

THIRTY-FOURTH JUDICIAL DISTRICT COURT  
PARISH OF ST. BERNARD  
STATE OF LOUISIANA

NO. 21-1612

DIVISION: 

STOP THE DESTRUCTION OF ST. BERNARD, INC., ET AL.

v.

BOARD OF COMMISSIONERS FOR THE PORT OF NEW ORLEANS AND  
ST. BERNARD PORT, HARBOR, AND TERMINAL DISTRICT

FILED: DEC 14 2021  
10:00

Randy S. Nunez

PETITION

NOW INTO COURT, through undersigned counsel, come petitioners, named hereinbelow, domiciled in the Parish of St. Bernard, who respectfully file this Petition and aver as follows:

PARTIES

1.

Petitioners are:

a. Stop the Destruction of St. Bernard, Inc. ("SOS"), a Louisiana not for profit corporation domiciled at Meraux, Louisiana, dedicated to championing good governance and promoting transparency in government, with a mission to oppose the construction of proposed container terminal in St. Bernard Parish;

b. Los Isleños Heritage and Cultural Society of St. Bernard, incorporated in 1976, is a 501(c)(3) nonprofit corporation composed of members of the Canary Islander Descendants Community and anyone interested in preserving and promoting the Isleño identity in Louisiana. Los Isleños Heritage and Cultural Society of St. Bernard is headquartered at El Museo de los Isleños (Los Isleños Museum) and Historic Village Los Isleños Heritage and Cultural Society of St. Bernard has been dedicated to preserving the folklore, history, language, music, traditions of the Isleño heritage.

c. Violet Cultural & Historical Association, a Louisiana not for profit corporation domiciled at St. Bernard Parish, Louisiana, dedicated to preserving the heritage, identity and contributions of the African-American citizenry of St. Bernard Parish, with a particular mission to preserve and protect the institutions created by and historical landmarks recognizing its ancestors, as well as the overall quality of life, safety and environmental integrity of the community.

d. AJ Hunt, L.L.C., is a domestic limited liability company authorized to do and doing business in the State of Louisiana, with its domicile and principal office located in St. Bernard Parish at 1000 E. Judge Perez Dr., Chalmette, LA 70043.

e. Charlie's Restaurant & Catering, L.L.C., is a domestic limited liability company authorized to do and doing business in the State of Louisiana, with its domicile and principal office located in St. Bernard Parish at 6129 E. St. Bernard Hwy, Violet, LA 70092.

f. The Parish Diner, L.L.C., is a domestic limited liability company authorized to do and doing business in the State of Louisiana, with its domicile and principal office located in St. Bernard Parish at 105 Dean Dr. Braithewaite, LA 70040.

g. Mario L. Williams, Sr., a resident, who is a person of the full age of majority and resident of the Parish of St. Bernard, State of Louisiana.

h. Janet Perez, a residential landowner, who is a person of the full age of majority and resident of the Parish of St. Bernard, State of Louisiana.

2.

Made defendant herein is the Board of Commissioners for the Port of New Orleans ("Port NOLA"), a political subdivision of the State of Louisiana with a tri-parish jurisdiction including the parishes of Jefferson, Orleans, and St. Bernard and subject to the jurisdiction of this Court.

3.

Made defendant herein is the St. Bernrd Port, Harbor, and Terminal District (“St. Bernard Port”), a political subdivision of the State of Louisiana with territorial limits coextensive with the parish of St. Bernard and subject to the jurisdiction of this Court.

### **JURISDICTION AND VENUE**

4.

This Court has broad subject-matter jurisdiction over all civil matters pursuant to La. Const. Art. 5, Sec. 16, and under La. Code of Civ. Proc. Art. 2 to adjudicate matters arising under the Louisiana Constitution of 1974, including in particular Art. I, §§ 2 (due process), 3 (individual dignity), 4 (property), and Art. XII, Sec. 4, governing preservation of cultural origins, as well as Louisiana’s laws governing property, zoning, land use, unmarked burials, torts, and environmental quality.

5.

Venue as to this action is proper in the Thirty-Fourth Judicial District Court, Parish of St. Bernard, State of Louisiana, as to all defendants pursuant to Louisiana Code of Civil Procedure articles 42, 73, 74, 76.1, and 80.

### **BACKGROUND**

6.

St. Bernard Parish is New Orleans’ most historic neighbor in a variety of ways. Famously, it was the site of the Battle of New Orleans during the War of 1812. The battlefield, operated by the National Park Service, is open daily for visits to the interpretive center and park ranger chats. St. Bernard Parish (San Bernardo) was originally settled in 1778 by Spanish colonists from the Canary Islands who were recruited by the Spanish Empire which at that time controlled New Orleans. These settlers, known as Islenos, brought with them their own culture, history, food, language, and customs. They were a people of the land, hunting and fishing and working on one of the many sugar plantations in St. Bernard Parish. Over many generations, and

through great difficulties, they have succeeded in preserving their heritage and their language and the descendants of the original settlers still maintain a community in the parish today. St. Bernard Parish is just 5 miles from downtown New Orleans, yet its scenic beauty, cultural treasures, and beautiful waterways will make you yearn to remain in its tranquil surroundings. Bountiful waterways such as Lake Borgne, the Mississippi River, and Breton Sound make this a paradise for fishing, hunting, and bird watching. In fact, St. Bernard Parish has several stops along America's Wetland Birding Trail. It is also home to the San Bernardo Scenic Byway which follows a bayou that traces an abandoned Mississippi Riverbed so one can view historic homes and other historic sites dating back to the early 1800's. Moreover St. Bernard contains seven bodies of water designated as Natural and Scenic Rivers by the State of Louisiana.

## 7.

St. Bernard Parish, named after the patron saint of colonial governor Bernardo de Galvez, was settled in 1778. The parish was officially designated in 1807. A variety of cultures settled in the area including French, Spanish, Islenos (from the Canary Islands), British, Africans, and Croatians. Among the historical sites within the parish, seven National Register sites are archaeological sites, including one prehistoric site, the Magnolia Mound Archaeological Site. There also are several other sites commemorated by historical markers within the parish including:

- St. Bernard Church and Cemetery.
- Sites of former plantations: Jumonville, Reggio, De La Ronde, Villere, and Contreras.
- Ducros Historical Museum.
- Kenilworth Plantation.
- U.S. National Cemetery.
- Site of the first steam sugar mill.
- Old St. Bernard Courthouse.
- Violet Community Center.

In addition, the Los Islenos museum includes replicas of early dwellings as well as artifacts from the Islenos who were some of the earliest settlers of south St. Bernard Parish.<sup>1</sup>

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<sup>1</sup>St. Bernard Parish Comprehensive Plan at p. 50. See [https://www.sbp.net/DocumentCenter/View/79/2015-St-Bernard-Parish-Comprehensive-Plan-PDF?bidId=\(last visited December 2, 2021\)](https://www.sbp.net/DocumentCenter/View/79/2015-St-Bernard-Parish-Comprehensive-Plan-PDF?bidId=(last%20visited%20December%202021)).

8.

Since 1976, the Los Islenos Heritage and Cultural Society of St. Bernard has tirelessly endeavored to preserve the heritage and cultural traditions of Spanish colonists from the Canary Islands who founded St. Bernard Parish and has worked to develop Los Islenos Museum Complex which interprets to the public the heritage and cultural evolution of the Canary Islanders or Islenos, opening the Museum Complex grounds and buildings daily and by appointment.

9.

Public use and tourist visitation of the Los Islenos Museum Complex amounted to more than 45,000 people in 2019, the year before the Covid 19 Pandemic, and over the years the Museum has hosted various dignitaries including former and current political leaders and elected officials from the Spanish mainland and Canaries, as well as academicians and many other distinguished individuals from around the world have visited Los Islenos Museum Complex and the larger surrounding descendants' community, focusing international attention on the Isleno cultural phenomenon.

10.

