

**40th JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST
STATE OF LOUISIANA**

The Descendants Project, Jocynthia Banner,
and Joyceia Banner,

Civil Action: 77305

Plaintiffs,

v.

Division C

St John the Baptist Parish, *et al,*

Defendants.

**PLAINTIFFS' MEMORANDUM OF LAW
IN SUPPORT OF TEMPORARY RESTRAINING ORDER**

INTRODUCTION

This action seeks an immediate temporary restraining order against Defendant Greenfield Louisiana, LLC, to stop it from undertaking ground-disturbing construction activities on the property at issue in this litigation (“the Wallace tract”).

Under cemetery dedication law in Louisiana, which protects some of the same interests protected by the free exercise clause of the First Amendment to the United States Constitution and Art. I, Sec. 8 of the Louisiana Constitution, property owners must protect and preserve burial sites in recognition of the fact “cemeteries are considered by most culture to be sacred spaces” and the living have “moral duties to the wishes of the dead.”

In the context of burial sites of people enslaved on plantations like those that existed on the Wallace tract, multiple of layers of historic injustices have prevented descendants from being able to locate, access, and honor the burial sites of their ancestors.

Plaintiffs come to this Court now to prevent further injustice and harm to the graves of enslaved ancestors that experts – including the state’s chief archaeological expert – believe likely exist on the Wallace tract.

FACTS IN VERIFIED PETITION

St. John the Baptist Parish, like other parishes along the Mississippi River, was home to numerous plantations where people were enslaved. Verified Motion at ¶ 15. The state’s chief archaeologist, Dr. Chip McGimsey, has stated, “with almost 100% certainty” that there is “going to be a slave cemetery” on “every plantation that existed.” Id. at ¶ 17. Other experts who have

researched and reviewed the history of the Wallace tract agree that there are likely graves of people enslaved on the plantations that once operated there. *Id.* at ¶¶ 20-25. Burials of people who were enslaved on plantations were not routinely recorded, marked, or venerated. Many have been lost to history – and to descendants of those who suffered under the system of slavery.¹ *Id.* at ¶ 16. Examples of the kind of mistreatment and destruction of these gravesites exist nearby – in St. James Parish, where one cemetery was partially destroyed when a pipeline was constructed through it and another mostly destroyed when the land was dug out for a borrow pit. *Id.* at ¶ 34. Another historic Black cemetery in Plaquemines was partially destroyed by industrial development in the 1970s and residents today fear its “final desecration” through further development. *Id.* at ¶ 35.

Plaintiffs have just learned that Greenfield has notified neighbors living adjacent to the Wallace tract that it will be conducting “pre-construction” activities on the site and that residents should expect “construction equipment noise,” “driving test piles,” and “hammering noise associated with driving of piles” and that this activity would tentatively last from May 19, 2022- June 24, 2022. *Id.* at ¶¶ 1-3. Plaintiffs have previously experienced similar loud, disruptive, and violent construction activities and sought the intervention of state officials charged with the protection and preservation of unmarked burials to protect the sites. *Id.* at ¶¶ 11-13. Those state officials responded that they could not take action in the absence of definitive proof of “disturbance of a specific burial ground.” *Id.* at ¶ 13. But the very nature of one of the cruel twists of slavery is that until now it has been nearly impossible for descendants to locate and identify the burial sites their enslaved ancestors. *Id.* at ¶¶ 16, 23, 37-38.

Greenfield’s notice to Plaintiffs’ neighbors comes right on the heels of this Court’s ruling denying their exceptions – including their exception arguing that Plaintiffs failed to state a claim that Ordinance 90-27 is an absolute nullity. In other words, the Court ruled that if all facts pleaded in Plaintiff’s petition are accepted as true, they have stated a claim that the ordinance

