

APPROVED JURISDICTIONAL DETERMINATION FORM  
U.S. Army Corps of Engineers

isolated waters

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** 26 Sep 2013

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Seattle District, CEMEX (Granite Falls Aggregate Facility), NWS-1994-729.  
Name of water being evaluated on this JD form: Wetlands 11, 17, 21, 23, 25-35, 37, 39, and 41.

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Washington County: Snohomish City: near Granite Falls  
Center coordinates of site (lat/long in degree decimal format): Lat: 48.11297 N, Long: -121.92523 W  
Universal Transverse Mercator:

Name of nearest waterbody: South Fork Stillaguamish River.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: N/A.

Name of watershed or Hydrologic Unit Code (HUC): 17110008.

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different JD form. List other JDs: Preliminary JD for Wetlands 1-10, 12-16, 18-20, dated 15 April 2013. These wetlands are waters of the U.S. because they appear to have surface water connections to tributaries of the South Fork Stillaguamish River or are adjacent to the river itself.

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

Office (Desk) Determination. Date: 15 April 2013.

Field Determination. Date(s): 26 July 2007.

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain: \_\_\_\_\_.

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **Are no** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):<sup>1</sup>**

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

**b. Identify (estimate) size of waters of the U.S. in the review area:**

Non-wetland waters: 0 linear feet 0 width (ft) and/or 0 acres.

Wetlands: 0 acres.

**c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual, and Established by OHWM.**

Elevation of established OHWM (if known): \_\_\_\_\_.

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

<sup>3</sup> Supporting documentation is presented in Section III.F.

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: wetlands are isolated wetlands with no surface or sub-surface connection to other waters of the U.S. 15 are glacial potholes, and 3 are narrow linear or broader depressions.

### SECTION III: CWA ANALYSIS

- A. TNWs AND WETLANDS ADJACENT TO TNWs: NOT APPLICABLE
- B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS: NOT APPLICABLE
- C. SIGNIFICANT NEXUS DETERMINATION: NOT APPLICABLE
- D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE: NOT APPLICABLE
- E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):<sup>4</sup>

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: \_\_\_\_\_.
- Other factors. Explain: \_\_\_\_\_.

Identify water body and summarize rationale supporting determination: NOT APPLICABLE

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).
- Other non-wetland waters: \_\_\_\_\_ acres.
- Identify type(s) of waters: \_\_\_\_\_.
- Wetlands: \_\_\_\_\_ acres.

F. **NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:**

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
- Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: \_\_\_\_\_.
- Other: (explain, if not covered above): \_\_\_\_\_.

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).
- Lakes/ponds: \_\_\_\_\_ acres.
- Other non-wetland waters: \_\_\_\_\_ acres. List type of aquatic resource: \_\_\_\_\_.
- Wetlands: 10.74 acres.

### SECTION IV: DATA SOURCES.

- A. **SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**
- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: "Associated Sand & Gravel Company, Inc., Granite Falls, Wetland and Stream Assessment", by Shockey/Brent, Inc., Inc., dated revised May 11, 1994; "Rinker Materials Wetland Delineation, Granite Falls, Washington" (letter report), by ESA Adolfson, dated July 26, 2007; "Wetland Characterization, Associated Sand and Gravel, Granite Falls, Washington", by Cooke Scientific Services, dated October 8, 1996. .
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.

<sup>4</sup> Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

- Office concurs with data sheets/delineation report.
- Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: \_\_\_\_\_.
- Corps navigable waters' study: \_\_\_\_\_.
- U.S. Geological Survey Hydrologic Atlas: \_\_\_\_\_.
- USGS NHD data.
- USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 7.5' Granite Falls quadrangle
- USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey of Snohomish County.
- National wetlands inventory map(s). Cite name: \_\_\_\_\_.
- State/Local wetland inventory map(s): \_\_\_\_\_
- FEMA/FIRM maps: \_\_\_\_\_.
- 100-year Floodplain Elevation is: \_\_\_\_\_ (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): \_\_\_\_\_  
or  Other (Name & Date): \_\_\_\_\_.
- Previous determination(s). File no. and date of response letter: \_\_\_\_\_.
- Applicable/supporting case law: \_\_\_\_\_.
- Applicable/supporting scientific literature: \_\_\_\_\_.
- Other information (please specify): see attached Memorandum for Decision: Jurisdictional Determination for CEMEX Granite Falls Aggregate Facility, dated 15 April 2013.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** the closest isolated wetlands are 1,600 horizontal feet from, and 3-400 vertical feet above the SF Stillaguamish River. See attached Memorandum for Decision: Jurisdictional Determination for CEMEX Granite Falls Aggregate Facility, dated 15 April 2013, for details on jurisdictional determination.

