

25TH JUDICIAL DISTRICT COURT FOR THE PARISH OF PLAQUEMINES

STATE OF LOUISIANA

NO.: 61-075

DIVISION "B"

WOODLAND BORROW PITS, LLC,

v.

THE PLAQUEMINES PARISH GOVERNMENT, and
COUNCIL PERSONS MARLA COOPER, PERCY V. GRIFFIN, JEFF EDGECOMBE,
BYRON MARINOVICH and BURGHART TURNER

FILED: _____

FILED
JAN 30 2014
/s/ JUDY S. HODNETT
DEPUTY CLERK _____
DE. CLERK

PETITION OF INTERVENTION

The Christian Ministers Missionary Baptist Association of Plaquemines, Joyce Cornin and Velma Hill Davis respectfully allege the following based on their information and belief, and file this Petition of Intervention for the purposes of "[u]niting with defendant[s] in resisting the plaintiff's demand[s]" pursuant to Article 1091 of the Louisiana Code of Civil Procedure:

Introduction

1. Woodland Borrow Pits, LLC ("Woodland") sought a Borrow Pit Permit from Plaquemines Parish for a proposed pit located across Highway 23 from the Ironton community in 2013.

2. The Plaquemines Parish Council ("Council") adopted Ordinance 12-238 ("2012 Borrow Pit Ordinance") on December 13, 2012 to provide "land use planning guidelines, requirements, and locational criteria for the review, approval or denial of all" borrow pits within the parish. This ordinance is codified at Chapter 18, Article V, Sections 18-86 through 18-95 of the Code of Ordinances, and attached to this petition. Exhibit A.

3. The ordinance requires anyone who "seeks approval from th[e] Parish for . . . a Permit to excavate or extract materials" to submit a permit application to the Plaquemines Parish government. Code of Ordinances § 18-88.

4. The Plaquemines Parish Council decides whether or not a borrow pit application should be approved. Code of Ordinances § 18-91(m).

5. In making its decision, the Council should “evaluate the impact of the special use on, and the compatibility of the use with surrounding properties, and neighborhoods to ensure the appropriateness of the use at a particular location.” These considerations are to be made “on the basis of the documents submitted with the application, the concerns expressed by citizens, and other information or documents submitted at the public meeting on the application.” Code of Ordinances § 18-91(l).

6. The Council must also consider, amongst other things, the economic impact of the project upon the community, public opposition, and material damage or prejudice to other property in the vicinity of the proposed pit. Code of Ordinances § 18-91(l).

7. At some point prior to October 24, 2013, Woodland submitted an application for a borrow pit permit.

8. On October 24, 2013, the Council denied the permit by a vote of five to three, with one absent Council member.

9. Prior to and during the October 24, 2013 meeting, the Council received comments and feedback from the public relevant to the Woodland borrow pit application.

10. Many public comments urged the Council to deny the application.

11. A neighboring property owner raised concerns that a borrow pit on the Woodland property would adversely affect drainage and flooding on his property.

12. Another public comment also brought to the Council’s attention negative consequences to business and the economy that Woodland’s borrow pit would cause.

13. Members of the community, including the intervenors, filed 319 comments opposing the pit.

14. Several members of the public, including the intervenors, testified in opposition to the pit during the October Council meetings.

15. The intervenors oppose the Woodland borrow pit permit application. Their reasons include:

(a) The borrow pit would lead to reduced property values;

(b) The Location of the pit would create safety hazards to the community;

- (c) The operation of the pit poses environmental and health concerns related to air-borne particulate matter;
- (d) The pit's operations will create increased congestion on Highway 23 (the only road in and out of Ironton);
- (e) The pit will provide breeding ground for mosquitos, which poses a health hazard to the community;
- (f) The location of the pit will exacerbate existing problems with flooding and subsidence; and
- (g) There is no clear plan for sustainable remediation, thus garbage and other waste may be used to fill the pit back in.

16. The intervenors therefore seek to unite with the defendants in resisting the plaintiff's demands.

Parties

17. Plaintiff Woodland Borrow Pits, LLC is a Louisiana corporation domiciled in New Orleans, Louisiana.

18. Intervenor defendant Christian Ministers Missionary Baptist Association of Plaquemines Parish is an incorporated nonprofit organization of Missionary Baptist ministers in Plaquemines Parish. The Ministers Association is domiciled in Plaquemines Parish.

19. Intervenor defendant Joyce Cornin is a citizen of Louisiana who is domiciled in the Ironton community in Plaquemines Parish.

20. Intervenor defendant Velma Hill Davis is a citizen of Louisiana who is domiciled in the Ironton community in Plaquemines Parish.

21. Defendant Plaquemines Parish Government is the governing authority for Plaquemines Parish. It consists of nine Council Districts and one Parish President. One voting Council Member from each of the nine Council Districts sits on the Parish Council.

22. The Parish Government maintains a principal place of business at 8056 Highway 23, Suite 200, Belle Chasse, LA 70037.

23. Defendant Marla Cooper is the duly elected Council Member for District 9, and

maintains a principal place of business at 112 Gille Ln, Buras, LA 70041.

24. Defendant Jeff Edgecombe is the duly elected Council Member for District 7, and maintains a principal place of business at 28028 Hwy 23, Port Sulphur, LA 70083.

25. Defendant Percy V. Griffin is the duly elected Council Member for District 1, and maintains a principal place of business at 15535 Hwy. 15, Davant, LA 70046.

26. Defendant Byron Marinovich is the duly elected Council Member for District 8, and maintains a principal place of business at 117 Auditorium Dr, Buras, LA 70041.

27. Defendant Burghart Turner is the duly elected Council Member for District 6, and maintains a principal place of business at 28028 Hwy 23, Port Sulphur, LA 70083.

**Plaquemines Parish's Decision
to Deny Woodland's Borrow Pit Permit Application**

28. Woodlawn Borrow Pits, LLC, applied for a permit to build a borrow pit on land west of Highway 23 across from the Ironton community.

29. Upon information and belief, Ironton is the oldest historically African-American community on the West Bank in Plaquemines Parish.

30. Citizens from Ironton and other communities in Plaquemines Parish urged the Council to deny the permit for reasons described in paragraphs 11-15 above.

