

**2012 NATIONWIDE PERMITS
FINAL REGIONAL CONDITIONS**

SEATTLE DISTRICT

March 19, 2012

A. GENERAL REGIONAL CONDITIONS (apply to all NWPs)

1. Aquatic Resources Requiring Special Protection.

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

- NWP 3 – Maintenance
- NWP 20 – Oil Spill Cleanup
- 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, you must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 (Pre-Construction Notification) and obtain written approval before commencing work.

2. Commencement Bay. The following NWPs may not be used to authorize activities located in the Commencement Bay Study Area (see Figure 1) requiring Department of the Army authorization:

- 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 Management Facilities

3. New Bank Stabilization Prohibition Areas 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 specific area identified on Figure 2) cannot be authorized by a NWP.

4. **Bank Stabilization.** Any project including new or maintenance bank stabilization activities requires pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 for Pre-Construction Notification. This requirement does not apply to maintenance work exempt by [33 CFR 323.4 \(a\)\(2\)](#). Each notification must also include the following information:

a. Need for the work, including the cause of the erosion and the threat posed to structures, infrastructure, and/or public safety. The notification must also include a justification for the need to place fill or structures waterward of the line of the Corps' jurisdiction (typically, the ordinary high water mark or mean higher high water mark).

b. Current and expected post-project sediment movement and deposition patterns in and near the project area. In tidal waters, describe the location and size of the nearest bluff sediment sources (feeder bluffs) to the project area and current and expected post-project nearshore drift patterns in the project area.

c. Current and expected post-project habitat conditions, including the presence of fish, wildlife and plant species, submerged aquatic vegetation, spawning habitat, and special aquatic sites (e.g., vegetated shallows, riffle and pool complexes, or mudflats) in the project area.

d. In rivers and streams, an assessment of the likely impact of the proposed work on upstream, downstream and cross-stream properties (at a minimum the area assessed should extend from the nearest upstream bend to the nearest downstream bend of the watercourse). Discuss the methodology used for determining effects. The Corps reserves the right to request an increase in the reach assessment area to fully address the relevant ecological reach and associated habitat.

e. For new bank stabilization activities in rivers and streams, describe the type and length of existing bank stabilization within 300 feet up and downstream of the project area. In tidal areas, describe the type and length of existing bank stabilization within 300 feet along the shoreline on both sides of the project area.

f. Demonstrate the proposed project incorporates the least environmentally damaging practicable bank protection methods. These methods include, but are not limited to, the use of bioengineering, biotechnical design, root wads, large woody material, native plantings, and beach nourishment in certain circumstances. If rock must be used due to site erosion conditions, explain how the bank stabilization structure incorporates elements beneficial to fish. If the Corps determines you have not incorporated the least environmentally damaging practicable bank protection methods and/or have not fully compensated for impacts to aquatic resources, you must submit a compensatory mitigation plan to compensate for impacts to aquatic resources.

g. A planting plan using native riparian plant species unless the applicant demonstrates a planting plan is not appropriate or not practicable.

5. **Crossings of Waters of the United States.** Any project including installing, replacing, or modifying crossings of waters of the United States, such as culverts, requires pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31

for Pre-Construction Notification. This requirement does not apply to maintenance work exempt by [33 CFR 323.4 \(a\)\(2\)](#). Each notification must also include the following information:

- a. Need for the crossing.
- b. Crossing design criteria and design methodology.
- c. Rationale behind using the specific design method for the crossing.

6. **Cultural Resources and Human Burials.** Permittees must immediately stop work and notify the District Engineer within 24 hours if, during the course of conducting authorized work, human burials, cultural resources, or historic properties, as identified by the National Historic Preservation Act, are discovered. Failure to stop work in the area of discovery until the Corps can comply with the provisions of 33 CFR 325 Appendix C, the National Historic Preservation Act, and other pertinent laws and regulations could result in a violation of state and federal laws. Violators are subject to civil and criminal penalties.

7. **Essential Fish Habitat.** An activity which may adversely affect essential fish habitat, as identified under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), may not be authorized by NWP until essential fish habitat requirements have been met by the applicant and the Corps. Non-federal permittees shall notify the District Engineer if essential fish habitat may be affected by, or is in the vicinity of, a proposed activity and shall not begin work until notified by the District Engineer that the requirements of the essential fish habitat provisions of the MSA have been satisfied and the activity is authorized. The notification must identify the type(s) of essential fish habitat (e.g., Pacific salmon, groundfish, and/or coastal-pelagic species) managed by a Fishery Management Plan that may be affected. Information about essential fish habitat is available at <http://www.nwr.noaa.gov/>.

8. **Vegetation Protection and Restoration.** Permittees must clearly mark all construction area boundaries before beginning work. The removal of native vegetation in riparian areas and wetlands, and the removal of submerged aquatic vegetation in estuarine and tidal areas must be avoided and minimized to the maximum extent practicable. Areas subject to temporary vegetation removal shall be replanted with appropriate native species by the end of the first planting season following the disturbance except as waived by the District Engineer. If an aquaculture area is permitted to impact submerged aquatic vegetation under NWP 48, the aquaculture area does not need to be replanted with submerged aquatic vegetation.

