constituted an abuse of discretion and must be overturned.

PARTIES

9. Petitioner Pixley Residents for Environmental Justice is a community unincorporated organization formed by Pixley residents. The purpose and mission of the organization, pursuant to its bylaws, is to advocate for just land use policies and practices that ensure access to clean air, clean and affordable drinking water, and investment in the community to improve community conditions and reduce pollution exposure. Voting members of Pixley Residents for Environmental Justice reside in Pixley near the Project site and are directly impacted by the risks associated with the Project. Pixley Residents for Environmental Justice members are thus directly and beneficially interested in the relief sought in this Petition and Compliant, and are aggrieved by the conduct of Respondents.

10. Respondent County of Tulare ("County"), a political subdivision of the State of California, is responsible for regulating and controlling land use in the unincorporated territory of the County, including implementing and complying with the provisions of CEQA. The County is the "lead agency" for the purposes of Public Resources Code Section 21067, with principal responsibility for conducting environmental review of the proposed actions. The County has a duty to comply with CEQA and other state laws.

11. Real Party Proteum is the Project applicant, an entity listed on the County's Notice of Determination filed for the Project on January 30, 2024, and the recipient of the Project approvals that are the subject of this Petition. Therefore, Proteum is a real party in interest within the meaning of Public Resources Code section 21167.6.5.

12. Real Party 3R Land & Development, LLC is the owner of the Project site and is an entity listed on the Project's application.

13. Petitioner does not know the true names or capacities of the persons or entities sued herein as Does 1 through 10, and therefore sues these respondents by such fictitious names. Petitioner will amend the Petition to set forth the names and capacities of said respondents along with appropriate charging allegations when the same have been ascertained.

14. Petitioner does not know the true names or capacities of the persons or entities sued herein as Does 11 through 20, and therefore sues these real parties in interest by such fictitious names. Petitioner will amend the Petition to set forth the names and capacities of said

real parties in interest along with appropriate charging allegations when the same have been ascertained.

JURISDICTION AND VENUE

15. This Court has jurisdiction over the writ action under section 1094.5 of the Code of Civil Procedure and sections 21168 and 21168.5 of the Public Resources Code.

16. This Court also has jurisdiction over the writ action under section 1085 of the Code of Civil Procedure.

17. Venue is proper in Tulare County because the causes of action alleged in this Petition arose in Tulare County, where the proposed Project is located, and because the environmental impacts of the Project will be felt in Tulare County.

BACKGROUND AND STATEMENT OF FACTS

The Pixley Community

18. Pixley is a Senate Bill 535 (de Leon, 2012) disadvantaged, predominantly rural unincorporated community in Tulare County, which is located between the communities of Tipton and Earlimart along State Route ("SR") 99.

19. The Tulare County General Plan describes Pixley as an agriculturally oriented service community surrounded on all sides by lands in agricultural production and rural residential uses. According to Pixley's Community Plan, it is a bedroom community, where many of the area's farm workers reside.

20. Pixley is approximately square in shape and is bisected in a north-south direction by SR 99, which runs east of and parallel to the Southern Pacific Railroad tracks. Local railroad crossings are located at Davis Avenue and Terra Bella Avenue.

21. Pixley residents face significant pollution exposures. The bisection by SR 99 results in heavy truck traffic transporting agricultural and other products. Pixley residents are surrounded by heavy agricultural operations, resulting in exposure to pesticides, emissions from dairy operations, and the production of dairy biogas.

22. According to the California Communities Environmental Health Screening Tool: CalEnviroScreen 4.0, Pixley ranks in the 96th percentile for pollution burden, the 82nd percentile for facing exposures to ozone, the 94th percentile for facing exposures to PM 2.5, the 88th percentile for facing exposures to pesticides, and the 100th percentile for facing exposure to poor water quality.

23. Several Pixley residents, including many of Petitioner's members and their friends and family members, already suffer from ailments and poor health outcomes. Pixley scores 0.9% on the Healthy Places index. The community's cardiovascular disease rate is 73.6% higher than all other California census tracts and the community's asthma rates are 48% higher than all other California census tracts.

24. In addition to health burdens, 70% of the population is living below twice the federal poverty level. Pixley is considered a "severely disadvantaged" community with a median income of $27,532. Tulare County's Environmental Justice Element identifies Pixley as a community that faces significant pollution burden and health risks.

Project Description

25. The Project involves the construction and operation of a 28-acre industrial hydrogen plant – which amounts to 1.22 million square feet – that will manufacture, store, and distribute large quantities of pressurized liquid hydrogen (over 30,000 kg/day) for use as a fuel for fuel cell powered trucks. The Project would also involve production of liquid carbon dioxide ("CO2"), which will require further construction of a liquefaction plant.