The proposed Louisiana International Terminal ("LIT") will disastrously impact the entirety of St. Bernard Parish, significantly isolating the Isleno Museum Complex thereby and potentially leading to its ruin, isolating the entirety of the traditional communities settled by Islenos in the 18<sup>th</sup> and 19<sup>th</sup> centuries, further compromising the natural environment and destroying the overall quality of life in St. Bernard Parish.

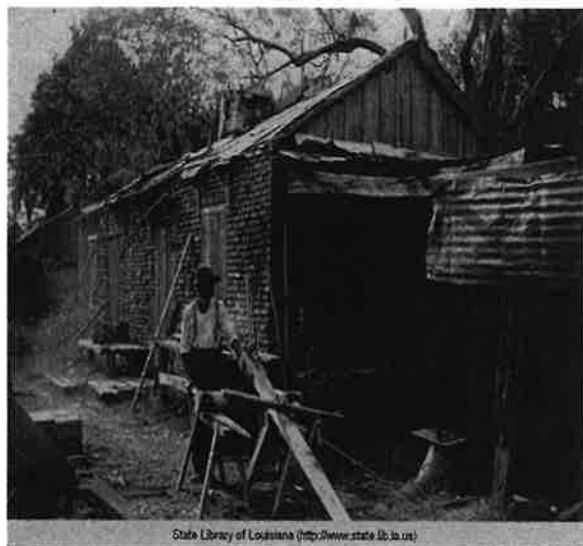
11.

The Violet community in particular, which is located immediately adjacent LIT is rich in history and culture. For example, the Merrit (AKA Merrick Cemetery) was established in the early 1900s by the Borgnemouth Realty Company, Ltd. for African American families who had

been burying their dead in slave cemeteries on nearby plantations.<sup>2</sup> Consequently, the Violet community is home to many historic sites including said former plantations, on which stood slave quarters and slave burial grounds. Violet, a predominantly African-American community, is also home to W. Smith, Jr. Elementary School, presently serving the Violet community from pre-kindergarten to fifth grade, which occupies land within the proposed footprint of the LIT, and which was, prior to desegregation, the only school serving African-American students in the parish.



Old slave quarters in Violet, 1930s. Source: Louisiana Digital Library



Man working outside old slave quarters in Violet, 1930s. Source: Louisiana Digital Library

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<sup>2</sup> See <http://sleepingbythebayou.com/cemeteries/merrick-merrit-cemetery> (last visited December 9 , 2021).

12.

Based upon current census data,<sup>3</sup> St. Bernard Parish has a population of approximately 47,000, 17,000+ housing units, and almost 700 total employer establishments. According to the U.S. Census Bureau (2010), the parish has a total area of 2,158 square miles (5,590 km<sup>2</sup>), of which 378 square miles (980 km<sup>2</sup>) is land and 1,781 square miles (4,610 km<sup>2</sup>) (83%) is water. It is the second largest parish in Louisiana by total area and has the largest percentage of area in water of any parish.<sup>4</sup>

13.

St. Bernard Parish has been ranked the fastest-growing county (parish) in the United States from 2007 to 2008 by the US Census Bureau.<sup>5</sup> In fact, according to 2020 U.S. Census data St. Bernard leads every parish in Louisiana in terms of growth, putting the parish's 21% growth rate top in the state.<sup>6</sup>

14.

As set forth in the paragraphs below, defendant Port NOLA has inserted itself into the affairs of the parish of St Bernard and is engaged in an effort with the cooperation of St. Bernard Port to build a massive container terminal in St. Bernard Parish, a narrow strip of land unsuitable for the type of development being proposed, in contravention of the law and the public interests of the citizenry of St. Bernard Parish, which endeavor will cause devastating damage to the Petitioners and the residents of the entire parish.

### **HISTORY OF ABUSE BY PORT NOLA**

15.

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<sup>3</sup>2019 census data available at: <https://www.census.gov/quickfacts/fact/table/stbernardparishlouisiana,LA/PST045219> (last visited December 9, 2021).

<sup>4</sup>See: [https://en.wikipedia.org/wiki/St.\\_Bernard\\_Parish,\\_Louisiana](https://en.wikipedia.org/wiki/St._Bernard_Parish,_Louisiana) (last visited Oct. 29, 2021).

<sup>5</sup> <https://www.ereferencedesk.com/resources/counties/louisiana/st-bernard.html> (last visited Oct. 29, 2021).

<sup>6</sup> See

<https://www.wvlty.com/article/news/local/st-bernard/st-bernard-is-louisianas-fastest-growing-parish-according-to-census/289-f027f413-2848-441f-b0c9-12d7ff3fbafe> (last visited December 10, 2021).

Port NOLA's proposed terminal represents the latest in a series of environmental, social, and economic abuses of St. Bernard, including the constructing the Industrial Canal; dynamiting the Mississippi River levee in 1927, thereby flooding St. Bernard; and, dredging the Mississippi River Gulf Outlet (MRGO), which destroyed wetlands and precipitated death and devastation wrought by Hurricane Katrina.

16.

Over a century ago, Port NOLA embarked on a strategy to relocate certain port facilities from the Mississippi River into an inner harbor by dredging the Industrial Canal, which was completed in 1923. Shortly thereafter, during the Great Mississippi Flood of 1927, concern about the potential and/or perception that rising tides might flood the city of New Orleans resulted in a decision to preemptively dynamite the levee system and intentionally flood St. Bernard Parish to eliminate any perceived threat to New Orleans. The resulting human suffering and the impact on the fur trapping, fishing, and shrimping in St. Bernard due to the flooding caused the episode to be described as the "public execution" of the parish.

17.

The MRGO, an ill-conceived project to dredge a navigation canal and shipping channel, approved in 1956 and constructed in the early 1960s, destroyed and degraded vast landscapes of protective coastal wetlands and increased flooding risk for the region. In an effort to connect the inner harbor to the Gulf of Mexico, Port NOLA created a so-called hurricane superhighway. From Hurricane Betsey and continuing through Hurricane Katrina, the MRGO caused environmental, economic, and social devastation and destruction until the channel was closed in 2009.

18.

The consequences of water planning decisions from over a century ago still have impacts today, as Port NOLA seeks to embark on yet another ill-conceived and ill-planned project with potentially catastrophic consequences.



19.

The proposed LIT would have serious negative environmental impacts and cause catastrophic damages not only to neighboring Petitioners but to all citizens of the parish, as the operations of the proposed terminal necessarily will co-opt virtually the entire public transportation infrastructure, destroy valuable wetlands and other facilities crucial to proper drainage, threaten the security of the residents and commercial concerns in the parish, and create damaging noise, light and aerial emissions, among many other public concerns.

20.

Construction of the LIT would require paving over hundreds of acres of land in and adjacent to a historic community as well as the destruction of wetlands. The Port NOLA's plans for the proposed LIT, which is situated within the federal \$14 billion flood protection system, includes a 350-acre terminal footprint on approximately 1100 acres, inclusive of property originally expropriated by St. Bernard Port, outlined below, and adjacent property Port NOLA is currently working to acquire, will consist of several berths with a planned annual capacity to handle 2 million TEUs<sup>7</sup>, and ships with the capacity of transporting up to 23,000 TEUs.<sup>8</sup> The traffic generated would amount to thousands<sup>9</sup> of 18-wheelers on parish roadways per day, monopolizing traffic flows throughout the parish. All of this in addition to Port NOLA's plans to pave over precious wetlands, together with the increase in aerial emissions emanating from the terminal, trucks, and ships, as well as the light, noise and sound and other nuisances which will be generated by the continual operations of the facility, will completely devastate not only the neighbors immediately adjacent, but will destroy quality of life and commerce as currently experienced in the parish.

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<sup>7</sup> Or "Twenty-foot Equivalent Unit," which is an exact unit of measurement used to determine cargo capacity for container ships and terminals. The number of containers a ship can load is translated into a number of 20ft containers and that measurement is known as TEU, and TEU is also used in reporting the capacity of container ships and terminals, and the metrics about port throughput are often reported in the amount of TEUs.

