



The Afterlife of Black Enslavement: *Environmental Racism and the Desecration of Black History in Louisiana*

***NGO Shadow Report before the United Nations Committee
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This report is being submitted by the following human rights and community organizations: The Descendants Project; Inclusive Louisiana; Concerned Citizens of St. John Parish and the Center for Constitutional Rights (See Appendix 1). The partners welcome the opportunity to contribute to the UN Committee on the Elimination of Racial Discrimination's review of the United States' compliance with the International Convention on the Elimination of Racial Discrimination.

I. ISSUE SUMMARY

The racial justice issues addressed in this submission—environmental racism and the desecration of Black history in Louisiana—are symptoms of a society that has intentionally failed to acknowledge and repair the historic injustices of slavery, settler colonialism, and genocide upon which the United States was founded. The U.S. government’s refusal to address and account for historic harms perpetuates and reinforces the current systemic racial discrimination and oppression of Black people, Indigenous peoples of the Americas, and other racialized people in the U.S. and around the world. The political decisions to deliberately target historic Black communities for the siting of toxic industry facilities and to destroy the burial grounds of enslaved people are the “afterlife” of chattel slavery¹ and the continued systemic dehumanization of people of African descent. While this submission is centered on the experiences of Black communities devastated by toxic industry in Louisiana, we recognize that the impact of chattel slavery is felt by all Black people of the African diaspora broadly, and that the duty of the U.S. to repair the harms of anti-Black racism extends beyond the borders of a singular nation-state.

Drawing from the scholarship of geographer and prison abolitionist, Ruth Wilson Gilmore, we invite the Committee to further contextualize the U.S.’ long history of racial discrimination within the framework of “organized abandonment.” Organized abandonment refers to the state’s systemic disinvestment in racialized communities, the failure to ensure the equitable distribution of public wealth, and the willful neglect of society’s most oppressed members.² While the state of Louisiana capitalizes on the history of enslavement, promoting tourism throughout “Plantation Country,” the government has engaged in intentional neglect of the descendants of those who were enslaved and created dangerous conditions of heightened vulnerability.³ And as further evidenced by the fact that white landowners who are descended from slaveholding plantation owners are still making critical decisions about the land on which the descendants of enslaved Africans are living,⁴ the U.S.’ legal, political and economic regime has been constructed to preserve and protect white power, property, and wealth.⁵

The U.S. government’s shallow policy responses aimed at preventing state actors from intentionally engaging in racially discriminatory conduct should thus be understood as attempts to preserve an infrastructure of racial oppression and to avoid accountability for these historic harms. Further, this political approach falls far short of what is required for the U.S. to eliminate all forms of racial discrimination and to comply with its obligations under CERD.⁶

¹ Saidiyah Hartman, *Lose Your Mother: A Journey Along the Atlantic Slave Route* 6 (2008). Drawing from Hartman’s description of the “afterlife of slavery,” the afterlife encompasses all the ways in which Black people are “still imperiled and devalued by a racial calculus and a political arithmetic that were entrenched centuries ago.” It manifests as “skewed life chances, limited access to health and education, premature death, incarceration, and impoverishment.”

² See The Humanities Institute at UCSC, *Ruth Wilson Gilmore: “Organized Abandonment and Organized Violence: Devolution and the Police”* 11.9.15, Vimeo (Nov. 20, 2015), <https://vimeo.com/146450686>.

³ See Louisiana Department of Culture, Recreation and Tourism - Office of State Parks, “Louisiana’s State Parks and Historic Sites,” accessed online (July 14, 2022):

https://www.civilservice.louisiana.gov/files/publications/newsletter/web_exclusive/State%20Parks%201.pdf; see also, Brand USA “New Orleans Plantation Country: Louisiana History and Culture.” available at: <https://www.visittheusa.com/experience/new-orleans-plantation-country-louisiana-history-and-culture>

⁴ See Oliver Laughland and Jamiles Lartey, *First slavery, then a chemical plant and cancer deaths: one town’s brutal history*, *The Guardian* (May 6, 2019, 6:00 AM), <https://www.theguardian.com/us-news/2019/may/06/cancertown-louisiana-reserve-history-slavery>.

⁵ See, e.g., Cheryl Harris, *Whiteness as Property*, 106 *Harv. L. Rev.* 1707 (1993); Ian Haney Lopez, *White By Law: The Legal Construction of Race* (2006).

⁶ 140 Cong. Rec. at S7634-02 (1994) (U.S. reservation to Article 1), <https://www.congress.gov/treaty-document/95th-congress/18/all-info>; see also Maya K. Watson, “The United States’

We affirm the analysis of the international community, which was articulated in response to the momentous popular uprisings against anti-Black police violence in the summer of 2020, that confronting past legacies of enslavement and colonialism is key to dismantling systemic racism and advancing reparatory justice.⁷ The partners also recognize in the provisions of CERD a framework for states to begin designing a process of reparations, with Articles 5 and 6 offering a clear roadmap for the U.S. government away from the laws, policies and practices of racial discrimination and organized abandonment toward a future of accountability and collective flourishing.

Environmental Racism: Toxic Industry in “Cancer Alley” Louisiana

The persistence of environmental racism and the government’s prioritization of profit for toxic, extractive industry over the health and well-being of Black communities is a clear manifestation of a failure to reckon with anti-Black historical injustices. Of particular concerns are discriminatory land use policies⁸ in the U.S. which have led to the approval and construction of more than 200 toxic industrial and petrochemical plants in historic Black communities along an 80 mile stretch of the Mississippi River in the southern state of Louisiana between Baton Rouge and New Orleans, resulting in lethal pollution and the poisoning of air, land and water.⁹ So notorious are the health impacts arising from industry pollution that the area has long been known as “Cancer Alley” and is referred to as “Death Alley” by local residents. According to U.S. government data, the cancer risk rate for parts of the area is 47 times higher than the national average.¹⁰ Reserve—a town in St. John the Baptist Parish, which has a majority of Black residents—is considered to be the epicenter of Cancer Alley as Environmental Protection Agency (EPA) research has declared it to be the place in the U.S. with the greatest risk of cancer from air pollution due to the high levels of toxic emissions from nearby industrial facilities.¹¹ In recent years, the toxic air quality also contributed to the foreseeable heightened vulnerability of these historic Black communities to COVID-19, with the residents of St. John being among those most disproportionately impacted by the global pandemic, at times experiencing the highest levels of COVID-19-related death and hospitalization in the country.¹²

The decision-making and administration of land use planning behind the siting of industrial facilities in historic Black communities in Louisiana’s river parishes not only reveal the

Hollow Commitment to Eradicating Global Racial Discrimination” American Bar Association (Jan. 6, 2020) (“These RUDs reflect a posture that U.S. laws prevail over multilateral, negotiated international human rights treaties, even if the treaty in question provides broader protections against racial discrimination.”)

https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/black-to-the-future-part-ii/the-united-states--hollow-commitment-to-eradicating-global-racial/.

⁷ Report of the U.N. High Commissioner for Human Rights, *Promotion and Protection of the Human Rights and Fundamental Freedoms of Africans and of People of African Descent Against Excessive Use of Force and Other Human Rights Violations by Law Enforcement Officers*, A/HRC/47/53 (June 1, 2021).

⁸ See Tulane Env’t L. Clinic at 5, Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and 40 C.F.R. Part 7 against the Louisiana Department of Environmental Quality for Lack of Environmental Justice Procedures in its Air Permitting Program and Resulting Discriminatory Decision on Formosa Air Permits (Feb 2022).

⁹ “An early motivation to fight in St. James was the erasure of residents; the land use was changed from agricultural residential to agricultural industrial.” Video Interview with Barbara Washington, Director of Inclusive Louisiana (July 5, 2022). See also Appendix 2

¹⁰ U.S. Env’t Prot. Agency “National Air Toxics Assessment - 2014 NATA: Assessment Results,” (Mar. 4, 2022) <https://www.epa.gov/national-air-toxics-assessment/2014-nata-assessment-results>.

¹¹ See *Id.* identifying St. John the Baptist Parish as having the nation’s highest county-equivalent risks for air toxics-related life-time cancer risk (483 in-a-million), primarily driven by Dupont/Denka’s emissions of chloroprene (44%) from Dupont/Denka and ethylene oxide emissions (47%) from Union Carbide and Evonik-Reserve.

¹² Ashley Killough and Ed Lavandera, *This small Louisiana parish has the highest death rate per capita for coronavirus in the country*, CNN (last updated April 16, 2020, 1:39AM), www.cnn.com/2020/04/15/us/louisiana-st-john-the-baptistcoronavirus/index.html.

entrenched devaluation of racialized communities, but are also notoriously corrupt. In 2021, Black community leaders filed a lawsuit against the local authorities seeking to declare a decades-old rezoning ordinance null and void and order St. John the Baptist Parish to remove it from all of its maps and records. Their suit stems from the 1990 corrupt rezoning of a large tract of rural land to industrial use in Wallace, La. In 1996, Lester Millet Jr., former council president of St. John the Baptist Parish, was sentenced to nearly five years in prison for his role in trying to aid Formosa, a Taiwanese corporation, build a rayon pulp factory next to Wallace. Millet engaged in money laundering and extortion and issued threats of expropriation to residents to coerce them into selling their land to Formosa. Millet abused his official position to push through the new zoning ordinance. The lawsuit highlights both the corruption and the anti-Black racism surrounding the practices of land use planning in favor of heavy industrial development.¹³

Another feature of the Government's historic disenfranchisement of Black communities in Cancer Alley and elsewhere is the denial of adequate consultation for people living in or near areas where infrastructure and heavy industry projects are sited for construction. In Wallace, Louisiana, for example, the majority Black community has been denied an opportunity to engage in consultation with the U.S. Army Corps of Engineers in relation to a grain terminal project that stands to further contaminate the air quality of an already heavily polluted area. Additionally, local government in St. John the Baptist Parish has consistently refused to listen to residents who have expressed deep concern by the close proximity of the toxic DuPont Pontchartrain Works (DuPont/Denka) facility to a predominantly Black (82%) elementary school serving about 400 students.¹⁴

The DuPont/Denka facility is a neoprene chemical plant in Reserve, Louisiana that was sold in 2015 to the Tokyo-headquartered company Denka Limited.¹⁵ Chloroprene, classified by the EPA as a likely human carcinogen, is a chemical used in the production of neoprene. The children who attend the public school near the Denka-owned plant have been consistently exposed to measured spikes of chloroprene particulate matter concentrations of "to more than 700 times the EPA's determined safe level of 0.2µg/m³".¹⁶ Asthma hospitalizations among St. John children are also more than two-and-a-half times higher than state and national rates.¹⁷ According to the most recent Center for Disease Control data, St. John residents of all ages have the highest rates of asthma Emergency Department visits in Louisiana and the third highest nationwide rate among the 1,010 reporting county equivalents.¹⁸

¹³ For more information, see *The Descendants Project v. St. John the Baptist Parish*,

<https://ccrjustice.org/home/what-we-do/our-cases/descendants-project-v-st-john-baptist-parish-1>

¹⁴ See Title VI Complaint by Concerned Citizens of St. John and Sierra Club. 20 January 2022. Available online at: chrome-extension://efaidnbnmnibpcjpcglclefindmkaj/https://earthjustice.org/sites/default/files/files/22.01.20_ccsj_title_vi_complaint_w_attachments.pdf

¹⁵ "By selling off a large percentage of the plant, DuPont was attempting to skirt liability." Interview with Robert Taylor, 13 July 2022.

¹⁶ Katner A. Independent Assessment of the Environmental Conditions of Public School Locations: St. John the Baptist Parish, LA. March 8, 2021. See also Victoria St. Martin, EPA Opens Civil Rights Investigation Into Louisiana's 'Cancer Alley', Inside Climate News (Apr 25, 2022), <https://insideclimatenews.org/news/25042022/epa-louisiana-cancer-alley/>.

¹⁷ Metropolitan Hospital Council of New Orleans (MHCNO). 2015 Community Health Needs Assessment, available online:

<http://www.stph.org/upload/docs/AboutUs/MHCNO%202015%20Community%20Health%20Needs%20Assessment.pdf>; see also East Jefferson General Hospital. 2015 Community Health Needs Assessment, available online:

ejgh.org/wp-content/uploads/2019/05/2015-EJGH-Community-Health-Needs-Assessment.pdf

¹⁸ See Centers for Disease Control and Prevention. Environmental Public Health Tracking Network. State Emergency Department Visits data. [National Environmental Public Health Tracking Network Data Explorer \(cdc.gov\)](https://neph.nceh.nih.gov/DataExplorer/)

Community leaders continue to advocate for a future that is not only defined by the absence of toxic industry and pollution, but by the presence of flourishing, healthy communities, with access to health care, safe and vibrant education for children, and a Black history that is acknowledged, accounted for, and honored.¹⁹

The Desecration of Black History: Enslaved African Burial Grounds in Louisiana

It is profoundly relevant that many of the sites of toxic industry are located on former plantations, where the ancestors of local people were enslaved for centuries, and where many died and were buried.²⁰ While many marked and unmarked burial sites have already been destroyed²¹ or made inaccessible by industry, community members continue to commemorate their ancestors and conduct ceremonies to honor their legacy.²² Mrs. Barbara Washington is a 5th generation granddaughter of an ancestor who was enslaved. “My grandmother came out of slavery and purchased 34 acres of land in 1874 that still belongs to our family. We know there are grave sites there.” Archaeologists have discovered burial grounds on land next to Mrs. Barbara’s family estate, though Nucor steel plant restricts access to the gravesites. Mrs. Washington, who co-founded Inclusive Louisiana explains how “most of the industry that has bought out land from Black communities have pushed folks off the land and folks now have to make appointments to see their loved ones.”²³ The organization is advocating to protect nearby Romeville, Louisiana from the corporate practice of restricting access to gravesites.

Since 2019, residents, civil rights groups and national legal organizations have called on St. James Parish Council to rescind the land use grant to Formosa Plastics, a Taiwanese-based plastics company, after discovering that the company willfully neglected to alert the community or governing parish officials about the discovery of unmarked graves that were located on the facility’s property.²⁴ Similarly, in Wallace, Louisiana, the Black and descendant community is challenging the construction of a massive \$400 million grain terminal on land likely containing ancestral graves. Local courts, however, have recently failed to intervene to stop “pre-construction” activity by Greenfield Louisiana (Greenfield), a Denver-based company.²⁵ A whistle-blower from the architectural firm hired by Greenfield to assess the site revealed that the firm had ignored her findings that the grain terminal would have “an adverse effect on historic properties.”²⁶ That the company is nonetheless proceeding with construction and local courts are unable or unwilling to prevent such severe violations of the human dignity of Black people reflects a profound disregard for the fundamental rights of the most vulnerable members of our community.

¹⁹ Appendix 2; See also Appendix 3.

