

2018-0331

**INTRODUCED BY: LARRY COCHRAN PARISH PRESIDENT
(DEPARTMENT OF PUBLIC WORKS)**

An ordinance to approve and authorize the Parish President to buy the property known as 409 Down the Bayou Road, Des Allemands from Sherwood A. Berard, which property is more particularly described in the attached "Agreement to Purchase and Sell" document.

WHEREAS, the Parish desires to purchase the property at 409 Down the Bayou Road for the purpose of enhancing the safety of sportsmen who use this area for recreational activities; and,

WHEREAS, the property has been appraised as shown in the attachment; and,

WHEREAS, the property owner has agreed to sell the property to the Parish for \$155,000 as particularly described in the attached "Agreement to Purchase and Sell" document.

THE ST. CHARLES PARISH COUNCIL HEREBY ORDAINS:

SECTION I. That the Parish President is hereby authorized to purchase at a price not to exceed \$155,000 the property more particularly described in the "Agreement to Purchase and Sell" document attached hereto and made a part hereof, from Sherwood A. Berard.

SECTION II. That the Parish President is hereby authorized to execute any and all documents necessary to complete said purchase.

The foregoing ordinance having been submitted to a vote, the vote thereon was as follows:

YEAS: NONE

NAYS: BENEDETTO, HOGAN, WILSON, CLULEE, GIBBS, WOODRUFF,
BELLOCK, FLETCHER, FISHER-PERRIER

ABSENT: NONE

**PROPOSED ORDINANCE FAILED FOR LACK OF A FAVORABLE MAJORITY
ON JANUARY 7, 2019.**

2018-0331 Failed Ordinance Purchase 409 Down the Bayou Road

2018-0331

**INTRODUCED BY: LARRY COCHRAN PARISH PRESIDENT
(DEPARTMENT OF PUBLIC WORKS)**

ORDINANCE NO. _____

An ordinance to approve and authorize the Parish President to buy the property known as 409 Down the Bayou Road, Des Allemands from Sherwood A. Berard, which property is more particularly described in the attached "Agreement to Purchase and Sell" document.

WHEREAS, the Parish desires to purchase the property at 409 Down the Bayou Road for the purpose of enhancing the safety of sportsmen who use this area for recreational activities; and,

WHEREAS, the property has been appraised as shown in the attachment; and,

WHEREAS, the property owner has agreed to sell the property to the Parish for \$155,000 as particularly described in the attached "Agreement to Purchase and Sell" document.

THE ST. CHARLES PARISH COUNCIL HEREBY ORDAINS:

SECTION I. That the Parish President is hereby authorized to purchase at a price not to exceed \$155,000 the property more particularly described in the "Agreement to Purchase and Sell" document attached hereto and made a part hereof, from Sherwood A. Berard.

SECTION II. That the Parish President is hereby authorized to execute any and all documents necessary to complete said purchase.

The foregoing ordinance having been submitted to a vote, the vote thereon was as follows:

And the ordinance was declared adopted the _____ day of _____, 2018, to become effective five (5) days after publication in the Official Journal.

CHAIRMAN: _____

SECRETARY: _____

DLVD/PARISH PRESIDENT: _____

APPROVED: _____ DISAPPROVED: _____

PARISH PRESIDENT: _____

RETD/SECRETARY: _____

AT: _____ RECD BY: _____

AGREEMENT TO PURCHASE AND SELL

THIS AGREEMENT, effective as hereinafter stated:

Sherwood A. Berard, whose mailing address P. O. Box 100, DesAllemands, Louisiana, and whose tax identification number is XXX-XX-_____ respectively, (hereinafter collectively referred to as "Seller"), and

St. Charles Parish, a political subdivision of the State of Louisiana, whose mailing address is P. O. Box 302, Hahnville, LA, 70057 and whose tax identification number is 72-6001208, (hereinafter referred to as "Purchaser").