<sup>8</sup> Port NOLA Press release dated June 29, 2021, attached, Exhibit 1.

<sup>9</sup> This estimate does not include the traffic for empty containers traveling back to the LIT which would be roughly equivalent to the out-going traffic.

The site upon which the proposed LIT is to be built is in a strip of geography several miles below Paris Road. The only means of ingress and egress in the parish are two state highways: Louisiana Highway 46 and Louisiana Highway 39. Louisiana Highway 46 is a state highway in Louisiana that serves Orleans and St. Bernard Parishes. It runs a west to east direction for a total length of 29.5 miles (47.5 km). It is demarcated as Elysian Fields Avenue and St. Claude Avenue in the city of New Orleans and as St. Bernard Highway, Bayou Road, East Judge Perez Drive, Florissant Highway and Yscloskey Highway in St. Bernard Parish (“St. Bernard Highway”). The highway is recognized by the United States Department of Transportation as San Bernardo Scenic Byway.<sup>10</sup> Louisiana Highway 39 is a state highway in Louisiana that serves Orleans, St. Bernard, and Plaquemines Parishes. In New Orleans, LA 39 is referred to as North Claiborne Avenue, while in St. Bernard Parish, it is known as Judge Perez Drive. It spans 54.08 miles (87.03 km) and is bannered north/south (“Judge Perez”).<sup>11</sup> The LIT operations essentially will convert Judge Perez Drive to a dedicated 18-wheeler truck route to the practical exclusion of all other traffic. Port NOLA is also proposing to “relocate” historic St. Bernard Highway, the only alternative means of access to the entire Parish other than Judge Perez. Both Judge Perez and St. Bernard Highway are below Interstate standards. There is but one railroad track which runs along St. Bernard Highway. There currently are, in addition to the St. Bernard Port facility located in Chalmette, two oil and gas refineries (Chalmette Refining and Valero Meraux Refinery), a petroleum coke calcining refinery (Rain CII Carbon LLC, the second largest producer of calcined petroleum coke (CPC) in the world<sup>12</sup>) and Domino Sugar’s largest sugar refinery in the U.S.<sup>13</sup> which also use these two highways and railroad, not to mention residents and visitors. Port NOLA’s LIT will in effect subsume utilization of a great portion of all such transportation resources to support its operations for which it will not be obliged to compensate the Parish through tax revenues.<sup>14</sup>

<sup>10</sup> [https://en.wikipedia.org/wiki/Louisiana\\_Highway\\_46](https://en.wikipedia.org/wiki/Louisiana_Highway_46) (last visited Oct. 29, 2021).

<sup>11</sup> [https://en.wikipedia.org/wiki/Louisiana\\_Highway\\_39](https://en.wikipedia.org/wiki/Louisiana_Highway_39) (last visited Oct. 29, 2021).

<sup>12</sup> <https://www.yellowpages.com/chalmette-la/mip/rain-cii-carbon-16840115> (last visited Oct. 29, 2021).

<sup>13</sup> <https://www.asr-group.com/our-companies/domino-sugar> (last visited Oct. 29, 2021).

<sup>14</sup> Port NOLA claims it is exempt from ad valorem taxation under Article VII, § 21(A) of the Louisiana Constitution, which confers an exemption on “public land” and “other public property used for public purposes.”

22.

Indeed Port NOLA already has factored into its plans the virtual coopting of additional land adjacent to the proposed LIT, as well as the Parish's two major thoroughfares and its single railroad, as announced in a July 2021 press release, "[t]he property also has ample acreage to support ancillary cargo-related logistics...and includes existing multimodal infrastructure with direct access to six Class I railroads and the interstate highway system."<sup>15</sup>

23.

The site selection for the container terminal directly contravenes the "St. Bernard Parish Comprehensive Plan" in terms of use, scope, and impact to the community. The 107-page land use plan developed between 2014 and 2015 with significant community input and debate, identifies the proposed site as a zone for "Development of Regional Impact," not as industrial but rather as mixed-use. The plan was formally adopted by the St. Bernard Parish Planning Commission on September 2, 2014, by unanimous vote and supported by the St. Bernard Parish Council through Resolution SBPC #1218-09-14,<sup>16</sup> and developments within St. Bernard Parish should be consistent with it.

24.

In fact the site selection contradicts the very findings and recommendations of Port NOLA's lengthy study of and investigation into a project known as the "Port of New Orleans Millennium Port" development, which was spearheaded for the Port by the Fredric R. Harris and VZM/TranSystems Millennium Port Development Team. From the 1990's through at least 2005, Port NOLA apparently commissioned studies into the optimal location at which to develop what ultimately would serve as a "state-of-the-art container terminal," which would handle the growing trade flows between Latin America and the Mid-West economies of the U.S. and Canada by accommodating large sized container ships requiring deep draft access, thus maximizing the State's ability to seize a large share of the projected container commerce within the Gulf of Mexico. The Millennium Port study envisioned three phases ranging from short term

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<sup>15</sup> Port NOLA Press Release dated July 12, 2021.

<sup>16</sup> <https://www.sbp.net/DocumentCenter/View/669/1218-PDF?bidId=> (last visited December 1, 2021).

to long term solutions, with the early 2000's as the sunset on the short term facilities which, because of ready access to an intermodal transportation infrastructure (roads and rail) were to serve as the “foot holds” to secure international container commerce until a permanent solution could be developed. In other words the short term facilities were expendable. None of the sites for any of the phases considered any location north of Plaquemines Parish, save for the Orleans-based Napoleon and France Road terminals as short-term solutions, with as its ultimate goal a deep water port immediately adjacent to the Gulf. Significantly, Port NOLA’s own studies show that port development should require a comprehensive approach taking into consideration the State’s desires for both “environmental and quality of life values” as well as those for quality economic development projects.

25.

Indeed, the adverse environmental impacts posed by port operations generally are well documented, and the proposed international container terminal at issue presents even greater threats to the air and water quality of the parish and health of its citizens. According to the Environmental Protection Agency (EPA), environmental impacts of port operations may cause communities with environmental justice concerns, such as the predominantly African-American population of Violet, also to experience disparities in health outcomes. In addition to the significant aerial emissions of greenhouse gasses and other pollutants including particulate matter (PM), nitrogen oxides (NOx), sulfur oxides (SOx), volatile organic compounds (VOCs) and air toxics generated from diesel engines, marine vessels, trains and cargo handling equipment operating at a port, port operations can have a significant impact on water quality and the health of marine life. Waste from ships and other port activities can result in loss or degradation of habitat areas and can also harm marine life. These factors, added to the ever increasing challenges posed by extreme weather events in this region, pose substantial risks to the area and its residents.<sup>17</sup>

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<sup>17</sup> See Letter to J. Ron Brinson from the Millennium Port Development Team, November 15, 1999, attached as Exhibit 2.

26.

The environmental effects of port operations cannot be overstated, particularly in the context of the scale of operations proposed for the LIT and the relatively small size of the community and parish it will occupy. Shipping containers produce more greenhouse gas emissions than some small countries. For instance, it has been estimated that just one container ship can produce the same amount of pollution as 50 million cars. The emissions from 15 of these mega-ships match those from all the cars in the world. And if the shipping industry were a country, it would be ranked between Germany and Japan as the sixth-largest contributor to CO2 emissions. Diesel soot is a toxic air pollutant linked to human cancer and studies also have linked diesel exhaust to the development of asthma, with 50,000 people dying prematurely each year from particle soot poisoning. Acid rain generated by these pollutants can change the composition of rivers and lakes, killing aquatic species and seeping into soil corrupting it in such a way that critical microorganisms die off, tipping ecosystems out of balance.<sup>18</sup>

27.

Consequently the development of the LIT, and if allowed, its operations, will violate several chapters under the Louisiana Environmental Quality Act, La. Stat. Ann. § 30:2001, *et. seq.*

28.

The LIT project also directly conflicts with the state constitutional and state statutory requirements and safeguards that were incorporated into the judicial findings supportive of the prior expropriation of the terminal site by St. Bernard Port, as set forth below, and in effect its construction and operation will result in an extra-judicial taking not only of the terminal situs, but the entire parish infrastructure supporting its residents and businesses, without due process of law.