9. **Access.** You must allow representatives of this office to inspect the authorized activity at any time deemed necessary to ensure the work is being, or has been, accomplished in accordance with the terms and conditions of your permit.

10. **Contractor Notification of Permit Requirements.** The permittee must provide a copy of the nationwide permit verification letter, conditions, and permit drawings to all contractors involved with the authorized work, prior to the commencement of any work in waters of the U.S.

B. NWP-SPECIFIC REGIONAL CONDITIONS

The following NWPs have permit-specific regional conditions, as follows:

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

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 Pre-Construction Notification for grading, berm construction, placement of substrate, and other activities involving a discharge of dredged or fill material.
2. The commercial harvest of clams by means of hydraulic escalator harvester equipment is not authorized by this NWP.

5. Scientific Measurement Devices.

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 to its original condition.
2. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 for Pre-Construction Notification for the construction of weirs and flumes that do not meet Washington Department of Fish and Wildlife fish passage design criteria (see http://www.wdfw.wa.gov/hab/engineer/cm/culvert_manual_final.pdf).
3. The quantity of discharged material and the volume of area excavated must not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line and the discharge will not cause the loss of more than 1/10th of an acre of waters of the U.S.

6. Survey Activities.

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 for Pre-Construction Notification for exploratory trenching activities and any project or activity involving oil or natural gas exploration.
2. The quantity of discharged material and the volume of area excavated must not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line and the discharge will not cause the loss of more than 1/10th of an acre of waters of the U.S.

7. Outfall Structures and Associated Intake Structures.

1. The pre-construction notification must include the following information: location and size of any submerged aquatic vegetation beds in the project vicinity (a formal survey may be required) and location and size of forage fish spawning areas in the project vicinity (e.g., documented or potential Pacific sand lance (*Ammodytes hexapterus*),

Pacific herring (*Clupea pallasii*), surf smelt (*Hypomesus pretiosus*), and Pacific eulachon (*Thaleichthys pacificus*)).

10. Mooring Buoys.

1. NWP 10 may not be used in any waterbody the Washington State Department of Health has designated as “closed” to shellfish harvesting (due to the number of boats moored in the waterbody). The Seattle District will publish the list of closed waterbodies in a Special Public Notice as waterbodies are added or removed from this list.

2. NWP 10 may not be used in any waterbody the Washington State Department of Health has designated as “threatened” due to the number of boats moored in the waterbody. This designation is made on an annual basis by the Washington State Department of Health. The Seattle District will publish the list of threatened waterbodies in a Special Public Notice as waterbodies are added or removed from this list.

12. Utility Line Activities.

1. When backfilling trenches in wetlands, no more than 10 percent of the soil used to backfill the top 12 inches of the trench may consist of subsurface soil.

2. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 (Pre-Construction Notification) for mechanized landclearing in a forested wetland for the construction of a substation.

3. A pre-construction notification 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.

14. Linear Transportation Projects.

1. Private linear transportation crossings placed in waters of the U.S. with footprints wider than 22 feet or longer than 200 feet are not authorized by this NWP. For the width requirement, “footprint” refers to the footprint of the width of the roadway fill prism.

2. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 (Pre-Construction Notification) for linear transportation crossing activities in tidal waters.

19. Minor Dredging.

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 (Pre-Construction Notification) for dredging proposed to occur in submerged aquatic vegetation, riffle and pool complexes, or mudflats.

20. Response Operations for Oil and Hazardous Substances.

1. For spill response training exercises in special aquatic sites, the discharge of dredged or fill material must not cause the loss of greater than ½ of an acre of waters of the U.S.

21. Surface Coal Mining Operations.

1. Reclamation to OSM standards must be completed within 5 years of the completion of mining in individual mining pits.
2. Permittees must provide compensatory mitigation for both temporal and permanent losses of aquatic ecosystem functions in waters of the U.S. See Nationwide Permit General Condition 23 for mitigation requirements.
3. No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds.

23. Approved Categorical Exclusions.

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 (Pre-Construction Notification) in all instances. The notification must include a statement/form verifying the proposed work is categorically exempt. The statement/form must be signed by an official of the Federal agency that issued the categorical exemption.

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

1. For projects subject to pre-construction notification, the notification must explain why the loss is necessary and show how it would be fully offset by the beneficial impacts of the project. The notification must describe pre-project site conditions (including photographs), general wetland and other aquatic functions the site provides, benefits anticipated from project construction, and proposed maintenance and monitoring plans.
2. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 (Pre-Construction Notification) 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, or Washington State Model Toxics Control Act clean-up site.

28. Modifications of Existing Marinas.

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 (Pre-Construction Notification) in all instances.