²⁰ See *The Descendants Project v. St. John the Baptist Parish*, Center for Constitutional Rights [hereinafter Descendants Project CCR], <https://ccrjustice.org/home/what-we-do/our-cases/descendants-project-v-st-john-baptist-parish-1>; see also Anya Groner, “Louisiana Chemical Plants are Thriving off of Slavery,” *The Atlantic*, (May 7, 2021), <https://www.theatlantic.com/culture/archive/2021/05/louisiana-chemical-plants-thriving-off-slavery/618769/>

²¹ See Stephen Curry Presents: Cancer Alley. Available at: https://www.youtube.com/watch?v=aeMxN_f4c8w

²² See “For Juneteenth, Rep. Raul Grijalva Joins Descendants Project at Land Blessing Honoring Enslaved Ancestors”, Center for Constitutional Rights, June 19, 2022, available online: <https://ccrjustice.org/home/press-center/press-releases/juneteenth-rep-raul-grijalva-joins-descendants-project-land>

²³ Washington, Barbara, Interview, July 12, 2022; see also Voices from the Fenceline: Barbara Washington. Available at: <https://www.youtube.com/watch?v=3exlwGvAwi4>

²⁴ See *RISE St. James - The Fight to Protect Burial Sites of Enslaved People*, Center for Constitutional Rights, <https://ccrjustice.org/home/what-we-do/our-cases/rise-st-james-fight-protect-burial-sites-enslaved-people>.

²⁵ See *supra* note 11. See also: “If toxic air is a monument to slavery, how do we take it down?” Forensic Architecture (2021). Available at: <https://vimeo.com/569801321>

²⁶ See Seth Freed Wessler. “She Warned the Grain Elevator Would Disrupt Sacred Black History. They Deleted Her Findings.” *ProPublica*. (May 20, 2022), <https://www.propublica.org/article/louisiana-enslaved-grave-sites>

II. Short stories from directly impacted communities²⁷

Robert Taylor, Founder of Concerned Citizens of St. John's Parish²⁸

“We have been designated a ‘sacrifice zone.’ That is ungodly. I cannot believe in the 21st century, in a so-called Christian country, that they decided that Black people can be sacrificed for the profit of corporations.”²⁹ Robert Taylor, born in 1940 in the agrarian river parishes of Louisiana, an advocate in his community, and founder of Concerned Citizens of St. John's Parish, says he was motivated to join the struggle against environmental racism because the children of his community were exposed to the toxic health effects of industry. In tracing the history of his community, where white landowners continue to make profit-based decisions that negatively impact the life, health and well-being of Black communities, Mr. Taylor recognizes the “remnants of that old plantation life.” Mr. Taylor is fighting both for the Black children of the 21st century as well as for his ancestors. “The wastewater plant completely desecrated the burial grounds of my great-grandparents,” Mr. Taylor reflected.

Gail LeBoeuf and Barbara Washington, co-directors of Inclusive Louisiana³⁰

Gail LeBoeuf and Barbara Washington, co-directors of Inclusive Louisiana, are lifelong residents of St. James Parish in Louisiana. As environmental justice advocates, they recognize how **“Industry is counting on greed and human frailty”** to justify the egregious and disproportionate impact of toxic industry on Black residents. As Black people with ancestral ties to the land, they name and resist the violent connection between economic oppression and racial domination—what Ms. LeBoeuf refers to as “a cycle of the haves feeding off the have-nots.” Mrs. Washington explains how discriminatory land policies made way for the expansion of toxic industry at the expense of the local Black community, “...In the late [19]40s, early [19]50s, the petrochemical industry began making inroads, buying out the sugar plantations, and the land use eventually changed from agricultural-residential to agricultural-industrial.” When that transition was happening, Mrs. Washington also recalled the devastating impact on the health and well-being of local communities, saying “the death rate of residents dying of cancer increased.”

Joy and Jo Banner, co-founders of The Descendants Project³¹

“Shaping our own future, one that is infused with joy, is reparations.” Joy and Jo Banner are the leaders of the Descendants Project, two sisters of Afro-Creole heritage who grew up in Wallace, Louisiana. These advocates are fighting to save their community from a proposed grain terminal that would bring more grain, dust, and pollution to their neighborhood, and threaten to destroy the burial grounds of their ancestors.³² These advocates' courageous struggle for justice is motivated in large part by the hope of self-determining a healthy, joyful future, rooted in repair and reparations. While Joy Banner notes that “corruption in zoning and affiliations with the descendants of white landowners shows the legacy of slavery,” she emphasizes the importance of tangible plans for the future: “We have creative proposals to protect our own environment; we have answers, we have solutions.” Jo Banner adds, “Land is what we wanted post-emancipation,” and “to be truly liberated, we want a future we can envision.”

²⁷ Appendix 3.

²⁸ Interview with Robert Taylor, 7 July 2022.

²⁹ Robert Taylor: “We have been designated a sacrifice zone,” Poor People's Campaign. Available at: <https://www.poorpeoplescampaign.org/we-cry-power/robert-taylor/>

³⁰ Interview with Gail LeBoeuf and Barbara Washington, 7 July 2022.

³¹ Interviews with Joy Banner and Jo Banner, 7 July and 12 July 2022.

³² See *more* Descendants Project CCR.

III. Prior Concluding Observations

Since 2001, the Committee on the Elimination of Racial Discrimination has repeatedly expressed concern that the U.S.' definition of racial discrimination "is not in line with article 1, paragraph 1 of the Convention, which requires States parties to prohibit and eliminate racial discrimination *in all its forms*, including practices and legislation that may not be discriminatory in purpose, but are *discriminatory in effect*."³³ Instead of acknowledging racism as a system of oppression, the U.S.' definition of racial discrimination as articulated in legislation and jurisprudence is concerned only with interpersonal, racially discriminatory conduct motivated by a prejudice towards people belonging to a particular racial category. In requiring individuals to prove racially discriminatory intent, rather than centering discriminatory impact, the U.S. legal system has exempted itself both from preventing or rectifying racism as well as from its obligation to address its root causes.³⁴

We also echo the Committee's concern since 2008 "at the lack of progress achieved in withdrawing or narrowing the scope of the reservation to article 2 of the Convention and in prohibiting all forms of discriminatory acts perpetrated by private individuals, groups or organizations."³⁵ By focusing solely on prohibiting racially discriminatory acts by state actors, the U.S. ignores the role of private actors, such as toxic petrochemical plants, in maintaining and perpetuating racism. Racism unfolds not only through affirmative state action but also state inaction by refusing to prevent racial discrimination by private actors or hold such perpetrators accountable.

Regarding the persistence of environmental racism, we affirm the Committee's concern in its 2014 Concluding Observations that "individuals belonging to racial and ethnic minorities as well as Indigenous peoples continue to be disproportionately affected by the negative health impact of pollution"³⁶ and regret that the U.S. government has continued to approve and construct new heavy industry projects that are disproportionately impacting racialized communities, such as those in Cancer Alley. We support the Committee's recommendation that the U.S. government "Undertake an independent and effective investigation into all cases of environmentally polluting activities and their impact on the rights of affected communities; bring those responsible to account; and ensure that victims have access to appropriate remedies."³⁷ We note General Comment No. 36 of the UN Human Rights Committee which states that, in the context of implementing the state's obligation to respect and ensure the right to life, the State must take measures to "preserve the environment and protect it against harm, pollution and climate change caused by public and private actors."³⁸

Finally, we celebrate and encourage further Committee attention and action to protect the sacred sites of Indigenous peoples, as recommended in its 2014 Concluding

³³ Comm. on the Elimination of Racial Discrimination (CERD), *Concluding observations on the combined seventh to ninth periodic reports of United States of America*, ¶ 5, CERD/C/USA/CO/7-9 (Aug. 29, 2014) (emphasis added) [hereinafter 2014 Concluding Observations]. See also CERD, *Consideration of Reports Submitted by States Parties Under Article 9 of the Convention*, ¶ 10, CERD/C/USA/CO/6 (May 8, 2008) [hereinafter 2008 Concluding Observations]; CERD, *Report of the Committee on the Elimination of Racial Discrimination*, ¶ 380–407, A/56/18 (2001).

³⁴ See, e.g., *Washington v. Davis*, 426 U.S. 229 (1976).

³⁵ 2014 Concluding Observations, *supra* note 8, ¶ 5; 2008 Concluding Observations, *supra* note 8, ¶ 11.

³⁶ *Id.* ¶ 10.

³⁷ *Id.* at ¶ 10(b).

³⁸ Hum. Rts. Comm., General Comment No. 36, ¶ 62, CCPR/C/GC/36 (Sept. 3, 2019) (on article 6 of the International Covenant on Civil and Political Rights, on the right to life).

Observations.³⁹ We join our Indigenous relatives in recognizing that human rights instruments impose on States a duty to ensure “the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage...situated on its territory” and that both the failure to protect as well as the intentional destruction of such heritage, including ancestral burial grounds, amounts to a violation of CERD.⁴⁰

IV. U.S. Government Response

In unsettling contrast to the U.S. government’s state reports in 2000 and 2013, the Biden Administration makes no mention of the legacy of slavery in its latest combined periodic report to CERD.⁴¹ While the U.S. government acknowledges in paragraph 34 that “climate change disproportionately impacts communities of color”, there is no recognition of the historical roots of injustice or the political decisions that continue to threaten the lives and well-being of vulnerable communities. The government’s articulated policy responses further reveal the Administration’s ahistorical approach to governance that focuses on “preparing communities and individuals to adapt to climate change” rather than repairing historic harm, and advancing policy solutions that divest from toxic industry and invest in communities most impacted.⁴² A focus on climate adaptation planning together with passive language that environmental justice issues are due to the “disproportionate prevalence of economically disadvantaged communities near hazardous waste sites” obfuscate the political decisions to target Black, brown, Indigenous and economically marginalized communities as sites for toxic development, and the continued government approval of polluting petrochemical projects at the expense of racialized people.⁴³ Finally, in describing the government’s approach to environmental justice, the Biden Administration reiterates its allegiance to the U.S. legal regime that fails to protect communities from discriminatory impact.⁴⁴

V. Other UN and Regional Human Rights Bodies Recommendations

Last year, UN Special Rapporteurs published a report discussing Cancer Alley stating, “this form of environmental racism poses serious and disproportionate threats to the enjoyment of several human rights of its largely African American residents, including the right to equality and non-discrimination, the right to life, the right to health, right to an adequate standard of living and cultural rights.”⁴⁵ Consistent with the international community’s commitment to

³⁹ 2014 Concluding Observations, *supra* note 30, ¶ 24(c).

⁴⁰ UNESCO, Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage, Operational Guidelines for the implementation of the World Heritage Convention, Jan. 2008, para. 49, available at <http://whc.unesco.org/archive/opguide08-en.pdf>.

⁴¹ US (2000), “Combined initial, second and third periodic reports submitted by the United States of America under article 9 of the Convention, due in 1999” (referencing historical “strategies for overcoming the legacy of slavery” and acknowledging vigorous public debates calling on Americans to “re-examine our history and to consider making reparations in some form to Blacks for past slavery.”) (September 21, 2000), CERD/C/351/Add.1; US (2013), “Combined seventh to ninth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2011” (describing efforts to overcome the “legacies of slavery, racism, ethnic intolerance, and destructive laws, policies, and practices relating to members of racial and ethnic minorities.”) (June 13, 2013), CERD/C/USA/7-9.

⁴² US (2021), “Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017”, ¶ 34 (December 21, 2021), CERD/C/USA/10-12.

⁴³ *Id.* at ¶ 35.

⁴⁴ *Id.* at ¶ 39.

⁴⁵ Special Procedures, “USA: Environmental racism in “Cancer Alley” must end – experts”, OHCHR (Mar. 2, 2021), <https://www.ohchr.org/en/press-releases/2021/03/usa-environmental-racism-cancer-alley-must-end-experts?LangID=E&NewsID=26824>.

acknowledging and addressing historical injustice, the Rapporteurs called on the U.S. and the local government of St. James Parish to “recognize and pay reparations for the centuries of harm to Afro-descendants rooted in slavery and colonialism.”⁴⁶

The U.S.’ failure to protect burial grounds of enslaved people and its complicity in destroying Black gravesites further entrenches this intergenerational harm, and violates numerous human rights instruments, which have long recognized the preservation of cultural heritage as an international priority.⁴⁷ In addition to the right to be free from discrimination, individuals and groups who seek to honor their ancestors and extend their rich history into the future, enjoy the right to freedom of religion and the right to manifest one’s beliefs,⁴⁸ the right to culture and the right to family.⁴⁹

VI. Recommended Questions

1. Will the U.S. government condition federal resources to the State of Louisiana pending a moratorium on all new heavy industry facilities and expansions of existing facilities, including petrochemical plants reliant on or producing human carcinogens, such as the DuPont/Denka neoprene plant?
2. Will the Biden administration direct those federal agencies involved in the permitting, funding or oversight of the Greenfield Terminal and Formosa Plastics facilities to deny all applications for grants or necessary permits, given the foreseeable human rights violations on local Black communities?
3. What commitments will the Biden Administration make to hold government agencies, such as the Louisiana Department of Environmental Quality, accountable for subjecting the Black residents of Cancer Alley to disproportionate air pollution, and what steps will be taken to prevent further air pollution in Louisiana?
4. If the U.S. Congress fails to enact S. 40 (2021), the Commission to Study and Develop Reparation Proposals for African-Americans Act, will the Biden administration establish a similar commission by executive order, and ensure the scope of the duties includes an express mandate to analyze environmental racism within the context of lingering negative effects of the institution of slavery?⁵⁰
5. What concrete steps will the U.S. government take to identify all burial sites of formerly enslaved people in the River Parishes and preserve these sites of cultural heritage for the benefit of the general public, and descendant communities in particular?

⁴⁶ *Id.* See also, *supra* note 5.

⁴⁷ Convention Concerning the Protection of the World Cultural and Natural Heritage, UNESCO Doc. 17/C106, (Nov. 16, 1972) Art. 1; U.S. acceded July 12, 1973, [hereinafter UNESCO Convention].

⁴⁸ Universal Declaration of Human Rights, G.A. res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948), Art. 18 [hereinafter UDHR]; International Covenant on Civil and Political Rights, GA res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (Dec. 16, 1966), entered into force Mar. 23, 1976; ratified by U.S. September 8, 1992, Art 18(1) [hereinafter ICCPR].

⁴⁹ UDHR, Art. 27; ICCPR, Art. 27.

⁵⁰ CCR, *Submission to UN Special Rapporteur on Minority Issues*, *supra* note 1.

VII. **Suggested Recommendations to the United States**

1. Enact H.R. 2021 (2021) / S. 872 (2021), the Environmental Justice for All Act, to achieve environmental justice, health equity, and climate justice for all underserved communities, and take executive action to establish standards and advisory bodies to address disproportionate adverse health issues and/or environmental effects of federal laws or programs on disenfranchised communities.
2. Direct government agencies to utilize public funds to develop infrastructure that responds to community-determined priorities such as state-of-the art health care, robustly-funded public schools with guaranteed curriculum on the history of racial discrimination in this country, and community land trusts as a remedy to centuries of disenfranchisement and organized abandonment of Black and Indigenous communities.
3. Enact H.R. 40 (2021) / S. 40 (2021), the Commission to Study and Develop Reparation Proposals for African-Americans Act, or establish a similar commission by executive order, and ensure environmental racism is identified as form of discrimination against descendant communities with lingering negative effects.
4. Recognize responsibility and pay reparations for the centuries of harm done to the people of African descent rooted in slavery and colonialism, including by ensuring access to remedy for such harms as environmental racism and the desecration of Black history through the state's failure to preserve the burial grounds of enslaved people.
5. Use all available means to preserve historical land, buildings, burial grounds and cultural artifacts in the Louisiana River Parishes as landmarks of historic heritage with profound cultural significance to descendants of enslaved people and the global African diaspora.