¹ See Terry L. Jones, *Researcher maps hidden graveyards of slaves who once tilled Louisiana sugar cane fields*, The Advocate, Feb. 5, 2017, (“The state of the cemeteries further underscores how those buried in them over the years have been denied their dignity even in death.”) available at https://www.theadvocate.com/baton_rouge/news/communities/westside/article_7f0fd2e8-e966-11e6-91bd7b5708a1dc45.html; See also, Evan Nicole Brown, *The Hidden-History of African-American Burial Sites in the Antebellum South: Enslaved people used codes to mark graves on plantation grounds*, Atlas Obscura, Oct. 25, 2018, available at <https://www.atlasobscura.com/articles/africanamerican-grave-markers>; *African American Slave Cemeteries: Where Are They Now?*, Slave Cemeteries, available at <https://slavecemeteries.wordpress.com/2015/04/17/african-american-slave-cemeteries-where-are-they-now/>; Ted Oberg, *A grave mistake: Possible slave cemeteries not investigated*, Feb. 5, 2016, available at <https://abc13.com/a-grave-mistake-possible-slave-cemeteries-in-harris-county-cypress/1188133/>; Karen Roberts, *Uncovering a painful past for African Americans, one headstone at a time*, Feb. 18, 2016, available at <https://www.usatoday.com/story/news/nation-now/2016/02/18/slave-burial-grounds-african-americans/78773156/>

purportedly rezoning the Wallace tract for heavy industrial use is an absolute nullity. There is no question that the facts of the ordinance and the corruption surrounding it, for which the Parish President was convicted, are true. Plaintiffs should thus prevail on their claim that the ordinance is absolutely null.

Plaintiffs bring this motion to enforce their lawful right to preserve and protect a sacred aspect of their cultural heritage. There is no harm to Defendant from an order of this Court restraining Defendant from ground-disturbing activities on this site during the pendency of this litigation.

LAW AND ARGUMENT

I. A Temporary Restraining Order Is Necessary and Appropriate to Prevent the Deprivation of Plaintiffs' Rights Under Cemetery Dedication Law and the United States and Louisiana Constitutions.

The Louisiana Code of Civil Procedure (LCCP) art. 3601, *et seq.*, sets out the standards for issuing a temporary restraining order. Temporary restraining orders are to be issued by courts where “irreparable injury, loss or damage may otherwise result to the applicant.” La. Code Civ. Proc. Art. 3601(A). They “shall” be granted without notice, when:

- (1) It clearly appears from specific facts shown by a verified petition or by supporting affidavit that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and
- (2) The applicant's attorney certifies to the court in writing the efforts which have been made to give the notice or the reasons supporting his claim that notice should not be required.

La. Code Civ. Proc. 3603(A). La. Code Civ. Proc. art. 3609 provides that the “court may hear an application for a preliminary injunction...upon the verified pleadings or supporting affidavits.” .

A temporary restraining order operates as a temporary restraint on the defendant until the propriety of granting a preliminary injunction may be determined, objectively preserving the status quo until that determination. *Powell v. Cox*, 228 La. 703, 83 So.2d 908, 910 (1955).

A. Plaintiffs Will Suffer Irreparable Injury if This Court Does Not Issue the Order Restraining Defendant from Preventing Their Access to the Cemetery.

“An injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law.” La. Code Civ. P. art. 3601(A). “Irreparable injury” that would require issuance of an *ex parte* temporary restraining order is injury or loss for which damages cannot be measured by a pecuniary standard

or which cannot be adequately compensated in money damages. *Pennington v. Drews*, 209 La. 1, 22; 24 So.2d 156, 163 (1945).

The U.S. Supreme Court has expressly recognized, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). See also, *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 295 (5th Cir. 2012) (irreparable harm would result to church’s right to free exercise of religion from failure to enjoin enforcement of zoning ordinance) and 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2948.1 (2d ed. 1995) (“When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”).

The Louisiana Attorney General has recognized that grave sites are “sacred spaces.”² Preservation of such sites, along with communion and prayer at those locations, are quintessential forms of religious or spiritual experience and practice protected by the free exercise clauses of First Amendment to the United States Constitution and Art. I, sec. 8 of the Louisiana Constitution, as well as cemetery dedication law in Louisiana. Cemetery dedication law in Louisiana accords a special status to cemeteries, recognizing the public interest in the sacred nature of burial places and preserving the right of access to such sites even over the wishes and property rights of private landowners who discover cemeteries after assuming ownership. See e.g., *Vidrine v. Vidrine*, 225 So. 2d 691, 696 (La. Ct. App. 3 Cir. 1969), writ refused, 254 La. 853, 227 So. 2d 594 (1969) citing *Humphreys v. Bennett Oil Corp.*, 195 La. 531, 546 (1940).

