



US Army Corps
of Engineers
Seattle District

Special Public Notice

Regulatory Branch
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Public Notice Date: September 30, 2020
Expiration Date: November 15, 2020

2020 NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS

On September 15, 2020, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue the 52 existing nationwide permits (NWP) and issue five new NWP.

Nationwide permits are general permits issued on a nationwide basis to streamline the authorization of activities that result in no more than minimal individual and cumulative adverse environmental effects. Many of the proposed NWP require notification to the district engineer before commencing those activities, to ensure that the activities authorized by those NWP cause no more than minimal individual and cumulative adverse environmental effects.

National Issues Concerning the Proposed NWP: The Federal Register notice is the public's opportunity to comment on the proposed NWP, general conditions, and definitions. Comments on national issues relating to these NWP should be submitted to docket number COE-2020-0002 at www.regulations.gov, or by email to nationwidepermits2020@usace.army.mil or by mail to Headquarters, U.S. Army Corps of Engineers, Directorate of Civil Works, ATTN: CECW-CO-R, 441 G Street, N.W., Washington, D.C. 20314-1000. Instructions for submitting comments are provided in the September 15, 2020 Federal Register notice. Comments on the proposed NWP are due by November 16, 2020.

Regional Issues Concerning the Proposed NWP, Including Regional Conditioning:

Division Engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are an important mechanism to help ensure that the adverse environmental effects of activities authorized by the NWP are no more than minimal, both individually and cumulatively. Division Engineers may also suspend or revoke specific NWP in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where the adverse environmental effects caused by activities authorized by those NWP may be more than minimal. An enclosure for this public notice (Enclosure 1) are the proposed regional conditions currently under consideration by the Seattle District for Washington State. The Seattle District is seeking comments on the proposed regional conditions and seeking comments on the need for additional regional conditions, including the need for regional conditions previously authorized in connection with the NWP issued in 2017,

to help ensure that the adverse environmental effects of activities authorized by the proposed NWP are no more than minimal, individually and cumulatively. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in Washington State. Comments on regional issues relating to the proposed NWP and proposed regional conditions should be sent to NWP-SeattleTeam@usace.army.mil; include on the subject line of the email "Comments on 2020 NWP Regional Conditions" or via regular mail 4735 E. Marginal Way South, Seattle, Washington, 98124. Comments relating to regional conditions are due by November 15, 2020. Similar public notices proposing regional conditions in other regions or states are being published concurrently by other division or district offices. After the final NWP are issued, the final regional conditions will be issued after they are approved by the Division Commander.

States, tribes, and other certifying authorities will make their Clean Water Act Section 401 water quality certification (WQC) decisions after reviewing the proposed NWP. States will make their Coastal Zone Management Act (CZMA) consistency determination decisions after reviewing the proposed NWP.

Draft decision documents for each of the proposed NWP, which include environmental documentation prepared for the purposes of the National Environmental Policy Act, have been written by Corps Headquarters. The decision documents will address compliance of the NWP with the requirements for issuance under the Corps' general permit authority. These draft decision documents, as well as the proposed NWP, are available for viewing at www.regulations.gov, docket number COE-2020-0002. Final decision documents will be prepared for the NWP that are issued.

Enclosed (Enclosure 2) is an index of the proposed national NWP and national conditions. Anyone wishing to provide comments may obtain a full text copy of the NWP through the Seattle District Corps Home Page at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>, at www.regulations.gov in docket number COE-2020-0002, or at the following Federal Register address: <https://www.federalregister.gov/documents/2020/09/15/2020-17116/proposal-to-reissue-and-modify-nationwide-permits>.

ENCLOSURE 1

Seattle District Proposed Regional Conditions

If you would like to view the 2017 Final Regional Conditions for Seattle District for comparison, please view them on our webpage located at: www.nws.usace.army.mil, select Permit Guidebook, Chapter II, Permitting Nationwide Permits, National and Regional Conditions.

REGIONAL GENERAL CONDITIONS (RGCs). The following conditions would 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. 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.

3. Commencement Bay

No permanent losses of wetlands or mudflats within the Commencement Bay Study Area may be authorized by any NWP (see Figure 2).

4. Bank Stabilization

All projects including new or maintenance bank stabilization activities in waters of the U.S. where salmonid species are present or could be present, requires PCN to the U.S. Army Corps of Engineers (Corps) (see NWP general condition 32).

