DEPARTMENT OF THE ARMY
NEW ORLEANS DISTRICT, CORPS OF ENGINEERS
P. O. BOX 60267
NEW ORLEANS, LOUISIANA 70160-0267

REPLY TO
ATTENTION OF:
Operations Division
Central Evaluation Section

SUBJECT: (General Permit) NOD-100
MVN-2005-3245-CR

SPECIAL PUBLIC NOTICE

TIME EXTENSION AND MODIFICATION FOR THE GENERAL PERMIT FOR MARSH RESTORATION WORK

Interested parties are hereby notified that (General Permit) NOD-100, originally issued by this office on September 1, 1989, for certain activities within the Louisiana Coastal Zone has been modified and is extended for 5 years until February 28, 2011. A copy of the modified and extended general permit is attached.

The proposed time extension and modification was advertised for public comment on August 26, 2005. The only changes from the general permit is the wording of paragraphs (3) including the use of the Joint Permit Application Form, if the work is in the Louisiana Coastal Zone.

Although the general permit is being extended, persons who become aware of problems or adverse impacts are requested to notify the Regulatory Branch of this District at the above address. The general permit will be suspended, revoked, or modified it is shown to be in the public interest to do so.

Ronald J. Ventola
Chief, Regulatory Branch

Enclosure

DEPARTMENT OF THE ARMY
NEW ORLEANS DISTRICT, CORPS OF ENGINEERS
P.O. BOX 60267
NEW ORLEANS, LOUISIANA 70160-0267

REPLY TO
ATTENTION OF:
Operations Division
Regulatory Branch

SUBJECT: CEMVN-OD-SC (General Permit) NOD-100

DEPARTMENT OF THE ARMY
GENERAL PERMIT

Authorization No.: (General Permit) NOD-100
MVN-2005-3245-CR

Under authorization granted by applicable sections of Parts 320 through 330 of Title 33, Code of Federal Regulations, and delegated authority from the Commander, U.S. Army Corps of Engineers, the District Engineer at New Orleans has determined that it is in the public interest to issue a time extension for the general permit for the Louisiana Department of Natural Resources, Coastal Restoration Division, and the Louisiana Department of Agriculture and Forestry, Office of Soil and Water, for the installation and maintenance of wave-dampening fences for dredging and fill to create terraces in shallow bay bottoms for vegetative marsh restoration projects.

Specific legislation requiring DOA permits for work of this nature:

a. Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403) and

b. Section 404 of the Clean Water Act (33 U.S.C. 1344).

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

This general permit will not authorize work within the following areas:

a. Within 3,000 feet of a bald eagle nesting site.

b. Within 1,500 feet of a colonial bird nesting site.

c. Within any area where the activity is likely to adversely affect federally listed threatened or endangered species, or that is likely to destroy or adversely modify the critical habitat of such species.

d. Within 1,000 feet of a levee or other flood control facilities constructed or maintained with federal funds, or owned and operated by agencies of state and local governments without the written consent of the appropriate agency or governing body.

e. At or in close proximity to any known historic or archeological sites within the boundaries of an historic district.

f. Across any navigable waterway.

g. On or in any of Louisiana's state natural and scenic rivers.

h. On any state seed oyster and/or public oyster harvest grounds or within 500 feet of any known oyster reef.

Applications for work to be performed under authority of this general permit must include the following:

An application (ENG Form 4345 or Joint Permit Application Form, if the work is in the Louisiana Coastal Zone), a location map, and a dimensioned and scaled plan view and cross sections showing the proposed work (sample drawings are enclosed as attachment 1). Applications for work within the boundaries of any state or federal wildlife refuge or management area must include the written consent of the appropriate Division Chief or Refuge Manager to be considered under the general permit.

Work authorized by the general permit will be subject to applicable conditions on ENG Form 1721, Department of the Army Permit (attachment 2), and the following special conditions.

a. No heavy equipment is allowed on vegetated marsh during construction.

b. Gaps of at least six feet will be left between each 90-foot section of fence constructed under this permit.

c. Non-biodegradable components used in construction will be removed upon termination of the project.

d. Borrow areas must be discontinuous and staggered with a maximum length of 100 feet. Gaps of 10 feet will be left between every 100-foot segment of terraced area.

e. Maximum water depth for terraces authorized by this permit is 2 feet.

f. The work must not interfere with the public's right to free navigation on all navigable waters of the United States.

g. Any safety lights and signals prescribed by the US Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense.

h. Work authorized by this general permit may not be performed until the CEMVN has reviewed the application and has issued a written approval.

i. Additional conditions may be added to this general permit by the District Engineer if it is found to be in the public interest to do so.

j. No work may be performed under this general permit unless and until all required local, state and other federal permits, licenses, authorizations, and, certifications are obtained. This includes, but is not limited to:

(1) A Coastal Use Permit or waiver signed by the Secretary of the Louisiana Department of Natural Resources or his designee.