31. On October 10, 2013, the Parish Council held a hearing on a proposed moratorium on new borrow pits.

32. The Council received comments from the public supporting the moratorium, including a statement from the Army Corps of Engineers that materials located in existing borrow pits already fulfilled the needs of current federal and non-federal levee projects within the Parish.

33. After the Parish Council considered public concerns and other information at both October hearings, it exercised its discretion and voted to deny Woodland's permit application on October 24, 2013.

34. Woodland filed the principal demand in this action on December 20, 2013 seeking a writ of mandamus directing the Plaquemines Parish Council to approve Woodland's

borrow pit permit application. Pl.'s Pet. ¶ 26.

35. Woodlawn filed an additional demand on December 20, 2013 with this Court seeking a declaratory judgment and injunction ordering the Council to approve Woodland's borrow pit permit application. No. 61-076.

36. The Parish's decision to deny Woodland's application represents a full and fair consideration of all information relative to the permit application under Code of Ordinances §§ 18-86 through 18-95.

Intervenors are Not Required to Answer Plaintiff's Petition

37. This writ of mandamus is to be decided in a summary proceeding under La. Code Civ. P. art. 2592(6).

38. No answer is required in a summary proceeding. La. Code Civ. P. art. 2593.

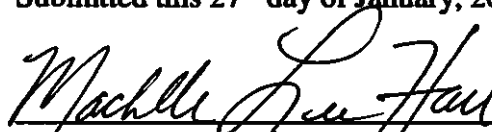
39. Thus the intervenor defendants are not required to answer the plaintiff's petition.

WHEREFORE, the intervenors Christian Ministers Missionary Baptist Association of Plaquemines, Joyce Cornin, and Velma Hill Davis pray:

- (1) That Woodland Borrow Pits, LLC be served with a certified copy of the Petition for Intervention;
- (2) That Defendants in the main demand also be served with certified copies of the Petition for Intervention;
- (3) That after due proceedings are had, there be judgment in favor of the intervenors dismissing or denying Woodland's petition for a writ of mandamus;
- (4) That the Court assign all costs in this matter to Woodland; and
- (5) That the Court award all of other relief it deems equitable.

Prepared by David Samuels

Submitted this 27th day of January, 2014, by:


Machelle Hall, La. Bar # 31498
Tulane Environmental Law Clinic
6329 Freret Street

New Orleans, Louisiana 70118
Telephone (504) 862-8814
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*Counsel for Christian Ministers Missionary Baptist
Association of Plaquemines, Joyce Cornin and
Velma Hill Davis*

PLEASE SERVE:

1. **Woodland Borrow Pits, LLC, through its attorneys:**
Timothy Scandurro, Scandurro & Layrison, LLC, 607 St Charles Ave., New Orleans,
LA, 70130, Phone (504) 522-7100
or
John Hulse IV, Conroy Law Firm, 3838 N. Causeway Blvd., Suite 3130, Metairie, LA
70002, Phone (504) 830-0118;

**Billy Nungesser, President of Plaquemines Parish; Percy V. Griffin, Council Member,
District 1, Plaquemines Parish Council; Burghart Turner, Council Member, District 6,
Plaquemines Parish Council; Jeff Edgecombe, Council Member, District 7, Plaquemines
Parish Council; Byron Marinovich, Council Member, District 8, Plaquemines Parish
Council; and Marla Cooper, Council Member, District 9, Plaquemines Parish Council**

**Through their attorney:
Chris Tankersley
Burglass and Tankersley
5213 Airline Drive
Metairie, LA 70001
Phone: (504) 836-2220
Fax: (504) 836-2221**

Minutes of a meeting of the Plaquemines Parish Council held in the Plaquemines Parish Temporary Courthouse, 450 F. Edward Hebert Blvd., Belle Chasse, Louisiana, on Thursday, December 13, 2012, at 1:46 p.m. pursuant to notice to all members with a quorum present as follows:

PRESENT: Council Member Byron T. Marinovich, Chairman
Council Member Keith Hinkley, Vice-Chairman
Council Member P.V. "Percy" Griffin
Council Member Kirk M. Lepine
Council Member Burghart Turner
Council Member Jeff Edgcombe
Council Member Marla Cooper

ABSENT: Council Member Stuart J. Guey
Council Member Anthony L. Buras

Tamara L. Olivier, Assistant Secretary

The Parish President, Billy Nungesser, is present.

Mr. Scott Lott, Director of Operations, Mr. Byron Williams, Director of Public Services, and Mrs. Janice Acosta, Director of Administration are present representing Administration.

The Prayer was led by Council Member Lepine.

The Pledge of Allegiance was led by Council Member Hinkley.

Council Member Marinovich moved to Agenda Item 1b, "Status Report by the Parish President". Without objection, so ordered.

Council Member Cooper moved to Suspend the Rules for an item entitled, "A Resolution respectfully requesting in recognition of Mr. Earl Armstrong's dedication to the preservation, restoration, and protection of our coast and beloved Plaquemines Parish, and his tireless and dedicated efforts to keep operational the West Bay Diversion Project, thus, averting the closure of the State of Louisiana's first and still only true Sediment Diversion Project, that the lands created as a result of the West Bay Freshwater and Sediment Diversion be hereby and forever called the "Earl Armstrong Islands". There was an unanimous second to suspend the rules. Without objection, so ordered.

RESOLUTION NO. 12-380

On motion of Council Member Cooper, with an unanimous second, and on roll call all members present voting "Yes", except Council Member Buras, absent, the following Resolution was adopted:

A Resolution respectfully requesting in recognition of Mr. Earl Armstrong's dedication to the preservation, restoration, and protection of our coast and beloved Plaquemines Parish, and his tireless and dedicated efforts to keep operational the West Bay Diversion Project, thus, averting the closure of the State of Louisiana's first and still only true Sediment Diversion Project, that the lands created as a result of the West Bay Freshwater and Sediment Diversion be hereby and forever called the "Earl Armstrong Islands".



are necessary to ensure that the health, safety, and general welfare of Parish residents and businesses are better protected; and

WHEREAS, this Ordinance will provide the Plaquemines Parish Council's position and its stated stance, pursuant to its Police Powers, to enforce the appropriate regulation of Borrow Pit and Sand Pit operations in the Parish;

NOW, THEREFORE:

BE IT ORDAINED BY THE PLAQUEMINES PARISH COUNCIL THAT:

SECTION 1

Section 18-86, Art. V, Chapter 18 of the Code of Ordinances is hereby amended and, as amended, reenacted to read as follows:

"Sec. 18-86 Excavation and Extraction Permit Required.

