



DEPARTMENT OF THE ARMY
NEW ORLEANS DISTRICT, CORPS OF ENGINEERS
P.O. BOX 80267
NEW ORLEANS, LOUISIANA 70160-0267

MAR 11 2009

Operations Division
Regulatory Branch

SUBJECT: CEMVN-OD-SC General Permit (NOD-123)

SPECIAL PUBLIC NOTICE

**TIME EXTENSION FOR GENERAL PERMIT NOD-123
AUTHORIZING MINOR CONSTRUCTION ACTIVITIES FOR
PROPERTY IMPROVEMENT AND THE ASSOCIATED DISCHARGE
OF FILL MATERIAL IN WATERS OF THE UNITED STATES**

Interested parties are hereby notified that the general permit, originally issued by this District on March 20, 1982, to authorize the construction of homesites and appurtenances in an established residential subdivision and the addition of appurtenant structures or improvements to existing homesites (such as storage sheds, swimming pools, barns, driveways, landscaping, etc.) is extended until May 31, 2014.

All available information was considered in determining that the public interest would best be served by this time extension. It is particularly noted that no significant adverse effects were noted or reported to us during the time the permit was previously in force.

Any person wishing to provide additional comments to assist in improving this general permit or advising us of adverse impacts is requested to send them to the Central Evaluation Section, Regulatory Branch, at the address listed at the head of this notice. Please refer to SC(General Permit) NOD-123 in any future correspondence.

The following revisions are included in the subject general permit.

- 1) Page 4, paragraph 4, Mitigation, of this authorization is being revised to state: "On a case-by-case basis, appropriate and practicable compensatory mitigation will be considered for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and/or minimization has been attained. Compensation for unavoidable impacts must be commensurate with the wetland loss." The intent of the required mitigation is that the function of the wetlands lost to project implementation will be replaced. Mitigation requirements will be determined by the US Army Corps of Engineers (COE) and be consistent with the Compensatory Mitigation Rule of March 31, 2008, between EPA and the COE.
- 2) The following condition is being added to this authorization:

x. Work authorized under General Permit NOD-123 may not be performed in the following areas or waterways: within an area where the activity is likely to result in a “disturbance” to bald eagles. Please review the National Bald Eagle management (NBEM) Guidelines to make this determination. A copy of the NBEM Guidelines is available at <http://www.fws.gov/migratorybirds/issues/BaldEagle/NationalBaldEagleManagementGuidelines.pdf>. Please contact the US Fish and Wildlife Service (334-291-3100) if you need further assistance.

Anyone wanting to review the file pertaining to this general permit may do so during regular working hours on any business day at the U.S. Army Corps of Engineers, New Orleans District, Operations Division, Regulatory Branch, located at the Foot of Prytania Street, Building No. 3, Room 276, New Orleans, Louisiana.



Pete J. Serio
Chief, Regulatory Branch



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Operations Division
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SUBJECT: SC(General Permit)NOD-123

**DEPARTMENT OF THE ARMY
GENERAL PERMIT**

**GENERAL PERMIT NOD-123 AUTHORIZING MINOR
CONSTRUCTION ACTIVITIES FOR PROPERTY IMPROVEMENT
AND THE ASSOCIATED DISCHARGE OF FILL MATERIAL
IN WATERS OF THE UNITED STATES**

AUTHORIZATION NO.: SC(GENERAL PERMIT)NOD-123

EFFECTIVE DATE: 10 February 2009

EXPIRATION DATE: 31 May 2014

Specific legislation requiring Department of the Army permits for work of this nature:

Section 404 of the Clean Water Act (33 USC 1344).

Waters of the United States are defined in Part 328 of Title 33, Code of Federal Regulations.

The work and activities specifically intended for authorization under this general permit are the construction of homesites and appurtenances in an established residential subdivision and the addition of appurtenant structures or improvements to existing homesites (such as storage sheds, swimming pools, barns, driveways, landscaping, etc.). Whenever any other nationwide or general permit is used in conjunction with this permit, the total acreage of impacts to waters of the United States combined cannot exceed 0.50 of an acre.