26. The Project would also produce over 12,000 gallons of natural gas, in addition to featuring a "Powergen facility." The Project would further include 114 acres of solar power generation. The site plans also indicate a 200-foot-wide vertical flare, which is a gas combustion device used at industrial sites to burn off waste or other unwanted gases.

27. The Project application materials also indicate future plans for Carbon Capture and Sequestration ("CCS"), which would require transport and storage of CO2 via an underground CO2 pipeline system.

28. Altogether, the Project will require the following equipment, broken down by each use in the Project's October 2023 Operating Statement:

a. Hydrogen Production: steam non-methane reformer (vaporizer, process CO2 separator, combustion CO2 separator), hydrogen separator, combustion CO2 chiller, production equipment including pumps, blowers, fans, dehydrators, deaerators, and methanizer, cooling tower, Tail Gas compressor, Process CO2 compressor, and combustion CO2 compressor

b. Hydrogen Liquefaction: four motors and production equipment

c. CO2 Liquefaction: motor

d. Turbine Power Generation: natural gas turbine generators

29. The Project proposes to use a proprietary, novel process involving conversion of ethanol to hydrogen gas, natural gas, and carbon dioxide. The gaseous hydrogen would be liquefied at very low temperatures (-253 degrees Centigrade) and high pressure. The liquid hydrogen would be stored in on-site, above ground tanks with a total capacity of 150 metric tons (approximately 330,000 pounds). The liquid hydrogen would then be loaded onto highly refrigerated trucks for transport to fueling facilities.

30. Hydrogen, the object of the Project, is the smallest and lightest of the elements. A very light gas at room temperature, it will liquefy under pressure to produce a very low-density liquid. Thus 150 metric tons would need storage vessels totaling hundreds of thousands of gallons. Because of its small size, hydrogen, even in liquid form, is difficult to contain.

31. Hydrogen in any form is highly reactive. It will combine with oxygen to form water, with the release of a very large quantity of energy. This is the basis for its use to generate electricity in fuel cells. When burned in oxygen, the flame temperature is approximately 2,800 degrees Celsius. When mixed with air, the mixture is highly explosive.

32. Proteum's application materials admit that the Project involves on-site storage and presence of "hazardous materials," "explosive materials," "volatile materials," and "poisons."

33. In addition to the 150 metric tons of liquid hydrogen to be stored on site, Project application materials indicate that liquid CO2, nitrogen gas, lubrication oil, reactor catalyst, amine propylene carbonate, triethylene glycol, natural gas, renewable natural gas, and refrigerant will also be stored on-site.

34. Proteum's application materials stated it "will obtain" state and local permits for transporting hazardous materials. The hydrogen production, hydrogen liquefaction, and CO2 liquefaction will require 20000kW of baseload power. Natural gas-fueled turbine generators will serve as "primary power" for the Project's baseload, with some power provided by on-site solar. (Project October 2023 Operating Statement, p. 6.)

Project Site and Zoning

35. As proposed, the Project would transform four abutting parcels totaling 150 acres that are currently actively farmed and part of a County agricultural preserve. (Preserve Number 676, Contract Number 3609.)

36. The site is located on the southwest corner of Avenue 120 and Road 120 within Pixley, immediately adjacent to the exit from the heavily trafficked State Route 99.

The Project site is zoned "M-1," which is defined and regulated under Tulare County Zoning Ordinance ("County Ordinance") Section 13, "M-1," Light Manufacturing Zone. Section 13 excludes from the M-1 zoning designation any manufacturing and processing that would be "obnoxious or offensive by reason of emission of odor, dust, smoke, gas, noise, or other similar causes."

37. County Ordinance Section 13(B)(2) provides a list of allowable uses under M-1. This list does not include "hydrogen production, liquefaction, or storage," CO2 production, natural gas production, or any of the Project's other intended uses.

38. In contrast, the Heavy Manufacturing Zone ("M-2") "is intended for manufacturing establishments and industries which may be obnoxious by reason of emission of odor, dust, smoke, gas, noise or similar causes and therefore require isolation from many other kinds of land use." (County Ordinance Section 14(A).)

39. County Ordinance Section 16(II)(B) of the zoning ordinance requires a Special Use Permit for above ground flammable liquid storage of over 2,000 gallons per parcel or lot in the M-1 zoning district.

40. Section 16 further requires a Special Use Permit for commercial biomass fuel manufacture in the M-1 zone. The neighboring CalGren Plant, from which the Project plans to source the ethanol for its production and processing, is a commercial biomass fuel manufacturing plant.

Project Review

41. On July 7, 2023, Proteum submitted an application for the Project to the County's Project Review Committee ("PRC").

42. On or about July 12, 2023, a County planner filled out a PRC Committee Consultation and Fact Sheet, determining that the Project is "allowed by right in the M-1 (Light Manufacturing) Zone," and qualifies for a "Categorical Exemption… pertaining to the Common Sense Rule."