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<sup>18</sup> See

<https://medium.com/@victoria27/heres-how-much-pollution-shipping-containers-and-freight-trucks-cause-b358cb034c70> (last visited December 9, 2021).

29.

Petitioners further aver that viable alternative locations exist in Louisiana for this container terminal outside of Port NOLA's tri-parish jurisdiction and control; however, Louisiana's feudalistic port system discourages cooperation and instead promotes intra-state rivalry among the various port authorities and commissions at the expense of the state as a whole and its citizens, including but not limited to Petitioners.

30.

Here, Port NOLA knowingly, intentionally, willfully, and recklessly colluded with St. Bernard Port to advance its agenda to develop a proposed container terminal under Port NOLA's exclusive jurisdiction and control as explained below, with full knowledge of the devastating consequences to parish infrastructure and quality of life.

## **FACTS**

### **THE VIOLET DOCK PORT TAKING**

31.

Violet Dock Port, LLC ("VDP") a privately owned port facility, performed berthing and servicing operations for ocean-going ships on behalf of the United States Navy and topside repair and commercial vessel lay berthing along approximately one mile of Mississippi River frontage in Violet, Louisiana.<sup>19</sup>

32.

In 2007, the St. Bernard Port offered to purchase the land and facilities from VDP, but VDP repeatedly declined the offers.<sup>20</sup> Eventually, the St. Bernard Port expropriated VDP's private land on December 22, 2010, for an estimated sixteen million dollars (the "taking").<sup>21</sup> The property subject to the taking consisted of approximately 75 acres of land, 22 acres of batture, 38.5 acres of upland property, and 4,238 linear feet of frontage along the Mississippi River as

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<sup>19</sup> St. Bernard Port, Harbor & Terminal District v. Violet Dock Port, Inc., *LLC*, 229 So.3d 626, 629-630 (La. App. 4 Cir. 2016).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

well as a 4-acre parcel across La. State Hwy. 46 (“the Property”).<sup>22</sup> VDP filed suit against the St. Bernard Port challenging the taking in the Thirty-Fourth Judicial District Court for the Parish of St. Bernard.

33.

The District Court found that the taking served a public purpose, and VDP appealed.<sup>23</sup>

34.

The Fourth Circuit Court of Appeals of Louisiana affirmed the District Court’s finding.<sup>24</sup> The stated “public purpose” was to create a dry and liquid bulk cargo facility by the St. Bernard Port.<sup>25</sup> Additionally, the St. Bernard Port intended to allow Associated Terminals to operate the port facility in Violet for a period of time to generate funds to finance the construction of a dry and liquid bulk cargo facility.<sup>26</sup>

35.

The Louisiana Supreme Court upheld the determination of the lower courts that the taking did not violate the Louisiana State Constitution but ruled that the value of the just compensation due to VDP was insufficient. The Louisiana Supreme Court remanded the case to determine the just compensation based on the fair market value of the expropriated property considering its highest and best use as a cargo facility.<sup>27</sup>

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<sup>22</sup> St. Bernard Port, Harbor & Terminal Dist. v. Violet Dock Port, Inc., LLC, 2016-0096 (La. App. 4 Cir. 12/14/16), 229 So. 3d 626, 629, writ granted, 2017-0434 (La. 5/26/17), 221 So. 3d 853, and aff’d in part, rev’d in part, 2017-0434 (La. 1/30/18), 239 So. 3d 243.

<sup>23</sup> Id.

<sup>24</sup> Id. at 630-633.

<sup>25</sup> Id. at 633. Justice Labrano dissented and assigned reasons. Specifically, Justice Labrano points to La. Const. art. I, section 4(B)(6) to show that the majority was incorrect in their interpretation. Id. at 638. He states that, “should the majority’s interpretation stand, a public port convinced that it can make better use of a private business enterprise’s assets will be empowered to usurp that private business enterprise and fashion it into a revenue maker for government.” Id. at 639. This decision may “stifle future port development by private businesses, who would be unwilling to take the risk that a public port could, at any time, take that private investment by expropriation.” Id.

<sup>26</sup> Id. at 639.

<sup>27</sup> Id. at 254-255.

36.

On remand, the Fourth Circuit awarded \$28,764,685 plus judicial interest and attorneys' fees to VDP as just compensation based on the value of a cargo facility at that location (the "judgment").<sup>28</sup>

37.

Just as the St. Bernard Port lacked immediate funds to finance a cargo facility, however, it also lacked the funds to satisfy the judgment, as amended. Indeed, the initial proposed payment of sixteen million dollars was to be largely financed through grant funding from the Louisiana Department of Transportation and Development, not from the St. Bernard Port's own coffers. Moreover, attorneys' fees and interest continued to accrue on the judgment at the rate exceeding two thousand dollars per day.<sup>29</sup>

38.

The following year, in June 2019, the United States Supreme Court issued a decision in *Knick v. Township of Scott, Pennsylvania*, 139 S. Ct. 2162 (2019), allowing direct federal action under Section 1983 for Fifth Amendment takings claim, thereby providing an avenue for VDP to pursue enforcement of its monetary judgment in federal court.

39.

The following month, VDP filed a lawsuit in the United States District Court for the Eastern District of Louisiana to enforce its monetary judgment against the St. Bernard Port under threat of seizure and sale of its assets.<sup>30</sup>

40.

After the Eastern District granted the St. Bernard Port's motion to dismiss the lawsuit in November 2019, VDP appealed to the United States Fifth Circuit Court of Appeals.<sup>31</sup>

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<sup>28</sup> *St. Bernard Port, Harbor & Terminal District v. Violet Dock Port, Inc., LLC*, 255 So.3d 57, 63 (La. App. 4 Cir. 2018).

<sup>29</sup> Drew Heaphy, *Port of New Orleans Proposed Container Terminal in Violet*, <https://www.stbernardport.com/news/port-of-new-orleans-proposed-container-terminal-in-violet> (Last visited December 9, 2021).

<sup>30</sup> *Violet Dock Port, Inc., LLC v. Heaphy*, 2:19-cv-11586, (E.D. La. 2019).

<sup>31</sup> *Violet Dock Port v. Heaphy*, 19-30992 (5th Cir. 2020).



41.

While on appeal, the parties requested a postponement of oral argument in September 2020 in the hope of reaching a settlement.<sup>32</sup> The Fifth Circuit allowed the postponement but directed the parties to file a status report every seven days. Two months later, in November 2020, the parties advised the Fifth Circuit that they had reached a deal in principle and expected to finalize the settlement by the end of the year.

#### **THE DECEMBER 29, 2020, TRANSACTION**

42.

Meanwhile, Port NOLA had been aggressively pursuing the St. Bernard Port in order to acquire and ultimately develop a container terminal at the VDP site. Now with the St. Bernard Port obligated to pay the VDP judgment but unable financially to do so, the St. Bernard Port acquiesced and negotiated a bail out with the Port NOLA and VDP to satisfy VDP's judgment in exchange for the right to own the subject property and develop the container terminal. Consequently, a privately owned dock that was expropriated under the "public purpose" of being used as a dry and liquid bulk cargo facility by the St. Bernard Port was now poised to become something completely different—the site of Port NOLA's expansive international downriver container terminal.

43.

Petitioners aver St. Bernard Port and Port NOLA colluded to reach a deal. A former Port NOLA commissioner was appointed to the St. Bernard Port to advance Port NOLA's agenda to build a container terminal in St. Bernard Parish—regardless of whether it was in the best interest of St. Bernard Port or reasonably related to its legitimate governmental objective. With its back against the wall, the St. Bernard Port agreed to the deal.

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<sup>32</sup> Violet Dock Port v. Heaphy, 19-30992 (5th Cir. 2020) (docket minute entry 9/2/2020).

