

Cameron
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38TH JUDICIAL DISTRICT COURT
PARISH OF CAMERON
STATE OF LOUISIANA

HEALTHY GULF, FOR A BETTER BAYOU,
FISHERMEN INVOLVED IN SUSTAINING OUR
HERITAGE, HABITAT RECOVERY PROJECT,
LOUISIANA BUCKET BRIGADE, MICAH 6:8
MISSION, AND SIERRA CLUB,

PETITIONERS,

VERSUS

SECRETARY, LOUISIANA DEPARTMENT OF
NATURAL RESOURCES,

RESPONDENT.

NUMBER _____

DIV. “ ___ ”

PETITION FOR JUDICIAL REVIEW

1. The Louisiana Department of Energy and Natural Resources’ Office of Coastal Management (“OCM”) violated its constitutional, statutory, and regulatory duties when it issued a Coastal Use Permit for a massive methane liquefaction, storage, and export terminal on the east side of the Calcasieu Pass (the “Export Terminal”) **1)** without assessing or weighing the resulting costs of the environmental impacts to Cameron Parish and Louisiana’s Coastal Zone, **2)** without adequately considering alternative sites or projects, and **3)** without meeting regulatory requirements to consider and avoid, among other things, the Export Terminal’s adverse impacts on public health, safety, and welfare.

2. Louisiana Constitution Article IX Section 1 mandates OCM, as public trustee of the environment, to give full and careful consideration to environmental costs, as well as alternatives that can avoid those costs, and to protect against the harm the activity would bring to the health, safety, and welfare of the people of Cameron Parish and Louisiana. OCM permitted the Export Terminal: a 770+ acre liquefied natural gas (“LNG”) export complex—a facility that would remove a 100+ acre chunk from the southwest corner of Monkey Island and concrete over east bank cheniers and wetlands the area of about 13 Superdome complexes (building, garages, and grounds). It would also interfere with use and access to Calcasieu Pass and nearby waters for

fishermen and other boaters, threaten and destroy breeding grounds for the endangered Eastern Black Rail and other birds and wildlife, and threaten and destroy fishing and hunting grounds, too. The Export Terminal would also mean construction of a new 85-mile, 4-foot diameter methane delivery pipeline (the “Pipeline,” and together with the Export Terminal, the “Project”) that OCM has approved to come into Louisiana from Texas west of Lake Charles, then curve around the east side of Calcasieu Lake before heading west at Creole to access the Export Terminal in Cameron from the east. The Pipeline would destroy at least an additional 786+ acres of fragile and protective coastal wetlands. Indeed, the Export Terminal and Pipeline are so interdependent that the applicant and OCM regularly refer to them together as one “Project.” OCM’s approval decision did not assess or weigh the costs of the real and potential adverse environmental impacts that the Export Terminal would bring—by itself or in conjunction with the Pipeline—to Cameron Parish, the Louisiana Coastal Zone, and the people of Louisiana.

3. Louisiana’s Coastal Resources Management Act and its regulations, the “Coastal Use Guidelines,”¹ mandate OCM to consider and avoid to the maximum extent practicable a proposed project’s adverse “cumulative impacts,”² “secondary impacts in undisturbed ... wetland[s],”³ “destruction of unique or valuable habitats, critical habitat for endangered species, important wildlife or fishery breeding or nursery areas,”⁴ and “increases in the potential for flood, hurricane and other storm damage, or increases in the likelihood that damage will occur from such hazards,”⁵ among other things. OCM cannot meet that “maximum extent practicable” mandate without determining that the benefits resulting from the proposed use would “clearly outweigh” its adverse impacts and that “there are no feasible and practical alternative locations,

¹ The “Coastal Use Guidelines” are regulations that implement Louisiana’s State and Local Coastal Resources Management Act (La. R.S. § 49:214.21, *et seq.*, the “Coastal Resources Management Act”) and constitute Subchapter B of Louisiana Administrative Code Title 43, Part 1, Chapter 7 on Natural Resources, Coastal Management. 43 La. Admin. Code Pt. I, §§ 701 – 719 (LAC §§ 43:I.701-719).

² See LAC § 43:I.701.F.15 (permitting authority “shall ...in evaluating whether the proposed use is in compliance with the guidelines,” use information including “likelihood of, and extent of impacts of, resulting secondary impacts and cumulative impacts”); *id.* at § 701.G.10 (all uses should avoid “adverse effects of cumulative impacts”).

³ See *id.* § 701.G.15.

⁴ See *id.* § 701.G.16.