29. Residential Developments.

1. For activities associated with multi-phase residential, commercial, institutional, or recreational development projects, including real estate subdivisions, the pre-construction notification must include a history of the entire property involved in the project, including information about subdivisions of the property and past work on the property in or affecting waters of the United States. Required documentation includes copies of the original plat and State Environmental Policy Act (SEPA) determination(s) for the property, including the SEPA checklist. The District Engineer may allow a variance to specific requirements of this condition on a case-by-case basis.
2. No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds.

33. Temporary Construction, Access, and Dewatering.

1. Temporary fills may be left in place no longer than six months unless the permittee requests and receives a waiver from the District Engineer.

35. Maintenance Dredging of Existing Basins.

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 (Pre-Construction Notification) in all cases. The notification shall include the results of any required sediment testing and identify the location of the upland disposal area(s). Applicants are strongly encouraged to contact the Seattle District's Dredged Material Management Office (telephone 206-764-3768) for specific sediment testing requirements early in the project planning process.

36. Boat Ramps.

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with General Condition 31 (Pre-Construction Notification) for boat ramps wider than 12 feet or located on documented or potential surf smelt (*Ammodytes hexapterus*), Pacific herring (*Clupea pallasii*), sand lance (*Hypomesus pretiosus*), candlefish (*Thaleichthys pacificus*), or salmon spawning beaches or if submerged aquatic vegetation is removed or disturbed. Spawning beach location information can be obtained from the StreamNet database (see <http://www.streamnet.org>) or the SalmonScape database (see <http://wdfw.wa.gov/mapping/salmonscape/index.html>) and other sources.
2. For contiguous properties under the same ownership, no more than one boat ramp per ownership may be authorized by this NWP.
3. The construction of poured-in-place concrete boat ramps is not authorized by this NWP.

39. Commercial and Institutional Developments.

1. For activities associated with multi-phase residential, commercial, institutional, or recreational development projects, including real estate subdivisions, the pre-construction notification must include a history of the entire property involved in the project, including information about subdivisions of the property and past work on the property in or affecting waters of the United States. Required documentation includes copies of the original plat and State Environmental Policy Act (SEPA) determination(s) for the property, including the SEPA checklist. The District Engineer may allow a variance to specific requirements of this condition on a case-by-case basis.
2. No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds.

40. Agricultural Activities

1. No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds.

41. Reshaping Existing Drainage Ditches.

1. The permittee must submit a pre-construction notification to the District Engineer in accordance with Nationwide Permit General Condition 31 (Pre-Construction Notification) for activities that involve the permanent sidestepping of excavated material into waters of the U.S.
2. Upon completion of the work, all exposed soil surfaces shall either be hydro-seeded or planted with appropriate native herbaceous species.

42. Recreational Facilities.

1. For activities associated with multi-phase residential, commercial, institutional, or recreational development projects, including real estate subdivisions, the pre-construction notification must include a history of the entire property involved in the project, including information about subdivisions of the property and past work on the property in or affecting waters of the United States. Required documentation includes copies of the original plat and State Environmental Policy Act (SEPA) determination(s) for the property, including the SEPA checklist. The District Engineer may allow a variance to specific requirements of this condition on a case-by-case basis.
2. No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds.

43. Stormwater Management Facilities.

1. The pre-construction notification must include a maintenance plan if periodic maintenance dredging is proposed.

2. No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds.

44. Mining Activities.

1. No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds.

2. Reclamation, when required by the Washington State Department of Natural Resources, must be achieved with 2 years of completion of mining in individual mining pits.

3. Permittees must provide compensatory mitigation for temporal losses of aquatic ecosystem functions in waters of the U.S. See Nationwide Permit General Condition 23 for mitigation requirements.

4. This NWP may only be used for aggregate mining activities in lower 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 a natural 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 appearance 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.

48. Commercial Shellfish Aquaculture Activities.

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

49. Coal Remining Activities.

1. Reclamation to OSM standards must be completed within 5 years of completion of mining in individual mining pits.

2. Permittees must provide compensatory mitigation for temporal loss of aquatic ecosystem functions in waters of the U.S. See Nationwide Permit General Condition 23 for mitigation requirements.

50. Underground Coal Mining Activities.

1. Reclamation to OSM, DOI or state agency standards must be completed within 5 years of completion of mining in individual mining pits.
2. Permittees must provide compensatory mitigation for temporal loss of aquatic ecosystem functions in waters of the U.S. See Nationwide Permit General Condition 23 for mitigation requirements.
3. No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds.