Attached Appendices:

Appendix 1: Partner Organizations

Provides background information of the authoring organizations.

Appendix 2: Cancer Alley

Map illustrations existing and future industry facilities and potential burial sites along the River parishes.

Appendix 3: Video Testimony & Visual Narrative

Various interviews and short films documenting community leaders in Cancer Alley; visual representation by CCR Ella Baker intern and artist Layla June West

Appendix 4: Recent Action in Louisiana

Compilation of litigation and advocacy efforts led by partner organizations.

APPENDIX 1 - PARTNER ORGANIZATIONS



The Descendants Project is an emerging organization committed to the intergenerational healing and flourishing of the Black descendant community in the Louisiana river parishes. Through programming, education, advocacy, and outreach, The Descendants Project is committed to reversing the vagrancies of slavery through healing and restorative work.



Inclusive Louisiana is a non-profit organization dedicated to protecting the residents of St. James Parish and neighboring parishes from environmental harm caused by industrial pollution. Inclusive Louisiana's mission is to spread enlightenment and hope to all people, to create a fairer and more inclusive society and to protect the heavens and earth for the generations to come.



Concerned Citizens of St. John Parish is an organization dedicated to ensuring the health and safety of all citizens while working to hold government officials and industry accountable for the quality of air being polluted by chemical emissions in St. John Parish, thus ensuring the health of families for generations to come.



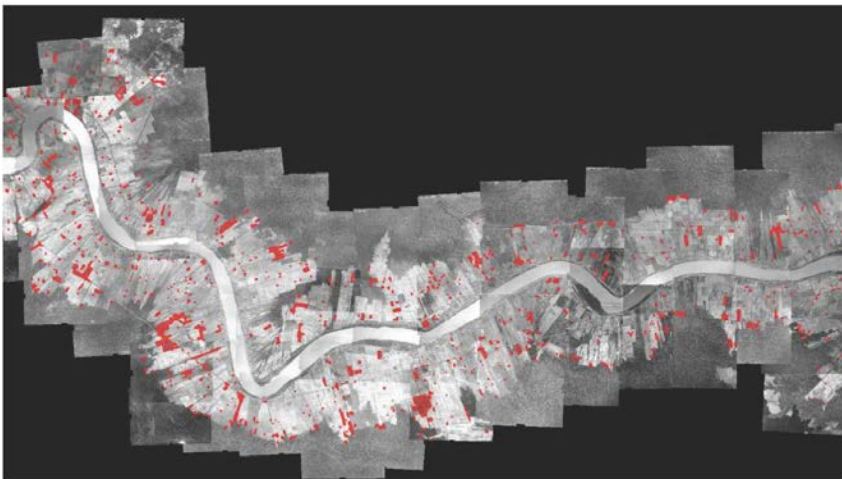
The **Center for Constitutional Rights** works with communities under threat to fight for justice and liberation through litigation, advocacy, and strategic communications. Since 1966, the Center for Constitutional Rights has taken on oppressive systems of power, including structural racism, gender oppression, economic inequity, and governmental overreach. The Center for Constitutional Rights has special consultative status with ECOSOC.

APPENDIX 2 - CANCER ALLEY⁵¹

More than 200 toxic industrial and petrochemical plants have been approved or constructed in historic Black communities along an 80 mile stretch of the Mississippi River in the southern state of Louisiana between Baton Rouge and New Orleans, resulting in lethal pollution and the poisoning of air, land and water. Image by Forensic Architecture featuring existing and future industrial development.



Existing and future industrial development overlaid on GE 2019 satellite imagery. Yellow and Orange: Existing industry; Red: LED-designated 'development-ready sites.'



Researchers mapped marked and unmarked burial grounds in Cancer Alley, and identified over 1200 anomalies in a 1940 aerial map that require further analysis.

We inched across the mosaiced landscape decade by decade. We identified close to 1200 anomalies in the USDA 1940 aerial photography mosaic.

⁵¹ Forensic Architecture. "Environmental Racism in Death Alley, Louisiana, Phase I Investigative Report." 4 July 2021. pp. 78, 70. Available online: <https://forensic-architecture.org/investigation/environmental-racism-in-death-alley-louisiana>



This is an illustration of the proposed Greenfield grain elevator scaled next to Fee Fo Lay Cafe in Wallace, Louisiana.

APPENDIX 3 - VIDEO TESTIMONY AND VISUAL NARRATIVE

Community leaders continue to advocate for a future that is not only defined by the absence of toxic industry and pollution, but by the presence of flourishing, healthy communities, with access to health care, safe and vibrant education for children, and a Black history that is acknowledged, accounted for, and honored.

Mrs. Barbara Matthews, Inclusive Louisiana
St. James Parish, Louisiana

[Voices from the Fenceline: Barbara Matthews](#)
Tell My Story, Sept. 14, 2021

Peak Plastics Foundation



Ms. Gail LeBoeuf, Inclusive Louisiana
St. James Parish, Louisiana

[Voices from the Fenceline: Gail LeBoeuf](#)
Sept. 14, 2021

Peak Plastics Foundation



Ms. Myrtle Felton, Inclusive Louisiana
St. James Parish, Louisiana

[Voices from the Fenceline: Myrtle Felton](#)
Sept. 14, 2021

Peak Plastics Foundation



Inclusive Louisiana

[Testimony on SB20](#) in Louisiana Senate
Committee on Environmental Quality in favor
of a bill to require 24hr air monitoring.
April 12, 2022



Robert Taylor, Concerned Citizens of St. John Parish

[Stephen Curry Presents: Cancer Alley](#)
October 5, 2021



Robert Taylor, Concerned Citizens of St. John Parish
Dr. Joy Banner, The Descendants Project
Jo Banner, The Descendants Project
St. John the Baptist Parish, Louisiana

[Big Oil's Last Lifeline: Part 2 - New Orleans](#)
June 25, 2022

Hip Hop Caucus



Robert Taylor, Concerned Citizens of St. John Parish
St. John the Baptist Parish, Louisiana

[Why This Town Is Dying From Cancer](#)

AJ+



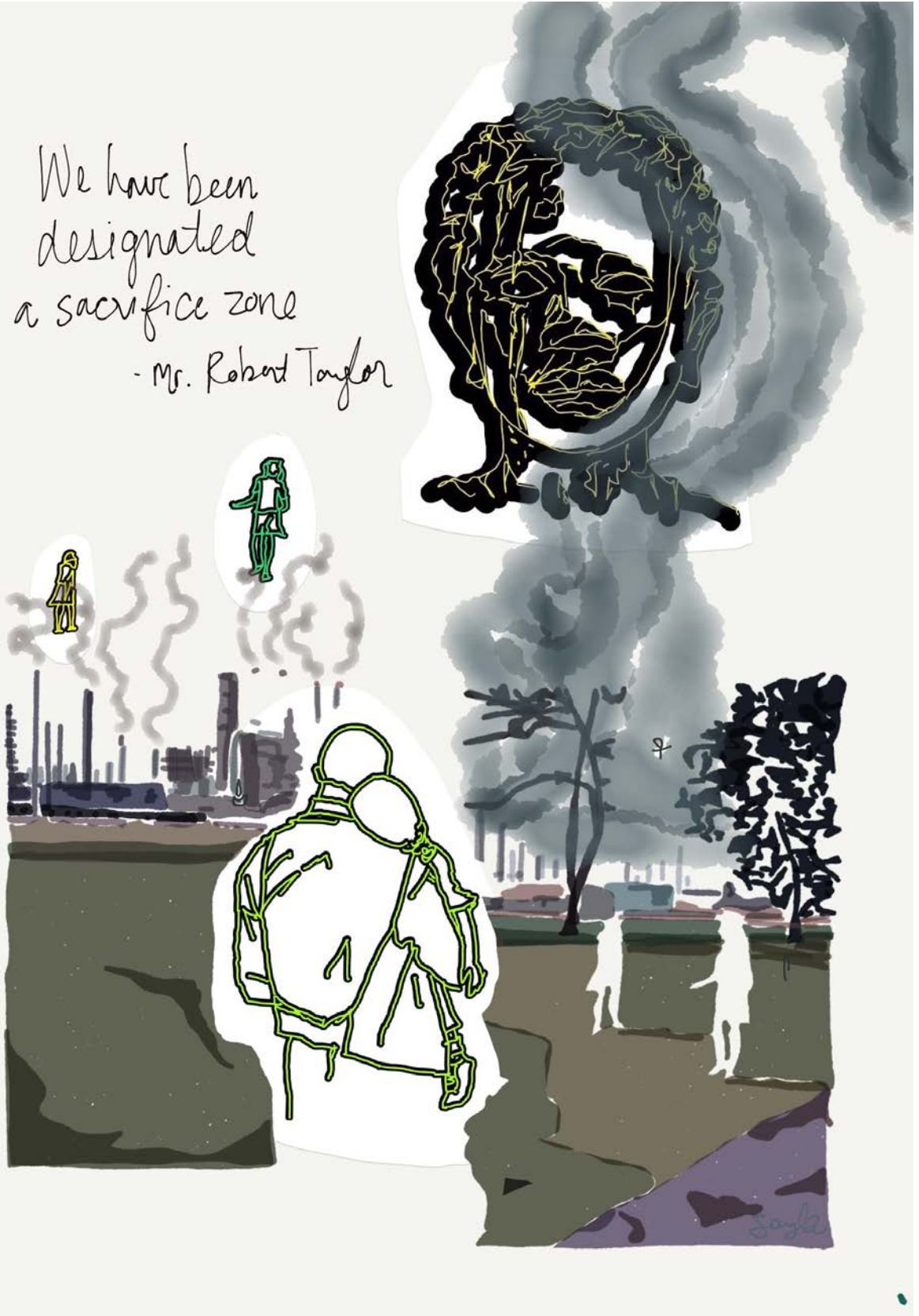
Robert Taylor, Concerned Citizens of St. John's Parish

[Environmental Racism in Death Alley](#)
June 26, 2021

Forensic Architecture

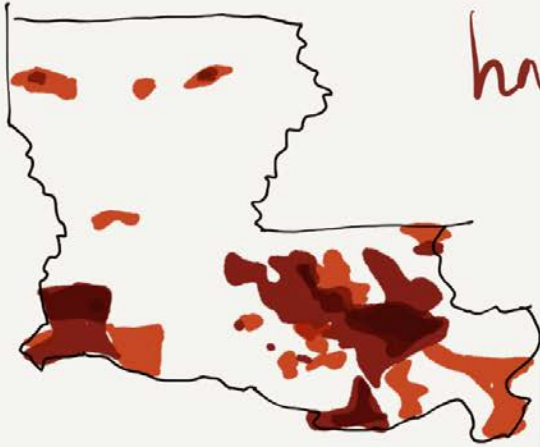


We have been
designated
a sacrifice zone
- Mr. Robert Taylor



a cycle of the
haves feeding off
the have-nots

-Ms. Gail
Leboeuf



Shaping our future, one that is infused with joy, is

reparations
- Joy & Jo Benner



1 generation ~ 25-30 yrs



Jayla

APPENDIX 4 - RECENT ACTION IN LOUISIANA

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The Descendants Project <i>Formal Complaint concerning Proposed Greenfield Louisiana, LLC, Grain Terminal</i> 23 August 2021.....	30
Louisiana Trust for Historic Preservation <i>2022 List of Louisiana’s Most Endangered Places Announced</i> 21 June 2022.....	41
National Trust of Historic Preservation <i>Letter to U.S. Army Corps of Engineers New Orleans District</i> 29 December 2021.....	45

Additional Resources

- Title VI Complaint by Concerned Citizens of St. John and Sierra Club. 20 January 2022.
Available online at:
https://earthjustice.org/sites/default/files/files/22.01.20_ccsj_sc_title_vi_complaint_w_attachments.pdf
- The Descendants Project v. St. John the Baptist Parish. Center for Constitutional Rights.
Available online at:
<https://ccrjustice.org/home/what-we-do/our-cases/descendants-project-v-st-john-baptist-parish-1>
- DeSmog. Rep. Grijalva Tours Cancer Alley Communities Plagued by Racial Discrimination and Environmental Injustice. 22 June 2022.
Available online at:
<https://www.desmog.com/2022/06/22/grijalva-cancer-alley-environmental-justice-for-all-a-ct/>

May 12, 2021

St. James Parish Council
5800 Hwy. 44
Convent, LA 70723

By email to: linda.hubbell@stjamesparishla.gov

Re: Resolution 19-07 Granting Formosa's Land Use Application

To the St. James Parish Council:

We write to you on behalf of RISE St. James and Louisiana Bucket Brigade regarding their request that the Council rescind the approval of Formosa Plastics' land use application set out in Resolution 19-07. We take this opportunity to highlight three important points:

- 1) The company has acknowledged that it did not reconfigure its site plan to relocate some of its production units farther away from the elementary school and church after consultation with the Parish. In fact, the only change Formosa Plastics has pointed to, which pre-dated its application to the Parish, actually worsened the threat to school children and churchgoers by placing a plant with the most potent carcinogenic emissions – Ethylene Oxide – *closer* to the school and church.
- 2) As a result of Formosa's misrepresentation, the land use approval is a legal nullity under Louisiana law and must be deemed as never having existed.
- 3) Since our last correspondence, the concerns about Ethylene Oxide have grown, as has the understanding of the ways in which air pollution has rendered some communities more vulnerable to COVID-19, which has had a disproportionate impact on Black communities and other communities of color.

The Council's land use approval was based on Formosa Plastics' misrepresentation – one that goes to the very heart of the Council's duty to protect the health, safety, and welfare of its residents – rendering the land use approval a nullity and therefore legally nonexistent.

I. Formosa did not reconfigure its site plan to lessen danger to the school and church as it stated that it had.

Formosa Plastics conceded that it had not reconfigured its site plan to relocate some of its production units further away from the nearby church and St. Louis Academy (formerly Fifth Ward Elementary School), where the young student population is nearly entirely Black. Formosa Plastics' concession contradicts what the company told the Council in October 2018, when it claimed that it had changed the site plan in response to the Parish's concerns. The only site change Formosa Plastics points to pre-dated its land use application and that change actually increases the threat to the school and church by moving an Ethylene Oxide-emitting production unit closer to the community.

Following is a summary of the factual events leading up to the present on this issue:

- Formosa Plastics submitted its initial land use application to the Parish on June 25, 2018.¹ This 430-page application only included the final site plan (not the older, October 30, 2017, site plan discussed in Formosa Plastics' January 21, 2020, letter that it sent to the Council in response to RISE and Louisiana Bucket Brigade's concerns as detailed below).
- Formosa Plastics presented its land use application at the Parish Planning Commission's July 27, 2018 meeting.²
- The Planning Commission held public hearings on Formosa Plastics' land use application on September 5, 2018 and September 19, 2018.³

⁴ In its supplemental application, Formosa Plastics pointed to its revised plot plan and relocation of production units as a measure it had taken to "enhance the Facility's safety and environmental protection."⁵

¹ See FG LA Land Use App (June 25, 2018) (on file with the St. James Parish Planning Commission as item #18-30); see also SJP Resolution 19-07 (stating FG LA requested approval of a proposed chemical manufacturing complex in an application dated June 25, 2018), pdf. 35, <https://www.stjamesla.com/AgendaCenter/ViewFile/Agenda/01082020-223>.

