



**DEPARTMENT OF THE ARMY**  
U. S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT  
P. O. BOX 1229  
GALVESTON, TEXAS 77553-1229

**SEPTEMBER 11, 2024**

Policy Analysis Branch

**SUBJECT: SWG-202024-00570**; HCFCD Project ID C106-06-00-Y001, Approved Jurisdictional Determination (AJD), Harris County, Texas

Jonathan Holley  
Harris County Flood Control District (HCFCD)  
9900 Northwest Freeway  
Houston, Texas 77092

Dear Mr. Holley:

This letter is in response to your AJD request, dated August 9, 2024, for an AJD on a 1-acre tract for HCFCD Project ID C106-06-00-Y001. Project area is located at 310 Weldon Street, Houston, Harris County, Texas.

Based on a review of the provided information, and federal regulations, we have determined that the subject site does not contain waters of the United States (see enclosed MFR and map). The tract contains no aquatic resources and consists entirely of dry land/upland. There are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area. This approved jurisdictional determination is valid for 5 years from the date of this letter unless new information warrants a revision of the determination prior to the expiration date.

Areas of Federal Interests (federal projects, and/or work areas) may be located within this proposed project area. Any activities in these federal interest areas would also be subject to federal regulations under the authority of Section 14 of the Rivers and Harbors Act (aka Section 408). Section 408 makes it unlawful for anyone to alter in any manner, in whole or in part, any work (ship channel, flood control channels, seawalls, bulkhead, jetty, piers, etc.) built by the United States unless it is authorized by the Corps of Engineers (i.e., Navigation and Operations Division).

This determination has been conducted to identify the limits of the United States Army Corps of Engineers (USACE) CWA jurisdiction for the site identified in this request. However, this determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985 as amended. If you or your tenant are USDA program participants or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

This letter contains an approved jurisdictional determination for your subject site. For the purposes of this AJD, we have relied on Pre-2015 Regulatory Regime implemented consistent with *Sacket v. EPA* in evaluating jurisdiction. If you wish to appeal the approved jurisdictional determination, please see the enclosed sheets regarding the administrative appeal process for jurisdictional determinations: Notification of Appeals Process (NAP) fact sheet and Request for Appeal (RFA) form. If you object to this determination, you may request an administrative appeal under USACE regulations at 33 CFR Part 331. If you request to appeal this determination, you must submit a completed RFA form to the Southwestern Division Office at the following address:

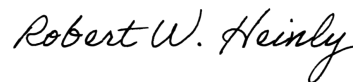
Mr. Jamie Hyslop, CESWD-PD-O  
U.S. Army Corps of Engineer Division, Southwestern  
1100 Commerce Street, Room 831  
Dallas, Texas 75242-1731  
Telephone: 469-216-1317; FAX: 469-487-7199

For an RFA to be accepted by the Corps, the Corps must determine that it is complete; that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP, noting that the date of the letter is Day 1. It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter.

If you have any questions concerning this approved jurisdictional determination, please reference file number SWG-2024-00570 and contact me at the letterhead address, by email at [Dwayne.Johnson@usace.army.mil](mailto:Dwayne.Johnson@usace.army.mil), or by telephone at 409-766-6353. To assist us in improving our service to you, please complete the survey found at <http://per2.nwp.usace.army.mil/survey.html> and/or if you would prefer a hard copy of the survey form, please let us know, and one will be mailed to you.

FOR THE DISTRICT COMMANDER:

Sincerely,



Robert W. Heinly  
Chief, Policy Analysis Branch

Enclosures: NAP, AJD MFR with map



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT  
2000 FORT POINT ROAD  
GALVESTON, TEXAS, 77550

SWG-RD-P

11 SEP 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023) ,<sup>1</sup> SWG-2024-00570

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.<sup>2</sup> AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.<sup>3</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>4</sup> the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable Texas due to litigation.

1. SUMMARY OF CONCLUSIONS.

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<sup>1</sup> While the Supreme Court's decision in *Sackett* had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

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- a. The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area).

