

**40<sup>th</sup> JUDICIAL DISTRICT COURT**  
**PARISH OF ST. JOHN THE BAPTIST**  
**STATE OF LOUISIANA**

NO. 77305

DIVISION “C”

**THE DESCENDANTS PROJECT,  
JOCYNTIA BANNER, and JOYCEIA BANNER**

**VERSUS**

**ST. JOHN THE BAPTIST PARISH,  
through its Chief Executive Officer,  
Parish President Jaclyn Hotard, et al.**

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

\_\_\_\_\_  
DEPUTY CLERK

**GREENFIELD’S MEMORANDUM IN OPPOSITION TO  
MOTION FOR PRELIMINARY INJUNCTION**

Intervenor, Greenfield Louisiana, LLC (“Greenfield”), submits this opposition to Plaintiffs’ attempt to obtain a preliminary injunction for Greenfield’s preconstruction activities. Plaintiffs have not met the applicable legal standards for such relief, and the motion should be denied.

**I. Introduction**

Plaintiffs filed this lawsuit *against St. John the Baptist Parish*, originally as a mandamus proceeding, asking the Court to declare a zoning ordinance an absolute nullity. After the Court ruled that the mandamus proceeding was unauthorized, Plaintiffs filed amended petitions for an ordinary proceeding seeking injunctive relief against the Parish – specifically, asking that the Court order the Parish to revise its zoning designations based on the cause of action of absolute nullity. Greenfield is participating in this litigation as an intervenor, aligned with the Parish, to defend its interest in its property. Plaintiff’s petition in this proceeding does not seek injunctive relief against Greenfield.

Now, Plaintiffs attempt to impermissibly expand this litigation beyond the issue of the validity of Ordinance 90-27 by seeking a preliminary injunction *against Greenfield*, who

Plaintiffs elected not to join as a party, to prevent Greenfield from conducting preconstruction activities on its property “in order to protect ancestral graves believed to exist there.” This requested preliminary injunction is not an adjunct to an underlying prayer for a permanent injunction in Plaintiffs’ petition, and thus the preliminary injunction is procedurally impermissible. Further, Plaintiffs’ petition contains no constitutional claim for the protection of cultural resources, which is the grounds upon which Plaintiffs purportedly base the requested preliminary injunction. Plaintiffs are attempting to usher in through the back door both subject matter and procedure that is outside of the scope of their petition and thus this litigation.

Regardless, the facts of this matter show that a preliminary injunction is not warranted. Plaintiffs seek to prevent Greenfield from conducting ground-penetrating activities based on their belief that unmarked burial grounds may exist on the property. However, Plaintiffs introduce no evidence that unmarked burial grounds may even potentially be located in the area in which Greenfield intends to conduct these activities. Indeed, Greenfield already conducted the very same ground-penetrating activities in the very same location and did not encounter any evidence of unmarked burial grounds. In addition, this activity is in complete alignment with the Phase I Cultural Resources Assessment and shovel tests that did not identify cultural resources in this area. In short, there is no injury for this Court to prevent where there is no evidence of unmarked burial grounds or even any reasonable potential for such unmarked burial grounds in this location.

## **II. Standard of Review**

Injunction is a *harsh, drastic*, and *extraordinary* remedy which should only issue where the petitioner is threatened with irreparable harm and has no adequate remedy at law. *Lafreniere Park Foundation v. Friends of Lafreniere Park, Inc.*, 97-152 (La.App. 5 Cir. 7/29/97), 698 So.2d 449, writ denied 97-2196 (La. 11/21/97), 703 So.2d 1312.

Louisiana Code of Civil Procedure art. 3601 provides for the issuance of a permanent injunction in cases “where irreparable injury, loss or damage may otherwise result to the applicant, or in other cases specifically provided by law.” The article further provides that during the pendency of an action for a permanent injunction the court may issue a temporary restraining order, a preliminary injunction, or both. La. Code Civ. Proc. art. 3601(C). Thus, an underlying

action for a permanent injunction is a prerequisite for a court's consideration of a temporary restraining order or a preliminary injunction. *See Pipe Liners, Inc. v. Edenwald Contracting Co., Inc.*, 610 So.2d 1109, 1113 (La. Ct. App.1992) (Article 3601 "provides for the ancillary right to a preliminary injunction" pending litigation of a permanent injunction.); § 1.2 Injunction, 1A La. Civ. L. Treatise, Civ. Proc. - Special Proceed. § 1.2 ("TRO and the preliminary injunction may only be obtained as adjuncts to a suit for permanent injunction"); *see also Yur-Mar, LLC v. Jefferson Par. Council*, 11-669, p. 4 (La.App. 5 Cir. 3/13/12); 90 So.3d 1137, 1139 ("the prima facie right to a permanent injunction must be proved before a preliminary injunction may issue.").