² *Id.*

³ *Id.*

⁴ Formosa Plastics' Supp. Land Use App., p. 4, pdf. 24-34, at 27, <https://www.stjamesla.com/AgendaCenter/ViewFile/Agenda/01082020-223>.

⁵ *Id.* at pp. 2, 4, pdf. pp. 25, 27.

- On January 24, 2019, the Council passed Resolution 19-07, approving Formosa Plastics' land use application based on its finding that "[t]he physical and environmental impacts of the proposal are within allowable limits, *and are substantially mitigated by the physical layout of the facility, and the location of the site in proximity to existing industrial uses and away from residential uses.*"⁶ The Council also determined that the "*placement of the production and process components on the site, and the proposed 300 foot civil buffer within the footprint of the site provide adequate buffer zones.*"⁷

- On December 23, 2019, RISE St. James and Louisiana Bucket Brigade sent a letter to the Council urging that it rescind Resolution 19-07 because Formosa Plastics had not revised its site plan to move hazardous production units away from the church and school to satisfy the Parish's concerns as the company claimed it had done.⁸ The letter highlights the risks associated with Formosa Plastics' toxic air emission, including discussion of a study showing that the area around the company's site is already "more toxic with cancer-causing chemicals than 99.6% of industrialized areas in the country," and that the level of permitted emissions from the complex would expose area residents to "more than triple" the toxic levels of cancer-causing chemicals.⁹ The letter draws attention to the fact that the site plan does nothing to mitigate environmental impacts, but instead places the production units with the largest and most harmful amounts of cancer-causing toxic emissions closest to the elementary school, church, and residential areas.¹⁰ The letter also details that the Ethylene Oxide emissions from the Ethylene Glycol plants expose residents to an unacceptable risk of cancer.¹¹

- On January 21, 2020, RISE St. James and Louisiana Bucket Brigade supplemented their December 23, 2019, letter with information about the vast reach of Formosa Plastics' harmful toxic emissions, showing increased risk of cancer from the plant's Ethylene Oxide emissions as far as Paulina. On the same day, legal counsel for RISE St. James and

<https://www.stjamesla.com/AgendaCenter/ViewFile/Agenda/01082020-223>.

⁷ *Id.*

⁸ Letter from RISE St. James and Louisiana Bucket Brigade's attorney, C. Van Dalen, to SJP Council, Dec. 23, 2019, pdf. pp. 13-40), <https://www.stjamesla.com/AgendaCenter/ViewFile/Agenda/01082020-223>.

⁹ *Id.* (quoting L. Younes, ProPublica, "What Could Happen if a \$9.4 Billion Chemical Plant Comes to 'Cancer Alley'" (Nov. 18, 2019), <https://www.propublica.org/article/what-could-happen-if-a-9.4-billion-chemical-plant-comes-to-cancer-alley>)

¹⁰ *Id.*

¹¹ *Id.*

Louisiana Bucket Brigade gave presentations to the Council on behalf of RISE St. James and Louisiana Bucket Brigade on the information provided in the organizations' letters.¹²

- Also on January 21, 2020, Formosa Plastics responded to RISE St. James and Louisiana Bucket Brigade's letters where the company conceded that it never changed its site plan to respond to the Parish's concerns.¹³ Instead, Formosa Plastics points to an alteration to the site plan that it had made months before it submitted the land use application to the Council, which actually increases the harm to the school and church by placing an Ethylene Oxide-emitting production unit closer to the community.¹⁴
- On September 15, 2020, after obtaining a copy of Formosa Plastics' January 21, 2020 letter through a public records request, RISE St. James and Louisiana Bucket Brigade wrote to the Council again, pointing out the obvious fact that Formosa Plastics admitted in its letter that it had not changed its site plan in response to the Parish's concerns.¹⁵ Indeed, the site alteration that Formosa Plastics disingenuously claimed as responsive to the Parish's concerns, actually took place long before the company ever submitted its application to the Parish – and that pre-Parish application site change put what would be one of the largest sources of Ethylene Oxide in the nation even closer to the school, church, and residences.¹⁶ RISE St. James and Louisiana Bucket Brigade also provided more information about Formosa Plastics' harmful Ethylene Oxide emissions, detailing with support that the potent toxic pollutant is linked to breast cancer, non-Hodgkin lymphoma, and lymphocytic leukemia¹⁷ – and has been found by the U.S. Environmental Protection Agency to be far more carcinogenic than previously understood.¹⁸

¹² St. James Parish Council, Agenda, Jan. 21, 2020, pdf. 2, <https://www.stjamesla.com/AgendaCenter/ViewFile/Agenda/01212020-225> (showing presentations from Pam Spees, Senior Staff Attorney, Center for Constitutional Rights on burial grounds of enslaved people on the proposed Formosa site and Corinne Van Dalen, Staff Attorney, Earthjustice on Formosa site plan layout of units and Formosa's modeled Ethylene Oxide concentrations).

¹³ Letter from Formosa Plastics' attorney, J. King, to Formosa Plastics' Community and Government Relations Director, J. Parks, Jan. 21, 2020, pdf. 67-85, at 68, <https://www.stjamesla.com/AgendaCenter/ViewFile/Agenda/09162020-252>.

¹⁴ *Id.*

¹⁵ Letter from RISE St. James and Louisiana Bucket Brigade's attorney, C. Van Dalen, to SJP Council, Sept. 15, 2020 Agenda, pdf. 60-113, <https://www.stjamesla.com/AgendaCenter/ViewFile/Agenda/09162020-252>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

emitting facilities only a mile from the St. Louis Academy.¹⁹

- On September 16, 2020, legal counsel for RISE St. James and Louisiana Bucket Brigade gave another presentation to the Council that detailed the points of the organizations' September 15, 2020 letter (i.e., the obvious admission by Formosa Plastics that it had done nothing to address the Parish's concerns).²⁰ After the presentation, the Council stated that RISE St. James and Louisiana Bucket Brigade raised issued that "should be looked into," that their "[September 15, 2020] letter and attached materials contain a lot of information and technical points that we need to understand with the help of the administration and our advisors."²¹ *The Council has never responded.*

II. Resolution 19-07 approving Formosa Plastics' land use application is a legal nullity and should be deemed as never having existed.

Louisiana law provides that "[p]ersons may not by their juridical acts derogate from laws enacted for the protection of the public interest" and that "[a]ny act in derogation of such laws is an absolute nullity." La. Civ. Code art. 7. An act that is absolutely null is deemed "never to have existed." La. Civ. Code 2033. A claim that an act or obligation is an absolute nullity never prescribes and may be brought by anyone. La. Civ. Code arts. 2030, 2032.

Resolution 19-07 also constitutes a type of obligation under Louisiana law, which is subject to the rules relating to nullity of contracts. La. Civ. Code art. 1917. As an obligation, the resolution is also absolutely null because the requirements for its formation have not been met. La. Civ. Code art. 2029. One of those requirements is mutual consent, which is vitiated by error or fraud. La. Civ. Code art. 1948. An error vitiates consent "when it concerns a cause without which the obligation would not have been incurred and that cause was known or should have been known to the other party." La. Civ. Code Ann. Art. 1949. Error induced by fraud "need not concern the cause of the obligation in order for it to vitiate consent, but it must concern a circumstance that has substantially influenced that consent." La. Civ. Code Ann. art. 1955. A contract or obligation may be rescinded once a failure of cause is shown. *See Angelo & Son, LLC v. Piazza*, 2008-370, p. 5 (La. App. 3 Cir. 12/10/08); 1 So.3d 705, 710, *writ denied*, 2009-0018 (La. 2/20/09); 1 So.3d 501.

An obligation is an absolute nullity where it "derogate[s] from laws enacted for the protection of the public interest, violate[s] a rule of public order, or produce[s] a result prohibited by law or public policy." *Davis v. Parker*, 58 F.3d 183, 189 (5th Cir. 1995) citing *Daigle v. Clemco Indus.*, 613 So.2d 619, 624 (La.1993). *See also* La. Civ. Code art. 2030. Sources of the state's public policy are its Constitution, laws, and judicial decisions of court of last resort. *W.L. Slayton & Co. v. Newton & Morgan*, 299 F. 279, 280 (5th Cir. 1924).

¹⁹ *Id.*

²⁰ St. James Parish Council Agenda, Sept. 15, 2020, pdf. 2, https://www.stjamesla.com/AgendaCenter/ViewFile/Agenda/_09162020-252

²¹ St. James Parish Council, Sept. 16, 2020 Meeting Minutes, pdf. 2, https://www.stjamesla.com/AgendaCenter/ViewFile/Minutes/_09162020-252

The Parish's Home Rule Charter requires the Parish Council to "protect [] and preserve the general welfare, safety, health, peace, and good order of St. James Parish." The Louisiana Constitution of 1974 requires that the "natural resources of the state, including air and water, and the healthful, scenic, historic and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people." Pursuant to Section 86-37(h)(3) of the St. James Parish Code of Ordinances, the Planning Commission must consider "the physical and environmental impacts of the proposed use [of land] 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."

With all of those requirements on the Council to protect the public interest, in particular the health and safety of St. James residents, this Council adopted Resolution 19-07 after Formosa Plastics represented that it had taken steps "to enhance the health and safety of the community" by "revis[ing] its plot plan" "[a]fter consultation and discussion with the Parish" and had "relocated some of its units along the western boundary, farther away from the new church and school."²² After obtaining this assurance, the Council approved Formosa Plastics' land use application, denying RISE St. James' appeal of the Planning Commission's decision. The Council explicitly did so with the understanding that "[t]he physical and environmental impacts of the proposal are within allowable limits, and are *substantially mitigated by the physical layout of the facility, and the location of the site in proximity to existing industrial uses and away from residential uses.*" The Council also understood that the "*placement of the production and process components on the site, and the proposed 300 foot civil buffer within the footprint of the site provide adequate buffer zones.*"²³

This was not true. Formosa Plastics did not revise its site plan as it assured the Council it had done. The only changes Formosa Plastics points to occurred well before its application and they actually increased the threat to the health and safety of children and staff at the elementary school and church. Long before its application to the Council, Formosa Plastics had moved the production unit with the most carcinogenic emissions – Ethylene Oxide – *closer* to the school and church; and Formosa Plastics never reconfigured the site plan after its application as it assured the Council it had done.

The Council relied on Formosa Plastics' assurance to enact a juridical act, the land use approval, that the Council believed would discharge its legal duty to protect the health and safety of nearby residents. Inasmuch as the resolution gave rise to an obligation under Louisiana law, the Council also relied on Formosa Plastics' assurance as a factual cause for the land use approval. We now know that Formosa Plastics' assurance was false.

As a juridical act, Resolution 19-07 derogates from laws governing the Council and its obligations to protect the public interest, resulting in an absolute nullity, pursuant to La. Civ. Code art. 7,

²² Letter from Formosa's consultant Providence Engineering to Blaise Gravois, Director of Operations St. James Parish Government, Oct. 19, 2019, pdf. 73-83, <https://www.stjamesla.com/AgendaCenter/ViewFile/Agenda/09162020-252>.

²³ *Id.*

because it was based on the false premise that Formosa Plastics had taken steps to ensure that school children and church-goers would be protected. As a type of obligation under Louisiana law, the resolution is infected with an error that vitiated the Council’s consent. That error results in a “derogat[ion] from laws enacted for the protection of the public interest” and “produce[s] a result prohibited by law or public policy.”

As a result of Formosa Plastics’ misrepresentation, the resolution is absolutely null and does not now exist. The only conscionable step at this point is for the Council to make this clear and formally acknowledge for the record that the land use approval is null and void.

III. Concerns about health and safety of residents in St. James have worsened with new reporting about the effects of ethylene oxide and exacerbating effects of air pollution and COVID-19.

The effort to address the Ethylene Oxide crisis has only become more urgent since RISE St. James and Louisiana Bucket Brigade’s last correspondence with the Council. The U.S. Environmental Protection Agency is currently in the process of reaching out to communities that are impacted by the potent carcinogen to warn them of their risks.²⁴ Just last week, EPA set up a call with community leaders and other representatives from Louisiana and Texas who are concerned about Ethylene Oxide impacts as the first step in this outreach effort. Most of the country is spared this worry, but a handful of states have Ethylene Oxide-emitting facilities – Louisiana and Texas among them. And now Formosa Plastics is planning to construct two massive Ethylene Glycol production units, both of which will be major sources of Ethylene Oxide emissions, at a time when this carcinogenic toxic pollutant is being reduced, phased out, or eliminated elsewhere. The Council should be leading this effort to address Ethylene Oxide, not welcome it into the Parish and remain silent in the face of this danger to the people of St. James Parish. Indeed, why is St. James Parish allowing Formosa Plastics to construct these new sources of Ethylene Oxide that exceed cancer risk standards? This is a question for the Council to take seriously especially when it based its decision to allow Formosa Plastics to come into the Parish and construct its massive facility on the company’s misrepresentations.

This [video](#), “Tracking An Invisible Killer,” follows eight women who grew up in the shadow of an Ethylene Oxide-emitting facility in Texas.²⁵ RISE St. James and Louisiana Bucket Brigade urge the Council to view this video, which provides a glimpse of the reality the Council has created for its residents by allowing Formosa Plastics to build. But unlike the mostly White suburb impacted by the Texas facility, toxic air pollutants have even greater harmful impacts in Black communities, like those in District 5 and District 4 which will get the brunt of Formosa Plastics’ harmful emissions. This makes the situation here even more dire – especially where residents closest to the Formosa Plastics’ site already face far greater risk of cancer from toxic air pollutants than do other

²⁴ U.S. EPA, Hazardous Air Pollutants: Ethylene Oxide, Inspector General follow-up, <https://www.epa.gov/hazardous-air-pollutants-ethylene-oxide/inspector-general-follow-ethylene-oxide-0>

²⁵ Sharon Lerner, *Tracking an Invisible Killer*, The Intercept (May 18, 2021), <https://theintercept.com/2021/03/18/texas-cancer-ethylene-oxide-pollution/>

residents of the state on average.²⁶ Furthermore, toxic air pollutants are associated with increased COVID-19 mortality. In fact, a study published in September 2020 found that the respiratory hazard index is associated with a 9% increase in COVID-19 mortality.²⁷ Black Louisianans have died from COVID-19 by an extraordinary, heavily disproportionate margin.²⁸ Black communities along the petrochemical corridor along the Mississippi River between Baton Rouge and New Orleans – which face some of the highest cancer risks from toxic pollution²⁹ – are dying at higher rates than the rest of the state.³⁰

Black residents of St. James Parish deserve the same protection the Council has afforded its White residents. Indeed, when Wolverine Terminals submitted an application to Louisiana Department of Environmental Quality (“LDEQ”) for a “minor source” air permit to build an oil terminal in the Paulina-Grand Point area, which is located in predominantly White District 3, the Council rushed to the community’s aid. That is, the Council passed a resolution stating that “the proposed construction of Wolverine Terminal conflicts with the future planned development of residential neighborhoods [in the Paulina-Grand Point area], causes health concerns to existing residents within close proximity of the proposed facility, and increases the congestion and on-going traffic problems.” Indeed, the Parish left no stone unturned, questioning LDEQ about Wolverine’s Benzene emissions – even arguing there is no “vendor guarantee” and therefore “no assurance that the [vapor combustion unit] will destroy 99 percent of the [emissions].”³² Meanwhile, the Council may recall that RISE St. James and Louisiana Bucket Brigade brought to the Council’s attention the fact that LDEQ greenlighted Formosa Plastics’ ethylene oxide sources based on the company’s unsupported claim (i.e., no vendor guarantee) that it can somehow combust and destroy *99.9 percent of its ethylene oxide emissions*.³³ The Council never looked into this important issue even though Ethylene Oxide

²⁶ See EPA EJScreen, <https://ejscreen.epa.gov/mapper/> (showing the community of Welcome has an EJScreen Index value of 96 percent for NATA Air Toxics Cancer Risk).