⁵ See *id.* § 701.G.20.

methods, and practices.”⁶ The regulations also call for OCM to avoid project sites that pose “flood and storm hazards” or otherwise “endanger” public safety,⁷ and to require “effective” plans to protect people and the environment during accidents or emergencies,⁸ and to give special consideration to levee systems.⁹ OCM, however, failed to comply with these mandates. In addition to skipping over Guideline applications and analyses, OCM did not consider or weigh the cumulative impacts that the Export Terminal—by itself or together with the Pipeline—will have on Cameron Parish and the Louisiana Coastal Zone—not from the combined destruction of more than 1487 acres of wetlands and cheniers that provide irreplaceable habitat and help protect Cameron Parish and the Lake Charles area from storm surges and flooding and hurricane damage, not from the projected millions of tons per year of greenhouse gas emissions (as well as other pollutant emissions) and related increases in storm severity and sea level rise, and not from the potential catastrophic accidents and emergencies that the Export Terminal and Pipeline would risk..

4. OCM’s failure to meet the legal requirements for permitting any project—let alone one whose impacts so threaten Cameron Parish and the Louisiana Coastal Zone—was arbitrary and capricious, in violation of the constitutional and statutory provisions, and made on improper procedure, and its decision must be vacated and remanded for reconsideration.

PARTIES

5. Petitioner Healthy Gulf is a non-profit organization based in New Orleans, and with membership across Louisiana and neighboring states, whose mission is to collaborate with and serve communities who love the Gulf of Mexico by providing the research, communications, and coalition-building tools needed to reverse the long pattern of over exploitation of the Gulf’s natural resources. Healthy Gulf fights for people of Gulf communities to live and work in

⁶ *See id.* § 701.H.1; *see also id.* § 701.F.10 (requiring information on “public costs resulting from use”).

⁷ *Id.* § 711.A.2 (instructing that industrial and other uses should take place only where “lands ... have foundation conditions sufficiently stable to support the use, and where flood and storm hazards are minimal or where protection from these hazards can be reasonably well achieved, and where the public safety would not be unreasonably endangered”).

⁸ *See id.* § 703 (“Guidelines for Levees.”).

⁹ *See id.* § 719.K (“Effective environmental protection and emergency or contingency plans shall be developed and complied with for all mineral operations.”).

Louisiana free from the sights, sounds, and dangers of industry. Healthy Gulf also fights for the ability for everyone to benefit from the use and enjoyment of the wetlands, waters, and coastal areas in the Gulf. Healthy Gulf's members include citizens who live, work, or recreate in Cameron Parish, Calcasieu Parish, and throughout Louisiana's Gulf Coast, *i.e.* areas affected by OCM's decision on coastal use permit application (20211131) to construct and operate an LNG export terminal and the Project.

6. Petitioner For a Better Bayou is a community-based organization based in Sulphur, Louisiana with the mission to protect and preserve the natural beauty of Southwest Louisiana. For a Better Bayou works to achieve its mission by working at the community level in Cameron Parish to ensure that the local environment is healthy and sustainable for generations to come. For a Better Bayou aims to raise awareness about the importance of protecting natural resources and advocate for policies that promote environmental conservation. For a Better Bayou serves community members who live, work, or recreate in Cameron Parish, Calcasieu Parish, and throughout Louisiana's Coastal Zone, *i.e.* areas affected by OCM's decision on coastal use permit application (20211131) to construct and operate an LNG export terminal and the Project.

7. Petitioner Fishermen Involved in Sustaining our Heritage ("FISH") is a Louisiana-based, indigenously-led nonprofit organization and coalition of dedicated commercial fishermen. Its mission is to advocate for environmental preservation, safeguarding fishing grounds, including those in Cameron Parish, against LNG threats, and championing the rights of commercial fishermen to flourish and prosper. FISH raises awareness about the situations fishermen face and extends direct mutual aid to uplift and support the vibrant community of Gulf Coast commercial fishermen who rely on the fishing and shrimping grounds of Louisiana's Gulf Coast. FISH's members include Fishermen and their families who work and recreate in Cameron Parish, Calcasieu Parish, and Louisiana's Coastal Zone, *i.e.* areas affected by OCM's decision on coastal use permit application (20211131) to construct and operate an LNG export terminal and the Project.

8. Petitioner Habitat Recovery Project, based in Vinton, Louisiana, is a community-focused conservation project dedicated to restoring, generating, and preserving wildlife habitats in contaminated communities, through supporting and benefiting the people who reside within

them. Habitat Recovery Project serves people and communities in southwest Louisiana, including in Cameron Parish and Calcasieu Parish, *i.e.* areas affected by OCM's decision on coastal use permit application (20211131) to construct and operate an LNG export terminal and the Project.

9. Petitioner Louisiana Bucket Brigade is a Louisiana based non-profit organization with the mission to use grassroots action to hold the petrochemical industry and State and Federal governments accountable for the true costs of pollution. Louisiana Bucket Brigade's members include citizens who live, work, or recreate in Cameron Parish, Calcasieu Parish, and throughout Louisiana's Gulf Coast, *i.e.* areas affected by OCM's decision on coastal use permit application (20211131) to construct and operate an LNG export terminal and the Project.