Irreparable injury is harm for which the movant "cannot be compensated in money damages, or for which damages cannot be measured by a pecuniary standard." *Sorrento Companies, Inc. v. Honeywell Int'l, 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. "The applicant for a preliminary injunction has the burden of making a *prima facie* showing that he will prevail on the merits of the case—i.e., that he will obtain a permanent injunction based upon proof of irreparable injury." *Equitable Petroleum Corp. v. Cent. Transmission, Inc.*, 431 So.2d 1084, 1087 (La. Ct. App.1983).

### **III. Argument**

#### **A. The Requested Preliminary Injunction Is Procedurally Impermissible Because the Petition Does Not Seek Injunctive Relief Against Greenfield.**

Louisiana Code of Civil Procedure art. 3601 provides that a court may issue a temporary restraining order or a preliminary injunction only during the pendency of an action for an underlying permanent injunction. Temporary restraining orders and preliminary injunctions are ancillary rights to an underlying permanent injunction to be tried on the merits. *See Pipe Liners, Inc.*, 610 So.2d at 1113 (Article 3601 "provides for the ancillary right to a preliminary injunction" pending litigation of a permanent injunction.); § 1.2 Injunction, 1A La. Civ. L. Treatise, Civ. Proc. - Special Proceed. § 1.2 ("TRO and the preliminary injunction may only be obtained as adjuncts to a suit for permanent injunction"); *see also Yur-Mar, LLC*, 90 So.3d at 1139 ("the prima facie right to a permanent injunction must be proved before a preliminary

injunction may issue.”); *Russell v. Cantrelle*, 2019-0284, p. 10 (La.App. 1 Cir. 2/21/20) (“We note that the petition herein for a preliminary injunction failed to state a cause of action because it was not coupled with a request for a permanent injunction.”).

Because the issuance of a temporary restraining order or a preliminary injunction may be tried by summary proceeding, the court’s preliminary and summary holding must be checked by the later mandatory trial of the same request under the more stringent rules of an ordinary proceeding. *See Louisiana Livestock Sanitary Bd. v. Johnson*, 372 So.2d 585, 591 (La. Ct. App.1979), *writ denied sub nom. Louisiana Livestock Sanitary Bd. v. Johnson.*, 373 So.2d 967 (La.1979). Here, Plaintiffs ask this court to order Greenfield to withhold ground-penetrating activity on its property “in order to protect ancestral graves believed to exist there.” Yet, the ordinary proceeding in this matter will not evaluate the existence or nonexistence of ancestral graves on the property. This ordinary proceeding will evaluate the validity of Ordinance 90-27. The Court has already stated that “That residents of Wallace, neighboring historic and cultural sites, and Lac des Alleman allegedly face ‘potential threat’ from a new heavy industrial facility seeking to locate on the Wallace tract is of no moment to the validity of an ordinance created through legislative process.” Written Reasons for Judgement, p. 5-6 (May 10, 2022).

Further, the Louisiana Supreme Court has stated that “[a] preliminary injunction is a procedural device interlocutory in nature designed to preserve the existing status pending a trial of the issues on the merits of the case.” *Smith v. West Virginia Oil & Gas Co.*, 373 So.2d 488, 494 (La. 1979). Here, the existing status is that the Wallace tract is zoned for industrial use, and thus Greenfield is allowed to undertake lawful preconstruction activities in accordance therewith. Plaintiffs seek to disrupt this existing status on grounds – the potential existence of unmarked burial grounds – that will not be tried on the merits of this case, as alleged in their petition.

**B. The Requested Preliminary Injunction Is Procedurally Impermissible Because the Petition Does Not Allege a Cause of Action for the Protection of Cultural Resources**

Plaintiffs base their preliminary injunction request on potential harm “to their constitutional and legal rights if gravesites of enslaved ancestors are harmed.” Memorandum of Law, p. 4. Yet, they have alleged no cause of action in their underlying petition pertaining to a constitutional claim for the protection of cultural resources. Plaintiffs cite to Louisiana cemetery

dedication case law and the free exercise clause of the U.S. Constitution and the Louisiana Constitution and La. Const. Art. XII, Sec. 4 in their Memorandum of Law, but it remains undefined as to how Plaintiffs can avail themselves of these laws, particularly when none have been asserted in the petition.

