

Tulane Environmental Law Clinic

March 30, 2015

*Via U.S. Mail and E-Mail (Doris.Terrell@usace.army.mil)*

USACE, CEMVN

Attn: Ms. Doris Terrell

Regulatory Branch

P.O. Box 60267

New Orleans, LA 70160-0267

**RE: Comments Opposing Southern Aggregates, LLC's § 404 Permit Application** for an Aggregate Mining Operation, AI # 192689, Permit # MVN-2014-1463-CU, and Activity # CER20140001

Dear Ms. Terrell:

Save Our Hills,<sup>1</sup> Louisiana Environmental Action Network<sup>2</sup> (LEAN), and Mr. O'Neil Couvillion<sup>3</sup> respectfully submit the following comments on Southern Aggregates' application for a § 404 Permit Application to dredge and fill 12.91 acres of wetlands for a sand and gravel mine ("proposed project"). This proposal will cause certain destruction of wetlands in a region already inundated with gravel operations and threatens to compound environmental problems facing the Amite River. In addition to the environmental degradation, Southern Aggregates' operation will directly impact the surrounding community and significantly impact the residents of Oak Hills Subdivision, a +224 residential subdivision within 200 feet of the proposed project. These are impacts that cannot be mitigated. Because Southern Aggregates' proposed project will have significant environmental impacts, the National Environmental Policy Act ("NEPA") and the United States Army Corps of Engineers ("Corps") Regulations require the Corp prepare an Environmental Impact Statement ("EIS") and analyze the cumulative impacts of Southern

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<sup>1</sup> Save Our Hills is a group composed of hundreds of residents in and near the Oak Hills subdivision. The proposed strip mining operation would be located less than 200 feet away from this community with +224 homes.

<sup>2</sup> LEAN is a non-profit corporation organized under the laws of the State of Louisiana. LEAN serves as an umbrella organization for environmental and citizen groups. LEAN's purpose is to preserve and protect the state's land, water, and other natural resources, and to protect its members and other residents of the state from threats of pollution. LEAN has members statewide, including members who live, work, or recreate in St Charles Parish.

<sup>3</sup> O'Neil Couvillion is a resident of Denham Springs, Louisiana.

Aggregates' proposed dredge and fill project before deciding whether to grant Southern Aggregates' permit request. This EIS, environmental assessment or finding of no significant impact, and all analysis of impacts should be part of the record subject to public comment before any Corps decision on the § 404 permit. Further, because Southern Aggregates' proposed project fails to comply with the restrictions in 40 C.F.R. § 230.10 and is contrary to the public interest under 33 C.F.R. § 320.4(a), the permit must be denied.

The commenters reserve the right to rely on all public comments submitted and request notice of any final decision and environmental analysis when such documents become available.

**I. THE CORPS CANNOT LAWFULLY ISSUE A § 404 PERMIT WITHOUT FIRST EXAMINING THE ENVIRONMENTAL IMPACT OF SOUTHERN AGGREGATES' PROPOSED PROJECT.**

**A. NEPA Requires the Corps to Prepare an Environmental Impact Statement for Southern Aggregates' Permit Application.**

The Corps must prepare an Environmental Impact Statement regarding Southern Aggregates' proposed project before the Corps decides whether or not to grant Southern Aggregates' permit request because the requested permit would be a "major federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). The significance of Southern Aggregates' proposed operation depends on the context of the project, including the effect on "society as a whole (human, national), the affected region, the affected interests, and the locality," as well as the intensity of the project, including "the degree to which the proposed action affects public health or safety," "unique characteristics of the geographic area such as wetlands," "the degree to which the effects on the quality of the human environment are likely to be highly controversial," "the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks," and "the degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration." 40 C.F.R. § 1508.27. The proposed permit is significant because of its direct effects but also because "it is reasonable to anticipate a cumulatively significant impact on the environment" from the project. *Id.* § 1508.27(b)(7). In assessing the significance of cumulative impacts, the Corps must consider the incremental impact of the mining operation when added to "other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." 40 C.F.R. § 1508.7.

It is beyond dispute that the Corps' issuance of a § 404 permit to Southern Aggregate for the proposed project will significantly affect the quality of the lives of the residents of the Oak Hills subdivision, and thus will have a significant impact on the "human environment." 42 U.S.C. § 4332(2)(C). Considering the operation's noise, dust, traffic, and effect on neighboring property values, this project will undoubtedly change the lives of this subdivision's residents. Currently, the Oak Hills subdivision is a quiet neighborhood

removed from industrial activity. Many residents moved to Oak Hills just for that peace and quiet this neighborhood offers. Several residents moved there for their health. Others moved there for the safety to raise a family or take care of loved ones.

Southern Aggregates' Simms Road plant site demonstrates the significant impact its mining operations will have on the residents of neighboring properties. Since 2012, Southern Aggregates' mining operation has disrupted the life and well-being of Mrs. Lynn Dupre, a property owner living next to the Simms Road plant site. *See generally* Dupre Aff. (attached and incorporated by reference) In 2006, when Mrs. Dupre moved to her property in Denham Springs, she had the same dreams as the Oak Hills residents: to live in peace and quiet, removed from the outside world. *Id.* at ¶ 8. For over five years, Mrs. Dupre had just that. Forested landscape surrounded her property and she lived a tranquil life. *Id.* Around June of 2012, Southern Aggregates' operations changed all of this. *Id.* at ¶ 9. Without notice to Mrs. Dupre, Southern Aggregates' located a generator and gravel washer within 100 feet from Mrs. Dupre's home and built a gravel road within 25 feet from her home. *Id.* at ¶ 10. Mrs. Dupre woke up at 4:30 A.M. every day to the sound of operations: the hum of the generator, the scraping of the gravel washer and the resonating "BEEP," "BEEP," "BEEP" of the large hauling trucks. *Id.* at ¶ 12, 14. As these trucks transported gravel along the gravel road, Mrs. Dupre watched the trucks kick up billowing clouds of dust. *Id.* at ¶ 16. Mrs. Dupre can see the dust everywhere as it covers her property, house and vegetation. *Id.* at ¶ 17. She can feel the grit of the dust when she touches her car and trashcans. *Id.* at ¶ 17. Every time a truck passes her home, she can feel the vibration, like the vibration of an airplane flying low over her. *Id.* at ¶ 19. Further, after the project began, the flooding started. *Id.* at ¶ 21. The afternoon rain, which once drained naturally, covered her property. *Id.* at ¶ 20-21. From the dust and noise to the flooding and vibrations, Southern Aggregates' operation greatly diminished Mrs. Dupre's enjoyment of living in her home. *Id.* at ¶ 25, 32-33.