10. Petitioner Micah 6:8 Mission is a Sulphur, Louisiana based organization that works to heal the systemic injury of environmental, economic, social, and racial injustice in southwest Louisiana communities, including in Cameron and Calcasieu Parishes. Micah 6:8 Mission's members include citizens who live, work, worship, or recreate in Cameron Parish, Calcasieu Parish, and throughout Louisiana's Gulf Coast, *i.e.* areas affected by OCM's decision on coastal use permit application (20211131) to construct and operate an LNG export terminal and the Project.

11. Petitioner Sierra Club is a non-profit organization whose mission is to explore, enjoy and protect the wild and beautiful places of the Earth; to practice and promote the responsible use of the Earth's ecosystems and resources; to educate and enlist people to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. Sierra Club has thousands of members in Louisiana, including citizens who live, work, or recreate in Cameron Parish, Calcasieu Parish, and throughout Louisiana's Gulf Coast. Members of Sierra Club live, work, or recreate in the area affected by OCM's decision on coastal use permit application (P20211131) to construct and operate an LNG export terminal and the Project.

12. The Louisiana Department of Energy and Natural Resources is an agency of the state of Louisiana, and its subdivision, Office of Coastal Management (OCM), is delegated the power to issue Coastal Use Permits. The Secretary of OCM took the final action approving

Coastal Use Permit application P20211131 and authorizing the Export Terminal and the Project and can be sued pursuant to the provisions of La. R.S. § 36:351(A).

13. Healthy Gulf, For a Better Bayou, FISH, Habitat Recovery Project, Louisiana Bucket Brigade, Micah 6:8 Mission, and Sierra Club (the “Petitioners”) are adversely affected parties with a real and actual interest in OCM’s Coastal Use Permit decision to authorize construction and operation of the Export Terminal and the Project.

14. Healthy Gulf, For a Better Bayou, FISH, Habitat Recovery Project, Louisiana Bucket Brigade, Micah 6:8 Mission, and Sierra Club are aggrieved persons who may appeal OCM’s decision pursuant to La. R.S. § 49:214.30(D).

JURISDICTION AND VENUE

15. Jurisdiction is proper in this Court, and Petitioners have a right to bring this judicial review action pursuant to La. R.S. § 49:214.35(D) and (E).

16. Venue is proper in this Court pursuant to La. R.S. § 49:214.35(E), which provides: “Proceedings for review may be instituted by filing a petition in the district court of the parish in which the proposed use is to be situated ...” OCM authorized construction and operation of the Export Terminal in Cameron Parish.

17. This petition is timely filed pursuant to La. R.S. § 49:214.35(E), which requires filing a petition “within thirty days after mailing of notice of the final decision by the secretary.”

18. Petitioners aver that the Export Terminal and Pipeline are one project and that OCM must analyze their cumulative impacts together, *see* Joint Permit Application Narrative (05/2023), p. 1, 5 (describing the Export Terminal and Pipeline as one project). But OCM issued two permit decisions. Accordingly, Petitioners are filing two separate petitions for judicial review, one for each permit decision. *See Derbes v. City of New Orleans*, 2019-0574 (La. App. 4 Cir. 12/4/19), 364 So. 3d 87, 89.

APPLICABLE LAWS

Review Standard

19. “[J]udicial review of actions of the secretary under [the Louisiana Coastal Zone Management Program], including coastal use permit ... approval ... and determinations of direct and significant impact” shall be “pursuant to the Louisiana Administrative Procedure Act,

provided that all such cases shall be tried with preference and priority. Trial de novo shall be held on request of any party.” La. R.S. § 49:214.35(A) & (F).

20. The Louisiana Administrative Procedure Act provides: “The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) In excess of the statutory authority of the agency; (3) Made upon unlawful procedure; (4) Affected by other error of law; (5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (6) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court.” La. R.S. § 49:978.1(G). The last ground, subpart (G)(6), empowers the reviewing court to “make its own determination and conclusions of fact . . . based upon its own evaluation of the record reviewed in its entirety.” *Id.*

Environmental Statute and Regulations

21. “The coastal use permit decision must be consistent with the state program and approved local programs for affected parishes and must represent an appropriate balancing of social, environmental and economic factors.” La. R.S. § 49:214.30(C)(3).

22. Coastal use permit decisions are subject to the Coastal Use Guidelines and other provisions contained in Louisiana Administrative Code Title 43, Part I, Chapter 7.

23. “The guidelines must be read in their entirety. Any proposed use may be subject to the requirements of more than one guideline or section of guidelines and all applicable guidelines must be complied with.” LAC § 43:I.701(A).

Public Trustee Duty

24. Under the Louisiana Constitution, Article IX, Section 1: “The natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people.” La. Const. Art. 9, § 1.

25. Before “granting approval of proposed action affecting the environment,” OCM must meet its mandate as “public trustee” under Article IX, Section 1 of the Louisiana Constitution, including to determine “that adverse environmental impacts have been minimized

or avoided as much as possible consistently with the public welfare.” *See Save Ourselves v. La. Env’t Control Comm’n*, 452 So.2d 1152, 1157 (La. 1984).