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

- 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.

5. Crossings of Waters of the United States

Any project including installing, replacing, or modifying crossings of waters of the U.S., such as culverts or bridges, requires submittal of a PCN to the U.S. Army 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.

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.

6. Construction Boundaries

Permittees must clearly mark all construction area boundaries within waters of the U.S. 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.

7. ESA Reporting to NOAA Fisheries

For any nationwide permit that may affect threatened or endangered species; Incidents where any individuals of fish species, marine mammals and/or sea turtles listed by National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) under the Endangered Species Act appear to be injured or killed as a result of discharges of dredged or fill material into waters of the U.S. or structures or work in navigable waters of the U.S. authorized by this Nationwide Permit verification shall be reported to NOAA Fisheries, Office of Protected Resources at (301) 713-1401 and the Regulatory Office of the Seattle District of the U.S. Army Corps of Engineers at (206) 764-3495. The finder should leave the animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved and, if possible, take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed by discharge exposure or some unnatural cause. The finder may be asked to carry out instructions provided by NOAA Fisheries

to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.

REGIONAL CONDITIONS FOR SPECIFIC NWP's. The following conditions would apply to the NWP's listed below for the Seattle District in Washington State. NWP's 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 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. A pre-construction notification must be submitted to the district engineer (see NWP general condition 32) for the construction of weirs and flumes.

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 150-foot radius of the proposed buoy.
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.

NWP 14. Linear Transportation Projects

NWP 14 Specific Regional Conditions:

1. 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. The project proponent must also demonstrate how despite the loss of waters the overall project would result in a net increase in aquatic/ecological functions .
3. The PCN must contain a description of pre-project site conditions including presence of wetlands (including photographs) and aquatic/ecological functions the site provides within the watershed.
4. For projects that would result in a loss of waters of the U.S., 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 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.

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).

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 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. Aggregate mining activities in streams authorized by this NWP must 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 A. Seaweed Mariculture Activities

No specific regional conditions proposed.

NWP B. Finfish Mariculture Activities

No specific regional conditions proposed.

NWP C. Electric Utility Line and Telecommunications Activities

No specific regional conditions proposed.

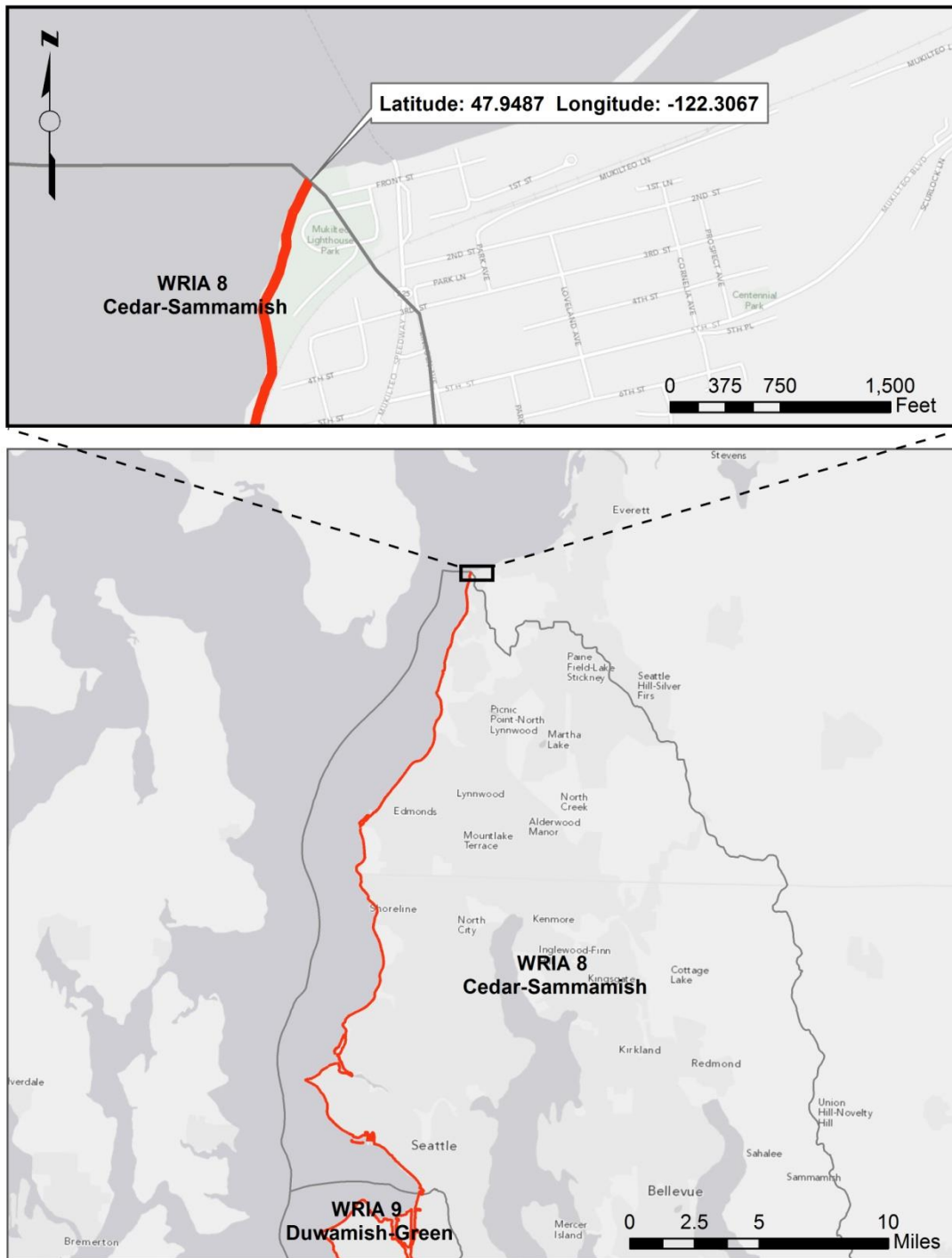
NWP D. Utility Line Activities for Water and Other Substances