This determination was coordinated with EPA, Region 10 on 9 May 2013. No response was received from EPA and the 21-day comment period has expired. Corps HQ concurred with our findings on 9 May 2013.

MEMORANDUM FOR DECISION: CORPS OF ENGINEER'S FIELD REVIEW AND JURISDICTIONAL SUMMARY

DETERMINATION: 18 wetlands comprising 10.74 acres are isolated waters; 15 of these are glacial potholes.

APPLICANT: CEMEX Granite Falls Aggregate Facility

REFERENCE: NWS-1994-729

LOCATION: Granite Falls, Snohomish County, Washington

PROJECT DESCRIPTION & BACKGROUND: The applicant proposes to fill 17 wetlands comprising 6.35 acres for a sand and gravel mine. A 10-acre compensatory wetland mitigation area would also be constructed in uplands. Fifteen of these wetlands are potholes: topographic depressions, often steep sided, surrounded by forested, sandy and gravelly outwash material. The other three are a slope wetland (#11), a linear depression (#17) that becomes channelized near its east end, and a broader 4.39-acre depression (#21). Although isolated Wetland 21 is within the Phase 3 – 5 mining area, it will not be filled, excavated, or drained per a Snohomish County hearing examiner's determination. During the 2007 site visit the agent requested the Corps not proceed with the approved JD since it would expire in 5 years and the mining would not occur until many years after that. Subsequently, on 4 February 2013 CEMEX requested an approved JD for the identified review area.

DATE OF VISIT/PARTICIPANTS: 26 July 2007 by Matt Bennett (Corps Environmental Analyst) with Sarah Spear Cooke (Cooke Scientific Services). The site inspection covered both wetland and upland areas within proposed mining and mitigation construction areas.

NAT'L WETLANDS INV. DESCRIP: Palustrine emergent/shrub semi-permanently saturated and flooded wetlands.

WETLAND REPORTS: *Associated Sand & Gravel Company, Inc., Granite Falls, Wetland and Stream Assessment*, by Shockey/Brent, Inc., Inc., dated revised May 11, 1994; *Rinker Materials Wetland Delineation, Granite Falls, Washington* (letter report), by ESA Adolfson, dated July 26, 2007; *Wetland Characterization, Associated Sand and Gravel, Granite Falls, Washington*, by Cooke Scientific Services, dated Oct. 8, 1996.

INDICATORS:

Vegetation – the character of each wetland varied with dominants including salmonberry, Douglas spirea, bur-reed, water parsley, willow spp., skunk cabbage, twinberry, black cottonwood, vine maple, thimbleberry, spearwort, veronica, and mannagrass pig-a-back, foamflower, red alder, lady fern, and sedge species. Douglas fir, western red cedar, western hemlock and red alder dominated upland areas.

Wetland Soils: Area soils series are mapped as non-hydric Elwell-Olomount outcrop complex, Everett gravelly sandy loam, Skykomish gravelly loam, Terric Medisaprists, and Ragnar series. According to the consultants' observations, soils

included mucks to sands to loams with varying amounts of gravel sometimes also present. Soils of the 15 pothole wetlands to be filled contained thick layers of woody sedge peats. Three wetlands (# 29, 30, 39) also contained sphagnum peat intermixed with the sedge peat. Wetland soils were mostly chroma 1; a few were chroma 2 with faint mottles where mineral soil was present and without mottles where organic materials predominated.

Hydrology – Wetlands: According to the consultants' reports, the pothole wetlands were inundated and/or saturated to near the soil surface from the Fall until at least June/July indicating low permeability conditions. Although Corps data sheets were not prepared on the 26 July 2007 site visit, the Corps observed the presence and absence of hydrologic indicators in the topographic potholes consistent with the applicant's delineation. The Corps' site inspection also confirmed that the wetlands have no surface water connection to any water of the U.S. including the South Fork Stillaguamish River to the south and Canyon Creek to the north. The wetlands' water source is precipitation and overland and sub-surface runoff from adjoining slopes.

**WETLAND DELINEATION CONFIRMATION:** We confirmed the applicant's wetland delineation as illustrated on the enclosed map sheet titled *Wetland Mitigation Construction Plans, Cemex – Granite Falls Facility (cover sheet)*, dated 18 January 2013. The Corps' July 2007 site visit confirmed that the applicant had accurately identified which topographic depressions (potholes) contained wetlands and which did not. This site visit also confirmed the applicant had satisfactorily identified all waters of the U.S. within the proposed Phases 3 – 5 mining, and the mitigation areas.