Based on the data sources listed in #9, the tract contains no aquatic resources and consist entirely of dry land/upland. There are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area.

## 2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. \_\_\_, 143 S. Ct. 1322 (2023)
- e. 2008 Rapanos guidance: "In addition, ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water are generally not waters of the United States because they are not tributaries, or they do not have a significant nexus to downstream traditional navigable waters."
- f. 2003 SWANCC guidance.
- g. 1980s preamble language (including regarding waters and features that are generally non-jurisdictional) (51 FR 41217 (November 13, 1986) and 53 FR 20765 (June 6, 1988)).
- h. 24 July 2020 Memo, "Joint Memorandum to the Field Between the U.S. Department of the Army, Corps of Engineers and the U.S. Environmental Protection Agency Concerning Exempt Construction or Maintenance of Irrigation Ditches and Exempt Maintenance of Drainage Ditches Under Section 404 of the Clean Water Act".

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3. REVIEW AREA. A 1-acre tract located at 310 Weldon Street, Houston, Harris County, Texas, 77587. 29.6678758, -95.231523. The 1-acre tract is for a proposed stormwater detention basin. There is no previous JDs on this tract.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS N/A
6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.<sup>6</sup> N/A
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
  - a. TNWs (a)(1): N/A
  - b. Interstate Waters (a)(2): N/A

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<sup>5</sup> 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce or is presently incapable of such use because of changed conditions or the presence of obstructions.

<sup>6</sup> This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

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- c. Other Waters (a)(3): N/A
- d. Impoundments (a)(4): N/A
- e. Tributaries (a)(5): N/A
- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): N/A

## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).<sup>7</sup> Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. N/A
- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A
- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A
- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A
- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “*SWANCC*,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic

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<sup>7</sup> 51 FR 41217, November 13, 1986.

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resource or feature, and how it was determined to be an “isolated water” in accordance with SWANCC. N/A

- f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water). N/A

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. Office evaluation(s) were conducted on 09 Aug 24 and 11 Sept 24.
- b. “Wetlands and Water Bodies Delineation C106-06-00-Y001 Stormwater Detention Basin Project, South Houston, Harris County, Texas”, WA Project Number 24.01.004, HVJ Associates Houston, Texas.
- c. U.S. Department of Agriculture (USDA). 2019. Web Soil Survey. <http://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>
- d. FEMA Federal Emergency Management Agency. FIRM Panel 48201C0915N, May 2019.
- e. USGS Topographic Maps. 7.5-min Quad Map, Crosby, Texas. 1915,1919,1955,1967,1982,1995, and 2022.
- f. Historical Aerials: 1943, 1953, 1978, 1989, 1995, 2022 and 2023. IR,1996 and 2004, TNRS.

10. OTHER SUPPORTING INFORMATION.

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR’s structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.





