



US Army Corps
of Engineers
Seattle District

Special Public Notice

Regulatory Branch
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Public Notice Date: March 17, 2017

Final Seattle District 2017 Nationwide Permit Regional Conditions

Nationwide permits (NWP) are issued by the U.S. Army Corps of Engineers (Corps) on a national basis every five years for activities that are similar in nature and will have no more than minimal adverse environmental effects, individually or cumulatively. On January 6, 2017, the Corps published a notice in the *Federal Register* announcing the reissuance of all existing NWPs, general conditions, and definitions with some modifications. The Corps also issued two new NWPs, one new general condition, and five new definitions. The 2017 NWPs are effective on March 19, 2017, and will expire on March 18, 2022, unless the NWPs are revised, rescinded, or revoked.

Based on the publication of the final rule in the *Federal Register*, the Seattle District finalized the enclosed regional conditions applicable within the State of Washington for the new and reissued NWPs (Enclosure 1). These regional conditions help ensure the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. There are 13 regional general conditions (RGC) that apply to all of the NWPs. In addition to the RGCs, there are regional conditions that apply to specific NWPs. Regional conditions are effective on March 19, 2017, and will expire on March 18, 2022.

We received the Section 401 Water Quality Certification (401 WQC) decisions from the Washington State Department of Ecology (Ecology) dated March 6, 2017, Environmental Protection Agency (EPA) dated March 6, 2017, the Spokane Tribe of Indians dated February 15, 2017, and the Tulalip Tribes dated March 3, 2017, for the 2017 Nationwide Permits. We also received the 401 WQC decisions to deny without prejudice all 401 WQCs on tribal lands from the Confederated Tribes of the Chehalis Reservation dated March 6, 2017, the Kalispel Tribe of Indians dated February 23, 2017, the Lummi Nation dated March 2, 2017, the Makah Tribe dated March 3, 2017, the Puyallup Tribe of Indians dated March 6, 2017, Swinomish Indian Tribal Community dated November 1, 2016,) and the Port Gamble S'Klallam Tribe dated March 6, 2017.

The 401 WQCs for EPA, the Spokane Tribe, and the Tulalip Tribes contain unacceptable conditions and are therefore administratively denied. The Seattle District will work with the EPA, the Spokane Tribe, and the Tulalip Tribes to revise these WQCs, if requested. For NWPs, that have been denied without prejudice or administratively denied, each project must be evaluated individually for a Section 401 WQC, and prospective permittees must submit an application to the EPA or respective Tribe.

Ecology has until April 5, 2017, to make Coastal Zone Management Act (CZMA) consistency determinations for the NWP. A separate public notice will be sent out announcing the CZMA consistency determinations. In the interim, the use of an NWP to authorize an activity within Washington State's coastal zone that will affect land or water uses or natural resources of the coastal zone, is contingent upon obtaining an individual CZMA consistency determination from Ecology.

We have posted the regional conditions and 401 WQC letters on our webpage. To view these documents please go to the Corps Seattle District website at www.nws.usace.army.mil, select the green box labeled "Regulatory Branch Permit Information," select "News and Updates" then select "2017 NWP Reissuance." Alternatively, the regional conditions and 401 WQC letters can be accessed on our website in the Permit Guidebook at: <http://www.nws.usace.army.mil/Missions/Civil-Works/Regulatory/Permit-Guidebook/NWPs/>, click on 2017 Nationwide Permit Information.

The Seattle District NWP regional conditions and Ecology's 401 WQC conditions are effective on March 19, 2017. The Seattle District will update the Nationwide Permit User's Guide for Washington State and send out a public notice announcing its availability. The NWP User's Guide will contain all of the NWP national and regional conditions, 401 WQC decisions, CZMA consistency determinations, definitions, and helpful information regarding the NWP program and how it is implemented in Washington State.

If you have questions about the regional conditions or would like to request a paper copy of the Final NWP Regional Conditions via U.S. mail, please send a letter to Mr. Andrew Shuckhart, U.S. Army Corps of Engineers, Seattle District, Post Office Box 3755, Seattle, Washington 98124. Mr. Shuckhart can also be reached by email at andrew.j.shuckhart@usace.army.mil or by phone at (206) 316-3822.

Enclosure 1: Final Seattle District Nationwide Permit Regional Conditions

FINAL SEATTLE DISTRICT
2017 NATIONWIDE PERMIT REGIONAL CONDITIONS

March 19, 2017

REGIONAL GENERAL CONDITIONS (RGCs). The following conditions apply to all Nationwide Permits (NWP) for the Seattle District in Washington State, unless specified.

1. Project Drawings

Drawings must be submitted with pre-construction notification (PCN). Drawings must provide a clear understanding of the proposed project, and how waters of the U.S. will be affected. Drawings must be originals and not reduced copies of large-scale plans. Engineering drawings are not required. Existing and proposed site conditions (manmade and landscape features) must be drawn to scale.

2. Aquatic Resources Requiring Special Protection

Activities resulting in a loss of waters of the United States in mature forested wetlands, bogs and peatlands, aspen-dominated wetlands, alkali wetlands, vernal pools, camas prairie wetlands, estuarine wetlands, wetlands in coastal lagoons, and wetlands in dunal systems along the Washington coast cannot be authorized by a NWP, except by the following NWPs:

- NWP 3 – Maintenance
- NWP 20 – Response Operations for Oil and Hazardous Substances
- NWP 32 – Completed Enforcement Actions
- NWP 38 – Cleanup of Hazardous and Toxic Waste

In order to use one of the above-referenced NWPs in any of the aquatic resources requiring special protection, prospective permittees must submit a PCN to the Corps of Engineers (see NWP general condition 32) and obtain written authorization before commencing work.