(2) A Water Quality Certification (if required) from the Louisiana Department of Environmental Quality, Office of Environmental Services.

k. This general permit may be suspended, in whole or in part, by the District Engineer if it is found to be in the public interest to do so.

l. The District Engineer may choose not to grant approval under this general permit and require the applicant to go through regular permit processing procedures when he finds that such action is in the public interest.

m. The Louisiana Department of Natural Resources, Coastal Restoration Division, and the Louisiana Department of Agriculture and Forestry, Office of Soil and Water, will provide data necessary to evaluate the effectiveness of projects authorized under this general permit to the District upon request.

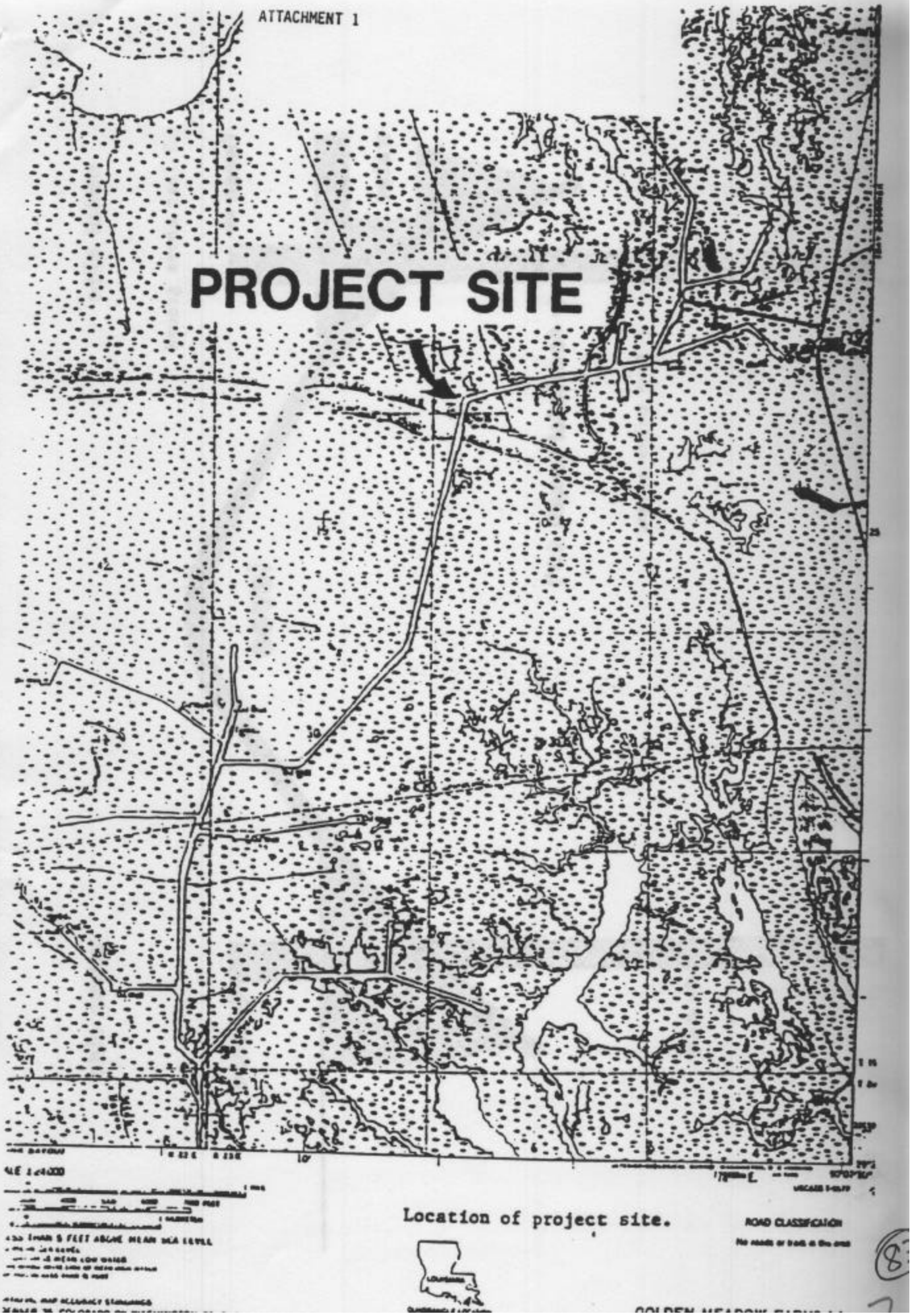
n. The permittee understands and agrees that, if future operations by the United States requires the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the CEMVN, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Ronald J. Ventola
Chief, Regulatory Branch
For
Richard P. Wagenaar
Colonel, U.S. Army
District Engineer