Once a haven from the outside world, this project will transform the Oak Hills subdivision to the backyard of mining operation, turning the nightmare described by Mrs. Dupre into the nightmare of an entire community. The dust from the operation, excavation and trucking will fill the air, scattering across the neighboring homes. The operation's noise will sound off for up to seventeen hours every weekday at as much as 85 dBA<sup>4</sup>, a noise level equivalent to the noise level of average traffic or a food blender. *It's a Noisy World We Live In, American Tinnitus Association (March 1, 2015, 2:34 PM), <http://www.ata.org/for-patients/how-loud-too-loud>.* The American Tinnitus Association Earplugs suggests earmuffs or other protection devices when exposed to sounds above 85 dBA. *Id.* Also, with the entrance to the mining site only 0.3 miles from Oak Hills' entrance, the trucks will flow back and forth across the Oaks Hills entrance as they transport gravel at all hours of the day. Further, when the homeowner's property values plummet, the residents who want to get

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<sup>4</sup> Between 6 a.m. and 11 p.m. on weekdays, the maximum allowable noise level is 85 dBA. Letter from Southern Aggregates on Needs/Alternatives Analysis/Response to Agency & Public Comments to La. Dep't of Env'tl. Quality 14 (Nov. 7, 2014) [hereinafter *Letter from Southern Aggregates on Needs/Alternatives Analysis*] (on file with La. Dep't of Env'tl. Quality; AI # 192689; Document ID # 9531737).

away from this nightmare will not be able to sell for a reasonable price. They'll be trapped in the backyard of a mining operation, at risk to the flooding, pollution and danger that this project would cause. All available evidence shows that these impacts would be significant. See *Nat'l Parks & Conservation Ass'n v. FAA*, 998 F.2d 1523, 1533 (10th Cir. 1993) (reversing the FAA's conclusion of no significant impacts when, based on "no empirical evidence," the FAA "substituted its subjective evaluation for that of recreational users.").

The cumulative effects of Southern Aggregates' dredging operation are also significant. First, the proposed project compounds the degradation of the Amite River Basin. As of 1990, the Amite River corridor had the greatest number of gravel sites (sixty) of any mined river in the state with 8,050 acres of mined area. Joann Mossa and David Coley, *River Corridor Sand and Gravel Mining, Louisiana and Mississippi: A Database and Comparison of Different Data Sources*, 1, 17 (2006), [http://minerals.usgs.gov/mrerp/reports/Mossa-04HQGR0178/Mossa\\_Report1-04HQGR0178.pdf](http://minerals.usgs.gov/mrerp/reports/Mossa-04HQGR0178/Mossa_Report1-04HQGR0178.pdf). Mining operations now cover the Amite River immediately north of Watson, LA and Southern Aggregates' alone has four active mine operations within five miles of the proposed site. Further, by granting Southern Aggregates' permit within 200 feet of +224 home subdivision, the Corps would set a precedent encouraging future mining operators to lease/purchase property containing wetlands and adjacent to residential communities for dredge and fill operations.

Second, the project involves highly uncertain and unique risks to the surrounding community. First, the operation presents a danger to the children of Oak Hills. Mrs. Dupre expressed this concern, noting how the operation next to her property is wide open and the edge of the pit goes straight down. Dupre Aff. at ¶ 28. "If a child fell into the pit," she said, "it would be very hard to save the child before he or she drowned." *Id.* Second, from Mrs. Dupre's experience, the operation could also attract trespassers.<sup>5</sup> Third, with Spillers Creek running through the plant site and into the neighborhood, the flooding and run-off into Spillers Creek could impact the public health and safety of the local community. Finally, as wetlands help prevent flooding, the wetlands degradation and destruction risks increased flooding in the area. *Wetland Importance*, Gulf Restoration Network, <http://healthygulf.org/our-work/wetlands/wetland-importance> (last visited March 1, 2015 1:54 PM).

Finally, the highly controversial history of this project alone illustrates the project's significance. In a town of just over 1,000 residents,<sup>6</sup> Save Our Hills collected more than 700 signatures on a petition opposing Southern Aggregates' proposed operation. Heidi R. Kinchen, *Watson Residents Ask for Public Hearing to Fight Proposed Gravel Pit*, The Advocate, Aug. 20,

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<sup>5</sup> "I have seen the front gate and it looks like a car could drive around the fence blocking the operation's entrance. In fact, around 3 P.M. one day, I heard shooting coming from the operation site. I saw a man and a woman shooting rifles on the property. They were not dressed like people working on the operation." Dupre Aff. at ¶ 29.

<sup>6</sup> According to the 2010 Census, Watson, LA has 1,047 residents. Census Viewer, *2010 Census Population of Watson, LA*, <http://censusviewer.com/city/LA/Watson/2010> (last visited March 7, 2015).

2014, <http://theadvocate.com/home/9986534-123/watson-residents-ask-for-public>. Other organizations and political officials have also voiced concern or openly opposed the operation and its potential impact.<sup>7</sup>

The Corps has not yet evaluated the environmental impacts of the Southern Aggregates' proposed project and, given the project's significant effects, cannot lawfully issue Southern Aggregates a permit to dredge until it prepares an Environmental Impact Statement.

### **B. A “Mitigated FONSI” is Not a Lawful Option.**

On some projects, the Corps has required mitigation of wetlands or flooding impacts and issued a so-called “mitigated FONSI”—a Finding of No Significant Impact concluding that the project's adverse impacts would be reduced to a less-than-significant level via mitigation conditions attached to the permit.” *O'Reilly v. U.S. Army Corps of Engineers*, 477 F.3d 225, 229 (5th Cir. 2007). But “a bare assertion” of mitigation is “insufficient to explain why the [applicable] mitigation requirements render the cumulative effects of [a] project less-than-significant, when considered with past, present, and foreseeable future development in the project area.” 477 F.3d at 235. Significant impacts posed by Southern Aggregates' proposed project cannot be mitigated. There is no practical way to mitigate the devastating impacts that this project will have on the Oak Hills subdivision so as to reduce the impacts to insignificance. Regardless, for example, of whether the permittee contributes to a “mitigation bank,” this project's neighbors will suffer the noise, dust, and loss of property values that inevitably accompanies living mere hundreds of feet away from a strip mine. Labeling these impacts as “insignificant” would be an arbitrary and capricious dismissal of the importance of a reasonable quality of life to Oak Hills residents.