No specific regional conditions proposed.

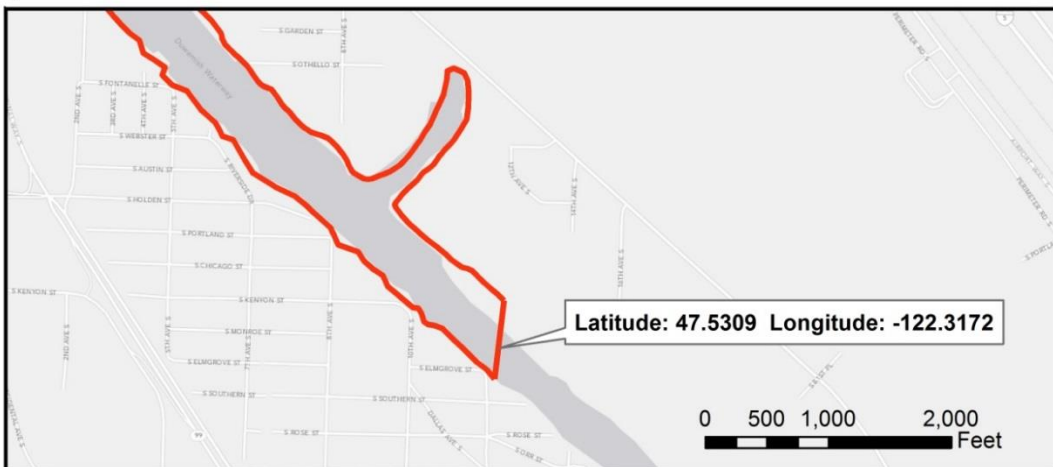
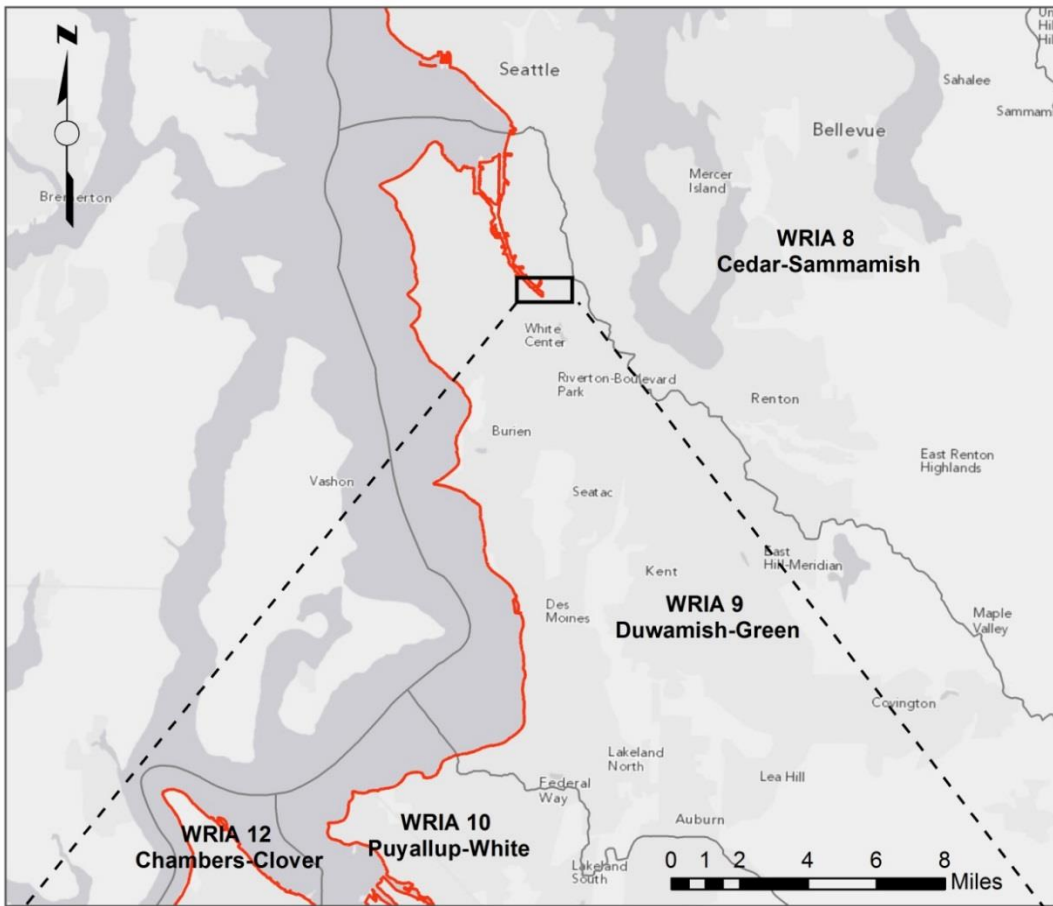
NWP E. Water reclamation and reuse facilities

