

SUPREME COURT OF LOUISIANA

No. 2025-C-0866

c/w

No. 2025-C-0868

BEVERLY ALEXANDER, ET AL.

Respondents (Plaintiffs/Appellants below)

versus

ST. JAMES PARISH

Applicant (Defendant/Appellee below)

and

KOCH METHANOL ST. JAMES, LLC

Applicant (Intervenor/Appellee below)

Writ of review directed to the
Louisiana Court of Appeal for the Fifth Circuit, Docket No. 24-CA-557,
reversing the decision of the 23rd Judicial District Court, St. James Parish,
Docket No. 41903(B), Cody M. Martin, District Judge

A CIVIL PROCEEDING

**ORIGINAL BRIEF IN SUPPORT OF WRIT APPLICATION
BY ST. JAMES PARISH, APPLICANT**

November 17, 2025

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ORIGINAL BRIEF IN SUPPORT OF WRIT APPLICATION BY ST. JAMES PARISH

November 17, 2025

May it please the court:

St. James Parish (the “Parish”) respectfully submits this original brief in support of its application for writs directed to the Louisiana Court of Appeal for the Fifth Circuit, Docket No. 24-CA-557. The Parish urges this Court to reverse the May 14, 2025 decision of Louisiana Fifth Circuit Court of Appeal, as modified on rehearing on June 6, 2025, and to affirm the district court’s judgment upholding a land use decision reached by St. James Parish to approve an industrial expansion project under its land use ordinance.

STATEMENT OF THE CASE

Summary of the project and procedural status.

This appeal started out in 2023 as a routine industrial project proposed by Koch Methanol St. James, LLC (“Koch”) at its existing methanol plant. The project has two components: (1) equipment modifications within the facility’s footprint to increase the plant’s capacity, including an 8” connection to an existing ethane pipeline; and (2) a backup oxygen

supply. The project is almost entirely located within the footprint of the existing methanol plant in an area expressly designated as Industrial in Sec. 82-25 of the St. James Parish Code of Ordinances.¹ The physically minor exception is the ethane connection, which lies immediately adjacent to the Industrial area in a “Wetlands” designated area. The connection requires a location in Wetlands because the ethane supply pipeline is already located in the Wetlands.

Under the authority of Koch’s original land use application approval, it completed the equipment modifications and the ethane connection. The oxygen backup has yet to be implemented.²

The project was unanimously approved by the planning commission. On Respondents’ appeal to the parish council, the council unanimously denied the appeal. On further appeal the district court upheld the parish’s decisions. The Fifth Circuit, in a 3-2 decision reversed and remanded the matter back to the planning commission. In response to the Fifth Circuit’s remand decision, Koch filed and updated land use application (the “Remand Application”), which was considered and recommended for approval by the planning commission on June 30, 2025. Three of the Respondents here (RISE St. James, Inclusive Louisiana, and Mt. Triumph Baptist Church) appealed the planning commission’s action to the parish council. The council took up both the planning commission’s recommendation and the Respondents’ appeal at its August 6, 2025 meeting. The council denied the appeal and accepted the recommendation of the planning commission to approve the project. See Resolution 25-146, attached as Appendix B.

Although Respondents indicated that they planned to appeal the approval of the Remand Application, they did not do so within the 30-day appeal delay period provided in Section 82-25(e) of the ordinance, which expired on September 5, 2025. The Parish’s approval of the Remand Application and the expiration of the appeal delay does not moot the instant writ

¹ https://library.municode.com/la/st_james_parish_council/codes/code_of_ordinances?nodeId=PTIICOOR_CH82PL_ARTIIPAPLCO_S82-25LAUSPL provides the full text of the ordinance, which is also attached for convenience as Appendix A to this brief.

² These facts, and the description of the Remand Application, do not appear in the record because that record predates the physical work being performed and predates the Remand Application. This non-record information is presented here for context. To the extent that an evidentiary basis is needed to substantiate this presentation, it is provided in the minutes of the August 6, 2025 meeting of the St. James Parish Council, available at https://www.stjamesla.com/AgendaCenter/ViewFile/Minutes/_08062025-590, beginning at p. 4.

application. First, it does not resolve the Fifth Circuit’s decision to apply the most intense Tier 3 level of scrutiny to *any* use in the Wetlands. Second, the Fifth Circuit’s decision clouds the role of the judiciary in reviewing local land use decisions. These reasons (and others that will be addressed in the Parish’s opposition to the Respondent’s November 12, 2025 motion to dismiss) demonstrate that the controversy over the Fifth Circuit’s decision remains very much alive. The merits of Koch’s land use application are moot, but the disputes over how the Parish’s land use ordinance are not.³

Meanwhile, during the pendency of Koch’s Remand Application, the Parish and Koch both applied this Court for writs, seeking a reversal of the Fifth Circuit’s decision. The writ applications were granted by this Court on October 22, 2025.

As it stands now, the merits of Koch’s project are not presently at issue by virtue of the approval of the Remand Application. However, should this Court wish to review the merits of the project and consider the substantive reasonableness of the Parish’s decisions, the Parish refers to the Court to pp. 19-24 of its writ application in docket #2025-C-0868, filed on July 7, 2025, which is incorporated in this brief by reference.

The balance of this brief will focus on the remaining matters in dispute rather than the merits of Koch’s project and the reasonableness of the Parish’s land use approval.

Background on the St. James Parish Land Use Ordinance

At its most fundamental level, the St. James Parish land use ordinance governs the physical development of the parish, and sets out the parish’s policy for that development. A passage from Sec. 82-25(c) succinctly expresses what the land use ordinance is intended to accomplish:

The land use plan divides the parish into land use categories whose purposes are described in this section. These category descriptions . . . shall be interpreted to control the general character and impacts of development so that the physical development within each use area is compatible with and beneficial to other uses within the same area.

³ The Parish plans to file its opposition to the Respondents’ motion to dismiss, and prospectively incorporates in this brief the arguments to be presented in that opposition.

Taken as a whole, the ordinance sets up a three-tier review and approval system, each with a different level of scrutiny to apply when considering a project. Which tier applies depends on the project, its location, and the designation of the location on the land use map.

Tier 1: The first tier allows the simplest approval procedure. It applies when a proposed project is on the list of allowable uses designated for its particular location: a residential use in a Residential Growth area, or an industry in an area designated as Industrial. Approval is handled administratively as a matter of course through the building permit system. Secs. 82-25(c) and (d)

Tier 2: The second tier piggybacks on the first. When a project is large enough (e.g., three acres or more), or requires certain state or federal permits, the project is subject to additional scrutiny under Sec. 82-25(f), even if it is expressly allowed as a use in a designated area. The logic behind this is that even though a project may be appropriate for its location, the size or nature of the project may entail impacts that need to be examined and mitigated with approval conditions. Tier 2 applications cannot be approved administratively. Instead, they are elevated to the planning commission. This Tier 2 scrutiny was applied to the KMe Project.

Tier 3: This tier is the most demanding procedurally and substantively. It applies where a project is prohibited at its proposed location by virtue of the list of allowable uses set out in Sec. 82-25(c). It requires a more extensive public vetting and approval process in which the planning commission does not have the approval power. Instead, it merely makes a recommendation to the parish council, which alone has the authority to approve or deny a project under Sec. 82-25(e). The land use ordinance prohibits approving a project that falls into this third tier unless it can satisfy one or more of three factors:

- That there is a compelling public benefit; or
- That the use is compatible with surrounding uses and adverse impacts of the use are inconsequential; or
- That approval is required as a matter of constitutional imperative or other vested legal rights superior to the land use ordinance.

Viewed overall, the land use ordinance is designed to make it easy to approve uses that are consistent with the land use plan, and thereby encourage the development of such uses. Conversely, for uses inconsistent with the plan, the approval process is more demanding.

SPECIFICATION OF ERROR

In its writ application, the Parish asserted two errors in the Fifth Circuit’s decision to reverse Koch’s approval and remand the application to the St. James Parish Planning Commission:

Error No. 1: The Fifth Circuit opinion incorrectly concluded that the land use ordinance was ambiguous, and erred by performing what it characterized as a de novo review to interpret the ordinance by adding an extra-textual requirement of a Tier 3 procedure for any use in the Wetlands.

Error No. 2: The Fifth Circuit majority erred by substituting its analysis and value judgments for those of the St. James Parish administrative staff, the planning commission, and parish council.

The legal arguments related to these errors have a common theme of deference to local government land use decision-making. This brief will therefore address these errors collectively to facilitate presentation of legal arguments that you like to both errors.