1. **Property:** In consideration of the mutual obligations undertaken herein, Seller does hereby agree to sell and Purchaser does hereby agree to buy, subject to the terms and conditions hereinafter set forth, the property known as 409 Down the Bayou Road, DesAllemands, St. Charles Parish, Louisiana, (said interest being hereinafter collectively referred to as the "Property").
2. **Deposit:** Within five (5) business days of being notified of Seller's execution of this Agreement, Purchaser will deliver to Seller the sum of \$-0- as a deposit. (the "Deposit"). The failure to make the Deposit shall constitute a breach of this Agreement.
3. **Purchase Price:** The purchase price for the Property shall be ONE HUNDRED FIFTY-FIVE THOUSAND AND NO/100 (\$155,000.00 DOLLARS (the "Purchase Price") payable in cash at the Closing, as hereinafter defined.
4. **Conditions to Close:**
 - A. This Agreement and Purchaser's obligation of performance hereunder are expressly contingent upon approval of a physical inspection of the Property by Purchaser at Purchaser's sole cost and expense within thirty (30) days after the effective date of this Agreement (the "Inspection Period").
 - B. Purchaser shall have the right to engage a qualified engineer to conduct an environmental inspection (the "Environmental Inspection") of the Property for any substance regulated by any federal, state or local law, rule, regulation, or ordinance involving the environment. Purchaser and its representatives shall have the right to conduct such physical tests and studies of the Property and samples thereof as Purchaser may deem appropriate, including without limitation intended, soil tests, groundwater tests, wastewater system tests and inspections, architectural and engineering inspections, hazardous substances tests and inspections and air quality tests, termite inspections, structural tests and HVAC tests, including without limitation, the Environmental Inspection. The costs of all of these inspections shall be shared equally by the parties.
 - C. If Purchaser, in Purchaser's sole and absolute discretion, objects to any item discovered during the Inspection Period, then Purchaser may elect by written notice to Seller prior to the expiration of the Inspection Period, to terminate this Agreement, in which case the Deposit shall be immediately refunded to Purchaser.

- D. This Agreement to Purchase and Sell is contingent on the St. Charles Parish Council approving the purchase of the subject property.

5. Representations and Warranties:

Seller represents and warrants to Purchaser that:

- a) Seller is the sole owner of the Property and has good valid and merchantable title to the Property and that Seller is the only owner of the Property, and all requisite action has been taken to make this Agreement valid and binding in accordance with its terms.
- b) There is no litigation proceedings pending or, to the best of Seller's knowledge, threatened, against or relating to Seller or any of the Property, including, without limitation, any proceedings for collection of taxes, condemnation or other exercise of eminent domain, or proceedings affecting the annexation or zoning of any of the Property and Seller is not presently in bankruptcy and have not filed for bankruptcy;
- c) There are no outstanding sales contracts, options to purchase, rights of first refusal to purchase or lease, or any other contracts with respect to any of the Property and are no leases or other agreements for use, occupancy or possession with respect to any of the Property
- d) Between the Effective Date and the Closing, Seller shall not make or enter into any contract, option, lease or other agreement for the sale, lease, use, occupancy or possession of all or any part of the Property without the prior written approval of Purchaser.

6. **Environmental Representations:** Seller hereby represents and warrants that as of the date hereof and as of the Closing hereunder (i) as long as Seller has owned the Property, Seller has not ever caused or permitted any hazardous materials or substances to be placed, held, located, or disposed of on, under or at the Property or any part thereof, and (ii) Seller does not have any knowledge that any person has ever caused or permitted any hazardous materials or substances to be placed, held, located, or disposed of, on, under or at the Property or any part thereof. The representations and warranties contained in this paragraph shall survive the Closing. Seller represents and warrants to Purchaser that Seller has not received written notice from any federal, state or local government of any current violation of any city, parish, state, federal, building, land use, fire, health, safety, environmental, hazardous materials or other governmental or public agency codes, ordinances, regulations, or orders with respect to the Property, or any lands adjacent to the Property. The representations and warranties contained in this paragraph shall survive the Closing.

