



**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): [7/13/2021](#)  
 ORM Number: [NWS-2021-637](#)  
 Associated JDs: [NA](#)  
 Review Area Location<sup>1</sup>: State/Territory: [WA](#) City: [Ferndale](#) County/Parish/Borough: [Whatcom](#)  
 Center Coordinates of Review Area: Latitude [48.891502°](#) Longitude [-122.551600°](#)

**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: [NA](#)
- 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
<a href="#">N/A.</a>	<a href="#">N/A.</a>	<a href="#">N/A.</a>	<a href="#">N/A.</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
<a href="#">N/A.</a>	<a href="#">N/A.</a>	<a href="#">N/A.</a>	<a href="#">N/A.</a>

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
<a href="#">Cougar Creek</a>	<a href="#">4,300</a>	<a href="#">linear feet</a>	<a href="#">The creek is a naturally occurring surface water channel that contributes surface water flow to a paragraph (a)(1) water in a typical year either directly or through one or more paragraph (a)(2) through (4) waters. The tributary has perennial or intermittent flow in a typical year.</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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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.	N/A.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
Field 3W	9.45	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland abuts a perennial (a)(2) tributary
Field 9	8.0	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland abuts a perennial (a)(2) tributary

**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
North Ditch	2,050	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).	The ditch did not relocate a tributary, was not constructed in a tributary, and was not constructed in an adjacent wetland. See Section III.C for additional details.
Tract 5789, Fields 2, 3, and 4	2.50	acre(s)	(b)(6) Prior converted cropland.	PCC/NW determination made by NRCS in 1998. Areas have not been abandoned from agricultural use
Tract 5145, Fields 1, 2, and 3	37.9	acre(s)	(b)(6) Prior converted cropland.	PCC/NW determination made by NRCS in 2021. Areas have not been abandoned from agricultural use

**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: [NRCS Certified Wetland Determinations dated 1998 and 2021; WA State Department of Fish and Wildlife stream assessment for North Ditch dated 1 July 2020](#)

This information is sufficient for purposes of this AJD.

Rationale: [The provided information adequately documents existing conditions at the site and immediate vicinity.](#)

<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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- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).
- Photographs: [Select. Title\(s\) and/or date\(s\)](#).
- 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: [On-line Web Soil Survey accessed 7 July 2021](#)
- USFWS NWI maps: [NWI On-line Map accessed 7 July 2021](#)
- USGS topographic maps: [Bertrand Creek 7.5 Minute Quad dated 1994](#)

**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>	<a href="#">National Hydrography Data mapper, accessed 7 July 2021</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>	N/A.
<a href="#">Other Sources</a>	<a href="#">WDFW SalmonScope, accessed 7 July 2021</a>

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

**C. Additional comments to support AJD:** The subject property is located immediately east of the Nooksack River near Ferndale, WA. The current fram is an approximately 600 acre ongoing agricultural and dairy operation in business since 1967. A majority of the site is in active agricultural use (corn and hay). There is one natural stream crossing the site, Cougar Creek (aka Wiser Lake Creek), running generally from east to west and a number of drainage ditches. Topography of the site trends generally from east to west. Water from across the site enters Cougar Creek and flows into the Nooksack River through a floodgate in an existing levee.

Cougar Creek (aka Wiser Lake Creek) is shown as perennial on NHD, NWI, and topographic maps. The creek contributes surface water flow to a downstream jurisdictional water (Nooksack River) in a typical year through a channelized non-jurisdictional surface water feature (floodgate).

North Ditch lies almost entirely within the mapped FEMA Floodway for the Nooksack River and flows seasonally into the river through an approximately 360-ft long culvert. It appears that the ditch was originally constructed in an active agricultural field sometime in the mid-1930s. A 1933 aerial photo does not show any signs of a ditch or natural tributary while a 1938 aerial photo shows a faint ditch line. Subsequent aerials indicate that the ditch was likely realigned and buried several times over the years. NWI mapping does not indicate the presence of wetlands; NRCS performed an assessment of the area and determined that the ditch flows through Prior Converted Cropland (PCC) or Non-Wetland (NW) areas. NHD maps the ditch as intermittent/ephemeral however, there is no indication that the ditch relocated a tributary, was constructed in a tributary, or was constructed in an adjacent wetland.

Tract 5789, Fields 2, 3, and 4 were determined to be PCC as stated in a certified wetland determination made by NRCS on 21 January 1998. Tract 5145, Fields 1 and 2 and portions of Field 3 were determined to be PCC/NW in a certified wetland determination made by NRCS on 19 April 2021. The identified PCC areas have not been abandoned from agricultural use.



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Field 9 in Tract 5789 was determined to be wetlands in the NRCS 1998 certified wetland determination. Portions of Field 3 (labelled 3W) in Tract 5145 was determined to be a wetland in the NRCS 2021 certified wetland determination. NRCS defines wetlands as “areas that meet the criteria for hydric soils, hydrophytic vegetation, and wetland hydrology. These areas typically have not been manipulated by altering hydrology and/or removing woody vegetation including stumps.” These wetlands abut Cougar Creek. NRCS did not delineate the exact wetland boundaries, boundaries were estimated during their field inspection.