For the purpose and use of this general permit, an established subdivision is defined as an area where the quality of the wetland functions is diminished by construction of a hard surface or aggregate road system, parish-approved drainage infrastructure and utilities, including either a central sewage system, parish- or state-approved individual sewerage treatment systems, as required by the Department of Health and Hospitals and that any fill required will be free of contaminants to the best of the applicant's knowledge. To be an established subdivision, the wetland acreage of the area must be approximately 50 percent developed, or if less than 50 percent developed, the remaining lots must be adversely impacted resulting in low quality wetland functions.

An area is considered to be developed when a permanent structure exists upon it.

Prior to written approval from the New Orleans District (MVN), each request for work covered by this general permit will be reviewed to determine impacts to the environment and other areas to determine if approval is not contrary to the public interest.

This general permit will authorize work in those areas which are located within the boundaries of the U.S. Army Engineer District, New Orleans. A map attached to this permit shows the approximate boundaries of the District (attachment 1).

When an applicant wishing to perform work under authority of this general permit and whose project site is within the boundaries of the coastal zone must make written application to the Louisiana Department of Natural Resources, Coastal Management Division (CMD)(attachment 1). The applicant's submittal must contain a check for \$20.00 for residential or \$100.00 for non-residential, made out to "Coastal Management Division, DNR" and eight (8) sets of the cover letter, an application form (ENG form 4345), and plats. CMD will express deliver a copy of the application to the New Orleans District.

1. **Inclusions:** The following are examples of work that may be eligible under this permit:
 - a. Homesites and appurtenances in an established residential subdivision. An established subdivision is defined as an area where the quality of the wetland functions is diminished by construction of a hard surface or aggregate road system, parish-approved drainage infrastructure and utilities, including either a central sewerage system or a parish-approved individual sewage treatment facility. To be an established subdivision, the wetland acreage of the defined area must be approximately 50 percent developed. If less than 50 percent is developed, the remaining lots must be adversely impacted resulting in low quality wetland functions. This will be determined on a case-by-case basis. The homesite and/or appurtenances must be the primary residence or in direct association with the primary residence of the permittee or a member of his/her immediate family.
 - b. Addition of appurtenant structures or improvements to existing homesites (such as storage sheds, swimming pools, barns, driveways, landscaping, etc.).
2. **Exclusions:** The following work will not be eligible under this general permit. Applications for this work will be processed in accordance with 33 CFR Part 325.
 - a. New homesites and/or appurtenances in undeveloped areas. "Undeveloped" meaning areas without an existing permanent structure or those areas not within an established subdivision (see definition above).
 - b. Work subject to authorization under Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403).
 - c. Work within the banks of natural drains which include, but are not limited to, streams, sloughs, bayous, creeks, etc.

- d. Work within areas that experience prolonged inundation (e.g., seasonally flooded bottomland hardwoods and cypress-tupelo swamp).
 - e. Work within areas which are subject to normal tidal flooding.
 - f. Work within areas which exhibit high quality wetland functions.
 - g. This general permit will not authorize work within the following areas:
 - (1) Within 0.50 of a mile of a known bald eagle nest.
 - (2) Within 0.50 of a mile of a known rookery area.
 - (3) No activity that is likely to adversely affect federally listed threatened or endangered species, or a species proposed for such designation, or that is likely to destroy or adversely modify the critical habitat of such species, is authorized under this General Permit.
 - (4) Within 1,000 feet of a levee or flood control facilities constructed or maintained with federal funds, or owned and operated by agencies of state or local governments without the written consent of the appropriate agency or governing body.
 - (5) At or in close proximity to any known historic or archeological sites or within the boundaries of a historic district without written approval or waiver from the State Historic Preservation Officer or the appropriate authority.
 - (6) Work within 500 feet of a state scenic stream without written approval from Louisiana Wildlife and Fisheries.
 - (7) Work performed within an existing subdivision where the existing hard surface or aggregate road system, drainage infrastructure, utilities, etc., are in violation of Section 404 of the Clean Water Act (33 USC 1344).
3. Applications for approval for work to be performed under authority of this general permit must include the following (attachment 2):
- a. Completed application form ENG 4345.
 - b. Vicinity Map – You may use an existing road map or U.S. Geological Survey topographical map. This map should include:
 - (1) Location of activity site (draw an arrow showing the exact location of the site on the map).
 - (2) Latitude, longitude, and/or section, township and range.