With respect to Louisiana cemetery dedication case law, Plaintiffs cite to *Vidrine v. Vidrine*, 225 So.2d 691, 695 (La. Ct. App.1969), *writ refused*, 254 La. 853; 227 So.2d 594 (1969), *In Humphreys v. Bennett Oil Corporation*, 195 La. 531, 197 So. 222 (1940), and *Thomas v. Mobley*, 118 So.2d 476, 478 (La. Ct. App.1960). However, each of these cases make clear that such “a cause of action is allowed a litigant when the graves of his family in [] a public cemetery are disturbed or desecrated.” *Vidrine*, 225 So.2d at 694 (citing *Humphreys*, 195 La. 531, 197 So. 222); *see also Thomas v. Mobley*, 118 So.2d at 478. These cases are inapplicable, as here there is not a known cemetery and Plaintiffs have not submitted evidence of family graves located on the area in question. Each of these cases sought dedication of a known cemetery and were brought by plaintiffs who had relatives known to be buried in that cemetery.

The only case to which Plaintiffs cite with respect to the right to free exercise of religion under the U.S. Constitution is *Satiacum v. Laird*, 475 F.2d 320 (D.C. Cir.1972). There the D.C. Circuit granted an injunction restraining officers at Arlington Memorial Cemetery from prohibiting Indians [sic] from holding religious ritual memorial services at the cemetery. However, Plaintiffs here do not seek an injunction allowing them to hold a religious service.

La. Const. Art. XII, Sec. 4 has not been applied to the protection of unmarked burial sites. Plaintiffs cite to *Monumental Task Comm., Inc. v. Foxx*, 157 F.Supp.3d 573, 601 (E.D. La.2016), *aff'd sub nom. Monumental Task Comm., Inc. v. Chao*, 678 Fed.Appx. 250 (5th Cir.2017), which held that the placement or removal of a monument on public property was not subject to La. Const. Art. XII, Sec. 4.

Lastly, Plaintiffs’ right of action against St. John the Baptist Parish does not create a right of action against Greenfield for an injunction. In the underlying action, Plaintiffs asserted that a claim of absolute nullity “may be brought by any person at any time” and/or that they belong to the class of “taxpayers” who have a right to enjoin unlawful action by a public body. However,

by way of the injunction sought against Greenfield, Plaintiffs are not seeking to have a public law declared null or to enjoin unlawful action by a public body.

**C. Plaintiffs Have Not Shown Irreparable Harm Will Result from Pre-Construction Activities.**

Greenfield's upcoming pre-construction activities are of limited scope and nature. They take place in a small area of the site of approximately 5 acres where despite shovel tests, surveys and prior ground-disturbing activities, cultural resources, including unmarked burial sites, have not been identified.

Greenfield conducted a Phase I Cultural Resources Assessment that included this approximately 5-acre area. In conjunction therewith, shovel tests were also conducted in the area of the preconstruction activities. Affidavit of Carl Calvin Williams, II ("Williams Decl.") ¶ 5. The Phase I Cultural Resource Assessment and shovel tests did not identify cultural resources, including unmarked burial sites. *Id.* Thereafter, in May 2021 through June 2021, Greenfield undertook the same type of pre-construction testing activity (i.e., testing pilings) that it plans to undertake now in the very same location. *Id.* ¶ 4. During this previous testing, Greenfield did not encounter any archaeological cultural resources, including unmarked burial sites. *Id.* ¶ 6.

Plaintiffs have neither alleged nor submitted any evidence of actual harm that resulted from the testing of those pilings. Indeed, as Plaintiff's themselves assert, if any discovery of unmarked burial grounds had been made, Plaintiffs could have further pursued the intervention of state officials. During the previous testing period, Plaintiffs sought the intervention of the Louisiana Office of the Attorney General to stop Greenfield's activities, and the Office advised Plaintiffs that should they have evidence of disturbance of a burial ground they could approach the Office with that information for evaluation. Plaintiff's Exhibit D. ("Should you now or in the future possess definitive evidence of such discovery or disturbance, we stand ready to evaluate that information."). However, Plaintiffs did not pursue such intervention, because no discovery of an unmarked burial site or artifacts was made.

In addition, for at least the past several decades, the area of preconstruction activities was used for cultivating agricultural crops. Williams Decl. ¶ 5. To the extent there may have been

cultural resources in this area, they likely would have been impacted by the past agricultural activities.