### **C. Preparation of an Environmental Assessment Will Demonstrate the Need for a Full Environmental Impact Statement.**

NEPA permits the Corps to prepare an Environmental Assessment in order to determine the threshold issue of whether it must prepare an Environmental Impact Statement for Southern Aggregates' proposed project. *See Sabine River Auth. v. United States Dep't of Interior*, 951 F.2d 669, 677 (5th Cir. 1992). The purpose of the Environmental Assessment is to lead to one of two findings: “either that the project requires the preparation of an [Environmental Impact Statement] to detail its environmental impact, or that the project will have no significant impact.” *Sabine River*, 951 F.2d at 677. An Environmental Assessment of Southern Aggregates' operation must include “discussions of the need for the proposal, of alternatives . . . of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.” 40 C.F.R. § 1508.9(b). An environmental

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<sup>7</sup> The Livingston Parish Council passed a resolution formally opposing the project. The Amite River Basin Drainage and Water Conservation District sent a letter to the Corps Aug. 4 expressing concerns over the pit's potential impacts on the river.

assessment must examine the "cumulative impacts" of Southern Aggregates' proposed mining project. 40 C.F.R. § 1508.7.

**D. The Corps Cannot Lawfully Grant Southern Aggregates' Permit Without First Providing For Public Comment On An Environmental Impact Statement Or Environmental Assessment And Finding Of No Significant Impact.**

Federal regulations require an opportunity for public comment on NEPA documents under circumstances of this case. 40 C.F.R. § 1506.10(b)(2); 40 C.F.R. § 1501.4(e)(2)(i)&(ii). Once the Corps completes the Environmental Impact Statement, it must make the Environmental Impact Statement part of the record, issue a public notice, and allow interested citizens at least 30 days to comment. 40 C.F.R. § 1506.10(b)(2). In the event the Corps was to make a Finding of No Significant Impact, the Corps would have to support its finding with written evidence. 40 C.F.R. § 1508.13; O'Reilly v. U.S. Army Corps of Engineers, 477 F.3d 225, 235 (5th Cir. 2007). Moreover, because Southern Aggregates' proposed action is one which "is, or is closely similar to, one which normally requires the preparation of an environmental impact statement," the Corps must allow a public comment period of at least 30 days on any such Environmental Assessment or finding. 40 C.F.R. § 1501.4(e)(2)(i). Further—as several people noted at the public hearing—permitting a sand and gravel mine so close to an existing residential subdivision is without precedent. Because the "nature of the proposed action is one without precedent," 40 C.F.R. § 1501.4(e)(2)(ii) requires "30 days [for public review of any finding of no significant impact] before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin." *Id.* at § 1501.4(e)(2). If the Corps believes that there is precedent for granting a permit for a sand and gravel mine so close to a residential subdivision, we request that the Corps identify that precedent specifically.

NEPA documentation in this matter should respond fully to (but not be limited to) the following reasonable concerns raised by residents at the public hearing:

- What effect will the operation have on the structural integrity of nearby residences?
- Will dewatering of the mine cause subsidence of soils under these residences?
- What effects will the operation have on drainage and flooding, for example from diverting flow and from elimination of wetlands?
- What constituents will dust and particulate matter from the operation contain?
- What concentrations of PM<sub>2.5</sub> and other particulates will residents experience because of the operation?
- What, precisely, will the increase in noise levels be, measured in decibels?
- What is the projected increase in traffic and what (quantitatively) will be the impact in terms of commute times and traffic injuries and fatalities?
- What are the Corps' conclusions with respect to expected decreases in property values in the Oak Hills subdivision?
- Quantitatively, what will be the increase in loadings of total suspended solids to Spillers Creek and what methodology supports the Corps' conclusion in this respect?

- Quantitatively, what will be the increase in loadings of total suspended solids to the Amite River and what methodology supports the Corps' conclusion in this respect?
- Quantitatively, what will be the impact on dissolved oxygen levels in Spillers Creek and what methodology supports the Corps' conclusion in this respect?
- Quantitatively, what will be the impact on dissolved oxygen levels in the Amite River and what methodology supports the Corps' conclusion in this respect?
- What will be the impact on wildlife?
- What archeological resources—especially from American Indian activity—will be lost due to the project?

When an Environmental Impact Statement or draft Finding of No Significant Impact is made available for public review and comment, please provide written notice of that review period to affected members of the public and their representatives, including without limitation:

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## **II. THE CORPS MUST DENY THE APPLICATION BECAUSE SOUTHERN AGGREGATES' APPLICATION FAILS TO COMPLY WITH FEDERAL RESTRICTIONS ON DISCHARGE UNDER 40 C.F.R. § 230.10.**

Under 40 C.F.R. § 230.12(a)(3), the Corps cannot lawfully grant Southern Aggregates' dredge and fill permit if the project fails to comply with any one of the following:

- (i) There is a practicable alternative to the proposed discharge that would have less adverse effect on the aquatic ecosystem, so long as such alternative does not have other significant adverse environmental consequences; or
- (ii) The proposed discharge will result in significant degradation of the aquatic ecosystem under § 230.10(b) or (c); or
- (iii) The proposed discharge does not include all appropriate and practicable measures to minimize potential harm to the aquatic ecosystem; or
- (iv) There does not exist sufficient information to make a reasonable judgment as to whether the proposed discharge will comply with these Guidelines.