- (3) Names, descriptions, and locations of landmarks.
 - (4) Name of and distance to nearest town, community or other identifying locations.
 - (5) Names or numbers of all roads in the vicinity of the site.
 - (6) North arrow.
 - (7) Scale.
 - c. Residential subdivision layout showing location of lot, other lots which have been developed, and the wetland area boundaries.
 - d. Scaled plan view and cross section (samples attached) of the proposed work which include:
 - (1) Principle dimensions of the activity.
 - (2) Graphic or numeric scale
 - (3) Number of cubic yards and source of fill material
 - e. Written approval of the project's proposed sewage treatment facility from the chief sanitarian of the parish or city health unit.
4. Mitigation: On a case-by-case basis, appropriate and practicable compensatory mitigation will be considered for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and/or minimization has been attained. Compensation for unavoidable impacts must be commensurate with the wetland loss. The intent of the required mitigation is that the function of the wetland lost to project implementation will be replaced. Mitigation requirements will be determined by the US Army Corps of Engineers (COE) and be consistent with the Compensatory Mitigation Rule of March 31, 2008.
5. No work may be performed under this general permit unless and until:
- a. The New Orleans District has reviewed the application and has issued a written approval.
 - b. All required local, state and other federal permits, licenses, authorizations, and certifications are obtained. This includes, but not limited to:
 - (1) A coastal use permit or waiver (if required) from the Secretary of Louisiana Department of Natural Resources or his designee, and

- (2) A water quality certification (if required) from the Louisiana Department of Environmental Quality, Office of Water Resources.

All work authorized by this general permit must be performed in accordance with the applicable standard conditions of ENG Form 1721, Department of the Army Permit (attachment 3), and the following special and general conditions. A copy of this form is attached and is made part of this general permit.

All references to "Permittee" in ENG Form 1721 shall, for purposes of this general permit, be understood to refer to the person, family agency or group performing work authorized by this permit.

6. Special Conditions:

- a. The area extent of the clearing, grading, and/or otherwise filling will be limited to the minimum amount necessary to include the house, garage, driveway, sewerage, etc. A maximum of 0.50 of an acre will be allowed for clearing, grading, and/or otherwise filling of the lot. The remaining wetland portions of the property will remain in their natural state as much as practicable and will be limited to clearing of vegetation by saw, bush hog, mowers, etc., with no change in elevation.
- b. This general permit does not authorize deviation from the approved residential subdivision plats.
- c. All projects must comply with the Section 404(b)(1) Guidelines (49 CFR 230.10). Appropriate and practicable steps must be taken to minimize potential adverse effects of the discharge on the aquatic ecosystem. Whenever practicable, nonwetland disposal sites must be used.
- d. This general permit does not authorize work that could adversely affect adjacent property.

1. General Conditions:

- a. In cases where the District Commander determines that the public interest will best be served by denying approval, an applicant may be required to obtain an individual permit before work may be performed.
- b. The District Commander may include additional conditions to this general permit at any time and as necessary to protect the public interest.
- c. This general permit may be suspended in whole or part and/or revoked if the District Commander determines such action is necessary to protect the public interest.

- d. Additional public notice will be given to advise the interested public of major revisions to the general permit or of its suspension or revocation.
- e. That all activities identified and authorized herein shall be consistent with the terms and conditions of this general permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this general permit which may result in the modification, suspension, or revocation of the authorization granted to the permittee, in whole or in part, as set forth more specifically in General Condition M. hereto, and in the institution of such legal proceedings as the United States Government may consider appropriate, whether or not this general permit has been previously modified, suspended, or revoked in whole or in part.
- f. That all activities authorized herein shall, if they involve, during their construction or operation, any discharge of pollutants into waters of the United States or ocean waters, be at all times consistent with applicable water quality standards and management practices established pursuant to the Clean Water Act of 1972 (PL 92-500: 86 Stat. 816) as amended 1977, the Marine Protection, Research and Sanctuaries Act of 1972 (PL 92-532, 86 Stat. 1052), or pursuant to applicable state and local laws.
- g. That the discharge will not affect a threatened or endangered species as identified under the Endangered Species Act, or endanger the essential habitat of such species.
- h. That the permittee agrees to make every reasonable effort to prosecute the construction or operation of the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife, special aquatic sites, and natural environmental values.
- i. That the permittee agrees that he will prosecute the construction of work authorized herein in a manner so as to minimize any degradation of water quality.
- j. That the permittee shall permit the District Commander or his authorized representative(s) or designee(s) to make periodic inspections of the project site(s) and disposal site(s), if different from the project site(s), at any time deemed necessary in order to assure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.
- k. That the permittee shall maintain the structure or work authorized herein in a good and safe condition.
- l. That the general permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of federal, state, or local laws or regulations nor does it obviate the requirement to obtain state or local approval required by law for the activity authorized herein.