The Plaquemines Parish Council hereby establishes the following requirements of the Parish Government for the Permitting and operating of Borrow Pits and other excavations or extractions for all properties within the Parish. Any and all planned Excavation or extraction of dirt, soil, clay, sand, mud, gravel or earth referenced in the following sections must be applied for; have the application and all necessary documentation reviewed by the Parish Department of Planning and Zoning, and then have the application approved by the Council, before an issuance of a Permit will occur."

SECTION 2

Section 18-87, Art. V, Chapter 18 of the Code of Ordinances is hereby amended and, as amended, reenacted to read as follows:

"Sec. 18-87 General Provisions.

- (a) This division shall be known more commonly as and may be cited as the "2012 Borrow Pit Ordinance" and may be referred to elsewhere herein as the "Ordinance."
- (b) The Ordinance from which this division derives is created pursuant to the enabling authority set forth in the Plaquemines Parish Charter and all related ordinances.
- (c) The Ordinance is adopted, pursuant to the Plaquemines Parish Council's Police Powers, for those purposes necessary to protect the safety, health and welfare of parish residents and property and to ensure that any such excavation of Borrow Pits is fully, completely and thoroughly reviewed, engineered, regulated, monitored and approved by the Council.
- (d) The Ordinance shall apply parish-wide.
- (e) The mandates, restrictions, duties, terms and condition of the Ordinance shall be effective on the date it is originally approved by the Parish Council (the "Effective Date").
- (f) The following shall be exempted from the Borrow Pit Ordinance regulations:
 - (1) Persons who extract mud, dirt, clay, sand and gravel on their own properties for their own Personal use to the extent that disturbance shall not consist of more than half (.50) acre in any five (5) continuous years (for example, driveways and swimming pools);
 - (2) Permits for extraction and preparation of a residential site, foundations for commercial buildings, or accessory structures;
 - (3) Small operations, less than two (2) acres, and no more than eight (8) feet in depth;
 - (4) Exploratory activities which do not result in the excavation and/or removal from the property of more than one hundred (100) cubic yards of material.
 - (5) Discontinued excavations or extraction sites. The term "discontinued" shall mean for an excavation or extraction site, no excavation or extraction by the Borrow Pit Operator has occurred within one hundred eighty (180) days prior to the effective date of this Ordinance. In order to be exempted from the Ordinance, a discontinued site must be declared as such, within one twenty (120) days of the Effective Date, in writing to the DPZ, and the Council, by: location, including the legal description of the Property containing the Borrow Pit; the discontinued Borrow Pit's dimensions; and, indicating the Borrow Pit Owner's name, and the

name and address of the last Operator, if different from the Owner. If the site resumes Borrow Pit related operations, the Borrow Pit Ordinance shall apply to such new operations, in full.”

SECTION 3

Section 18-88, Art. V, Chapter 18 of the Code of Ordinances is hereby amended and, as amended, reenacted to read as follows:

“Sec. 18-88 Definitions.

Applicant - A Person that initiates the administrative process and seeks approval from this Parish for permission or a Permit to excavate or extract materials for the purposes stated in its application packet submitted for review.

Backfill – means to fill the Borrow Pit in its entirety, in compacted lifts of no greater than twelve (12) inches, with a minimum of ninety (90) percent relative compaction of the last three (3) feet of fill. There shall be an over-build of the crown of the Borrow Pit as is necessary (in light of the actual characteristics of the combination of sand and Suitable Materials used) to ensure that after any settlement, the contours of the former pit/site will remain consistent with the pre-Excavation natural topography of the Property.

Borrow Pit - an area excavated or to be excavated from which soil and unconsolidated materials are removed or extracted, below the grade level of the Property which existed before any overbuilding of the site occurred, for any purpose including but not limited to: for sale, exchange, or for use, as fill for any activities, including but not limited to landscaping, building construction, levees, dams, highway construction or maintenance, or low lying areas, whether on-site or off-site.

Council – Plaquemines Parish Council.

Department - Any applicable Department, or office, of the Parish Administration.

Director - A Person who heads or supervises one (1) or more parish Departments. The positions as defined in the parish charter.

Dirt - Includes all geologic materials, soil, mud, rock, clay, gravel, sand and the like.

Disturbed area or lands - The area within the Property which is altered by the Excavation or extraction related activities, including but not limited to the Borrow Pit, any road, utility, or facilities construction, and materials stockpiling areas.

DPZ – Plaquemines Parish Department of Permits, Planning, and Zoning.

Excavation - Activities, whether of commercial nature or not, conducted on the surface or beneath the surface of lands in connection with sand, mud, clay, gravel, dirt including any removal or extraction operation whatsoever; the products of which enter commerce for the operations of which directly or indirectly affect commerce. Such activities include excavation for the purpose of obtaining sand, mud, clay, gavel, or dirt, including such common methods as contour, drift, auger, box cut, open pit, borrow pit, and area mining; and the cleaning, concentrating, or preparation for loading of soil at the site.

Footprint - The indentation upon a land surface; an outline of existing Excavation.

Operator - The Person who operates, manages, controls, or oversees any aspect of the Excavation and/or extraction activity, project and/or process at a Borrow Pit.

Owner(s) - Any one or combination of the relationships outlined below:

- a. Being a Permittee, Operator, or Owner of a sand, clay, Dirt or gravel operation;
- b. Based on instruments of ownership or voting securities, or owning of record any interest of an entity; or
- c. Having any other relationships which give a Person authority directly or

indirectly to control the manner in which an Applicant, an Operator, or other entity conducts sand, Dirt and gravel operations.

Permit – Refers to a Plaquemines Parish issued Borrow Pit permit, regardless the title or name given to such permit, pursuant to the Council’s approval of a Borrow Pit Permit application.

Person - Includes both natural and juridical persons.

Post-extraction use - Specific uses or management-related activities that follow closure of an extracted parcel of Property.

Property - Lands that are capable of legal description and recorded Ownership, and that are the subject in part or in whole to Excavation, including extraction related activities, or proposed Excavation or extraction related activities.

