



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

April 15, 2013

Compliance Section

SUBJECT: **SWG-2013-00212**; Michael L. Richker, Approved Jurisdictional Determination,
5.2-Acre Tract, Houston, Harris County, Texas

Mr. Michael L. Richker
5534 Rutherglenn
Houston, Texas 77096

Dear Mr. Richker:

This letter is in response to your request, dated February 11, 2013, for an approved jurisdictional determination on a 5.2-acre tract. The tract is located northwest of the West Tidwell Road and T.C. Jester Boulevard intersection, in Houston, Harris County, Texas.

Based on our April 4, 2013 site visit and April 3, 2013 desk review, we determined that the 5.2-acre tract (see enclosed map) does not contain waters of the United States, including wetlands. Therefore, the discharge of dredged or fill material onto the tract is not subject to Section 404 of the Clean Water Act and does not require a Department of the Army permit.

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.

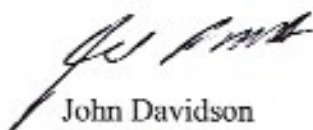
This letter contains an approved jurisdictional determination for your subject site. If you wish to appeal the approved jurisdictional determination, please see the enclosed sheets regarding the administrative appeal process for jurisdictional determinations: Notification of Appeals Process (NAP) fact 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 Southwest Division Office at the following address:

Mr. Elliott Carman
Appeal Review Officer, CESWD-PD-O
U.S. Army Corps of Engineer Division, Southwestern
1100 Commerce Street, Room 831
Dallas, Texas 75242-1731
Telephone: 469-487-7061; FAX: 469-487-7199

In order 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. 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 jurisdictional determination please reference file number **SWG-2013-00212** and contact me at the letterhead address or by telephone at 409-766-3933 or email at john.davidson@usace.army.mil. 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.

Sincerely,



John Davidson
Team Lead
Compliance Section

Enclosure

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: MICHAEL L. RICHER	File Number: SWG 2013-00212	Date: 04/15/2013
Attached is:		See Section below
☐	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
☐	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
☐	PERMIT DENIAL	C
☒	APPROVED JURISDICTIONAL DETERMINATION	D
☐	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/> Or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved jurisdictional determination (JD) or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

John Davidson
Compliance Section
Team Lead
CESWG-PE-RC
P.O. Box 1229
Galveston, Texas 77553-1229
Telephone: 409-766-3933 FAX: 409-766-6301

If you only have questions regarding the appeal process you may also contact:

Elliott Carman
Regulatory Appeals Review Officer
Southwestern Division USACE (CESWD-PO-O)
1100 Commerce Street, Suite 831
Dallas, Texas 75242
Phone: 469-487-7061 FAX: 469-487-7199

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or authorized agent.	Date:	Telephone number:
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Pond Spring St

SWG-2013-00212 Michael L. Richker

Sample Point 1

Sample Point 2

YC Junior Blvd

W. White Oak Bayou Trail

W. White Oak Bayou Trail

Image location: Latitude: 30.000000, Longitude: -95.000000
© 2013 Google

lat: 29.846837, lon: -95.455647, elev: 70.8

© 2010

ACKNOWLEDGEMENT

This Is To Acknowledge Receipt of Your Request.

DATE: 14 March 2013

To: **MICHAEL RICHKER
RICHKER PROPERTIES, INC.
5534 RUTHERGLENN
HOUSTON, TEXAS 77096**

Date Request Received: February 14, 2013

Applicant (If Other Than Requestor):

Request For: Jurisdictional Determination

Site Location: Northwest corner of West Tidwell Road @ T.C. Jester Blvd.,
Harris County, Texas

Project Manager Assigned: Mr. John Davidson

Telephone Number: (409) 766-3933

Application File Number: **SWG-2013-00212**

Please reference the above file number in future matters dealing with your request, and contact the Corps Regulatory Compliance Staff person working on this action. It should be noted that at the present time our average response time to finalize determinations exceeds 120 days. Please contact the Compliance Staff person working on this action for any concerns and/or questions that you may have pertaining to this action, they may be contacted at:

**John Davidson
CESWG-PE-RC
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229**

From: "Houston, Michael F SWG" <Michael.F.Houston@usace.army.mil>
Subject: **definition of a wetland (UNCLASSIFIED)**
Date: February 14, 2013 11:57:54 AM CST
To: "vicky.richker@gmail.com" <vicky.richker@gmail.com>