26. As public trustee, OCM must, at a minimum, demonstrate on the record that: “1) the potential and real adverse environmental effects of the proposed project [have] been avoided to the maximum extent possible; 2) a cost benefit analysis of the environmental impact costs balanced against the social and economic benefits of the project demonstrate that the latter outweighs the former; and 3) there are [no] alternative projects [n]or alternative sites [n]or mitigating measures which would offer more protection to the environment than the proposed project without unduly curtailing non-environmental benefits to the extent applicable.”

In re Rubicon, Inc., 95-0108, p. 12 (La. App. 1 Cir. 2/14/96), 670 So.2d 475, 483.

27. To be “in conformity” with the public trustee duty, a decision must “at least contain[]: 1) a general recitation of the facts as presented by all sides; 2) a basic finding of facts as supported by the record; 3) a response to all reasonable public comments; 4) a conclusion or conclusions on all issues raised which rationally support the order issued; and 5) any and all other matters which rationally support the [agency’s] decision. This is not an exclusive listing, but merely illustrative.” *Id.* at 483.

28. The reviewing court must reverse the agency’s decision, “if the decision was reached ‘without individualized consideration and balancing of environmental factors conducted fairly and in good faith.’” *Id.* at 481 (*quoting Save Ourselves*, 452 So.2d at 1159).

29. A public trustee “is required to make basic findings supported by evidence and ultimate findings which flow rationally from the basic findings; and it must also articulate a rational connection between the facts found and the order issued.’ . . . Only by detailing its reasoning does the [the agency] uphold its position as public trustee and justify the discretion with which it is entrusted by constitutional and statutory authority in a contested environmental matter.” *In re Am. Waste & Pollution Control Co.*, 93-3163 (La. 9/15/94), 642 So.2d 1258, 1266 (*quoting Save Ourselves*, 452 So.2d at 1159-60).

CLAIMS

30. On December 3, 2021, Venture Global CP2 LNG, LLC, a subsidiary of Venture Global LNG, Inc., applied to OCM for a Coastal Use Permit for the Export Terminal, *i.e.* the

CP2 LNG export terminal, application file no. 20211131 (also referred to as P20211131). On the same date and submitting some or all of the same documents, including the same Joint Application Narrative, another subsidiary of Venture Global LNG, Inc., Venture Global CP Express, LLC, applied to OCM for a separate Coastal Use Permit for the Pipeline that the Export Terminal would depend on entirely for its methane feedstock supply, the “CP Express” pipeline, under permit no. 20211132 (also referred to as P20211132). (Venture Global CP2 LNG, LLC and Venture Global CP Express Pipeline, LLC are referred to together as “Venture Global.”) On the same date and through some or all of the same documents, Venture Global applied to the U.S. Army Corps of Engineers for a single permit for the whole Export Terminal and Pipeline project, which it referred to together as the “Project.”

31. Application 20211131 sought a Coastal Use Permit for “construction and operation of natural gas liquefaction, storage, and export facilities at a proposed liquefied natural gas (LNG) Terminal.” It stated: “CP2 LNG’s proposed development will be constructed on approximately 775.9 acres of the mainland (Terminal Site) and shoreline of Monkey Island (Marine Facilities). The Terminal Site will include pretreatment facilities, a liquefaction plant and support facilities, four LNG storage tanks, power generation facilities, and ancillary facilities. The Marine Facilities will include two LNG carrier loading docks and accompanying turning basins. Approximately 394,230 cubic yards of concrete, 52,698 cubic yards of rock, 3,292,554 cubic yards of gravel, and 283 cubic yards of sand will be hauled in to be used as fill material. Approximately 1,043,363 cubic yards of native material will be excavated and placed onsite, and 6,398,600 cubic yards will be excavated and hauled offsite. The proposed terminal would connect to the existing natural gas pipeline grid in east Texas and southwest Louisiana through a proposed CP Express natural gas pipeline.” Terminal Basis of Decision, p. 1.

32. OCM’s March 13, 2024, Basis of Decision for the Coastal Use Permit for the Export Terminal acknowledged “[t]he direct impacts of the proposed project in the Coastal Zone (CZ) include effects upon approximately 2,626.7 acres including 413.8 acres of impact occurring within uplands. ... The remaining 2,212.9 acres includes 1,512.5 acres of waterbottoms, and 700.4 acres that have been classified as vegetated wetlands currently consisting of 121.4 acres of

fresh marsh, 190.0 acres of coastal prairie, 59.9 acres of scrub shrub, 7.8 acres of saline marsh, and 321.3 acres of brackish marsh habitats.” Terminal Basis of Decision, p. 7.