Plaintiffs will suffer irreparable harm to their constitutional and legal rights if gravesites of enslaved ancestors are harmed. Conversely, Defendant would not suffer harm, financial or otherwise, by issuance of a temporary restraining order prohibiting it from undertaking ground-disturbing construction activities during the pendency of this litigation, which will determine the legally correct zoning status and permissible uses of the land. La. Code Civ. Proc. Art. 3610 provides that the court require an applicant for a temporary restraining order to furnish security in the amount fixed by the court to indemnify the person wrongfully restrained or enjoined for the payment of costs incurred and damages sustained. Because Defendant would not suffer harm

² Attorney General Opinion No. 07-0183, available at <http://www.lcb.state.la.us/ago/ago07-0183.pdf>.

by this Court and because important constitutional rights are at stake, Plaintiffs ask that the Court issue the order without requiring a bond; or, if the court deems it necessary, a minimal bond.

B. Plaintiffs Will Prevail on the Merits of the Injunction.

Generally, a party seeking the issuance of a preliminary injunction must show that they will suffer irreparable injury, loss, or damage if the injunction does not issue and must show entitlement to the relief sought; this must be done by a *prima facie* showing that the party will prevail on the merits of the case. *Sorrento Companies, Inc. v. Honeywell Intern., Inc.*, 2004–1884, p. 9 (La.App. 1 Cir. 9/23/05), 916 So.2d 1156, 1163, *writ denied*, 2005–2326 (La. 3/17/06), 925 So.2d 541; *Adler v Williams*, 2016-0103 (La.App. 1 Cir. 9/16/16); 203 So.3d 504, 512-513. The Louisiana Attorney General has also noted that “the importance of the preservation of historic cemeteries is paramount in Louisiana” and there is a profound “interest of preserving these sacred and historically significant sites.” La. Attorney Gen. Op. 08-0186.

Plaintiffs are likely to prevail on the merits of the injunction sought here because this court has already ruled that if their allegations are accepted as true, they have stated a claim that Ordinance 90-27 is absolutely null. If the ordinance is null, the land is not zoned for heavy industrial use as intended by Greenfield and it may not construct a massive grain elevator on the site. In light of this fact and given the potential for serious harm to sacred burial sites while this matter is pending, Greenfield should not be allowed to pursue ground-disturbing, testing and “pre-construction activity” on the site.

Any burial sites on the property are subject to the requirements of cemetery dedication law even though unmarked and unrecorded. *Vidrine v. Vidrine*, 225 So.2d at 696 (“regardless of the title to the land itself, when a plot of ground is set apart and used for cemetery purposes, it becomes dedicated to use for such purposes”). Formal dedication is not required. *See, e.g., Thomas v. Mobley*, 118 So. 2d 476, 478 (La. App. 1 Cir. 1960) (there was no formal dedication of cemetery of enslaved people in plantation, but it was dedicated simply by virtue of being set apart and used for cemetery purposes). The Louisiana Supreme Court has recognized the profound meaning and significance of burial sites, and the cemetery law that governs their existence that even supersedes the normal laws governing property ownership:

Regardless of the laws and rules relating to the ownership and control of real property, when a plot of ground is set apart for cemetery purposes, and burials are made in the land, *the ground changes its character in the minds and feelings of the community. It assumes a sacred quality that overrides conveyancers’ precedents and requires freedom from profanation* until, by abandonment and

removal of the bodies or by complete disintegration, there remains nothing to appeal to the emotions of the survivors.

Humphreys v. Bennett Oil Corp., 195 La. 531, 551, 197 So. 222, 229 (1940) (citations omitted) (emphasis added).

One of the many enduring harms of slavery in the United States was the reduction of human beings to the status of chattel, or property. One of the ways this manifested was in the lack of respect accorded people enslaved in their death and the failure to properly venerate and record their burials. This dimension of the harm of slavery reaches through to today where it is often difficult for descendants to trace the burial sites of their ancestors.