- m. That any individual authorization granted under this general permit may be either modified, suspended, or revoked in whole or in part if the Secretary of the Army or his authorized representative determines that there has been a violation of any of the terms or conditions of this general permit or that such action would otherwise be in the public interest.
- n. That in issuing authorization under this general permit, the federal government will rely upon information and data supplied by the applicant. If subsequent to the issuance of an authorization such information and data prove to be false, incomplete, or inaccurate, the general permit authorization may be modified, suspended, or revoked, in whole or in part.
- o. That any modification, suspension or revocation of this general permit or any individual authorization granted under this general permit will not be the basis for any claim for damages against the United States.
- p. That this general permit does not authorize or approve the construction of particular structures that authorization or approval of which require authorization by the Congress or other agencies of the federal government.
- q. That if the recording of this general permit or authorization is possible under applicable state or local law, the individual(s) receiving authorization shall take such action as may be necessary to record this general permit approval and any individual authorization under this general permit with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to an interest in real property.
- r. That this general permit cannot be used for piecemeal fill activities or other piecemeal work, nor is this general permit valid for any activity that is part of an overall project for which the Corps has determined that an individual permit is required.
- s. That if the permittee during prosecution of authorized work within the area subject to Department of the Army jurisdiction encounters a previously unidentified archeological or other cultural resource that might be eligible for listing in the National Register of Historic Places, he/she shall immediately cease operations and notify the District Commander. Work shall not begin again without written notification from the District Commander.
- t. That wetlands that are not part of the project site but that are disturbed during construction, including the temporary crossing of wetland areas, will be restored to their pre-project elevations and conditions, including replanting where needed. To compensate for the loss of wetland impacts, mitigation will be required accordingly.
- u. That misrepresentation of the proposed project or falsification of facts may be cause to exclude the project from further general proceedings. If the misrepresentation or

falsification was intentional, the applicant shall forfeit the right to conduct work at the proposed project site pursuant to this general permit.

- v. That if the project includes deposits of fill materials, only clean material which is free of organic matter, wastes, metal products, chemical pollutants, unsightly debris, etc., may be used as fill.
- w. Individual approvals granted under this general permit allows 5 years from the date of approval letter to complete the project.
- x. Work authorized under General Permit NOD-123 may not be performed in the following areas or waterways: within an area where the activity is likely to result in a "disturbance" to bald eagles. Please review the National Bald Eagle management (NBEM) Guidelines to make this determination. A copy of the NBEM Guidelines is available at <http://www.fws.gov/migratorybirds/issues/BaldEagle/NationalBaldEagleManagementGuidelines.pdf>. Please contact the US Fish and Wildlife Service (334-291-3100) if you need further assistance.

BY THE AUTHORITY OF THE SECRETARY OF THE ARMY:

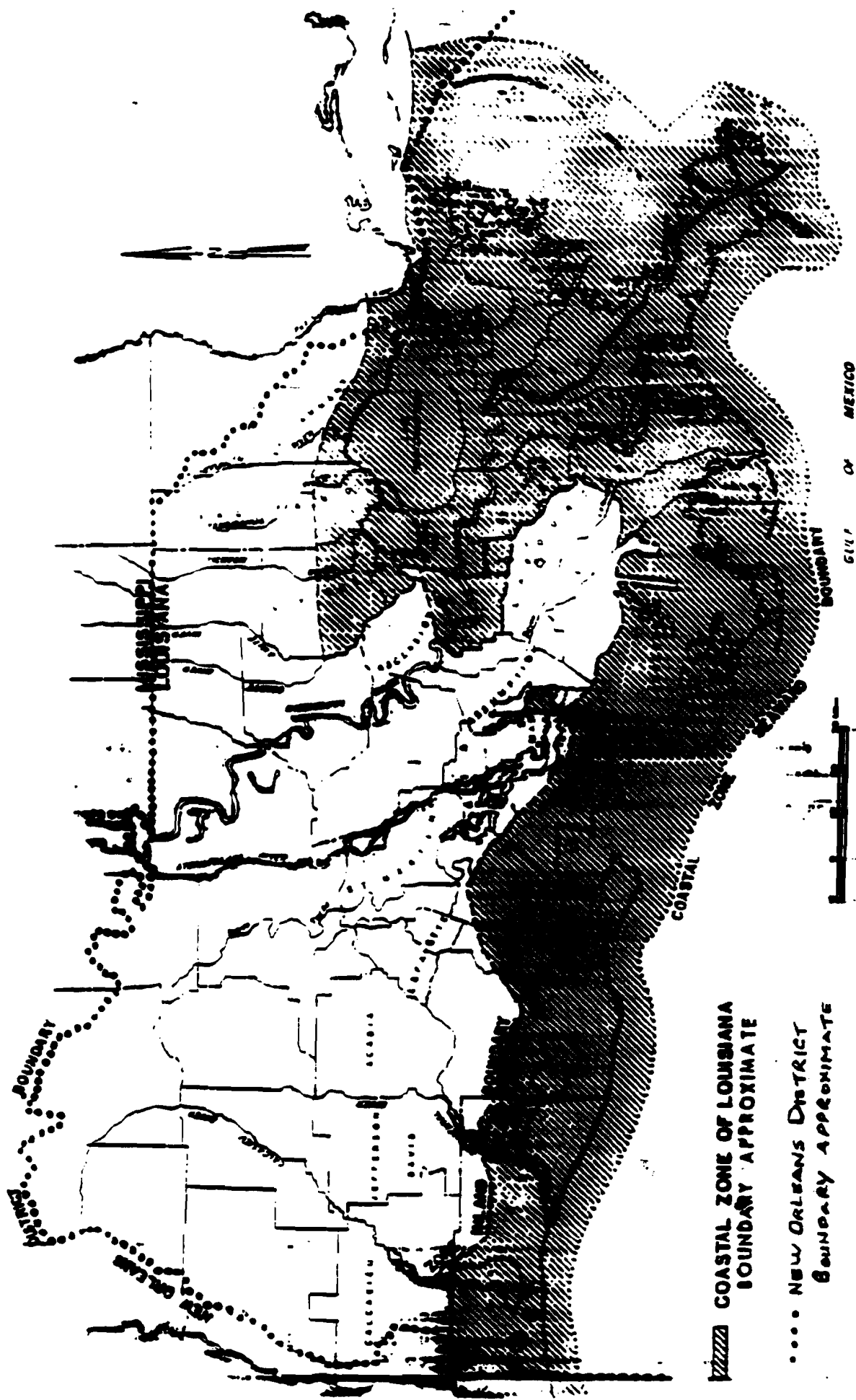


Pete J. Serio
Chief, Regulatory Branch

Attachments

- 1. District Boundary Map and Coastal Zone Boundary Map
- 2. Sample Drawings

ATTACHMENT 1 LMNOD-5(GENERAL PERMIT)123



The image is a hand-drawn map titled "VICINITY MAP" in large, bold, black letters at the bottom left. Above the title, the words "SAMPLE DRAWINGS" are written in a similar style at the top right. The map itself is a complex, hand-drawn sketch of a geographical area. It features a network of roads, buildings, and other landmarks. A large, dark, irregular shape is drawn over the central part of the map, possibly representing a specific area of interest or a redacted section. The drawing is done in black ink on a light background.

VICINITY MAP

APPLICANT NAME _____
PROPOSED HOMESIT
AND APPURTENANCE
IN: (NAME OF SUBD)
NEAR: (NAME OF TOWN)
IN _____ PARISH

LMNOD-5 (GENERAL PERMIT) 123

--- (QUEST)