33. OCM approved the Export Terminal’s ship berthing and loading area to “occupy 122.2 acres on the southwest shoreline of Monkey Island, which is located between the Calcasieu Ship Channel and Calcasieu Pass. The 122.2 acres consists of 19.4 acres of existing offshore water and 102.8 acres of existing onshore waters (0.5 acre) and land (102.3 acres).” Joint Permit Application Narrative, p. 10. In short, OCM approved removal of more than 100 acres of land at the southwest corner of Monkey Island.

34. On the same day it approved the Export Terminal, OCM also approved the 85-mile Pipeline to supply methane to the Export Terminal, authorizing construction of “approx[imately] 45.7 miles of 48-inch-diameter natural gas pipeline within the Louisiana Coastal Zone, 6.0 miles of 24-inch-diameter lateral pipeline, and associated aboveground facilities, a Compressor Station, and two standalone mainline valves. Approx[imately] 1,785,592 cubic yards of material will be excavated and placed onsite, 155,115 cubic yards of material will be excavated and hauled offsite, 45,006 cubic yards of concrete, 37,337 cubic yards of stone, 30,733 cubic yards of sand will be used as fill, and 120,931 cubic yards of timber mats will be used. The proposed pipeline would connect the proposed CP2 LNG Terminal to the existing pipeline grid in east Texas and southwest Louisiana.” Pipeline Basis of Decision, p. 1.

35. OCM’s March 13, 2024, Basis of Decision for the Pipeline acknowledged “[t]he direct impacts of the proposed project in the Coastal Zone (CZ) include effects upon approximately 928.66 acres, including 141.79 acres of impact occurring within uplands. ... The remaining 786.87 acres includes 685.27 acres that have been classified as vegetated wetlands currently consisting of 10.60 acres of scrub shrub, 1.30 ac[res] of forested wetlands, 350.06 acres of fresh marsh, 177.86 acres of intermediate marsh, and 145.45 acres of brackish marsh.” Pipeline Basis of Decision, p. 6.

36. To the question “Why is the proposed project needed?” Venture Global responded: “The basic project purpose is to construct an LNG export facility to process domestically-produced natural gas and then liquefy, store, and subsequently export the gas as LNG to the overseas global market.” Export Terminal Application, Step 8.

37. OCM issued public notice of Venture Global's Application 20211131 for the Export Terminal approximately three months after its public notice of Venture Global's Application 20211132 for the Pipeline.

38. On September 9, 2022, Healthy Gulf, Louisiana Bucket Brigade, Micah 6:8 Mission, and Sierra Club submitted written public comments on Venture Global's Application 20211132. On December 9, 2022, Healthy Gulf, Louisiana Bucket Brigade, Micah 6:8 Mission, and Sierra Club submitted written public comments on Venture Global's Application 20211131. On November 1, 2023, For a Better Bayou, Healthy Gulf, Micah 6:8 Mission, Louisiana Bucket Brigade, and Sierra Club also submitted additional supplemental written public comments on Venture Global's Application 20211131 and Application 20211132.

39. In one public notice, OCM announced on September 19, 2023, that it would hold "a Public Hearing ... on Wednesday, November 1st at 3:00 PM" for both the Export Terminal and the Pipeline applications in Cameron, Louisiana. At the public hearing, OCM indicated that it would split the single-noticed hearing into two separate and consecutive sessions, one focused on the Export Terminal and the other on the Pipeline. On November 1, 2023, representatives of Healthy Gulf, FISH, For a Better Bayou, Habitat Recovery Project, Louisiana Bucket Brigade, Micah 6:8 Mission, and Sierra Club submitted oral comments at OCM's first session, which began at 3:00 pm. While OCM's transcript for that first session is titled Public Hearing P20211131, the hearing officer announced that the session concerned P20211132 and described the Pipeline. Representatives of Healthy Gulf, For a Better Bayou, and Louisiana Bucket Brigade were able to remain in the room and submit comments for OCM's second session, which the hearing officer began at 5:40 pm and again announced concerned P20211132 and described the Pipeline. (Collectively, the comments that Petitioners submitted together or individually are "Petitioners' Comments.")

40. On March 12, 2024, OCM authorized the Export Terminal (the "Terminal Decision"). OCM issued its Terminal Basis of Decision on March 13, 2024.

41. On March 12, 2024, OCM authorized the Pipeline (the "Pipeline Decision"). OCM issued its Pipeline Basis of Decision on March 13, 2024.

42. Coastal Use Guideline 701.F provides that OCM “shall ... in evaluating whether the proposed use is in compliance with the guidelines,” use information regarding the “availability of feasible alternative sites or methods of implementing the use;” the “public costs resulting from use” and the “likelihood of, and extent of impacts of, resulting secondary impacts and cumulative impacts,” among other things. LAC § 43:I.701.F.5, F.10 & F.15.

