

ATTACHMENT 4

CONSERVATION SERVITUDE AGREEMENT

**7.06-Acre Portion of
Bayou Grand Coteau Coastal Forested Wetland Conversion Project
(LA2002_1204_1200 [Duck Lake 2002])**

**LOUISIANA CONSERVATION SERVITUDE AGREEMENT
(7.06-ACRE PORTION OF BAYOU GRAND COTEAU CONVERSION PROJECT)
(LA2002_1204_1200 [Duck Lake 2002])**

UNITED STATES OF AMERICA

STATE OF LOUISIANA

PARISH OF LAFOURCHE

On the dates and at the places respectively set forth below, before the several undersigned Notaries Public, and in the presence of the respective undersigned competent witnesses, personally came and appeared:

PBC Operators, Inc. (Fed. I.D. # 72-12053⁰⁶), a corporation organized under the laws of the State of Louisiana, whose permanent mailing address is P.O. Box 63, Station 2, Houma, LA 70360 (“PBC”), appearing herein as a Grantor by and through its duly authorized representative Tim Bourgeois.

Louisiana Conservation Corporation (Fed. I.D. # 72-1463025), a Louisiana non-profit corporation certified by the Louisiana Department of Natural Resources as a non-profit land conservation organization, whose address is the Law Offices of Pat Berrigan, 202 Village Circle, Suite 2, Slidell, LA 70458 (“LCC”), appearing herein as a Party to this Agreement, as defined hereafter, by and through its duly authorized representative Rex English.

Grantor, in consideration of good and valuable consideration, the receipt and sufficiency of which is acknowledged, agrees to the following:

1. **Definitions.** Unless otherwise expressly stated herein, the following terms shall have the meanings and definitions expressed as follows:
 - a. The term “Agreement” shall mean this Conservation Servitude Agreement for Natural Resource Damage Assessment (NRDA) case file #LA2002_1204_1200 (Duck Lake 2002).
 - b. The term “Grantor” shall mean and include PBC, any subsequent landowner and any successors in interest of the Restoration Property.
 - c. The term “Holder” shall mean and include LCC, who will have the following rights and responsibilities:
 - i. The right of access to inspect and verify compliance with this Agreement;
 - ii. The right to take action to preserve and protect the purposes of this Agreement;
 - iii. The right to take legal action to enforce compliance with this Agreement;
 - iv. The right to seek complete restoration of any breach of this Agreement;
 - v. The right to payment for costs of correcting breach or costs of restoration, including expenses, court costs, and attorney fees;
 - vi. The responsibility to regularly monitor Restoration Property and its condition;