**A. The Corps Must Deny Southern Aggregates' Application Because There Is a Practicable Alternative to the Proposed Discharge That Would Have Less Adverse Effect on the Aquatic Ecosystem.**

As practicable alternatives exist, the Corps must deny Southern Aggregates' application. *See* 40 C.F.R. § 230.12 (a)(3)(i) (“A proposed disposal site for the discharge of dredged or fill material must be... [s]pecified as failing to comply with the requirements of these Guidelines where... [t]here is a practicable alternative to the proposed discharge that would have less adverse effect on the aquatic ecosystem, so long as such alternative does not have other significant adverse environmental consequences.”). Southern Aggregates could choose the “No Action” Alternative and expand operations at one or multiple sites to meet its desired production. According to the website of VantaCore, Southern Aggregates' parent company, Southern Aggregates has “extensive reserves which will last over 27 years at the current production rates.” VantaCore, <http://vantacore.com/> (last visited March 1, 2015). Southern Aggregates could pull from these reserves by expanding operations at one or several of their six gravel mine operations in Louisiana thereby minimizing and possibly eliminating any further wetlands loss. *See Letter from Southern Aggregates on Needs/Alternatives Analysis*, supra, at 5. Four active operations are within five miles of the proposed site, making the No Action alternative practicable in minimizing Southern Aggregates' cost of expansion and distribution. In addition, Southern Aggregates has the option of locating a new mine in an area that does not require destruction of wetlands—there is no credible argument that sand and gravel only exist in areas that currently qualify as wetlands. Therefore, practicable alternatives exist and the Corp must deny Southern Aggregates' application.

**B. The Corps Must Deny Southern Aggregates' Application Because Southern Aggregates Has Not Clearly Demonstrated the Absence of Practicable Alternatives.**

The Corps must deny Southern Aggregates' application since practicable alternatives presumably exist and Southern Aggregates has not clearly demonstrated otherwise. “Where [an] activity, [such as development activity,] associated with a discharge [of dredge or fill material] which is proposed for a special aquatic site does not require access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose (i.e., is not “water dependent”), practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise.” 40 C.F.R. § 230.10(a)(3). An aggregate mining operation is not water-dependent, requiring neither water-access (like with shipping) nor a water source to conduct its activities. As this project is not water dependent, practicable alternatives are presumed and the burden of proof is on Southern Aggregates to show otherwise. 40 C.F.R. § 230.10(a)(3).

Southern Aggregates' alternatives analysis does not satisfy its alternatives burden since Southern Aggregates examined only nine proposed alternatives, none of which were credible as a serious attempt to come up with options. *Letter from Southern Aggregates on Needs/Alternatives Analysis*, supra, at 26-40. Under Southern Aggregates' method of alternatives analysis, an applicant could list any property as an alternative but claim the property is inadequate for being

too small or having insufficient resources.<sup>8</sup> *See Id.* Southern Aggregates included one property on the alternatives list without even conducting any exploratory tests on the property and therefore does not know what resources could be in the property.<sup>9</sup> *See Id.* Further, although gravel mining exists throughout the region, Southern Aggregates limited its analysis to alternatives along the Amite River.<sup>10</sup> It would be unlawful for the Corps to rely on an alternatives analysis that is subject to arbitrary geographical limitations. *Cf. Matter of Browning-Ferris Indus. Petit Bois Landfill*, 93-2050 (La. App. 1 Cir. 6/23/95), 657 So. 2d 633, 639 (“[I]t appears inherently unreasonable in the mind of this court to limit consideration of alternative sites to arbitrary geographical boundaries where the potential benefits and risks of the proposed facility will impact a multi-parish, if not a multi-state region.”). Southern Aggregates must show that none of their other proposed mining developments satisfy the practicable alternative requirement. Sand and gravel is not unique to this property and the number of Southern Aggregates’ own mining operations in the area indicate that these resources are widely available within miles of this proposed location. Since 2009, Southern Aggregates has started four mining operations along the Amite River and is applying for a fifth gravel mine permit in addition to this proposed operation, Plant 10. *See* Letter from Southern Aggregates in Re: Request for Initial Minor Source Air Permit for Plant 12 Adams to La. Dep’t of Env’tl. Quality (Oct. 16, 2014) (on file with La. Dep’t of Env’tl. Quality; AI # 194054; Document ID # 9505348). Southern Aggregates’ proposed fifth gravel mine, Plant 12 Adams, is located in Helena Parish far removed from residential developments. Southern Aggregates has the burden to show that Plant 12 would not serve as a practicable alternative to Plant 10’s operations. Further, Southern Aggregates has the burden to show that any other new Southern Aggregates mining operations, not mentioned here, would not serve as a practicable alternative to Plant 10’s operations.

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<sup>8</sup> Powers 3, Redstick, Bishop and Haden Properties are not valid alternatives on their face since neither property meets Southern Aggregates’ minimum size criterion to begin with. *Letter from Southern Aggregates on Needs/Alternatives Analysis*, supra, at 33-34, 37. The Westerhaeuser Properties, Area 1, Area 2 and Area 3 are not a valid alternatives as Southern Aggregates’ investigation showed that there are no gravel reserves. *Id.* at 35-36. The Robertson Property is 116.46 acres, 11.46-26.36 acres more than Southern Aggregates’ suggested minimum, but contains a pipeline reducing the mineable area and serving as a serious impediment. *Id.* at 26, 36.

<sup>9</sup> The Burrell Carter Property is a possible alternative, but Southern Aggregates says the owner will not allow them to conduct any geotechnical investigation on the property and therefore does not know what resources could be in the property. *Id.* at 31-33. Further, Southern Aggregates does not mention how many acres of wetlands would be affected by their operations, so LDEQ would not know what environmental effects this alternative could have. *Id.*

<sup>10</sup> The study found that 56 rivers with in-corridor mining amounting to 251 sites and covering 69,675.6 acres. Joann Mossa and David Coley, *River Corridor Sand and Gravel Mining, Louisiana and Mississippi: A Database and Comparison of Different Data Sources*, 1, 17 (2006), [http://minerals.usgs.gov/mrerp/reports/Mossa-04HQGR0178/Mossa\\_Report1-04HQGR0178.pdf](http://minerals.usgs.gov/mrerp/reports/Mossa-04HQGR0178/Mossa_Report1-04HQGR0178.pdf).