**JURISDICTIONAL DETERMINATIONS (JD):** The 17 wetlands shown on the enclosed map sheet 1 of 3 (Wetlands 11, 17, 23, 25-35, 37, 39, and 41) comprising 6.35 acres are not waters of the U.S. because: (a) they are isolated waters and (b) their on-going use (or potential use), degradation or destruction would not affect interstate or foreign commerce including recreation, fish harvest, or industrial activities. Wetland 21 (map sheet 2 of 3) is also isolated. Regarding their isolation, the USGS topographic map (7.5' Granite Falls quadrangle) shows all the proposed-to-be-filled wetlands have no surface connection to flowing waters of the U.S. This map also shows the wetlands are enclosed within one of three small closed drainage basins which themselves have no surface water connection to the S.F. Stillaguamish River to the south or Canyon Creek to the north. The Corps' site visit also confirmed the wetlands had no surface or likely groundwater connection to other waters of the U.S. including traditional navigable waters (TNW). Potential sub-surface connections to other waters of the U.S. are highly speculative because the wetlands are 1,600 feet or more from the S.F. Stillaguamish River, the nearest stream with seasonal or perennial flow, and because these wetlands appear to retain most of their inflow as indicated by their persistent flooded condition.

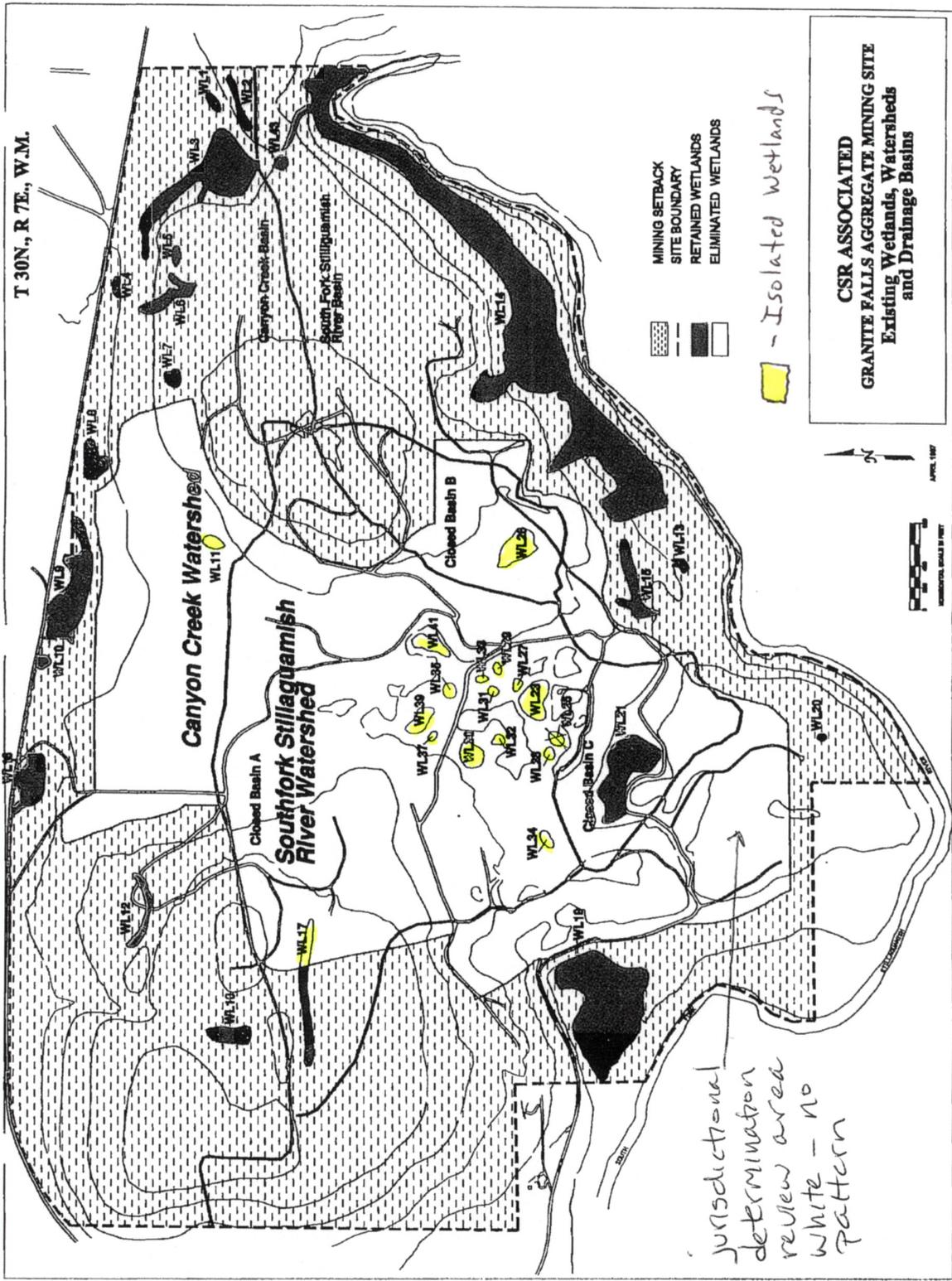
Regarding an interstate commerce connection, there is no evidence of ongoing or potential uses unique to the wetlands for recreation, fish harvest, or industrial activities. Although trees have historically been harvested from adjoining uplands, the wetlands do not provide conditions favoring growth of commercial size trees.