- vii. Enforce Agreement in case of disturbance (i.e. an activity that is inconsistent with the maintenance and protection of the natural resources and their services to be provided by the Restoration Property) or breach of Agreement; and
 - viii. Report periodically (i.e. at least every 5 years) on condition of the Restoration Property and its condition relative to the purpose of this Agreement to the Trustees through the Lead Administrative Trustee.
- d. The term “Trustees” shall mean and include the State of Louisiana by and through its duly authorized representatives the Louisiana Oil Spill Coordinator’s Office/Office of the Governor (“LOSCO”), the Louisiana Department of Wildlife and Fisheries (“LDWF”), the Louisiana Department of Environmental Quality (“LDEQ”), who will have the following rights:.
- i. The right of access to inspect and verify compliance with this Agreement;
 - ii. The right to take action to preserve and protect the purposes of this Agreement;
 - iii. The right to take legal action to enforce compliance with this Agreement;
 - iv. The right to seek complete restoration of any breach of this Agreement;
 - v. The right to payment for costs of correcting breach or costs of restoration, including expenses, court costs, and attorney fees.
- e. The term “Parties” shall mean and include PBC, LCC, and the State of Louisiana by and through its duly authorized representatives, LOSCO, LDWF, and LDEQ.
- f. The term “Restoration Property” shall mean and include that property more fully described in Section 2 of this Agreement.
- g. The term “Third Parties with Rights of Enforcement” shall mean and include the State of Louisiana, by and through the Trustees, which will have the right to enforce the terms of this Agreement, in accordance with La. R.S. 9:1272 and R.S. 9:1274(3).
- h. The term “Lead Administrative Trustee” shall mean and include LOSCO.
- i. The term “Settlement Agreement” shall mean and include the Settlement Agreement for NRDA case file # LA2002_1204_1200 (Duck Lake 2002) including its attachments: Attachment 1 (Final Damage Assessment and Restoration Plan [Final DARP]); Attachment 2 (Restoration Implementation and Monitoring Plan); Attachment 3 (Forest Management Agreement); Attachment 4 (Conservation Servitude Agreement between the Trustees and the Landowner); Attachment 5 (Bayou Grand Coteau Mitigation Area Conservation Servitude Agreement); and Attachment 6 (United States Army Corps of Engineers Letter of No Objection).
- j. The term “Responsible Party” shall mean and include Hilcorp Energy Company, as defined in section II.Q of the Settlement Agreement.
- k. The term “Restoration Project” shall mean and include the Bayou Grand Coteau Coastal Forested Wetland Conversion Project, as defined in section II.P of the Settlement Agreement, which was selected in the Final Damage Assessment and Restoration Plan (Final DARP [Attachment 1 of the Settlement Agreement]) to recover damages for injuries to natural resources and services resulting from a discharge of crude oil into the surrounding swamp located approximately 1.5 miles southwest of Duck Lake, St. Martin Parish, Louisiana.
2. **Restoration Property.** The property subject to this Agreement consists of that certain tract of land located in Section 39, Township 16 South, Range 17 East, Lafourche Parish, Louisiana, approximately 5 miles north-northeast of Houma, Louisiana. The Restoration Property comprises approximately 7.06 acres of the property and is more clearly described and delineated on the map and survey attached hereto and made a part hereof by reference as Exhibit A and Exhibit B of this Agreement.

3. **Conservation Servitude.**

- a. It is the purpose of this Agreement to protect and preserve the important natural resources and natural resource services provided by the Restoration Property. Specifically, to sustain the Restoration Property within the forested wetland landscape in order to maintain and conserve its vegetative and soil productivity and wildlife value for a specified period of time (see section 3d of this Agreement for the duration of this Agreement).
- b. Grantor acknowledges the Settlement Agreement for the Restoration Project and the provisions described herein are part of the Settlement Agreement. The lands within the Restoration Property are to be maintained for the express purpose of compensating for interim losses pending recovery of the natural resources within the swamp southwest of Duck Lake, St. Martin Parish, Louisiana, and, as such, cannot be altered in a manner contrary to said purposes without approval from the Trustees. The interim losses for which the Restoration Project will compensate are described in Section 4.0 of the Final DARP (Attachment 1 of the Settlement Agreement). Any other activities that are inconsistent with the goals of the Restoration Project are prohibited.
- c. With subrogation of all rights, Grantor hereby grants to Holder and/or Third Parties with Rights of Enforcement of this Agreement, as follows:
 - i. An irrevocable and unrestricted right within the discretion of Holder and/or Third Parties with Rights of Enforcement to ensure and enforce the purposes of this Agreement. This right may also be enjoyed and exercised by their agents, employees, contractors, consultants, permittees, and invitees.
 - ii. In accordance with the Louisiana Conservation Servitude Act, La. R.S. 9:1271, et seq., the right to restrict use of the Restoration Property pursuant to which the Restoration Property shall not be used, sold, conveyed, transferred, or leased, and neither Landowner nor any other person claiming any right, title, or interest in the Restoration Property shall grant, sell, convey, transfer, lease, or otherwise permit or fail to prevent the use of the Restoration Property, in any manner that would interfere with compliance with this Agreement or any amendment thereto, except as provided otherwise in this Agreement.
 - iii. Protection and preservation of the Restoration Property
 - (a) Land Use. No commercial, industrial, residential, agricultural, quarrying, mining, or building development activities are permitted on the Restoration Property. No surface mining, drilling, mineral development, or other man made changes in the existing general topography of the landscape or land surface are permitted on the Restoration Property. No utility corridors or other rights-of-way may be located within the Restoration Property. No additional filling, dumping, excavation or other alteration may be made to the surface of the Restoration Property. No mechanical land clearing or deposition of soil, rock, shell or other fill on the Restoration Property is permitted without written authorization from the Trustees. No grazing of cattle or domestic livestock is permitted on the Restoration Property. Subject to any more restrictive local, state, and federal laws and regulations, it is forbidden to dispose of or store rubbish, garbage, building debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly or other offensive material on the Restoration Property. All other activities, which are inconsistent with the maintenance and protection of forested wetlands, associated wildlife and habitat values within the Restoration Property and which are not subject to state