The elevated status accorded cemeteries with the recognition that they are sacred spaces with important rights of preservation and access protected by cemetery dedication law in Louisiana overlaps with some of the same interests protected by the free exercise clauses of the First Amendment to the United State Constitution and Art. I, Sec. 8 of the Louisiana Constitution. Protection and preservation of burial sites, along with prayer, and religious and spiritual observances at cemeteries are among the oldest and clearest examples of religious and spiritual practice which Plaintiffs have a right to exercise. *See Satiacum v. Laird*, 475 F.2d 320, 321 (D.C. Cir. 1972) (Regulation prohibiting “ceremonies at [Arlington Memorial] Cemetery if they coincide in point of time with ‘partisan’ activities outside of the Cemetery,” may “unduly trammel freedom of religion, by prohibiting memorial, religious services inside the Cemetery.”).

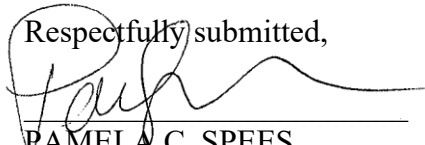
Finally, the Louisiana Constitution protects the right of the people to “preserve, foster, and promote their respective... cultural origins.” La. Const. Art. XII, Sec. 4. One of two courts to address this provision reviewed the legislative history and noted that a leading commentator had observed that this article is “seen as a particularization of those principles protecting the rights of association that have been grafted onto the first amendment [*sic*], encompassing a right to unite and associate for promotion of certain values and causes.” *Monumental Task Comm., Inc. v. Foxx*, 157 F.Supp.3d 573, 600 (E.D. La.2016), *aff’d sub nom. Monumental Task Comm., Inc. v. Chao*, 678 Fed.Appx. 250 (5th Cir.2017). Unlike the failed attempt to enjoin the removal of confederate monuments in *Monumental Task*, Plaintiffs here wish to preserve and protect burial sites of ancestors who suffered immeasurably under the system of slavery and who, as a result of that system, were denied burials that could be located, visited, and honored by descendants.

CONCLUSION

Wherefore, in light of the foregoing, Plaintiffs respectfully request an order from this Court restraining Defendant-Intervenor Greenfield Louisiana, LLC, from conducting ground-disturbing activity on the Wallace tract during the pendency of this litigation.

May 18, 2022

Respectfully submitted,



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Plaintiffs,

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Defendants.

**PLAINTIFFS' VERIFIED MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Plaintiffs request an emergency order from this Court restraining Defendant-Intervenor Greenfield Louisiana, LLC, from conducting ground-penetrating activities on the property at issue in this litigation in order to protect ancestral graves believed to exist there.

Plaintiffs make this request pursuant to La. Code of Civ. Proc. Art. 3601, *et seq.*, in furtherance of their rights under Louisiana cemetery dedication law and Art. XII, sec. 4 of the Louisiana Constitution to preserve, foster, and promote their cultural origins, and their rights to free exercise of religion under the United States Constitution and Art. I sec. 8, of the Louisiana Constitution.

FACTUAL BACKGROUND

A. Greenfield Recently Notified Residents of Impending Ground-Penetrating Activity on the Wallace Tract, the Zoning of Which Is in Question in This Litigation.

1. Plaintiffs just learned that their neighbors living next to the tract of land at issue in this litigation (“the Wallace tract”) began receiving notices over the weekend of May 14, 2022, that Defendant-Intervenor Greenfield Louisiana would be conducting “pre-construction activity at the Greenfield Grain Elevator site.” Greenfield Postcard Notice, address redacted, annexed hereto as Exhibit A.

2. Neither Plaintiffs nor their counsel have received any notice of this planned activity.

3. The notice advised neighbors that they should expect “construction equipment noise,” “driving test piles,” and “hammering noise associated with driving of piles” and that this activity would tentatively last from May 19, 2022-June 24, 2022. *Id.*

4. This litigation was originally commenced as a summary mandamus proceeding out of concern for the potential for harm to graves of people enslaved on the plantation that once operated on the Wallace tract.

5. As the Court knows, Plaintiffs seek to have the 1990 ordinance that purportedly rezoned the Wallace tract to heavy industrial declared an absolute nullity due to the corruption surrounding and furthered by the ordinance.