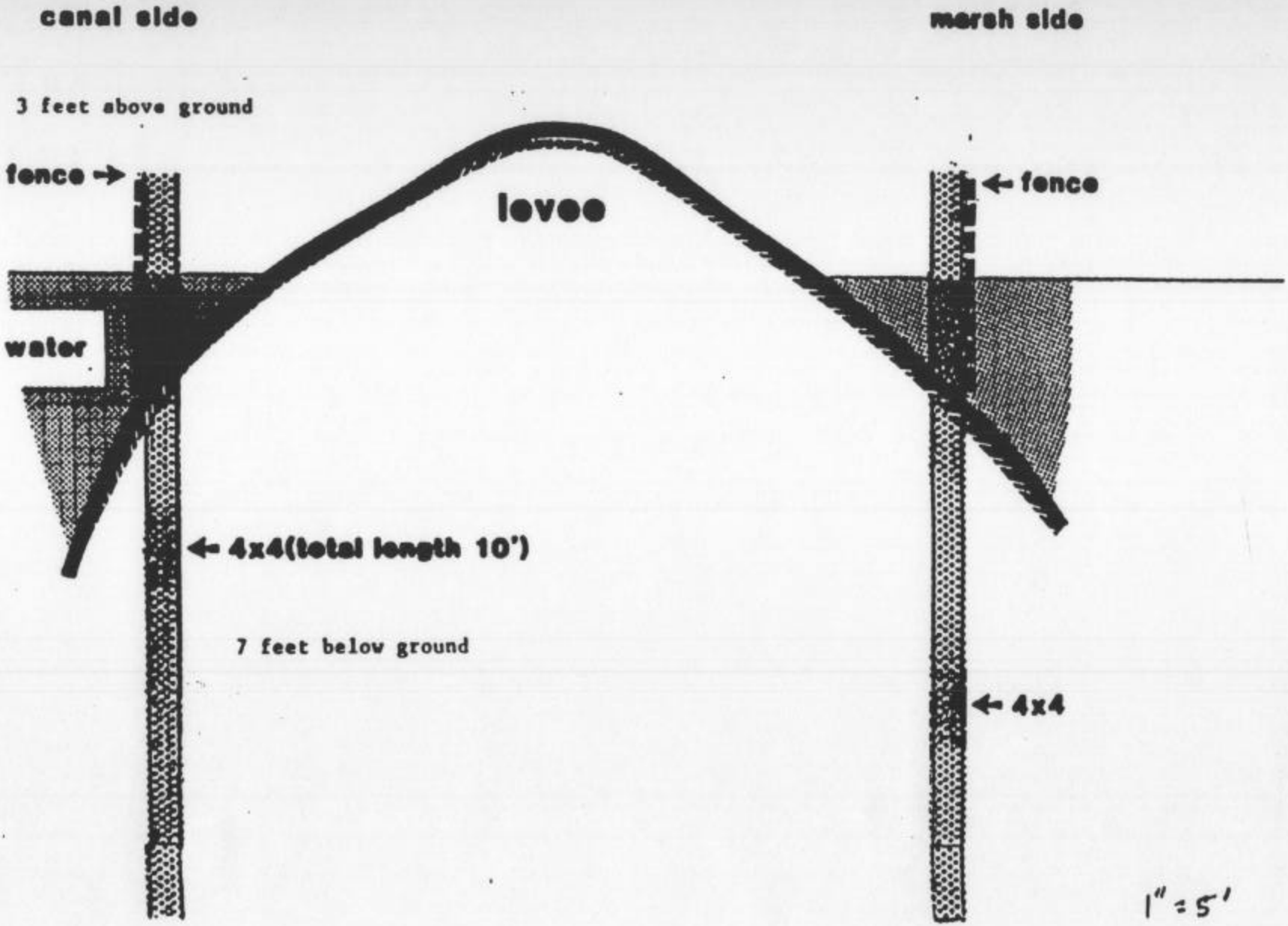
ATTACHMENTS
1. Sample Drawings
2. ENG Form 1721