3. New Bank Stabilization in Tidal Waters of Puget Sound

Activities involving new bank stabilization in tidal waters in Water Resource Inventory Areas (WRIAs) 8, 9, 10, 11 and 12 (within the areas identified on Figures 1a through 1e) cannot be authorized by NWP.

4. Commencement Bay

The following NWPs may not be used to authorize activities located in the Commencement Bay Study Area (see Figure 2):

- NWP 12 – Utility Line Activities (substations)
- NWP 13 – Bank Stabilization
- NWP 14 – Linear Transportation Projects
- NWP 23 – Approved Categorical Exclusions
- NWP 29 – Residential Developments
- NWP 39 – Commercial and Institutional Developments
- NWP 40 – Agricultural Activities
- NWP 41 – Reshaping Existing Drainage Ditches
- NWP 42 – Recreational Facilities

NWP 43 – Stormwater and Wastewater Management Facilities

5. Bank Stabilization

All projects including new or maintenance bank stabilization activities require PCN to the Corps of Engineers (see NWP general condition 32).

For new bank stabilization projects only, the following must be submitted to the Corps of Engineers:

- a. The cause of the erosion and the distance of any existing structures from the area(s) being stabilized.
- b. The type and length of existing bank stabilization within 300 feet of the proposed project.
- c. A description of current conditions and expected post-project conditions in the waterbody.
- d. A statement describing how the project incorporates elements avoiding and minimizing adverse environmental effects to the aquatic environment and nearshore riparian area, including vegetation impacts in the waterbody.

In addition to a. through d., the results from any relevant geotechnical investigations can be submitted with the PCN if it describes current or expected conditions in the waterbody.

6. Crossings of Waters of the United States

Any project including installing, replacing, or modifying crossings of waters of the United States, such as culverts or bridges, requires submittal of a PCN to the Corps of Engineers (see NWP general condition 32).

If a culvert is proposed to cross waters of the U.S. where salmonid species are present or could be present, the project must apply the stream simulation design method from the Washington Department of Fish and Wildlife located in the *Water Crossing Design Guidelines* (2013), or a design method which provides passage at all life stages at all flows where the salmonid species would naturally seek passage. If the stream simulation design method is not applied for a culvert where salmonid species are present or could be present, the project proponent must provide a rationale in the PCN sufficient to establish one of the following:

- a. The existence of extraordinary site conditions.
- b. How the proposed design will provide equivalent or better fish passage and fisheries habitat benefits than the stream simulation design method.

If a culvert is proposed to cross waters of the U.S. where salmonid species are present or could be present, project proponents must provide a monitoring plan with the PCN that specifies how the proposed culvert will be assessed over a five-year period from the time of construction completion to ensure its effectiveness in providing passage at all life stages at all flows where the salmonid species would naturally seek passage.

Culverts installed under emergency authorization that do not meet the above design criteria will be required to meet the above design criteria to receive an after-the-fact nationwide permit verification.

7. Stream Loss

A PCN is required for all activities that result in the loss of any linear feet of stream beds. No activity shall result in the loss of any linear feet of perennial stream beds or the loss of greater than 300 linear feet of intermittent and/or ephemeral stream beds. A stream may be rerouted if it is designed in a manner that maintains or restores hydrologic, ecologic, and geomorphic stream processes, provided there is not a reduction in the linear feet of stream bed. Streams include brooks, creeks, rivers, and historical waters of the U.S. that have been channelized into ditches. This condition does not apply to ditches constructed in uplands.

Stream loss restrictions may be waived by the district engineer on a case-by-case basis provided the activities result in net increases of aquatic resource functions and services.

8. Mitigation

Pre-construction notification is required for any project that will result in permanent wetland losses that exceed 1,000 square feet. In addition to the requirements of General Condition 23 (Mitigation), compensatory mitigation at a minimum one-to-one ratio will be required for all permanent wetland losses that exceed 1,000 square feet. When a PCN is required for wetland losses less than 1,000 square feet, the Corps of Engineers may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment.

Compensatory mitigation for impacts to marine waters, lakes, and streams will be determined on a case-by-case basis. If temporary impacts to waters of the U.S. exceed six months, the Corps of Engineers may require compensatory mitigation for temporal effects.

9. Magnuson-Stevens Fishery Conservation and Management Act – Essential Fish Habitat

Essential Fish Habitat (EFH) is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. If EFH may be adversely affected by a proposed activity, the prospective permittee must provide a written EFH assessment with an analysis of the effects of the proposed action on EFH. The assessment must identify the type(s) of essential fish habitat (i.e., Pacific salmon, groundfish, and/or coastal-pelagic species) that may be affected. If the Corps of Engineers determines the project will adversely affect EFH, consultation with NOAA Fisheries will be required.

Federal agencies should follow their own procedures for complying with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act. If PCN is required for the proposed activity, Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

10. Forage Fish

For projects in forage fish spawning habitat, in-water work must occur within designated forage fish work windows, or when forage fish are not spawning. If working outside of a designated work window, or if forage fish work windows are closed year round, work may occur if the work window restriction is released for a period of time after a forage fish spawning survey has been conducted by a biologist

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approved by the Washington State Department of Fish and Wildlife (WDFW). Forage fish species with designated in-water work windows include Pacific sand lance (*Ammodytes hexapterus*), Pacific herring (*Clupea pallasii*), and surf smelt (*Hypomesus pretiosus*).

This RGC does not apply to NWP 48, *Commercial Shellfish Aquaculture Activities*. Please see specific regional conditions for NWP 48.

11. Notification of Permit Requirements

The permittee must provide a copy of the nationwide permit authorization letter, conditions, and permit drawings to all contractors and any other parties performing the authorized work prior to the commencement of any work in waters of the U.S. The permittee must ensure all appropriate contractors and any other parties performing the authorized work at the project site have read and understand relevant NWP conditions as well as plans, approvals, and documents referenced in the NWP letter. A copy of these documents must be maintained onsite throughout the duration of construction.