6. While the Court did not allow the litigation as a mandamus proceeding, Plaintiffs were allowed to amend their complaint and continue as an ordinary proceeding.

7. After Plaintiffs filed a Second Amended Complaint, Defendants filed exceptions and a hearing was held on April 28, 2022.

8. The Court denied all of Defendants' exceptions, including the exception of failure to state a claim that the 1990 ordinance is an absolute nullity.

9. Greenfield's notices to residents of its planned pre-construction activities were sent on the heels of this Court's April 28th ruling denying Defendants' exceptions and allowing this matter to proceed.

10. From their very first filing in this case, Plaintiffs have raised their concern about the need to protect the ancestral gravesites that are believed to exist on this property, noting the concern about the possibility of harm caused by previous construction activities, which also involved pile driving and installation of large steel beams which today still protrude from the ground, as shown in the photograph annexed hereto as Exhibit B.

11. Plaintiffs are also concerned about the presence of large cranes on the property and the damage that equipment can cause. Declaration of Jo and Joy Banner ("Banner Decl."), annexed hereto.

12. In fact, months before commencing this litigation, on May 25, 2021, Plaintiffs alerted the Louisiana Division of Archaeology to similar construction activities on the site. Letter from P. Spees to C. McGimsey, May 25, 2021, annexed hereto as Exhibit C.

13. An Assistant Attorney General in the office of the Louisiana Attorney General responded to for his office and the Division of Archaeology that while "some of the anomalies identified in your letter may represent unmarked burial sites," applicable law did not provide their offices with authority to issue cease-and-desist orders in the absence of definitive proof of

“disturbance of a specific burial ground.” Letter from R. Seidemann to P. Spees, June 1, 2021, annexed hereto as Exhibit D.

14. At a minimum, Greenfield has been on notice since the commencement of this action that Plaintiffs are deeply concerned about the potential of harm to graves of people once enslaved on this property.

B. Experts Believe Graves of People Enslaved on the Plantation That Once Operated There Likely Exist on the Property.

15. St. John the Baptist Parish, like other parishes along the Mississippi River, was infamously home to numerous plantations where people who were enslaved and lived, died, and were buried.

16. Burials of people who were enslaved on plantations in the United States were not routinely recorded, marked, or venerated. Many have been lost to history – and to descendants of those who suffered under the system of slavery.¹

17. According to Dr. Chip McGimsey, the Director of the Louisiana Division of Archaeology, “Pretty much, the entire stretch on the river from New Orleans to Baton Rouge were plantations. So there is going to be a slave cemetery – I would say with almost 100% certainty with every plantation that existed.”²

18. McGimsey heads the state office charged with overseeing compliance with state and federal guidelines for the investigation and preservation of historic sites, cemeteries and unmarked burials.

19. His office has also been involved in reviewing the cultural resources investigation of the proposed Greenfield project on the Wallace tract conducted by Greenfield’s archaeological consultant, Gulf South Research Corporation (“GSRC”).

¹ See Terry L. Jones, *Researcher maps hidden graveyards of slaves who once tilled Louisiana sugar cane fields*, The Advocate, Feb. 5, 2017, (“The state of the cemeteries further underscores how those buried in them over the years have been denied their dignity even in death.”) available at https://www.theadvocate.com/baton_rouge/news/communities/westside/article_7f0fd2e8-e966-11e6-91bd7b5708a1dc45.html; See also, Evan Nicole Brown, *The Hidden-History of African-American Burial Sites in the Antebellum South: Enslaved people used codes to mark graves on plantation grounds*, Atlas Obscura, Oct. 25, 2018, available at <https://www.atlasobscura.com/articles/africanamerican-grave-markers>; *African American Slave Cemeteries: Where Are They Now?*, Slave Cemeteries, available at <https://slavecemeteries.wordpress.com/2015/04/17/african-american-slave-cemeteries-where-are-they-now/>; Ted Oberg, *A grave mistake: Possible slave cemeteries not investigated*, Feb. 5, 2016, available at <https://abc13.com/a-grave-mistake-possible-slave-cemeteries-in-harris-county-cypress/1188133/>; Karen Roberts, *Uncovering a painful past for African Americans, one headstone at a time*, Feb. 18, 2016, available at <https://www.usatoday.com/story/news/nation-now/2016/02/18/slave-burial-grounds-african-americans/78773156/>

² Charisse Gibson, *Who Benefits from the petrochemical industry in St. James Parish?*, WWL TV CBS, Feb. 14, 2020, available at <https://www.wwltv.com/article/news/local/who-benefits-from-the-petrochemical-industry-in-st-james-parish/289-e41c3adb-0a11-47c4-b28e-dcfc2bc230e6>.

