



Tulane Environmental Law Clinic

August 16, 2021

**Via Email to:** [thomas.harris@la.gov](mailto:thomas.harris@la.gov) and U.S. Mail

Thomas Harris, Secretary  
State of Louisiana  
Department of Natural Resources  
Office of the Secretary  
617 N. Third Street  
Lasalle Building  
Baton Rouge, LA 70802

Re: Petition for Reconsideration of LDNR Decision on Greenfield Terminal Project in St. John the Baptist Parish; Coastal Use Permit Application No. 20201021

Dear Secretary Harris,

Pursuant to Section 49:214.35(B) of Louisiana's State and Local Coastal Resources Management Act, and on behalf of Ms. Jocyntia Banner, a St. John the Baptist Parish resident; Stop the Wallace Grain Terminal, a St. John-based community group; Concerned Citizens of St. John; and the Louisiana Bucket Brigade, with members in St. John (collectively "St. John residents"), we submit this petition requesting that you reconsider the August 9, 2021, Louisiana Department of Natural Resources (LDNR) decision to authorize the proposal by Greenfield, Louisiana, LLC ("Greenfield") to construct and operate a grain terminal in the coastal zone in St. John the Baptist Parish, Wallace, Louisiana ("Greenfield Terminal Project" or "Project").

LDNR should reconsider the decision to authorize the Project because issues not previously considered, through no fault of the petitioners, ought to be examined; the decision is clearly contrary to the law and evidence; and there exist other good grounds for further consideration of the issues and the evidence in the public interest. Of primary importance is LDNR's unconscionable intentional choice, in conformance with Greenfield's priorities, to leave the public entirely out of its permitting process. Nowhere in LDNR's publicly accessible files does LDNR provide evidence of a public notice, and St. John residents have never seen one. Not only does LDNR's failure to publicly notice the Project violate the agency's constitutional duty as trustee for the public – the Wallace community – to protect their coastal zone environment, but it is prohibited under mandatory coastal use permit procedures that require LDNR to publicly notice, and accept comment on, coastal use permit applications.

Tulane Environmental Law Clinic

6329 Freret St., Ste. 130, New Orleans, LA 70118-6231 tel/504.865.5789 fax 504.862.8721 www.tulane.edu/~telc

LDNR's Office of Coastal Management (OCM) intentionally left the affected public entirely out of its decision-making, despite the fact that Greenfield's proposed grain terminal would change the face of Wallace, a majority African American rural community with a strong cultural heritage tie to the land. Indeed, Greenfield would place its Project – with its massive silos and other structures hundreds of feet high – in a cultural landscape that may hold unmarked gravesites of enslaved people and other historic and cultural resources. The community already suffers from a disproportionate share of industrial air pollution. In this context, LDNR's decision to authorize this Project without input from the affected public implicates environmental justice responsibilities and Title VI of the Civil Rights Act.

St. John residents request that the Secretary grant the petition, rescind the August 9, 2021, authorization, order a public comment period and public hearing on Greenfield's application, and issue a new decision denying Greenfield's application. Giving the people of Wallace an opportunity to provide input to LDNR, particularly on its determination that the Greenfield proposal would have “no direct and significant impact” (NDSI), is the very least a Louisiana state agency with a constitutional duty as public trustee should do when deciding to cast its people literally in the shadows of an industrial coastal use for generations to come.

The issues posed by this proposed use are significant and form a compelling basis for LDNR to reconsider authorizing the Greenfield Terminal Project:

1. LDNR violated its regulations and abdicated its public trustee role, including its duty to evaluate environmental justice issues, by shutting the people out of its decision-making.
2. LDNR's decision violates its public trustee duties and Title VI of the Civil Rights Act.
3. LDNR did not adequately analyze alternative sites and alternative projects or conduct an appropriate cost-benefit analysis on this non-coastal dependent use and in light of the proximity to the Wallace community.

Pursuant to La. R.S. § 49:214.35(C), we additionally request that you issue an immediate stay of the August 9, 2021, authorization of the Project until the final disposition of this petition. A stay is particularly appropriate here due to the exclusion of the public from the proceedings leading to the authorization.

## **I. Factual Background**

The proposed Greenfield Terminal Project would be massive, encompassing 36 storage silos, a dock, numerous conveyors and towers, a railroad spur, and various other components that cover approximately 250 acres. Many features are between 200 and 300 feet high, and would tower over the landscape. The proposed site is within the community of Wallace, Louisiana, with active grain terminal operations proposed for the northwestern portion of the property – less than 200 feet from Wallace homes and businesses, essentially as near to the people of Wallace as they can be. Exhibit A (June 4, 2021, application site map).