12. Construction Boundaries

Permittees must clearly mark all construction area boundaries before beginning work on projects that involve grading or placement of fill. Boundary markers and/or construction fencing must be maintained and clearly visible for the duration of construction. Permittees should avoid and minimize removal of native vegetation (including submerged aquatic vegetation) to the maximum extent possible.

13. Temporary Impacts and Site Restoration

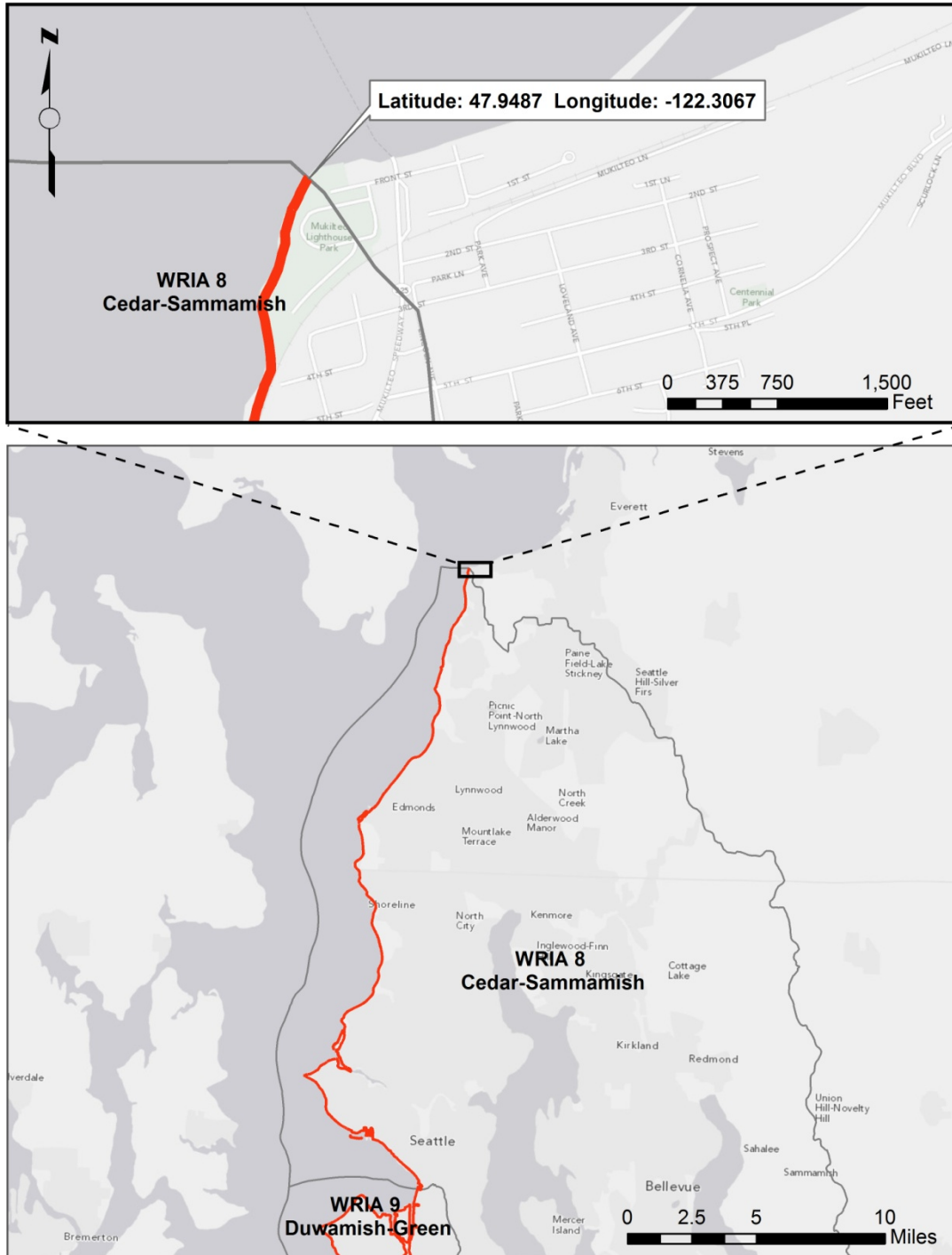
- a. Temporary impacts to waters of the U.S. must not exceed six months unless the prospective permittee requests and receives a waiver by the district engineer. Temporary impacts to waters of the U.S. must be identified in the PCN.
- b. No more than 1/2 acre of waters of the U.S. may be temporarily filled unless the prospective permittee requests and receives a waiver from the district engineer (temporary fills do not affect specified limits for loss of waters associated with specific nationwide permits).
- c. Native soils removed from waters of the U.S. for project construction should be stockpiled and used for site restoration. Restoration of temporarily disturbed areas must include returning the area to pre-project ground surface contours. If native soil is not available from the project site for restoration, suitable clean soil of the same textural class may be used. Other soils may be used only if identified in the PCN.
- d. The permittee must revegetate disturbed areas with native plant species sufficient in number, spacing, and diversity to restore affected functions. A maintenance and monitoring plan commensurate with the impacts, may be required. Revegetation must begin as soon as site conditions allow within the same growing season as the disturbance unless the schedule is approved by the Corps of Engineers. Native plants removed from waters of the U.S. for project construction should be stockpiled and used for revegetation when feasible. Temporary Erosion and Sediment Control measures must be removed as soon as the area has established vegetation sufficient to control erosion and sediment.
- e. If the Corps determines the project will result in temporary impacts of submerged aquatic vegetation (SAV) that are more than minimal, a monitoring plan must be submitted. If recovery is not achieved by