43. Coastal Use Guideline 701.G provides “all uses and activities shall be planned, sited, designed, constructed, operated, and maintained to avoid to the maximum extent practicable significant: ... adverse effects of cumulative impacts; ... detrimental secondary impacts in undisturbed or biologically highly productive wetland areas; ... land loss, erosion ... [and] increases in the potential for flood, hurricane and other storm damage, or increases in the likelihood that damage will occur from such hazards,” among other things. LAC § 43.I.701.G.10, G.15, G.19 & G.20.

44. Coastal Use Guideline 701.H requires, where OCM relies on the modifier “maximum extent practicable” to meet the regulation, that it must perform “a systematic consideration of all pertinent information regarding the use, the site and the impacts of the use ... and a balancing of their relative significance” and must find “that the benefits resulting from the proposed use would clearly outweigh the adverse impacts resulting from noncompliance with the modified standard and [that] there are no feasible and practical alternative locations, methods, and practices for the use,” among other things, before it can approve the use. LAC § 43:I.701.H.1.

45. Petitioners’ public comments pointed to the Application’s failure to provide the information necessary for OCM to meet its duty as public trustee to weigh the costs of the Export Terminal’s adverse environmental impacts, including the failure to account for: “[a] adverse impacts of the Project on the local economy, including commercial and recreational fishing in Calcasieu Lake and the Gulf, hunting, and tourism—more than just an eyesore, the facility would increase ship traffic, sedimentation in shipping channels, and salination in Calcasieu Lake and its surrounding waters and wetlands; [b] alternative sites for the proposed Terminal, like current wetlands acreages and alternative pipeline routes for each terminal alternative, as well as for the Project as a whole; [c] a need or basis for building a 20 million tonnes per annum (“MTPA”)

Terminal versus a smaller capacity alternative; [d] quantification of the Terminal's and the Project's costs and benefits; [and e] the Terminal's and the Project's real, potential, and cumulative adverse environmental impacts on the Coastal Zone and its people—particularly in an area with some of Louisiana's most important coastal resources, like protective wetlands and chenier habitats, one that is already saturated with oil and gas development and one suffering the impacts of climate change that this development exacerbates." Petitioners' Comments dated December 9, 2022, p. 3. Petitioners' public comments highlighted information missing from the Application, like for the Project's proposed carbon capture and storage system and its real and potential adverse impacts. Petitioners' public comments also raised concerns about the Pipeline's and the Export Terminal's potential for leaks, explosions, and accidents, as well as Venture Global's non-compliance history with state permitting requirements at its only existing and operational LNG export terminal, Calcasieu Pass LNG.

46. Petitioners' public comments raised concerns about the destruction of wetlands and cheniers that serve to protect communities from storm surges and flooding, as well as to provide habitat for birds, fish, and other wildlife. They highlighted concerns about the Project's destruction of critical habitat for the endangered Eastern Black Rail, as well nesting grounds for many other coastal birds and wildlife. Petitioners' public comments raised concerns about the Project's contribution to methane and other greenhouse gas emissions, including from Project's leaks, the Project's compressor stations' turbines, and from downstream use of the methane, among other things. The public comments also explained (using scientific and government reports) that greenhouse gas emissions are exacerbating the severity of hurricanes, storms, and storm surges, as well as rising sea levels, noting that Cameron Parish and the Louisiana coastal zone are particularly vulnerable to those cumulative impacts.

47. For its Terminal Decision, OCM acknowledged many of Petitioners' comments, but did not respond to many of Petitioners' comments. Terminal Basis of Decision, p. 2 - 6, *passim*.

48. For its Terminal Decision, OCM's application of Guideline 701.H included the following statement of adverse impacts:

“[The Terminal’s] impacts include permanent impacts to 413.8 acres of uplands, 1,513.3 [sic] acres of non-vegetated water bottoms and 362.1 acres of vegetated wetlands; temporary impacts to 345.3 acres of vegetated wetlands; intermittent temporary impacts to fisheries from turbidity during dredging; impacts to air and water quality and impacts to cheniers.”

Terminal Basis of Decision, p. 24.

49. For its Terminal Decision, OCM failed to weigh or consider costs of cumulative, secondary, or potential impacts to the environment, including impacts from the Export Terminal, the Pipeline, or other LNG export related buildout in the area, among other things, when it found that project benefits “clearly outweighed” impacts.

50. For its Terminal Decision, OCM failed to account for, assess, quantify, or attempt to quantify the costs of the Export Terminal’s or the Project’s adverse environmental impacts.

See Terminal Basis of Decision, Review Process, p. 6 – 16, *passim*.

51. OCM’s analysis of alternative sites for the Export Terminal, the Pipeline, and the Project was unreasonable and included outdated and inaccurate information, contradictions, and unsupported conclusions.

52. In its decision approving the Terminal, the DNR did not adequately consider whether alternative sites or projects would offer more protection for Cameron Parish and the Louisiana Coastal Zone without unduly curtailing nonenvironmental impacts.

53. For its “Needs, Alternatives, and Justification” review, OCM justified its approval of the Export Terminal on its “the national significance,” among other things. Terminal Basis of Decision, p. 8.