Reclamation - Those activities taken to disturbed lands to bring such lands to a Council approved post-extraction use. These activities shall include: Backfilling, grading, compacting, soil stabilization, re-seeding; re-vegetation, and planting of nursery stock. Backfilling shall not be required in the event that the Borrow Pit is used exclusively for the providing of fill materials to Plaquemines Parish public levees, whether Federal, State, or locally sponsored projects, and wherein the Borrow Pit is located on the West bank of the Mississippi River, between the southern property line of the property upon which Captain Larry’s Seafood is situated (municipal address 11334 Highway 23, Belle Chasse, Louisiana 70037), and the northern property line of the property upon which St. Jude Church is situated (municipal address 24220 Diamond Road, Port Sulphur, Louisiana), to (B) Sand Pits, and to (C) Borrow Pits with operations less than ten (10) acres in size.

Sand Pit - An excavation area, which is at or above original grade, typically surrounded by a “ring levee”, into which sand is pumped for later extraction. In the event that excavation occurs below original grade, that portion of the excavation shall be considered a Borrow Pit for purposes of this Ordinance.

Suitable Materials - Soil, subsoil or geologic material with sufficient nutrient content and that can be used to support vegetation in a post-extraction use.”

USACE – United States Army Corps of Engineers.

SECTION 4

Section 18-89, Art. V, Chapter 18 of the Code of Ordinances is hereby amended and, as amended, reenacted to read as follows:

“Sec. 18-89 Standards for Operating Borrow Pits.

Each of the following standards set forth in sub-sections (a)-(l) are applicable to: (1) All Borrow Pits operations wherein the Borrow Pits are not used exclusively for the providing of fill materials to Plaquemines Parish public levees projects, whether Federal, State, or locally sponsored projects; (2) All Borrow Pits operations wherein the Borrow Pit is not located on the West Bank of the Mississippi River, between the southern property line of the property upon which Captain Larry’s Seafood is situated (municipal address 11334 Highway 23, Belle Chasse, Louisiana 70037), and the northern property line of the property upon which St. Jude Church is situated (municipal address 24220 Diamond Road, Port Sulphur, Louisiana), whether or not the Borrow Pits are used exclusively for the providing of fill materials to Plaquemines Parish public levees projects; (3) All Borrow Pits wherein the Borrow Pit Operators and/or Property Owners are not operating within the conditions placed on the Permit as originally issue.

The standards set forth in sub-sections (b), (c), (d), (e), (g), (h), and (j) are applicable to (A) any Borrow Pit permitted after the Effective Date of the Ordinance wherein the Borrow Pit is used exclusively for the providing of fill materials to Plaquemines Parish public levees, whether Federal, State, or locally sponsored projects, and wherein the Borrow Pit is located on the West bank of the Mississippi River, between the southern property line of the property upon which Captain Larry’s Seafood is situated (municipal address 11334 Highway 23, Belle Chasse, Louisiana 70037), and the northern property line of the property upon which St. Jude Church is situated (municipal address 24220 Diamond Road, Port Sulphur, Louisiana), and to (B) Borrow Pits with operations less than ten (10) acres in size in the Parish.

The standards set forth in sub-sections (c), (d), (g), (h), (j), and (k) are applicable to any Sand Pit in the Parish.

- (a) Any Property to be considered for a Borrow Pit operation Permit shall have a minimum area of five (5) acres.
- (b) Any Person who constructs, operates, uses, leases or owns a Property containing a Borrow Pit site shall post, or cause to be posted, signs in letters not less than three and one-half (3½) inches high in black on a yellow background: (1) attached at a five (5) foot height on the fencing, at intervals no greater than one hundred (100) feet along the Property boundaries and along any public rights-of-way that shall warn of the Borrow Pit operation on the Property and against trespassing on such Property; and (2) at all controlled access points and at other points on the fence line that are not more than two hundred (200) feet apart, listing the names and telephone numbers of Persons to call for access.
- (c) The Excavation or Borrow Pit shall not be located closer than one thousand (1,000) feet from:
 - (1) any existing, habitable, residential structure, which has been occupied within the previous five (5) years, or any platted residential subdivision boundary;
 - (2) any bridge, drainage structure (does not include levees, ditches or canals), or water supply; or,
 - (3) any school, park, playground, hospital, clinic, health care facility, registered burial grounds, or any site officially recognized or registered as having social, historical, and/or heritage significance.
- (d) No Borrow Pit site shall be closer than one hundred fifty (150) feet to any Property line, nor closer than two hundred (200) feet to any public road. Within this reserved perimeter buffer area, existing vegetation shall not be disturbed or removed, except for paved access areas and required landscaping and buffering.
- (e) Any Person who constructs, operates, uses, leases or owns a Borrow Pit site shall secure such site or cause such site to be secured, with a fence at least six (6) feet in height and a closing gate with a locking device at each opening to prevent unauthorized access to the site. The fence must be locked when the Borrow Pit is closed for business, and on any days when it is not having materials trucked out of it. The fence shall be of welded wire galvanized metal mesh, minimum 6 gauge, with a maximum mesh aperture of 2" x 4", and a total height of at least six (6) feet. The fencing requirements shall be maintained until all required backfilling is completed, and accepted by the DPZ, and approved by the Council. In the event that backfilling is not otherwise mandated, fencing shall be maintained so long as there is existing below level excavation, whether filled with water or not, or, in the case of Sand Pits, so long as future operations may occur.
- (f) All Borrow Pits shall allow for and preserve the historic topographical drainage of the area. In so complying, the Applicant/Permittee shall in no way increase drainage and/or runoff water to or from any adjacent Property. The steepest side slope of any Excavation site will be one (1) foot vertical drop for every three (3) feet horizontal run, to a maximum depth of thirty-five (35) feet.
- (g) The Property in which any Borrow Pit site is located shall not be used for the disposal of any material not originally found in the Borrow Pit or Excavation site, except for backfilling efforts with fill sand and other Suitable Materials, or as otherwise approved by the Plaquemines Parish Council.
- (h) Any Permit granted shall be valid for a maximum duration of five (5) years. Excavation must begin within one hundred eighty (180) days of the issuance of the Permit, and continue without having an interruption in excavation exceeding one hundred eighty (180) days. A one-time extension for two (2) additional years shall be granted by the Council for Borrow Pits, upon the original Applicant seeking the extension in writing no sooner than one hundred eighty (180) days before expiration of the initial five (5) year Permitted term, and no later than sixty (60) days before such expiration, and payment of the requisite administrative fees. Extensions for Sand Pits shall be granted every two years (2) by the Council, upon the original Applicant seeking the extension no sooner than one hundred fifty (150) days before the expiration of each Permitted term, and no later than thirty (30) days before such expiration, and payment of the requisite administrative fees.
- (i) Borrow Pits, once there has been a cessation of operations, or that are subsequently closed, or abandoned, shall at minimum, be filled with sand, and with Suitable Materials for the top three (3) feet of Backfill, to pre-Excavation elevation. The only exception to the complete Backfilling requirement shall be for: (A) a Borrow Pit permitted after the Effective Date of the Ordinance wherein the Borrow Pit is used exclusively for the providing of fill materials to Plaquemines Parish public levees, whether Federal, State, or locally sponsored projects, and wherein the Borrow Pit is located on the West bank of the Mississippi River, between the southern property line of the property upon which Captain