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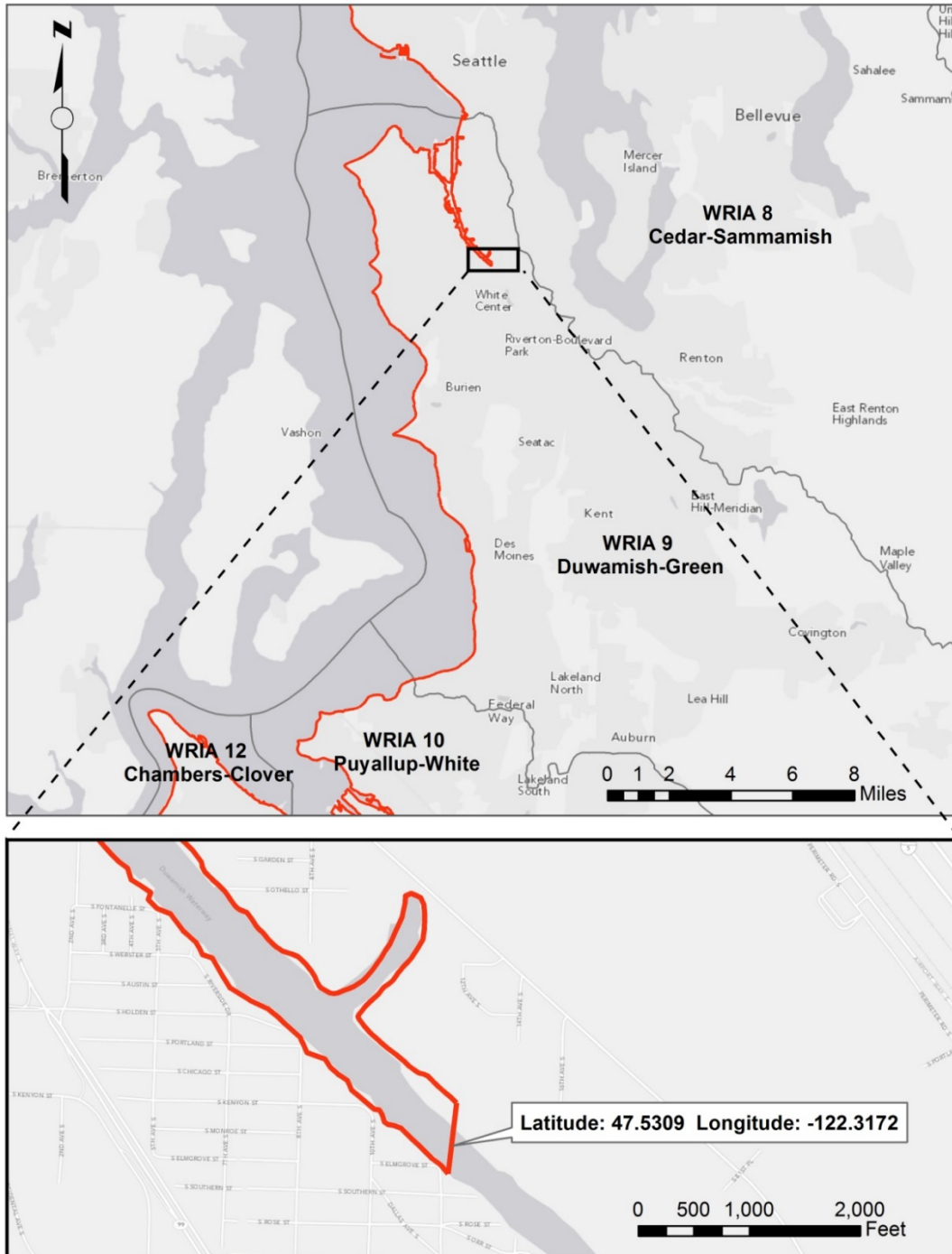
the end of the monitoring period, contingencies must be implemented, and additional monitoring will be required.

This RGC does not apply to NWP 48, *Commercial Shellfish Aquaculture Activities*. Please see specific regional conditions for NWP 48.