ARGUMENT

Summary of the Argument

Local governments – and only local governments – have the constitutional authority to regulate land use. In that role, they are afforded broad discretion in land use decisions, and their decisions should not be disturbed on appeal unless it violates constitutional or statutory law. Under both the 2021 and 1974 Louisiana Constitutions, the allocation of land use decisions has been constitutionally mandated to local governments. Courts must respect that allocation of decision-making.

Based on more than a century of constitutional and statutory law, coupled with consistent jurisprudential guidance over that same century, the first question to ask in a land use dispute is whether a land use decision violates constitutional or statutory requirements. If the answer is “no,” judicial review ends there, and courts are not allowed to substitute their judgment for that of local governments. It is only when local decisions stray outside of the bounds may courts step in. An “out of bounds” finding is a threshold determination that the Fifth Circuit did

not consider before jumping immediately to a *de novo* determination that substituted its choice for that of the planning commission and parish council.

The Parish may indulge in a range of interpretations of its own ordinances, as long as those interpretations are reasonable. If the Parish's interpretation is within the range of reasonableness, it is not the role of the courts to substitute their view for that of the Parish. Here, the planning commission's conclusion as to how the ordinance applied to the ethane pipeline connection in the Wetlands was fully explained in the public notice, the description of the agenda item, and the planning commission's resolution approving it. While one can disagree with the commission's reasoning, it had a sound, rational basis. That is sufficient to uphold the decision.

The decision below conflicts with explicit text of the ordinance. The Fifth Circuit's majority interpreted the phrase "Allowable Uses" in the wetlands to mean prohibited uses.

In the final analysis, this case demonstrates the need to clarify the application of the "*de novo*" concept applicable to land use matters, and to distinguish it from the concept of "*de novo*" review of legal issues.

Louisiana's constitution, statutes, and relevant jurisprudence collectively and consistently establish a highly deferential standard of judicial review regarding local land use decisions.

Land use decisions are legally different from run-of-the-mill civil actions involving local governments. The role of local governments in making land use decisions is hard-wired in Louisiana's constitution. Art. I, § 4(A) of the 1974 constitution sets the stage:

Every person has the right to acquire, own, control, use, enjoy, protect, and dispose of private property. This right is subject to reasonable statutory restrictions and the reasonable exercise of the police power.

Subsequent articles of the constitution describe who may exercise the police power. Art. VI, § 17 (Land Use; Zoning; Historic Preservation) fleshes out the police power and defines an explicit role for local governments to make land use decisions:

Subject to uniform procedures established by law, a local governmental subdivision may (1) adopt regulations for land use, zoning, and historic preservation, which authority is declared to be a public purpose; (2) create commissions and districts to implement those regulations; (3) review decisions of any such commission; and (4) adopt standards for use, construction, demolition, and modification of areas and structures.

Existing constitutional authority for historic preservation commissions is retained.

These twin constitutional provisions firmly ensconce land use regulation in the legal system of Louisiana as a constitutionally protected local government function to be exercised by municipalities and parishes.⁴

Today's constitutional provisions are nothing new. They continue a long line of statutory and constitutional protections for local land use decisions dating back to 1918 (at least), when the Louisiana Legislature passed the first zoning enabling statute as 1918 La. Acts 27. This statute was affirmed and applied in the well-known case of *State ex rel. Civello v. City of New Orleans*, 154 La. 271, 97 So. 440 (1923). In *Civello*, the Louisiana Supreme Court unequivocally stated the deference to local decisions in land use matters that has remained good law for over a century:

We have nothing to do with the question of the wisdom or good policy of municipal ordinances. If they are not satisfying to a majority of the citizens, their recourse is to the ballot – not the courts.

154 La. at 283; 97 So. at 445.

Like the 1974 constitution, the earlier 1921 Louisiana Constitution specifically protected local authority as to land use matters, and the *Civello* case above relied on Art. 14, § 29 of the 1921 constitution, which at the time read:

All municipalities are authorized to zone their territory, to create residential, commercial and industrial districts, and to prohibit the establishment of places of business in residential districts.

The municipal power to zone in the original 1921 constitution was incrementally extended via a string of constitutional amendments to empower a number of parishes to do the same. By the time the 1974 constitution was enacted, it recognized and protected land use regulation at the local level broadly for municipalities and parishes alike.

⁴ Art. VI, § 44 defines “local governmental subdivision” to mean “any parish or municipality.”

Today's statutes likewise respect the primary role of local governments as to land use matters by limiting judicial review to specified grounds. See La. R.S. 33:4721 (municipalities) and 33:4780.40 (parishes).⁵

This Court has steadfastly deferred to the land use decisions of local government, unless those decisions were unreasonable. There is a consistent theme running through more than a century of Louisiana Supreme Court milestone land use decisions. The sweeping consistency of those decisions is clear:

- **1923**, *Civello v. City of New Orleans*, 154 La. at 283; 97 So. at 445: "We have nothing to do with the question of the wisdom or good policy of municipal ordinances. If they are not satisfying to a majority of the citizens, their recourse is to the ballot – not the courts."
- **1942**, *State ex rel. Szodomka v. Gruber*, 201 La. 1068, 1078, 10 So. 2d 899, 902 (1942): "But the municipality's interpretation of its own penal ordinance, tacitly given to it by the municipal officers who are entrusted with its enforcement, is entitled to great weight in a case where there is much doubt, as there is in this case, whether the ordinance forbids the act complained of."
- **1948**, *Carrere v. Orleans Club*, 214 La. 303, 316, 37 So. 2d 715, 720 (1948): "This is also in accord with the interpretation placed on this sub-section by the municipal authorities themselves and which, under our jurisprudence, is given great weight."
- **1974**, *Four States Realty Co., Inc. v. City of Baton Rouge*, 309 So.2d 659, 672 (La. 1974): "Courts will not and cannot substitute their wisdom for that of a legislative body or other zoning authority except when there is an abuse of discretion or an excessive use of power."
- **1981**, *Folsom Rd. Civic Ass'n v. St. Tammany Par.*, 407 So.2d 1219, 1222 (La. 1981): "Zoning ordinances are presumed to be valid and whoever attacks the constitutionality of an ordinance must show an abuse of discretion or an excessive use of power."
- **1990**, *Palermo Land Co., Inc. v. Planning Comm'n of Calcasieu Par.*, 561 So.2d 482, 492 (La. 1990): "The differing needs of each parish, according to its size, population, level of industrial and commercial development, and the rapidity of growth of such development, will naturally result in different planning and zoning regulations in each parish. The need for change through rezoning or reclassification will depend on the same factors, thus rezoning decisions are properly left to those officials who are most familiar with the needs of each community. Judicial review of zoning decisions acts merely as a check on this legislative power granted to parish officials to ensure that there is no abuse of the power.

⁵ Although the St. James Parish land use ordinance at issue here is not a statutory zoning ordinance, it functions similarly to a traditional zoning ordinance, and legal principles addressed in zoning statutes and jurisprudence and are relevant.

Courts will not and cannot substitute their judgment for that of the legislative authority.”

- **2011, *Toups v. City of Shreveport*, 2010-1559 (La. 3/15/11, 5); 60 So.3d 1215, 1218:** “The courts may not assume powers and functions which the law has lodged in other agencies of government relative to the adoption and administration of the zoning laws; in other words, a court may not constitute itself as a zoning commission, or ‘super-zoning’ commission, or zoning board.” (Quoting *Meyers v. City of Baton Rouge*, 185 So.2d 278, 282 (La. App. 1 Cir. 1966.)

These cases generally base their deference to local government decision making on the concept that zoning is a legislative function that ordinarily should not be disturbed by the courts. This concept is fundamentally correct, but the concept is much stronger than the cases have historically described. Under both the 2021 and 1974 Louisiana Constitutions, the allocation of land use decisions has been constitutionally mandated to local governments. Courts must respect that allocation of decision-making. They have generally done so, albeit without consistently and expressly basing that respect on the constitution’s delegation of responsibility for land use decisions to local governments.

The end result of more than a century of constitutional and statutory law, coupled with consistent jurisprudential guidance over that same century, is this: the first question to ask is whether a land use decision violates constitutional or statutory requirements. If the answer is “no,” judicial review ends there, and courts are not allowed to substitute their judgment for that of the locals. It is only when local decisions stray out of the bounds may courts step in. An “out of bounds” finding is a threshold determination that the Fifth Circuit did not consider before jumping immediately to a de novo determination that substituted its choice for that of the planning commission and parish council.