Classification: UNCLASSIFIED

Caveats: NONE

Mr. Richker,

Below you will find the official Army Corps of Engineers definition of a wetland. We determine a wetland's presence using a three parameter approach. All three parameters (vegetation, hydrology, and hydric soils) must be present for a determination that a specific area is a wetland. Many wetlands are not subject to federal jurisdiction under the Clean Water Act, however. These non-jurisdictional wetlands are "isolated" wetlands. For a wetland to be subject to Corps jurisdiction it must be "adjacent", meaning it is bordering, neighboring, or contiguous with other waters of the United States. Other waters of the United States include streams, rivers, waters subject to the tide, other jurisdictional wetlands, and navigable waters. For a wetland to be considered "adjacent" it must have a "significant nexus" to a "traditional navigable water." A wetland may also be deemed jurisdictional if it has the capacity to affect interstate commerce.

I know this is quite a bit of information. You may research any of the above terms using Google. The following is quoted from the 1987 Army Corps of Engineers Wetland Delineation manual (manual). We utilize this manual in conjunction with the appropriate Regional Supplement to determine if an area is or is not a wetland. The regional supplement for our area is the Atlantic and Gulf Coastal Plain Region Supplement. You may find the entire text of the manual here:

<http://el.erdc.usace.army.mil/wetlands/pdfs/wlman87.pdf>

A link to the supplement may be found here:

http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/reg_supp/AGCP_regsupV2.pdf

26. The following definition, diagnostic environmental characteristics, and technical approach comprise a guideline for the identification and delineation of wetlands:

a. Definition. The Corps of Engineers (Federal Register 1982) and the EPA (Federal Register 1980) jointly define wetlands as: Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

b. Diagnostic environmental characteristics. Wetlands have the following general diagnostic environmental characteristics:

(1) Vegetation. The prevalent vegetation consists of macrophytes that are typically adapted to areas having hydrologic and soil conditions described in a above. Hydrophytic species, due to morphological, physiological, and/or reproductive adaptations, have the ability to grow, effectively compete, reproduce, and/or persist in anaerobic soil conditions. Footnote: Species (e.g. *Acer rubrum*) having broad ecological tolerances occur in both wetlands and nonwetlands. Indicators of vegetation associated with wetlands are listed in paragraph 35.

(2) Soil. Soils are present and have been classified as hydric, or they possess characteristics that are associated with reducing soil conditions. Indicators of soils developed under reducing conditions are listed in paragraphs 44 and 45.

(3) Hydrology. The area is inundated either permanently or periodically at mean water depths <6.6 ft, or the soil is saturated to the surface at some time during the growing season of the prevalent vegetation. The period of inundation or soil saturation varies according to the hydrologic/soil moisture regime and occurs in both tidal and non-tidal situations. Indicators of hydrologic conditions that occur in wetlands are listed in paragraph 49.

c. Technical approach for the identification and delineation of wetlands. Except in certain situations defined in this manual, evidence of a minimum of one positive wetland indicator from each parameter (hydrology, soil, and vegetation) must be found in order to make a positive wetland determination.

M. Flynt Houston
U.S. Army Corps of Engineers
2000 Fort Point Road
Galveston, TX 77553
Phone: 409-766-3936
409-766-3936



Richker Properties, Inc.

Commercial Real Estate

Flynt Houston, in this department. Born 1972
Grew up in Westbury S/D ph: 409 766 3936
sending me by email the 3 requirements for a
tract of land to be designated...WETLANDS!

February 11, 2013

U.S. Army Corps of Engineers
Regulatory Branch
P.O. Box 1229
Galveston, Tx. 77553-1229

Attention: Mr. John Davidson, Team Leader

Dear Sir:

I am the owner, as of December, 1979, of a tract of land, being the northwest corner of West Tidwell Road @ T.C. Jester Blvd. with frontage, also, on the south side of Paul Quinn Street.

To further identify the property, I have enclosed:

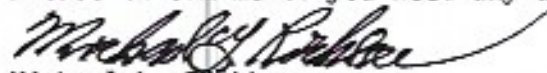
- * general location map showing the 5.173-acre tract of land at that intersection;
- * boundary, topographical map from Daram Engineers, Inc. dtd. 05/31/ 2011;
- * aerial photograph (GoogleEarth) of the subject property.