- and federal regulatory authority, are prohibited.
- (b) Subdivision. No division or subdivision of the Restoration Property is permitted, nor may the Restoration Property be included as part of the gross tract area of other property not subject to this Agreement.
 - (c) Structures. As of the date of this agreement, there are no structures on the Restoration Property. No additional structures of any kind, temporary or permanent, may be located on the Restoration Property for the life of this Agreement.
 - (d) Vegetation Management. As of the date of this Agreement, the Restoration Property is in an early developmental stage; predominantly colonized by black willow (*Salix nigra* Marsh) swamp and Chinese tallow (*Triadica sebifera* (L.) Small) thicket. Vegetation on the Restoration Property may not be burned, cut, disturbed, altered or removed from the Restoration Property without the prior written consent of the Holder and Third Parties with Rights of Enforcement. The use of chemical herbicides, pesticides, fungicides, fertilizers and other agents that may have an adverse effect on wildlife, waters, and other important conservation interests to be protected by this Agreement is prohibited, unless their use is recommended by the Trustees as a part of a prescribed management plan (e.g., mid-course correction or corrective action plan, forest management plan, etc.). Any conflict between the terms of this Agreement and the Settlement Agreement shall be resolved in favor of the Settlement Agreement.
 - (e) Access. Nothing contained herein should be construed as affording the general public physical access to any portion of the Restoration Property. Nothing in this Agreement should be construed to preclude Grantor's right, at Grantor's liability, to grant public access on, over or across the Restoration Property, for low-impact outdoor recreation, nature observation and study, provided that such use does not conflict with the conservation values of the Restoration Property, and further provided that more than a *de minimis* use of the Restoration Property for commercial outdoor recreation is prohibited.
- d. Grantor and Holder acknowledge that this Agreement shall become effective on the date of the last signature of the Settlement Agreement and be in effect for a period not to exceed either 60 years from that date or 55 years from the date of the Certificate of Completion of the Restoration Project (as defined in section 3.8 of the Final RIMP [Attachment 2 of the Settlement Agreement]), whichever period is longer. A letter stating the execution date of the Settlement Agreement and a copy of the Certificate of Completion of the Restoration Project will be filed in the conveyance records of Lafourche Parish by the Responsible Party.
 - e. Grantor and Holder shall perform their obligations under this Agreement and in compliance with all applicable laws, regulations, ordinances, permits, and authorizations required to implement this Agreement.
 - f. Grantor and Holder acknowledge that all costs related to the implementation of this agreement are the responsibility of the Grantor and Holder.
 - g. Holder will insure that the prohibited activities identified in this Agreement will be prohibited for the duration of this Agreement.
 - h. This Agreement shall (i) run with the land and be binding upon all present and future owners, tenants, possessors, occupants, and all other persons claiming any right, or interest in the Restoration Property; and (ii) except as otherwise provided herein, shall exist through the