**C. The Corps Must Deny Southern Aggregates' Application Because the Proposed Discharge Will Result in Significant Degradation of the Aquatic Ecosystem under § 230.10(b) or (c); Specifically, the Proposed Discharge Will Be Significantly Adverse to Recreational, Aesthetic and Economic Values and Violate State Water Quality Standards.**

First, the Corps must deny Southern Aggregates' application because the discharge of pollutants will cause "significantly adverse effects" on "recreational, aesthetic, and economic values" of Spillers Creek and Oak Hills Subdivision. 40 C.F.R. § 230.10(c)(4). Spillers Creek runs through the project operations and into Oak Hills Subdivision. Any runoff from discharged material will affect the local residences use of the creek for recreation and marring the creek's scenic view with debris. Local residents already complain of run-off from other mines draining into Spillers Creek as well as the flooding potential of Spillers Creek. See Heidi R. Kinchen, *Gravel Pit Concerns Go Beyond Water Quality*, The Advocate, Sept. 24, 2014, <http://theadvocate.com/news/weeklies/10252902-123/gravel-pit-concerns-go-beyond>.

Second, the Corps must deny Southern Aggregates' application as this project will violate Louisiana's water quality standards by compounding the Amite River's "use impairment." The Corps cannot issue a dredge and fill permit if the discharge "causes or contributes, after consideration of disposal site dilution and dispersion, to violations of any applicable State water quality standard." 40 C.F.R. § 230.10(b)(1). Damage from this project will not be limited to Spillers Creek. Spiller's Creek runs through the project operations and a neighboring subdivision before draining into the Amite River. Any contamination of Spillers Creek will flow into the Amite River compounding the river's existing "use impairment". The Louisiana Administrative Code designates the Amite River south of La-37 for use as "Primary Contact Recreation, Secondary Contact Recreation, and Fish and Wildlife Propagation" La. Admin. Code. tit. 33 § 1123.E. As of 2012, Amite River did not support its designated use of fish and wildlife propagation. Final 2012 Integrated Report of Water Quality in Louisiana, 2012. The Final 2012 Integrated Report of Water Quality in Louisiana cited, inter alia, dissolved oxygen levels as a suspected causes of impairment. The suspected sources of impairment include clearance for site development. The oxygen dissolved in lakes, rivers, and oceans is crucial for the organisms and creatures living in it. U.S. Geology Survey, <http://water.usgs.gov/edu/dissolvedoxygen.html> (last visited February 27, 2015). As the amount of dissolved oxygen drops below normal levels in water bodies, the water quality is harmed and creatures begin to die off. *Id.* Any additional run-off from Southern Aggregates' operation risks compounding the Amite River's "use impairment" and therefore the Corps must deny Southern Aggregates' application.

**D. The Corps Must Make Written Findings as to the Cumulative and Secondary Effects of Southern Aggregates' Project Prior to Any Final Action on the Permit Application.**

The Corps must gather more information from Southern Aggregates and its own independent studies to make a reasonable judgment regarding the proposed discharge and how it will impact the wetlands, local community and Amite River. As the permitting authority, the Corp

must “determine in writing the potential short-term or long-term effects of a proposed discharge of dredged or fill material on the physical, chemical, and biological components of the aquatic environment.” 40 C.F.R. § 230.11. As part of this written determination, the Corps must “determine the nature and degree of effect that the proposed discharge will have individually and cumulatively on water, current patterns, circulation including downstream flows, and normal water fluctuation.” 40 C.F.R. § 230.11(b). In determining the cumulative effects, the Corps must “collect information and solicit information from other sources about the cumulative impacts on the aquatic ecosystem.” 40 C.F.R. § 230.11(g).

Additionally, the Corps must make factual determinations regarding the proposed project’s secondary effects on the aquatic ecosystem that are “associated with a discharge of dredged or fill materials, but do not result from the actual placement of the dredged or fill material.” 40 C.F.R. § 230.11(h)(1). The Corp must make these determinations of secondary effects prior to any final action on the permit. *Id.* Also, 40 C.F.R. § 230.41 provides that when regarding “special aquatic sites” (such as the wetland here), the Corps must take secondary impacts into consideration. “When disruptions in flow and circulation occur, apparently minor loss of wetland acreage may result in major losses through secondary impacts.” 40 C.F.R. § 230.41(b). In other words, possible secondary impacts may prove devastating to the stability, hydrology, and biodiversity of the wetlands and surrounding areas. “Discharging fill material in wetlands as part of . . . industrial . . . development may modify the capacity of wetlands to retain and store floodwaters and to serve as a buffer zone shielding upland areas from wave actions, storm damage, and erosion.” *Id.*

The Corps must make factual determinations as to the project’s cumulative effects and possible secondary effects of runoff and loss of flood protection to determine whether the permit, if approved, would comply with the regulations set forth in 40 C.F.R. §§ 230.11(h) and 230.41(b). In addition to the 12.91 acres of wetlands directly impacted, 49.24 acres of wetlands exist on the project site. Southern Aggregates’ operation could disrupt the capacity of those wetlands to retain and store floodwaters causing flooding in the Oak Hills Subdivision and runoff into the neighboring water bodies. Further, as Spillers Creek empties into the Amite River, any run-off into Spillers Creek risks damaging the Amite River as well.

**E. We Request That the Corps Submit the 40 C.F.R. § 230.12(b) Written Findings to the Commenting Parties.**

We request that the Corps make written findings, including “the factual determinations required by § 230.11 and a brief explanation of any adaptation of these Guidelines to the activity under consideration.” 40 C.F.R. § 230.12(b). Further, we request that the Corp make these written findings available to us, the commenting parties, in addition to the applicant, Southern Aggregates. *See* 40 C.F.R. § 230.12(b) (“Findings under this section shall be set forth in writing by the permitting authority for each proposed discharge and made available to the permit applicant.”).

### **III. THE CORPS MUST DENY THE APPLICATION BECAUSE SOUTHERN AGGREGATES' PROJECT IS NOT IN THE PUBLIC INTEREST.**

The Corps must deny Southern Aggregates' application because it is "contrary to the public interest." 33 C.F.R. § 320.4(a). In deciding whether to issue Southern Aggregates' permit, the Corps must base its evaluation on "the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest." *Id.* In this evaluation, the Corp must weigh all relevant factors and balance the reasonably expected benefits against the reasonably foreseeable detriments. *Id.* Relevant factors include:

conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.

