



**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): 7/30/2020
 ORM Number: NWS-2020-571 NorthPoint Development
 Associated JDs: N/A
 Review Area Location¹: State/Territory: Washington City: Marysville County/Parish/Borough: Snohomish
 Center Coordinates of Review Area: Latitude 48.141228 Longitude -122.161746

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
- 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.



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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
51st Avenue East Ditch	3,280	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	51st Avenue East Ditch is a constructed, excavated channel used to convey water. The subject ditch is not subject to tidal ebb and flow. It does not meet the definition of a tributary, was not constructed in a tributary, and does not relocate a tributary. No portions of the subject ditch is constructed in an adjacent wetland. See Section III.C. for additional discussion.
Ditch V	1,260	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	Ditch V is a constructed, excavated channel used to convey water. The subject ditch is not subject to tidal ebb and flow. It does not meet the definition of a tributary, was not constructed in a tributary, and does not relocate a tributary. No portions of the subject ditch is constructed in an adjacent wetland. See Section III.C. for additional discussion.
Ditch W	520	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	Ditch W is a constructed, excavated channel used to convey water. The subject ditch is not subject to tidal ebb and flow. It does not meet the definition of a tributary, was not constructed in a tributary, and does not relocate a tributary. No portions of the subject ditch is constructed in an adjacent wetland. See Section III.C. for additional discussion.

III. SUPPORTING INFORMATION

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: [Technical Memorandum, submitted by Soundview Consultants LLC, dated 24 June 2020.](#)

This information **Select.** sufficient for purposes of this AJD.

Rationale: [N/A or describe rationale for insufficiency \(including partial insufficiency\).](#)

Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)

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.



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- Photographs: **Aerial:** [Google Earth Aerial Imagery](#), accessed 14 June 2020
- Corps site visit(s) conducted on: [Date\(s\)](#).
- Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\)](#).
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [Web Soil Survey Soil Report, Marysville, WA](#); accessed 28 July 2020
- USFWS NWI maps: [NWI Map, Marysville, WA](#); accessed 28 July 2020
- USGS topographic maps: [Mount Vernon, Washington 1911](#); [Marysville, Washington 1943](#); [Arlington West, Washington 1956](#); [Arlington West, Washington 2017](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	Letter from Washington State Department of Fish and Wildlife, entitled "Deregulation of 51st Avenue Watercourse", dated 16 January 2009.
Other Sources	N/A.

B. Typical year assessment(s): [N/A](#)

C. Additional comments to support AJD: Historically, a wetland mosaic existed in this portion of Snohomish County. Agricultural practices began in 1916, and drainage tiles were installed to effectively drain the wetland mosaic. When the subject ditches were excavated between 1942 and 1957, the drainage tiles were still operational and wetlands were not present. Based on a USFWS NWI Map for the review area, accessed 28 July 2020, there are no wetlands adjacent to the subject ditches. In addition, Soundview Consultants LLC conducted extensive wetland studies in the immediate, larger vicinity (over 250) acres which identified over 30 wetlands, none of which were adjacent to the subject ditches. Although soils within the review area are mapped as hydric, per USDA NRCS Soil Survey data for the review area, accessed 28 July 2020, documented site history demonstrates that the subject ditches were not excavated within wetlands.

The 51st Avenue East ditch was constructed between the years of 1942 and 1957, based on historical USGS topographic maps, for the purpose of seasonal stormwater conveyance. It is not subject to tidal ebb and flow and has no potential to be used in interstate or foreign commerce. The subject ditch has been identified as "Westphal Creek" on a 2017 USGS topographic map. Based on historic aerial imagery and topographic maps, there is no history of this creek or evidence to support that a creek was diverted into the subject ditch. The WDFW has determined that the ditch is not a natural watercourse and is entirely artificial. The WDFW found no recorded history that the ditch was a natural watercourse, and thus determined that it is not regulated under their jurisdiction. In addition, the City of Marysville has determined that the subject ditch is not a regulated waterbody under their jurisdiction. Based on historical aerial imagery and topographic maps, the subject ditch does not relocate a tributary, is not constructed in a tributary, and is not constructed in an adjacent wetland; thus the subject ditch does not meet the definition of a tributary.

Ditch V is an excavated ditch that provides artificial drainageways for drain tile in the adjacent, actively managed agricultural fields. The subject ditch is not subject to tidal ebb and flow and has no potential to be



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used in interstate or foreign commerce. Based on historical aerial imagery and topographic maps, the subject ditch does not relocate a tributary, is not constructed in a tributary, and is not constructed in an adjacent wetland thus the subject ditch does not meet the definition of a tributary.

Ditch W is an excavated ditch that provides artificial drainageways for drain tile in the adjacent, actively manged agricultural fields. The subject ditch is not subject to tidal ebb and flow and has no potential to be used in interstate or foreign commerce. Based on historical aerial imagery and topographic maps, the subject ditch does not relocate a tributary, is not constructed in a tributary, and is not constructed in an adjacent wetland thus the subject ditch does not meet the definition of a tributary.