7. **Sale with Warranty:** Seller's ability to deliver to Purchaser a merchantable title is a condition precedent to Purchaser's obligations hereunder. Seller's inability to deliver such title within the time stipulated herein permits Purchaser to terminate this Agreement upon delivery of written notice to Seller prior to the Closing. At Closing Seller shall sell and deliver a good, valid and merchantable title to the Property to Purchaser with full warranties of title, and with full substitution and subrogation in and to all rights and actions of warranty which said Seller has or may have against all preceding owners. At the sole expense of Purchaser, Purchaser shall order a title insurance commitment insuring title to the Property. If Purchaser's

title examination reveals any valid exceptions, claims or defects which would render Seller's title to the Property unmerchantable (hereinafter "Defects"), Purchaser shall have the right to either cancel this Agreement or shall promptly notify Seller and Seller shall, at Seller's expense, take all reasonable efforts to cure such Defects. The Closing Date will be extended by an additional sixty (60) days from the date of receipt of Purchaser's notice in order to cure or remove such Defects. Should Seller be unable to cure or remove any Defect, Purchaser shall have the right to either terminate this Agreement and its obligations hereunder or to proceed with the purchase of the Property subject to such Defect. At Closing Seller shall pay and release all amounts secured by mortgages, deeds of trust or other liens on the Property ("Monetary Liens"). Should Seller decline or be unable to cure or remove any Defect, Purchaser shall have the right to terminate this Agreement and its obligations hereunder. If Purchaser elects to terminate this Agreement in the manner hereinabove provided, Purchaser shall be reimbursed its out of pocket expenses for any environmental assessment it ordered of the Property and shall be entitled to reimbursement of its expenses in ordering the Commitment.

8. **Date of Closing:** Time being of the essence, the Closing shall take place on or before thirty (30) days after the purchase has been approved by the St. Charles Parish Council on a date to be chosen by Purchaser upon three (3) days prior notice to Seller.
9. **Commissions:** Neither Seller nor Purchaser has contracted for the payment of any real estate commission, brokerage, finders or other fees with respect to the transaction contemplated hereby and each party hereto hereby agrees to defend, indemnify and hold harmless the other party from and against any claim by third parties for brokerage, commission, finders or other fees relative to this Agreement or the sale of the Property, and any court costs, attorney's fees or other costs or expenses arising therefrom, alleged to be due by, through or under the indemnifying party.
10. **Closing:**
 - (A) At the Closing, real and personal property taxes relating to the Property, shall be prorated as of the Closing date. If the current year's immovable property taxes are not available as of the Closing, then the taxes paid during the preceding calendar year tentatively shall be used in computing the prorations applicable to the current year. Should actual taxes billed by the applicable governmental authorities vary from those used for proration at Closing, appropriate adjustments shall be made between the parties based on actual taxes as soon as practicable after the actual taxes are determined, notwithstanding that the Closing has already occurred. All utility charges (based upon meter readings as of the date immediately preceding the Closing), shall be paid by Seller up to the date of Closing. The obligations set forth in this paragraph which are, by their nature, to be performed after the Closing, shall survive the closing and delivery of the act of sale.
 - (B) At the Closing, Seller shall execute and/or deliver to Purchaser the following:
 - (i) An act of Cash Sale with full warranties in recordable form acceptable to Purchaser's title company;

- (ii) An affidavit as described in Section 1445 of the Internal Revenue Code (or Regulations promulgated thereunder) stating under penalty of perjury that the Seller is not a "foreign person" as defined in Section 6039c of the Internal Revenue Code, and stating the Seller's U.S. taxpayer identification number;
 - (iii) Any affidavit required by Purchaser's title company to delete the mechanics and materialmen's lien exemption from the title insurance policy and a gap indemnity to cover any acts recorded but not yet indexed in the public records;
 - (iv) All liens and encumbrances of ascertainable amounts shall be paid and satisfied of record by Seller and Seller shall make arrangements satisfactory to Purchaser for the payment and satisfaction of such liens and encumbrances of record on the Closing; and
 - (v) All other documents reasonably required to be executed by Seller or Purchaser to consummate the transaction in accordance with this Contract.
- (C) As provided above, Seller shall convey title with full warranty of title and with full substitution and subrogation to all of Seller's rights against prior owners and warrantors.
- (D) Seller shall pay a reasonable vendor's closing fee and all conveyance, mortgage and tax research certificates in the name of Seller insofar as they may affect the Property and all title curative work. All costs for preparation, recordation, registration and transfer of the Act of Sale of Property from Seller to Purchaser, all title insurance costs shall be borne by Purchaser and all other fees and costs in connection with the sale of the Property, unless otherwise stipulated to the contrary herein. Each party shall pay the cost and expense for their respective attorneys.
- (E) The Closing shall be passed at Purchaser's attorneys' office.