*Id.* The weight given to each factor in the balancing test depends on its relevance and importance to each individual case and will vary with each particular situation. *Id.* at § 320.4(a)(3).

In particular, however, the Corps' regulations mandate that the Corps consider the following criteria relevant to the public interest:

- (i) The relative extent of the public and private need for the proposed structure or work;
- (ii) Where there are unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work; and
- (iii) The extent and permanence of the beneficial and/or detrimental effects which the proposed structure or work is likely to have on the public and private uses to which the area is suited.

33 C.F.R. § 320.4(a)(2).

#### **A. Southern Aggregates' Proposed Project Is Not in the Public Interest.**

The reasonably foreseeable detriments from Southern Aggregates' proposed project outweigh the expected benefits. This operation would subject over 224 residences to around-the-clock noise, dust from trucks and operations, danger from constant truck traffic, and the many dangers of mining an open-pit less than 200 feet from children. The operations would destroy 12.91 acres of wetlands, reducing the area's ability to retain floodwaters and creating further flood hazards for the local community. Spillers Creek, which runs through the operation and into the subdivision, would carry any run-off, debris and pollution through the subdivision and into the Amite River, a water-body already listed by the State as impaired by pollution. Final 2012

Integrated Report of Water Quality in Louisiana, 2012. Finally, the operation will cause neighboring property values to drop, resulting in a reduction in property taxes to Livingston Parish and the State. Neighboring landowners could see their property values fall by as much as 39%. Ben Lansink, Diminution in Price (if any) to Residential Real Estate if Located in the Vicinity of an Existing or Proposed Ontario Pit or Quarry 3 (2014).

The expected benefits and relative public need of this project are de minimis. There has been no credible demonstration of need. Southern Aggregates is just one of a host of mining companies serving Baton Rouge/Lafayette developments. Southern Aggregates alone has six operations in the state with four located along the Amite and is currently applying for two more. See *Letter from Southern Aggregates on Needs/Alternatives Analysis*, supra, at 5. Their own website notes that they have extensive reserves lasting over 27 years at current production rates. VantaCore, <http://vantacore.com/> (last visited March 1, 2015). Further, aggregate resources are not unique to this location. Southern Aggregates could mine at another location along the Amite or in another part of the parish or region. Only five miles north of the proposed location, aggregate mining is prevalent and operations are removed from residential neighborhoods. Southern Aggregates itself is mining along the northern part of the Amite yet chose to locate a new mine as close to residential properties as possible.

**B. The Corps Must Conduct an Independent “Review of the Economic Need” of Southern Aggregates’ Project Prior to Any Final Action on the Permit Application.**

The Corps must conduct a Review of Economic Need including but not limited to an appraisal of the Oak Hills Subdivision, an accounting of the loss in tax revenues from an estimated reduction in local property values adjacent to the proposed operation, and an accounting of the tax benefit of the proposed operation to Livingston Parish. “[T]he district engineer in appropriate cases, may make an independent review of the need for the project from the perspective of the overall public interest.” 33 C.F.R. § 320.4(q). In its Review of Economic Need, the Corps must consider the importance of the project to the local community and contribution, if any, to needed improvements in the local economic base, affecting such factors as employment, tax revenues, community cohesion, community services, and property values. *Id.*

Given the potential effect on local property values, the potential loss in tax revenues, and the use and sale of this aggregate in locations outside Livingston Parish, the Corps must determine whether the operation is economically important to the local community. The creation of a pit or quarry creates apprehension in the general public, which makes the property less desirable and thus diminishes the prices of neighboring property. Ben Lansink, Diminution in Price (if any) to Residential Real Estate if Located in the Vicinity of an Existing or Proposed Ontario Pit or Quarry 5 (2014). Continuing scientific uncertainty over the adverse health consequences of a neighboring pit or quarry only serves to perpetuate the debilitating effect of pits or quarries on property prices.

*Id.* Livingston Parish would lose the property tax revenues from reduced property values.<sup>11</sup> Conversely, the benefits to Livingston Parish from the operation's aggregate sales would be minimal as Southern Aggregates mainly supplies Baton Rouge and Lafayette, locations outside of Livingston Parish. VantaCore, <http://vantacore.com/> (last visited March 1, 2015). The tax gains from those sales may accrue to other parts of the State and not to Livingston Parish or the local community.

### **C. The Corps Must Condition this Permit to Include On-site Mitigation of Wetlands.**

Due to the loss of aesthetic and wetlands value, the Corps must condition Southern Aggregates' application upon the use of on-site mitigation of wetlands instead of off-site compensatory mitigation of wetlands. The Corps has the power to require on-site mitigation to replace permitted losses of aquatic resource functions and services. 40 C.F.R. § 230.93(d)(2); *See also* 33 C.F.R. § 325.4(a) ("District engineers will add special conditions to Department of the Army permits when such conditions are necessary to satisfy legal requirements or to otherwise satisfy the public interest requirement. Permit conditions will be directly related to the impacts of the proposal, appropriate to the scope and degree of those impacts, and reasonably enforceable.").

The Corps must condition this permit to include on-site mitigation, since, without these wetlands, adjacent landowners will be at greater risk to flooding and Spillers Creek and the Amite River will be at greater risk to pollution. Wetlands improve water quality by trapping sediments, filtering out pollutants and absorbing nutrients that would otherwise result in poor water quality for downstream users. *Wetland Importance*, Gulf Restoration Network, <http://healthygulf.org/our-work/wetlands/wetland-importance> (last visited March 1, 2015 1:54 PM). Wetlands also help prevent flooding by trapping and slowly releasing surface water. *Id.* (A one acre wetland can typically store about one million gallons of water, depending on permeability.).

If the Corps determines that on-site mitigation or any other necessary conditions are not reasonably enforceable, the Corps must deny Southern Aggregates permit. 33 C.F.R. § 325.4(c).("If the district engineer determines that special conditions are necessary to insure the proposal will not be contrary to the public interest, but those conditions would not be reasonably implementable or enforceable, he will deny the permit.").