43. On July 20, 2023, the Resource Management Agency coordinated a meeting with Proteum, where "it was determined that the Project was allowed by right" under the CEQA common sense exemption. (Project October 2023 Operating Statement, p. 14.)

44. On or around October 6, 2023, Proteum submitted another Planning Application to the County's Resource Management Agency ("Planning Application"). The Planning Application required selection of one of several options under the header "LAND USE ENTITLEMENT (*DISCRETIONARY*)." (Emphasis added.) Proteum selected the option for "Other" and inserted the following text: "Request for Categorical Exemption." All pages of Proteum's Planning Application featured the footer: "Discretionary Land Use Entitlement."

45. On information and belief, the first time the public received notice about the Project was on January 25, 2024, when the Project was listed as consent item #28 on the agenda for the January 30, 2024 Board of Supervisors Meeting Agenda.

46. On January 26, 2024, Petitioner's members, through its counsel, emailed County staff requesting information about the Project.

47. On January 29, 2024, one day before the hearing, the County provided the Project application and certain related documents to Petitioner's counsel.

48. Later that day, on January 29, 2024, Petitioner's members submitted a letter through its counsel alerting the County that the Project is not exempt from CEQA and requires an EIR.

49. Several community members, including Petitioner's members, signed the letter. Petitioner detailed the Project's inconsistencies with the underlying zoning and County ordinances, as well as County land use plans. The letter emphasized that hydrogen is highly flammable and informed the County that its claimed exemption was improper. The letter further raised the Project's potential to result in significant air quality, water quality, and water supply impacts, requesting that these impacts be studied and mitigated to protect the community. The letter requested the item be withdrawn from the consent calendar.

50. On January 30, 2024, Communities for a Better Environment submitted a letter notifying the County that the Project does not qualify for a ministerial exemption and detailing the Project's potential to result in significant impacts to air quality, energy, and safety.

51. The Revised Agenda for the January 30, 2024 Board of Supervisors meeting provided the following Environmental Summary: "A notice of exemption is appropriate because the parcel is designated Light Industrial M-1 zoning, which allows the proposed use of the property by right. Therefore, the issuance of building permits is a ministerial act which is exempt from CEQA analysis pursuant to 14 CCR (Sec. 21080(b)(1); & 15268)."

52. During the January 30, 2024 Board of Supervisors meeting, Petitioner's members, through its counsel, presented oral comments objecting to the County's claimed exemptions, requesting an EIR to ensure protection for the community members of Pixley and Tipton.

53. One of Petitioner's members also provided oral comments, describing the health impacts that she and other community members suffer due to the existing contamination in Pixley, which has worsened. She described many members of the community suffering from asthma, lung deficiencies, allergies, head and eye aches, and nose bleeds. She explained how their noses burn from the smell of the CalGren facility, and that many community members are sick and dying, and need continuous positive airway pressure (CPAP) machines to help breathe and sleep through the night. She expressed concern with the addition of another industrial project that could worsen the existing pollution.

54. Another commenter emphasized that the Project is a major infrastructure and industrial Project that is subject to CEQA, especially given that the San Joaquin Valley already suffers from poor air and water quality.

55. The Assistant Director of Resource Management Agency responded to Petitioner's counsel's oral comment by stating the Project was a "by-right" project in the M-1 zone.

56. The Board of Supervisors subsequently voted 5-0 to adopt the resolution approving the Project and its CEQA exemption, on the grounds that the Project is statutorily exempt as an approved use based on the Light Manufacturing (M-1) zoning designation and that the building permits are ministerial under 14 CCR Sections 21080(b)(1) and 15268.

57. On February 9, 2024, through its counsel, Petitioner's members submitted an appeal of the Board of Supervisors' decision, pursuant to Section 165 of the County's Ordinance. Petitioner again alerted the County that the Project is not ministerial and therefore is not statutorily exempt from CEQA.

58. On February 12, 2024, the County Clerk denied the request for an appeal, stating that "the County's procedures do not allow said decision to be appealed to the Board of Supervisors" and that "the vote taken by the Board of Supervisors on January 30, 2024, is considered final and not subject to reconsideration by the Board."

59. On or about January 30, 2024, the County filed a Notice of Exemption with the County Clerk, and on January 31, 2024 with the State Office of Planning and Research.

EXHAUSTION OF ADMINISTRATIVE REMEDIES AND INADEQUATE REMEDIES AT LAW

60. Petitioner has exhausted all available administrative remedies by presenting its objections to the use of a CEQA exemption to the County and by attempting to appeal the County's decision.

61. Petitioner has a beneficial right and interest in Respondent's fulfillment of all its legal duties, as alleged herein.

62. Petitioner has complied with Section 21167.5 by providing a written notice of commencement of this action to the County. A true and correct copy of that notice is attached hereto as **Exhibit 1**.