²⁷ Michael Petroni et al., *Hazardous air pollutant exposure as a contributing factor to COVID-19 mortality in the United States*, 15 ENVIRON. RES. LETT. 0940a9 (2020).

²⁸ State of Louisiana, Dep’t. of Health, Additional COVID-19 Data, <https://ldh.la.gov/index.cfm/page/4065>.

²⁹ NBC News, *Black Americans in ‘Cancer Alley’ disproportionately exposed to toxic pollution*, NBC NEWS (October 18, 2020) <https://www.nbcnews.com/nightly-news/video/black-americans-in-cancer-alley-disproportionately-exposed-to-toxic-pollution-94107205554>.

³⁰ USA Today, Rick Jervis & Alan Gomez, *Racism turned their neighborhood into ‘Cancer Alley.’ Now they’re dying from COVID-19* (October 12, 2020), <https://www.usatoday.com/in-depth/news/nation/2020/10/12/covid-racism-kills-black-americans-living-near-toxic-plants/3498180001/>.

³¹ St. James Parish Council, Resolution 13-176, <https://edms.deq.louisiana.gov/app/doc/view.aspx?doc=9120612&ob=yes&child=yes> (also noting that the Parish’s master land use plan had not even been enacted yet).

³² Statement of St. James Parish President Timothy Roussel, LDEQ Public Hearing on Wolverine Air Permits, April 29, 2014, Tr., p. 38 pdf. 12, <https://edms.deq.louisiana.gov/app/doc/view.aspx?doc=9308886&ob=yes&child=yes>.

³³ Formosa Plastics plans to route an average of 2,881.02 tons per year of ethylene oxide to each thermal oxidizer at its two ethylene glycol plants, and emit 2.88 tons per year from each thermal oxidizer after the

is nearly *400 times more carcinogenic as Benzene*.³⁴ The Parish rejected the Wolverine project; it was never built. But here, the Council has abdicated its role to protect the health of its Black residents by blindly deferring to LDEQ and relying on Formosa Plastics' misrepresentation about measures taken to protect area residents. The Council has not even mentioned impacts to the area immediately next to Formosa Plastics' site that the Parish designated as "Residential Growth" in its master land use plan. Indeed, the potential impacts of a "minor source" oil terminal in predominantly White District 3 prompted immediate action and deep scrutiny, whereas here the Council has allowed Formosa Plastics' massive facility to sail through unchecked. District 5 and 4 residents, who would be most affected by Formosa Plastics' massive complex, ask the Council to extend the same diligence and care to them as applied elsewhere in the Parish.

We also reiterate the concern raised previously that Formosa Plastics did not notify the Parish Council of the existence of the Buena Vista Plantation Cemetery while its land use application was pending before the Planning Commission. While the company was not under a legal obligation to provide notice to the Parish Council of the existence of the burial grounds, its failure to do so demonstrates a disregard for the cultural and historical significance of such sites to communities in St. James and elsewhere, in particular the likely descendants of those buried there, and for the Council's authority over land use.

Formosa Plastics' plant is far from a done deal. The U.S. Army Corps of Engineers has suspended the wetlands permit it issued needed for construction of the massive chemical complex³⁵ and the validity of the air permits (also needed to begin construction) is pending before the 19th Judicial District Court. And the company itself has not made a final investment decision to go through with its plans. Furthermore, the outcry against the facility could not be louder from people who will have to suffer in Formosa Plastics shadows to objections from the New Orleans and Westwego

combustion process. EDMS No. 10878178, pdf. p. 97,

<https://edms.deq.louisiana.gov/app/doc/view.aspx?doc=10878178&ob=yes&child=yes>. If the combustion rate is only 99 percent efficient (a rate the Parish argued needed a vendor guarantee) instead of 99.9 percent, the combustion units would emit *10 times more ethylene oxide*. LDEQ has also allowed Formosa to emit ethylene oxide from flares and from fugitive (or uncontrolled) sources at its ethylene glycol plants. While the Parish has required Formosa Plastics to install monitoring along its eastern property boundary for ethylene oxide and some other toxic pollutants, but this does nothing for the people who live across the river just one half mile away. Further, there is no requirement that Formosa Plastics ever send any reports from these monitors to LDEQ, leaving open the question as to whether the Parish will have the capacity evaluate the reports for ethylene oxide emissions, which, according to the EPA "can be difficult to analyze." See U.S. EPA, *Update on EPA's work to understand air concentrations of ethylene oxide* (Nov. 6, 2019), <https://www.epa.gov/hazardous-air-pollutants-ethylene-oxide/ethylene-oxide-updates>.

³⁴ The Inhalation Unit Risk ("IUR") values in EPA's IRIS system show Ethylene Oxide IUR = 3×10^{-3} per $\mu\text{g}/\text{m}^3 = 0.003 \mu\text{g}/\text{m}^3$ and the Benzene IUR = 7.8×10^{-6} per $\mu\text{g}/\text{m}^3 = 0.0000078 \mu\text{g}/\text{m}^3$. See https://iris.epa.gov/static/pdfs/1025_summary.pdf and https://iris.epa.gov/static/pdfs/0276_summary.pdf, respectively.


³⁵ *Ctr. for Biological Diversity v. U.S. Army Corps of Engineers*, No. CV 20-103 (RDM) (D.D.C. 2021), Mot. to Stay, Nov. 4, 2020, https://s3-us-west-2.amazonaws.com/s3-wagtail.biologcaldiversity.org/documents/67_DOJ_motion_to_stay.pdf

city councils, and beyond to the United Nations.³⁶ The Council must step up and prevent this atrocity in the making and protect its people.

Sincerely,



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³⁶ UN News, *Human Rights, Environmental racism in Louisiana's 'Cancer Alley', must end, say UN human rights experts*, Mar. 2, 2021, <https://news.un.org/en/story/2021/03/1086172>

August 23, 2021

By Email

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St. John the Baptist Parish
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Tara Lambeth
Zoning Regulatory Administrator
St. John the Baptist Parish
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Ms. Jaclyn Hotard
Parish President
St. John the Baptist Parish
j.hotard@stjohn-la.gov

Re: Formal Complaint Concerning Proposed Greenfield Louisiana, LLC, Grain Terminal, and Request for Zoning Verification Letter

Dear Mr. Pastorek, Ms. Lambeth, Ms. Hotard:

The Descendants Project, an organization based in Wallace, Louisiana, founded to reverse the contemporary legacies of slavery faced by the local descendant community, and the Center for Constitutional Rights, a legal organization dedicated to advancing equality, social justice, and human rights, submit this complaint in reference to the grain terminal proposed by Greenfield Louisiana, LLC, in accordance with Sec. 113-27 of the Parish's Code of Ordinances, on the following grounds:

1. The designated I-3 zone violates the required distance from residential development.

Sec. 113-410 of the Parish Code of Ordinances requires that the planning commission and parish council ensure a distance of 2,000 feet between land zoned as Industrial District Three (I-3) and residential developments.¹ The designation of this area as I-3 is a clear violation of the

¹ Sec. 113-410 states,

In reaching recommendations and decisions as to rezoning land to Industrial District Three (I-3), the planning commission and parish council *shall* apply the following locational criteria and performance standards: [...] (1)(b) **Separation from residential development.** Sites to be designated Industrial District Three (I-3) *shall* be so located a **minimum 2,000 feet away from a concentration of one dwelling unit per acre** (du/ac) gross area. (emphasis added in **bold**).

ordinance's distance requirement as there are a number of residential dwellings, as well as small, locally-owned businesses, concentrated well within 2,000 feet of the site, as shown in Figure 2 below.

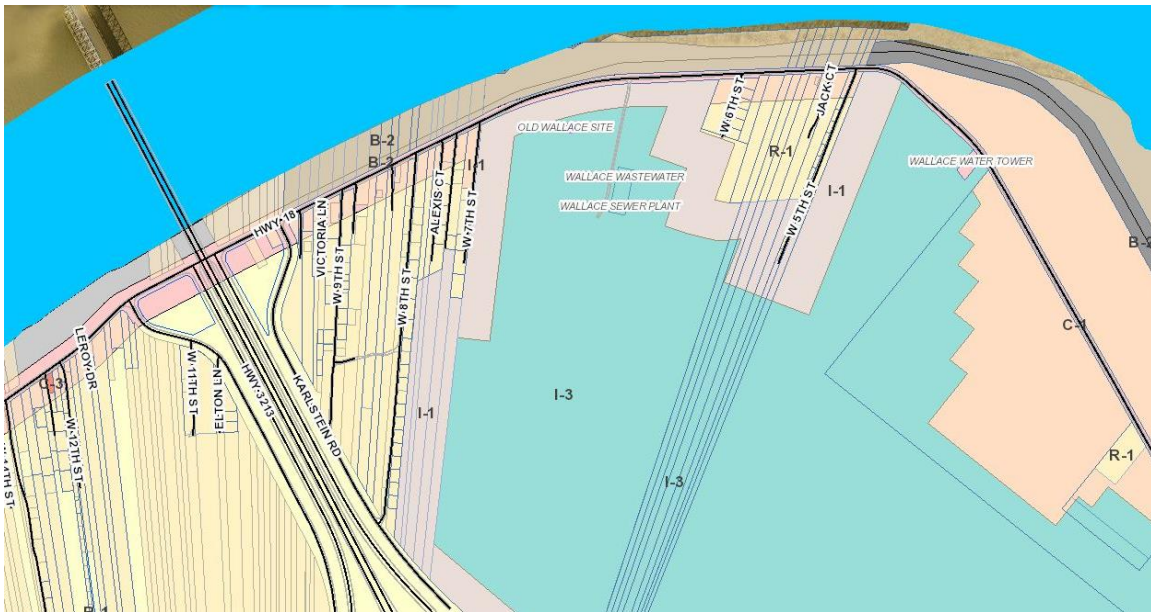


Figure 1: Official Parish Zoning Map for Wallace, Louisiana showing Heavy Industrial (I-3) (blue), and the established community of Wallace as residential (R-1) (yellow) and commercial (B-1, C-1).

Source: https://atlas.geoportalmaps.com/stjohn_public

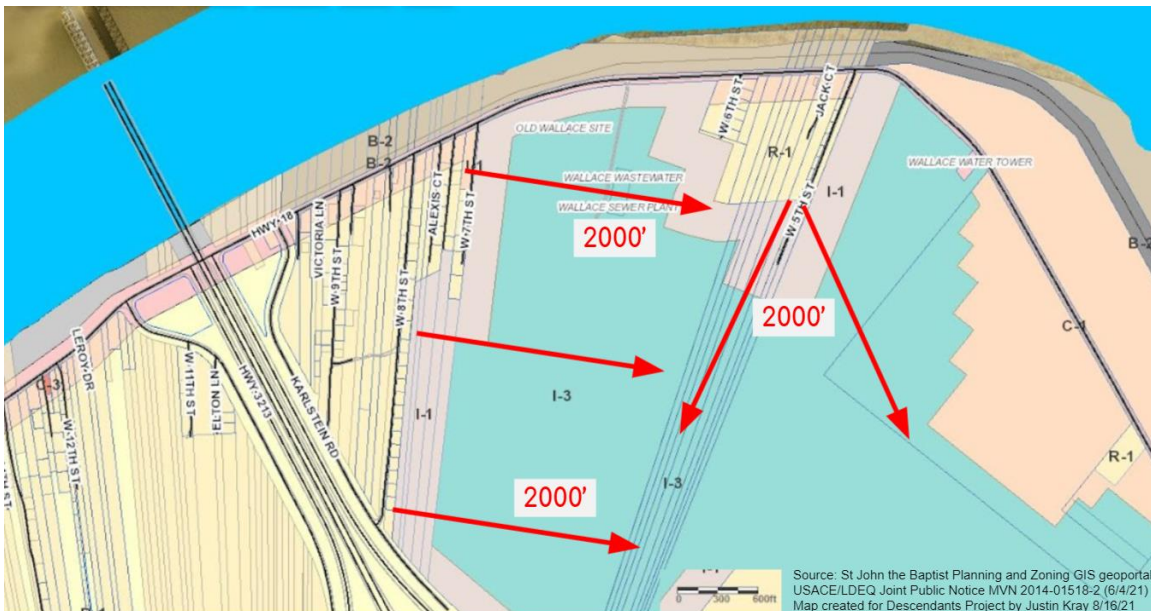


Figure 2: The zoning ordinance requires that new I-3 zones be located 2000 feet from existing residential dwellings at the required density of 1 du/acre. The red arrows indicate how this distance requirement was disregarded at multiple locations. Courtesy Justin Kray/ Louisiana Bucket Brigade

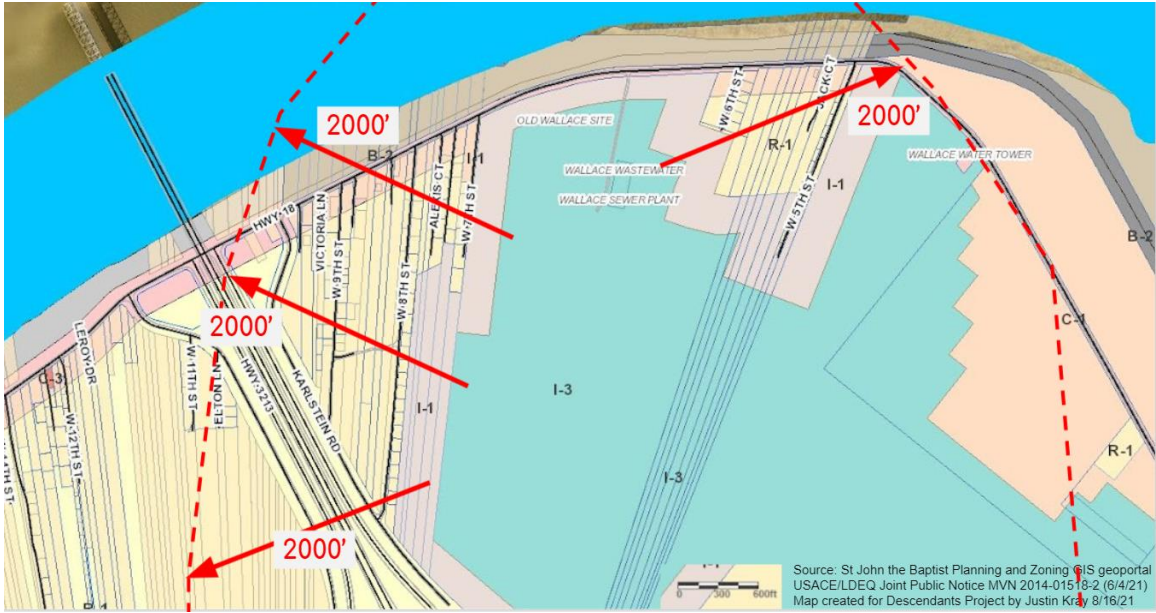


Figure 3: Another rendering of the extent to which the I-3 zone violates the ordinance requiring a distance of 2,000 feet from residential dwellings. The dashed red line represents the residential area encroached upon within 2,000 feet from the new I-3 zone. This area encompasses the entire community of Wallace. Courtesy Justin Kray/Louisiana Bucket Brigade