20. According to GSRC, the plantations that once operated on the Wallace tract where Greenfield is seeking to build were known as the Horn, Mialaret, and Whitney plantations. *See* Excerpts from Phase I Archaeological Investigation of the Greenfield Development on Robert Brothers' Farm in St. John the Baptist Parish, Louisiana, Gulf South Research Corporation, annexed hereto as Exhibit E, and Addendum 1, annexed hereto as Exhibit F. Greenfield's consultants reported that the 1810 census indicates that the owner of the Whitney Plantation "owned 56 slaves" at that time. Exhibit E, at p. 12.

21. While Greenfield's report does not address the likelihood of the presence of burial sites of people enslaved on the property, other experts who have researched and reviewed the history of this tract agree that people once enslaved there are likely buried there.

22. Recently, Forensic Architecture, an internationally recognized research agency based in London, in consultation with an expert archaeologist in Louisiana, identified a series of archaeological anomalies on the site of the proposed facility that they believe are likely to be unmarked burial sites. Declaration of Imani Jacqueline Brown, annexed hereto.

23. In her declaration, Imani Jacqueline Brown explains the extensive methodology used by Forensic Architecture and the resources the agency reviewed to locate the anomalies on Greenfield's proposed project site and their reasoning as to why these are likely burial sites of people once enslaved on the plantations.

24. Likewise, Dr. Ryan Gray, an historical archaeologist with over 20 years of experience in both private cultural resource management and scholarly research on the archaeology of southeast Louisiana, including past field work in St. John the Baptist Parish, has expressed his concerns about the inadequacy of the site investigation conducted by Greenfield's archaeological consultants in comments he submitted to the U.S. Army Corps of Engineers. Comment of Dr. Ryan Grey on Permit Application #MV 2014-01518-2 EMM, annexed hereto as Exhibit G.

25. Gray, who is also Associate Director of the Midlo Center for New Orleans Studies and the Richard Wallin Boebel Professor of Anthropology, expressed his opinion that in light of the similar development history of the different plantations that operated on the Wallace tract, he considers the entire tract "to be extremely sensitive for the locations of unmarked enslaved or nineteenth-century post-Emancipation burials." *Id.*

26. Gray further advised that “there are significant questions about the GSRC results” in light of the inadequate methodology used, noting in particular that the “1 or 2 shovel tests” “would be completely inadequate to locate burial shafts or unmarked graves in such a locale.” *Id.*

27. An employee of GSRC apparently had similar concerns. Despite the significant historical landmarks already listed in the National Register of Historic Places that surround the project site, such as the Whitney and Evergreen Plantations, and the likely presence of graves of people enslaved on the plantations, GSRC concluded that “[n]o archaeological cultural resources that are recommended as eligible for the [National Register of Historic Places] will be affected by construction of the proposed project” and “[n]o additional archaeological investigations are recommended for the project area.” Exhibit F at p. 95.

28. However, an email from a former GSRC employee, which was obtained in response to a public records request to the state Division of Archaeology, suggests the company’s conclusions were contentious internally and heavily influenced by Greenfield.

29. The Division of Archaeology produced an email that office received from a former GSRC employee who alerted the division that,

“The addendum report that I wrote for Roberts Brothers / Greenfields and the LHRI forms I filled out to accompany that report, are very different from the current version that should be coming to you soon. The current version of the report was written by the project manager *and the client*, playing architectural historian, and they have made eligibility determinations and conclusions in the report that I absolutely do not agree with.”

Email from E. Edwards to N. Hobson-Morris, Oct. 22, 2021, annexed hereto as Exhibit H.

(emphasis added).