63. Petitioner has advised the County that Petitioner elects to prepare the record of proceedings relevant to the approval of the Project, pursuant to Public Resources Code Section 21167.6. A true and correct copy of that notice is attached hereto as **Exhibit 2**.

64. Petitioner has complied with Public Resources Code Section 21167.7 by filing a copy of the original petition with the California Attorney General. A true and correct copy of the notification is attached hereto as **Exhibit 3**.

65. Petitioner has no plain, speedy, or adequate remedy at law unless the Court grants the requested writ of mandate requiring the County to set aside its approval of the Project and the County's determination that the Project is statutorily exempt from CEQA. In the absence of such remedy, the County's approvals will remain in effect in violation of State law and Petitioner will suffer irreparable harm because of the significant adverse environmental impacts generated by the Project.

66. Further, absent injunctive relief restraining Respondent's unlawful conduct and construction of the Project, Petitioner's members will suffer irreparable harm.

67. An actual and present controversy exists between Petitioner and Respondent over whether Respondent's conduct violates state law and local municipal ordinances, as detailed herein. Petitioner claims that Respondent's conduct violates State law and municipal ordinances, whereas Respondent claims that it does not. As Respondent's conduct puts Pixley residents, including members of Petitioner, at risk of exposure to environmental contamination, hazardous risk, and other harms, Petitioner is entitled to a declaration that Respondent has violated the

California Environmental Quality Act, California Planning and Zoning Laws, and municipal ordinances.

FIRST CAUSE OF ACTION

(VIOLATIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT)

(Pub. Res. Code §§ 21000 et seq.)

The County Improperly Relied on Inapplicable CEQA Exemptions

68. Petitioner hereby realleges and incorporates by reference the preceding paragraphs in their entirety.

69. The Board of Supervisors' Resolution and the County's Notice of Determination improperly claim a statutory exemption under Public Resources Code 21080, subd. (b)(1) and Cal. Code Regs. tit. 14 ("CEQA Guidelines") Section 15268, on the grounds that the Project is "by-right" and thus constitutes a ministerial approval that is not subject to CEQA.

70. Prior Project-related documents indicated County staff's determination that the Project qualifies for the "common sense rule" exemption pursuant to CEQA Guidelines Section 15061, subd. (b)(3).

71. The County's claimed exemptions for the Project are improper because they are not legally supported.

The Project Does Not Qualify for Any Statutory Ministerial Exemption

72. Public Resources Code Section 21080, subd. (a) provides that, except as otherwise provided, CEQA shall apply to discretionary projects proposed to be carried out or approved by public agencies. Section 21080, subd. (b)(1) provides that "[t]his division does not apply to … [m]inisterial projects proposed to be carried out or approved by public agencies."

73. Ministerial projects are those for which the law requires an agency to act "in a set way without allowing the agency to use its own judgment…" (CEQA Guidelines, § 15002, subd. (i)(1).) They involve "little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision." (CEQA Guidelines, § 15369.) In contrast, a project is "discretionary" when an agency is required to exercise judgment or deliberation in deciding whether to approve an activity. (CEQA Guidelines, § 15357.)

74. The County claims the Project is ministerial because it is allowed "by right" in the underlying M-1 zone.

75. The County's claims are false. The County's zoning ordinance precludes the Project from being allowed "by right." Further, the Project review and approval required discretion from the County, especially given that hydrogen production is not a listed allowed use in the M-1 zoning designation and has not previously been studied by the County.

76. The site's M-1 zoning designation only allows for "the manufacturing, assembling, packaging, treatment and processing of products other than those which may be obnoxious or offensive by reason of emission of odor, dust, smoke, gas, noise or other similar causes."

77. Section 13 of the County's zoning ordinance specifies the allowed uses in the M-1 zone. The list of allowed uses does not include any of the Project's intended uses, which includes: hydrogen production, liquefaction, and storage, cogeneration plant, and natural gas production. Thus, the Project cannot be considered a "by right" use.

78. Section 15(A)(1)(a) of the County's zoning ordinance provides that "no building shall be erected…nor shall any building or land be used for any purpose other than permitted in the zone in which such building or land is located," except "as hereinafter provided." Further, the Project will involve gas, a flare, noise, and CO2 and NOx emissions. Real Party acknowledges that the Project will store hazardous, explosive, volatile, and poisonous materials. These uses further exclude the Project from being considered a "by-right" use under the M-1 zone.

79. In contrast, the Heavy Manufacturing Zone ("M-2") "is intended for manufacturing establishments and industries which may be obnoxious by reason of emission of odor, dust, smoke, gas, noise or similar causes and therefore require isolation from many other kinds of land use." The M-2 Zone lists uses such as acetylene gas manufacture or storage, boiler works, and ammonia or chlorine manufacturing. Notably, the Project may require ammonia as part of its processing. Even in the M-2 Zone, the County's ordinance requires a Special Use Permit for storage of explosives, gas manufacture, and steam plants – which are the most comparable uses under the County's code to the Project. This further underscores that the Project is not allowed by-right in the M-1 zone.