Thus, the zone itself is invalid as it violates the Parish’s ordinance, and the Parish must take urgent steps to remove the I-3 designation since this land area should have never been designated as I-3 in the first place. In fact, it appears from the records of the parish’s Comprehensive Plan that it was not originally intended to be designated I-3. The Parish’s [Phase II Task II Land Use Report](#) on its Comprehensive Planning Project included a map entitled “Future Land Use” on p. 47 which clearly showed the various I-3 zones designated for heavy industrial use. The site of the proposed grain terminal was not among them. Rather, it was marked for residential and agricultural use, as seen here:

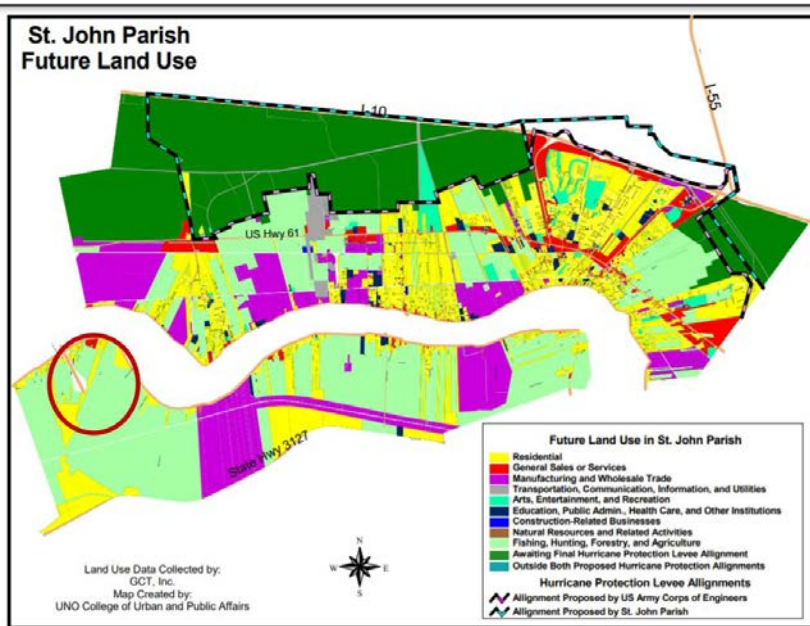


Figure 4: Official Map included in a report of the parish’s Comprehensive Planning Project showing that the area targeted for the proposed grain elevator, in the red circle which has been added for purposes of this letter, was originally intended to be zoned for “fishing, hunting, forestry and agriculture”

The Descendants Project, their families and neighbors living next to this proposed site are understandably troubled and concerned about this proposed development and the murky process that led to this incorrect zoning designation. The community's concerns are heightened in light of the fact that this particular parcel of land has been the subject of controversy in the past. In regard to a facility proposed by Formosa on this property, backroom land dealings and zoning assurances gave rise to charges of public corruption, including extortion and money laundering, for which the former president of the Parish Council was ultimately convicted. *See, e.g., United States v. Millet, 123 F.3d 268 (5th Cir. 1997).*

With respect to this current designation, there are serious questions about the differences in the zoning maps and the history of rezoning of this parcel. The questions about how and why the land use designation was changed from agricultural to heavy industrial need to be answered, particularly when it so clearly violates the distance requirement set out in Sec. 113-410(1)(b) of the Code of Ordinances. The community also deserves to know whether any of the current stakeholders, such as the company seeking to build the facility or other entities and adjacent landowners, had any involvement in the decision to change the designation.

2. Even if the zoning designation were valid, the proposed grain elevator would violate it because it would wholly occupy the 2,000-foot area right next to residential dwellings.

Even assuming that the zoning designation were valid, and the requirement of 2,000 feet were intended to be encompassed within the zoned area, the proposed grain elevator would actually sit within the 2,000-foot area directly abutting the residential neighborhood and numerous dwellings.

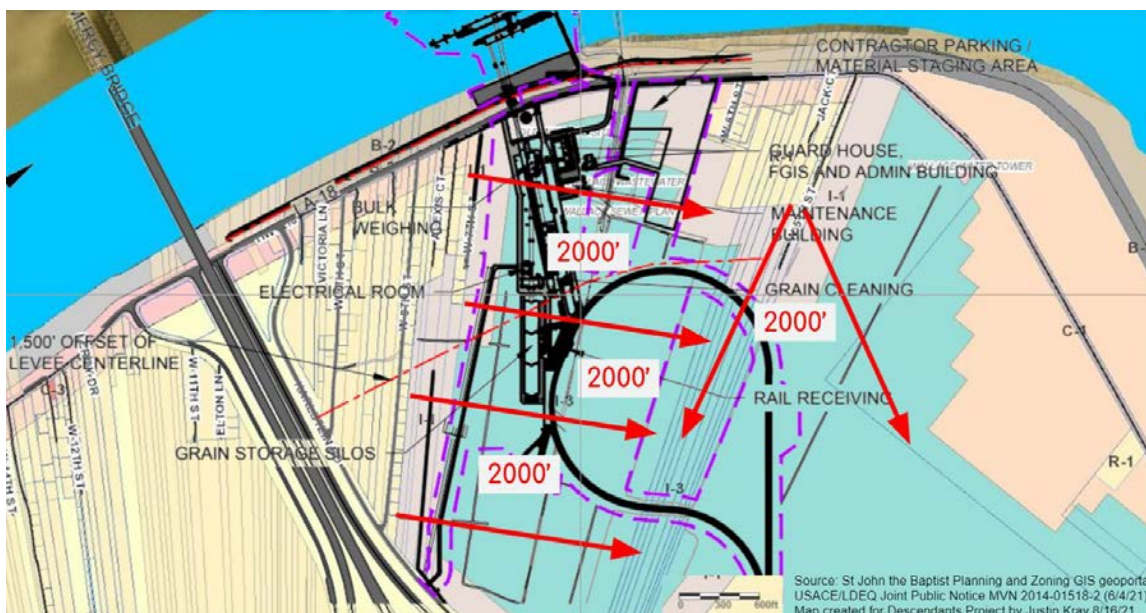


Figure 5: Greenfield site plan overlay with the Zoning map shows how the entire grain elevator facility would sit squarely *within* the required 2,000ft distance from residential dwellings, dramatically violating the Parish ordinance. Courtesy Justin Kray/Louisiana Bucket Brigade

The close proximity of the proposed facility to the neighborhood next to it and the sheer size and enormity of the grain elevator render the setback requirements of the zoning ordinance

meaningless. The massive facility, consisting of 54 grain silos and a conveyor structure nearly as tall as the Statue of Liberty, would run roughly north-south and would cast a long shadow over the community residing to the west of it, blotting out the sunrise and much of the sunlight the community now enjoys. This in itself is a violation of one of the stated purposes of Sec. 113-3 of the parish’s zoning regulations -- “to provide adequate light and air.”

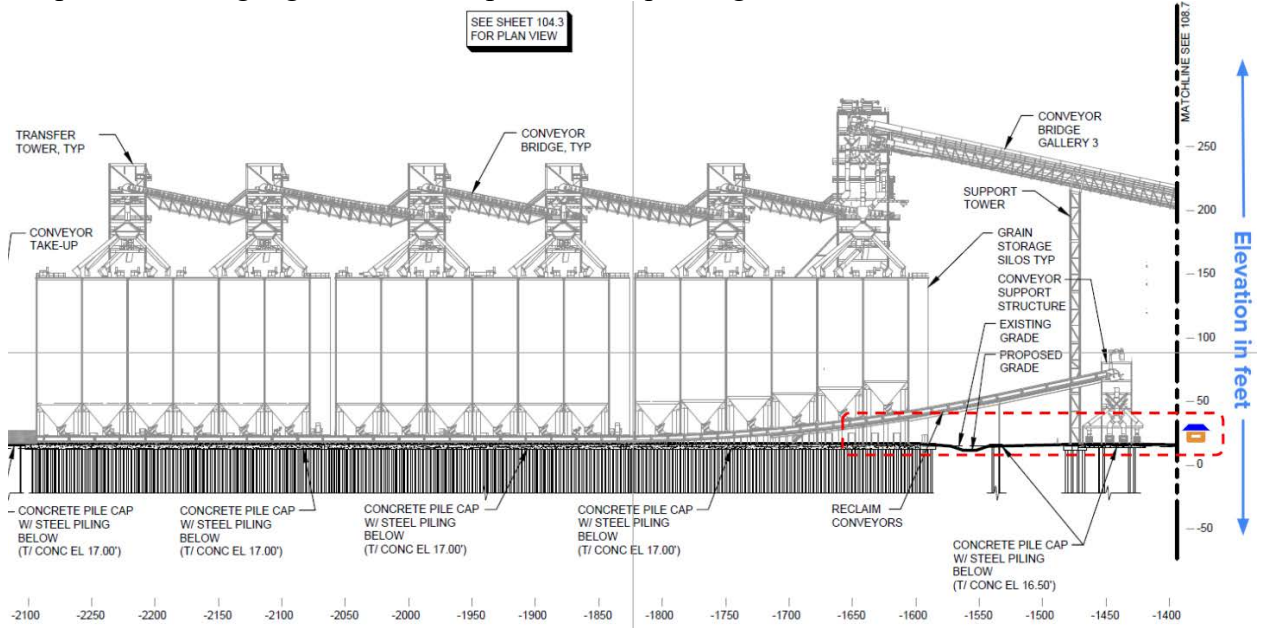


Figure 6: Diagram of proposed grain elevator to scale next to an average-sized home. Residential homes would be less than 300 feet away from the facility. Dashed red box shows a typical-size home relative to the scale of the facility. Graphic Justin Kray/Louisiana Bucket Brigade

3. The project is a “high hazard industry” and would devastate the adjacent neighborhood and community.

The Descendants Project, which works within the historic African American community that would be directly impacted by this massive project, has heard the fears and concerns from several nearby residents who understand this facility would spell the end of the place some have called home for generations.

² U.S. Occupational Safety and Health Administration, “Grain Handling - Overview,” available at <https://www.osha.gov/grain-handling#:~:text=These%20hazards%20include%3A%20fires%20and,death%20in%20grain%20storage%20bins.>

³ *Id.*

modern Louisiana history, and the deadliest disaster to date in the nation's grain industry."⁴ Thirty-six people died in the Westwego explosion.⁵

In addition to the community's concerns about explosions, the sheer expanse of the facility with operations going 24/7 would bring additional heavy traffic and noise pollution. Not least, the grain terminal would exacerbate air pollution in a part of the Parish, already designated as having one of the highest risks of cancer in the country, and where Black residents are disproportionately affected. Grain dust itself has been shown to cause a host of respiratory problems, and exacerbate conditions like asthma.⁶ Making matters even worse, according to Kim Terrell, staff scientist at the Tulane Environmental Law Clinic, grain dust "can essentially be a vehicle for toxics to get deep into your lungs and into your blood stream."⁷

This too violates the stated purposes of the parish's zoning regulations set out in Sec. 113-3 -- and indeed its legal obligations -- to promote and protect "the public health, safety, convenience, order, prosperity, and general welfare of the community."

4. The project proposals and related permit and grant applications erased entire neighborhood streets from their maps.

Greenfield's application to the U.S. Army Corps of Engineers and Louisiana Department of Environmental Quality omitted two residential streets from its project map. Alexis Court and Bastian Court are streets that are home to Black families who have lived there for several generations. See Figure 7 below. Similarly, the Port of South Louisiana disregarded the homes, including the home and small business of one of the founders of the Descendants Project, as well as a historic cemetery, church, and slavery museum when it enveloped them within its "project site" in the application it submitted to the U.S. Department of Transportation when it sought funds to build a dock for Greenfield's use. See Figure 8 below.

The Parish Council, as a government entity accountable to the citizens of the Parish, bears responsibility and authority for land use in the Parish and for respecting, protecting, and fulfilling the rights of parish residents. The casual erasure and disregard of this historic community's streets and homes from Greenfield's application and the Port's maps is deeply troubling. It demonstrates the lack of respect these entities have for the people who would be most impacted by their projects and their rights to property, due process, equality and non-discrimination. The

⁴ Richard Campanella, *Westwego Continental Grain Elevator Explosion*, 64 Parishes, April 9, 2021, available at <https://64parishes.org/entry/westwego-continental-grain-elevator-explosion>.

⁵ *Id.*

⁶ See, e.g., Centers for Disease Control and Prevention, The National Institute for Occupational Safety and Health, Grain Dust: OSHA comments from January 19, 1989 Final Rule on Air Contaminants, <https://www.cdc.gov/niosh/pel88/graindst.html#:~:text=1%2D3%20and%20Rankin%20et.symptoms%20of%20chronic%20respiratory%20disease>.

⁷ John Burnett, Marisa Peñaloza, *Descendants of Slaves Say Proposed Grain Complex Will Destroy the Community*, National Public Radio, July 7, 2021, available at <https://www.npr.org/2021/07/07/1012609448/descendants-of-slaves-say-this-proposed-grain-factory-will-destroy-the-community>

Parish Council must step in and carry out its responsibility for protecting the residents in this neighborhood against this erasure.

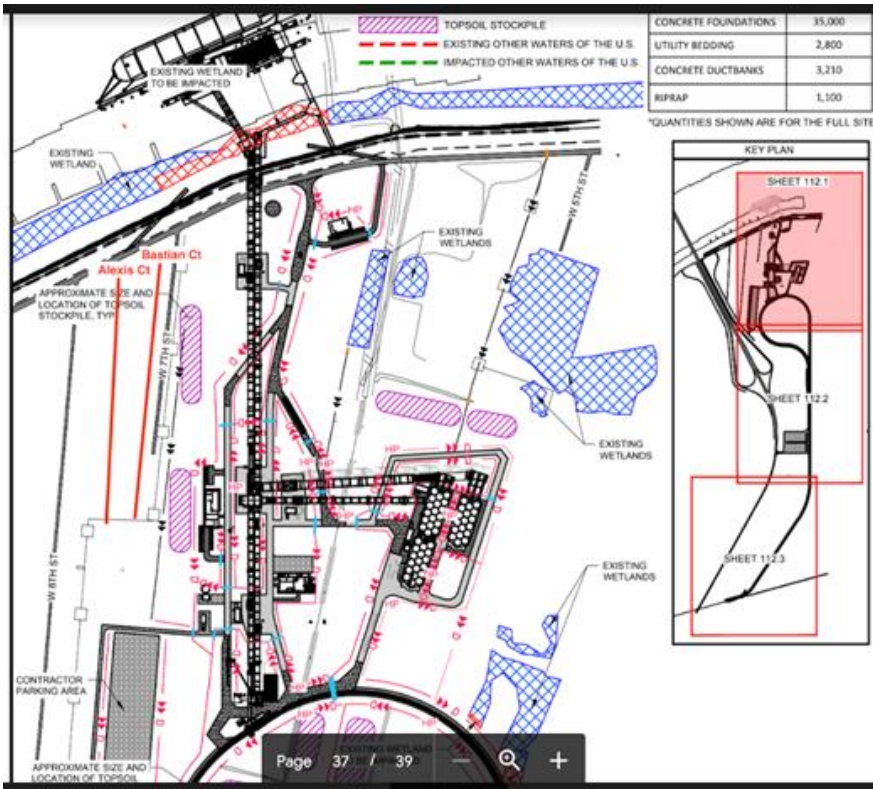


Figure 7: One of the maps submitted by Greenfield Louisiana LLC in its application for Water Quality Certification to the U.S. Army Corps of Engineers and Louisiana Department of Environmental Quality. The map omitted Alexis Court and Bastian Court, two streets that are home to a number of families, and which have been added here in red, courtesy of Jo Banner/The Descendants Project.