No specific regional conditions proposed.

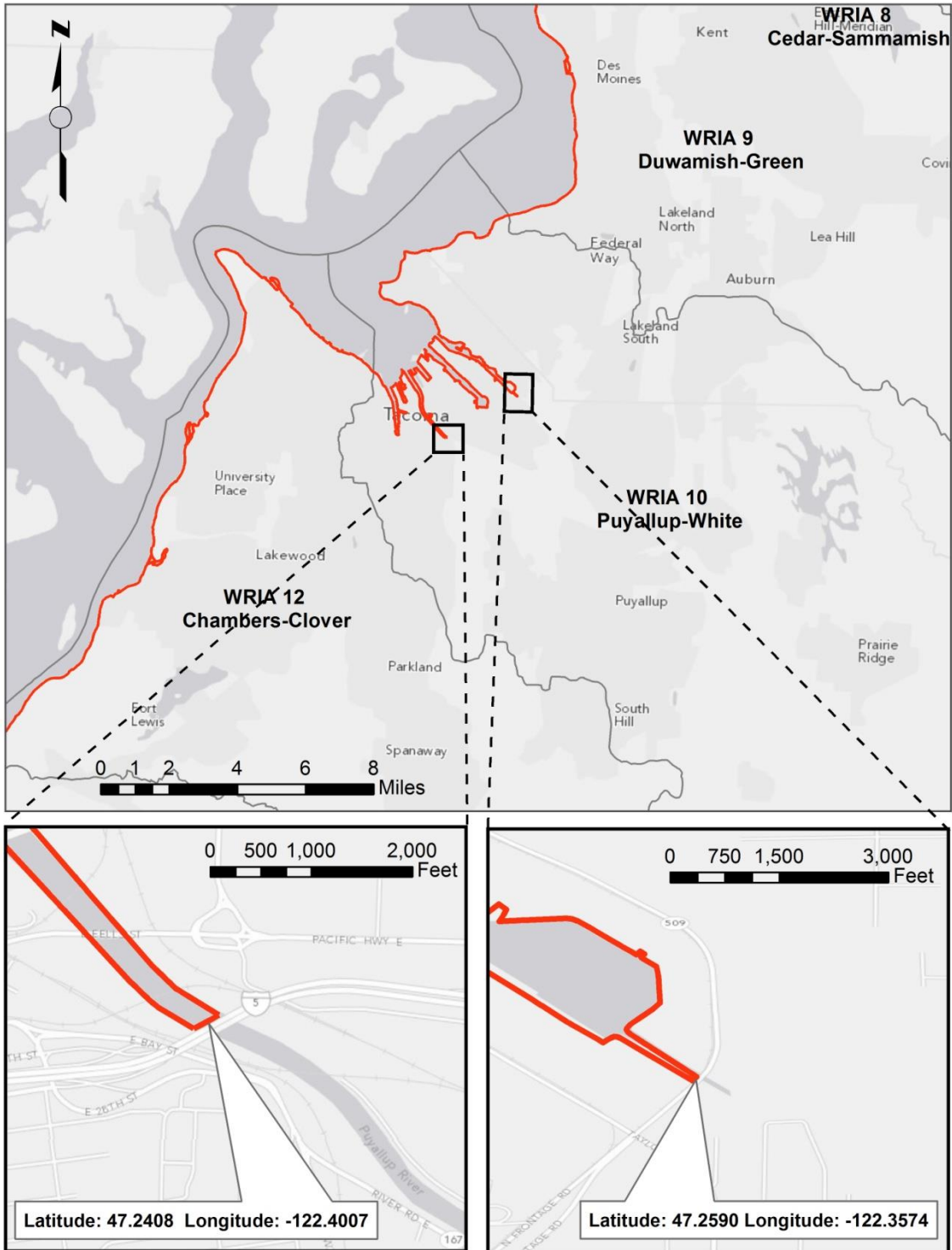
Figure 1: RGC 2 - WRIAs 8, 9, 10, 11, and 12
a. WRIA 8