80. Section 13 of the County's zoning ordinance allows for "additional uses" in the M-1 zone "only if a Special Use Permit has been approved."

81. The County's zoning ordinance explicitly requires a Special Use Permit for the Project, given that the Project will require above ground storage of over 2,0000 gallons of liquid hydrogen, which is a flammable substance. (Tulare County Zoning Ordinance, Section 16(II).) The zoning ordinance also requires a Special Use Permit for biomass fuel manufacturing.

82. A Special Use Permit is a discretionary decision that is subject to CEQA. The County's zoning ordinance instructs that a "Special Use Permit shall be granted only if it is found that the establishment, maintenance and operation of the use of building or land applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood, or to the general welfare of the County."

83. Making matters even more clear, Tulare County Zoning Ordinance Section 16(H) provides a list of uses allowed without a Special Use Permit (i.e., "by right" uses) in each zone, which includes "Warehouses *except for the storage of fuel or flammable liquids and explosives*. CO, C-1, C-2, C-3, M-1." (Emphasis added.)

84. Section 16(H) also mandates: "Projects with a square footage of 80,000 or more will also require traditional (sic) use permit." The Project application states the Project's hydrogen plant will cover 28 acres, which translates to over 1 million square feet. This provides further evidence that the Project does not qualify for a by-right approval.

85. Internally, the County's own processes reflected the fact that the Project was clearly not a ministerial decision. Section 16(H) explains the process for ministerial decisions. "The Permit Center will review the project for General Plan Policy, Community Plan Policy and development standard consistency and determine which environmental document is appropriate. Projects where the Permit Center is unable to make an immediate determination will be required to go through the Project Review Committee (PRC)… Uses that have an environmental effect on adjacent properties or necessitate mitigation measures through the California Environmental Quality Act will be required to apply for a PRC and a traditional use permit and legislative process through the County."

86. Proteum submitted an application to the Project Review Committee on July 7, 2023. The July 12, 2023 Consultation and Fact Sheet requested information on conditions of approval, development requirements, design criteria, and improvement standards.

87. In October 2023, Proteum submitted another application to the Resource Management Agency. This subsequent application was submitted via a "Discretionary Entitlement" application.

88. Given the magnitude and impacts involved with the Project, and the fact it proposes a new use that has not yet been considered, studied, defined or allowed under the County's zoning ordinance, the determination required discretion from County staff.

The Project Does Not Qualify for the Common Sense Exemption

89. County staff initially determined the Project was exempt from CEQA under the common sense exemption. When Petitioner's counsel disputed the application of the common sense exemption during the January 30, 2024 Board of Superiors meeting, County staff stated the Project was not relying on the common sense exemption. In any case, the common sense exemption does not apply.

90. CEQA Guidelines Section 15061, subd. (b)(3) provides that "CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is *no possibility* that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." (Emphasis added.)

91. The Project clearly does not qualify for the common sense CEQA exemption. The Project proponent admits it will involve a flammability risk of storing large volumes of liquid hydrogen. This alone precludes any qualification for the common sense exemption. Further, the Project has the potential to cause significant impacts to air quality, water quality, water supply, transportation and safety. The County's use of an exemption precluded adequate analysis, disclosure of information, and incorporation of mitigation measures.

92. Hydrogen production using ethanol steam reforming will produce carbon dioxide emissions. The Project will produce up to 510 metric tons of CO2 per day. (October 2023 Operating Statement, p. 9.) While the Project envisions carbon capture and sequestration – which itself involves impacts – the Project application materials repeatedly emphasize that carbon capture is not a required component of the Project, which can operate regardless of whether or not any carbon is being captured and stored. (October Operating Statement, p, 11.)

93. Proteum provided scant information about its novel, proprietary "steam non-methane reformation" process. Proteum states that renewable feedstock used to produce hydrogen will be "wet ethanol" sources from the Calgren Facility. (October 2023 Operating Statement, p. 7.) As a proprietary process, little information is known about steam non-methane reformation.

94. In comparison, steam methane reformation, another form of hydrogen production, emits nitrogen oxides, fine particulate matter, carbon monoxide, and volatile organic compounds.

95. The Project proposes to use gas turbines to generate baseload electricity. The increase in emissions has the potential to exacerbate the region's noncompliance with federal air quality standards and worsen health impacts for nearby communities.

96. Hydrogen production can also potentially increase greenhouse gas ("GHG") emissions if it is not produced using electrolysis and does not comply with the "Three Pillars" of additionality, deliverability, and hourly matching. This project does not utilize electrolysis, and does not demonstrate that it will in fact reduce GHG emissions.