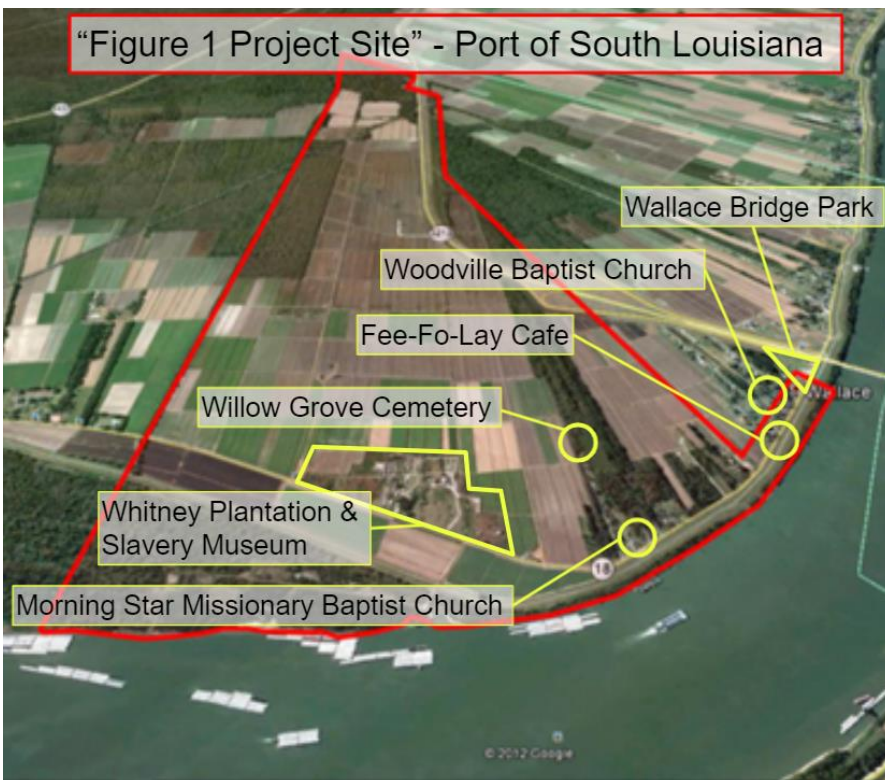


Figure 8: One of the maps submitted by the Port of South Louisiana for a grant from the U.S. Department of Transportation for funds to build a dock for Greenfield’s use. The “project site” encompasses dozens of homes, a significant cultural site, a cemetery, a public park and a locally-owned business and restaurant, which have been highlighted in yellow, courtesy of Justin Kray/Louisiana Bucket Brigade.

5. Burial sites of people once enslaved on the property would likely be impacted or destroyed.

The Descendants Project is deeply concerned about burial sites of people who were enslaved on the plantations that once operated on this site. Figure 9 is a map assembled by forensic researchers which shows a series of anomalies and the locations of sugar mills and outbuildings on the site.⁸ In the field of archaeology, particularly in this region, such anomalies often correspond to unmarked gravesites or other historic or cultural resources.

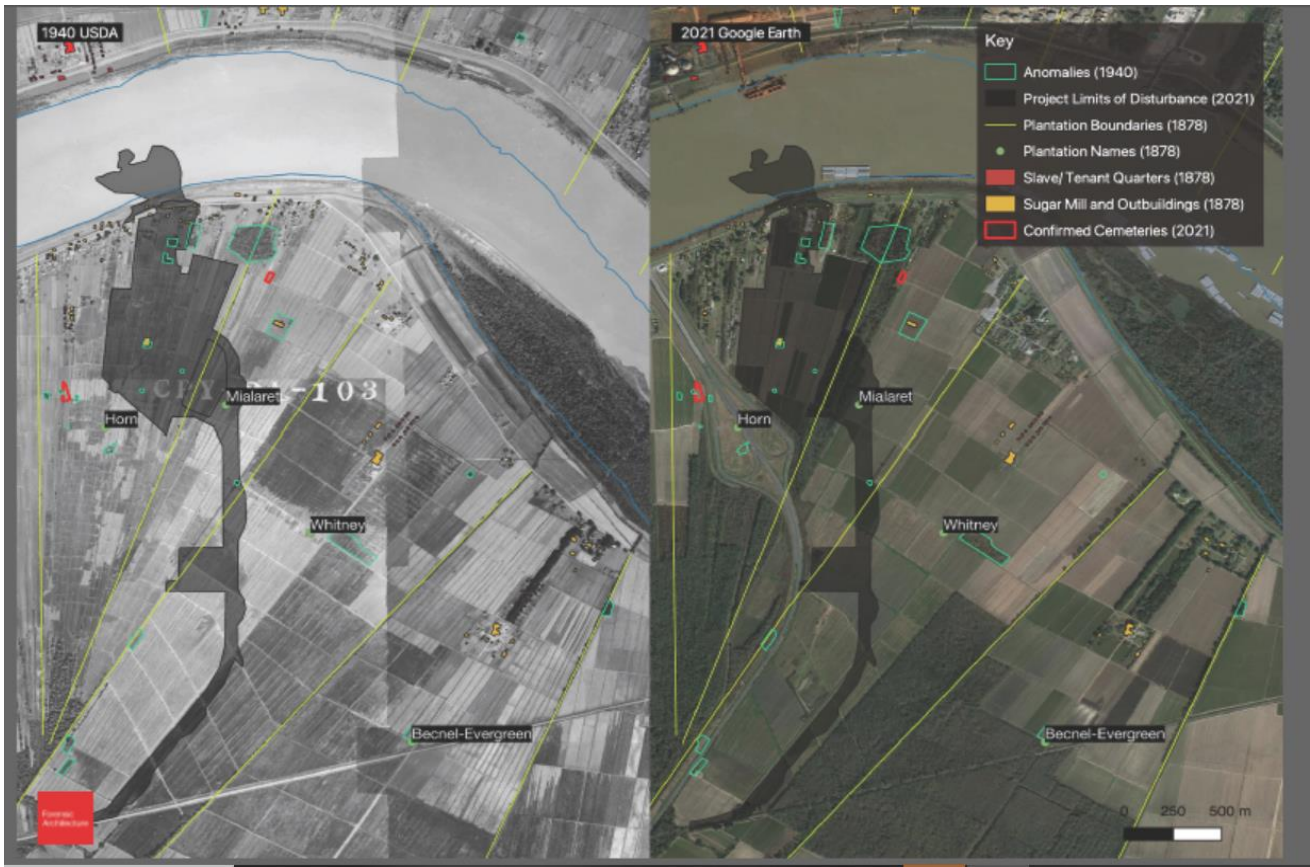


Figure 9: Anomalies on former plantations, some of which may correspond with burial sites of people once enslaved there. Courtesy Forensic Architecture.

The map shows that the project area spans what were once the Horn, Mialaret, and Whitney Plantations. Anomalies, as used by archaeologists, are “things that appear to be out-of-place in an archaeological setting typified by sugarcane fields,” such as a “small stand of trees in a plowed field [that] might be avoided because it contained headstones or was known to have been a

⁸ The map was assembled by Forensic Architecture, a research agency based at Goldsmiths, University of London, in consultation with an experienced archaeologist in Louisiana with expertise in the use of cartographic regression to identify probable historic sites, particularly unmarked burials in this area along the Mississippi River. Forensic Architecture is an internationally renowned research agency with expertise in investigating human rights violations, including environmental destruction, and developing and applying new evidentiary methods and complex multimedia spatial analyses. Forensic Architecture has worked with prominent international and non-governmental organizations such as the United Nations, the International Committee of the Red Cross, Amnesty International, Doctors Without Borders, and Human Rights Watch.

cemetery.” See, e.g., [Cartographic Regression Analysis of Certain Tracts of Land, Coastal Environments, Inc. 2020 at p. 7](#). Archaeologists identified anomalies on this site through careful analysis of historic maps, other historic records, and in this instance, combined with later obtained aerial imagery of the land.

There are unmarked burial sites of people who were enslaved all along this stretch of river where plantations once operated. As an organization founded by and for descendants of people enslaved on these plantations who had no choice in where and how they were buried and commemorated, the Descendants Project believes that this entire area is sacred and should be protected and preserved against destruction and disturbance, especially when the development proposed threatens both the remains of the community’s ancestors and the health of their living descendants. Given recent activity on the site, which involved heavy machinery and loud, violent soil testing, the Descendants Project is concerned that there may have already been damage done to possible unmarked cemeteries.

Cemetery dedication law in Louisiana is rooted in the recognition that “cemeteries are considered by most cultures to be sacred,” that we have “moral duties to the wishes of the dead” and that there is a “generally held sanctity for cemeteries.”⁹ For too much of our history, these notions did not and could not extend to the places where enslaved people were buried, and their descendants were deprived of these rites and rituals. This historical and moral breach is what makes the identification, location, protection, and preservation of unmarked burials more urgent for descendants.

The Louisiana Constitution protects the right of the people to preserve, foster, and promote their respective cultural origins. La. Const. Art. XII, Sec. 4. For the Descendants Project, such unmarked burial grounds, and indeed this entire region, are central to the acknowledgement and preservation of their cultural origins.

The Parish itself has benefitted for years from the promotion of plantations and associated tourism and events. Since 2001, St. John the Baptist Parish has allowed for the collection of millions of dollars from visiting tourists through a hotel/motel occupancy tax, with approximately 1 million of those funds being collected in the last five years alone. The parish council and administration has stood by as the River Parishes Tourist Commission, the recipient of these funds, created and promoted the region as “New Orleans Plantation Country,” a deeply problematic marketing strategy that highlighted the grand life of plantation sugar barons while disregarding the enslaved men, women, and children who were violently exploited to build and support this region.¹⁰ This terminology is still used by the River Parishes Tourist Commission¹¹

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

¹⁰ Brooke Robichaux, *Goodbye, New Orleans Plantation Country brand: Tourist Commission now promoting history, culture & flavor of “Louisiana’s River Parishes”*, L’Observateur (June 24, 2020), <https://www.lobserveur.com/2020/06/24/goodbye-new-orleans-plantation-country-brand-tourist-commission-now-promoting-history-culture-flavor-of-louisianas-river-parishes/>; Nick Reimann, *‘Plantation Country’ campaign in River Parishes stirs controversy over legacy of slavery*, NOLA.com (November 20, 2018), https://www.nola.com/news/article_f319ba53-d85a-5834-b94a-23db767055aa.html.

¹¹ See *Plantations*, Louisiana’s River Parishes, <https://lariverparishes.com/plantation/> (last accessed August 13, 2021) (under “Start Booking. Find the Resources You Need.” the website links to “New Orleans Plantation Country” along with “New Orleans Swamp Country,” “Andouille Trail,” and other links.)

as well as other tourism partners despite descendant pleas to the parish council for its discontinuation. Nevertheless, it has paid little attention to the existence of burial sites of people enslaved on plantations in the area, and has failed to address what these sites mean for descendants near and far. In coordination with descendant communities, the Parish Council and Historic Preservation Commission should take urgent steps to include the location, identification, preservation and commemoration of these critically important sites in the land use priorities of the Parish.

The Descendants Project is also concerned with the proximity of the site to Whitney Plantation Museum, the only plantation in the region and in the state with a focus on the life and labor of those enslaved in southeastern Louisiana. As our country struggles to reckon with the history and legacies of slavery, Whitney Plantation has become nationally and internationally renowned for its mission to educate visitors and the public at large about slavery.¹² Prior to the pandemic, more than 100,000 visitors came to Whitney annually. The dust, noise, and traffic from the grain elevator would interfere with this important cultural, historical, and educational resource, which has become an economic driver in the community. In addition, the construction and heavy operations could damage the 16 original structures on site including an 18th century main house and original slave cabins that are part of a National Historic District. Whitney Plantation also qualifies for National Landmark status.

Whitney Plantation Museum employs a number of local Black community members who descend from people enslaved at Whitney or nearby plantations. Despite the Covid-19 pandemic, Whitney Plantation Museum expects continued growth and success, and more employment opportunities for local residents at all levels of the organization. The grain operation would greatly detract from the tourism industry's ability to grow and diversify the economic base in St. John the Baptist Parish.

Given the enormous stakes involved for nearby residents, serious concerns about this proposed facility, and legality of the I-3 designation, we request the following:

- 1) That the Parish President, Director of Planning and Zoning, and/or Zoning Administrator issue a notice to all relevant parish departments and agencies that the I-3 designation for this area violates the distance requirements set out in the Code of Ordinances and that no building or related permits should be issued while this matter is pending;
- 2) That the Parish President, Director of Planning and Zoning, and/or Zoning Administrator issue a letter to the operator of the proposed facility stating the same;

¹² See e.g., David Amsden, *Building the First Slavery Museum*, N.Y. Times (February 26, 2015), <https://www.nytimes.com/2015/03/01/magazine/building-the-first-slave-museum-in-america.html>; *Whitney Heritage Plantation*, International Coalition of Sites of Conscience, last accessed August 10, 2021, <https://www.sitesofconscience.org/en/membership/whitney-heritage-plantation/>; Jared Keller, *Inside America's Auschwitz*, Smithsonian Magazine (April 4, 2016), <https://www.smithsonianmag.com/history/inside-americas-auschwitz-180958647/>; . Most recently, Whitney Plantation was highlighted in an entire chapter of Clint Smith's recent New York Times Best Seller, *How the Word Is Passed*, see Hope Wabuke, 'How The Word Is Passed' Teaches The Importance Of Reckoning With History, NPR (June 2, 2021), <https://www.npr.org/2021/06/02/1002027683/how-the-word-is-passed-teaches-the-importance-of-reckoning-with-history>.

- 3) A Zoning Verification Letter from the Director of Planning and Zoning addressing: a) the issue of the I-3 designation for this area and the distance requirements, and the process by which this area came to be designated I-3; and b) the residential zones that would be impacted by the proposed grain elevator.
- 4) That the issue of the proposed grain elevator, and the I-3 designation be placed on the agenda of the next Parish Council Meeting;
- 5) That the issue of the burial sites of people once enslaved on plantations in the parish be placed on the agendas of Planning Commission and Parish Council meetings slated for October 2021.
- 6) A meeting with the Historic Preservation Commission to address a) the potential negative impacts of industrial development on historic sites, including damage to their structures, facades, and landscapes; and b) the investigation, identification, and commemoration of burial sites of people enslaved on the plantations in the Parish.