Under pressure to confect a deal as quickly as possible due to the pending litigation, St. Bernard Port and Port NOLA entered into a complex transaction on December 29, 2020, involving several agreements, including but not limited to the following (the “Transaction”):

- (1) Second Amendment to Cooperative Endeavor Agreement by and between Port NOLA and the St. Bernard Port Outlining the Framework and Terms for the Acquisition of Certain Property in Violet, Louisiana, and Other Obligations;<sup>33</sup>
- (2) Assignment of Judgments and Rights by and between Port NOLA and Violet Dock Port;<sup>34</sup>
- (3) Dation en Paiement Agreement by and between Port NOLA and St. Bernard Port for the Transfer of Approximately 81 Acres Along the Mississippi River in Violet, Louisiana;<sup>35</sup>
- (4) Satisfaction of Judgment by and among Port NOLA, St. Bernard Port and Violet Dock Port;<sup>36</sup>
- (5) Purchase and Sale Agreement by and between Port NOLA and St. Bernard Port for the Purchase of and/or Assumption of Leases Relating to Approximately 8 Acres in Violet, Louisiana;<sup>37</sup>
- (6) Lease for a Term of Five Years for Berths 1 & 2 at the Violet Location from Port NOLA and to St. Bernard Port;<sup>38</sup> and
- (7) Purchase and Sale Agreement by and among Port NOLA, Borgnemouth, Willowbank, L.L.C., Louise Carrere Properties, L.L.C., Claverie Properties of St. Bernard, L.L.C., MBM Investments, L.L.C., Dupuy Storage and Forwarding, L.L.C., Succession of Michael S. Buckley, and Succession of Vivian Champagne Buckley for the Purchase of Approximately 1,037 Acres of Property in Violet, Louisiana.

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<sup>33</sup> The Second Amendment to Cooperative Endeavor Agreement, attached, Exhibit 3.

<sup>34</sup> The Assignment of Judgments and Rights, attached, Exhibit 4.

<sup>35</sup> The Dation en Paiement Agreement, attached, Exhibit 5.

<sup>36</sup> The Satisfaction of Judgment, attached, Exhibit 6.

<sup>37</sup> The Agreement, attached, Exhibit 7.

<sup>38</sup> The Lease for a Term of Five Years for Berths 1 & 2 at the Violet Location, attached, Exhibit 8.

45.

At Port NOLA's December 17, 2020, board meeting, the commissioners considered approval of a resolution authorizing the President and Chief Executive Officer to enter into the Transaction.<sup>39</sup>

46.

Port NOLA's Executive Counsel presented an overview of the Transaction to the commissioners and then detailed the component documents required for approval to complete the Transaction as follows.<sup>40</sup> He stated that on December 29, 2020, Port NOLA would enter into a Second Amendment to the Cooperative Endeavor Agreement with St. Bernard Port ("CEA Amendment"). The CEA Amendment outlined the general terms of the transaction, including the acquisition of approximately eighty-one (81) acres of property located in Violet, Louisiana ("VDP Property") and currently owned by VDP. On December 29, 2020, Port NOLA would also execute an Assignment of Judgments and Rights with VDP for the VDP Property, at a cost of \$18,000,000. Immediately following the execution of the Assignment of Judgements and Rights, Port NOLA and St. Bernard Port would execute a Dation in Paiement Agreement to transfer the VDP Property to Port NOLA in exchange for the satisfaction of the outstanding judgments. Afterwards, Port NOLA, St. Bernard Port, and VDP would execute a Satisfaction of Judgements to dispose of outstanding judgments and all claims related to the expropriation of VDP Property. Concurrent to the acquisition of the VDP Property, Port NOLA and St. Bernard Port would enter into a lease agreement for a portion of the VDP Property that encompasses two (2) berths (the "Lease"). The Lease would be for a term of five (5) years, at a rate of \$540,000 per year. Finally, Port NOLA would execute a Purchase and Sale Agreement with St. Bernard Port for additional acreage ("Additional Acreage PSA"). Pending Port NOLA's completion of a two (2) year due diligence process, the Additional Acreage PSA will close on or before December 29, 2022, and Port NOLA will receive title for the additional acreage for a payment of \$8,000,000.

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<sup>39</sup> Regular Meeting Minutes, Board of Commissioners of the Port of New Orleans, Thursday, December 17, 2020, p. 4, attached, Exhibit 9.

<sup>40</sup> Regular Meeting Minutes, Board of Commissioners of the Port of New Orleans, Thursday, December 17, 2020, p. 4, attached, Exhibit 9.

47.

The motion to approve the resolution to authorize the President and Chief Executive Officer to execute the Transaction carried unanimously.<sup>41</sup>

48.

Immediately thereafter, the commissioners considered approval of a resolution authorizing the President and Chief Executive Officer to enter into a Purchase and Sale Agreement with the Borgnemouth Realty Company, Limited, Willowbank, L.L.C., Louise Carrere Properties, L.L.C., Claverie Properties of St. Bernard, L.L.C., MBM Investments, L.L.C., Dupuy Storage and Forwarding, L.L.C., Succession of Michael S. Buckley, and Succession of Vivian Champagne Buckley for the purchase of approximately one thousand thirty-seven (1,037) acres of property in Violet, Louisiana (“PSA”).

49.

The Director of Operations & Real Estate presented and recommended approval of the resolution. She gave an overview of the terms of the PSA, including the various parties involved and the relationship of this transaction to Port NOLA’s project for a downriver development in St. Bernard Parish. The PSA contemplated the purchase of approximately 1,037 acres of land in Violet, Louisiana from multiple property owners. The average acquisition price would be estimated at \$25,000 per acre, while the final closing costs and precise property dimensions will be subject to Port NOLA’s completion of a due diligence process, including land surveys and environmental assessments. A deposit of \$1,000,000 would be required at the time of execution of the PSA and would be refundable within the first twelve (12) months of due diligence. Closing was expected to occur within eighteen (18) months of executing the PSA, and Port NOLA would have the option to extend the closing date by an additional six (6) months at a cost of \$1,000,000, which would not be credited to the purchase price.

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<sup>41</sup> Regular Meeting Minutes, Board of Commissioners of the Port of New Orleans, Thursday, December 17, 2020, p. 5, attached, Exhibit 9.

50.

The motion to approve the resolution to authorize the President and Chief Executive Officer to execute the PSA carried unanimously.<sup>42</sup>

51.

At the following Port NOLA meeting on January 21, 2021, the President and Chief Executive Officer reported that, following approval of the resolution at Port NOLA's Regular Board Meeting on December 17, 2020, Port NOLA had executed a PSA to acquire property in Violet, Louisiana.<sup>43</sup>

52.

The St. Bernard Port also presented the Transaction to its board at a meeting held virtually on December 16, 2020. According to the official meeting minutes, the discussion of the Transaction<sup>44</sup> was conducted virtually rather than in person, potentially in violation of the Louisiana Open Meetings Law, which in turn resulted in the exclusion of many community residents not having been able to attend, but those in attendance did express concerns that the process was rushed and that the community had not been provided adequate information regarding Port NOLA's plans for the Violet site. The minutes reflect that the representatives from the two Ports in attendance (St. Bernard and NOLA) responded to the citizens' concerns by claiming that the Transaction ended lengthy litigation and stating, without evidence, that it represented the "best possible solution" for both ports, the parish and surrounding metro areas and neighboring states.

53.

The St. Bernard Port's resolution was likewise adopted over the concerns expressed at the meeting.

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<sup>42</sup> Regular Meeting Minutes, Board of Commissioners of the Port of New Orleans, Thursday, December 17, 2020, p. 6, attached, Exhibit 9.

<sup>43</sup> Regular Meeting Minutes, Board of Commissioners of the Port of New Orleans, Thursday, January 21, 2021, p. 6 attached, Exhibit 10.

<sup>44</sup> Special Meeting Minutes, St. Bernard Port, Harbor, and Terminal District, December 16, 2020, attached, Exhibit 11.

54.