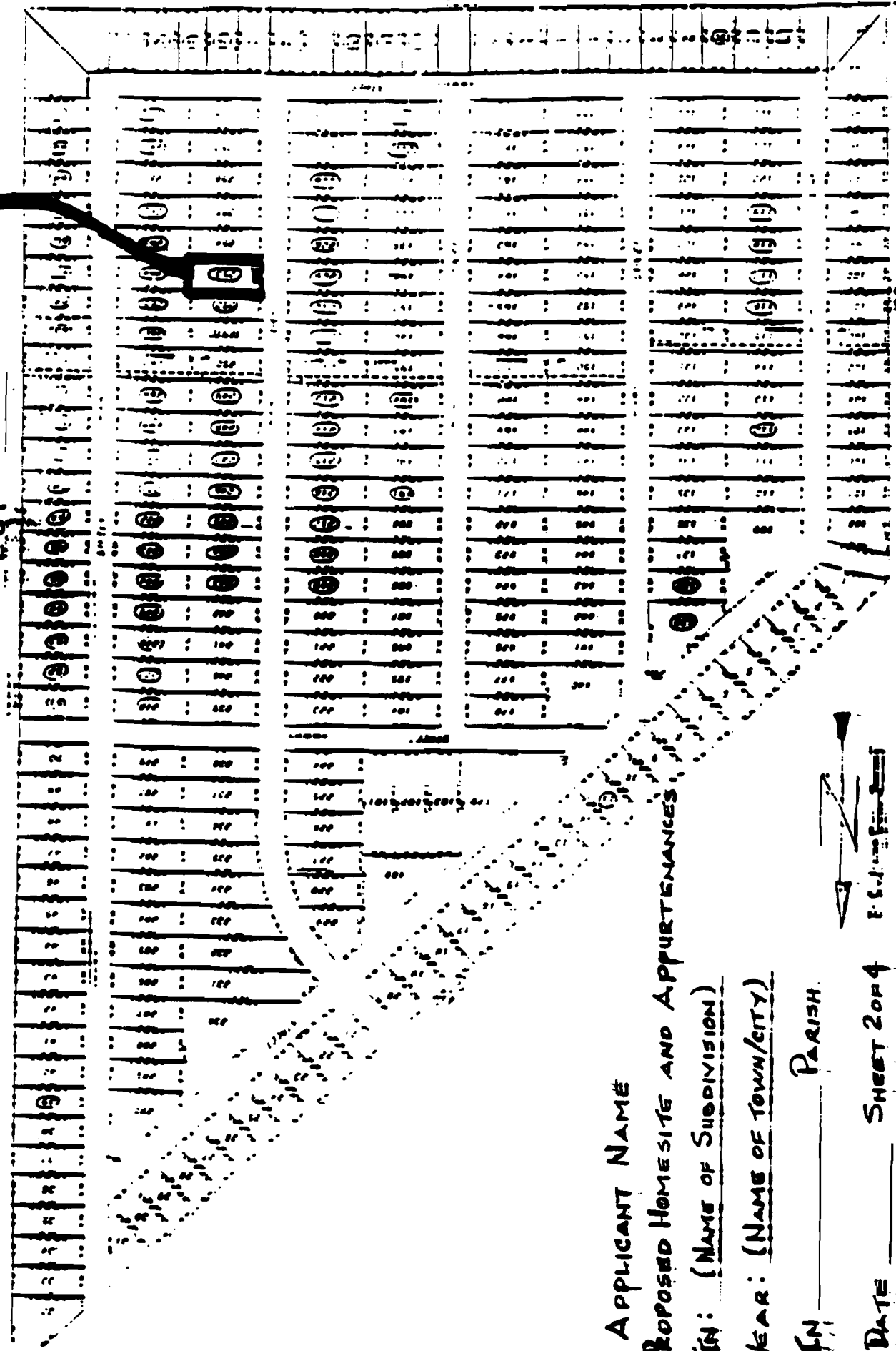
245

SHEET-17

SAMPLE DRAWINGS
 LMNOD-5 (GENERAL PERMIT) 123
 ATTACHMENT 2 (SHEET 2)

WORK LOCATION

LOT #



APPLICANT NAME

PROPOSED HOMESITE AND APPURTENANCES

IN: (NAME OF SUBDIVISION)

NEAR: (NAME OF TOWN/CITY)