Louisiana courts have consistently reached the principles the parish urges here: it is not only jurisprudentially correct to defer to local governmental decision-making when it comes to land use. It is constitutionally mandated. And the only instances in which the court may depart from that principle is when the local decision violates some constitutional or statutory mandate. Absent and initial finding on such a violation, courts cannot substitute their opinion for that of the local government. However, that is what the Fifth Circuit did in this case, and that is the fundamental reason why it should be reversed.

Because the constitution expressly assigns land use regulatory functions to local governments, courts must do more than merely give “great weight” to local authorities (*Carrere*, 214 La. at 316; 37 So.2d at 720). Courts are constitutionally obliged to defer to the decisions of local governments unless those decisions violate other authoritative law.

The Fifth Circuit majority erred by substituting its analysis and value judgments for that of the St. James Parish officials.

The Parish’s interpretation of its own ordinance is due deference, and is a reasonable construction of the text of the ordinance under the facts here.

Where is the boundary between determining the law and in applying that law to zoning and land use applications? That is the key consideration here. The Fifth Circuit’s decision recognized that it should not substitute its judgment for that of the Parish , p. 8, but went on to do exactly that. This intruded into the role of local officials in making land use decisions.

The Louisiana constitution protects the Parish’s construction of its own ordinance. La. Const. Art. 6, § 17 grants the parish the power to “adopt regulations for land use,” to “create commissions and districts to implement those regulations,” and to “**review decisions of any such commission.**” Emphasis supplied.

The jurisprudence recognizes that local officials routinely interpret and apply the law to the decisions that come within their purview, and courts are called upon to accord “great weight” to such interpretations.

A reviewing court should afford considerable weight to an administrative agency’s construction and interpretation of its rules and regulations adopted under a statutory scheme that the agency is entrusted to administer, and its construction and interpretation should control unless they are found to be arbitrary, capricious, or manifestly contrary to its rules and regulations.

Forbes v. Cockerham, 2008-0762, p. 33 (La. 1/21/09); 5 So.3d 839, 859, citing *Dixie Electric Membership Corp. v. Louisiana Public Service Comm’n.*, 441 So.2d 1208, 1211 (La.1983).

Great weight is due to “the construction of an ordinance as interpreted by a municipal commission council.” *Gautreau v. Bd. of Elec. Examiners of City of Baton Rouge*, 167 So.2d 425, 433 (La. Ct. App.1964) (citing *Carrere v. Orleans Club*, 214 La. 303, 37 So.2d 715).

Such should have been the case here with respect to who decides (and when they decide) whether a “unique situation” exists to justify an allowable use in the wetlands. Here, at every level – administrative, planning commission, and parish council – local officials uniformly interpreted the “unique situation” language of the land use ordinance to recognize that the connection to the ethane pipeline in the wetlands was an allowable use. That uniform interpretation is reasonable, and is entitled to judicial deference.

The Parish made a preliminary administrative determination that the ethane pipeline connection was an allowable use in the wetlands because the ethane pipeline to which it was connecting was already located in the wetlands. This preliminary determination was clearly stated in the public notice that preceded the planning commission’s meeting, and it was clearly articulated in the agenda for that meeting. The factual and legal issues surrounding that determination were discussed at the planning commission meeting, and the planning commission made a specific finding:

WHEREAS, the commission also received an explanation from its counsel as to how the land use ordinance applied to the application, and the decision-making criteria therein. Counsel also addressed the allowability of the ethane pipeline connection depicted in the Application being located an area designated as Wetlands in the land use plan, such pipeline connection being 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 in the Wetlands area, in accordance with ordinance Section 82-25(c)(11). The commission concurs that the pipeline connection is an allowable land use in the Wetlands in this circumstance.

Rec.0248. The commission expressly determined that the pipeline connection to an existing pipeline in the wetlands was an allowable use that was appropriately considered under Sec. 82-25(f) rather than Sec. 82-25(e) of the ordinance.

The parish council is the legislative body of the parish. By denying the original appeal and accepting the planning commissions’ July 31, 2025 decision, the parish council accepted the planning commission’s interpretation of the ordinance, as expressed in the planning commission’s approval resolution. On remand, the parish council expressly set out its legislative disagreement with the Fifth Circuit’s decision. See Appendix B. Conceptually, this acceptance by the parish council is the type of expression contemplated by La. R.S. 24:177(B)(2)(a): “The legislature may express the intended meaning of a law in a duly adopted concurrent resolution.”

While the matter at hand does not directly involve a state statutory issue, the interpretive guidance in La. R.S. 24:177 is highly relevant as a law on the same subject matter. See La. C.C. Art. 13. The legislative body here – the parish council – affirmed its legislative intent in an official enactment denying the appeal. This is a clear indication of the fundamental intent of the ordinance, adopted by the only body authorized to enact ordinances – the parish council.

In considering the Remand Application, the council was more explicit in setting out its legislative view of the Fifth Circuit’s decision. In the council’s Remand Application resolution (attached here as Appendix B), the council stated:

- 10.** As the legislative body of the parish, the parish council finds that the Fifth Circuit’s decision misapplied the parish’s land use ordinance in the following non-exclusive particulars:
 - a.** The land use ordinance expresses the parish’s preference to leave Wetlands in their natural state, but it does not prohibit development in wetlands. The ordinance fully anticipates that limited development may occur in Wetlands.
 - b.** Unique situations requiring a location in Wetlands are allowable uses under the land use ordinance, and are not subject to to [sic] the approval process and the criteria in code of ordinances Sec. 82-25(e).
 - c.** Whether a use presents a unique situation, and whether it requires a location in Wetlands, are determinations that may be made as administrative decisions under Sec. 82-25(d), or as planning commission decisions under Sec. 82-25(f), based on the requirements pertinent to each of those sections.

The deferential standard of judicial review still leaves substantial room for the judiciary to perform its judicial functions, including interpreting the law, The discretionary freedom to make land use decisions at the local level does not intrude on those legitimate judicial functions.

By the time the courts get a land use or zoning controversy, there has already been a quasi-adjudicatory proceeding at the local level. Courts do not adjudicate land use controversies in the first instance; courts operate in a purely appellate role. Judicial deference does not usurp the law-interpreting function of the courts, but it does define the boundaries of that function.

Courts still must consider constitutional constraints (e.g., regulatory takings, equal protection, freedom of speech (as with sign controls ordinances) or religious freedom issues). Courts still must apply statutory limitations (such as statutory notice provisions or requirements

peculiar to specific jurisdictions), but within the limits of those statutes (such as the review standards in La. R.S. 4780.40).

It is hyperbole to suggest that adhering to the deferential standard of review stymies the judicial branch's exercise of its proper functions. For example, courts may still require a local governments to follow their own ordinance. But note: the “didn’t follow their own ordinance” line of cases is short. Reversals of local land use decisions on that basis have occurred only where there was a clear departure from an explicit mandate in the ordinance. Other than the decision of the Fifth Circuit below, none of the cases known to undersigned counsel required the court to interpret the ordinance to enforce a procedure that was not stated in the ordinance, then hold that the local government failed to follow the court’s newly articulated procedure.

The Parish may indulge in a range of interpretations of its own ordinances, as long as those interpretations are reasonable. If the Parish’s interpretation is within the range of reasonableness, it is not the role of the courts to substitute their view for that of the Parish. Here, the planning commission’s conclusion as to how the ordinance applied to the ethane pipeline connection in the Wetlands was fully explained in the public notice, the description of the agenda item, and the planning commission’s resolution approving it. While one can disagree with the commission’s reasoning, it had a sound, rational basis. That is sufficient to uphold the decision.

The Fifth Circuit opinion incorrectly concluded that the land use ordinance was ambiguous.

The decision below fails to identify the asserted ambiguity in the ordinance.

The trigger for the Fifth Circuit’s decision was that there was an ambiguity in the ordinance. However, the majority opinion below did not articulate what that ambiguity was. Instead, the court simply stated: “Appellants have shown an ambiguity exists regarding what may be considered a “unique situation” that could ultimately become an approved use of the Wetlands, besides its conservation to protect the State’s coastal areas.” Decision below, p. 11.

This explanation does not identify an ambiguity; it merely declares that one exists. That declaration is incorrect. The court below created its own ambiguity when it departed from

the actual text of the ordinance. Interpreting the law to say something it does not, then finding that the parish failed to comply with that nonexistent provision, is an improper interpretation of the ordinance and an intrusion on the constitutional authority of local governments.