54. For its Terminal Decision, OCM did not consider the Export Terminal’s cumulative climate change related environmental impacts on Cameron Parish or anywhere else in the Louisiana Coastal Zone reasoning that some of those impacts would also affect non-local areas:

It is acknowledged that proposed LNG export facilities have a potential to grow greenhouse gas emissions. . . . However, this topic is beyond the scope of the project review under the coastal use regulations and guidelines. While the guidelines do address cumulative and secondary impacts, these are limited to the localized effects on Louisiana’s coastal resources.

Terminal Basis of Decision, p. 15.

55. For its Terminal Decision, OCM did not consider detrimental secondary impacts in undisturbed wetlands areas or find that they had been avoided to the maximum extent practicable.

56. The Export Terminal will have adverse cumulative impacts on Cameron Parish and the Louisiana Coastal Zone, including from methane and other greenhouse gas emissions from and related to the Export Terminal.

57. OCM violated the Coastal Resources Management Act, the Coastal Use Guidelines, and the Louisiana Constitution when it did not fully consider, avoid, or minimize to the maximum extent possible the adverse cumulative impacts of the Export Terminal, the Pipeline, or other existing and proposed LNG projects in the area, including the adverse cumulative impacts of wetlands destruction and of methane and other greenhouse gas emissions from and related to the Project.

58. Coastal Use Guideline 703 provides “Guidelines for Levees,” including for “hurricane and flood protection levees.” LAC § 43:I.703. Coastal Use Guideline 700 defines “Levees” to mean “any use or activity which creates an embankment to control or prevent water movement, to retain water or other material, or to raise a road or other lineal use above normal or flood water levels. Examples include levees, dikes and embankments of any sort.” LAC § 43:I.700.

59. OCM found Guideline 703 did not apply because “there are no levees included as part of the proposed [terminal].” Terminal Basis of Decision, p. 26.

60. The Export Terminal includes a “perimeter berm that encloses the Terminal,” as well as a “north access road,” that OCM acknowledged are each a linear facility. Terminal Basis of Decision, p. 27.

61. The Export Terminal “is to be surrounded by a storm surge wall designed to protect the facility from Hurricane-force storm surge and flooding that is known to occur in the project area.” Terminal Basis of Decision, p. 32.

62. The Export Terminal would include levees under LAC § 43:I.700, including the enclosing perimeter barrier and the surrounding storm surge wall.

63. DNR's finding that "there are no levees included as part of the proposed project" is arbitrary and capricious and not supported or sustainable by a preponderance of evidence. *See* Terminal Basis of Decision, p. 26.

64. DNR violated the Coastal Resources Management Act, the Coastal Use Guidelines, and the Louisiana Constitution when it did not apply Coastal Use Guideline 703 to the Project or require the Project to conform with Coastal Use Guideline 703.

65. Coastal Use Guideline 711.A provides: "Industrial, commercial, urban, residential, and recreational uses ... shall, to the maximum extent practicable, take place only ... on lands which have foundation conditions sufficiently stable to support the use, and where flood and storm hazards are minimal or where protection from these hazards can be reasonably well achieved, and where the public safety would not be unreasonably endangered," among other things. LAC § 43:I.711.A.

66. OCM's application of 711.A failed to address foundational stability or public safety, including in the event of acknowledged "[h]urricane-force storm surge and flooding that is known to occur in the project area." Terminal Basis of Decision, p. 32.

67. OCM violated the Coastal Resources Management Act, the Coastal Use Guidelines, and the Louisiana Constitution when it determined that Coastal Use Guideline 711.A was "met, to the maximum extent practicable," without considering, among other things, whether "public safety would not be unreasonably endangered."

68. Coastal Use Guideline 711.H provides: "Surface alterations shall, to the maximum extent practicable, be located away from critical wildlife areas and vegetation areas." LAC § 43:I.711.H.

69. Coastal Use Guideline 711.I provides: "Surface alterations which have high adverse impacts on natural functions shall not occur, to the maximum extent practicable, on ... isolated cheniers, isolated natural ridges or levees, or in wildlife and aquatic species breeding or spawning areas, or in important migratory routes." LAC § 43:I.711.I.

70. "The [E]astern [B]lack [R]ail ... is a diminutive waterbird that inhabits both freshwater and saltwater marshes in the United States, Central America, and South America The [Eastern Black Rail] is currently considered critically imperiled in Louisiana, and, as of

October 8, 2020, is Federally listed as threatened under the Endangered Species Act.” Terminal Basis of Decision, p. 12 – 13.

71. Louisiana’s Department of Wildlife and Fisheries “expressed concerns about the project impacts on the Eastern Black Rail ... [and] recommended that OCM ‘minimize disturbance and alteration to high marsh habitat.’” Terminal Basis of Decision, p. 13.