11. Defaults:

- (A) If Seller fails to perform its obligations hereunder within the time stipulated herein (unless Seller has the right to waive such performance), Purchaser shall have the right to either (i) demand specific performance plus damages resulting from Seller's breach which includes reasonable attorneys' fees or (ii) sue for all damages incurred by Purchaser from Seller's breach.
- (B) If Purchaser fails to perform its obligations hereunder within the time stipulated herein, (unless Purchaser has the right to waive such performance) Seller shall have the right, after placing Purchaser in default to either (i) dissolve this Agreement (ii) demand specific performance plus damages resulting from Purchaser's breach which includes reasonable attorneys' fees.

12. Attorneys' Fees: If any party fails to comply with the terms of this offer, if accepted, then such defaulting party is obligated to and agrees to pay all reasonable attorneys' fees and costs incurred by the non-defaulting party in enforcing its respective rights.

13. **Notices:** All notices, demands or other communications of any type (hereinafter "Notice") given by Seller to Purchaser or by Purchaser to Seller, whether required by this Agreement or in anyway related to the transaction contemplated herein, shall be in writing and delivered to the person to whom the Notice is directed, either in person, or by Federal Express or similar overnight delivery service, or by United States Mail, registered or certified, return receipt requested. Any notice given or received by either party's attorney shall have the same effect as though given or received by such party personally. Notice delivered by mail shall be effective when received or when tendered for delivery, and shall be addressed, if to Seller, as follows:

**Sherwood A. Berard
P. O. Box 100
DesAllemands, LA 70030**

and addressed, if to Purchaser, as follows:

**St. Charles Parish
c/o Parish President
P. O. Box 302
Hahnville, LA 70070**

with a copy to:

**Robert L. Raymond
14108 River Road
Destrehan, Louisiana 70047**

Either party may change the address for Notice specified above by giving the other party ten (10) days advance written notice of such change of address.

14. **Expropriation and Annexation:** Seller hereby warrants that it has not received notification of any pending or threatened expropriation or condemnation proceeding involving the Property or any portion thereof. If the Property is taken in whole or part by condemnation or expropriation proceedings, between the date of mutual execution of this Agreement and the date of Closing, this Agreement may, at Purchaser's option, be terminated, whereupon neither party shall have any further liability or obligation to the other hereunder and the Deposit shall be returned to Purchaser. Alternatively, Purchaser may elect to accept the Property in its then condition, whereupon any condemnation award shall be assigned and/or paid to Purchaser at Closing.
15. **Risk of Loss:** The risk of any and all losses to the Property as a result of casualty from and after the Effective Date shall be on the Seller (unless caused by the acts or negligence of Purchaser or Purchaser's agents, employers or contractors, in which case Purchaser shall be responsible for damages attributable to such casualty). If the Property is materially damaged by fire or other casualty prior to the Closing, then Purchaser will have the right to take title to the Property in its damaged condition, with no reduction in the Purchase Price but with the right to receive all insurance proceeds payable to Seller for repair of the damage to the

Property. If the Purchaser elects to continue this Agreement in effect and to take title to the Property or if the damage to the Property is not material, Seller shall at Closing assign to Purchaser all insurance proceeds payable for repair of the damage to the Property, and the Purchase Price will not be reduced.

16. **Effective Date** This Agreement has been signed by Purchaser as of the _____ day of _____, 2018, and shall stand as an offer which, if accepted by Seller by 3:00 p.m. on _____, 2018 shall constitute an Agreement to Purchase and Sell as provided herein. If Seller does not accept Purchaser's offer within the required time and in the required manner, then this instrument shall become null and void, and the parties shall have no further obligation to each other hereunder. This Agreement shall be effective as of the date of execution by Seller.