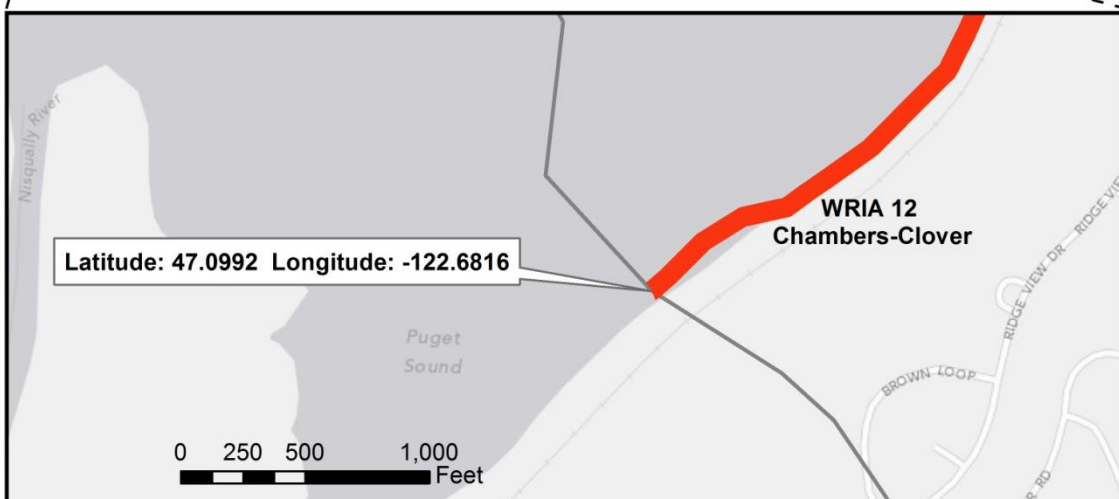
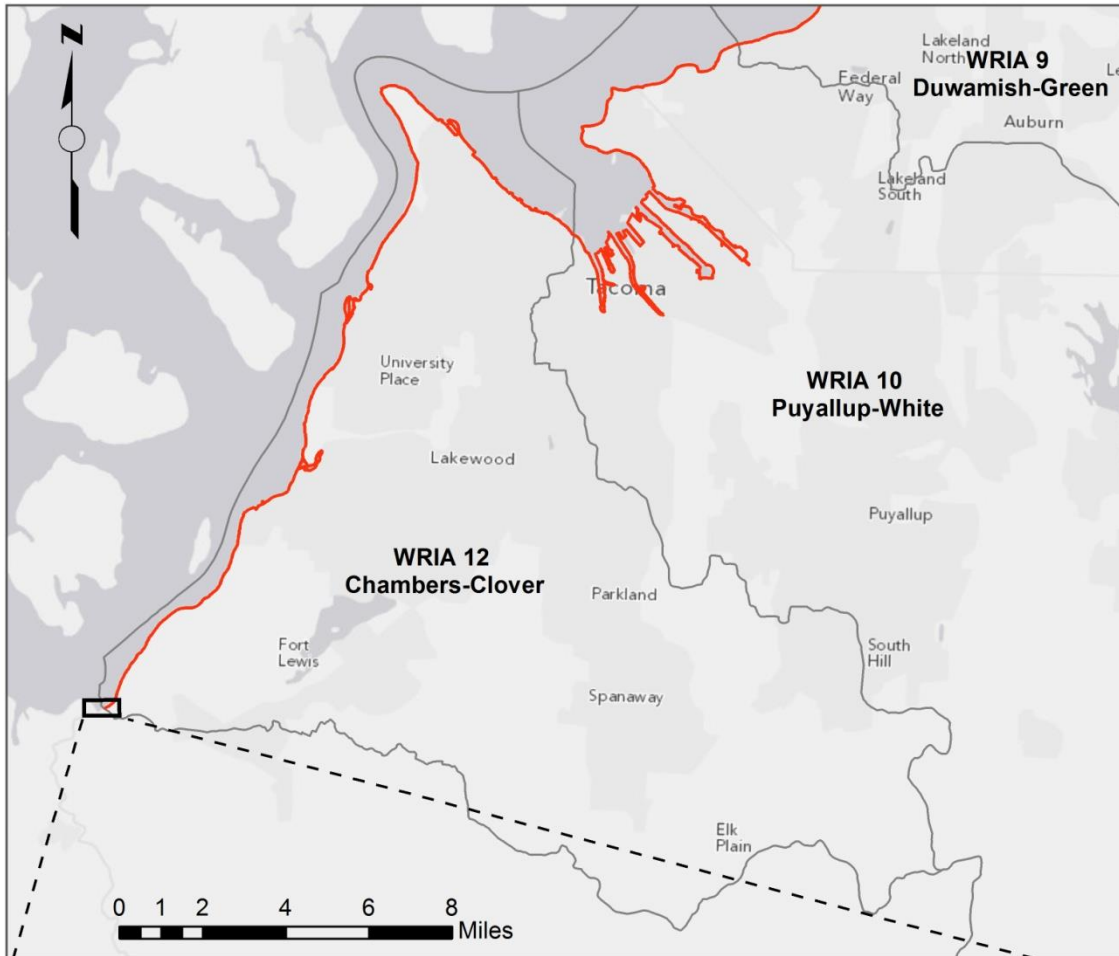
b. WRIA 9