97. Further, the Project Application reports that the Project involves liquid carbon dioxide (CO2). Carbon dioxide is hazardous to human health, the gas is odorless and colorless, and exposure causes serious health problems and even death. For example, a pipeline rupture in Satartia, Mississippi, in 2020 caused at least 45 hospitalizations.

98. In relation to potential impacts to water supply and quality, the Project Application reports it would require 80 million gallons of water in the reforming process alone. However, the Project Application did not report the water usage required for the remaining components of the Project. One well serves the property, which will be utilized by the Project. The Project is proposed to be constructed in a groundwater subbasin that is not only critically over drafted, but also has a Groundwater Sustainability Plan that has been deemed inadequate by the Department of Water Resources and is awaiting a probationary hearing to determine if the region will require additional state intervention.

99. The Project area already faces poor groundwater quality. The Tulare General Plan reports that "Pixley's water supply is derived from four existing deep underground wells. The four wells have a maximum production efficiency of approximately 2,700 gallons per minute (GPM)…three of the existing four wells exceed the acceptable arsenic level for drinking water."

(Tulare General Plan, p. 10-1.) The Project involves a substantial amount of water usage and wastewater, and will store several hazardous and poisonous materials. Yet, potential impacts to groundwater were not studied.

100. The Project would produce 12 million gallons per year of wastewater. Proteum listed "TBD" for the size of septic tank and leach lines for liquid waste disposal. The Project application reported that its waste would include used lubrication oil, used reactor catalyst, water blowdown waste, and post-combustion gas, and a third-party contractor will be used for disposal. The Tulare General Plan reports "deficiencies" with Pixley's waster and water infrastructure. (General Plan, p. 35-5.)

101. Project application materials report that there would be 52 to 68 daily shipments related to the Project via tractor-trailer tankers, with access to the Project along Avenue 120 to the north and Road 120 to the east. This increased truck traffic will result in increased emissions of CO2 and NOx and other contaminants. Further, there is a possibility of significant impacts related to transportation and safety, given the introduction of new heavy-duty trucks transporting flammable, liquefied hydrogen onto Avenue 120, which is already utilized by farming-related vehicles, and State Route 99, which is also heavily trafficked.

102. Proteum has highlighted the benefits of the Project's proximity to the railroad for transportation. However, transportation of explosive hydrogen by railway presents further risks that should have been studied.

103. The Project requires an extensive list of permits from local, federal, and state agencies, further underscoring that the common sense exemption does not apply. (October 2023 Operating Statement, p. 14.)

SECOND CAUSE OF ACTION

(VIOLATIONS OF CALIFORNIA PLANNING AND ZONING LAWS)

(Gov. Code § 65300, et seq.)

104. Petitioners hereby reallege and incorporate by reference the preceding paragraphs in their entirety.

105. The California State Planning and Zoning Law requires the legislative body of each county to adopt a general plan for the physical development of the county.

106. The County's General Plan is a fundamental land use planning document and serves as the constitution for future development within the County. Land use actions, including the approvals associated with the Project, must be consistent with the General Plan.

107. The Project is inconsistent with the County's General Plan, which explicitly incorporates the Pixley Community Plan. (General Plan, p. vii ["Section 1.8 Pixley Community Plan"].)

108. The Pixley Community Plan lists permitted by-right uses for each land use zone, including the M-1 zone. (Pixley Community Plan, pp. 130-136.) This table of permitted uses does not include production, liquefaction, storage, distribution and refueling of hydrogen, solar arrays, or carbon capture and storage. (Id. at 130.)

109. The Pixley Community Plan further provides that warehouse uses are only allowed by-right if the warehouse is less than 10,000 square feet, and does not include the storage of fuel or flammable liquids and explosives. (Id. at 136.)

110. The Project involves the storage of fuel, flammable liquids, and explosives. Thus, the County's approval of the Project "by right" violated the Pixley Community Plan.

111. The Project is further inconsistent with additional General Plan and Community Plan policies, including the following:

a. LU-1.3, Prevent Incompatible Uses: "The County shall discourage the intrusion into existing urban areas of new incompatible land uses that produce significant noise, odors, or fumes."

b. AQ-1.3, Cumulative Air Quality Impacts: "The County shall require development to be located, designed, and constructed in a manner that would minimize cumulative air quality impacts. Applicants shall be required to propose alternatives as part of the State CEQA process that reduce air emissions and enhance, rather than harm, the environment."

c. AQ-1.4, Air Quality Land Use Compatibility: "The County shall evaluate the Compatibility of industrial or other developments which are likely to cause undesirable air pollution with regard to proximity to sensitive land uses, and wind direction and circulation in an effort to alleviate effects upon sensitive receptors."

d. HS-4.4, Contamination Prevention: "The County shall review new development proposals to protect soils, air quality, surface water, and groundwater from hazardous materials contamination;" and

e. WR-2.1, Protect Water Quality: "All major land use and development plans shall be evaluated as to their potential to create surface and groundwater contamination hazards from point and non-point sources. The County shall confer with other appropriate agencies, as necessary, to assure adequate water quality review to prevent soil erosion; direct discharge of potentially harmful substances; ground leaching from storage of raw materials, petroleum products, or wastes; floating debris; and runoff from the site."