- duration of the Agreement or until such time as terminated by Holder and Third Parties with Rights of Enforcement.
- i. No Security. Neither Holder nor Third Parties with Rights of Enforcement shall have any obligation to post security (such as a bond) in connection with this Agreement.
 - j. Acceptance of Rights. Holder hereby accepts all rights of this Agreement affecting the Restoration Property granted by the Grantor.
4. **Conveyance of Restoration Property.** At least thirty (30) days prior to any conveyance of the Restoration Property by Grantor, Grantor shall provide written notice of this Agreement to purchaser and written notice of the proposed conveyance to Holder and Third Parties with Rights of Enforcement. Moreover, at least thirty (30) days prior to any proposed conveyance of the Restoration Property by Grantors' successors or assigns to any third party, Grantors' successors and assigns shall provide written notice of this Agreement to the proposed grantee and written notice of the proposed conveyance to Holder and Third Parties with Rights of Enforcement. Copies of all said notices shall be provided by certified mail to the Lead Administrative Trustee within ten (10) days of issuance of the notifications.
5. **Enforcement.** Holder and Third Parties with Rights of Enforcement shall have the right to enforce any breach of this Agreement by any legal means available, including, but not limited to, specific performance or prohibitory or mandatory injunction without the necessity of showing irreparable injury and without in any way limiting the Parties' right to damages in the event of a breach of this Agreement. Should Grantor fail to comply with the requirements of this Agreement, Holder and Third Parties with Rights of Enforcement may undertake legal proceedings to insure compliance. Among other relief, Holder and Third Parties with Rights of Enforcement may seek the complete restoration of any breach of this Agreement. Breaches of this Agreement may be actionable without notice. The costs of correcting a breach or costs of restoration, including expenses, court costs and attorneys' fees, shall be paid by Grantor. Enforcement shall be at the discretion of the Holder or Third Parties with Rights of Enforcement, and no omission or delay in acting shall constitute a waiver of any enforcement right. These enforcement rights are in addition to and shall not limit enforcement rights available under other provisions of law or equity, or under any applicable permit or certification.
6. **Ownership.** Grantor represents and warrants that Grantor is the owner of the Restoration Property, which is free from any mortgage, lien, judgment or encumbrance, other than the Conservation Servitude of the Bayou Grand Coteau Mitigation Area (Attachment 5 of the Settlement Agreement), which will or can conflict with the purposes of this Agreement, or has not otherwise been subordinated to this Agreement, and that Grantor has full right and title to execute this Agreement.
7. **Designation of Representatives and Notice.** All notices or consents required under this Agreement shall be given in writing by certified mail, return receipt, or by email upon the Parties through their following representatives, or to such other representative whom the Parties hereafter designate in writing:

For Grantor:

Tim Bourgeois
P.O. Box 20640
Houma, Louisiana 70360
Federal ID # 72-1205306

For Holder:

Rex English
Law Offices of Pat Berrigan
202 Village Circle, Suite 2
Slidell, LA 70458
Federal ID # 72-1468025

For Third Parties with Rights of Enforcement:

Distribution by the Lead Administrative Trustee to the Louisiana Trustees
Louisiana Oil Spill Coordinator's Office, Office of the Governor
150 Third Street, Suite 405
Baton Rouge, LA 70801

8. Miscellaneous.

- a. *Agreement Conditional upon Settlement Agreement.* While this Agreement shall be executed prior to the execution of the Settlement Agreement, the Parties acknowledge, intend, and agree that this Agreement shall not be effective for any reason unless and until the Settlement Agreement is finally executed by all Parties thereto.
- b. *No Obligations of Third Parties with Rights of Enforcement.* Nothing contained in this Agreement is intended to nor shall be deemed or construed to create any obligation on the part of Third Parties with Rights of Enforcement to Grantor or to any other person or entity with regard to the Restoration Property.
- c. *Recordation.* This Agreement shall be filed in the conveyance records of Lafourche Parish by the Responsible Party upon execution of the Settlement Agreement.
- d. *Mineral Rights.* This conservation servitude granted herein shall not affect any mineral right of Grantor in existence heretofore or as hereafter may be acquired; with the exception that any activities conducted on the surface of the Restoration Property shall be subject to the conservation servitude granted herein.
- e. *No Waiver.* The failure of the Parties to strictly enforce any provision of this Agreement shall not be deemed to act as a waiver of any provision, including the provision not so enforced.
- f. *Severability.* Invalidation of any one of the provisions contained herein shall in no way affect any other provision, which shall remain in full force and effect.
- g. *Governing Law.* This Agreement shall be governed by and interpreted in accordance with the laws of the State of Louisiana. Venue of any action brought with regard to this Agreement shall be in the Nineteenth Judicial District Court, parish of East Baton Rouge, State of Louisiana.
- h. *Headings.* Any headings in this Agreement are inserted for the convenience of reference only and shall not be considered in the construction or interpretation of this Agreement.
- i. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original.
- j. *Modification or Termination.* This Agreement can only be modified or terminated by the written consent of all Parties.
- k. *Hold Harmless Clause and Indemnification.* The Trustees shall not be responsible or liable for any adverse impacts that are directly or indirectly related to the Grantor's and Holder's performance of its obligations under this Agreement. Grantor and Holder shall each