The Transaction between Port NOLA and St. Bernard Port closed on or about December 29, 2020, the VDP litigation was subsequently dismissed, and Port NOLA embarked on developing the LIT container terminal on the property it had acquired from the St. Bernard Port in Violet.

**PORT NOLA'S PROPOSED CONTAINER TERMINAL:**  
**ISSUES AND CONCERNS**

55.

Prior to acquiring the VDP property from the St. Bernard Port, Port NOLA attempted to purchase another tract of land in the parish located in Chalmette across St. Bernard Highway from the principle facilities operated by the St. Bernard Port, the "Sinclair" tract, for the same purpose it acquired the VDP property: the development of a major container terminal.

56.

Despite agreeing to the VDP Transaction, the St. Bernard Port had previously disseminated a three-page memorandum titled, "Issues and Concerns Memorandum Sinclair Tract Development for Container Terminal and Industrial Park by Port of New Orleans," wherein it discussed the following concerns, summarized below in pertinent part, regarding the earlier attempted purchase of the Sinclair tract:

**CONCERN:** THE IMPACT OF THE OPERATIONS AT THE PORT OF NEW ORLEANS'S TERMINAL AT THE SINCLAIR TRACT ON OPERATIONS AT THE ST. BERNARD PORT.

**CONCERN:** THE NEGATIVE IMPACT THAT THE INGRESS AND EGRESS OF TRUCKS AND VEHICLES AT THE PORT OF NEW ORLEANS' TERMINAL AND INDUSTRIAL PARK WILL HAVE ON THE EXISTING ROADS AND TRAFFIC IN ST. BERNARD PARISH AND THE INFRASTRUCTURE AND IMPROVEMENTS REQUIRED TO COUNTER THIS IMPACT.

**CONCERN:** THE NEGATIVE IMPACT OF ADDITIONAL RAIL TRAFFIC ON THE NORFOLK SOUTHERN RAIL LINE ALONG LA 46 AND LA 39 IN ARABI AND THE INFRASTRUCTURE AND IMPROVEMENTS REQUIRED TO COUNTER THIS IMPACT.

**CONCERN:** THE STRAIN ON ST. BERNARD PARISH'S RESOURCES AND INCOME THAT WILL BE CREATED BY THE INCREASED GOVERNMENTAL SERVICES THAT THE PARISH WILL HAVE TO PROVIDE DURING THE CONSTRUCTION AND OPERATION OF THE PORT OF NEW ORLEANS' TERMINAL AND INDUSTRIAL PARK.

**CONCERN:** THE IMPACT OF THE PORT OF NEW ORLEANS' OPERATIONS ON NEIGHBORING RESIDENTIAL AREAS AND ON INDUSTRIAL DEVELOPMENT IN ST. BERNARD PARISH AS A WHOLE.

**CONCERN:** THE CURRENT GOVERNING BODY OF THE PORT OF NEW ORLEANS, WHICH WILL PLAN AND OPERATE THE SINCLAIR TRACT FACILITIES, WILL NOT ADDRESS THE NEEDS AND CONCERNS OF THE ST. BERNARD PORT OR THE ST. BERNARD PARISH RESIDENTS, BUSINESSES OR PARISH GOVERNMENT.

**CONCERN:** THE INFORMATION THAT HAS BEEN PROVIDED TO THE ST. BERNARD PORT IS NOT SUFFICIENT TO PERMIT THE ST. BERNARD PORT OR ST. BERNARD PARISH TO EVALUATE THE PORT OF NEW ORLEANS' PROPOSED DEVELOPMENT AND USE OF EITHER THE TERMINAL PORTION OR THE BACK PORTION OF THE SINCLAIR TRACT OR THE WAYS IN WHICH THIS DEVELOPMENT AND USE WILL AFFECT THE ST. BERNARD PORT AND ST. BERNARD PARISH GENERALLY.<sup>45</sup>

57.

After documenting these concerns as to the Sinclair tract proposed development, the St. Bernard Port now appears to have flipped its position and outrageously claims that the container terminal is in its, and purportedly the parish's best interests, with no mention at all of the negative impacts expressed as to the Sinclair development:

Resolving the litigation through the Port of New Orleans' container terminal was in the best interest of the [St. Bernard] Port so that it could continue its current operations and avoid having its property seized and sold, and the proposed container terminal would provide economic benefits to the Parish and its citizens. Since its inception and still today, the Port is committed to the welfare and prosperity of the citizens of St. Bernard. The Port even obligated the Port of New Orleans to address the concerns of the community in the parties' agreements. St. Bernard Port remains committed to this Parish and sincerely believes that the proposed container terminal will bring positive benefits.<sup>46</sup>

58.

In the CEA Amendment relative to the VDP facility, Port NOLA set forth a laundry list of generic "commitments" to "engage" with the adjacent community and

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<sup>45</sup>Issues and Concerns Memorandum, attached, Exhibit 12.

<sup>46</sup><https://www.stbernardport.com/news/port-of-new-orleans-proposed-container-terminal-in-violet>(last visited December 9, 2021).

parish representatives on a variety of concerns and issues. Notably absent were any assurances to implement any concrete measures to actually address in a meaningful way the community concerns which included addressing environmental impacts, infrastructure, traffic impact, roadway capacity, economic impact, and negative impacts upon schools, recreational facilities and an historic cemetery located within close proximity to the VDP tract and within the area Port NOLA plans to purchase and incorporate into the overall container facility footprint.<sup>47</sup>

59.

Upon information and belief, action as to these “commitments” have not been initiated or met.

60.

On the contrary, when the St. Bernard Parish Council raised concerns about the proposed container terminal, upon information and belief the Port NOLA provided a memorandum of law concluding that the St. Bernard Parish Government was without authority to regulate its proposed container terminal:

In this instance, the utilization of property by the Board within the Board’s jurisdiction in St. Bernard Parish for a container terminal and associated warehousing and other accessory uses is plainly within the constitutionally- and legislatively-mandated powers and functions of the Board. As such, they are core functions of the Board, as a political subdivision of the State, and thus are of vital interest to the State as a whole. *See City of New Orleans v. Bd. Of Dir. Of La. State Museum, supra.* Accordingly, parish zoning ordinances shall have no effect on such uses by the Board, which has authority to regulate the use of any such properties within its judgment and discretion. *See* La. R.S. 34:21(A)(1) and 34:25(B).<sup>48</sup>

61.

Thereafter, the St. Bernard Council unanimously approved a Resolution to oppose the Port NOLA’s Louisiana International Terminal in St. Bernard Parish.<sup>49</sup>

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<sup>47</sup>CEA Amendment, p. 16, attached Exhibit 3.

<sup>48</sup>Port Authority re: Zoning, p. 3, attached, Exhibit 13.

<sup>49</sup>SBPC #2159-08-21, adopted August 3, 2021, by St. Bernard Parish Council, attached, Exhibit 14.



62.

Nevertheless, Port NOLA continues to proclaim the benefits of the container terminal, including the generation of local property taxes that its tenants and operators will pay.<sup>50</sup>

63.

Notwithstanding repeated assurances regarding the direct benefit to St. Bernard as a result of property taxes generated through the proposed container terminal, Port NOLA has successfully challenged the imposition of property taxes on behalf of both itself and its tenants and operators as recently as 2016.<sup>51</sup> On information and belief, Port NOLA's tenants and operators will use similar tactics to avoid paying property taxes.

64.

The utter disregard Port NOLA has for the rights of the Petitioners and the residents of the parish has been exhibited throughout the process of acquiring the St. Bernard Port's Violet property is probably best summarized by Port NOLA's President & CEO, who recently touted the virtues of the LIT as Port NOLA's "ace in the hole" in achieving the national competitive edge to getting containerized cargo to the midwest-the primary destination in this supply chain- cheaper, faster and quicker, stating that Port NOLA is "working against the shot clock" in this effort and that the main reason the LIT fits the bill is that St. Bernard offers the quickest route to market *because "[i]t has roads and rails already in place."*<sup>52</sup> Obviously, Port NOLA has factored into its plans the practical acquisition of the usage of all means of public transportation in St. Bernard Parish.

