

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 20 April 2015.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District, Segale Properties LLC, NWS-2014-1147.
Name of water being evaluated on this JD form: Area 1, Area 2, and Area 3

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Washington County: King City: North Bend

Center coordinates of site (lat/long in degree decimal format): Lat: 47.478671 N, Long: -121.735015 W

Universal Transverse Mercator: _____

Name of nearest waterbody: South Fork Snoqualmie River.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Snoqualmie River.

Name of watershed or Hydrologic Unit Code (HUC): 17110010.

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: _____

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

Office (Desk) Determination. Date: _____.

Field Determination. Date(s): 17 March 2015.

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):¹

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters² (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: _____ linear feet _____ width (ft) and/or _____ acres.

Wetlands: _____ acres.

c. Limits (boundaries) of jurisdiction based on: **Not applicable. and **Not applicable.****

Elevation of established OHWM (if known): _____.

2. Non-regulated waters/wetlands (check if applicable):³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **Corps of Engineers regulations dated 13 November 1986 [preamble page 41217, Section 328.3(e)] state, "waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel" are not waters of the U.S. "unless and until**

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

² 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).

³ Supporting documentation is presented in Section III.F.

the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the U.S." Based on the information provided by the applicant, the Corps has concluded that Area 1 is a wetland created in dry land through excavation incidental to a gravel mining operation. Therefore, it is not a Water of the U.S.

Area 2 is located within a topographical depression, which collects surface water runoff from three adjacent gravel piles with no visible outlet. Although Area 2 now meets all three wetland criteria, it appears to be hydrologically isolated with no interstate or foreign commerce connection. There are no habitats, resources, or wildlife species of interest present within the vicinity to attract interstate or foreign travelers. Aquaculture cannot be conducted because of its terrestrial location, and both agricultural and silvicultural practices would not be viable onsite because of past land use as a gravel mine. Though the review area was historically used for industrial purposes, it has since been abandoned. Based on both the size and location of Area 2, it was not used in the gravel mine operation (such as for water extraction or storage), nor would it be of use today if the industrial practices were to resume. Therefore, Area 2 is not a Water of the U.S.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: _____.

Summarize rationale supporting determination: _____.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": _____.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both.

If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: _____ square miles

Drainage area: _____ Pick List

Average annual rainfall: _____ inches

Average annual snowfall: _____ inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through Pick List tributaries before entering TNW.

Project waters are Pick List river miles from TNW.

Project waters are Pick List river miles from RPW.

Project waters are Pick List aerial (straight) miles from TNW.

Project waters are Pick List aerial (straight) miles from RPW.

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Project waters cross or serve as state boundaries. Explain: _____.

Identify flow route to TNW⁵: _____.

Tributary stream order, if known: _____.

(b) **General Tributary Characteristics (check all that apply):**

Tributary is: Natural
 Artificial (man-made). Explain: _____.
 Manipulated (man-altered). Explain: _____.

Tributary properties with respect to top of bank (estimate):

Average width: _____ feet
Average depth: _____ feet
Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover: _____
 Other. Explain: _____.

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: _____.

Presence of run/riffle/pool complexes. Explain: _____.

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): _____ %

(c) **Flow:**

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime: _____.

Other information on duration and volume: _____.

Surface flow is: **Pick List**. Characteristics: _____.

Subsurface flow: **Pick List**. Explain findings: _____.

Dye (or other) test performed: _____.

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community
 other (list): _____
 Discontinuous OHWM.⁷ Explain: _____.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

High Tide Line indicated by: Mean High Water Mark indicated by:
 oil or scum line along shore objects survey to available datum;
 fine shell or debris deposits (foreshore) physical markings;
 physical markings/characteristics vegetation lines/changes in vegetation types.
 tidal gauges
 other (list): _____

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: _____.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶ A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

Identify specific pollutants, if known: _____.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): _____.
- Wetland fringe. Characteristics: _____.
- Habitat for:
 - Federally Listed species. Explain findings: _____.
 - Fish/spawn areas. Explain findings: _____.
 - Other environmentally-sensitive species. Explain findings: _____.
 - Aquatic/wildlife diversity. Explain findings: _____.

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: 0.01 acres

Wetland type. Explain: Area 3 is located in a topographical depression, which makes it a Depressional Wetland.

Wetland quality. Explain: Category IV (based on a scale of I to IV, I being the highest functioning).

Project wetlands cross or serve as state boundaries. Explain: N/A.

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain: Flow only occurs during precipitation events.

Surface flow is: **Overland sheetflow**

Characteristics: Area 3 flows through the remains of a old ditch that was used during historic gravel mining operations. Once mining operations ceased, the ditch filled in with sediment. It is now a shallow, linear depression that conveys water from Area 3 to Area 1 during precipitation events.

Subsurface flow: **Unknown**. Explain findings: _____.

Dye (or other) test performed: _____.

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: During precipitation events, water flows from Area 3 through an old ditch to Area 1.

Ecological connection. Explain: _____.

Separated by berm/barrier. Explain: _____.