Larry's Seafood is situated (municipal address 11334 Highway 23, Belle Chasse, Louisiana 70037), and the northern property line of the property upon which St. Jude Church is situated (municipal address 24220 Diamond Road, Port Sulphur, Louisiana); (B) Sand Pits, (C) Borrow Pits with operations less than ten (10) acres in size, or (D) the post-Excavation use of the Borrow Pit is to be incorporated into a platted subdivision, or other Council specifically approved and Permitted use, as a water feature within the development.

- (j) The date of cessation or abandonment of operations shall be filed with the DPZ, within ten (10) days of such cessation or abandonment. Backfilling, if applicable, and all other Reclamation efforts will begin within one hundred eighty (180) days of the earlier of cessation or abandonment of Excavation or extraction operations, and shall continue unabated, until completed.
- (k) Any Person who constructs, operates, uses, leases or owns a Property containing a Sand Pit site shall post, or cause to be posted, signs in letters not less than three and one-half (3½) inches high in black on a yellow background: (1) attached at a five (5) foot height on metal posts, at all points of ingress and egress that shall warn of the Borrow Pit operation on the Property and against trespassing on such Property, listing the names and telephone numbers of Persons to call for access.
- (l) The forgoing standards in this Section shall not be subject to waivers or variances, nor may conditions imposed by the Council subsequently be waived or varied."

SECTION 5

Section 18-90, Art. V, Chapter 18 of the Code of Ordinances is hereby amended and, as amended, reenacted to read as follows:

"Sec. 18-90 Standards for Obtaining Borrow Pit Permits.

The following standards are applicable to all Borrow Pit Permit operations, except that Borrow Pit operations less than ten (10) acres in size need meet only the applicable parts of sub-paragraphs (a), (b), (d)(5), and (d)(6).

- (a) Any Person who seeks to excavate, or operate, or who seeks to continue to excavate or operate, a Borrow Pit within the parish must both provide to the DPZ, a completed Borrow Pit application form, which can be obtained from the DPZ, and receive a Permit upon compliance with the terms and conditions set forth in this Ordinance, before beginning work.
- (b) Any Borrow Pit Operator or Property Owner currently operating a Borrow Pit must provide to the DPZ, within ninety (90) days of the Effective Date of the Borrow Pit Ordinance a completed Borrow Pit application form, which can be obtained from the DPZ. Such operating Borrow Pit may continue operations, pending the application process, but shall be subject to the applicable sections of this Ordinance, pending the processing of the Borrow Pit application.
- (c) Each Borrow Pit Applicant must obtain a letter of no objection or certification from the USACE prior to review by the DPZ. Additionally, said letter of no objection or certification from the USACE and the documentation submitted to the USACE by the Borrow Pit Operator or Property Owner, and any conditions contained therein shall be attached to the Permit and incorporated therein, with the result that complete compliance with the conditions contained in said letter of no objection or certification from the USACE shall become additional conditions of the grant of the Permit and shall subject the Permittee to revocation of the Permit should the Permittee fail to comply with said conditions.
- (d) The Applicant shall provide and attach to the application the following:
 - (1) A scaled plan or drawing, no smaller in detail than 1" = 50', of:
 - (A) A Vicinity Map, indicating locations of all structures, sites, properties or boundaries, described in Sec. 18-89(C), which are within one thousand five hundred (1,500) feet of the Excavation or Borrow Pit;
 - (B) A Site Plan of the Property, indicating the maximum proposed outline of each Borrow Pit to be excavated on the Property, along with a calculated percentage of the combined area of all proposed Borrow Pits on site, compared to the entire Property;

- (C) A survey of the Property in its current state;
- (2) A copy of each Excavation or extraction contract between any Operator, contractor, Applicant, or Owner, and a copy of a legal document reflecting the current Ownership of the Property;
- (3) A plan in cross-section showing existing and planned profiles and slopes of affected areas;
- (4) A traffic route plan, which shall illustrate all public roads that will be used by the operation to transport heavy equipment, supplies, and sand and gravel within a three-mile radius of the Property or to the nearest paved Parish or State highway;
- (5) A detailed Reclamation plan.
 - A Reclamation plan is required for the site and associated disturbed areas, and for each distinct phase of the Excavation and Backfill operations. Reclamation includes those activities taken to restore disturbed lands to an approved post-Excavation land use. These activities shall include: backfilling, grading, compacting, soil stabilization, mitigation measures, re-seeding, re-vegetation, and planting of nursery stock. However, Backfilling shall not be mandatory when the Borrow Pit is used exclusively for providing fill materials to Plaquemines Parish public levees projects, whether Federal, State, or locally sponsored projects and wherein the Borrow Pit is located on the West bank of the Mississippi River, between the southern property line of the property upon which Captain Larry's Seafood is situated (municipal address 11334 Highway 23, Belle Chasse, Louisiana 70037), and the northern property line of the property upon which St. Jude Church is situated (municipal address 24220 Diamond Road, Port Sulphur, Louisiana).
 - (A) Plan requirements. A Reclamation plan shall at minimum consist of the following elements:
 - (i) A description of post-Excavation land use;
 - (ii) A description of how Reclamation is to be achieved;
 - (iii) An estimated timetable for each phase of the Excavation operations and each Reclamation activity.
 - (iv) An estimated cost of accomplishing each phase of the Reclamation plan;
 - (v) A description of the manner in which the plan is consistent with local conditions in the general area as follows:
 - (1) A description of all planned drainage features or ditches and any body of water;
 - (2) A description and maps of soils and geologic conditions;
 - (3) A plan indicating planned vegetation.
 - (6) The name and mailing address of:
 - (A) The Applicant or designated agent;
 - (B) The Excavation contractor;
 - (C) The Owner, and, if more than one, the Owners of the land; and,
 - (D) Any abutting or adjoining landowner to the Property.
- (e) The Council having determined the Excavation activities and operations will substantially increase the traffic burden on, and cause deterioration to, parish roads, the Operator of a Borrow Pit or Sand Pit shall by such operation be deemed to agree to undertake to collect a road maintenance charge of three (3) cents per ton equivalent from any contractor purchasing soil, or sand, and to forward by December 31st of each year of operation, all such charges collected through November 30 of that year, to the Parish Department of Finance, and to be specifically used by the Parish to offset the costs of maintenance and repairs to the parish roads, as determined by the appropriate Parish Department Director.
- (f) The forgoing standards in this Section shall not be subject to waivers or variances, nor may conditions imposed by the Council subsequently be waived or varied, except by a 2/3 vote of all members of the Council."