72. For its Terminal Decision, OCM acknowledged that the site of the Terminal includes approximately 125 acres of suitable habitat for the Eastern Black Rail, approximately 61 acres of which would be “directly and permanently impact[ed]” (21 out of 25 acres on Monkey Island and 40 out 100 on the east bank). OCM found the remaining suitable habitat “would not be impacted directly by construction activities,” but did not consider acreage or extent of indirect impacts. OCM acknowledged “[a]nticipated impacts to the E[astern] B[lack] R[ail] would be caused by noise, lighting, day-to-day facility operations, and replacement of vegetated and open water habitats with surfacing materials” and that “[t]he number of [Eastern Black Rail] individuals subject to harm from the Action ... [to be] up to 39 adults and 63 subadults within the construction and operational footprints.” Terminal Basis of Decision, p. 13.

73. For its Terminal Decision, OCM “determined that the selected site for the facility is the least damaging feasible alternative even though some critical habitat for the Eastern Black Rail... will be permanently impacted by the facility.” Terminal Basis of Decision, p. 33.

74. For its Terminal Decision, OCM included conditions in the Coastal Use Permit that suggested and did not require steps for the Export Terminal to avoid or minimize impacts to the Eastern Black Rail and to other birds and wildlife. Terminal Basis of Decision, p. 45 – 46.

75. For its Pipeline Decision, OCM included conditions in the Coastal Use Permit that suggested and did not require steps for the Pipeline to avoid or minimize impacts to the Eastern Black Rail and to other birds and wildlife. Pipeline Basis of Decision, p. 34 – 36.

76. For its Terminal Decision, OCM did not consider the Pipeline’s or other proposed and existing LNG export terminals’ impacts to the Eastern Black Rail or to other birds and wildlife.

77. For its Terminal Decision, OCM did not adequately weigh real or potential impacts to the imperiled Eastern Black Rail or to other birds and wildlife.

78. OCM violated the Coastal Resources Management Act, the Coastal Use Guidelines, and the Louisiana Constitution when it determined that Coastal Use Guideline § 711.H was “to the maximum extent practicable, met.” *See* Terminal Basis of Decision, p. 33.

79. OCM violated the Coastal Resources Management Act, the Coastal Use Guidelines, and the Louisiana Constitution when it determined that Coastal Use Guideline § 711.I was “to the maximum extent practicable, met.” *See* Terminal Basis of Decision, p. 33.

80. OCM’s Terminal Decision violated the La. R.S. § 49:214.30 mandate to represent an appropriate balancing of social, environmental and economic factors.

81. OCM’s Terminal Decision violated the regulatory requirement that “[p]ermit decisions will be made only after a full and fair consideration of all information before the permitting body, and shall represent an appropriate balancing of social, environmental, and economic factors.” *See* LAC § 43:I.723.C.8.a.

82. OCM’s Terminal Decision did not follow and failed to meet the Coastal Use Guidelines.

83. OCM arbitrarily and capriciously determined that the Export Terminal and the Project is consistent with the State and Local Coastal Resources Management Act and the Louisiana Coastal Management Program.

84. OCM’s Terminal Decision violated Article IX, Section 1 of the Louisiana Constitution.

85. For its Terminal Decision, OCM did not meet its constitutionally mandated public trust duty.

ASSIGNMENT OF ERRORS

86. OCM's decision to authorize the Export Terminal has prejudiced substantial rights of the Petitioners because OCM's decision is "[i]n violation of constitutional or statutory provisions." *See* La. R.S. § 49:978.1(G)(1).

87. OCM's decision to authorize the Export Terminal has prejudiced substantial rights of the Petitioners because OCM's decision is "[i]n excess of the statutory authority of the agency." *See* La. R.S. § 49:978.1(G)(2).

88. OCM's decision to authorize the Export Terminal has prejudiced substantial rights of the Petitioners because OCM's decision is "[m]ade upon unlawful procedure" or "[a]ffected by other error of law." *See* La. R.S. § 49:978.1(G)(3) & (4).

89. OCM's decision to authorize the Export Terminal has prejudiced substantial rights of the Petitioners because OCM's decision is "[a]rbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." *See* La. R.S. § 49:978.1(G)(5).

90. OCM's decision to authorize the Export Terminal has prejudiced substantial rights of the Petitioners because OCM's decision is "not supported or sustainable by a preponderance of the evidence." *See* La. R.S. § 49:978.1(G)(6).

DESIGNATION OF RECORD FOR APPEAL

91. Petitioners designate as the Administrative Record all information produced by, considered by, and submitted to OCM in connection with Venture Global's application for a Coastal Use Permit (P20211131).

PRAYER FOR RELIEF

Upon consideration of the law and facts of this case, Petitioners respectfully request that this Court grant relief as follows:

1. Reverse the OCM decision and vacate the authorization for the Export Terminal and Coastal Use Permit application no. P20211131; and
2. Award all other relief as this Court finds equitable.

[Signature block on next page.]

Respectfully submitted on April 11, 2024,



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