30. The employee also indicated in the email that she had resigned from the company and did not wish to be “associated with this revised report in any way.” *Id.*

C. Plaintiffs Are Deeply Troubled and Concerned About the Potential for Harm to Graves of People Once Enslaved on the Wallace Tract.

31. Cemetery dedication law in Louisiana requires landowners to protect and preserve cemeteries and unmarked burial grounds.³ It is a recognition that “cemeteries are considered by most cultures to be sacred spaces” and that we have “moral duties to the wishes of the dead” and that there is a “generally held sanctity for cemeteries.”⁴

³ Attorney General Opinion No. 07-0183, available at <http://www.lcb.state.la.us/ago/ago07-0183.pdf>.

⁴ *Id.*

32. Those enslaved on the plantations had no choice in where they would be buried and no control over whether or how their deaths and burial would be recorded. Often, they were buried in places on the plantations that were not being used for farming or other business. These sites were once thought lost to history, unless discovered inadvertently through development, and only if such discoveries were reported to local and state authorities.⁵

33. Despite laws which require landowners to protect and preserve unmarked burial sites discovered on their property and to notify local and state authorities, too often these laws are not followed and unmarked gravesites have been damaged or destroyed in development projects.

34. One tragic example lies just up the river in St. James Parish where it was discovered that one unmarked burial site believed to contain the graves of people once enslaved on the Buena Vista Plantation was partially destroyed when a pipeline was constructed through it, and another – the Acadia Plantation Cemetery - appears to have been mostly destroyed when the site was used for a borrow pit.⁶

35. Another example recently came to light in Plaquemines Parish in the historic Black community of Ironton where one historic cemetery was partially destroyed during the course of development of a power plant in the 1970s. Community members have been faced with the prospect of “final desecration” of the gravesite through current planned industrial development amid a lack of transparency and even perceived misdirection by some of their representatives on the Port and Harbor District and by officials working with the oil company.⁷

36. In her affidavit, Imani Jacqueline Brown notes that “[h]undreds of anomalies throughout the region have likely already been impacted by development activities, which may range from plowing to the construction of industrial facilities.” Brown Decl., at p. 9.

⁵ Report: Forensic Architecture, *Environmental Racism in Cancer Alley*, June 28, 2021, available at <https://forensic-architecture.org/investigation/environmental-racism-in-death-alley-louisiana>. See also, A. Eaton, et al, *Searching for the Lost Graves of Louisiana’s Enslaved People: There are Thousands of enslaved people buried in Louisiana’s industrial corridor. But their locations have remained a mystery. Until Now. Using historic maps and aerial photos, we can locate these possible graves*, New York Times, June 27, 2021, available at <https://www.nytimes.com/video/us/100000007778616/louisiana-cancer-alley-cemetery-african-americansvideo.html>.

⁶ See Letter from Center for Constitutional Rights on behalf of RISE St. James and Archaeological Report, March 11, 2020, available at <https://ccrjustice.org/sites/default/files/attach/2020/03/RISE%20Letter%20to%20St.%20James%20Parish%20Council%20March%2011%202020.pdf>.

⁷ David Hammer, *Oil Company files plan to build tanks, pipeline over historic slave cemeteries*, WWL, Feb. 11, 2021, available at <https://www.wvlv.com/article/news/investigations/david-hammer/hammer-sweeps-wednesday/289-ed79f62d-be94-4021-b298-8dd5ab54f8bf>

37. For generations, descendants of those enslaved on plantations in St. John the Baptist Parish and other parishes in Louisiana did not have the ability or privilege of knowing where their ancestors were buried and of having sacred burial places where they could honor them and their lives.

38. Now, with technological advances and the ability to identify anomalies likely to be gravesites, the possibilities exist to affirmatively locate, identify, protect, and preserve such sites, and unite descendant communities with the burial places of their ancestors.⁸

39. Plaintiffs describe their “horror and pain” at having to witness and experience previous construction activity and their concern about the destruction of sacred burial grounds of their ancestors, noting that the location of pilings previously installed by Greenfield coincides with an anomaly on the site that could be burial grounds. Banner Decl.

40. Plaintiffs thus seek a temporary restraining order prohibiting Defendant Greenfield from undertaking pre-construction activities during the pendency of this action.