Despite the substantive nature of this proposed use, and coastal use permit statutory and regulatory requirements, OCM issued no public notice of Greenfield's application and provided no public comment period or public hearing. OCM's ultimate decision to keep the people in the dark on this Project is contradicted by its prior recognition that the Project would need to be publicly noticed. In January 2021 OCM is on record expressing its immediate intent to publicly notice Greenfield's application for comment. Exhibit B at 2. Greenfield's consultant at Ramboll responded with a request that OCM "hold" the public notice, explaining that Greenfield has "been sensitive about going overtly public with this project." Ex. B at 1. OCM agreed to hold off. *Id.* In February 2021 on behalf of Greenfield, Ramboll reiterated its request to OCM that the public notice remain on hold pending revisions in the application, but still it remained clear that the application would have to be publicly noticed. Exhibit C (Ramboll email stating that "[i]t'll likely be a few weeks or more before we can . . . move ahead with going out to notice."). Six months later, without any explanation for its reversal of course on public notice, OCM authorized the project, never having provided public notice.<sup>1</sup>

OCM's failure to provide notice and a comment period or public hearing compounds an additional breach of required procedure by Greenfield in which it omitted mailing notice of its plans – required by the coastal use permitting procedures – to certain adjacent property owners. See OCM Coastal User's Guide, available at <https://data.dnr.la.gov/LCP/LCPHANDBOOK/FinalUsersGuide.pdf>, at V-2. Its most recent CUP application, dated July 23, 2021, lists the adjacent landowners Greenfield notified of its plans. Noticeably missing are adjacent property owners Jocyntia Banner, 5593 Hwy. 18, Vacherie (between Bastian Ct. and Alexis Ct.) and William Banner, 157 Alexis Ct., Vacherie. These properties are located immediately adjacent to the northwestern border of Greenfield's proposal, as marked on the attached map. Exhibit E; see also Exhibit F, in globo (St. John the Baptist property records). They are closer to the proposed site than some of the addresses on Greenfield's list of mailed notices. This failure means Greenfield's application was not complete, and OCM should rescind the authorization to require Greenfield to provide proper notice to these landowners, as well as requiring Greenfield to explain how it omitted landowners known to be opposed to its project.

Remarkably, in its consideration of the proposal, OCM entirely disregarded the community the proposal would affect, and the facility's proposed proximity to people. OCM's August 6, 2021, Basis for Decision is entirely boilerplate, reflecting no independent consideration of the potential and real adverse environmental impacts of the project – on the coastal zone, the environment in general, or the people. Exhibit G (Basis of Decision). Similarly,

---

<sup>1</sup> On August 5, OCM issued a "Basic Findings and Guideline Conformance Checklist" for the Project that designated the Notice Type as "None," and stated "No Notice Required." Exhibit D ("GL Checklist"). Without explanation, the checklist indicates that the project scope is "Minor" rather than Major. The designation of "minor" appears to be inappropriate per the instructions, as they provide: "The following activities are defined as **MINOR**. Check appropriate description. If not listed, activity is considered **MAJOR**." OCM did not check off any of the "minor" activities listed and, indeed, Greenfield's operation does not fit any of the listed categories.

OCM's checkbox findings that the Project conforms with the Coastal Use Guidelines show no actual consideration of any facts, and certainly not of the people of Wallace.

Wallace is located on property of the former Horn, Mialaret, and Whitney Plantations. The Whitney Plantation museum – a one-of-a-kind museum in Louisiana with an exclusive focus on the lives of enslaved people – is less than half-a-mile from the proposed Project site. The Whitney Plantation is on the National Register of Historic Places and Louisiana's African American Heritage Trail.

Importantly, research by forensic architects has revealed anomalies on the proposed Project site that may well represent unmarked burial grounds of people enslaved on the former plantations. Attached as Exhibit H is a map created by Forensic Architecture that marks the location of the anomalies as well as other cultural resources and historical artifacts like sugar mills and outbuildings on the site.

In short, the land Greenfield proposes for its grain terminal is a cultural resource highly valued by the Wallace community as part of the history. LDNR chose to hear nothing about this impact.