51. Land-Based Renewable Energy Generation Facilities.

1. No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds.

52. Water-Based Renewable Energy Generation Pilot Projects.

1. No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds.

Figure 1: Commencement Bay Study Area (Regional General Condition 2)

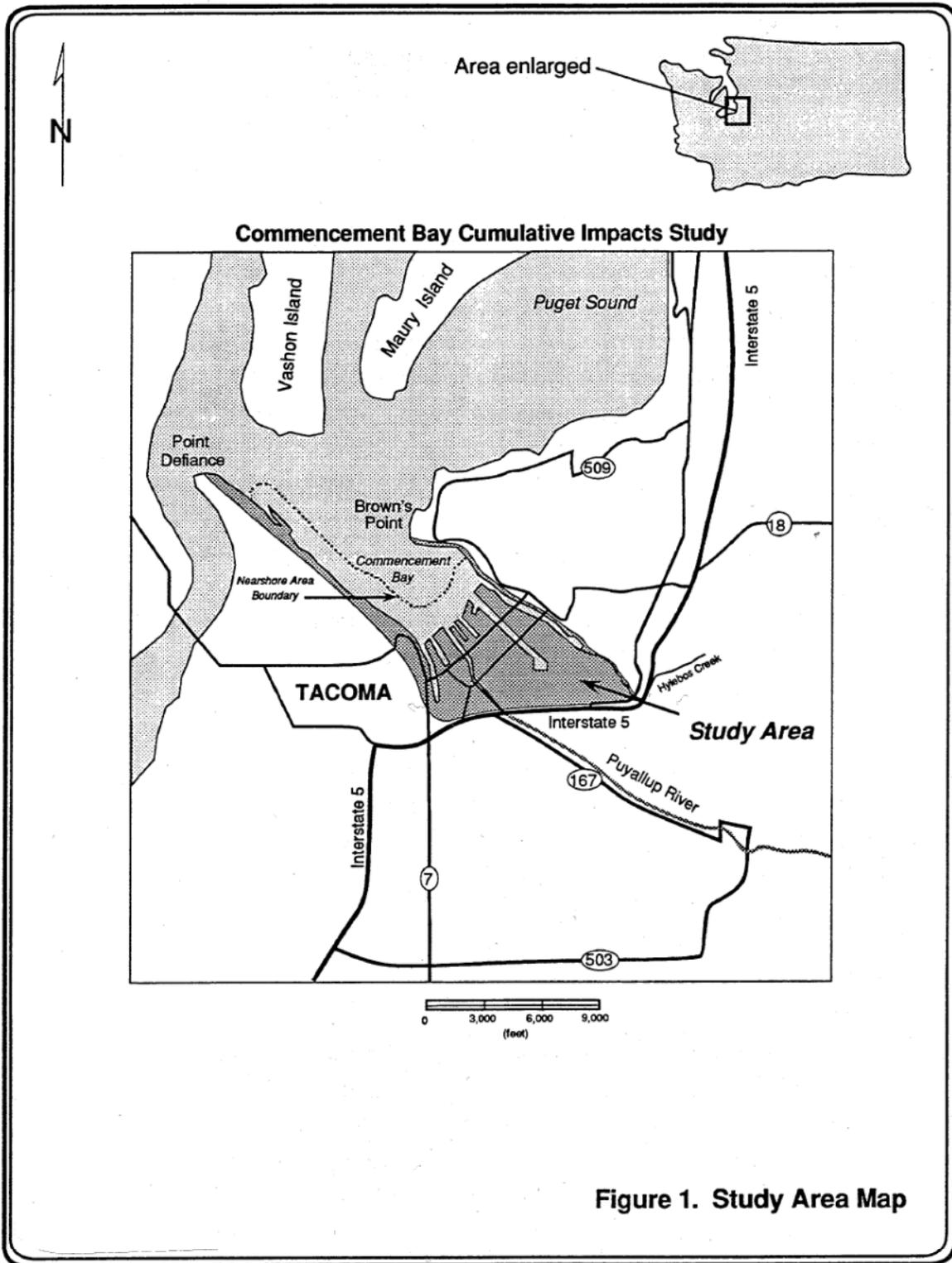
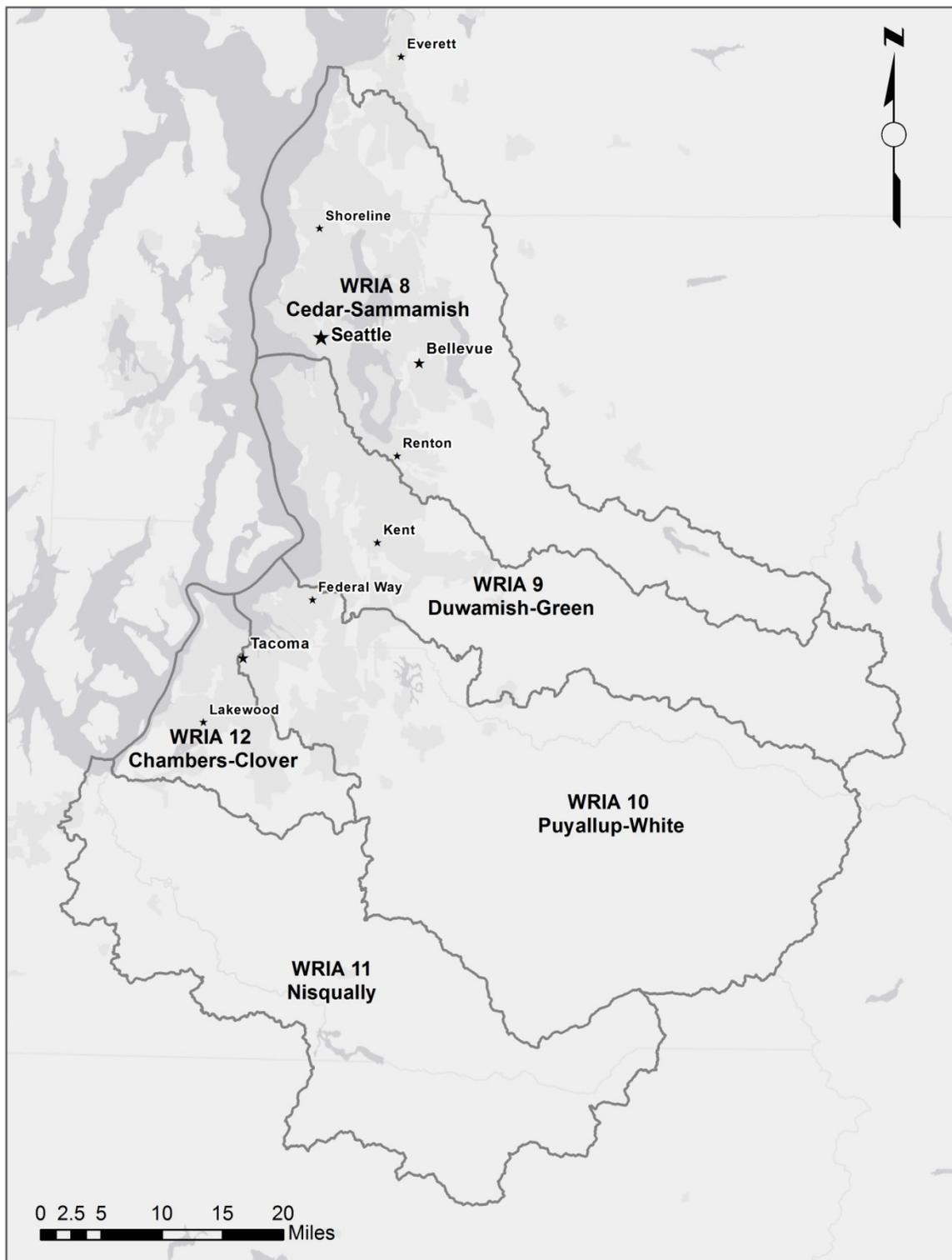
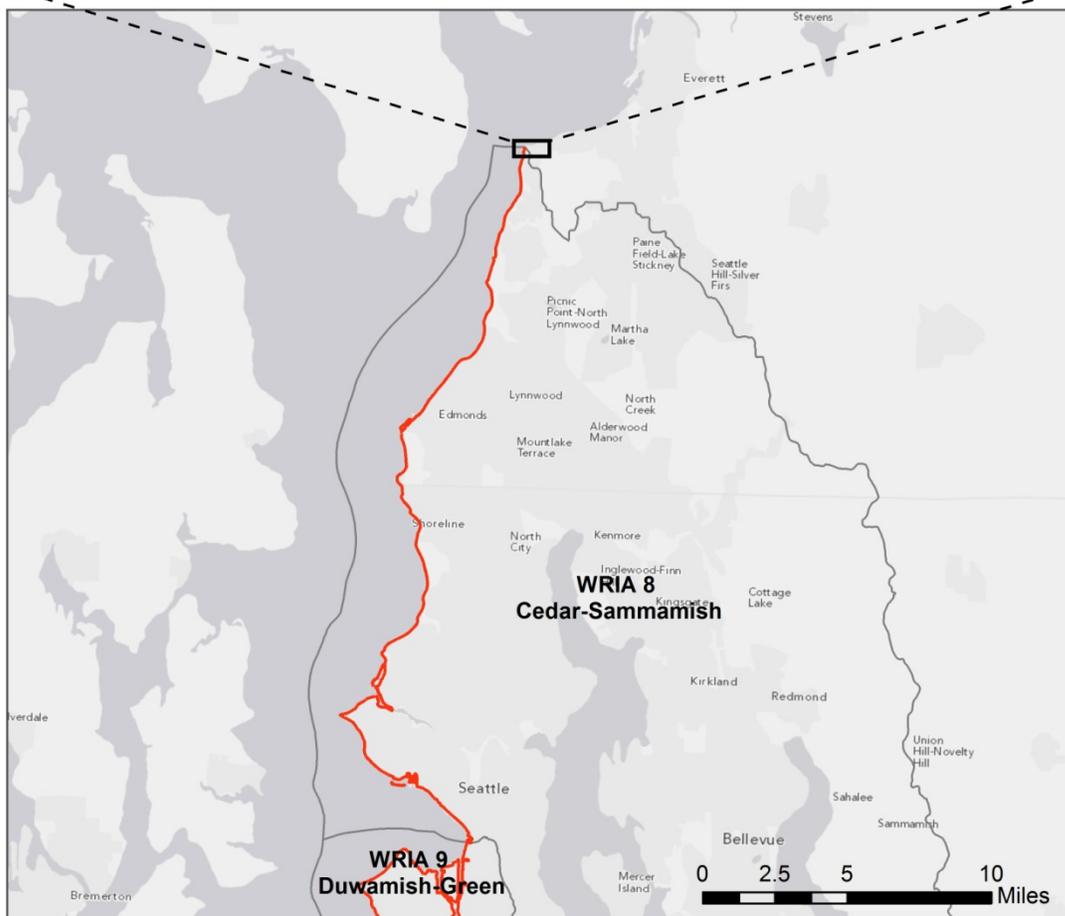
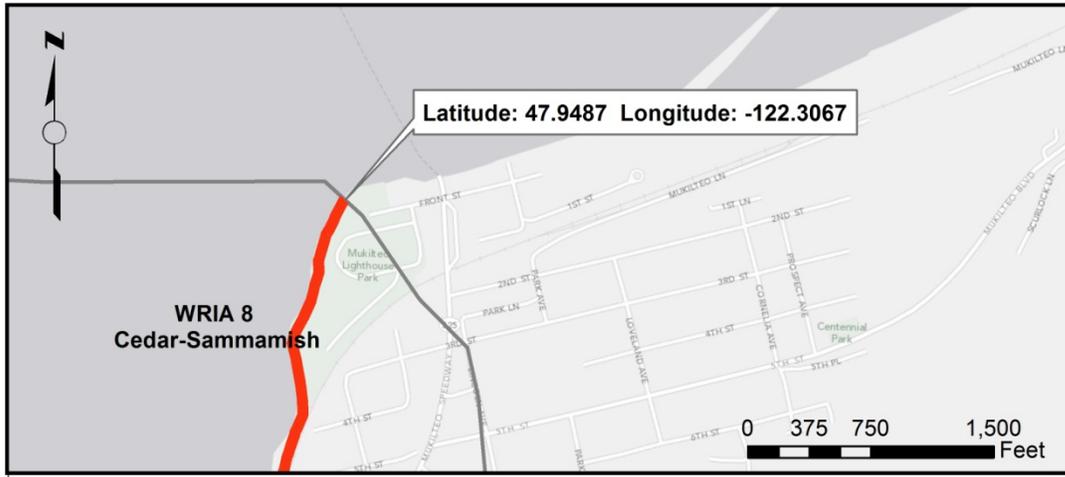