IN: PARISH

DATE SHEET 2 OF 4

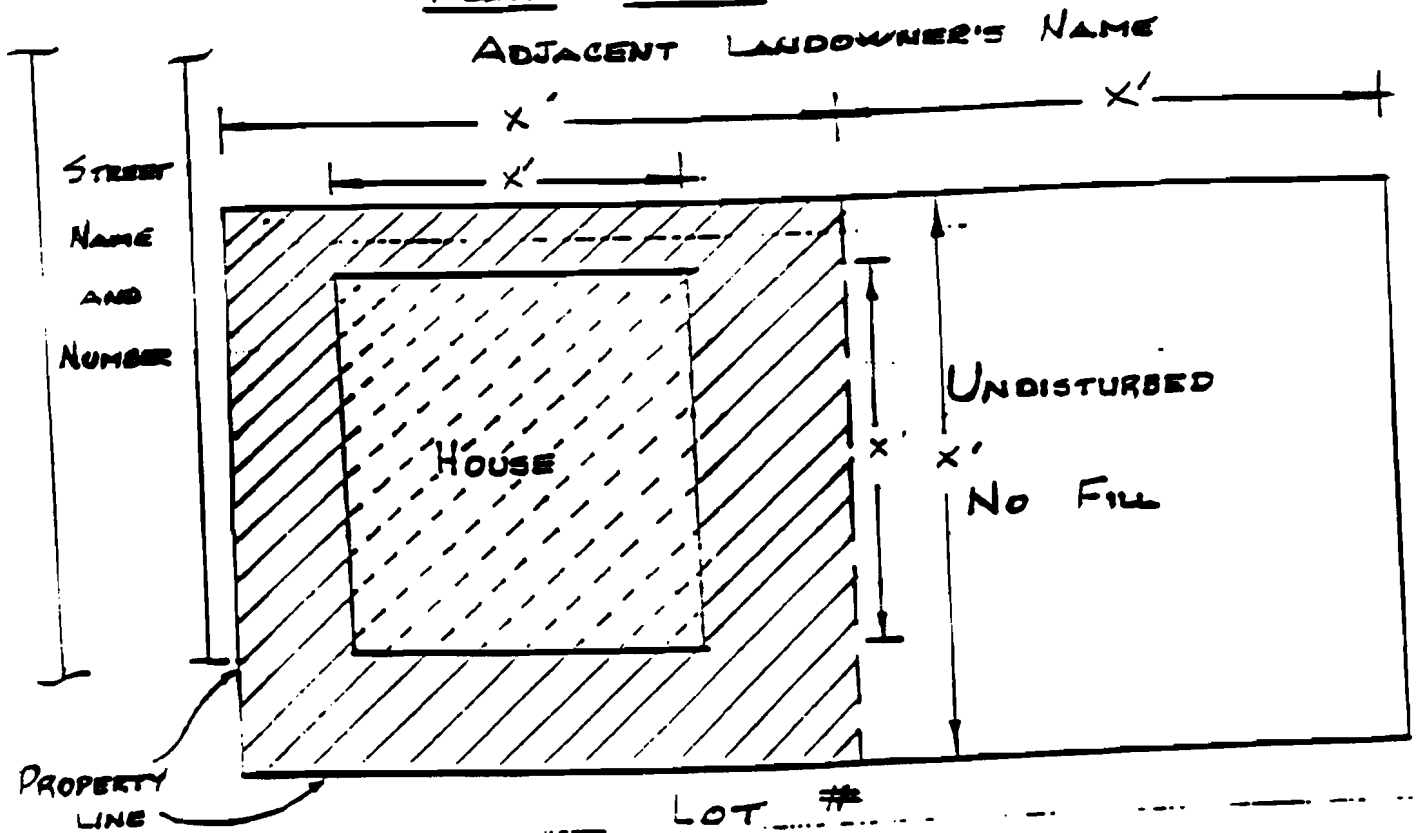


PLANNING

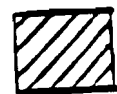
(GENERAL PERMIT) NOD-123

SAMPLE DRAWINGS

PLAN VIEW



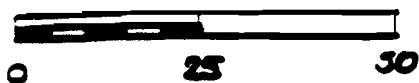
ADJACENT LANDOWNER'S NAME



FILL AREA

APPROXIMATELY XXX CUB
YARDS OF MAILED IN
MATERIAL.