### **D. The Corps Must Deny the Permit Application if Inconsistent with "Local Requirements."**

33 C.F.R. § 325.4(j) requires respect for "local requirements." Southern Aggregate's drawings and plans associated with its application are inconsistent with Livingston Parish

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<sup>11</sup> If the three subdivisions located near the proposed site sustained a 20% decrease in value, the Livingston Parish Tax Assessor estimated \$350,023 loss in property taxes per year just on these 3 subdivisions. Jeff Taylor, Tax Impact of 20% Decrease in Value for Easterly Lakes/Lakes at BelleTerre/Oak Hills (2014). Over eight years, the estimated length of the proposed project, at this decreased value, the Parish would lose \$2,800,184 in real estate taxes.

Ordinance No.14-45 because, *e.g.*, the plans do not show a 12 foot berm and do not show a 125 foot buffer. Livingston Parish, La., Code of Ordinances § 14-45 (2014); Letter from Southern Aggregates on Supplement to Needs/Alternatives Analysis/Response to Agency & Public Comments to La. Dep't of Env'tl. Quality Figure No. 2 (Jan. 30, 2015) (on file with La. Dep't of Env'tl. Quality; AI # 192689; Document ID # 9626805). The Corps cannot lawfully grant a permit application that, on its face, is inconsistent with local requirements.

## CONCLUSION

Save Our Hills, LEAN and O'Neill Couvillion strongly object to Southern Aggregates' permit application for a gravel mine and request that the Corps deny it. In particular, we request the following:

- 1) The Corps should prepare an Environmental Impact Statement to assess the cumulative impacts of this project.
- 2) Upon completion of an environmental impact statement, the Corps should make the EIS part of the record, issue a public notice, and allow interested citizens at least 30 days to comment on the EIS.
- 3) In the event that the Corps makes a Finding of No Significant Impact, the Corps should allow for a comments period of at least 30 days on any such Environmental Assessment or finding.
- 4) The Corps should deny the application because there is a practicable alternative to the proposed discharge that would have less adverse effect on the aquatic ecosystem.
- 5) The Corps should deny the application since Practicable Alternatives presumably exist and Southern Aggregates has not clearly demonstrated otherwise.
- 6) The Corps should deny Southern Aggregates' application since the proposed discharge will result in significant degradation of the aquatic ecosystem under § 230.10(b) or (c); specifically, the proposed discharge will be significantly adverse to recreational, aesthetic and economic values and violate State water quality standards.
- 7) The Corps should make written findings regarding the potential short-term or long-term effects of the project and collect information and solicit information from other sources about the cumulative impacts on the aquatic ecosystem.
- 8) The Corps should make factual determinations in writing to determine the secondary effects on the aquatic ecosystem that are "associated with a discharge of dredged or fill materials, but do not result from the actual placement of the dredged or fill material" in accord with 40 C.F.R. § 230.11(h)(1) and prior to any final action on the permit.
- 9) The Corps should make these written findings available to us, the commenting parties.
- 10) The Corps should deny Southern Aggregates' project as contrary to the public interest.
- 11) The Corps should conduct an Independent Review of Economic Need of Southern Aggregate's project prior to any final action on the permit application.
- 12) The Corps should condition this permit to include on-site mitigation of wetlands.
- 13) The Corps should deny the permit application since it is inconsistent with Livingston Parish Ordinance No.14-45.

- 14) The Corps should respond fully to all reasonable public questions, concerns, and comments.

Finally, we request notification of approvals/denials/changes to Southern Aggregates' permit request and look forward to a written response to the concerns outlined in this document. Please provide copies of those documents to, at minimum:

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Respectfully submitted by:



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*Counsel for Save our Hills, Louisiana  
Environmental Action Network, and Mr.  
O'Neil Couvillion*

## **AFFIDAVIT OF LYNN DUPRE**

STATE OF LOUISIANA

PARISH OF LIVINGSTON

BEFORE ME, the undersigned authority, personally came and appeared, Lynn Dupre who, after being duly sworn, did depose and say:

### **Personal Background**

1. My name is Marta Lynn Dupre, formerly Wilhoit. I go by “Lynn.” I am more than eighteen (18) years old, married, and am competent to make this declaration. All matters in this declaration are based on my personal knowledge.
2. I am a resident of Denham Springs, Louisiana in Livingston Parish, a town bordering on the east side of the Amite River. This has been my residence for 8 years.
3. I used to help manage a construction company with my former husband. I am familiar with construction operations.

### **My Property Prior to Southern Aggregates’ Operations**

4. My address is 38131 Nan Wesley, Denham Springs LA 70706. I moved here in November, 2006. I live here with my husband, Kerry Dupre. The property is approximately an acre and a half.
5. The area surrounding our property consists mostly of small properties (1-3 acres) and wooded areas. There is an open field to the south and a wooded area to the north. The property to the west was pasture land. I do not know the owners of the property to the west, but when I bought my property, the seller told me that the property to the west was used for cattle and had a servitude on it by DEMCO, Dixie Electric Membership Corporation, an energy company.
6. From conversations with neighbors, my understanding is that a lot of people in the area are retired.
7. I have been retired since 2013. I am on my property almost all day most days except to go to the store or run the occasional errand. I would estimate I spend 20-24 hours of the day on my property every day.
8. I moved to the property for the peace and quiet the area had to offer. The property seemed very quiet and very dark when I first moved in.

### **Southern Aggregates' Operations Begin**

9. Southern Aggregates, LLC leases and operates an aggregate mining operation on the property to the west of my property.

10. I noticed their operation in May/June of 2012. At first I thought DEMCO was working on the property. I started noticing noise 24 hours per day and it sounded like a generator. It turned out to be a generator. I watched them put together a large machine about 100 feet from our property line. I later found out that this was a gravel washer. I watched them build a gravel and sand road. This road is about 25 feet from the property line and is on the east side of the washer.

11. Southern Aggregates never notified me that they were locating a gravel pit next my house.

### **The Gravel Washer and Generator**

12. Beginning in about June 2012, I noticed Southern Aggregates operating the generator and gravel washer starting at 4:30 A.M. every day. This would wake me up every day. I would wake up and tell my husband, "Here they go again."

13. In early 2013, the noise from Southern Aggregates' generator and gravel washer was so bad that I had trouble getting to sleep at night. My husband contacted Southern Aggregates to turn off the generator in the afternoons. After that, the noise from the generator ended at 6/6:30 P.M. and would start again at 6 A.M.

