



**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): 3/31/2021

ORM Number: NWS-2020-571

Associated JDs: AJD dated July 30, 2020 for NWS-2020-571 (51st Avenue East Ditch, Ditch V, Ditch W)

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

Center Coordinates of Review Area: Latitude 48.132575 Longitude -122.161641

**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
51st Avenue East Ditch	2,039	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 portion of the subject ditch is constructed in an adjacent wetland. See Section III.C. for additional discussion.
Ditch U	1,016	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 U 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 portion 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 for 51st Avenue East Ditch and Ditch U, dated February 4, 2021](#)  
This information is 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\(s\).](#)
- Photographs: [Aerial: Historic aerial imagery accessed via Google Earth, March 2021; Historic Aerials accessed via NETR Online, March 2021; Site photographs provided by Soundview Consultants, LLC dated February 4, 2021](#)
- Corps site visit(s) conducted on: [Date\(s\).](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [NWS-2020-571 \(51st Avenue East Ditch, Ditch V, Ditch W\) dated July 30, 2020](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [Title\(s\) and/or date\(s\).](#)
- USFWS NWI maps: [Title\(s\) and/or date\(s\).](#)

<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, Washington, 1911](#); [Marysville, Washington, 1941, 1943](#); [Arlington, Washington, 1956](#); [Victoria, Washington, 1957](#); [Port Townsend, Washington, 1975](#); [Arlington West, Washington, 2020](#)

**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="#">Letter from Washington State Department of Fish and Wildlife, entitled "Deregulation of 51st Avenue Watercourse", dated January 16, 2009; Snohomish County PDS Map Portal accessed March 2021.</a>
<a href="#">Other Sources</a>	N/A.

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

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

The Corps previously determined that the portion of the 51st Avenue East ditch located north of 152nd Street Northeast is a (b)(5) ditch that is not an (a)(1) or (a)(2) water and was not constructed in an (a)(4) water (AJD for NWS-2020-571 dated July 30, 2020). The portion of the 51st Avenue East ditch located south of 152nd Street Northeast is the subject of this 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. The 51st Avenue East ditch was constructed between the years of 1943 and 1956, based on historical USGS topographic maps, for the purpose of seasonal stormwater conveyance. At the time of construction, the ditch appears to extend both to the north and south of 152nd Street Northeast. The 51st Avenue East ditch 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 U is an excavated ditch located north of and parallel to 152nd Street Northeast. The subject ditch provides an artificial drainageway for drain tiles presumably located in the adjacent, actively managed 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 a review of historic aerial imagery and topographic maps, the subject ditch does not relocate a tributary and is not constructed in a tributary. The subject ditch is not present on any USGS historic topographic maps dated 1911 through 2020; however, based on a review of aerial imagery the subject ditch was likely constructed concurrent with or after the construction of the 51st Avenue East ditch and other on-site artificial ditches between the years of 1943 and 1956. Due to the



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presence of drainage tiles at the subject property since the early 1900s, it is likely that any historic wetlands would have been drained prior to construction of the subject drainage ditch. Based on this information, the subject ditch does not relocate a tributary, was not constructed in a tributary, and was not constructed in an adjacent wetland.