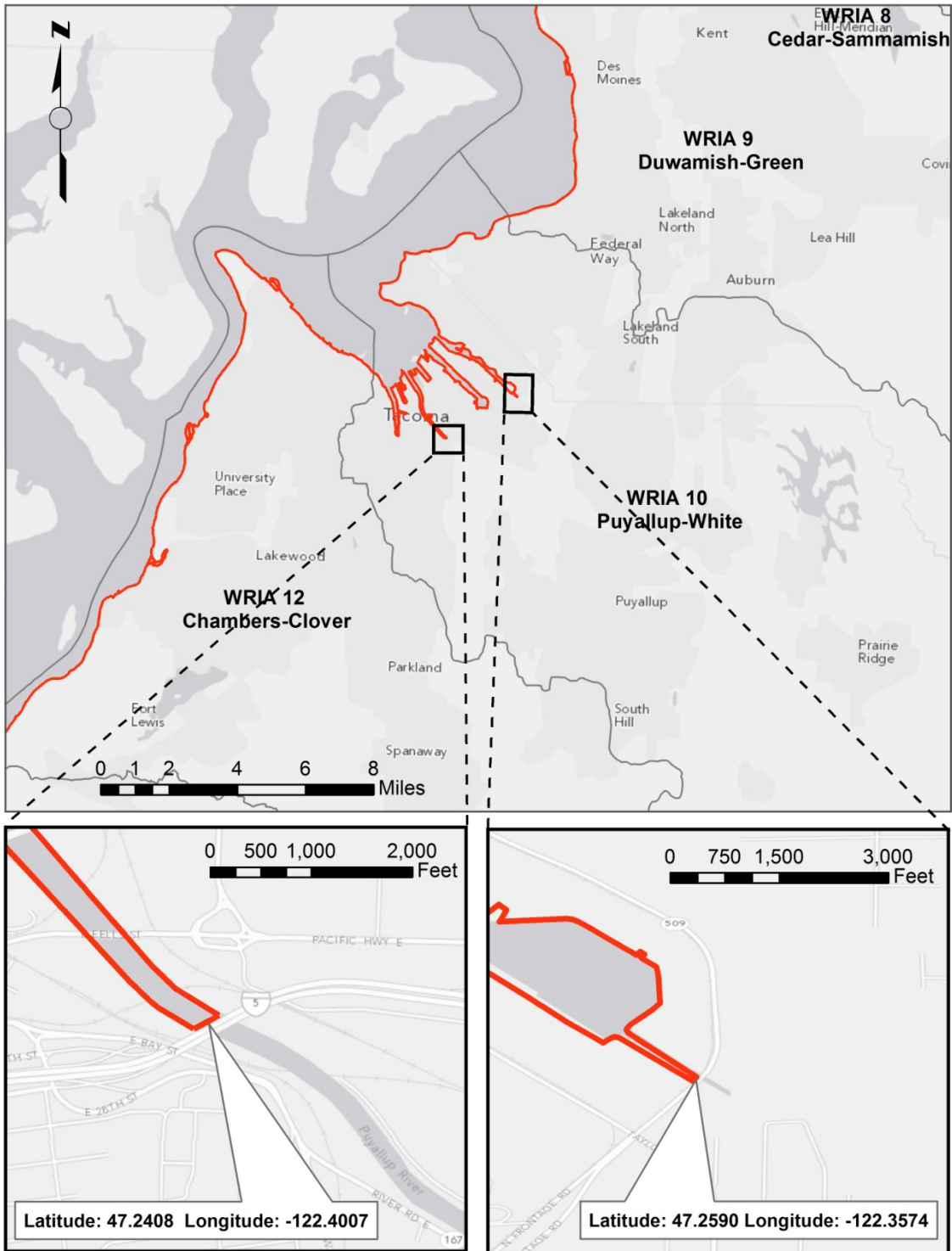
Figure 1: RGC 3 – WRIAs 8, 9, 10, 11, and 12
a. WRIA 8