## **II. LDNR violated its regulations, abdicated its public trustee role and ran afoul of environmental justice obligations by shutting the people out of its decision-making.**

LDNR's failure to publicly notice Greenfield's application violated both the statutes and the regulations governing its administration of the coastal zone management program, which mandate that LDNR publicly notice applications for uses in the coastal zone to allow people to comment before the agency. La. R.S. § 49:214.30(C)(2)(a) provides: "Within ten days of receipt of a coastal use permit application by the secretary . . . public notice shall be given." *See also* La. Admin. Code tit. 43, pt. I, § 723(C)(5). That notice must inform the public of their right to file comments within 25 days. *Id.* at § 723(C)(5)(c)(v). In comments, the commentor can request a public hearing. *Id.* at § 723(C)(6)(b). LDNR did not publicly notice Greenfield's application, even after deeming it complete.<sup>2</sup> LDNR appears to have been poised to follow the law requiring public notice, having found the application complete, until Greenfield, through its consultant, Ramboll, pushed back on "going overtly public" with the project. Ex. B at 1; *see also* Exhibit I (Jan. 8, 2021, LDNR determination of complete application packet).

---

<sup>2</sup> St. John residents note that LDNR's database reflects one "comment," from Healthy Gulf's Scott Eustis. Contacted on his submission, Mr. Eustis verified that he saw no public notice, and discovered the Greenfield proposal "hidden on the LDNR SONRIS maps with no public notification," after being asked by residents hearing of the project for help in protecting local businesses and cultural resources. He feared the agency would not publicly notice the project, and there would be no way to alert the residents "that the evaluation was moving forward, despite the danger to the local economy, jobs, history, cultural resources, and people's lung health, so I was moved to file an objection that the department conduct an analysis as pertinent to new Port facilities." August 12, 2021, email from Scott Eustis, on file with author.

This violation alone mandates that the Secretary grant the petition for reconsideration and comply with its governing statute. Beyond its statutory and regulatory obligations, though, LDNR's denial of process to the majority African American affected community of Wallace violates its public trust duties and Title VI of the Civil Rights Act.

In its role overseeing uses in the coastal zone, OCM acts as the trustee for the people of the coastal zone, and in that role it has a constitutional responsibility to:

act with diligence, fairness and faithfulness to protect this particular public interest in the resources. . . . [T]he [agency's] role as the representative of the public interest does not permit it to act as an umpire passively calling balls and strikes for adversaries appearing before it; the rights of the public must receive active and affirmative protection . . . .

*Save Ourselves, Inc. v. La. Env'tl. Control Comm'n*, 452 So. 2d 1152, 1157 (La. 1984). This duty includes the need to "fully minimize[ ] adverse environmental effects" by considering "whether alternate projects, alternate sites, or mitigative measures would offer more protection for the environment than the project as proposed without unduly curtailing non-environmental benefits." *Id.* That environment, of course, includes the human environment. *See* National Environmental Policy Act (NEPA), 42 U.S.C. § 4332(C); *see also* *Save Ourselves*, 452 So. 2d at 1157 (noting the influence of NEPA and citing NEPA caselaw).

Concomitant with its public trust duties is LDNR's duties to address environmental justice issues. The Environmental Protection Agency (EPA) defines environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulation, and policies."<sup>3</sup> According to the EPA, meaningful involvement means that: "(1) potentially affected community members have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decisionmaking process; and (4) the decision makers seek out and facilitate the involvement of those potentially affected."<sup>4</sup>

Not only did LDNR do none of those things for the Wallace community or the public at large with respect to the Greenfield Grain Terminal proposal, it actively undermined the potentially affected community's ability to be meaningfully involved by disregarding even its own minimal public involvement requirements. LDNR must now remedy this injustice by rescinding its authorization and granting a public hearing on Greenfield's proposal, as well as providing clear information to the public.

---

<sup>3</sup> <https://www.epa.gov/environmentaljustice>

<sup>4</sup> EPA, Plan EJ 2014 at 3, available at <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100DFCQ.PDF?Dockkey=P100DFCQ.PDF>.