REASONS FOR INJUNCTIVE RELIEF

41. Without injunctive relief, Plaintiffs will suffer irreparable damage because their rights under Louisiana law, and the United States and Louisiana constitutions will be denied, through the potential destruction of burial sites of people once enslaved on the plantations that operated on the Wallace tract.

42. Article XII, Sec. 4 of the Louisiana Constitution protects the “right of the people to preserve, foster, and promote their respective historic... and cultural origins.” The cultural origins of African American residents of St. John the Baptist Parish, whose families have resided there for generations are undoubtedly rooted in the history of slavery. Historic burial sites, dating from that era, once believed lost to history are meaningful connections to and reminders of that past.

43. The Louisiana Attorney General has recognized the sanctity and profound cultural significance of burial sites which contain the “history of their respective communities” and “lead us to a better understanding of our own culture: who we are, where we have come from, and where we are going... We, the living, are custodians of the dead and the stories that they can tell, and we must strive to protect those stories.”⁹

⁸ See Forensic Architecture, *supra* n. 5.

⁹ Attorney General Opinion No. 07-0183, available at <http://www.lcb.state.la.us/ago/ago07-0183.pdf>.

44. It was one of many cruelties of the system of chattel slavery with impacts that have reached into the present that descendants of those enslaved were deprived of the ability to commune with the burial places of their ancestors, and to be “custodians of the dead and the stories that they can tell.”

45. The First Amendment to the United States Constitution and Article I, Section 8, of the Louisiana Constitution protect the free exercise of religion. The location, identification, preservation, and protection of ancestral burial sites, wherever they may be, are unquestionably religious or spiritual exercises

RELIEF SOUGHT:

WHEREFORE, Plaintiffs respectfully request that, after due proceedings had, this Court enter judgment, and:

- a. Enter a temporary restraining order, without bond, and later, a preliminary and permanent injunction, enjoining and stopping Defendant from conducting construction activities on the Wallace tract;
- b. Grant any other and further relief as the Court deems just and proper.

Dated: May 18, 2022

Respectfully submitted,

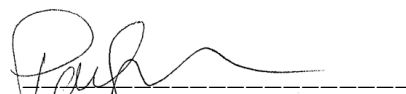


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all known counsel of record by electronic mail on this 18th day of May 2022.



Pamela C. Spees

40th JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST
STATE OF LOUISIANA

The Descendants Project, Jocynthia Banner,
and Joyceia Banner,

Civil Action: 77305

Plaintiffs,

v.

Division C

St John the Baptist Parish, *et al,*

Defendants.

VERIFICATION

Before me, the undersigned Notary Public, personally came and appeared:

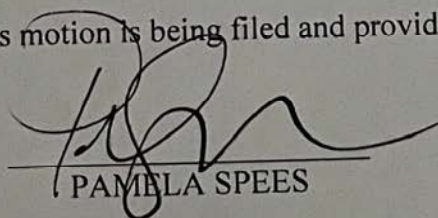
PAMELA SPEES

who, after being duly sworn, did depose and say that she is attorney for the Plaintiffs in the above-captioned civil action, that she has read the foregoing and that all of the allegations contained therein are true and correct to the best of her knowledge and belief.

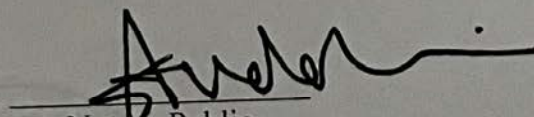
Spees further affirms that all exhibits annexed to the motion are true and correct copies of the documents referenced.

In the case of Exhibits E and F, Spees affirms that they are true and correct excerpts of the full reports obtained from the Louisiana Division of Archaeology in response to public records requests.

Further, she affirmed that counsel for Plaintiffs have reached out by email to counsel for Defendants, advising them that this motion is being filed and providing them a copy of the same.


PAMELA SPEES

Sworn to and subscribed before me, the undersigned Notary Public, on this 18th day of May, 2022, at Woodside, New York.


Notary Public

Sheikh Akram Uddin
Notary Public State of New York
Reg. No. 01UD6025769
Qualified In Queens County
Commission Expires June 01 2023