In light of the urgency of these apparent zoning violations and the community’s growing concerns, we ask for your responses by August 31, 2021. We thank you for your immediate attention, and look forward to working with you toward a just conclusion to this matter.

Sincerely,



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LOUISIANA TRUST
for HISTORIC PRESERVATION

FOR IMMEDIATE RELEASE

June 21, 2022

2022 LIST OF LOUISIANA'S MOST ENDANGERED PLACES ANNOUNCED

Baton Rouge, LA - Louisiana is known for its rich history and cultural diversity. Louisiana's historic sites represent the past, but often these sites become neglected, abandoned, or ultimately demolished. The Louisiana Trust for Historic Preservation works statewide to help identify and advocate for our state's historic places. The organization announced **14 new additions to the Louisiana's Most Endangered Places List**. Since 1999, LTHP has maintained this growing list. Many sites have been saved while others remain stagnant. LTHP encourages creative approaches and valuable tools such as the National Register of Historic Places or state and federal tax credits to help save these endangered places.

This year's list represents a mix of sites ranging from rural schools, hurricane impacted areas, Civil Rights history, and more. Listing these places acknowledges their importance to the local community but also our statewide identity and economy.

The list is generated from nominations made by the public and aims to attract creative approaches and resources to see the sites saved and rehabilitated for future generations. Brian Davis, LTHP Executive Director said, "Getting a property added to the Louisiana's Most Endangered Places List can be a useful tool in the effort to save an important part of a community's history. It reinforces the significance of the site and the urgency for action, when applying for a grant or garnering support from the local community. It also increases the commitment of the Louisiana Trust and its resources in seeing a positive outcome for the site."

Selections to Louisiana's Most Endangered Places List are based on their historic significance; the critical nature of their threat; and the likelihood to bring about a positive resolution to their situation or to those of similar sites. More information about the program, including nomination form, and a complete list of sites may be found at <https://www.lthp.org/most-endangered/>.

2022 Additions to Louisiana's Most Endangered Places List:

Alphabetical by Parish

Grave Houses at Istre Cemetery (Morse, Acadia Parish, c. 1900) - Out of the forty that existed, only three historic grave houses remain in this cemetery. Due to this rare and unusual burial tradition, the cemetery was placed on the National Register of Historic Places in 2008. The grave houses have been the subject of a book and a documentary in an attempt to raise awareness of the site. A skilled caretaker and restoration plan are needed to keep the remaining houses standing.

Hamburg Post Office/General Store (Hamburg, Avoyelles Parish, 1830s) - The site was originally the Hamburg commissary, an ancillary structure of Calliham Plantation. The Post Office opened in 1888 and the building remained in the same family for 8 generations. The front of the building was modernized with bricks in the 1950s/1960s. The building has remained vacant since a fire in 2000. It was the inspiration for creating the new Bayou des Glaises Cultural District.

Shreveport Friendship House (Shreveport, Caddo Parish, 1905) - This simple frame structure was built around 1905 but is significant as the only Friendship House established in the South. Friendship House was a national organization and an element of the social justice movement of the mid-20th century advocating for integration without regard to race or religion. This Friendship House was associated with Father Joseph Gremillion who founded and served as a pastor of St. Joseph Parish in Shreveport, 1949-1958. He later took an academic role at the University of Notre Dame. The Shreveport Friendship closed July 31, 1955 after less than 2 years in operation.

Woolworth Building (Shreveport, Caddo Parish, c. 1908) - The F.W. Woolworth Dept Store occupied this building for much of the 20th century. It had several remodels and even a mid-century facade update (since removed). It is home to Louisiana's oldest operating escalator. It was last remodeled in the 1990s. The building currently sits vacant and suffers from demolition by neglect along Shreveport's main business corridor.

Grand Avenue High School Gym (Dequincy, Calcasieu Parish, 1955) - Built in the mid-1950s, this gymnasium was built to accommodate students of the DeQuincy Colored School (both elementary and high school aged). Physical education classes were held outside before this gym was built. It hosted basketball games, sports tournaments, proms, graduations, high school plays, and much more. It is the site of one of the highest recorded scores for a high school basketball game. The rest of the school buildings were demolished in 1990 but the surviving gym was listed on the National Register in 2017. Severe damage occurred to the structure in 2020. Active alumni hope to save the site for community orientated space for educational purposes or even a disaster relief and staging center.

Palace Theater (Jonesboro, Jackson Parish, 1925) - This entertainment venue was built in 1925 and was updated to its current style of Art Deco (and some Spanish Colonial Revival) shortly after in the 1930s when stucco was applied to its facade. It became a popular gathering space for this rural north central Louisiana community. Entrances and seating were segregated by its original design. In 1965, the theater and two nearby restaurants were sued by the US Attorney General for refusing black patrons. It has been vacant for decades, but the Greater North Louisiana Community Development Corporation hopes to return it back to an entertainment attraction again. They are actively fundraising to make major renovations to the National Register landmark.

11 Mile Stretch (West Bank of St. John the Baptist Parish) - This area was settled in 1724, often known as the Second German Coast. It is the cradle of the Creole Culture of

Louisiana. Its unique history has been preserved through its agriculture, rural landscape, and cultural resources that has attracted thousands of annual tourists. Plans for a large-scale grain elevator, port and other industrial development will change this corridor's historic integrity and destroy the overall quality of life for local residents.

San Francisco Plantation (Garyville, St. John the Baptist Parish, 1856) - Among the many surviving plantations along River Road, San Francisco has one of the most ornate and opulent architectural styles often referred to as "Steamboat Gothic" in publications. It was designated a National Historic Landmark in 1974.

Public tours ended permanently in September 2021. Concerns for its future include if the property would be relocated or allowed to deteriorate as the surrounding industry expands.

Baldwin School (Baldwin, St. Mary Parish, 1939) - This one-story school building opened in 1939 near Bayou Teche. It is a simple design constructed of standard cinder block with several windows in each classroom. This school housed students from grades 1-7 until a new school was built in late 1990s. The new vision for the school is to convert it to the Baldwin Town Hall with the town's post office and community space connecting it to the town's fire station located directly behind the former school building.

Daigleville Indian School (Houma, Terrebonne Parish, 1937) - This Neo-Classical style building represents the tripartite system of segregated education that existed in Terrebonne and Lafourche Parishes when Native American were excluded from white and Black schools. Houma Nation students continued to attend the school following desegregation in the 1960s. The United Houma Nation is working to acquire the property from the Terrebonne Parish School Board as well as repair damage from Hurricane Ida. It was listed on the National Register in 2020.

Trappers Store (Theriot, Terrebonne Parish, 1900) - This structure was built by John A. Marmande to serve the needs of the lower Dularge community and its seasonal population of fur trappers. It features original cypress construction. It later went on to become a general store and post office station. Today it sits vacant and exposed to the elements since Hurricane Ida with concerns of its longevity.

Sikes High School (Sikes, Winn Parish, 1929) - This school replaced an earlier one-room schoolhouse when it was completed in 1929. It took only four months to build at about \$40,000. Both the elementary school and high schools closed in late 1980s and have sat vacant ever since. The Sikes Wolf Creek Handicraft Guild and local Council on Aging are partnering to find ways to save this school. It needs major renovation and fundraising to restore it to a functional condition.

Winnfield Intermediate School (Winnfield, Winn Parish, 1928) - Originally built as the Winnfield High School, this educational landmark was constructed in 1928. It was designed by Herman J. Duncan and constructed by Tudor & Ratcliff, both of

Alexandria. Much of Winnfield's historic fabric has been lost and this school has become one of the last notable landmarks standing. Other modern schools have been built nearby and the last classes were held here in 2018. A building and community assessment are needed to determine its condition and potential new uses.

Louisiana Original Rosenwald School Buildings (Statewide, 1920-32) - In the early 20th century, Booker T. Washington saw the lack of adequate school facilities in rural areas of the South and proposed an affordable and efficient model. He gained the financial support of Julius Rosenwald, Jewish philanthropist and president of Sears, Roebuck and Co. Between 1920 and 1932, approximately 388 Rosenwald School buildings and 31 teachers residences were constructed in Louisiana. Some were used until the educational system in Louisiana was desegregated in 1971. The Louisiana Trust for Historic Preservation has been researching and documenting the status of remaining schools. As of today, 18 schools and 2 teacher residences are still standing - all in various conditions. These schools can be adapted into new uses and interpreted as a significant part of our state's history.

The Louisiana Trust for Historic Preservation was founded in 1979 and works in all 64 parishes to advocate, promote and preserve historic places representing our diverse culture. It is a 501(c)3 non-profit organization and for more information, visit LTHP.org or follow on Facebook ([@LTHPPreservation](https://www.facebook.com/LTHPPreservation)) and Instagram ([@LouisianaTrust](https://www.instagram.com/LouisianaTrust)).

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For photos and additional information, please contact Brian Davis, LTHP Executive Director, at 318.267.5220 or bdavis@lthp.org

Photo credits: Louisiana Trust for Historic Preservation



**National Trust for
Historic Preservation**
Save the past. Enrich the future.

December 29, 2021

U.S. Army Corps of Engineers New Orleans District
Regulatory Division (REG-E)
7400 Leake Avenue
New Orleans, Louisiana 70118

via email to: scott.n.kennedy@usace.army.mil

*Re: Greenfield Louisiana Terminal, Wallace, LA
Permit Application MVN 2014-01518-2 EMM*

Mr. Kennedy:

The National Trust for Historic Preservation has reviewed the public notice issued on November 29, 2021 by the U.S. Army Corps of Engineers (Army Corps) for Permit Application MVN 2014-01518-2 EMM. The applied-for permit would facilitate the construction of the Greenfield Louisiana Terminal in Wallace, LA, a proposal that includes construction of a 275-foot-tall grain elevator, a new rail line, and other associated infrastructure. The National Trust is concerned that the project location is directly adjacent to the Whitney Plantation, a historic site listed in the National Register of Historic Places (National Register) and also in the immediate vicinity of Evergreen Plantation, a National Historic Landmark. Both sites are nationally significant, with high levels of public visitation, and the permitting of the proposed project would result in substantial adverse effects to both sites. The National Trust, therefore, requests to **participate in this Section 106 review process as a “consulting party” pursuant to 36 C.F.R. § 800.2(c)(5) and 800.3(f)(3).**

The National Trust is a private nonprofit organization chartered by Congress in **1949 to “facilitate public participation” in the preservation of our nation's heritage, and to** further the historic preservation policy of the United States. 54 U.S.C. § 312102. With more than one million members and supporters around the country, the National Trust works to protect significant places representing our diverse cultural experience by taking direct action and inspiring broad public support. In addition, the National Trust has been designated by Congress as a member of the Advisory Council on Historic Preservation (ACHP), which is responsible for working with federal agencies to implement compliance with Section 106 of the National Historic Preservation Act (NHPA). *Id.* § 304101(8), 304108(a). The National Trust also owns the historic site, Shadows-on-the-Teche, which is open for public visitation in New Iberia, Louisiana.

The nature of the historical significance of Whitney and Evergreen Plantations is **at the core of the National Trust’s concerns about the proposed Greenfield Louisiana Terminal.** Both sites interpret the experience of the enslaved persons who lived there, and both sites rely on the relationship of their built environments to the landscape to tell the full American story. The majority of the viewsheds from both plantations currently consist of agricultural fields, some under continuous cultivation since the 18th century, that were the workplaces of the enslaved persons who were housed at the plantations. The

intrusion of large-scale, modern industrial development into those viewsheds would inexorably compromise, and directly adversely effect, the ability of these sites to communicate the experience of the enslaved persons who lived and worked there.

The disruption of both sites' settings and surrounding landscapes would result in an adverse effect as defined under Section 106 of the NHPA, 36 C.F.R. § 800.5(a). The large-scale visual intrusions of the proposed project, as well as its other direct, indirect, and cumulative impacts on these historic properties, are of great concern to the National Trust. Further, the footprint of the proposed project has a substantial likelihood of disturbing significant archaeological resources, as it was historically part of the Whitney

Parish has been designated by the State of Louisiana as the River Road Cultural District, including portions of the proposed project footprint, and the area has also been designated as the River Road Historic District by the St. John the Baptist Parish Council. These designations recognize that this area is of immense historic significance and is a destination for tourism, and that its uninterrupted historic use is reflected in many historic resources, both known and yet undiscovered.

The goal of the Section 106 consultation is to “develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties.” 36 C.F.R. § 800.6(a). This needs to include consideration of alternative sites for the industrial development that would avoid or minimize harm to these historic places.

The assessment of adverse effects must include “cumulative” effects, 36 C.F.R. § 800.5(a)(1), and we appreciate the Army Corps' explicit commitment on page 2 of the public notice to include cumulative effects as a part of its public interest review for this permit application. The potential effects include “reasonably foreseeable effects caused by the undertaking that may occur later in time, [or] be farther removed in distance,” *id.* The Army Corps' plan to include “considerations of property ownership” as a component of the cumulative effects analysis is especially critical. We believe this proposed project would have the reasonably foreseeable effect of causing widespread industrialization of this historic and nationally significant section of the Mississippi River corridor, both within the larger property owned by Greenfield Louisiana LLC, and as the owners of other historic plantations nearby would find preservation increasingly unsustainable financially, and would be bought out by industry. In addition, this proposed project would have very predictable adverse effects on tourism, which must be addressed.

The proposed project would also have disproportionate adverse environmental impacts on disadvantaged minority and low-income communities, in violation of federal environmental justice policies. Executive Order 12898, 59 Fed. Reg. 7629 (Feb. 16, 1994).

Taken together, these potential adverse impacts call for the preparation of a full Environmental Impact Statement under the National Environmental Policy Act.

As the Army Corps moves forward to initiate Section 106 consultation, it will also be important to ensure compliance with Section 110(f) of the NHPA, which requires that, prior to approving any project that may directly and adversely affect a National Historic Landmark (e.g., Evergreen Plantation), the Army Corps **must “to the maximum extent possible undertake such planning and actions as may be necessary to minimize harm to the landmark.” 54 U.S.C. § 306107. In addition, the Army Corps must specifically invite the ACHP and the National Park Service to participate in the consultation. 36 C.F.R. § 800.10(b)-(c).**

We appreciate your consideration of our request to participate as a consulting party in the Section 106 review of this project, and we look forward to working with the Army Corps towards a positive outcome by exploring the consideration of less harmful alternatives. Please include the following contacts in your distribution lists for notices of meetings and for the circulation of any documents for comment:

Chris Cody, Associate General Counsel, ccody@savingplaces.org,
Anne Nelson, Senior Associate General Counsel, anelson@savingplaces.org, and
Elizabeth Merritt, Deputy General Counsel, emerritt@savingplaces.org.

Very truly yours,



Associate General Counsel



Anne E. Nelson
Senior Associate General Counsel

cc: Jaime A. Pinkham, Federal Preservation Officer, U.S. Army Corps of Engineers
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