**III. LDNR did not adequately analyze alternative sites and alternative projects or conduct an appropriate cost-benefit analysis on this non-coastal dependent use and in light of the proximity to the overburdened Wallace community.**

LDNR's constitutional duty requires it to affirmatively investigate alternative sites, costs, and benefits, and to analyze and discuss the potential and real adverse environmental impacts of the proposed project and determine that they have been avoided to the maximum extent possible. *Save Ourselves*, 452 So. 2d at 1157. LDNR's summary of these considerations was entirely boilerplate, reflecting no independent consideration. Ex. G at 2. Further, though Greenfield submitted a Needs, Alternatives, and Justification Analysis (NAJA) that purported to analyze these factors, Greenfield's submission ignored the effects of its project on the Wallace community and the cultural landscape it would destroy. Indeed, its analysis ignored the entire existence of the Wallace community, much like its dozens of application maps and drawings, where it is hard to even find evidence of the streets that border, and run directly through, the site. Greenfield discussed benefits – like jobs (that may just as easily go to Texas or other non-Louisiana residents) and other economic benefits whose recipients are unclear – but entirely ignored every potential and real cost of its project on Wallace.<sup>5</sup>

Neither OCM nor Greenfield acknowledged even the most obvious of impacts – the sheer proximity of this industrial operation to where people in this community live, work, and recreate. The facility butts directly up against Wallace homes and properties – so close that it appears to violate the St. John the Baptist Parish buffer zone requirements. There are a number of residential dwellings concentrated well within 2,000 feet of the site; in fact, some appear as close as 200 feet. Compare Exhibit J (Google map image) with Ex. A (application site map). And this encroaching portion of the Project is an operational portion of the site. Sec. 113-410(1)(b) of the St. John Code of Ordinances states: “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.”

OCM raised no concerns, and does not appear to have even noticed, how near to people this Project would be. Yet this should be a key aspect of an alternative sites analysis – is there an alternative site that could allow some distance between the industrial operations and where people live? This distance is critical both as to definite impacts – such as air and noise pollution, aesthetic harm, permanent loss of a cultural landscape – and potential impacts, such as explosions. The Project's proposed location right on top of the Wallace community means that an explosion at the facility significantly threatens lives and hard-earned property.

Explosions are common, well-known hazards from any grain elevator. *See, e.g.*, <https://engineering.purdue.edu/FFP/research/dust-explosions> (“Our research has shown that grain

---

<sup>5</sup> In drastic contradiction to its documented efforts to keep its project plans out of the public eye, in its NAJA Greenfield also touted its “plans to become heavily involved in the local community.”

dust explosions have been occurring at a constant rate in the US over the past decade.”); [https://engineering.purdue.edu/FFP/research/dust-explosions/2020\\_Grain\\_Dust\\_Explosions.pdf](https://engineering.purdue.edu/FFP/research/dust-explosions/2020_Grain_Dust_Explosions.pdf) (providing figures for 2020 grain dust explosions in the U.S. as: “There were 8 grain dust explosions reported in the U.S. in 2020 . . . . This compares to 8 in 2019 and a ten-year average of 8.1 explosions.”). LDNR did not consider this potential impact, particularly in light of how close the Project would be to Wallace residents and valuable cultural resources like the Whitney Plantation.

Similarly, an alternative sites analysis must ask whether there is an alternative to destroying a cultural landscape and simultaneously subjecting the people who would lose this invaluable resource to noise and air pollution, on top of the disproportionate health risk they already face. Here, OCM must consider the effect of this proposal on the people on top of whom Greenfield chose to locate its project: the Wallace community. The video linked here, of a land blessing in Wallace, depicts some of the members of that community and their dedication to protecting their environment and their heritage: <https://www.youtube.com/watch?v=gkLu1ImP0eM>. As the video notes, the site may contain unmarked burial grounds for enslaved people. In fact, these sites are not only important to preserve in honor of the lineages of the Wallace descendants of enslaved people, but are also important to the economic success of community members. The histories of Black and Indigenous peoples in this region provide opportunities for funding new businesses, jobs, and programs around historic preservation, heritage tourism, and agritourism to stimulate the local economy.

Not only does LDNR’s constitutional duty require consideration of the impacts of the Project on the Wallace community’s history and cultural landscape, but the Coastal Zone Management Act, from which LDNR gets its authority to allow this Project, mandates these types of considerations. Congress provided that economic development is not the only, or even main, goal of the program: “[I]t is the national policy-- to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values . . . .” 16 U.S.C. § 1452(2).

Environmental justice’s fair treatment imperative means that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”<sup>6</sup> According to EPA’s EJSCREEN database, the community of Wallace, without the grain terminal, is already disproportionately impacted by industrial air pollutant emissions. Attached as Exhibit K is an EJSCREEN report for Wallace. It reflects that Wallace is at the 99th percentile for cancer risk from air toxics, and 85th percentile for respiratory hazard health impacts. OCM must consider that the Greenfield operation would

---

<sup>6</sup> EPA, Plan EJ 2014 at 3, available at <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100DFCQ.PDF?Dockey=P100DFCQ.PDF>.

add to the very same health hazard Wallace is already disproportionately impacted with, because it would emit grain dust.