The decision below simply does not acknowledge that there is an explicit exception for certain uses in the wetlands, and that exception makes those uses in Wetlands allowable under the ordinance, i.e., “unique situations” requiring a location in the Wetlands. Significantly, the decision below does not address the exception language and presents its conclusions as though the exception does not exist.

There is no ambiguity in how the ordinance applies to the ethane connection here.

The plain text of the ordinance demonstrates that the pipeline connection is an “allowable use” under the land use ordinance. “When a statute is clear and unambiguous and the application of the statute does not lead to absurd consequences, the statute must be applied as written.” La. C.C. Art. 9; see also *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.

The relevant ordinance provision is Sec. 82-25(c)(11) in a chart in the ordinance. In relevant part, it reads as follows:

Land Use Category	Allowable Uses
11. Wetlands	Shown for information only; wetland areas should remain unoccupied except for unique situations requiring a location in the water, subject to any permits required under article V, chapter 18.

The text of this critical provision parses out into four essential components. An examination of each in detail leads directly to the conclusion that the pipeline connection is allowed, not prohibited. Each component of the Wetlands provision is addressed below.

- “**Shown for information only. . .**” This introductory phrase is non-regulatory; it does not prohibit any use. This phrase telegraphs that the substantive regulation of uses located in wetlands is provided through the Coastal Zone Resource Management Program in Chapter 18 of the St. James Parish Code of Ordinances (which is a Coastal Use Permit system.)⁶

⁶ https://library.municode.com/la/st_james_parish_council/codes/code_of_ordinances?nodeId=PTIICOOR_CH18BUBURE_ARTVCOZOREMAPR provides the ordinance and the Coastal Use Permit system.

- “. . . **wetland areas should remain unoccupied** . . .” This language is likewise aspirational, not regulatory. Louisiana courts have consistently treated the word “should” as permissive rather than mandatory. *Louisiana Seafood Mgmt. Council v. Louisiana Wildlife & Fisheries Comm’n*, 97-1367 (La. 5/19/98, 12–13); 715 So.2d 387, 394 (“‘should’ generally denotes discretion and should not be construed as ‘shall’”); *Harrah’s Bossier City Inv. Co., LLC v. Bridges*, 2009–1916 (La. 5/11/10), 41 So.3d 438, 447 (“the word ‘should’ in the unambiguous sentence pertaining to diversity was clearly intended to be permissive”).
- “. . . **except for unique situations requiring a location in the water** . . .” Even if the “should remain unoccupied” were construed as prohibitory, this phrase is an express exemption from the prohibition. It specifically states that the described “unique situations” are allowable uses.
- The “unique situation” exception is in the column labeled “**Allowable Uses**,” which constitutes an explicit statement that the uses excepted are exactly what it says: allowable.

The Fifth Circuit’s decision disregards the non-regulatory language that the designation is “Shown for information only.” It disregards the aspirational permissive statement that wetlands “**should** remain unoccupied,” distorting it into a mandatory command that prohibits any use in Wetlands. The Fifth Circuit’s decision below disregards the phrase “**except**” treating the word as though it means the opposite of what it says. Finally, the decision below ignores that the “unique situations” language is listed in the tabular column labeled “**Allowable Uses**,” making it clear that a “unique situation” is an “Allowable Use.”

The decision below is a four-fold conflict with explicit text of the ordinance. It does not match reality. Ultimately, the Fifth Circuit majority interprets the phrase “Allowable Uses” to mean prohibited uses.

Other provisions in the ordinance reinforce that uses in the Wetlands can be addressed under the Tier 2 provisions of Sec. 82-25(f). One of the stated criteria that triggers the Tier 2 process is:

Any commercial or industrial development that requires a state or federal permit for air, water, solid waste, hazardous materials, or **section 404 Wetland/Rivers and Harbors Act** permits.

Sec. 82-25(f)(3), emphasis supplied. This text in the land use ordinance contemplates that uses in Wetlands can receive Tier 2 treatment. This passage – part of the Tier 2 procedure – expressly recognizes that development in Wetlands may be considered under a Tier 2 procedure, and that a Tier 3 consideration is not required.

Civil Code Art. 9 (and related statutes) compel the conclusion that the decision of the parish should have been affirmed.

First, always, is the question whether the legislature has directly spoken to the precise question at issue. If the intent of the legislature is clear, that is the end of the matter; for the courts must give effect to the unambiguously expressed intent of the legislature if its application does not lead to absurd consequences.

Moore v. Gencorp, Inc., 633 So.2d 1268, 1270 (La.1994), citing La. C.C. Art. 9.

Here, The intent of the legislature – which is the St. James Parish Council – is plain. In upholding the planning commission’s approval of the KMe Project, the council “has directly spoken to the precise question at issue” and concluded that the ethane pipe connection required only a Tier 2 evaluation under the land use ordinance. In terms of *Moore v. Gencorp*, “that is the end of the matter; for the courts must give effect to the unambiguously expressed intent of the legislature.” *Id.*

The parish council, as the legislature, is the most credible arbiter of what it intended to legislate. It has spoken authoritatively to the issue. By denying the original appeal and upholding the planning commission, the parish council concluded that the ethane pipeline connection was a “unique situation” that required it to be in the Wetlands. There’s nothing unreasonable about the conclusion that a connection to a pipeline that is already in the Wetlands needs to be in the Wetlands. A conclusion to the contrary would be illogical, as the dissent from the opinion clearly described at pp. 1-2 of the dissent:

I see no ambiguity in this language and would affirm the Council’s interpretation of Section 82-25(c), as its decision has not led to an absurd result under the facts presented and is not clearly wrong. Here, tapping into the existing ethane pipeline falls within the very definition of a unique situation, as the only logical way to physically approach the pipeline is through the wetland.

Forcing every “unique situations requiring a location in the water” to undergo the full Tier 3 process under Sec. 82-25(e) would lead to absurd consequences.

According to the decision below, p. 10, **any** use in the Wetlands requires a Tier 3 decision-making process under Section 82-25(e) of the parish ordinances. That view means that the parish council, and only the parish council, could determine whether a “unique situation” begets an “Allowable Use” in the wetlands. On its face, this would lead to an

absurd result. It would embroil the entire parish council in making decisions in the first instance for even minor Tier 1 uses.

If allowed to stand, the Fifth Circuit's decision below would force the parish council to make a decision on every pier, culvert, boat ramp, drainage ditch, weir, and pipeline crossing in the Wetlands, regardless of how trivial and despite the existence of a Coastal Use Permit system that is already set up to consider these very matters. This would undercut the mandate in Section 82-25(b) that assigns compliance with the land use plan to a variety of departments, officers, employees, board, and commissions.

When it originally considered this appeal as its first judicial review step, the district court correctly found that Respondents' interpretation would lead to absurd results:

If accepting Plaintiffs position that each and every improvement made within land classified as "Wetlands" no matter how small or minute, would require consideration by the Planning Commission and additional approval by the Council, this Court believes the potential for an absurd result(s) would then exist. This Court, using principles of rationality, does not believe that such would have been the intent of the Council when enacting this ordinance because such a requirement would be overly exhaustive and more times than not, unnecessary.

District court's Reasons for Judgment, p. 24, Rec. 0028.

A call for clarification of the standard of review.

The volume of litigation resources expended in this case over more than two years regarding a physically trivial installation in the Wetlands underscores the need for this Court to clarify the approach to and limits of judicial review of local land use decisions. The Parish urges this Court to take this opportunity to authoritatively clarify how the judicial branch should consider land use appeals and provide guidance to applicants, local governments, and the courts.

Using a "de novo review" label to signify that appellate courts should evaluate the original record of an initial land use decision presents a different concept than the customary use of the term "de novo review" to describe the traditional role of appellate courts in resolving legal issues. This case illustrates how the resulting confusion can lead to incorrect results.

The Fifth Circuit's majority cited the "de novo review" rubric to address what it perceived as a legal issue, but the court's reasoning evolved into substituting its judgment for

that of the Parish on the substantive land use issues. What was or wasn't a unique situation that satisfied the exception for Wetlands uses, and whether the list of "allowable uses" in the table of uses specifically incorporated such a unique situation were decisions constitutionally committed to the Parish's decision-making process. The meaning of terminology in an ordinance and its application to particular facts are tasks that local government officials perform on a daily basis. It is the bread and butter of administering ordinances.