Figure 1. Study Area Map

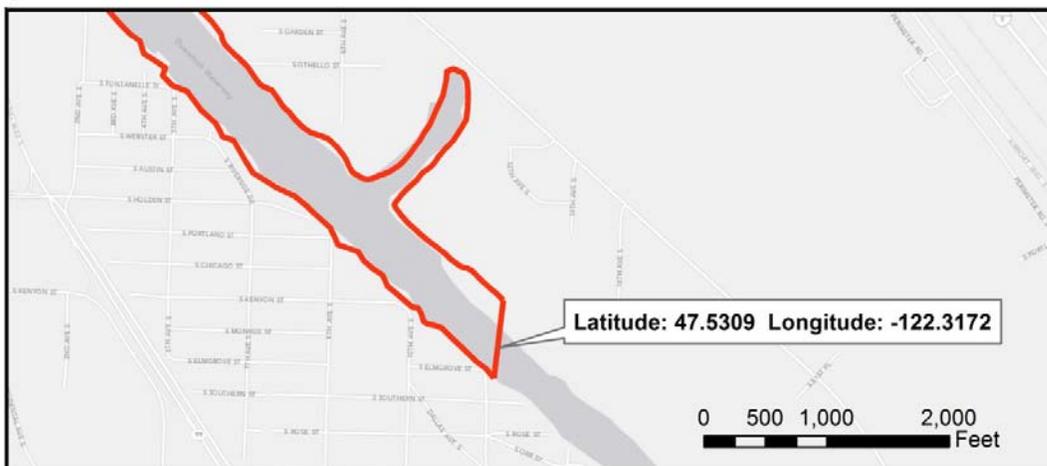
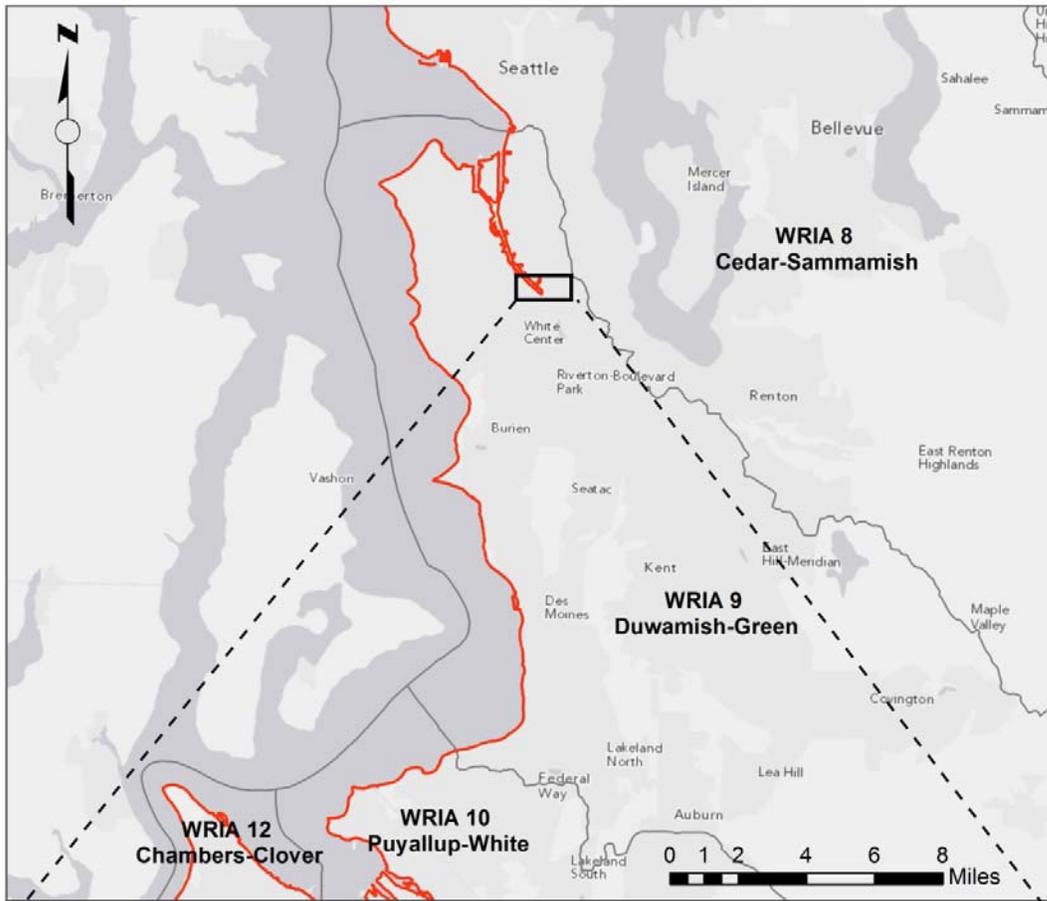
Figure 2: Regional General Condition 3 Prohibition Limits in WRIs 8, 9, 10, 11, and 12