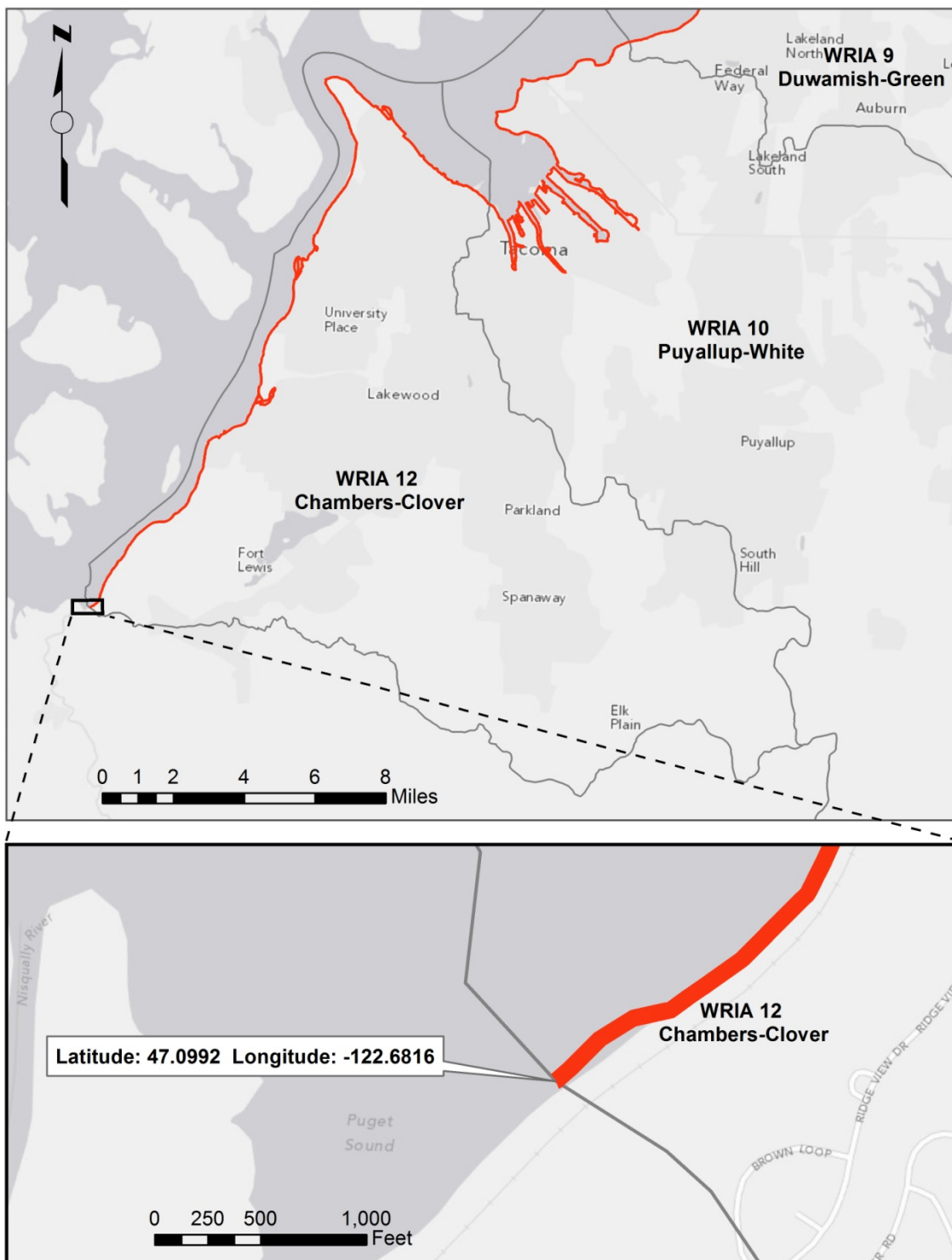
b. WRIA 9



c. WRIA 10



d. WRIA 12



e. WRIA 11

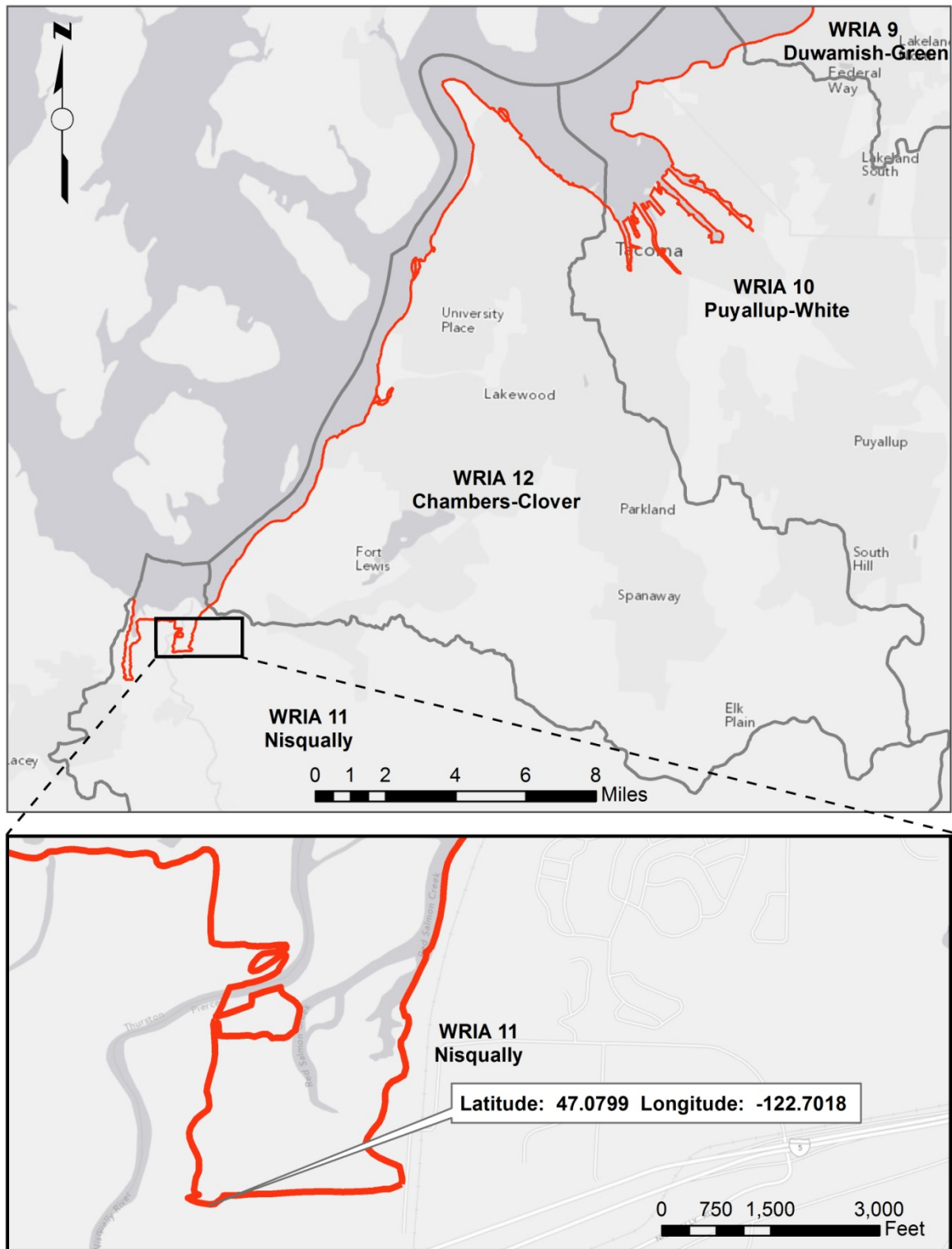
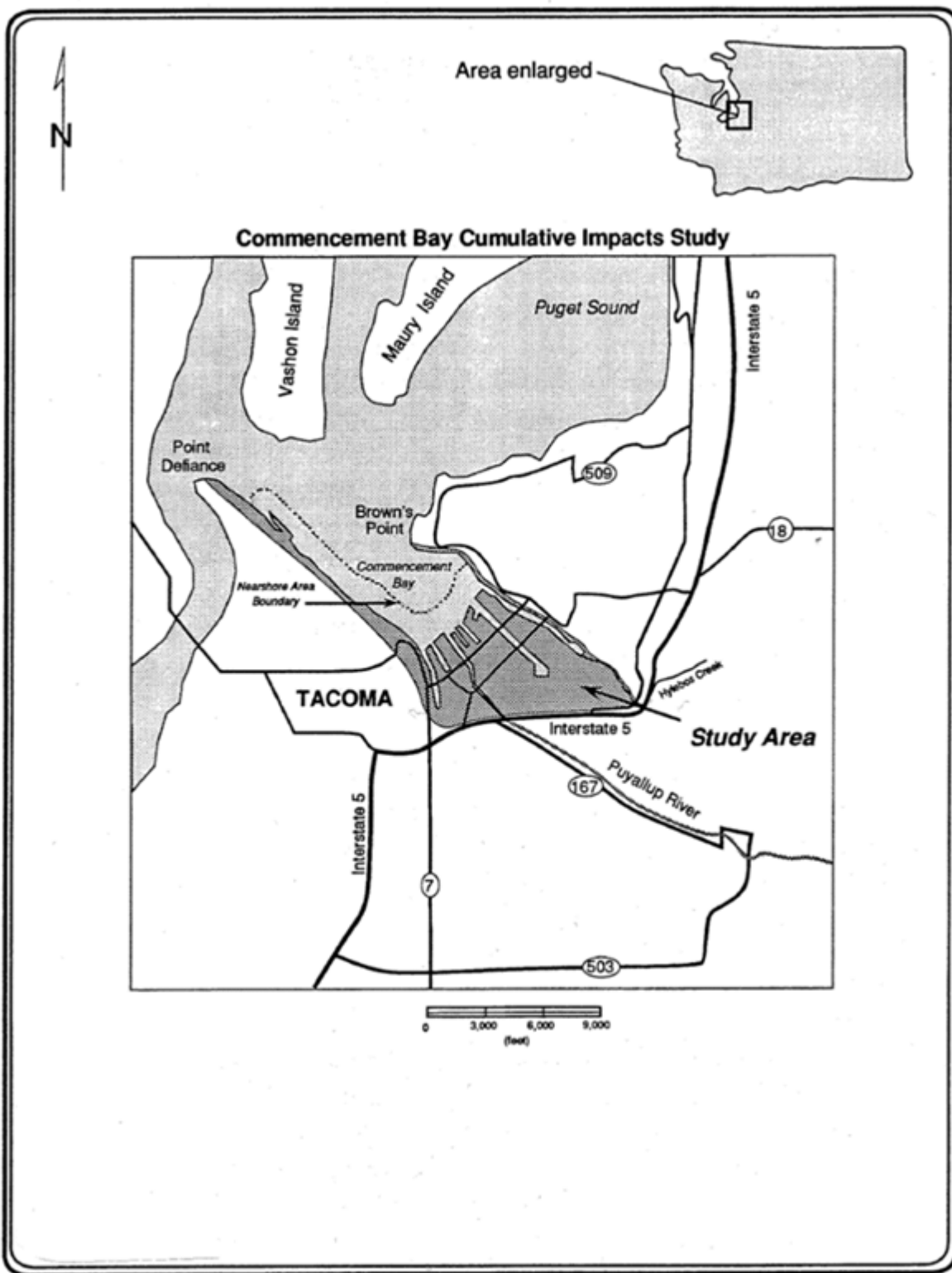