THIRD CAUSE OF ACTION

(VIOLATIONS OF MUNICIPAL ORDINANCE SPECIAL USE PERMIT REQUIREMENTS)

112. Petitioners incorporate all previous paragraphs as if fully set forth.

113. The Project involves storage of high volumes of flammable and explosive liquids and will involve the production, liquefaction, and storage of hydrogen. It will also involve liquefied carbon dioxide, as well as a cogeneration plant.

114. Yet, the County failed to require and follow its own ordinances and procedures, including County Zoning Ordinance Section 13 (allowable uses in the "M-1" Zone); as well as Sections 15 and 16 (requirements for a special use permit.) The County failed to require a special use permit in violation of Section 16(II)(B) of its Zoning ordinance.

115. Further, "gas manufacture," which is only allowed in the Heavy Industrial "M-2" zone, requires a Special Use Permit.

116. The County's code explains that its designation of the various uses requiring a special use permit "is based upon the fact that all of the uses herein enumerated possess characteristics of unique and special forms *so as to make impractical their being included automatically in any specific zone*." (Emphasis added.)

PRAYER FOR RELIEF

In each of the respects enumerated above, Respondent has violated its duties under law, abused its discretion, and failed to proceed in the manner required by law. Accordingly, approval of the Project must be set aside.

WHEREFORE, Petitioner prays for relief as follows:

1. For an alternative and peremptory writ of mandate, commanding Respondent to:

A. Set aside and vacate all approvals for the Project and the adoption of a CEQA exemption on the grounds that the development violates the California Environmental Quality Act and California Planning and Zoning Law;

B. Comply with the provisions of CEQA and California Planning and Zoning laws in taking any further actions to consider the Project;

2. For an order enjoining Respondent and Real Party in Interest from issuing any construction or development approvals or permits, taking any other action to implement the Project, taking any action to construct any portion of the Project or to develop or alter the Project site in any way that could result in a significant adverse impact on the environment unless and until there is a lawful approval that is in full compliance with CEQA and California Planning and Zoning laws;

3. For declaratory relief;

4. For costs of the suit;

5. For an award of reasonable attorneys' fees under Code of Civil Procedure section 1021.5, or as otherwise authorized by law; and

6. For such other and further relief as the Court deems just and proper.

DATE: March 4, 2024

Respectfully Submitted,

CHATTEN-BROWN LAW GROUP, APC

By: _____
Josh Chatten-Brown
Kathryn Pettit

DATE: March 3, 2024

LEADERSHIP COUNSEL FOR JUSTICE AND ACCOUNTABILITY

By: Perry Elerts
Perry Elerts

VERIFICATION

I, Tequita Jefferson, declare that I am a member of the Leadership Group of Pixley Residents for Environmental Justice in this action, and I am authorized to make this verification. I have read the foregoing Petition for Writ of Mandate and know the contents thereof, and the same is true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3 day of March, 2024 in Pixley, California.

Tequita Jefferson

EXHIBIT 1

Chatten-Brown Law Group, APC
Josh Chatten-Brown | Partner
325 W. Washington Street, Suite 2193
San Diego, CA 92103
jcb@chattenbrownlawgroup.com
Phone: (619) 940-4522

March 4, 2024

Via Mail

Office of the Tulare County Clerk
221 S. Mooney Blvd
Room 105
Visalia, CA 93291-4593

Re: Challenge to Golden State Hydrogen Project; *Pixley Residents for Environmental Justice v. County of Tulare*

Dear County Clerk:

Pursuant to Public Resources Code section 21167.5, please take notice that Pixley Residents for Environmental Justice plans to file a petition for writ of mandate challenging the January 30, 2024 approval of the Golden State Hydrogen Plant via a Notice of Exemption by the County of Tulare.

Please contact us if you have any questions.

Sincerely,

Josh Chatten-Brown
Kathryn Pettit

Perry Elerts

Perry Elerts

Enclosure:
Petition for Writ of Mandate

Pixley Residents for Environmental Justice v. County of Tulare
Superior Court of the State of California, County of Tulare

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. On March 4, 2024, I served the following documents:

NOTICE TO COUNTY OF TULARE COUNTY CLERK PURSUANT TO PRC SECTION 21167.5 RE: CHALLENGE TO GOLDEN STATE HYDROGEN PLANT

☒ **VIA UNITED STATES MAIL.** I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices I placed the package for collection and mailing on the date and at the place of business set forth above.