ATTACHMENT 1



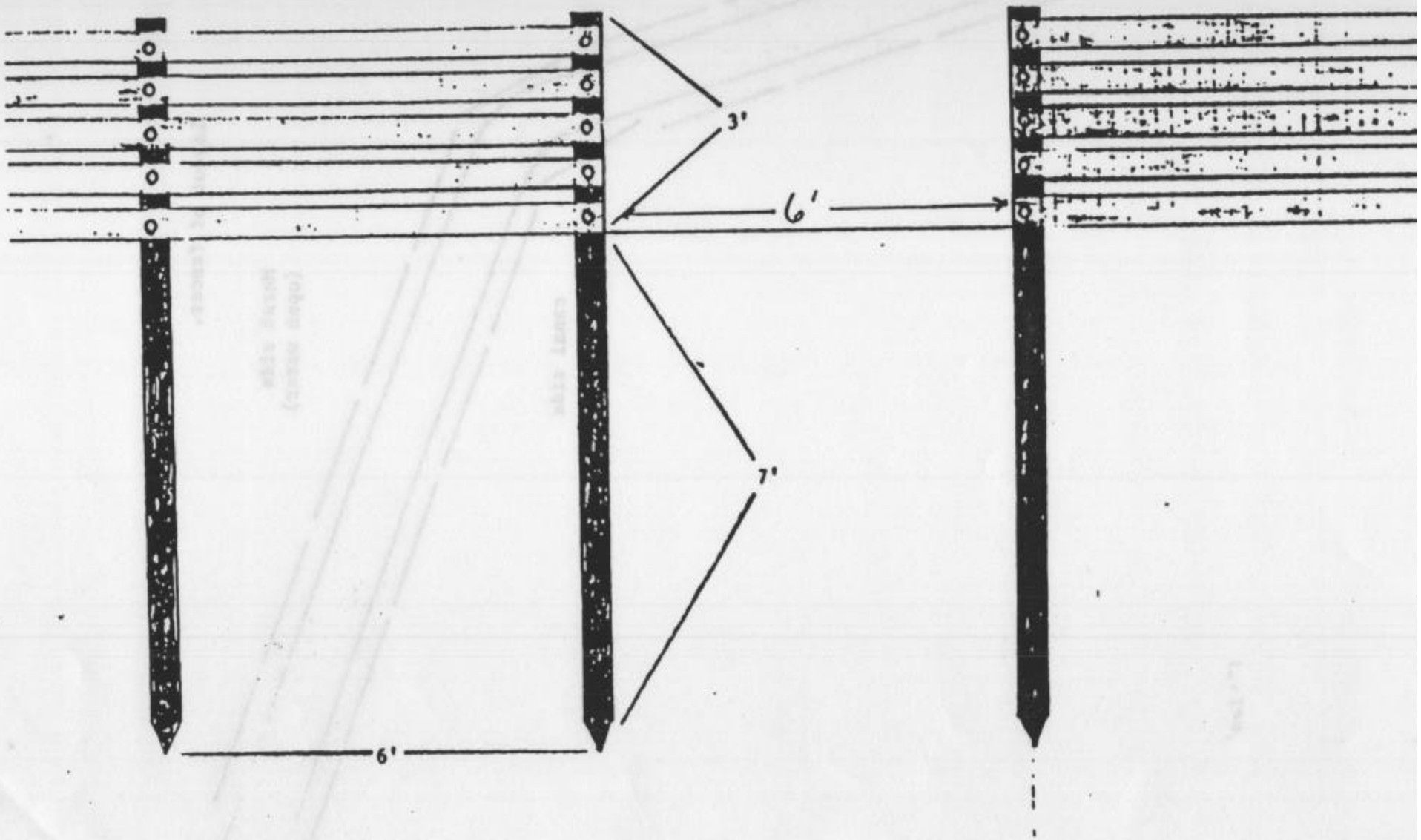
Location of project site.

Fence Construction: fencing boards on far side of posts away from levee.