The jurisprudence admonishes that the analysis and judgments reached by local officials making land use decisions are not to be disturbed on appeal unless the results of local officials' actions are arbitrary and capricious (or variations of those concepts). The Fifth Circuit's opinion below did not justify its decision on this basis. Rather, it stated that the parish did not follow its own ordinance. However, to reach that conclusion, it had to create a requirement that does not exist in the ordinance, namely that any use in the wetlands must receive a full Tier 3 review process. It is beyond the authority of the judicial branch to create new requirements. Adding such a requirement is a decision assigned to local governments by the Louisiana constitution.

The "de novo review" terminology is a problem. The unfortunate use of the term to describe how Louisiana courts should evaluate local land use creates confusion between the de novo consideration of the law versus the de novo consideration of the result of the fact finding and analysis that local governments typically perform in connection with land use decisions.

The jurisprudential guidance is muddled. Several cases refer to the Court's review on appeal as "de novo." See, e.g., *Palermo Land Co., Inc. v. Planning Commission of Calcasieu Parish*, 561 So. 2d 482, 492 (La. 1990); *Toups*, 60 So. 3d at 1217; *Truitt v. West Feliciana Parish Government*, 2019-0808 (La. App. 1st Cir. 2/21/20), 299 So. 3d 100, 103. However, these cases do not clearly and fully describe what they mean by "de novo." They do not outline the legal boundaries of the concept, nor how it jibes with the deferential standard of review that admonishes courts not to substitute their judgment for that of local officials.

In the context of these decisions, characterizing an appeal as a "de novo" proceeding refers to examining the result of the decision under review to determine whether it is arbitrary or capricious, but without being bound by the findings of an appellate level below. See *Palermo*,

561 So. 2d at 492 (emphasis in the original). An appeal of a land use decision “is not an appeal from the decision of a lower tribunal wherein the court scrutinizes the record below to test the accuracy of the City’s decision; rather it is a de novo proceeding which tests whether the result of the City’s legislation . . . is arbitrary.” *Hernandez v. City of Lafayette*, 399 So.2d 1179, 1182 (La. Ct. App. 1981), *writ denied*, 401 So.2d 1192 (La. 1981), cited with approval in *Palermo*, 561 So. 2d at 492.

There is an inherent contradiction in the “de novo review” terminology. Outside when in use matters, and it refers to the freedom courts have to interpret the law free of the legal rationale of lower tribunals. In contrast, when it comes to land use matters, the term refers to considering the original local government administrative decision. These are contradictory concepts. The contradiction creates confusion among regulators, the regulated, interested citizens, and the courts; and it invites unnecessary litigation.

This lack of legal clarity is underscored by two statutes that explicitly set out a standard of judicial review for zoning decisions. La. R.S. 33:4721 (for municipalities) and La. R.S. 33:4780.40 (for parishes). Each statute specifies four grounds for judicial review: (1) abuse of discretion; (2) unreasonable exercise of the police powers; (3) excessive use of the power granted by statute; and (4) denial of the right of due process. These statutory grounds are far more restrictive than the customary use of the term “de novo.” Although cases frequently mention these statutes in passing, Louisiana’s jurisprudence has not reconciled these highly deferential statutory standards with the concept of a de novo review of local land use decisions.

The proceedings below illustrate the potential misapplication of the standard of review. The Fifth Circuit invoked a de novo review of what it perceived as legal issues, but that review impermissibly evolved into the court substituting into own judgment for that of the Parish as to how to evaluate the proposed project. The Fifth Circuit majority rejected the Parish’s decision that the ethane pipeline connection qualified as a “unique situation” that met the allowable use exception in Sec. 82-25(c)(11), and substituted its own conclusion to the contrary. The Fifth Circuit relied on de novo review reasoning when it should have tracked the constitutional, statutory, and jurisprudential deference to local government land use decisions.

There is a need to clarify the application of the “de novo” concept applicable to land use matters, and to distinguish it from the concept of “de novo” review of legal issues.

CONCLUSION

This case should be resolved under the fundamental legal principles that local governments – and only local governments – have the constitutional authority to regulate land use. In that role, they are afforded broad discretion in land use decisions, and their decisions should not be disturbed on appeal unless it violates constitutional or statutory law.

Respondents disagree with the Parish’s policy to allow industrial development in designated areas, and they disagree with the policy to treat “unique situations” as allowable uses in areas designated as Wetlands. Respondents – and indeed the Fifth Circuit majority – are entitled to hold policy viewpoints contrary to those of the Parish. However, they are not free to substitute their judgment for that of the Parish in the face of express constitutional authority saying that the judgment if for the Parish to make.

As the Fifth Circuit correctly recognized at pp. 13-14 of the opinion below, the judicial system is not the forum to resolve policy disagreements with the Parish. Respondents cannot legally leverage the intercession of the Fifth Circuit to impose their differing viewpoint on the people elected and appointed to make a decision they disagree with.

Respectfully submitted this the 17th day of November, 2025.

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CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been delivered to the appropriate court of appeal, to the lower court judge, and to all counsel via email at the addresses stated below by email on this the 17th day of November, 2025:

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APPENDIX

- A. St. James Parish Code of Ordinances Excerpt (Sec. 82-25)
- B. August 6, 2025 resolution (No. 25-146) of the St. James Parish Council denying appeal and approving the remand application of Koch Methanol St. James.

CODE OF ORDINANCES OF ST. JAMES PARISH, LOUISIANA

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Appendix A

Sec. 82-25. - Land use plan.

(a)

Adoption of future land use plan and area map.

(1)

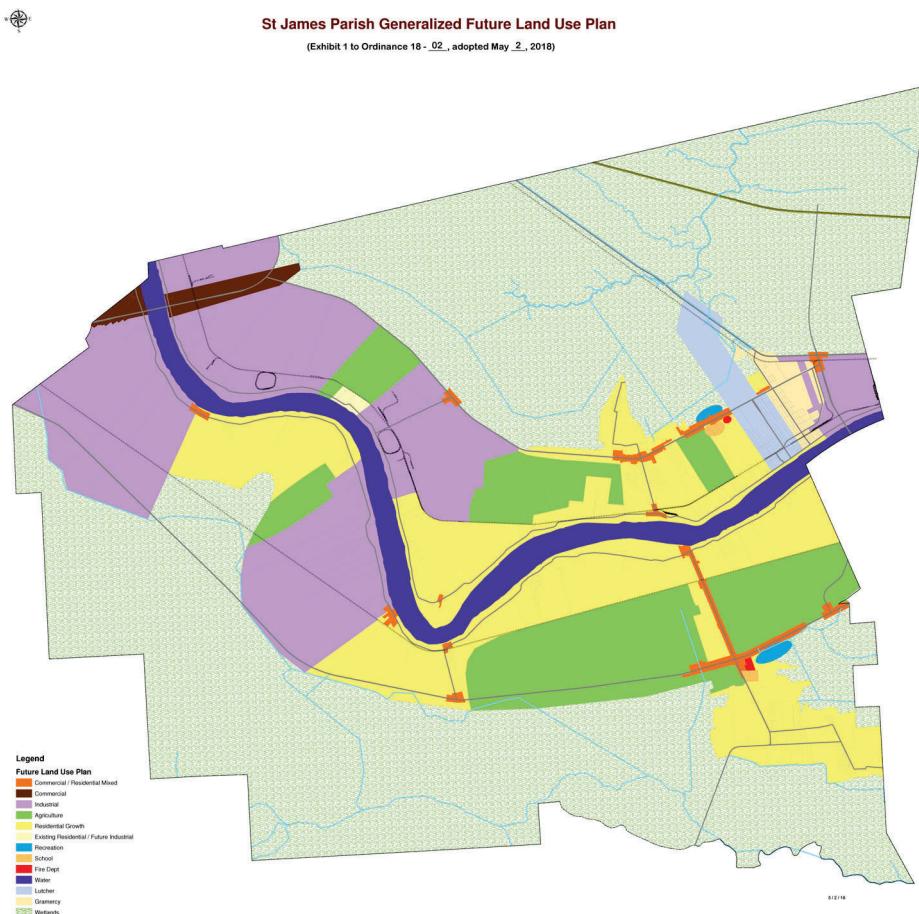
The following map is hereby adopted and incorporated herein by reference to guide the development of the parish: The parish generalized future land use plan, dated May 2, 2018 in a printed and digital form. A printed version of the map is set forth in this subsection as Exhibit 1. Any ambiguity in the location of the land use category boundaries, or any conflict between the printed and digital forms of the map, shall be resolved by relying on the digital form of the map. Any ambiguity in the boundaries shown on the digital map shall be resolved as follows:

a.