14. Although the noise from the generator didn't start until 6 A.M. now, I could still hear noise from Southern Aggregates' operation at 4:30 A.M. It sounded like trucks and we could hear a loud "BEEP! BEEP! BEEP!" when they were operating. We came to find out that Southern Aggregates employees were loading up trucks at that time and this was the sound of the trucks reversing.

### **The Trucks**

15. I am concerned about the big industrial trucks that are part of Southern Aggregates' operation adjacent to my home. They come up and down the road and pick up gravel from the gravel washer. They look like giant dump trucks.

16. The dust looks like it comes from the large trucks. When they are driving along the gravel road next to my property, I can see it billowing through the air.

17. I can see the dust everywhere. I can see it on my car even though my car is under the car port. I can see it on the porch, garbage cans and vegetation. I can shake the limbs of trees and dust flies everywhere. In the summertime, when there isn't a lot of rain, the amount of dust looks considerably worse to me. It's so gritty, I can feel it. I'm aware that rural areas are dusty but not like that.

18. I had never seen a water truck to help with the dust until after July 2014; after Southern Aggregates proposed the operation next to Oak Hills. I recognized the water trucks because I can see a hopper on the truck and watch them spray water 2-3 feet off the ground. This seemed to make a difference in how much dust the trucks kicked up, but within 10 minutes I could see the trucks kicking up dust again. I think the water dried up that quickly.

19. I can also feel a vibration. I think it's coming from the trucks. It's a shaking; it feels like the vibration of when an airplane is flying low over you. There are ceiling vents in my house that have come loose since the project began. I think it's caused by this vibration.

### **Flooding**

20. We did not have a flooding problem prior to Southern Aggregates' operation. There is a swell ditch near the property and the rainwater would drain from the west to the south, which seemed to me to prevent flooding in the neighborhood. From conversations with my neighbors, my understanding is that none of the neighbors had problems with flooding prior to the Southern Aggregates' operation.

21. After Southern Aggregates built the road, my husband and I started having more flooding problems. After a rain event, the area would flood and we would have standing water all over the yard and up to the carport.

22. My husband called Southern Aggregates to tell them about the problem. The Southern Aggregates representative told my husband that they recognized that they had a problem. They came to my property and dug a trench and put a pipe in it to get the water to drain. We no longer have a flooding problem.

### **Lack of Berm**

23. There is no berm between my property and Southern Aggregates' operation.

### **Concerns for Oak Hills Subdivision**

24. In July 2014, I heard about Southern Aggregates' new operation next to Oak Hills Subdivision. I contacted my Parish Councilman, Jim Norred, because I wanted to show him what it was like living next to a Southern Aggregates' mining operation.

25. Jim Norred brought a group of people to my property to check out the operation. We walked over to the area site and watched the trucks go up and down the road. By the time the group was leaving the property, I could see that dust covered their shoes.

26. About this time, Southern Aggregates moved their washer to another part of the property.

27. My main concern for Oak Hills is the noise. This operation generates a lot of noise. From my experiences, I believe that the noise will be bad.

28. I am also concerned about the danger this operation presents to the children of Oak Hills. These operations are wide open and a child could fall into the pit. The edge of the pit

next to my house goes straight down, and if a child fell into the pit, it would be very hard to save the child before he or she drowned.

29. I am also concerned about the operation attracting trespassers. I have seen the front gate and it looks like a car could drive around the fence blocking the operation's entrance. In fact, around 3 P.M. one day, I heard shooting coming from the operation site. I saw a man and a woman shooting rifles on the property. They were not dressed like people working on the operation.

30. From my experience, I believe the dust could also be bad. Southern Aggregates says that they use a wet process for their gravel washers, but from my experience, I believe that it is the trucks that cause much of the dust. I do not know to what degree a berm might help with this problem.

31. I am also concerned about the property values of Oak Hills' residences. Who knows if someone would be willing to buy a home next to an operation like the one next to my home.

**Closing Remarks**

32. Living adjacent to Southern Aggregates' operation has greatly diminished my enjoyment of living in my home and in my neighborhood. In particular, the noise and dust from the operation disturb and concern me.

33. I am concerned that Oak Hills will have to go through what I had to go through and am still going through. I had not spoken up sooner because I am just one person and did not think that I could have an effect on Southern Aggregates' operation next to my home. I hope that these remarks will have an effect on Southern Aggregates' site choices and consideration of their neighbors.

34. I am also concerned that Southern Aggregates will lease another property near my property. I have heard rumors that this might be happening, but I have no idea if that is true. I have not received any notification from Southern Aggregates about a proposed operation, but I also do not expect to receive notification at this point, since Southern Aggregates did not notify me of their past operation.

\_\_\_\_\_  
LYNN DUPRE

Address: \_\_\_\_\_

SWORN TO AND ASCRIBED BEFORE ME, THIS DAY OF \_\_\_\_\_, 2015.

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Closing Remarks

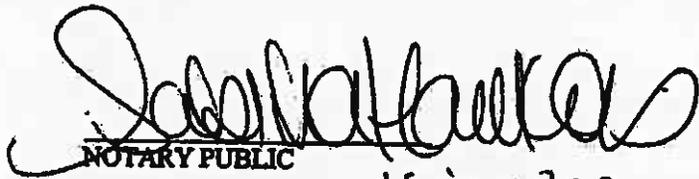
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Marta   
LYNN DUPRE  
Address: 38131 Nan Wesley Rd. JS LA 70106

SWORN TO AND ASCRIBED BEFORE ME, THIS DAY OF 28<sup>th</sup> March 2015.



NOTARY PUBLIC

State of Louisiana, Parish of Livingston

My Commission Expires 1/1/2010



## Photographs

1. Dumper Excavation Truck
2. Dust cloud caused by Dumper Excavation Truck
3. Property adjacent to Dupre property, no fencing, no berm, dangerous for children to be around. Sheer drop-offs.
4. Lake formed by excavation, no clue as to depth.
5. View looking North
6. Fence that principals from Southern Aggregates refer to. Placed on property approximately 20-30 years ago, barbed wire and only partially standing and is not a true representation of the property line.
7. Standing on the pit property adjacent looking at the Dupre home.
8. Someone whether with permission or not shooting a rifle in the pit area. There are homes in the southerly direction where he is shooting.

1



2



3



4



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