Figure 2. RGC 4 – Commencement Bay Study Area



REGIONAL CONDITIONS FOR SPECIFIC NWPs. The following conditions apply to the NWPs listed below for the Seattle District in Washington State. NWPs not listed do not have specific regional conditions, but must still comply with all RGCs.

NWP 4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities

NWP 4 Specific Regional Conditions:

1. A pre-construction notification must be submitted to the district engineer (see NWP general condition 32) if the activity involves grading, berm construction, placement of substrate, and other activities involving a discharge of dredged or fill material.
2. The harvest of clams by means of hydraulic escalator harvester equipment is not authorized by this NWP.

NWP 5. Scientific Measurement Devices

NWP 5 Specific Regional Conditions:

1. Devices and any structures or fills associated with the devices must be completely removed within 30 days upon completion of the use of the device to measure and record scientific data and the site restored.
2. A pre-construction notification must be submitted to the district engineer (see NWP general condition 32) for the construction of weirs and flumes.
3. The quantity of discharged material must not exceed 25 cubic yards below the plane of ordinary high water or the high tide line. The volume of area excavated must not exceed 25 cubic yards below the plane of ordinary high water or the high tide line.

NWP 6. Survey Activities

NWP 6 Specific Regional Conditions:

1. A pre-construction notification must be submitted to the district engineer (see NWP general condition 32) for exploratory trenching activities and any project involving oil or natural gas exploration.
2. The quantity of discharged material must not exceed 25 cubic yards below the plane of ordinary high water or the high tide line. The volume of area excavated must not exceed 25 cubic yards below the plane of ordinary high water or the high tide line.

NWP 10. Mooring Buoys

NWP 10 Specific Regional Conditions:

1. A pre-construction notification (PCN) must be submitted to the district engineer prior to commencing the activity (see NWP general condition 32). The PCN must include a map, aerial photo, or project drawing identifying all existing mooring buoys within a 250-foot radius of the proposed buoy.

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2. NWP 10 must not be used in marine waters if it would result in a concentration of more than one mooring structure per acre, unless waived by the district engineer. Mooring structures include buoys, piers, floats, and boatlifts.
3. The buoy system must contain an embedded anchor and mid-line float where site conditions allow. If an embedded anchor cannot be used, the project proponent must provide a written statement with the PCN describing why site conditions prohibit use of an embedded anchor.
4. Mooring buoys must be permanently marked with the Corps reference number in print large enough to be read from a distance of 20 feet.
5. NWP 10 may not be used in any area the Washington State Department of Health has designated as “closed” to shellfish harvesting (due to the number of boats moored in the area).
6. NWP 10 may not be used in any area the Washington State Department of Health has designated as “threatened” (due to the number of boats moored in the area).

NWP 12. Utility Line Activities

NWP 12 Specific Regional Conditions:

1. Pre-construction notification (PCN) must be submitted to the district engineer (see NWP general condition 32) if the activity involves mechanized land clearing in a forested wetland for the construction of a substation and/or access roads.
2. A PCN must be submitted to the district engineer (see NWP general condition 32) if the utility line exceeds 300 linear feet in waters of the U.S. for each single and complete project.
3. For projects subject to PCN, the PCN must include drawings and/or a description of the measures that will be used to prevent permanent drainage of adjacent areas by the backfilled trench and/or along the buried utility line.