implement this Agreement in such a way as to minimize any adverse effects of this Agreement. In addition, the Trustees shall not be liable for any property damage or personal injury to third-parties caused by implementation of this Agreement. Furthermore, the Trustees shall not be liable for the actions of the Grantor or Holder, their agents, employees, partners or subcontractors and Grantor and Holder shall fully indemnify and hold harmless the Trustees from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by Grantor or Holder, their agents, employees, partners or subcontractors, without limitation; provided, however, that Grantor and Holder shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the Trustees. Finally, and Grantor and Holder agree to release, defend, indemnify and hold harmless the Trustees from and against any and all costs, expenses, claims, judgments, damages, losses, penalties, fines, or liabilities arising from their implementation of this Agreement.

- l. *Liability Insurance.* Grantor and Holder shall each maintain \$1,000,000 in liability insurance and must submit proof of insurance prior to execution of this Agreement.
- m. *Binding Effect.* This Agreement shall inure to the benefit of and be binding upon the heirs, successors, and assigns of the Parties.

DONE AND SIGNED by PBC Operators, Inc at Houma, Louisiana on the 23 day of March, 2009, in the presence of me, Notary, and the following competent witnesses, who have signed in the presence of the said party and me, Notary Public, after due reading of the whole.

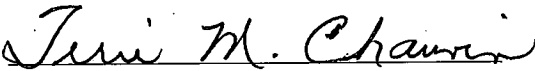
PBC OPERATORS, INC

By: 

Printed Name: Tim Bourgeois

Title: Pres

WITNESSES:


Signature

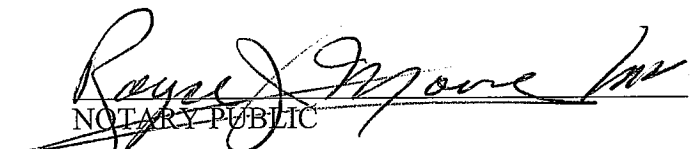
Terri M. Chauvin

Printed Name

DANIEL BLANCHARD
Signature

Daniel Blanchard

Printed Name


NOTARY PUBLIC

Printed Name

Notary Number: _____

ROYCE J. MOORE
NOTARY PUBLIC
PARISH OF LAFOURCHE, STATE OF LOUISIANA
MY COMMISSION ISSUED FOR LIFE.
NOTARY NUMBER: 014878

DONE AND SIGNED by Louisiana Conservation Corporation at SL1022, LOUISIANA on the 8th day of April, 2009, in the presence of me, Notary, and the following competent witnesses, who have signed in the presence of the said party and me, Notary Public, after due reading of the whole.

LOUISIANA CONSERVATION CORPORATION

By: [Signature]

Printed Name: D. REX ENGLISH

Title: PRESIDENT

WITNESSES:

[Signature]
Signature

Suzanne S Ratcliff

Printed Name

Tammy C. Fortier
Signature

Tammy C. Fortier
Printed Name

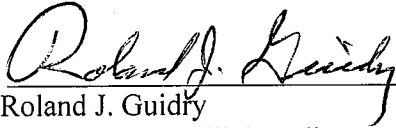
[Signature]
NOTARY PUBLIC

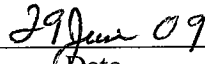
PATRICK J. BERRIGAN, # 3022

Printed Name **NOTARY PUBLIC**

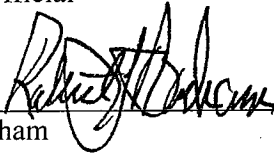
PARISH OF ST. TAMMANY
Notary Number: MY COMMISSION IS FOR LIFE

LOUISIANA OIL SPILL COORDINATOR'S OFFICE
OFFICE OF THE GOVERNOR
Authorized Official