Scale: 1 in.  $\approx$  900 ft

Project No.: 24.01.004



Client: HVJ Associates  
Houston, Texas

**SITE MAP**

Base Source: Google Earth  
Image Date June 2023



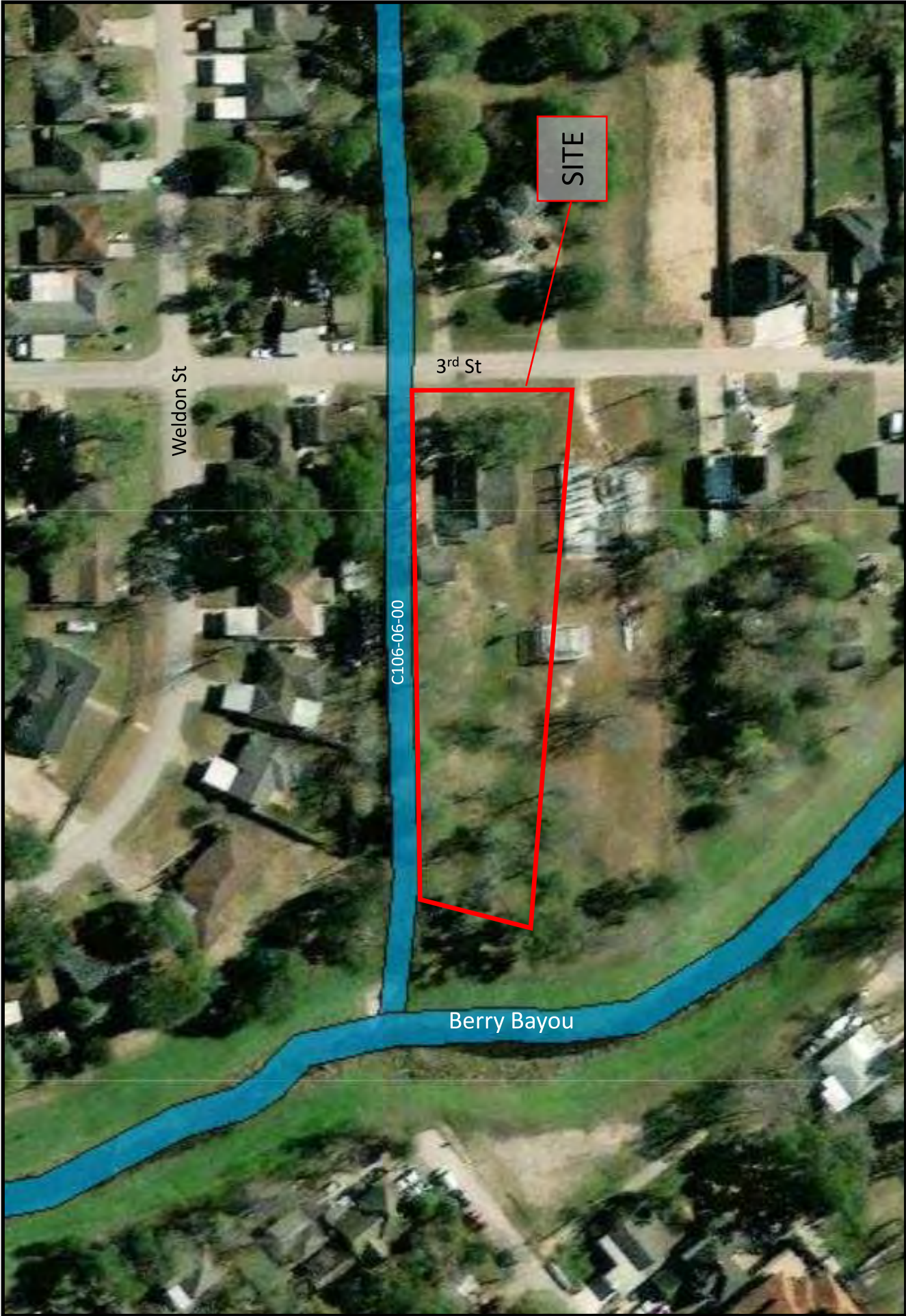
**Project:**  
Wetlands and Water Bodies Delineation  
HCFCD C106-06-00-Y001  
Stormwater Detention Basin Project  
South Houston, Harris County, Texas





Project: Wetlands and Water Bodies Delineation HCFCD C106-06-00-Y001 Stormwater Detention Basin Project South Houston, Harris County, Texas	 WILD ASSOCIATES Engineering & Environmental Consulting	Client: HVJ Associates Houston, Texas		Scale: 1 in. ≈ 500
				Project No.: 24.01.004
2022 TOPOGRAPHIC MAP United States Geological Survey 7.5 Minute Series Pasadena Quadrangle				





Project:  
Wetlands and Water Bodies Delineation  
HCFCD C106-06-00-Y001  
Stormwater Detention Basin Project  
South Houston, Harris County, Texas

NATIONAL WETLANDS INVENTORY MAP  
SOURCE: [www.fws.gov/wetlands/Data/Mapper.html](http://www.fws.gov/wetlands/Data/Mapper.html)



Client: HVJ Associates  
Houston, Texas



Scale: 1 in. ≈ 100 ft

Project No.: 24.01.004