Any boundary that does not align with an existing tract or lot line shown in instruments or plats registered as of April 2, 2014, in the conveyance records of the parish clerk of court shall be interpreted to align with the nearest boundary of an existing tract, or in commercial/residential mixed areas, to be located 300 feet from the front public right-of-way.

b.

If an ambiguity in any boundary cannot be resolved based on the conveyance records, the map shall be interpreted to apply the least restrictive of the land use categories that reasonably could apply to the affected parcel based on the land use map.



(2)

The map in subsection (a)(1) of this section, together with the text of this section, are collectively referred to herein as the "land use plan."

(b)

Plan compliance. All departments, officers, employees, boards, and commissions of the parish, and all representatives of the parish serving on boards, commissions, or other governing bodies whose jurisdictions include any portion of the parish, shall carry out their public duties in compliance with the land use plan. To the maximum extent permissible by law, all such agencies, persons, and entities shall exercise decision making discretion in a manner consistent with the land use plan. With respect to uses covered by subsection (e) or (f) of this section, such uses shall not be considered to be consistent with the land use plan unless the use has been approved in accordance with subsection (e) or (f) of this section, as applicable. It is the intention of the parish to avail itself of the benefits of R.S. 33:109 and 33:109.1 for all agencies and departments of the state and political subdivisions bound thereby to conduct their activities in full compliance with the land use plan, which is hereby declared to be a "master plan" as that term is used in R.S. 33:109 and 33:109.1. It is further the intention of the parish that all local, regional, state, and federal entities operating in or making decisions affecting property in the parish comply with the land use plan to the maximum extent allowable under law, and the parish hereby invokes all such law for the benefit of its citizens.

(c)

Land use categories and allowable uses. The land use plan divides the parish into land use categories whose purposes are described in this section. These category descriptions are not intended to be a comprehensive prescriptive list of all possible land uses, but shall be interpreted to control the general character and impacts

of development so that the physical development within each use area is compatible with and beneficial to other uses within the same area.

Land Use Category	Allowable Uses
1. Residential/Future Industrial	Dwellings and uses customarily associated with dwellings (such as garages, carports, patios, outbuildings used by residents of the dwellings) developed on existing lots or properties of record. Subdividing properties is not allowed, except for family subdivisions under chapter 102 , which shall be allowed. Industrial uses, subject to the establishment of suitable buffer zones under section 82-25(i) and (j).
2. Residential Growth	Dwellings and uses customarily associated with dwellings (such as garages, carports, patios, outbuildings used by residents of the dwellings), whether developed on existing lots or on properties subdivided in accordance with chapter 102 .
3. Commercial	Retail outlets, grocery stores, restaurants, convenience stores and service stations, lodging, service businesses, offices, automotive and light equipment sales and service, wholesale businesses not requiring unusually heavy traffic; light manufacturing in enclosed structures not exceeding 100,000 square feet; warehousing in enclosed structures not exceeding 100,000 square feet.
4. Commercial/Residential Mixed	All uses described under either residential growth or commercial uses, along with multifamily housing development.
5. Industrial	Petrochemical operations; manufacturing; tank farms; material processing and production; grain elevators, railroad yard facilities; raw, spent, and finished material storage; warehousing or open-yard equipment; material handling facilities (such as conveyors, pipelines, and trans-shipment facilities); and associated support facilities and offices.
6. Agriculture	Growing crops; raising fowl, livestock, or aquaculture; dairying; forestry and fiber production; any facilities customarily associated with such activities; any uses allowed in any adjacent residential or residential growth areas. Agricultural areas may also be used for buffer areas required around other uses.
7. Recreation	Parks, playgrounds, athletic fields, golf courses, open spaces, natural areas, and wildlife

	preserves.
8. Schools	Public, private, and parochial schools and related facilities.
9. Fire Department	Fire stations and other facilities related to fire protection.
10. Water	Shown for information only; water areas should remain unoccupied except for unique situations requiring a location in the water, subject to any permits required under article V, chapter 18 .
11. Wetlands	Shown for information only; wetland areas should remain unoccupied except for unique situations requiring a location in the water, subject to any permits required under article V, chapter 18 .
12. Lutcher	The municipal limits of Lutcher are shown for information only; uses in this area are governed by Lutcher's ordinances.
13. Gramercy	The municipal limits of Gramercy are shown for information only; uses in this area are governed by Gramercy's ordinances.

(d)

Permitting of allowable uses as a matter of course. Within the areas designated for each land use category, allowable uses described in subsection (c) of this section shall be permitted as a matter of course through the parish's customary building permit process under [chapter 18](#), subject to compliance with other applicable ordinance requirements, and except as otherwise provided in this section.

(e)

Approval of uses not listed as allowable uses. Uses not specifically listed as allowable in a use category in subsection (c) of this section are prohibited unless the planning commission considers the use in accordance with subsections (g), (h) and (i); and the parish council approves the use. Any such recommendation or approval shall be made on a case-by-case basis. In addition to the other provisions of this subsection, solar energy farm facilities shall be evaluated in accordance with [section 82-26](#). The planning commission shall not recommend a use for approval, and the parish council shall not approve a use, under this subsection unless it makes affirmative findings that there is a compelling public benefit; that the use is compatible with surrounding uses and adverse impacts of the use are inconsequential; or that approval is required as a matter of constitutional imperative or other vested legal right superior to this section. Any person aggrieved by a decision of the parish council under this subsection may appeal to a court of competent jurisdiction within 30 days of the decision of the parish council.

(f)

Planning commission consideration of certain allowable uses. Notwithstanding subsection (d) of this section, the following uses or activities shall not be issued a building permit until approved by the planning commission (or by the parish council on appeal):

(1)

Any residential building containing three or more dwelling units.

(2)

Any nonresidential development exceeding 10,000 square feet of building area or sites three acres or more.

(3)

Any commercial or industrial development that requires a state or federal permit for air, water, solid waste, hazardous materials, or section 404 Wetland/Rivers and Harbors Act permits.

The planning commission shall act on the proposal under this subsection, and such decision shall be final unless it is appealed. Any person aggrieved by the planning commission's decision under this subsection may appeal to the parish council in writing within 30 days of the planning commission's decision. The parish council shall take up the appeal as soon as is practical following the written notice of appeal to the parish council, and shall do so in accordance with the requirement of the state Open Meetings Law, R.S. 42:11 et seq. The parish 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.

(g)

Application, public notice, and hearing process.

(1)

Uses or activities that do not require action by the planning commission (including those covered by [section 18-38\(l\)](#)) shall be applied for and considered through the parish's building permit process under [chapter 18](#).

(2)

For any use or activity requiring planning commission consideration (either for a final decision by the planning commission or for recommendation for final action to the parish council), the proponent of the proposed use shall submit an application in such a form required by and accompanied by documentation as required by the planning commission or its designated representative.

(3)

The application for any use or activity covered by subsection (e) or (f) of this section shall include:

a.

A listing and a map of all parks, playgrounds, churches, schools, community or senior citizen centers, nursing homes, hospitals, other places of public assembly, and historic sites within the impact area of the use or activity for which approval is sought;

b.

A listing of all substances that are anticipated to be present on the site for which reportable quantities have been established under the Right-to-Know Law (R.S. 30:2361 et seq.), along with the anticipated quantities of such substances; and

c.

If article III of [chapter 30](#) applies, a description of how the use or activity will comply with [section 30-55](#).

The impact area referred to in subsection (g)(3)a of this section shall extend one mile in all directions from the outer extent of the use or activity for which approval is sought, except in cases where the use or activity is anticipated to have any substances present on the site for which the reportable quantity under the Right-to-Know Law (R.S. 30:2361 et seq.) is less than 1,000 pounds. In those cases, the impact area shall be two miles in all directions from the outer extent of the use or activity for which approval is sought.

(4)

Public notice of any decision or recommendation to be made under subsection (e) or (f) of this section shall be published in the official journal of St. James Parish at least two weeks prior to the meeting at which it is to be made.

(h)

Procedure before the planning commission. The planning commission shall consider the following factors for approval or denial of uses under subsection (f) of this section:

(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.

(5)

In addition to the other provisions of this subsection, solar energy farm facilities shall be evaluated in accordance with [section 82-26](#).

(i)

Conditions on uses.

(1)

Prior to recommending or approving any use under subsection (e) or (f) of this section, the planning commission may establish conditions on such approval which, in the reasonable discretion of the planning

commission, would minimize adverse impacts and be beneficial to the public

(2)

For all uses and activities covered by subsection (e) or (f) of this section, the planning commission shall affirmatively consider the public need for buffer zones in accordance with subsection (j) of this section, and shall either condition its approval on the creation and maintenance of an appropriate buffer zone, or shall adopt a finding that such a buffer zone is not required.

