



**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): 7/9/2021

ORM Number: NWS-2021-516

Associated JDs: N/A

Review Area Location<sup>1</sup>: State/Territory: Washington City: Marysville County/Parish/Borough: Snohomish

Center Coordinates of Review Area: Latitude 48.124792 Longitude -122.175687

**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)<sup>2</sup>**

§ 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):<sup>3</sup>**

(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.

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

<sup>2</sup> 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.

<sup>3</sup> 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)): <sup>4</sup>				
Exclusion Name	Exclusion Size		Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Ditch X	933	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 X is not subject to tidal ebb and flow and has no potential to be used in interstate or foreign commerce. Hayho Creek is an artificial channel that did not relocate a tributary, was not constructed in a tributary, and was not constructed in an adjacent wetland. Hayho Creek is not an (a)(1) or (a)(2) water and was not constructed in an (a)(4) water. See Section III.C for additional details.
Ditch Z	994	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 Z is not subject to tidal ebb and flow and has no potential to be used in interstate or foreign commerce. Hayho Creek is an artificial channel that did not relocate a tributary, was not constructed in a tributary, and was not constructed in an adjacent wetland. Hayho Creek is not an (a)(1) or (a)(2) water and was not constructed in an (a)(4) water. See Section III.C for additional details.

**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: USACE Jurisdictional Determination Request Adjacent to 40th Avenue Northeast dated 19 May 2021](#)  
This information is sufficient for purposes of this AJD.  
Rationale: [N/A](#)
- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).
- Photographs: [Aerial and Other: Technical Memorandum, Appendix C, Site Photographs dated 19 May 2021; Google Earth aerial imagery accessed June 2021; Historic Aerial imagery provided by NETRonline accessed June 2021](#)
- Corps site visit(s) conducted on: [Date\(s\)](#).
- Previous Jurisdictional Determinations (AJDs or PJDs): [AJD for Hayho Creek: NWS-2021-130 dated 24 February 2021](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [NCS Soil Survey Map accessed June 2021](#)
- USFWS NWI maps: [USFWS National Wetland Inventory Map accessed June 2021](#)

<sup>4</sup> 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.

<sup>5</sup> 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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USGS topographic maps: [Mount Vernon, 1911](#); [Marysville, 1941, 1943, 1956](#)

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
<a href="#">USGS Sources</a>	N/A.
<a href="#">USDA Sources</a>	N/A.
<a href="#">NOAA Sources</a>	N/A.
<a href="#">USACE Sources</a>	N/A.
<a href="#">State/Local/Tribal Sources</a>	<a href="#">Snohomish County Wetland Inventory Map dated 25 January 2018</a> ; <a href="#">WDFW SalmonScape map accessed June 2021</a>
<a href="#">Other Sources</a>	<a href="#">EPA WATERS layer accessed via Google Earth, June 2021</a>

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

**C. Additional comments to support AJD:**

Ditch X is a linear, artificial feature that flows along the southern boundary of the subject property. Ditch X is not subject to tidal ebb and flow and has no potential to be used in interstate or foreign commerce. Based on a review of USGS historic topographic maps, Ditch X was excavated within agricultural fields between the years of 1943 and 1956. Ditch X originates from a stormwater culvert at the southwest corner of the subject property and flows east along the southern property boundary before discharging to Hayho Creek. A previous AJD for Hayho Creek (NWS-2021-130 dated 24 February 2021) determined that Hayho Creek is a ditch that did not relocate a tributary, was not constructed in a tributary, and was not constructed in an adjacent wetland. Hayho Creek is not an (a)(1) through (3) water. Based on historic topographic maps and aerial imagery, no natural tributary was present at this location prior to excavation of Ditch X. Therefore, Ditch X did not relocate a tributary and was not constructed in a tributary. Based on a review of the NWI map for the subject property and historic topographic maps, no historic wetlands were mapped adjacent to the subject ditch at the time of ditch excavation. The nearest potential water of the U.S. is Middle Fork Quilceda Creek, located 1 mile southeast of the subject ditch. Railroad tracks and roadways were present between the subject property and nearest potential water of the U.S. which would have prevented a direct hydrologic connection between the subject property and nearest potential water of the U.S. Therefore, any existing wetlands present along the southern property boundary at the time of Ditch X construction would not have been adjacent wetlands. Based on this information, Ditch X did not constructed in an adjacent wetland. Ditch X was not constructed in a tributary, did not relocate a tributary, and was not constructed in an adjacent wetland, therefore Ditch X is a (b)(5) ditch.

Ditch Z is a linear, artificial feature that flows along the northern boundary of the subject property. Ditch Z is not subject to tidal ebb and flow and has no potential to be used in interstate or foreign commerce. Based on a review of USGS historic topographic maps, Ditch Z was excavated within agricultural fields between the years of 1943 and 1956. Ditch Z originates offsite to the northwest, flows east parallel to the northern property boundary, then discharges to Hayho Creek. A previous AJD for Hayho Creek (NWS-2021-130 dated 24 February 2021) determined that Hayho Creek is a ditch that did not relocate a tributary, was not constructed in a tributary, and was not constructed in an adjacent wetland. Hayho Creek is not an (a)(1) through (3) water. Based on historic topographic maps and aerial imagery, no natural tributary was present at this location prior to excavation of Ditch Z. Therefore, Ditch Z did not relocate a tributary and was not constructed in a tributary. Based on a review of the NWI map for the subject property and historic topographic maps, no historic wetlands were mapped adjacent to the subject ditch at the time of ditch excavation. The nearest potential water of the U.S. is Middle Fork Quilceda Creek, located 1.1 mile



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southeast of the subject ditch. Railroad tracks and roadways were present between the subject property and nearest potential water of the U.S. which would have prevented a direct hydrologic connection between the subject property and nearest potential water of the U.S. Therefore, any existing wetlands present along the northern property boundary at the time of Ditch Z construction would not have been adjacent wetlands. Based on this information, Ditch Z did not constructed in an adjacent wetland. Ditch Z was not constructed in a tributary, did not relocate a tributary, and was not constructed in an adjacent wetland, therefore Ditch Z is a (b)(5) ditch.