☐ **VIA OVERNIGHT DELIVERY.** I enclosed the above-referenced document(s) in an envelope or package designated by an overnight delivery carrier with delivery fees paid or provided for and addressed to the person(s) at the address(es) listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **VIA ONE LEGAL E-SERVICE.** By submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at www.onelegal.com.

☐ **VIA ELECTRONIC SERVICE.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the above-referenced document(s) to be sent to the person(s) at the electronic address(es) listed below.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 4, 2024, at San Diego, California.

Josh Chatten-Brown

SERVICE LIST

Office of the Tulare County Clerk
221 S. Mooney Blvd
Room 105
Visalia, CA 93291-4593

EXHIBIT 2

CHATTEN-BROWN LAW GROUP, APC
Josh Chatten-Brown, SBN 243605
Kathryn Pettit, SBN 341315
325 W. Washington Street, Suite 2193
San Diego, CA 92103
Telephone: (619) 393-1313
kmp@chattenbrownlawgroup.com
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LEADERSHIP COUNSEL FOR JUSTICE AND ACCOUNTABILITY
Michael Claiborne, SBN 281308
Perry Elerts, SBN 329665
2210 San Joaquin St.
Fresno, CA 93721
Telephone: (559) 369-2790
mclaiborne@leadershipcounsel.org
pelerts@leadershipcounsel.org

Attorneys for Petitioner Pixley Residents for Environmental Justice

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF TULARE

PIXLEY RESIDENTS FOR ENVIRONMENTAL JUSTICE, Petitioner, v. COUNTY OF TULARE and DOES 1-10, Respondents. PROTEUM ENERGY, LLC; 3R LAND & DEVELOPMENT, LLC; and DOES 11-20, Real Parties in Interest.	CASE NO.: **PETITIONER'S NOTICE OF ELECTION TO PREPARE ADMINISTRATIVE RECORD** (CALIFORNIA ENVIRONMENTAL QUALITY ACT, STATE PLANNING AND ZONING LAW, TULARE COUNTY ZONING ORDINANCE)

PLEASE TAKE NOTICE:

Pursuant to Public Resources Code section 21167.6, Petitioner PIXLEY RESIDENTS FOR ENVIRONMENTAL JUSTICE hereby elects to prepare the administrative record in this matter.

DATE: March 4, 2024

Respectfully Submitted,

CHATTEN-BROWN LAW GROUP, APC

By: _____
Josh Chatten-Brown
Kathryn Pettit

DATE: March 4, 2024

LEADERSHIP COUNSEL FOR JUSTICE AND ACCOUNTABILITY

By: Perry Elerts
Perry Elerts

EXHIBIT 3

Chatten-Brown Law Group, APC
Josh Chatten-Brown | Partner
325 W. Washington Street, Suite 2193
San Diego, CA 92103
jcb@chattenbrownlawgroup.com
Phone: (619) 940-4522

March 4, 2024

Via Email

California Attorney General
600 W. Broadway, Unit 1800
San Diego, CA 92101

Re: Challenge to Golden State Hydrogen Plant; *Pixley Residents for Environmental Justice v. County of Tulare*

Honorable Attorney General:

Please find enclosed a copy of the Petition for Writ of Mandate filed to challenge the January 30, 2024 decision by the County of Tulare and its Board of Supervisors to approve the Golden State Hydrogen Plant.

This Petition is being provided pursuant to the notice provisions of the Public Resources Code section 21167.7.

Please contact us if you have any questions.

Sincerely,

Josh Chatten-Brown

Perry Elerts

Kathryn Pettit

Enclosure:

Petition for Writ of Mandate

Pixley Residents for Environmental Justice v. County of Tulare, et. al
Superior Court of the State of California, County of Tulare

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. On March 4, 2024, I served the following documents:

COPY OF PETITION TO CALIFORNIA ATTORNEY GENERAL PURSUANT TO PRC SECTION 21167.7 RE: CHALLENGE TO GOLDEN STATE HYDROGEN PLANT

☐ **VIA UNITED STATES MAIL.** I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices I placed the package for collection and mailing on the date and at the place of business set forth above.

☐ **VIA OVERNIGHT DELIVERY.** I enclosed the above-referenced document(s) in an envelope or package designated by an overnight delivery carrier with delivery fees paid or provided for and addressed to the person(s) at the address(es) listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **VIA ONE LEGAL E-SERVICE.** By submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at www.onelegal.com.

☒ **VIA ELECTRONIC SERVICE.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the above-referenced document(s) to be sent to the person(s) at the electronic address(es) listed below.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 4, 2024, at San Diego, California.

Josh Chatten-Brown

SERVICE LIST

CEQA Coordinator
Office of the Attorney General
Environment Section
1300 "I" Street
Sacramento, CA 95814-2919
CEQA@doj.ca.gov