SELLER:



SHERWOOD A. BERARD

PURCHASER:

ST. CHARLES PARISH

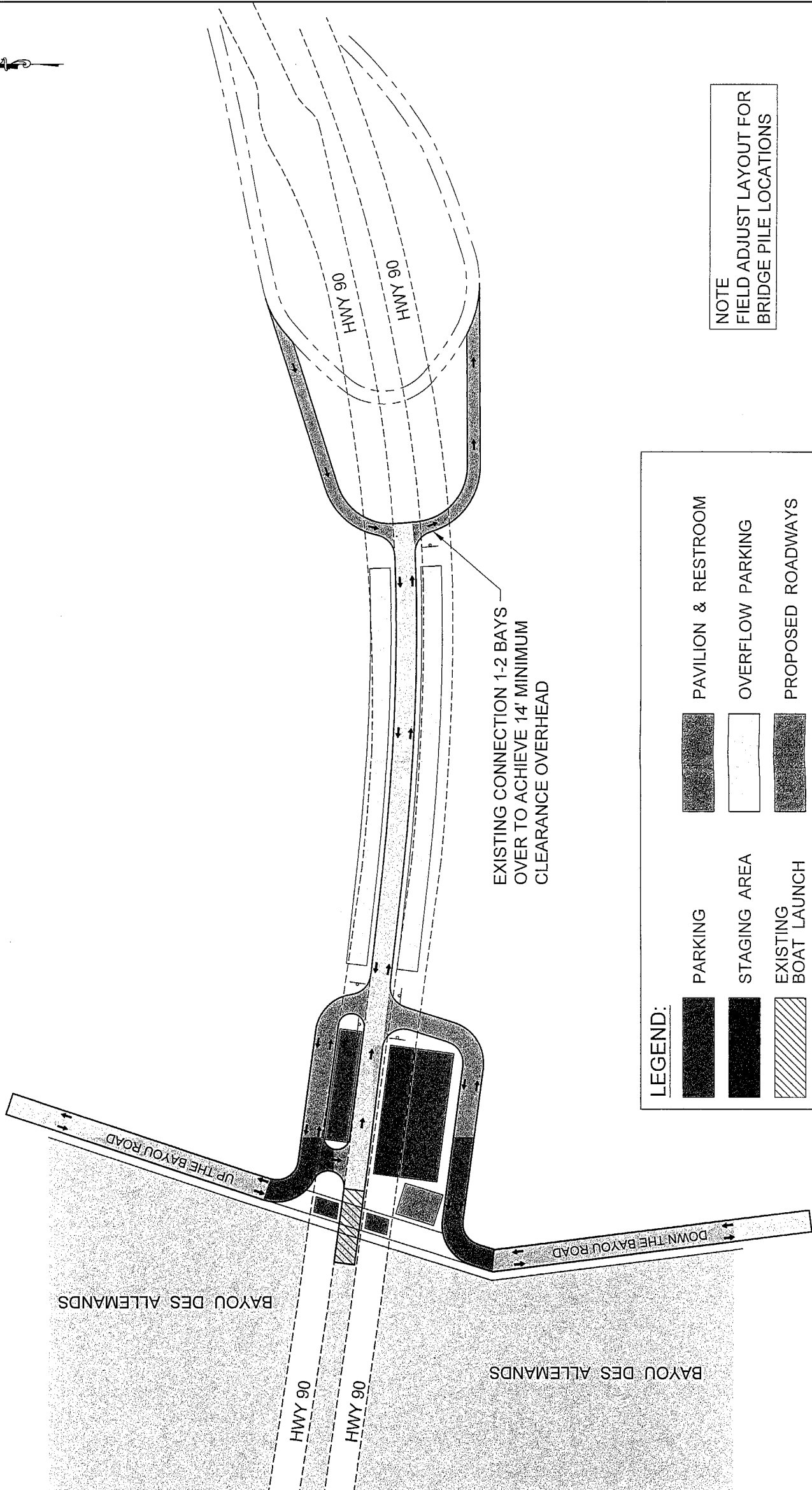
By: _____
LARRY COCHRAN
PARISH PRESIDENT

Date: _____

Date: _____

Time: _____

Time: _____



LEGEND:

	PARKING		PAVILION & RESTROOM
	STAGING AREA		OVERFLOW PARKING
	EXISTING BOAT LAUNCH		PROPOSED ROADWAYS
	STOP SIGNS		

NOTE
FIELD ADJUST LAYOUT FOR
BRIDGE PILE LOCATIONS