The EJSCREEN report also reflects that Wallace is composed of 73% people of color, implicating Title VI of the Civil Rights Act. Title VI of the Civil Rights Act of 1964 prohibits recipients of federal funds from discriminating against individuals on the basis of race, color, or national origin. It provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. Acceptance of federal funds therefore creates an obligation on the recipient to comply with Title VI and, here, Department of Commerce implementing regulations. The Department of Commerce’s implementing Title VI regulations provide that “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving Federal financial assistance from the Department of Commerce.” 15 C.F.R. § 8.1; *see also id.* at § 8.4(a). The regulations prohibit recipients of federal funds from using “criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect any persons of a particular race, color, or national origin.” 15 C.F.R. § 8.4(b)(2).

As noted above, LDNR certainly excluded Wallace and the surrounding public “from participation in” its permitting program by intentionally depriving them of public notice and comment. Its authorization of this facility with no regard to its impact on Wallace and its cultural resources discriminates against that community in violation of Title VI of the Civil Rights Act. LDNR can remedy this aspect of its Title VI violation by rescinding the authorization and providing the robust public participation that Wallace deserves, which includes a public hearing.

#### **IV. LDNR violated procedure in exempting a portion of the Project.**

LDNR exempted a portion of the Project from needing a coastal use permit by finding that it “is located at an elevation of 5’ MSL or higher.” Exhibit G at 1. It then declared the remainder of the activity to be “of No Direct and Significant Impact (NDSI).” *Id.* LDNR’s piecemealing of Greenfield’s Project in this manner, to circumvent the need for a coastal use permit, violates LDNR’s governing statute. The statute exempts “Activities occurring *wholly* on lands five feet or more above mean sea level” from the need for a coastal use permit. La. R.S. § 49:214.34(A)(1) (emphasis added). The plain language of the statute requires that the entire project be five feet or more above mean sea level to qualify, but a portion of Greenfield’s project would lie below five feet MSL. Exhibit L (August 9, 2021, authorization).<sup>7</sup>

---

<sup>7</sup> It is unclear how much or which portions of the project lie below 5’ MSL and which lie above, as LDNR did not provide that information in its Basis for Decision or its Authorization or in any other LDNR document readily available. This is critical information that should be publicly noticed.



**V. LDNR's Checkbox Findings of Conformance with the Coastal Use Guidelines Shows No Actual Consideration; the Project Violates Coastal Use Guidelines.**

LDNR prepared a document finding that the Project meets all of the Coastal Use Guidelines. Exhibit D. The findings are merely dozens of checked boxes of "C" for conformance. No documented agency consideration or analysis is reflected in these critical findings, and the Project implicates a number of guidelines. For example, though the form erroneously omits a portion of Guideline 711 for surface alterations, there is no evidence in the record or any consideration by LDNR of whether the activity will take place, as required, only "on lands which have foundation conditions sufficiently stable to support the use, and where flood and storm hazards are minimal or where protection from these hazards can be reasonably well achieved, and where the public safety would not be unreasonably endangered." La. Admin. Code tit. 33, pt. I, § 711(A)(2). Flood and storm hazards are not minimal here, because lightning from storms is one of the most common causes of grain dust explosions and people live, work, and recreate mere yards from the proposed site. This fact also means the Project poses an unreasonable danger to residents, also in violation of the guideline. Nor have flood risks been addressed.

LDNR must hold a public hearing and comment period to hear from the public on this critical guideline which directly addresses their safety, as well as other applicable guidelines.

**Conclusion**

LDNR must grant this petition for reconsideration, rescind its authorization of the Greenfield Terminal Project, and give the Wallace community and the public at large an opportunity to provide input on this proposal that will change the face of the community for generations to come. LDNR must remedy its actions that attempt to make the black descendant community of Wallace invisible.

Respectfully submitted this 16th day of August, 2021,

/s/ Lisa Jordan

---

Lisa W. Jordan, Director  
Tulane Environmental Law Clinic  
6329 Freret Street, Suite 130  
New Orleans, Louisiana 70118  
Phone: (504) 314-2481  
Fax: (504) 862-8721  
Email: lwjordan@tulane.edu  
*Counsel for Jocyntia Banner, Save the  
Wallace Grain Terminal, Concerned  
Citizens of St. John, and the Louisiana  
Bucket Brigade*