(3)

If article III of this chapter applies, approval of the use or activity shall be conditioned on compliance with section 30-64, and no permit shall be issued under [section 18-38](#) unless the director of homeland security and emergency preparedness has determined that the use or activity complies with [section 30-55](#).

(4)

In other cases, the planning commission may include requirements for buffer zones surrounding potentially dangerous uses to protect residences, schools, public facilities, and other occupied areas or facilities.

(j)

Basis of buffer zones. Buffer zone requirements shall be based on the nature of the use for which the buffer zone is established, and shall be based on commonly recognized regulatory, trade group, or manufacturing and industrial standards, including reportable quantities and associated standards under the Right-to-Know Law (R.S. 30:2361 et seq.). In establishing buffer zone requirements, the planning commission shall consider not only normal operations of the use but potential failure scenarios impacting public safety.

(k)

Nonconformities.

(1)

Description. A use of land existing as of the effective date of the ordinance from which this section is derived and which would not constitute an allowable use under subsection (c) of this section shall be considered a nonconformity.

(2)

Intention. It is the intention of this section to allow nonconformities to continue until they are voluntarily closed or removed, but not to encourage their survival or expansion.

(3)

Maintenance, safety, and environmental protection. It is also the intention of this section to allow nonconformities to perform routine maintenance, and to allow improvements limited to improving safety conditions and environmental protection without being treated as a new use under this section.

(4)

Loss of nonconforming status. A nonconformity that discontinues operation or use for more than six continuous months shall lose its status as a nonconformity, and shall thereafter be treated as a new use subject to the provisions of this section. Failure to maintain a reasonable level of employment compatible with the

historic operation of a nonconformity shall be deemed to be a discontinuation of operations. The mere presence of security personnel at a nonconformity shall not be deemed to be a continuation of operations. The burden of proving that a nonconformity is continuing or has continued operations shall be borne by the owner, operator, or similarly situated person responsible for the nonconformity.

(5)

Expansions. Any expansion of capacity or enlargement of physical facilities that would support the future expansion of capacity shall be considered as a new use subject to the provisions of this section.

(6)

Reporting. For a nonconformity to retain its status as such, the owner, operator, or similarly situated person responsible for the nonconformity must timely submit an annual Tier 2 report pursuant to the Right-to-Know Law (R.S. 30:2361 et seq.). Submission of this report to the parish office of homeland security and emergency preparedness shall satisfy this requirement. Such submissions shall be made available to the parish department of operations, planning and permitting office to allow for verification of the nonconformity's status. If a nonconformity is not required to report under the Right-to-Know Law (R.S. 30:2361 et seq.), the owner, operator, or similarly situated person responsible for the nonconformity must furnish a copy of one or more of the following reports to the parish department of operations, planning and permitting office within 30 days of submitting the report to the responsible public agency:

a.

Its annual toxic chemical release inventory report submitted under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023);

b.

Its discharge monitoring report (DMR) submitted under the Louisiana Pollution Discharge and Elimination System. For those uses whose DMR is submitted annually, the annual report shall satisfy this requirement. For those uses that submit DMRs more frequently than annually, the reports for an entire calendar year may be submitted to the parish at one time within 30 days of the last DMR submitted for the calendar year, or the DMRs may be submitted to the parish incrementally; or

c.

Such other report approved in writing by the parish president as providing information about ongoing operations similar to the reports described in subsections (k)(6)a and b of this section.

(l)

Use decisions not board of adjustment functions. No permit, approval, or decision rendered under the land use plan shall be construed as the decision of a board of adjustment under R.S. 33:4727, nor shall the land use plan be construed as invoking the procedures under that statute.

(m)

Appeal of administrative decisions. Administrative decisions made pursuant to or in the implementation of this section, or made on the basis of the land use plan, are subject to review by the parish president, and any aggrieved person may request that the decision be referred to the parish president for review and informal resolution. If such a review fails to resolve the matter, or if the aggrieved person chooses to bypass review by the parish president, the following process shall apply:

(1)

Appeal, timing, and stay. The aggrieved person may appeal to the planning commission in writing within 30 days of the administrative decision or of the parish president's review, whichever is later. An appeal shall not stay the effect of the administrative decision unless the stay is granted by the parish president, the planning commission, or a court of competent jurisdiction.

(2)

Appointment of appeal panel. Upon receipt of an appeal, the chairman of the planning commission shall designate an appeal panel composed of three members of the planning commission. The chairman may serve as one of the three appeal panel members. The chairman shall appoint the commission member or members whose districts are most impacted by the matter appealed from, unless a commission member so appointed waives service on the appeal panel. The chairman shall designate one of the three appeal panel members as the facilitator who shall preside over the appeal proceedings. The chairman shall also give notice to the parish councilmember or members of the districts in which the matter appealed from is located, and that councilmember or members may attend and participate in the deliberations of the appeal panel, but shall not have a vote in deciding the appeal.

(3)

Hearing and decision. The appeal panel shall convene and hear the appeal as soon as practical following the designation of the appeal panel, and shall decide the appeal by a majority of the panel's voting members.

(4)

Finality or further appeal. The decision of the appeal panel shall be final, unless that decision is appealed in writing to the parish council within 30 days of the decision by the appeal panel. Any person aggrieved by the appeal panel's decision may appeal to the parish council.

(5)

Parish council action. The parish council shall take up the appeal as soon as practical following the written notice of appeal to the parish council, and shall do so in accordance with the requirement of the state Open Meetings Law, R.S. 42:11 et seq. The parish 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.

(6)

Further appeal to the district court. Any person aggrieved by the decision of the parish council may appeal to a court of competent jurisdiction within 30 days of the decision of the parish council.

(n)

Deemed denial after lapse of 60 days. Any action, recommendation, approval, or decision on appeal provided for in this section shall be deemed to have been taken, made, or rendered adversely to the application or proposal under consideration, without prejudice, unless taken, made, or rendered within 60 days of being submitted to the decision-making authority (either an administration official, the planning commission, or the parish council), and any appeal periods shall run from the end of the 60-day period. Prior to the end of the 60-day period, the period may be extended one time for up to an additional 60 days by the decision-making authority, in writing, and any appeal periods shall run instead from the end of the period as extended, unless the action, recommendation, approval, or decision is made earlier.

(Code 1997, § 86-37; Ord. No. [14-03](#), § 1, 4-2-2014; Ord. No. [17-21](#), § 1, 2-21-2018; Ord. No. [18-02](#), § 1, 5-2-2018; Ord. No. [22-08](#), § 1, 8-17-2022; Ord. No. [23-11](#), Exh. A(pts. 1, 2, 5), 11-8-2023)

PASSED

The following resolution was offered and moved for adoption by Councilman Nash and seconded by Councilman Jasmin:

RESOLUTION 25-146 ST. JAMES PARISH COUNCIL

A RESOLUTION DENYING APPEAL AND APPROVING THE REMAND APPLICATION OF KOCH METHANOL ST. JAMES, LLC UNDER THE ST. JAMES PARISH LAND USE ORDINANCE, WITH CONDITIONS

WHEREAS:

1. In July 2023, Koch Methanol St. James, LLC ("Koch") applied to the St. James Parish Planning Commission for approval to increase the capacity of its existing methanol plant through an Optimization Project, and to implement an Oxygen Backup Supply Project, all located predominantly in an area designated in the Land Use Plan for Industrial Use, along with a connection to an existing ethane pipeline located in an area designated as Wetlands. The project was identified by the planning commission as Item #23-25 (the "Item 23-25 Application").

2. The planning commission unanimously approved the Item 23-25 Application on July 31, 2023. An appeal challenging that approval was unanimously denied by the parish council on September 27, 2023.

3. The approval of the Item 23-25 Application was further appealed to the 23rd Judicial District Court on October 27, 2023. On June 18, 2024, the district court denied that appeal.

4. The district court's decision on the Item 23-25 Application was further appealed to the Louisiana Fifth Circuit Court of Appeal. That court reversed and remanded the matter back to the planning commission in a judgment handed down on May 14, 2025 and corrected on June 6, 2025. That decision held that with respect to the Wetlands area, the planning commission itself did not have the authority to approve the application under code of ordinances Sec. 82-25(f), but instead, approval required full consideration under the Sec. 82-25(e) approval process. That process limits the planning commission to merely making a recommendation to the parish council, which has the authority to approve or deny an application.