c. WRIA 10



d. WRIA 12



e. WRIA 11

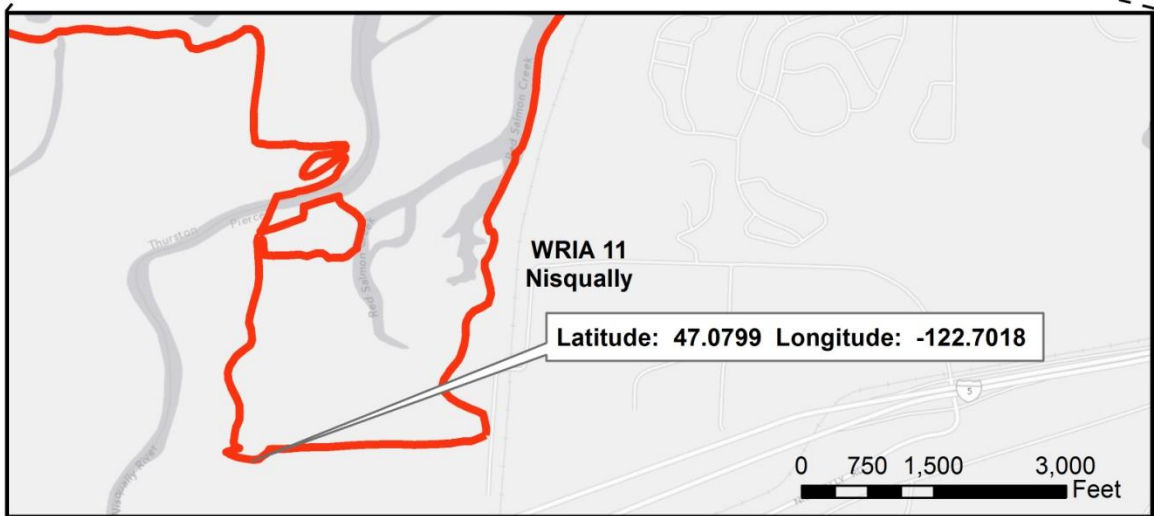
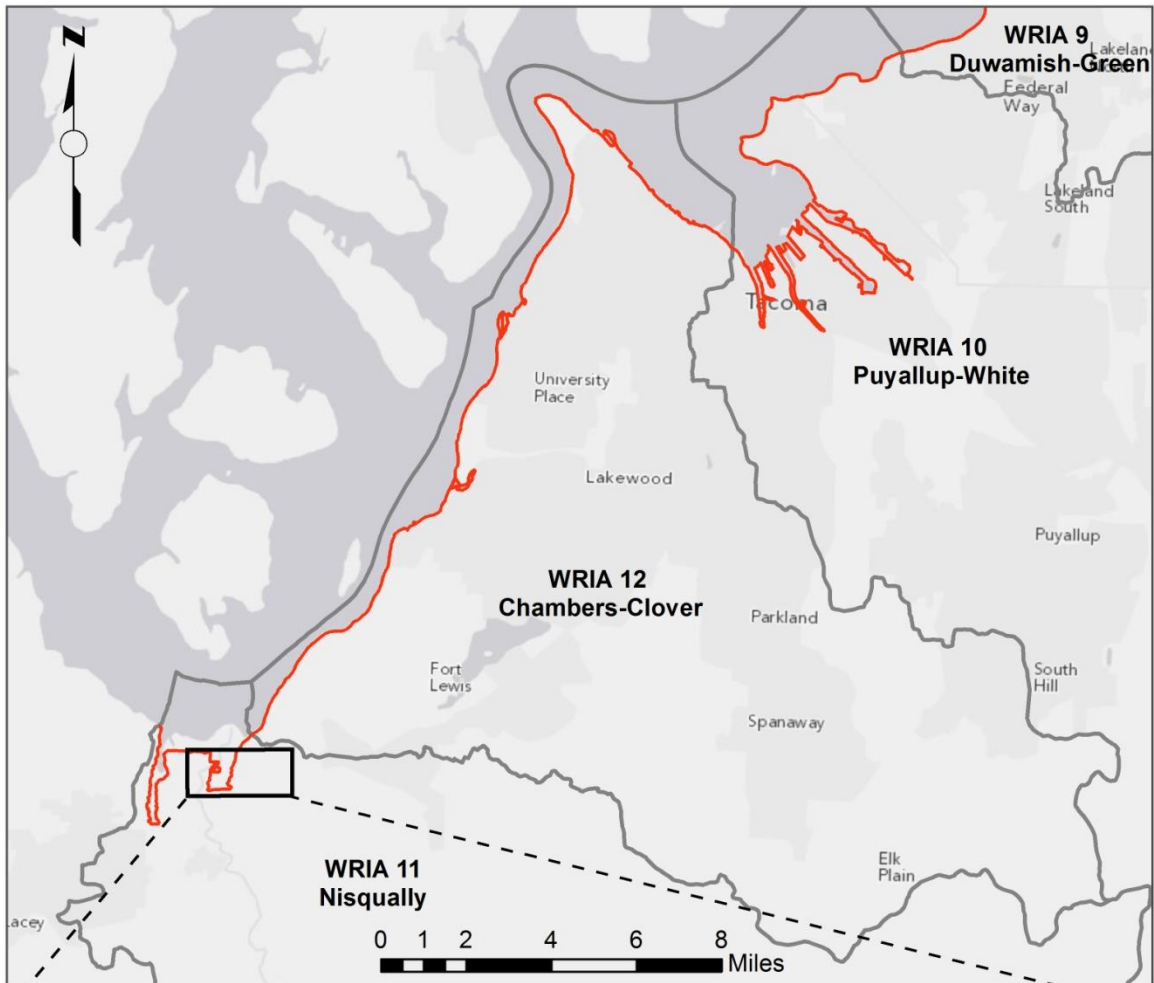
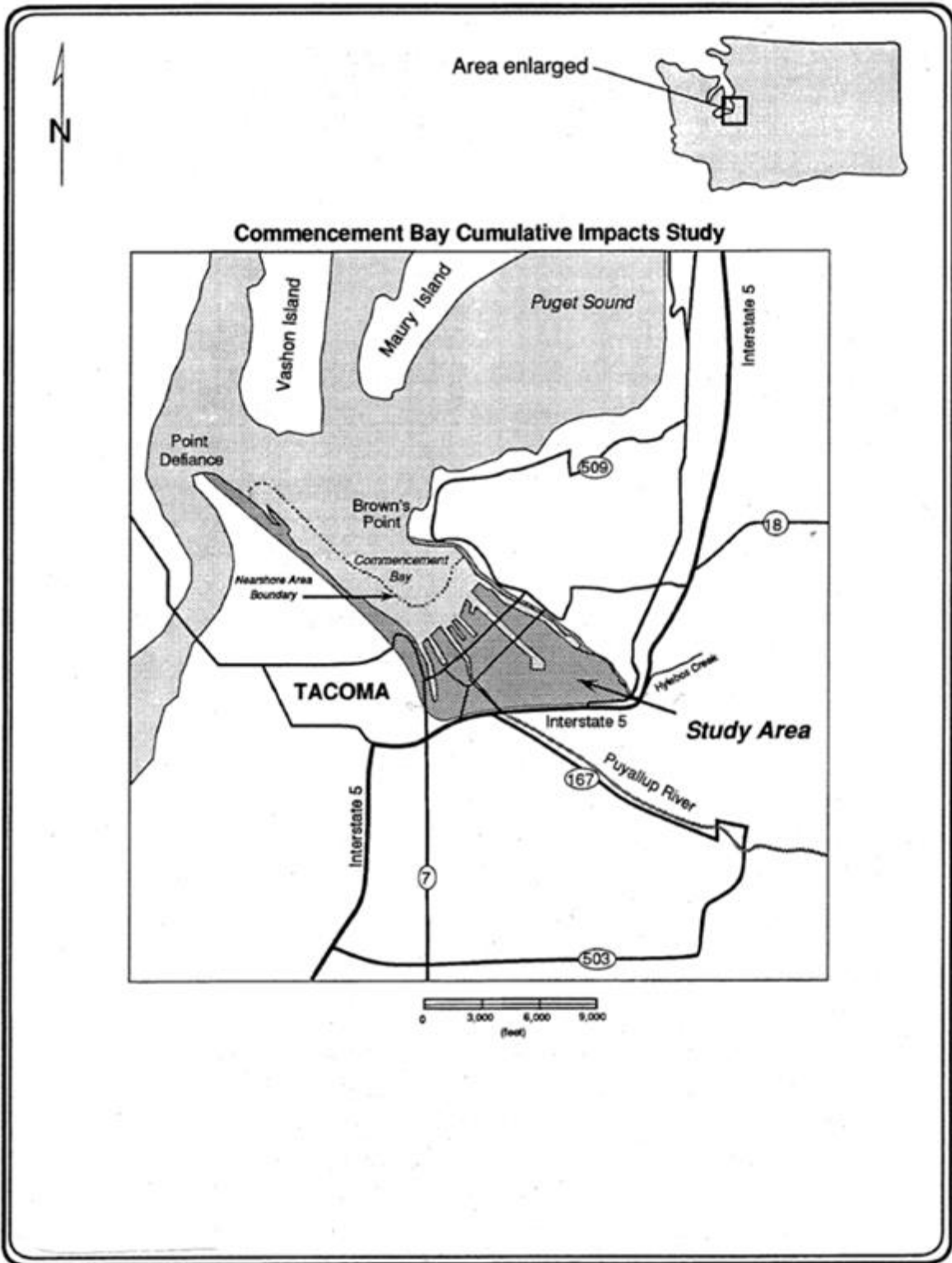


Figure 2. RGC 3 - Commencement Bay Study Area



ENCLOSURE 2

Index of Proposed Nationwide Permits, Conditions, and Definitions

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Open water
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Pre-construction notification
Preservation
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Restoration
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Riparian areas
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Single and complete linear project
Single and complete non-linear project
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