Pursuant to my conversation today with Mr. Flynt Houston in your offices, I am respectfully requesting "AN APPROVED JURISDICTIONAL DETERMINATION" for my property....to confirm that the property is NOT a "wetlands".

I understand that there is no fee for obtaining this information from the Corps of Engineers. Thank you for your immediate response to my request.

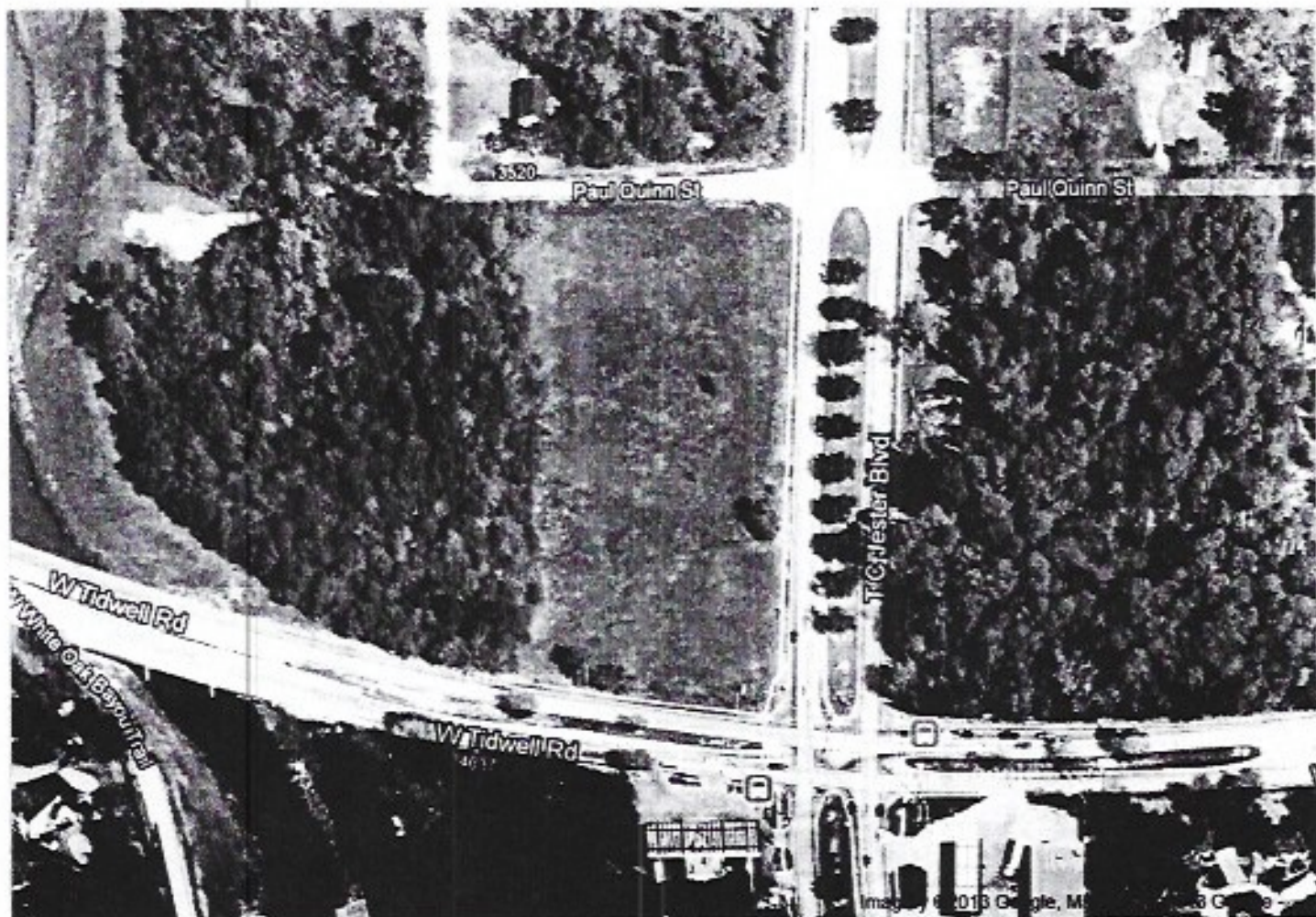
My phone numbers are: (residence) 713 729 0535
(cellular) 713 305 0158 or
281 236 8532

Please inform me if you need any additional data. Cordially,


Michael L. Richker

Google

To see all the details that are visible on the screen, use the "Print" link next to the map.



Photos

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