5. Consistent with the Fifth Circuit's decision, Koch submitted an application, identified as planning commission Item 25-16 (the "Remand Application") for a project substantially the same as that presented in the Item 23-25 Application.

6. On June 30, 2025, the planning commission unanimously approved the Remand Application, with certain conditions, and recommended that the parish council approve those components of the Remand Application located in areas designated as Wetlands as well as those located in Industrial areas, whether considered separately or collectively.

7. Public notice of the parish council's August 6, 2025 hearing and consideration of the Remand Application was published in the News Examiner -Enterprise on July 17, 2025.

8. On July 30, 2025, Rise St. James, Inclusive Louisiana, and Mt. Triumph Baptist Church ("Appellants") appealed to the parish council, seeking a reversal of the planning commission's action on the Remand Application.

9. The parish council has conducted a public hearing, had received input in this matter from Koch and from the general public, and has reviewed the resolution of the planning commission approving the Remand Application.

NOW, THEREFORE BE IT RESOLVED as follows:

10. As the legislative body of the parish, the parish council finds that the Fifth Circuit's decision misapplied the parish's land use ordinance in the following non-exclusive particulars:

- a. The land use ordinance expresses the parish's preference to leave Wetlands in their natural state, but it does not prohibit development in wetlands. The ordinance fully anticipates that limited development may occur in Wetlands.
- b. Unique situations requiring a location in Wetlands are allowable uses under the land use ordinance, and are not subject to the approval process and the criteria in code of ordinances Sec. 82-25(e).
- c. Whether a use presents a unique situation, and whether it requires a location in Wetlands, are determinations that may be made as administrative decisions under Sec. 82-25(d), or as planning commission decisions under Sec. 82-25(f), based on the requirements pertinent to each of those sections.

11. Pending action on the parish's writ application to the Louisiana Supreme Court, and out of respect for the Fifth Circuit's decision, the parish council has considered the Remand Application in accordance with that decision, while at the same time rejecting the rationale of that decision as being inconsistent with the parish's land use ordinance.

12. Under ordinance Sec. 82-25(e) and (f), the parish council hereby (a) affirms the June 30, 2025 decision of the planning commission, and (b) approves the recommendation of the planning commission regarding the Remand Application, and in doing so adopts as its own the scope, conditions, findings and conclusions of approval stated in the planning commission's resolution.

13. The parish council finds that approval is justified with specific reference to the factors described in Section 82-25(h) because:

- a.** 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.
- b.** Within the Wetlands, the impacts of the proposed use are compatible with and significantly less impactful than the existing pipelines and the electric transmission line located in the same area.
- c.** The project would improve the competitive advantage of Koch's plant. The parish's experience with the closure of the Shell Convent refinery and the ensuing adverse impacts on the parish underscore the importance to local citizens of promoting the economic health of the parish's existing industries.
- d.** The project will help retain existing jobs while providing new job opportunities.
- e.** The project would expand the tax base with the value of additional facilities.

Such benefits outweigh the minor physical and environmental impacts, and will not impair the parish's ability to attract other beneficial development, considering the project's compliance with air quality standards, and the location being predominantly in an industrial area, distant from potentially impacted uses. This reasoning under Sec. 82-25(h) would apply equally whether the project is considered under Sec. 82-25(e) or (f).

14. The parish council has considered the balance between the project's benefits and its air emissions. In issuing air permits for the project, the Louisiana Department of Environmental Quality concluded that the project would not adversely affect human health or the environment, and that the off-property emissions would remain well below the Louisiana Ambient Air Quality Standards. The parish council accepts those conclusions.

15. Regarding buffer areas, the parish council finds that the proposed facility does not require additional buffer areas because: the use is substantially contained within the footprint of the existing methanol plant; it is located within and adjacent to industrial areas; the risk analysis for the project indicates that the impacts of failure scenarios would be limited to the existing industrial site or immediately adjacent industrial facilities without impacting residential areas; it is distant from other potentially impacted uses; and its impacts during normal operations are limited.

16. The parish council finds that the ethane pipeline connection is a unique situation requiring a location in Wetlands because the existing ethane pipeline to which the connection has been made was already located in the Wetlands. This finding is in accordance with ordinance Sec. 82-25(c)(11). The commission finds that the pipeline connection is an allowable land use in the Wetlands in this circumstance.

17. The parish council has considered the factors set out in Sec. 82-25(e) as they apply to those components of the Remand Application that are located in the area designed as Wetlands in the land use ordinance. While the parish council believes that Sec. 82-25(e) does not apply, in case it does, the parish council affirmatively finds that the uses within the Wetlands area (the ethane pipeline connection) are compatible with surrounding uses and adverse impacts of the uses are inconsequential, considering the following non-exclusive factors:

- a.** The area impacted by the tie-in and the connecting pipeline is in an already highly disturbed area because of the presence of several existing pipelines and a major electric transmission line.
- b.** The existing facilities there have been in place since before Koch's predecessors built the methanol plant. The corridors for these facilities are already routinely cleared and mowed. The tie in and the connecting pipeline for Koch's ethane supply are compatible with these existing uses.
- c.** The physical area occupied by the tie-in is minimal, leading to inconsequential impacts that do not extend beyond the small footprint of the tie-in area. The aerial photographs provided in the Remand Application bear this out.

d. The regulatory agencies responsible for the wetlands and coastal use permit found that the routing and tie-in to the ethane pipeline was the least damaging alternative.

18. The parish council finds that the criteria in Sec. 82-25(e) do not apply to the components of the Remand Application that are located in the area designed as Industrial in the land use ordinance. If a court finds that Sec. 82-25(e) does apply to those components, the parish council affirmatively finds that the uses depicted in the Remand Application are compatible with surrounding uses and adverse impacts of the uses are inconsequential. The area is expressly designated for Industrial use. The impacts of the project are common to industrial plants and are not substantially different from the impacts of other allowable uses in industrial areas. Considering the fact that the project is almost exclusively contained within the existing footprint of an existing industry, the impacts, if any, are not noticeable, and are therefore inconsequential.

19. The parish council finds that the project's components in the Industrial and the Wetlands areas, whether considered separately or collectively, satisfy the criteria in Sec. 82-25(e) – namely, that they compatible with surrounding uses and adverse impacts of the uses are inconsequential.

20. The parish council rejects Appellants' legal argument that the applicant must demonstrate both a compelling public benefit and inconsequential impacts. These are "either/or" criteria under the land use ordinance. Compliance with both is not required. Compliance with either is sufficient. They have consistently been applied in that manner since the inception of the land use ordinance in 2014. A finding of compelling public benefit is not required. To require such a finding would be inconsistent with how the parish has applied the land use ordinance for over a decade.

21. For the foregoing reasons, the parish council hereby:

- a. Denies the appeal submitted on behalf of Rise St. James, Inclusive Louisiana, and Mt. Triumph Baptist Church;
- b. Approves the component of the Remand Application located in a designated Wetlands area; and
- c. If parish council approval is required with respect to the components of the Remand Application located in a designated Industrial area, the parish council approves those aspects of the Remand Application, whether considered separately or collectively with the components of the project located in the Wetlands.

This resolution having been submitted to a vote, the vote thereon was as follows:

YEAS: T. Poche, Long, N. Poche, Jasmin, Etienne-Steib, Nash, and Louque
NAYS: None
ABSTAIN: None
ABSENT: None

And the resolution was declared adopted on this, the 6th day of August 2025.



Council Chairman

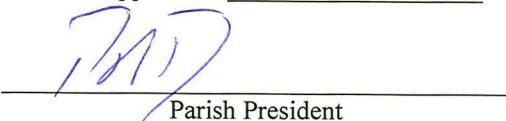


Secretary

Delivered to Parish President: 08-07-2025

Approved: 8-7-25

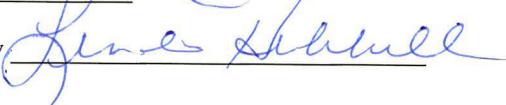
Disapproved: _____



Parish President

Returned to Secretary on 08-07-2025

At 4:04 AM/PM

Received by Linda Schuell

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C E R T I F I C A T E

I, Linda Hubbell, Secretary of the Council of the Parish of St. James, State of Louisiana, hereby certify that the foregoing is a true and correct copy of a resolution adopted by the St. James Parish Council in regular meeting held on the 6th day of August 2025.

Signed at Vacherie, Louisiana, this 7th day of August 2025.

(S E A L)



Linda Hubbell
Secretary