NWP 14. Linear Transportation Projects

NWP 14 Specific Regional Conditions:

1. Private residential driveways in waters of the U.S. with footprints wider than 22 feet or longer than 200 feet are not authorized by this NWP. For this requirement, “footprint” refers to the bottom width of the roadway fill prism.
2. A pre-construction notification must be submitted to the district engineer (see NWP general condition 32) for linear transportation project crossings in tidal waters.

NWP 17. Hydropower Projects

NWP 17 Specific Regional Condition:

1. Project proponents must submit documentation of their FERC license or exemption as part of the pre-construction notification.

NWP 19. Minor Dredging

NWP 19 Specific Regional Condition:

1. A pre-construction notification must be submitted to the district engineer (see NWP general condition 32) for dredging proposed to occur in special aquatic sites (i.e., wetlands, vegetated shallows, riffle and pool complexes, or mudflats).

NWP 23. Approved Categorical Exclusions

NWP 23 Specific Regional Condition:

1. A pre-construction notification (PCN) must be submitted to the district engineer prior to commencing the activity (see NWP general condition 32). The PCN must include a statement or form bearing the signature of an official of the Federal agency that issued the categorical exclusion, or of an official with delegated authority from that Federal agency verifying the proposed work is categorically excluded.

NWP 27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities

NWP 27 Specific Regional Conditions:

1. A pre-construction notification (PCN) must be submitted to the district engineer (see NWP general condition 32) for any proposed project located in a Department of the Army permit compensatory mitigation site, Comprehensive Environmental Response, Compensation and Liability Act (Superfund) site, Resource Conservation and Recovery Act hazardous waste clean-up site, Washington State Department of Ecology compensatory mitigation site, or Washington State Model Toxics Control Act clean-up site.
2. For projects subject to PCN, if there is a loss of waters of the U.S., the project proponent must explain in the PCN why the loss is necessary and show how it would be fully offset by the beneficial elements of the project.
3. The PCN must contain a description of pre-project site conditions (including photographs), aquatic functions the site provides, and benefits anticipated from project construction.
4. The project proponent must include maintenance and monitoring plans with the PCN.
5. Restoration projects involving shellfish seeding must use shellfish native to the watershed.

NWP 28. Modifications of Existing Marinas

NWP 28 Specific Regional Condition:

1. A pre-construction notification must be submitted to the district engineer prior to commencing the activity (see NWP general condition 32).

NWP 29. Residential Developments

NWP 29 Specific Regional Condition:

1. Pre-construction notification must identify if the project is an individual lot within a subdivision or part of a multiphase development.

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2. Private residential driveways in waters of the U.S. with footprints wider than 22 feet or longer than 200 feet are not authorized by this NWP. For this requirement, “footprint” refers to the bottom width of the roadway fill prism.

NWP 33. Temporary Construction, Access, and Dewatering

NWP 33 Specific Regional Condition:

1. A pre-construction notification must be submitted to the district engineer prior to commencing the activity (see NWP general condition 32).

NWP 35. Maintenance Dredging of Existing Basins

NWP 35 Specific Regional Condition:

1. A pre-construction notification (PCN) must be submitted to the district engineer prior to commencing the activity (see NWP general condition 32). The PCN must include the results of any required sediment testing and identify the location of upland disposal area(s).

NWP 36. Boat Ramps

NWP 36 Specific Regional Conditions:

1. A pre-construction notification must be submitted to the district engineer prior to commencing the activity (see NWP general condition 32).
2. For contiguous properties under the same ownership, no more than one boat ramp per ownership may be authorized by this NWP, unless waived by the district engineer.
3. The construction of poured-in-place concrete boat ramps is not authorized by this NWP.

NWP 38. Cleanup of Hazardous and Toxic Waste

NWP 38 Specific Regional Condition:

1. Non-government project proponents must submit a copy of court ordered remedial plans or related settlements with the pre-construction notification.

NWP 39. Commercial and Institutional Developments

NWP 39 Specific Regional Condition:

1. Pre-construction notification must identify if the project is an individual lot within a subdivision or part of a multiphase development.

NWP 41. Reshaping Existing Drainage Ditches

NWP 41 Specific Regional Conditions:

1. A pre-construction notification must be submitted to the district engineer (see NWP general condition 32) if the activity involves permanent sidesteering of excavated material into waters of the U.S.
2. Upon completion of the work, all exposed slopes and channel banks must either be seeded or planted with site-appropriate native herbaceous species.

NWP 42. Recreational Facilities

NWP 42 Specific Regional Condition:

1. Pre-construction notification must identify if the project is an individual lot within a subdivision or part of a multiphase development.

NWP 43. Stormwater Management Facilities

NWP 43 Specific Regional Condition:

1. Pre-construction notification for new facilities must include a long-term maintenance plan if permits for periodic maintenance dredging will be required in waters of the U.S.

NWP 44. Mining Activities

NWP 44 Specific Regional Conditions:

1. This NWP may only be used for aggregate mining activities in perennial streams that meet the following criteria:
 - a. Aggregate may not be excavated from a vegetated bar or flowing water, or pushed across a wetted channel.
 - b. A 5-foot (horizontal) buffer must be left in an undisturbed state along the river edge of the aggregate bar during excavation. After aggregate material is removed, the area must be graded to restore a natural contour and not trap fish.
 - c. Aggregate material may be temporarily stockpiled within the channel above the plane of the water surface for up to 7 days. Aggregate material may not be stockpiled in wetlands or flowing water.
 - d. Aggregate material may not be disposed in the channel or where it could re-enter a water of the United States.

NWP 48. Commercial Shellfish Aquaculture Activities

NWP 48 Specific Regional Condition:

1. The commercial harvest of clams by means of hydraulic escalator harvester equipment is not authorized by NWP.

NWP 54. Living Shorelines

NWP 54 Specific Regional Condition:

1. The construction of breakwaters and reefs is not authorized.