(d) Proximity (Relationship) to TNW

Project wetlands are **5-10** river miles from TNW.

Project waters are **5-10** aerial (straight) miles from TNW.

Flow is from: **No Flow**.

Estimate approximate location of wetland as within the **2-year or less** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Area 3 has clear, shallow surface water. Sparse emergent, hydrophytic vegetation is present with high leaf litter from adjacent trees.

Identify specific pollutants, if known: none known.

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

Riparian buffer. Characteristics (type, average width): _____.

Vegetation type/percent cover. Explain: Emergent vegetation cover is less than 30%.

Habitat for:

Federally Listed species. Explain findings: none.

Fish/spawn areas. Explain findings: none.

Other environmentally-sensitive species. Explain findings: none.

Aquatic/wildlife diversity. Explain findings: none.

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **1**

Approximately (0.01) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Area 3 (N)	0.01		

Summarize overall biological, chemical and physical functions being performed: See below.

C. SIGNIFICANT NEXUS DETERMINATION

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: ____.
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: The relevant reach of Area 3 consists of two ditches, a pond used during historic mining operations (referenced herein as Area 1), a perched Corrugated Metal Pipe (CMP) culvert, and a concrete culvert (please see Figure 3). The flow path of Area 3 to a TNW is as follows: During precipitation events, water flows from Area 3 through the remnants of an old ditch to Area 1. A perched CMP culvert is located adjacent to Area 1; however, it is several feet above Area 1's ordinary high water line. While flow through the perched CMP culvert is possible, it is highly improbable and would only occur during extremely wet conditions indicative of flood events. Nonetheless, if water does flow through the perched CMP culvert, it would then drain into a roadside ditch outside of the review area. The ditch drains into a concrete culvert, which extends beneath Southeast Tanner Road and drains into the Middle Fork Snoqualmie River. The Middle Fork Snoqualmie River flows into the Snoqualmie River, which becomes a TNW at Carnation, Washington.

Area 3 has the capacity to transmit waters to a TNW, but Area 1 detains the water and reduces flow velocity before the water enters the TNW. The vegetated reach between Area 3 and Area 1 provides a riparian corridor for animals, however the riparian corridor is disrupted by Southeast Tanner Road before it reaches a TNW. There is no significant nexus between Areas 1 and 3 because the above-mentioned biological, chemical, and physical elements are disrupted and constrained by the perched culvert.

- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: ____.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

- 1. TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 TNWs: ____ linear feet ____ width (ft), or ____ acres.
 Wetlands adjacent to TNWs: ____ acres.
- 2. RPWs that flow directly or indirectly into TNWs.**
 Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide rationale indicating that tributary flows perennial: ____.
 Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: ____.

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: ____.

- 3. Non-RPWs⁸ that flow directly or indirectly into TNWs.**

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

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

⁸See Footnote # 3.
Version 2-8-08

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
- Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: _____
- Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: _____

Provide acreage estimates for jurisdictional wetlands in the review area: _____ acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: _____ acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: _____ acres.

7. **Impoundments of jurisdictional waters.⁹**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from "waters of the U.S.," or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

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):¹⁰**

- 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: _____

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 (CHECK ALL THAT APPLY):**

- 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. Explain: **Area 2 is an isolated water 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: **Please reference Section III, C.2. for an explanation on why Area 3 does not meet the "significant nexus" standard.**
- Other: (explain, if not covered above): **Reference Section II, B.2. for an explanation of why Area 1 is not a Water of the U.S..**

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ 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.

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: _____ acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (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: 0.01 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: _____.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - 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: The waterbody is on the Section 10 Navigable Waterway List for Seattle District.
- 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: _____
- USDA Natural Resources Conservation Service Soil Survey. Citation: _____.
- 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): _____.

B. ADDITIONAL COMMENTS TO SUPPORT JD: On 16 March 2015, Tina Tong and I traveled to North Bend, Washington to verify whether or not the wetlands delineated by Raedeke Associates, Inc. (Area 1, Area 2, and Area 3) were Waters of the U.S. The inspection included the following: Reviewing data sheets and maps provided by Raedeke Associates, Inc.; looking for the three wetland parameters (hydrology, hydric soil, and hydrophytic vegetation); inspecting surface water flow through the site and offsite, including natural and artificial flow barriers; and, reviewing hydrology monitoring data provided by Raedeke Associates, Inc. We did not verify the boundaries of Area 1, Area 2, or Area 3 since they are not Waters of the U.S.

The JD was coordinated with Corps Headquarters (HQ) and the Environmental Protection Agency (EPA) on 30 March 2015. Twenty-one days were allotted for review and comment. The comment period closed on 20 April 2015. Corps HQ did not comment. On 23 April 2015, the EPA stated that they do not concur with the Significant Nexus determination because they believe the Middle Fork Snoqualmie River should be classified as a TNW, which may change the Significant Nexus determination. However, the Corps finds no need to change the Middle Fork Snoqualmie River's classification from a RPW to a TNW since the Significant Nexus Determination would not be affected. Since the EPA did not elevate their objections to EPA HQ, the Corps finalized this JD.