



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 8/12/2020

ORM Number: SWG-2019-00655

Associated JDs: SWG-2019-00655 Rapanos AJD issued 18JUN20 and SWG-2019-00193 AJD issued 10Oct19

Review Area Location¹: State/Territory: Tx City: Houston County/Parish/Borough: Harris

Center Coordinates of Review Area: Latitude 29.608408 Longitude -95.141933

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): ³			
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):			
(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A.	N/A.	N/A.	N/A.

¹ Map(s)/figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wet B	2.04	acre(s)	(b)(1) Non-adjacent wetland.	Wetlands that meet the definition of paragraph (c)(16) and are not (a)(4) waters are not jurisdictional according to this specific type of (b)(1) exclusion for documentation purposes. The subject water does not meet the definition of “adjacent wetlands.” 33CFR328.3(c)(1)(iii): Adjacent wetlands include wetlands that are physically separated from a water identified in paragraph (a)(1), (2), or (3) only by a natural berm, bank, dune, or similar natural feature. Wetland B is physically separated from Horsepen Bayou by a man made berm that has no break or direct connection to the a(2).
Wet E	0.73	acre(s)	(b)(1) Non-adjacent wetland.	Wetlands that meet the definition of paragraph (c)(16) and are not (a)(4) waters are not jurisdictional according to this specific type of (b)(1) exclusion for documentation purposes. The subject water does not meet the definition of “adjacent wetlands.” 33CFR328.3(c)(1)(iii): Adjacent wetlands include wetlands that are physically separated from a water identified in paragraph (a)(1), (2), or (3) only by a natural berm, bank, dune, or similar natural feature. Wetland E physically sits above Horespen Bayou and is elevated atop a buried box culvert.
Wet D	1.07	Acres	(b)(1) Non-adjacent wetland	Wetlands that meet the definition of paragraph (c)(16) and are not (a)(4) waters are not jurisdictional according to this specific type of (b)(1) exclusion for documentation purposes. The subject water does not meet the definition of “adjacent wetlands.” 33CFR328.3(c)(1)(iii): Adjacent wetlands include wetlands that are physically separated from a water identified in paragraph (a)(1), (2), or (3) only by a natural berm, bank, dune, or similar natural feature. Wetland D is physically separated from Horsepen Bayou by a man made berm that has no break or direct connection to the a(2).

III. SUPPORTING INFORMATION

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

- A. Select/enter all resources** that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.
- Information submitted by, or on behalf of, the applicant/consultant: [Terracon delineation report dated 28 Jan 2020, "Horsepen Bayou Conveyance Improvements, Preliminary Waters of the U.S. Delineation"](#)
This information is sufficient for purposes of this AJD.
Rationale: [Provides information on baseline data and delineated aquatic features](#)
 - Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).
 - Photographs: [Aerial and Other: 1943 B&W Google Earth, 1988 B&W Google Earth, 2006 Color Google Earth, 2017 Color Google Earth, base map color Google Earth, Oct 18, 2017.](#)
 - Corps site visit(s) conducted on: [06/16/2020](#)
 - Previous Jurisdictional Determinations (AJDs or PJDs): [Rapanos AJD issued 18JUN20 and 2019-00193 AJD issued 10Oct19](#)
 - Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
 - USDA NRCS Soil Survey: [Soil Survey of Harris County, TX \(August 1976\)](#)
 - USFWS NWI maps: [League City, TX and Friendswood, TX Quadrangle](#)
 - USGS topographic maps: [1916, 1969, 1995, 2016: 7.5' League City and Friendswood, Texas, 1:24,000](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	See above
USDA Sources	See above
NOAA Sources	N/A.
USACE Sources	APT Calculations
State/Local/Tribal Sources	N/A.
Other Sources	FEMA Flood Profiles- Panel B06P- Horsepen Bayou

B. Typical year assessment(s): [Water features were analyzed using APT calculating for base delineation map aerial photograph date of 18 OCT 17. The APT is a tool that affords the user the capability to look at rainfall in the recent past, cumulative for the last 3 months as well and climatological review for the past 30 years. The WETs score \(last 3 months\) for that date was 14 on a scale of 7-18 with a score of 15-18 being wetter than normal precipitation for the previous 3 months, which indicates that the measurements or observations made are reflective of normal climatic conditions. It uses climatic data collected from numerous nearby weather stations and produces the most reliable source with a full 30 years of precipitation data. The site coordinates are located at an appx 21.17 ft elevation. Extreme rainfall in September 2017, Hurricane Harvey 38.3 inches, however APT still averaged out to be normal conditions. Below is the result of numerous dates run for this site.](#)

Date	Rain prior 72 hours	WETS (3 mth) score:	APT	Season	PDSI
18 OCT 17 Wetness (Base Map)	2-3	14 (N)	Normal	Wet	Extreme
04 DEC 19 Drought (Site Visit)	0	10(N)	Normal	Wet	Incipient



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

15 June 18 (Google Earth)	1-2	10(N)	Normal	Dry	Dry Season
05 APR 2017 Wetness (Google Earth)	0	14 (N)	Normal	Wet	Incipient
03 MAR 2016 Wetness (Google Earth)	0	12 (N)	Normal	Wet	Mild

Climatic data was collected from Houston Hobby and Dear Park AP, which is the closest stations (8.3-8.6 mi) and is within the appropriate geographic region and is the most reliable source with a full 30 years of data. Furthermore, the precipitation assessment did not deviate from the 30th to 70th percentile of precipitation totals for the periodic range used. For each period, the 30-day precipitation total falls within the 70th and 30th percentiles for totals from the same date range over the preceding 30 years.

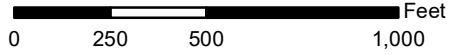
Based on randomly selected resources the APT was calculated for 5 randomly selected resources and an determination of "normal," is made based on the condition value sums

- C. Additional comments to support AJD:** The subject wetlands look like they are located in close proximity to Horsepen Bayou an a(2), a modified perennial stream. Upon site specific information being examined (i.e. aerial photographs, elevation data, historic aerials, soil maps and flood plain maps) it has been determined that these wetlands are located outside any of those areas that might have potential inundation by the flooding of Horsepen Bayou in a typical year. Evidence indicates that the subject wetlands (B, E, and D) are wetlands that are non-abutting, physically separated from Horsepen Bayou by a man made berm or upland that has no break, and are not located in a geomorphic position that would be inundated by the flood waters of Horsepen Bayou in a typical year; as such per federal regulations 33 CFR 328 3 (b)1 these aquatic features are non-jurisdictional waters and not subject to Section 404 of the Clean Water Act.

**SWG-2019-00655 Base map
Google Earth 18 OCT 17**



Project Boundaries (16 acres)



DATA SOURCES:
Friendswood USGS Quad; October 18, 2017 Aerial Photograph

Project No.:	92187794
Date:	Aug 2020
Drawn By:	REW
Reviewed By:	GCH



11555 Clay Road, Suite 100 Houston, TX 77043
PH. (713) 690-8989 terracon.com

2017 Aerial Photograph with Demarcated Wetlands

Approved Jurisdictional Determination
Horsepen Bayou Conveyance Improvements
IDS Engineering Group
Houston, Harris County, Texas

Exhibit
-