65.

Further, Port NOLA and the St. Bernard Port have embarked upon this ill-conceived plan to construct the LIT facility even though a more practicable alternative is currently being proposed in Plaquemines Parish at the mouth of the river and in the Gulf

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<sup>50</sup> E.g., "However, Port NOLA is a landlord port and tenants who operate on and around the terminal will pay local and state sales taxes along with local property taxes, which will directly benefit St. Bernard Parish." Port NOLA FAQs, attached, Exhibit 15.

<sup>51</sup> Board of Commissioners of the Port of New Orleans v. City of New Orleans, 15-0768 (4th Cir. 3/16/2012), 186 So.3d 1282.

<sup>52</sup> [A new way to Chicago: Logjammed suppliers eye Louisiana as a potential multimodal hub for imports](https://www.1012industryreport.com/infrastructure/a-new-way-to-chicago-logjammed-suppliers-eye-louisiana-as-a-potential-multimodal-hub-for-imports/), <https://www.1012industryreport.com/infrastructure/a-new-way-to-chicago-logjammed-suppliers-eye-louisiana-as-a-potential-multimodal-hub-for-imports/> (last visited November 8, 2021).

of Mexico, which would have far less of an adverse impact on the adjacent residents, businesses, infrastructures and environmental elements, for reasons, as related above, grounded in defendants' self-interest and self-preservation, as the alternative facility lies outside of their respective jurisdictions.

**COUNT I:**

***Nuisance***

66.

Petitioners specifically adopt and reaver all allegations as set hereinabove.

67.

Petitioners are owners ("Owners") and/or lessees ("Lessees") of property within the Parish of St. Bernard adjacent to and/or in close proximity to the LIT facility which Port NOLA seeks to construct.

68.

Petitioners, also own and/or lease commercial property.

69.

Owners and Lessees own or lease property a located at:

- a. Mario L. Williams, Sr. resides at 6324 Jules Brown St., Violet, LA, 70092;
- b. Janet Perez resides at 6535 E. St. Bernard Hwy., Violet, LA 70092;
- c. AJ Hunt, L.L.C., owns several real properties in St. Bernard Parish, including a proposed residential subdivision, known as "Chaperone Estates<sup>53</sup>;"
- d. Charlie's Restaurant & Catering, L.L.C., operates at 6129 E. St. Bernard Highway, Violet, LA 70092;
- e. The Parish Diner, L.L.C., operates at 2401 Paris Road, Chalmette, LA 70043.

70.

Owners and lessees aver that the operations of the proposed LIT facility will damage their properties, impair the market value and full use of their properties, impair

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<sup>53</sup> PTN. OF GROUND DESIGNATED AS LOTS 26, 27 & 28 OF STORY PLANTATION IN SECTION 4, TS13SR13E MEAS. 576' FRT. ON E. JUDGE PEREZ X DEPTH TO 40 ARPENT LINE.

appraisal values of real property and homes in the area, cause economic damage, disturb the use and enjoyment of their properties, and threaten their health and safety in the following respects.

71.

The proposed LIT facility will create a nuisance because the works and operations there will involve inherent dangers; will visit irreparable and permanent damage upon its neighbors; will produce serious and material discomfort to persons of ordinary sensibilities and of normal physical and mental health; its construction and operation is antithetical and violative of the legal constraints placed upon Port NOLA in the exercise of its authority, policymaking and/or discretionary duties and acts; and, the acts and decisions of the defendants in connection with the transfer of the land for the facility and construction and operation of the LIT are not reasonably related to acts within the course and scope of their lawful powers and duties.

72.

The defendants' proposal to construct and operate the LIT facility in St. Bernard Parish is done with knowledge: that parish infrastructure, including drainage, roadways and railways, are not sufficient to support the facility; that its operations will impose a prohibitive strain upon daily life of the Petitioners and parish residents including disruption of traffic patterns and depletion of valuable governmental resources for the protection of Parish residents; of the additional load of pollutants in the form of aerial emissions from vehicular and ship traffic and operations generated by the facility; the deleterious effects upon residents by noise, lights, and other nuisances created by operations there; and, of the environmental consequences from the destruction of wetlands and natural resources which lie within and adjacent to the footprint of the LIT site.

73.

Defendants, knowing that the LIT facility and its operations will cause damage to Petitioners, have failed to exercise any care, much less reasonable care to prevent the inevitable damage caused by its construction and operations.

74.

Petitioners, Owners and Lessees, assert that the proposed LIT has already adversely impacted property values and have chilled residential and other commercial development in the neighboring communities within the parish.

75.

Petitioners further aver that there is no scenario under which the proposed LIT facility may operate in a manner which will not cause real damage and harm, irreparable, extrinsic and intrinsic, to its neighbors.

76.

Petitioners therefore move for the issuance of a permanent injunction preventing the construction and operation of the proposed LIT facility.

**COUNT II:**

***Permanent Injunctive Relief***

77.

All petitioners specifically adopt and reaver all allegations as set forth hereinabove.

78.

Petitioners aver that they are entitled to injunctive relief without the requisite showing of irreparable injury because the conduct sought to be restrained, the construction and operation of the LIT facility, is unconstitutional or unlawful, as it constitutes a direct violation of a prohibitory law and/or a violation of a constitutional right.

79.

The defendants both are political subdivisions of the state, both deep-water port commissions/districts, meaning “those commissions or districts within whose territorial jurisdiction exist facilities capable of accommodating vessels of at least twenty-five feet of draft and of engaging in foreign commerce,”<sup>54</sup> whose continuing existence, powers, functions, structure, organization and territorial jurisdiction falls within La. Const.

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<sup>54</sup> La. Const. (1974) art. VI, §44(7).

(1974) art. VI, §43, and whose powers and territorial limits are further defined under state law. Each port has the power to regulate the commerce and traffic of said district in such manner as may “be best for the public interest,”<sup>55</sup> and has administrative authority over structures and facilities necessary and proper for the use and development of the business of such districts, where such commerce is conducted by or through a facility wholly owned by the district. See La. R.S. §§ 34:21, 34:1701.

80.

Port NOLA has general regulatory authority over the parish of St. Bernard, subject to exceptions carved out in favor of the St. Bernard Port. See LSA–R.S. 34:1701–34:1715. Both Ports have the authority to regulate domestic and international commerce within their territorial limits and where such is conducted by or through a facilities wholly owned by the respective Ports, while Port NOLA has regulatory jurisdiction over international commerce in St. Bernard Parish where such was not conducted by or through a facility wholly owned by the St. Bernard Port.

81.

The site for the proposed LIT facility was originally acquired by defendant Port of St. Bernard through expropriation. Expropriation laws are special and exceptional in character, in derogation of common rights, and as such, must be strictly construed.<sup>56</sup> Authorization for expropriations by a government body and important limitations placed upon those authorizations are found in both the federal and state constitutions and under both Constitutions, any expropriation must be for a “public purpose.”<sup>57</sup> The Louisiana Constitution provides in part that “public purpose” is defined as continuous public ownership of property dedicated to “[p]ublic ports . . . to facilitate the transport of goods or persons in domestic or international commerce.” La. Const. art. I, § 4(B)(2)(b)(vi).

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<sup>55</sup> La.R.S. 34:1703.

<sup>56</sup> Exxon Mobil Pipeline Co. v. Union Pac. R. Co., 2009-1629 (La. 3/16/10), 35 So. 3d 192, 197, citing United Gas Pipe Line Company v. Blanchard, 149 So.2d 615 (La.App. 1st Cir.), writ denied, 244 La. 135, 150 So.2d 590 (1963).

<sup>57</sup> St. Bernard Port, Harbor & Terminal Dist. v. Violet Dock Port, Inc., LLC, 2017-0434 (La. 1/30/18), 239 So. 3d 243, 249-250.

82.