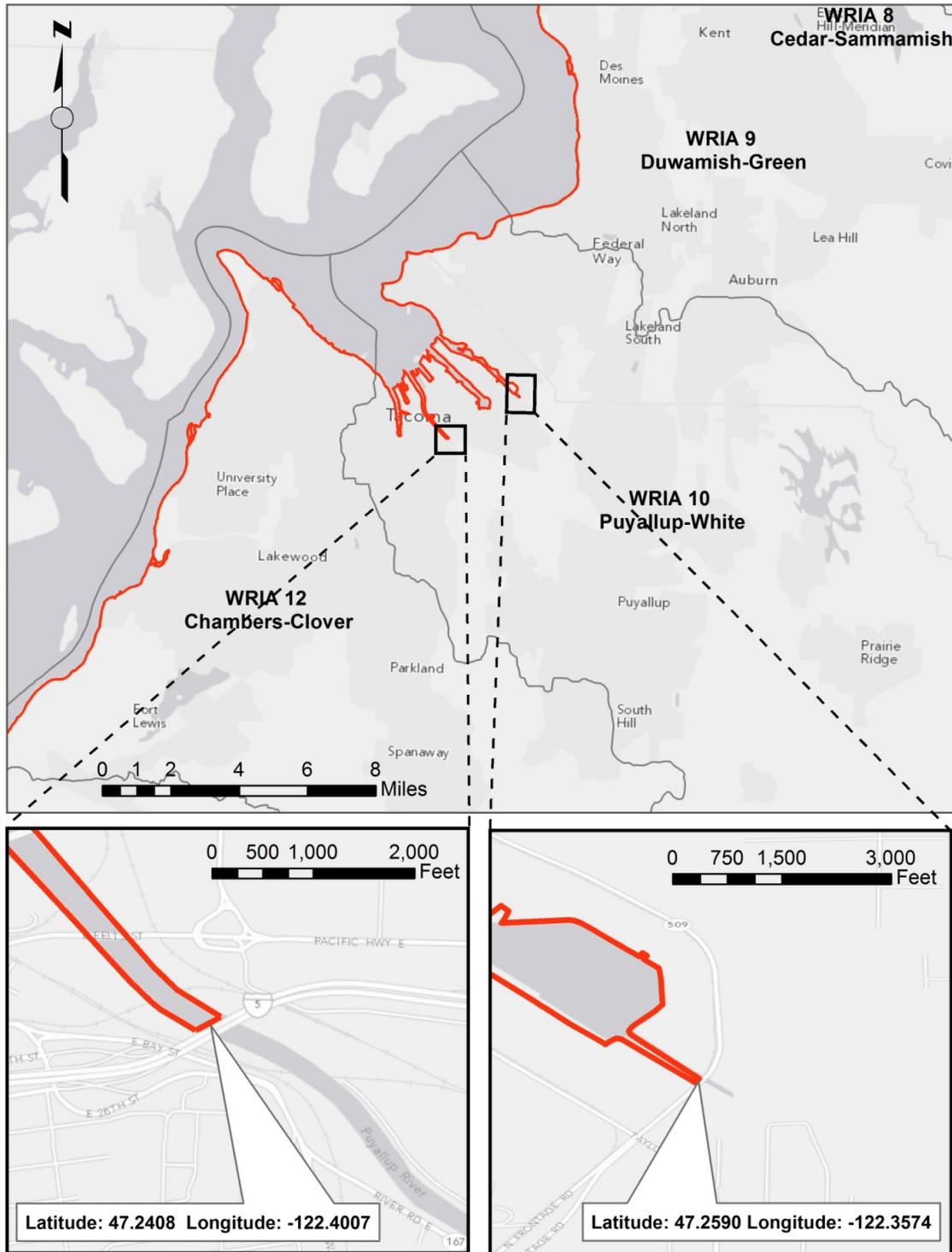
a. WRIA 8 Prohibition Limits



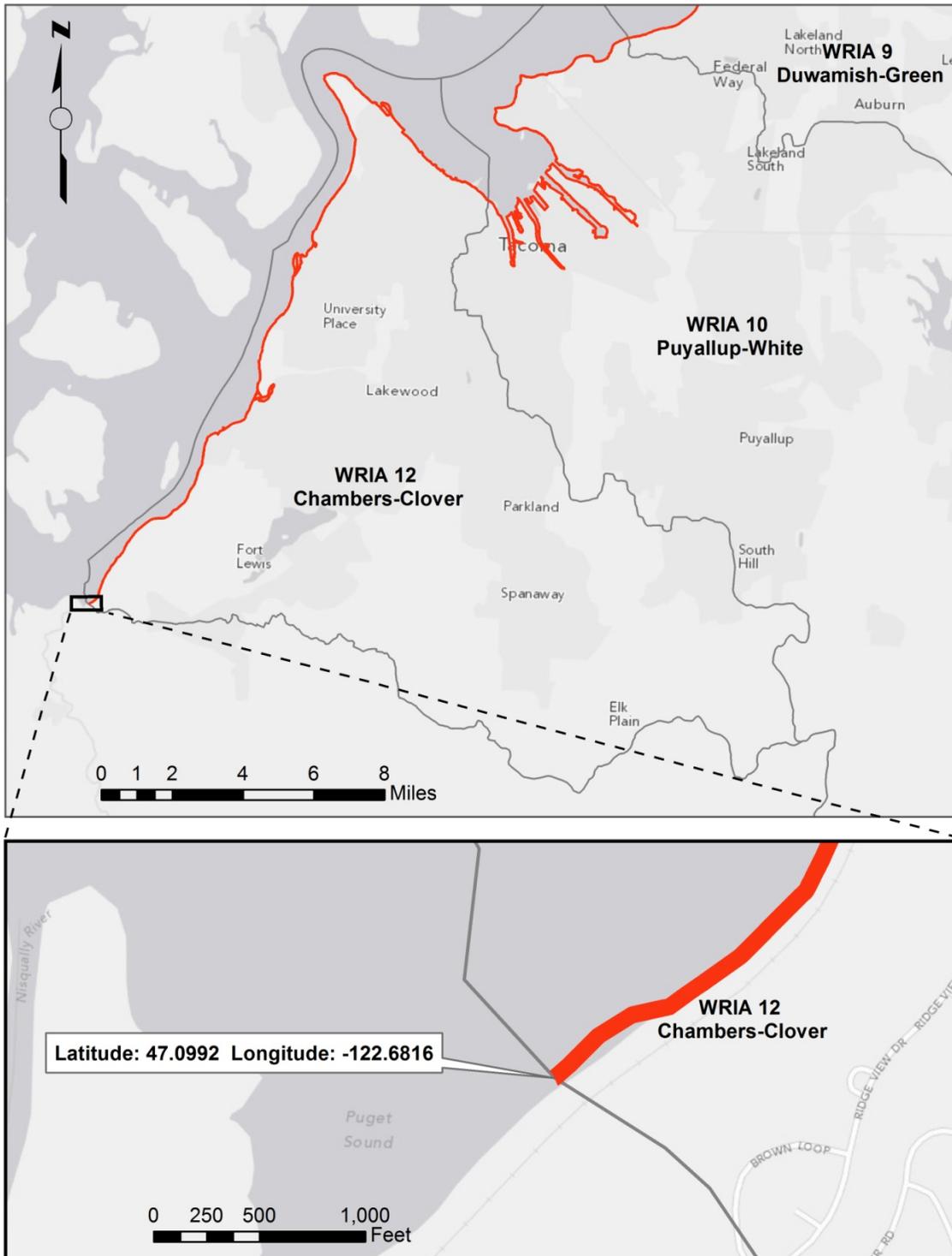
b. WRIA 9 Prohibition Limits



c. WRIA 10 Prohibition Limits



d. WRIA 12 Prohibition Limits



e. WRIA 11 Prohibition Limits