SCALE *
1" = 25'



*OPTIONAL IF ALL DIMENSIONS

APPLICANT'S NAME
PROPOSED HOMESITE

APPURTENANCES

IN: (NAME OF SUBDIVISION)

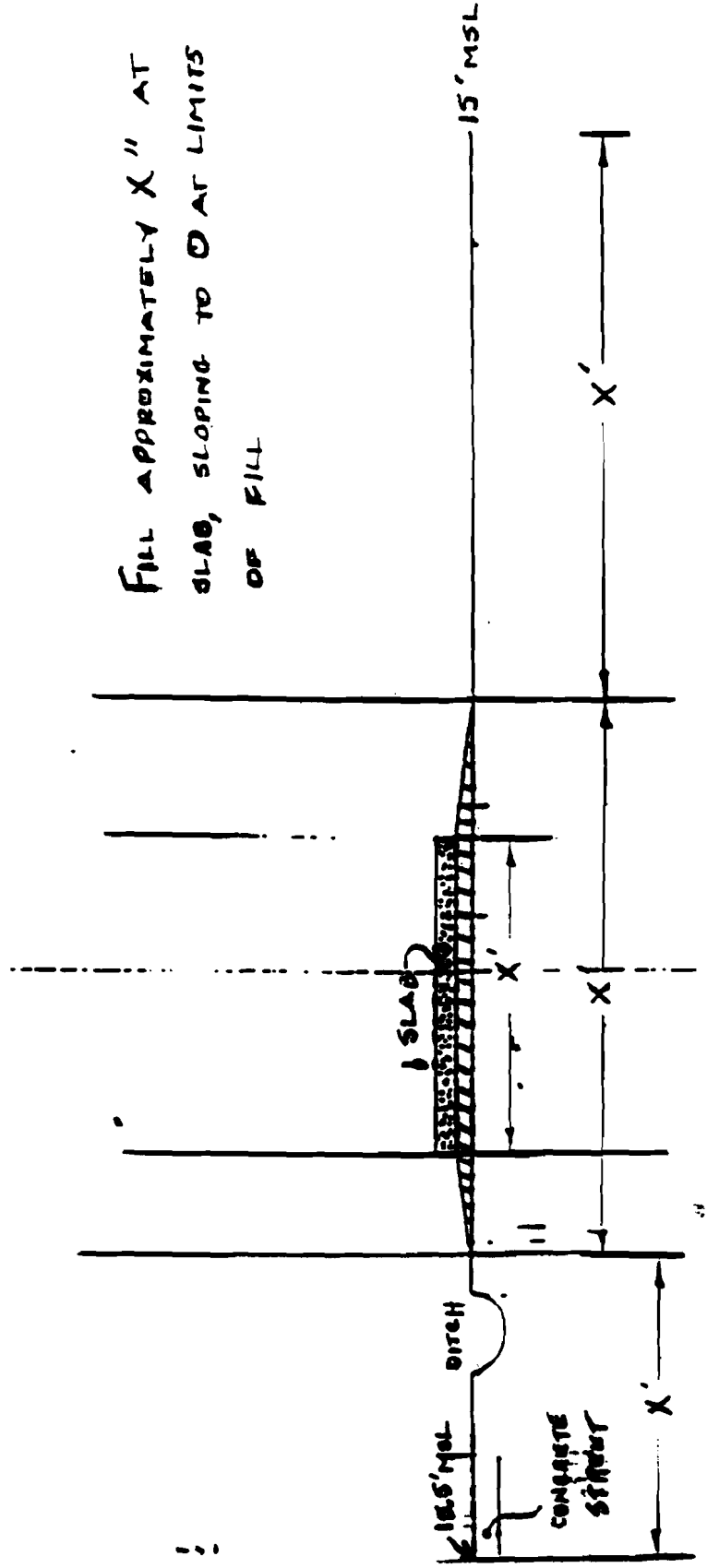
NEAR: (NAME OF TOWN)

IN _____ PERISH
GATE SHEET 3 OF

ATTACHMENT 2 (SHEET 4)

LMNOD-5 (GENERAL PERMIT) 123 SAMPLE DRAWINGS

FILL APPROXIMATELY X" AT
SLAB, SLOPING TO D AT LIMITS
OF FILL



LOT #

SCALE
1" = 25'

SECTION VIEW

APPLICANT'S NAME
PROPOSED HOME SITE AND
APPURTENANCES
IN: (NAME OF SUBDIVISION)
NEAR: (NAME OF TOWN, CITY)
IN _____ PARISH