Although the state (and political subdivisions) may have wide discretion in expropriation matters, it is entitled to take only what it needs for public purposes and will not be permitted to take more than what is reasonably sufficient and suitable for its particular need. An expropriation beyond the public interest is illegal and unconstitutional.<sup>58</sup> La.Const. art. I, § 4(B)(3) provides that: “[n]either economic development, enhancement of tax revenue, or any incidental benefit to the public shall be considered in determining whether the taking or damaging of property is for a public purpose pursuant to Subparagraph (1) of this Paragraph or Article VI, Section 23 of this Constitution.”

83.

Louisiana Constitution Article 1, Section 2 provides that “[n]o person shall be deprived of life, liberty, or property, except by due process of law.” Substantive due process rights are balanced against the police power of a governing authority to protect the health, safety, morals and general welfare of the people. The Louisiana Constitution further provides for “open courts.” La. Const. Art. I, Section 22. Procedural due process concerns the means or processes used by the State to effect the deprivation of a fundamental right or property interest<sup>59</sup>. In a due process claim involving the loss of property, the claimant must show the existence of a property interest that has been adversely affected by state action. Further, affected persons have the right to be heard and in order that they may enjoy that right, they must first be notified.

84.

In this case, Port NOLA’s plans for the LIT situs completely and fundamentally changes what was the scope and purpose for the land and facility previously owned by the VDP as established in the expropriation proceedings instituted by St. Bernard Port.

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<sup>58</sup>See *Ryan v. Calcasieu Par. Police Jury*, 2017-16 (La. App. 3 Cir. 9/26/18), 256 So. 3d 1044, 1049.

<sup>59</sup>*Messina v. St. Charles Parish Council*, 03-644 (La.App. 5 Cir. 12/30/03), 865 So.2d 158, 161, writ denied, 2004-0285 (La.3/26/04), 871 So.2d 354, cert. denied, 04-279 (2005), 544 U.S. 1060, 125 S.Ct. 2512, 161 L.Ed.2d 2209.

85.

The decision affirming the expropriation fell within the constitutional definition of “public purpose” because the expressed purpose was to “build and operate a terminal to accommodate transport of liquid and solid bulk commodities into national and international commerce to and from St. Bernard,” a continuation of business which St. Bernard Port conducts within its primary facility. That enterprise, however, did not entail the now proposed cannibalization of adjacent properties as well as all parish-wide traffic infrastructures, among others, to support a facility and operations neither supportable nor appropriate in the parish, which effectively infringes upon the constitutional rights and liberties of the Petitioners, as well as all other citizens.

86.

The proposed facility and its operations will necessarily adversely impact property rights, real and economic, life and liberty of Petitioners and constitutes a virtual “taking” in excess to what it may be entitled for the espoused “public purposes” in violation of positive law. There are no public policy or constitutional considerations allowing for the defendants to operate the proposed facility when to do so will effectively destroy the community in which it is located.

87.

The defendants’ justifications for the proposed LIT facility and its operations fall within the avowed categories of “economic development,” “enhancement of tax revenue,” and other generalized incidental benefits, some alleged in favor of the public and others not (the end of civil litigation) which under the state constitution shall not be considered in determining whether a taking or damaging of property is for a public purpose.

88.

Further, the defendants’ attempt to exercise its administrative authority beyond the boundaries of its expropriated / “daitioned” property to the detriment of the rights of Petitioners and the citizens of St. Bernard Parish represents the antithesis of the constraints to the proper exercise of police power as it threatens rather than promotes the

foundational bases of such power: to protect the health, safety, morals and general welfare of the people.

89.

Additionally, as related above, the proceeding or meeting at which time the defendants presented the Transaction to the St. Bernard Port board, was held virtually on December 16, 2020 and, upon information and belief in violation of the Open Meetings Law and without adequate notice, which, in turn resulted in the exclusion of many community residents not having been able to attend, depriving Petitioners of their procedural due process rights.

90.

Petitioners all will suffer, and to a certain degree have suffered real damage to real property, economic interests, impairment to the market value and full use of their properties, impairment to appraisal values of real property and homes in the area, disruption to the use and enjoyment of their properties, and to the health and safety of themselves and the community.

**COUNT III:**

***Damages***

91.

All petitioners specifically adopt and reaver all allegations as set forth hereinabove.

92.

The existence of the defendants' proposed LIT and accessory facilities will present a nuisance on the subject property and within this parish and further will cause petitioners actual and substantial harm. Furthermore, this harm will be irreparable. It is the purpose and intent of this lawsuit to prevent the deleterious effects upon the environment; damage to petitioners' properties, real and commercial; the market value and full use of petitioners' properties; appraisal values of real property and homes in the area, causing economic damage; and, petitioners' physical and mental health and safety. The conditions created by the proposed LIT will cause actionable damage in the form of



depressed land values; health and safety hazards to petitioners, communities and neighborhoods throughout the parish; impairment and destruction of the environment and wildlife habitat; and, the coopting of parish infrastructure to the detriment of all parish residents.

93.

Wherefore, petitioners' pray for compensatory damages pursuant to La. Civ. Code Ann. arts. 667, *et. seq.* and 2315.

***Prayer For Relief***

Wherefore, Petitioners pray as follows:

a. A judgment declaring that defendants are in violation of Louisiana nuisance laws prohibitions against public and private nuisances;

b. A judgment declaring that the violations committed constitute public nuisances;

c. A judgment declaring the LIT project presents a substantial endangerment to health and the environment;

d. An order permanently enjoining any further action to taken to finalize the acquisition and/or development of the property located in Violet, Louisiana, formerly the "VDP Property;"

e. An order permanently enjoining defendants from proceeding with any aspect of the LIT facility;

f. An order declaring the dation of the VDP property to Port NOLA is contrary to law;

g. An order declaring the development of the LIT facility is prohibited by Louisiana law and the state and federal constitutions;

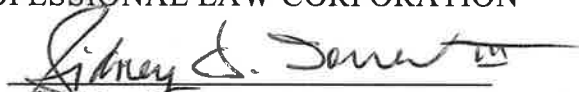
h. An order declaring the development of the LIT facility will present an imminent and substantial danger to health or the environment; and

i. An award of such other relief, including compensatory damages, as the Court deems appropriate and just, including costs and attorney fees.

Respectfully submitted,

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**Please serve:**

**Board of Commissioners for the Port of New Orleans**

*through:*

Brandy D. Christian, President and Chief Executive Officer  
1350 Port of New Orleans Place  
New Orleans, LA 70130

**St. Bernard Port, Harbor, and Terminal District**

*through:*

Drew Heaphy, Executive Director  
9000 W Saint Bernard Hwy  
Chalmette, LA 70043

THIRTY-FOURTH JUDICIAL DISTRICT COURT  
PARISH OF ST. BERNARD  
STATE OF LOUISIANA

NO. 21-1612

DIVISION:

A

STOP THE DESTRUCTION OF ST. BERNARD, INC., ET AL.

v.

BOARD OF COMMISSIONERS FOR THE PORT OF NEW ORLEANS AND  
ST. BERNARD PORT, HARBOR, AND TERMINAL DISTRICT

FILED: DEC 14 2021

/s/ Bonnie Casanova

STATE OF LOUISIANA

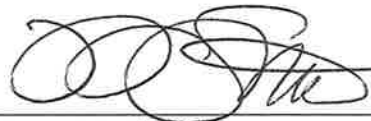
PARISH OF ST. BERNARD

BEFORE ME, undersigned authority, personally came and appeared:

**ROBERT SHOWALTER**

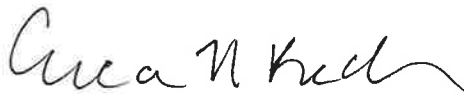
who after being duly sworn, did depose and state as follows:

1. He is a duly authorized director of Stop the Destruction of St. Bernard, Inc.
2. He has read the above and foregoing Petition, and it is true and correct to the best of his knowledge, information, and belief.



ROBERT SHOWALTER

Sworn to and subscribed before me, this 13 day of December, 2021.



NOTARY PUBLIC



**ERICA N. BECK**

BAR ROLL #30000, State of Louisiana  
My commission expires at my death.