Roland J. Guidry
Louisiana Oil Spill Coordinator


Date

LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES
Authorized Official

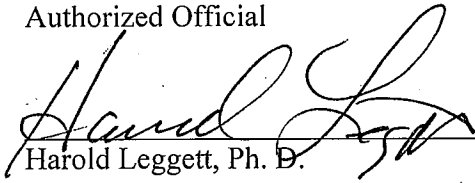


8-4-2009

Robert J. Barham
Secretary

Date

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Authorized Official



Harold Leggett, Ph. D.
Secretary

07-29-09
Date

EXHIBIT A

LOCATION MAP OF RESTORATION PROPERTY

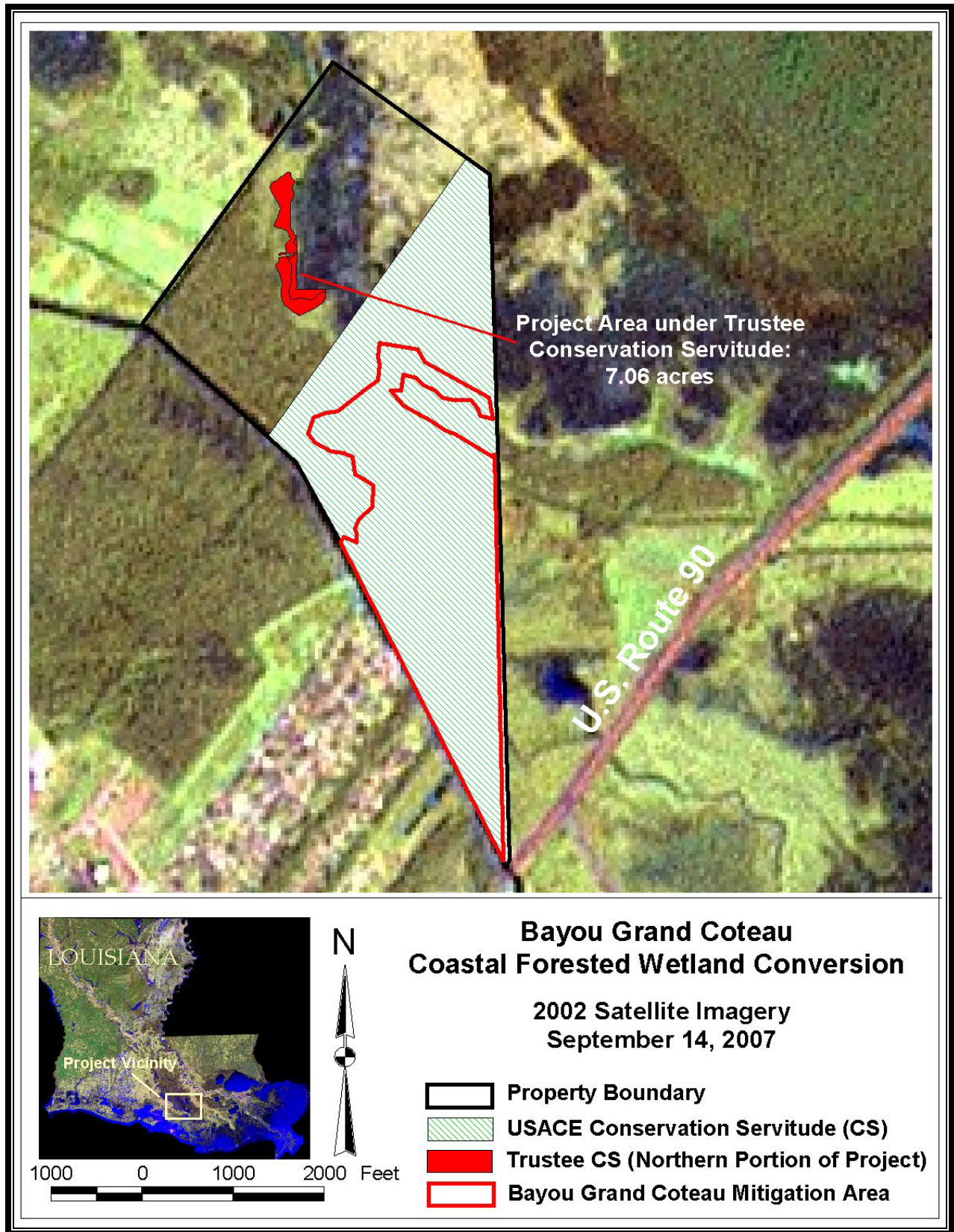


EXHIBIT B

RESTORATION PROPERTY DESCRIPTION AND SURVEY