Jonathan Smith  
Project Manager  
15 April 2013

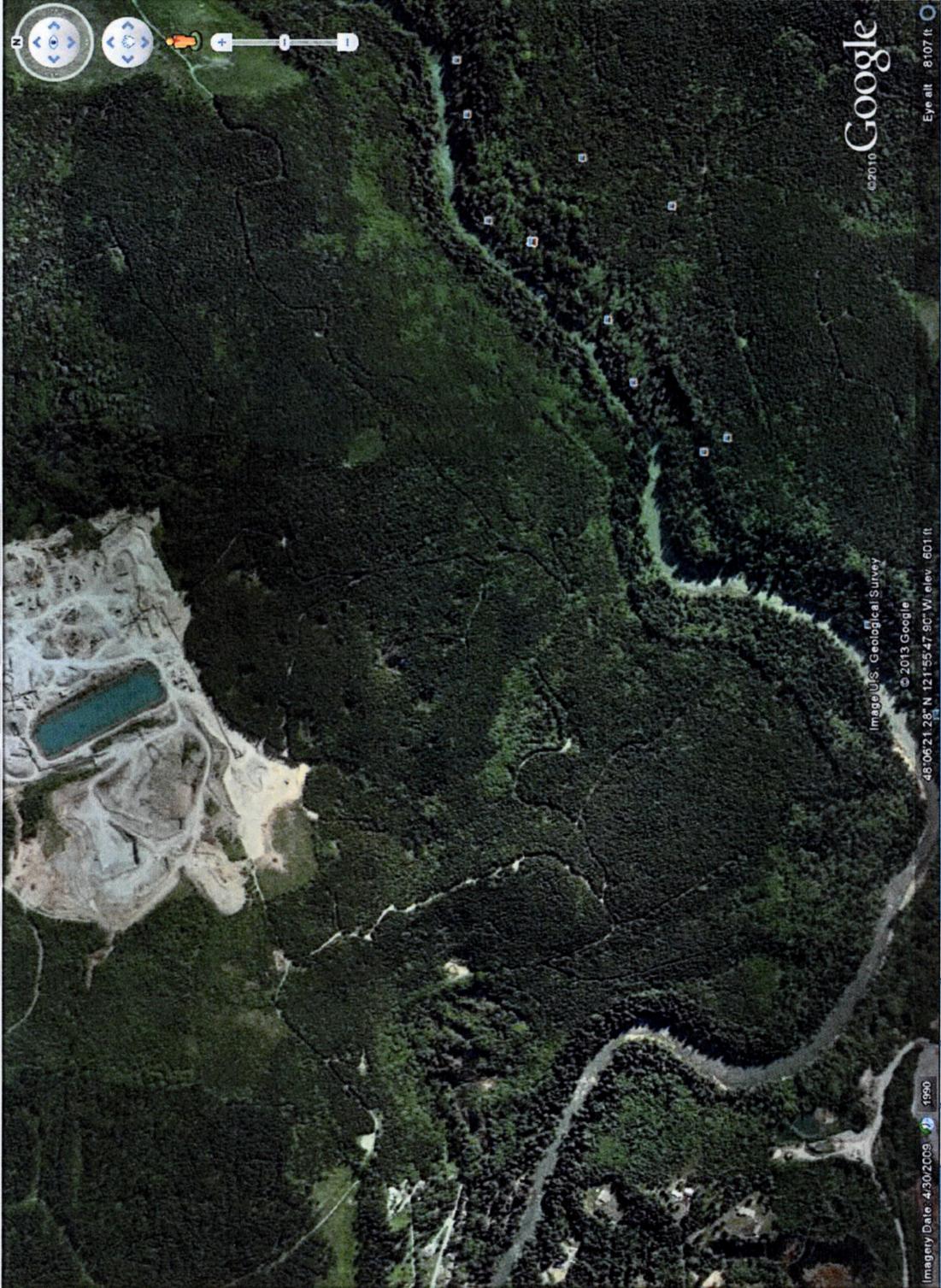


Matthew J. Bennett  
Chief, N. Puget Sound Section  
15 April 2013



jurisdictional determination review area white - no pattern

CEMEX Granite Falls Aggregate Facility  
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Aerial Photograph of CEMEX Granite Falls Aggregate Facility Vicinity 2012

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