SECTION 6

Section 18-91, Art. V, Chapter 18 of the Code of Ordinances is hereby amended and, as amended, reenacted to read as follows:

“Sec. 18-91 Processing of Application.

The following standards, except those in sub-paragraph (o), are applicable to all Borrow Pits operations.

The standards set forth in sub-paragraph (o) are applicable only to: (A) Sand Pits, (B) Borrow Pits permitted after the Effective Date of the Ordinance wherein the Borrow Pit is used exclusively for the providing of fill materials to Plaquemines Parish public levees, whether Federal, State, or locally sponsored projects, and wherein the Borrow Pit is located on the West bank of the Mississippi River, between the southern property line of the property upon which Captain Larry’s Seafood is situated (municipal address 11334 Highway 23, Belle Chasse, Louisiana 70037), and the northern property line of the property upon which St. Jude Church is situated (municipal address 24220 Diamond Road, Port Sulphur, Louisiana), and (C) Borrow Pits with operations less than ten (10) acres in size.

- (a) All Borrow Pit operations shall be permitted. Either the Owner and/or the Operator of each Borrow Pit operating in the Parish after the effective date of this Ordinance shall file a completed application, including all requisite attachments, with the DPZ, and shall pay all fees as provided for in the Ordinance. The review process by the DPZ shall be a minimum of thirty (30) days.
- (b) Prior to the issuance of the Borrow Pit Permit, any Person who constructs, operates, uses, leases or owns a Borrow Pit site shall provide an irrevocable letter of credit (“LOC”) by a financial institution organized or authorized to do business in the United States and identify the Plaquemines Parish Government as the sole payee with full authority to demand immediate payment in the case of default in the performance of the terms the Reclamation plan (including, but not limited to, any applicable back-filling) ultimately approved by the Council.
 - (1) The LOC must be payable to the Plaquemines Parish Government, for the initial one million cubic yards of fill material to be sold, in the amount of the lesser of \$3.00/yard of material to be sold, or \$1,500,000.00.
 - (2) The initial expiration date of the LOC must not be less than one year from the effective date of the LOC. The LOC must contain a provision for automatic renewal for periods of not less than one-year in the absence of notice from the financial institution to the Plaquemines Parish DPZ, via certified and ordinary mail at least ninety (90) days prior to the originally stated, or any extended, expiration date of the financial institution’s election not to renew.
 - (3) The LOC must contain provisions allowing collection by the Plaquemines Parish Government for failure of the obligor to replace the bond when ninety (90) days’ notice is given by the financial institution that the LOC will not be renewed and the LOC is not replaced by other suitable bond or LOC at least thirty (30) days before its expiration date.
 - (4) The LOC shall be payable to the Plaquemines Parish Government upon demand, in part or in full, upon receipt from the authorized officer of Plaquemines Parish Government (the Plaquemines Parish President, or alternatively, the Plaquemines Parish Council Chairperson, acting pursuant to a resolution approved by the Council, of a notice of default, stating the basis therefore, e.g., default in compliance with the Permit or the failure to file a replacement for an expiring LOC as described in Item (3) above.
 - (5) The LOC must be subject to the Uniform Customs and Practice for Documentary Credits.
- © In the alternative, the Person who constructs, operates, uses, leases or owns a Borrow Pit site may provide a performance and payment bond in favor of the Parish. This bond shall be a commercial bond issued by a bonding company duly licensed in the State of Louisiana, pursuant to the requirements of La. R.S. 38:2219, meeting the same bonding requirements and amounts set forth for an LOC, above.
- (d) The Borrow Pit Operator or Owner must provide proof of the sales taxes paid on each five hundred thousand (500,000) cubic yards sold, and must back-fill, when applicable, the Excavation caused by each 500,000 cubic yards of fill sold, prior to starting further Excavation. Failure to completely back-fill after each five hundred thousand (500,000) cubic yards of fill material has been sold shall result in an immediate call on the Letter of Credit, and revocation of the Applicant’s Borrow Pit Permit, and any assessment of all other applicable penalties and fines.
- (e) It is the Applicant/Permittee’s sole responsibility, on a yearly basis, to maintain with the DPZ an adequate letter of credit or performance/payment bond, in the properly calculated amount, prior to the one year anniversary date of the filed application. Failure to do so shall