Greenfield undertook its prior pre-construction activities in full compliance with the law, and Greenfield plans to undertake its currently planned pre-construction activities accordingly. Greenfield has a plan to address cultural resources in the event cultural resources are discovered. If during the preconstruction activities Greenfield discovers the presence of cultural resources, including unmarked burial sites, pursuant to Greenfield's plan, the activities in that area will immediately cease, the area will be secured, and the State Historic Preservation Office and other appropriate agencies will be notified so that cultural resources may be responsibly addressed. Williams Decl. ¶ 13.

Plaintiffs' affidavits and supporting evidence do not delineate where any archaeological anomalies with verified potential resources intersect with the small area Greenfield has been using to test pilings and where it will conduct the additional test pilings. Plaintiffs attach the declaration of Imani Jacqueline Brown, comments submitted by Dr. Ryan Gray to the U.S. Army Corps of Engineers, an email from a former Gulf South Research Corporation ("GSRC") employee, and the declaration of Jocyntia Banner. While the declaration of Imani Jacqueline Brown references anomalies "potentially impacted by the Greenfield Louisiana terminal," only Areas #1 and #2 are depicted as within the Project Limits of Disturbance. Decl. of I.J. Brown, p. 6. Plaintiffs have not identified that either of these locations intersects with the area of the preconstruction activities. *See* Williams Decl. ¶ 15, Exh. 1. The comments of Dr. Ryan Gray concern the location of the Willow Grove Cemetery and that its boundaries might extend further to the south. Plaintiff's Exhibit G. However, Plaintiffs have not identified that the Willow Grove Cemetery or the tract of land to its south intersects with the area of the preconstruction activities.

Further, the October 22, 2021, email sent to SHPO by a former employee of GSRC does not contain any specific allegation regarding archaeological resources. The email contains only conclusory statements regarding the GSRC Addendum report, all of which GSRC strenuously disputes. Again, this email contains no evidence of impending threat to the area of preconstruction activities. The declaration of Ms. Banner only contains one conclusory sentence

that the location of the pilings coincides with an anomaly that could be burial grounds. Ms. Banner provides no information regarding the anomaly as to which she speaks.

Accordingly, Plaintiffs' claims of irreparable harm are conclusory and speculative, based on conjecture that cultural resources could potentially be located at the site in general. Where irreparable harm is based on speculation or mere conclusions, the court may not grant an injunction. *Faubourg Marigny Imp. Ass'n, Inc. v. City of New Orleans*, 2015-1308, p. 18 (La.App. 4 Cir. 5/25/16); 195 So.3d 606, 618; *see A to Z Paper Co., Inc. v. Carlo Ditta, Inc.*, 98-1417, p. 10 (La.App. 4 Cir. 9/9/98); 720 So.2d 703, 708 (denial of preliminary injunction upheld where plaintiffs' anticipation of damage was based on potential conditions that they failed to show presently existed). Here, Plaintiffs anticipate harm to unmarked burial grounds, but they have not shown that these burial grounds exist in the area to be disturbed.

Lastly, to the extent that Plaintiffs allege harm from noise and/or vibrations, Plaintiffs have presented no evidence that irreparable harm occurred due to noise or vibration during previous testing or that it will occur in the future. Additionally, Greenfield previously monitored noise and vibration levels during the last testing of pilings and will monitor noise and vibration levels during this round of testing again. Williams Decl. ¶¶ 7 and 12.

**D. Plaintiffs Have Not Made a *Prima Facie* Showing They Will Prevail on the Merits.**

The standard for granting a preliminary injunction requires that the applicant make a *prima facie* showing that it will prevail on the merits of the underlying permanent injunction. *See Land v. 310 Investments, LLC*, 15-477, p. 6 (La.App. 5 Cir. 11/19/15); 179 So.3d 861, 865, *writ denied sub nom. Esperanza Land v. 310 Investments, LLC*, 2015-2311 (La. 2/19/16); 187 So.3d 464; *Yur-Mar, LLC v. Jefferson Par. Council*, 11-669, p. 4 (La.App. 5 Cir. 3/13/12); 90 So.3d 1137, 1139 (“the *prima facie* right to a permanent injunction must be proved before a preliminary injunction may issue”). As an initial matter, Plaintiffs' failure to clear the procedural hurdle of identifying a prayer for an underlying permanent injunction based on the protection of unmarked burial grounds in this litigation forecloses any conclusion that they are likely to prevail on the merits thereon. *See Equitable Petroleum Corp.*, 431 So.2d at 1087 (“The applicant for a preliminary injunction has the burden of making a *prima facie* showing that he will prevail on



the merits of the case—i.e., that he will obtain a permanent injunction based upon proof of irreparable injury.”).