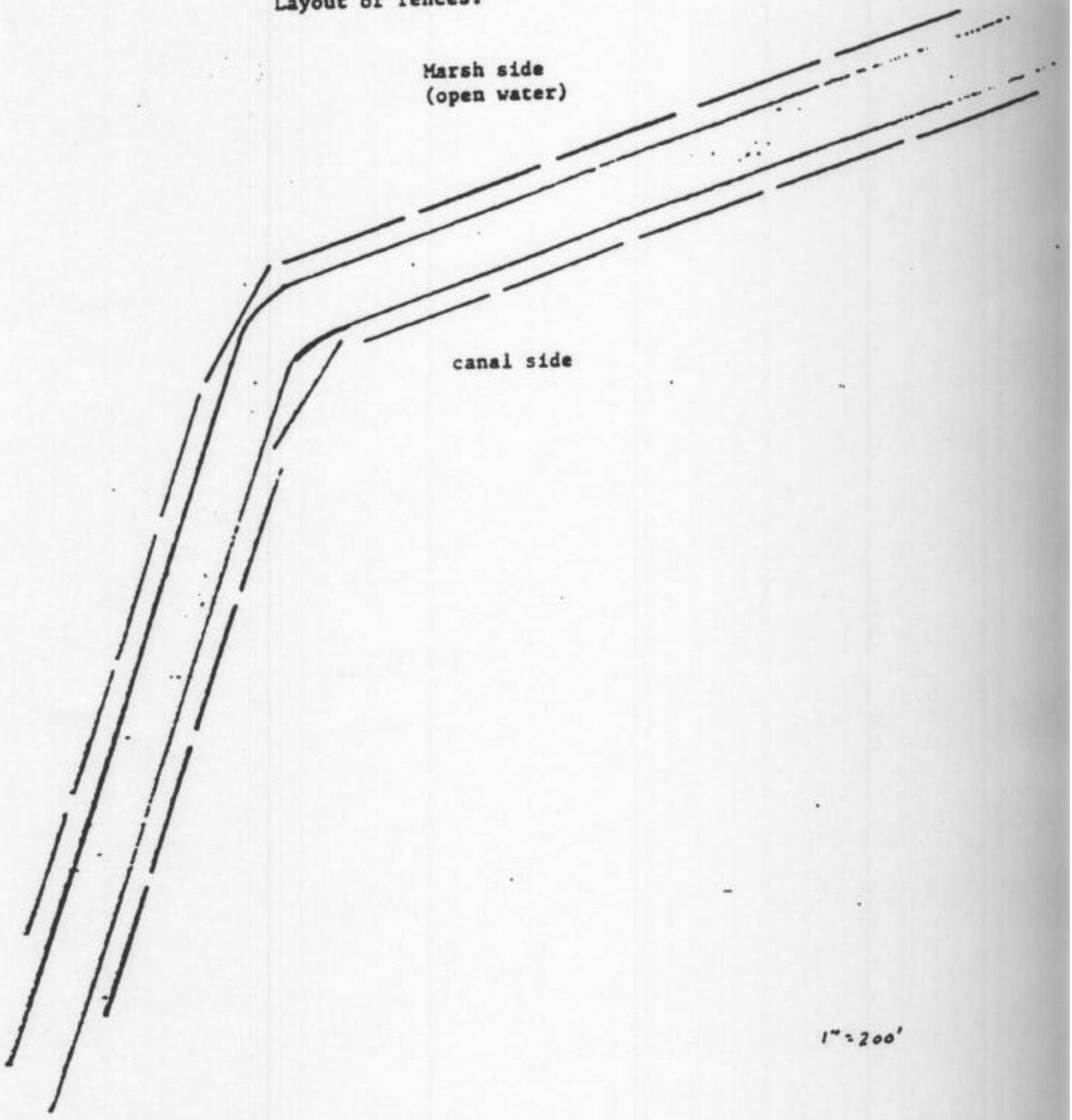


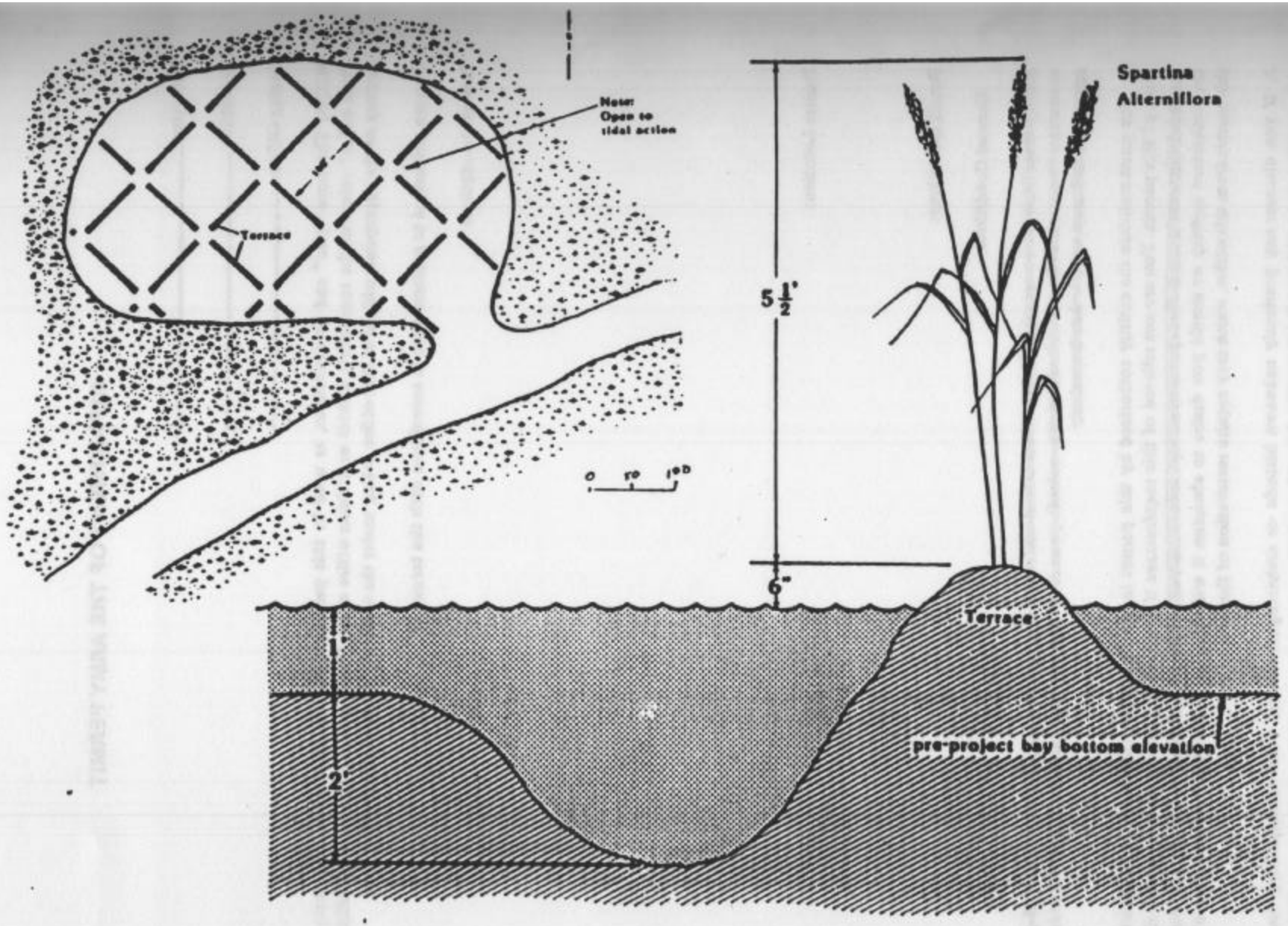
Fence construction.

1) 10 ft. long 4 x 4's placed on 6 ft. centers, driven 7 feet.
2) 5, 1 x 4's with 3 inch gaps attached to posts with bolts.
3) Fences constructed in 90 ft. segments with 6 ft. spaces between segments.



Layout of fences.





Cross-sectional and plan views of terracing concept.

ATTACHMENT 2

DEPARTMENT OF THE ARMY PERMIT

Permittee _____

Permit No. _____

Issuing Office _____

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description:

Project Location:

Permit Conditions:

General Conditions:

~~1. The time limit for completing the work authorized ends on _____. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.~~

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, ~~although you may make a good faith transfer to a third party in compliance with General Condition 4 below~~. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

~~4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provide and forward a copy of the permit to this office to validate the transfer of this authorization.~~

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specifie in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it con tains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensur that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(x) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(x) Section 404 of the Clean Water Act (33 U.S.C. 1344).

~~( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).~~

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natura causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behal of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activit authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the pub interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this perm

(PERMITTEE) *(DATE)*

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

(DISTRICT ENGINEER) *(DATE)*

~~When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.~~

~~(TRANSFEREE)~~ ~~(DATE)~~

☆U.S. GOVERNMENT PRINTING OFFICE: 1986 — 717-48