- result in immediate rescission and termination of the Permit, with no advance notice.
- (f) In addition, prior to the issuance of the Borrow Pit Permit, the Applicant shall provide a commercial general liability insurance policy, naming the Plaquemines Parish Government as an additional insured, and providing for the indemnifying and defending of the Parish Government from any and all claims and causes of action for injury to or death of a Person or Property damage filed in any regulatory proceeding, arbitration, or court of competent jurisdiction against the Parish Government, its elected officials, officers and employees, arising out of or in any manner connected to acts or omissions of such Applicant, its officers, agents, employees and representatives. The surety or insurer issuing such policy shall meet the requirements of LSA – R.S. 38:2219.
 - (g) The Applicant shall submit its application to the DPZ, then retain for consultation with the DPZ, the services of an independent licensed professional civil engineer to review for completeness the application package submitted by the Applicant. The engineer shall review the application, prepare an independent written report of compliance or non-compliance of the application package, and shall deliver the original independent report directly to the DPZ, and shall deliver a copy of the report simultaneously to the Applicant, and the report shall include a certification in writing by the engineer to the DPZ, certifying the independent nature of the report, and detailing compliance or non-compliance of the application package submitted by the Applicant with each requisite document mandated by Sec. 18-90.
 - (h) The Applicant shall have sixty (60) days from the date the Parish mails a Notice of Deficiency report to the Applicant to cure any noted deficiencies. If an Applicant fails to completely and fully cure each deficiency timely, the application shall be deemed denied. For good cause shown to the Superintendent of Permits, the “cure” period may be extended thirty (30) days, once.
 - (i) Failure of an Applicant to timely cure all deficiencies shall automatically preclude and disallow such immovable Property so affected by the application from being considered for permitting by the Council for a period of twelve (12) months from the later of the following dates: (a) failure to cure as per subsection (e) above; (b) final denial by any Department head to approve and refer an application to the Council for consideration, or © denial of a Permit by the Council.
 - (j) In the event the Council denies an application, or it is deemed denied under subsection (e), the Applicant shall have sixty (60) days from the effective date of the vote of the Council to seek judicial relief with the 25th District Court for the Parish of Plaquemines.
 - (k) If the retained engineer reports to the DPZ that the application conforms to each documentation requirement of Section 18-90, the DPZ, within thirty (30) days of receipt of the report from the engineer, shall forward to the Council one copy of the complete application, with attachments, and the engineer’s report certifying that all application documentation mandated by the Ordinance has been met.
 - (l) When considering Borrow Pit Permit applications, the Council in rendering its decision shall, on the basis of the documents submitted with the application, the concerns expressed by citizens, and other information or documents submitted at the public meeting on the application, evaluate the impact of the special use on, and the compatibility of the use with surrounding properties, and neighborhoods to ensure the appropriateness of the use at a particular location. The Council shall specifically consider the extent of the:
 - (1) Economic impact of the project upon the community.
 - (2) Public opposition or public support.
 - (3) Impact on traffic.
 - (4) Impact on drainage.
 - (5) Impact on security and evacuation routes.
 - (6) Impact upon all existing and proposed federal and non-federal levee systems.
 - (7) Satisfactory back-filling plan or requirements.
 - (8) Safety afforded neighboring properties.
 - (9) Material damage or prejudice to other Property in the vicinity.
 - (10) Material detriment, if any, of the proposed use on the public health, safety, convenience or welfare of the people and Property of this parish.
 - (m) No Permit shall be issued by the DPZ until the Permit application has been approved by the Council. Council approval of the Permit application may be conditioned upon additional conditions the Council reasonably determines are necessary to safeguard the public health, safety and welfare of the people and Property of Plaquemines Parish. Council approval of the Permit application shall not constitute an “issuance of the Permit”. Any conditions imposed shall be set forth in the resolution approving the special use and shall be

incorporated into the Permit issued.

- (n) In connection with the operation of any Borrow Pit and other Excavations of Property within the Parish neither the approval or issuance of a Permit, the non-performance of any enforcement procedure nor any provision of the Parish Borrow Pit Ordinance shall constitute or be construed as a warranty or guarantee by the Parish, the Council, or any Parish Department, agency or enforcement official as to durability or fitness, or as a warranty or guarantee by the Parish, the Council, or any Parish Department agency, or enforcement official that said Borrow Pit or any materials, equipment, or method or type of construction Excavation used therein is or will be free from defects, will perform in a particular manner, is fit for a particular purpose, or will last in any particular way. In the approval and issuance of a Permit, the enforcement of any provision of the Parish Borrow Pit Ordinance, the performance or non-performance of any procedure by the Parish or any Parish Permit, inspection or enforcement Department or agency, shall be deemed to be a discretionary act and shall be subject to the provisions of R.S. 9:2798.1.
- (o) Once all Excavation is completed, the letter of credit or performance and payment bond shall be reduced to \$250,000.00 to ensure maintenance of the requisite signage and fencing. The provisions of Sections 18-89(b) and (f) are to be met by these sub-paragraph (o) Borrow Pits within one hundred eighty (180) days of the Effective Date of this Ordinance, and such mandates are to be maintained thereafter unless or until back-filling occurs.”

SECTION 7

Section 18-92, Art. V, Chapter 18 of the Code of Ordinances is hereby amended and, as amended, reenacted to read as follows:

“Sec. 18-92 Administrative fees.

Any Person seeking to excavate Dirt, mud, clay, sand, soil, or gravel in this parish shall pay the administrative fees, as set by the Council for:

- (a) Annual Borrow Pit Permit fee -- (includes costs of processing, monitoring, annual inspection of material excavated, compliance reporting, inspecting tax sales receipts and enforcement): \$.05 per yard, as reflected in the applied for, and permitted, size of the Borrow Pit, with a maximum of \$10,000.00/annum.
- (b) Sand Pit Permit fee, and renewal application: \$4,000.00.
- © Engineer’s Estimate of Backfilling cost: \$2,000.00.
- (d) Engineer’s report and certification of application: \$3,000.00.

These fees must be paid at the time of filing the application for the Borrow Pit Permit, and with regards to item (a), annually thereafter, before the anniversary of the Permit issuance. One-half of the initial item (a) or (b) fee shall be reimbursed to the Applicant in the event that a Permit is not issued to the Applicant.”

SECTION 8

Section 18-93, Art. V, Chapter 18 of the Code of Ordinances is hereby amended and, as amended, reenacted to read as follows:

“Sec. 18-93 Monitoring, Enforcement, Penalties, and Fines.