Plaintiffs also confuse their burden in obtaining a preliminary injunction. They assert that they “are likely to prevail on the merits of the injunction sought here.” Plaintiff’s Memorandum of Law at 5. Plaintiffs then appear to argue that because the Court ruled that there is an existing cause of action in this lawsuit, they have made the requisite *prima facie* showing. However, the mere existence of a cause of action, which is based purely on the pleadings and accepting all allegations as true, is not equivalent to making a *prima facie* showing. Plaintiffs must make a showing related to substantive merits, and the Court must tentatively decide those substantive issues. *See Equitable Petroleum Corp.*, 431 So.2d at 1088 (trial court must examine and tentatively decide substantive issues in order to determine whether plaintiff likely to succeed on the merits of the suit for a permanent injunction). Likewise, the Court’s opinion that a cause of action lies in this litigation does not equate to the Court tentatively deciding substantive issues. Plaintiffs have not met their burden of making a *prima facie* showing that it will prevail on the merits of the underlying permanent injunction.

#### **IV. The Article Annexed to Plaintiff’s Motion for Leave to Supplement Motion for TRO is Inadmissible Hearsay**

A newspaper article used to prove the truth of the matter within the article is hearsay, and it is inadmissible unless it falls within one of the exceptions to hearsay. *State v. Harper*, 93-2682 p. 6 (La. 11/30/94), 646 So.2d 338, 342; La. Code Evid. Ann. art. 801(c)). In addition to being inadmissible hearsay, the newspaper article submitted by Plaintiffs has no probative value and is highly prejudicial to Greenfield. Independent reviews have identified ProPublica as biased reporting, presenting one-sided information. As such, the article should not be considered as evidence in any court proceeding.

#### **V. Plaintiffs Must Post a Bond for a Preliminary Injunction**

La. C.C.P. Art. 3610 requires that “a temporary restraining order or preliminary injunction shall not issue unless the applicant furnishes security in the amount fixed by the court, except where security is dispensed with by law.” The article is strictly construed and the posting of a bond is required unless an express waiver is provided for by law. *Liberty Bank & Tr. Co. v.*

*Dapremont*, 2000-2146, p. 8 (La.App. 4 Cir. 12/12/01); 803 So.2d 387, 391; *Yokum v. Van Calsem*, 2005-0797, p. 5 (La.App. 4 Cir. 6/21/06); 935 So.2d 736, 739 (district court had erred when it failed to require security before granting the preliminary injunction). Here, no such exemption from security exists in the law, and Plaintiffs have cited to no statute or case law exempting matters involving constitutional rights.

La. C.C.P. Art. 3610 provides that the amount of the bond “shall indemnify the person wrongfully restrained or enjoined for the payment of costs incurred and damages sustained.” The purpose of the bond is to “protect the defendant against all damages that he or she might sustain because of the injunction,” and the amount of the bond is subject to the court's discretion. *Citizens, Electors & Taxpayers of Tangipahoa Par. v. Layrisson*, 449 So.2d 613, 618 (La. Ct. App.1984), writ denied sub nom. *Citizens, Elector & Taxpayers of Tangipahoa Par. v. Layrisson*, 452 So.2d 170 (La.1984).

Greenfield will incur the following direct costs if it is delayed from implementing its pre-construction activities of testing the concrete pilings:

- \$199,998 for mobilization and demobilization once cranes have been delivered to the site;
- \$30,000 for silt fencing and equipment; and
- \$65,000 for pile fabrication and delivery to site (\$45,000 if not delivered).

Williams Decl. ¶16. Greenfield will additionally incur damages in the amount of \$300,000 for each month it is delayed from implementing its pre-construction activities due to schedule slippage. *Id.* ¶17. Based on the foregoing, Greenfield seeks a bond in the amount of \$2,095,000, which represents the direct costs of delay and 6 months of damages from delay. Greenfield reserves the right to seek additional bond amounts should a preliminary injunction result in more than a six-month delay.

## **VI. Conclusion**

Based on the foregoing, Plaintiffs have not met the standard for a preliminary injunction. Consequently, the preliminary injunction should not issue.

Respectfully submitted,



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**Attorneys for Greenfield Louisiana, LLC**

**CERTIFICATE OF SERVICE**

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

New Orleans, Louisiana, on this 26<sup>th</sup> day of May, 2022.



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