- (a) The DPZ shall retain an independent qualified professional Civil Engineer on a contracting/consulting basis to monitor, inspect, report and certify in writing to the DPZ regarding the compliance/non-compliance with the Ordinance, of each Borrow Pit operating, or which has operated within one hundred eighty days of the effective date of this Ordinance. In the case of a Borrow Pit which was permitted prior to the approval date of this Ordinance, the engineer shall report and certify to the DPZ regarding the compliance/non-compliance of the permitted Borrow Pit Operator with the particular requirements of the Permit issued to the Borrow Pit Operator. The results of the compliance/non-compliance report and certification issued by the engineer shall be mailed to the DPZ. The DPZ shall forward to the Council a copy of the report, and in the event that any non-compliance has been reported by the Engineer, the DPZ shall advise the Council of the DPZ’s plan of action to be taken, in order to enforce compliance with the

- Ordinance or the previously issued Permit, as the case may be.
- (b) The retained engineer shall thereafter perform annual inspections on each permitted Borrow Pit, and shall also report any Borrow Pit of which the engineer becomes aware that is operating or has operated within the Parish, regardless its permit status. The engineer shall report and certify, and the report shall be forwarded by the DPZ, along with its plan of action, to the Council in the same manner as set forth in sub-paragraph (a).
 - © The retained engineer shall inspect all sales tax receipts submitted for each Borrow Pit and verify that the amount of material excavated from the Borrow Pit for both public levee use and non-public use is consistent with the actual amount of material excavated. The engineer shall report and certify, and the report shall be forwarded to the Sales Tax Division, the DPZ and to the Parish Council in the same manner as set forth in sub-paragraph (a).
 - (d) Any Person who fails to comply with any requirement or provision of Section 18-89, or Section 18-91, shall be fined One Thousand (\$1,000.00) Dollars, and One Thousand (\$1,000.00) Dollars, per day once the infraction is reported by the retained engineer to the DPZ, and such infraction shall be noticed within ten (10) days of the DPZ receiving such report by either posting notice of such infraction on the Property, or mailing it via certified mail to the Person. The fine shall continue to accrue until such Person complies with each noticed infraction, plus reimbursement to the Parish Government for all costs, including court costs and/or attorney's fees incurred in enforcing compliance. Failure to pay the entirety of such fine and costs reimbursement within ten (10) days of the earlier of mailing of notice of any infraction, or posting of notice of such infraction on the Property, shall constitute cause for immediate rescission and termination of the Borrow Pit Permit. In addition, the Parish Government shall have the right to seek injunctive and equitable relief, as well as damages equivalent to all costs incurred by the Parish Government in undertaking remediation of any Property excavated in violation of this ordinance, in addition to the fines provided for herein, costs of court, and attorney's fees, in a court of competent jurisdiction as provided by law."

SECTION 9

Section 18-94, Art. V, Chapter 18 of the Code of Ordinances is hereby amended and, as amended, reenacted to read as follows:

"Sec. 19-94 Pre-existing Non-Conforming Use.

To the extent that an existing, previously non-Permitted, Borrow Pit has conformed with an applicable, previously enacted, ordinance regarding Borrow Pits, the Operator of the Borrow Pit may continue such operations pursuant to the previously applicable Borrow Pit Ordinance, but only to the extent that the Footprint of the Borrow Pit is not increased in size after the effective date of this 2012 Borrow Pit Ordinance. Any increase in the size of the Borrow Pit Footprint, after the effective date of this 2012 Borrow Pit Ordinance, shall subject the Borrow Pit operations to all provisions of the 2012 Borrow Pit Ordinance."

SECTION 10

Section 18-95, Art. V, Chapter 18 of the Code of Ordinances is hereby amended and, as amended, reenacted to read as follows:

"Sec. 18-95 Severability.

The provisions of this Borrow Pit Ordinance are severable, and if any provision, sentence, clause, section or part hereof is held illegal, invalid or unconstitutional, or inapplicable to any Person or circumstance, the illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance or their application to other Persons or circumstances. It is hereby declared to be the intent of the Council that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional provision, sentence, clause, section or part had not been included herein, and if the Person or circumstances to which this Ordinance or any part thereof are inapplicable has been specifically exempted therefrom."

SECTION 11

The Secretary of this Council is hereby authorized and directed to immediately certify and release this Ordinance and that Parish employees and officials are authorized to carry out the purposes of this Ordinance, both without further reading and approval by the Plaquemines Parish Council.

WHEREUPON, in open session the above Ordinance was read and considered section by section and as a whole.

Council Member Edgcombe seconded the motion to adopt the Ordinance.

The foregoing Ordinance having been submitted to a vote, the vote resulted as follows:

YEAS: Council Members Keith Hinkley, Kirk M. Lepine, Stuart J. Guey, Jeff Edgcombe, Byron T. Marinovich and Marla Cooper

NAYS: Council Member Burghart Turner

ABSENT: Council Member Anthony L. Buras

PRESENT BUT NOT VOTING: (ABSTAIN) Council Member Percy "P.V." Griffin

And the Ordinance was adopted on this the 13th day of December, 2012.

Council Member Marinovich moved to advance to Agenda Item 6j. Without objection, so ordered.

RESOLUTION NO. 12-391

On motion of Council Member Marinovich, seconded by Council Member Guey, and on roll call all members present voting "Yes", except Council Member Buras, absent, the following Resolution was adopted:

A Resolution to provide employee's group coverage consisting of health, dental, vision and life for the policy period January 1, 2013 through December 31, 2013, on an employer/employee contributory basis of 72%/28% ; and otherwise to provide with respect thereto.

WHEREAS, the best quote for health was submitted by Blue Cross/Blue Shield at a cost of \$411,099 per month or \$4,933,181 per year; the best quote for dental was submitted by Ameritas at a cost of \$31,929 per month or \$383,149 per year; the best quote for vision insurance was submitted by Ameritas at a cost of \$6816 per month or \$8,1792 per year; the best quote for life was submitted by Sun Life at a cost of \$11,919 per month or \$143,028 per year;

NOW, THEREFORE:

BE IT RESOLVED by the Plaquemines Parish Council that it hereby authorizes the acceptance of Blue Cross/Blue Shield for health insurance coverage, Ameritas for dental insurance coverage, Ameritas for vision insurance coverage and Sun Life for life insurance coverage to provide the employee group insurance for the policy period January 1, 2013, to December 31, 2013, on an employer/employee contributory basis of 72%/28% respectively for health, dental, vision and life coverage.

BE IT FURTHER RESOLVED by the Plaquemines Parish Council that the Secretary of this Council is hereby authorized and directed to immediately certify and release this Resolution and that Parish employees and officials are authorized to carry out the purposes of this Resolution, both without further reading and approval by the Plaquemines Parish Council.