

ORDINANCE NO. 12680

**AN ORDINANCE** creating the Nisqually Reach Shellfish Protection District, establishing its boundaries, and adopting a shellfish protection program,

**WHEREAS**, on November 1, 2000 the Washington State Department of Health downgraded approximately seventy-four acres of the commercial shellfish growing area in Nisqually Reach in Thurston County from a classification of "Conditionally approved" to a classification of "Restricted" because of water quality degradation; and

**WHEREAS**, the Washington State Department of Health determined that degradation of the Nisqually Reach water quality is primarily due to nonpoint sources of water pollution from McAllister Creek; and

**WHEREAS**, when the Washington State Department of Health closes or downgrades shellfish growing areas because of water quality degradation, RCW 90.72.045 directs the County to create a shellfish protection district and establish a shellfish protection program; and

**WHEREAS**, the McAllister Creek and Nisqually Reach watershed falls within the jurisdiction of Thurston County, and Thurston County desires to address the causes of water pollution and shellfish growing area downgrades; and

**WHEREAS**, RCW 90.72.040 directs counties to coordinate with other jurisdictions in establishing shellfish protection districts and carrying out shellfish protection programs; and

**WHEREAS**, the Board of County Commissioners supports the "Response Strategy For Shellfish Growing Area Downgrades in Henderson Inlet and the Nisqually Reach" and will seek to implement the response strategy as funding and resources allow; and

**WHEREAS**, Thurston County has worked with the Thurston Conservation District, City of Lacey, City of Olympia, and Washington State Departments of Ecology and Health to identify appropriate boundaries, work program, and will continue to coordinate future work of the shellfish protection district to address water quality for the Nisqually Reach; and

**WHEREAS**, Thurston County staff have conducted an extensive process for public involvement in the establishment of a Nisqually Reach Shellfish Protection District and held public meetings on February 22, 2001, April 12, 2001, October 1, 2001, November 19, 2001; and

**WHEREAS**, the Board of Thurston County Commissioners held a public hearing on December 11, 2001; and

**WHEREAS**, the Board of County Commissioners commits to utilize existing programs and resources administered by the Departments of Water and Waste Management, Public Health

and Social Services, Roads and Transportation Services, Office of Program and Budget Development, and Development Services to address water quality degradation in the Nisqually Reach; and

**WHEREAS**, the Board of County Commissioners commits to use existing and additional county resources and grant sources, as available, to fund activities in its initial response to correct and prevent nonpoint source pollution in order to avoid additional charges to Thurston County residents; and

**WHEREAS**, the Board of County Commissioners recognizes that maintaining the water quality of the Nisqually Reach requires diligence, a long-term commitment, and continued public involvement; and

**WHEREAS**, the Nisqually Reach is an important recreational and commercial shellfish growing area in Thurston County; and

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF THURSTON COUNTY hereby ordains as follows:

**Section 1.** Creation of District. The Nisqually Reach Shellfish Protection District is hereby established pursuant to Chapter 90.72 RCW.

**Section 2.** Purpose. The purpose of the Nisqually Reach Shellfish Protection District is to address water quality problems in the Nisqually Reach and its tributary McAllister Creek and to develop long-term strategies to prevent further downgrades and restore commercial shellfish growing areas.

**Section 3.** District Boundaries. The Nisqually Reach Shellfish Protection District shall encompass the McAllister Creek and Nisqually Reach watersheds as defined by the map shown in Exhibit A for the purpose of Phase 1, which is attached hereto and incorporated herein by reference.

**Section 4.** The Nisqually Reach Shellfish Protection District program is adopted as attached hereto as Exhibit B and incorporated herein by reference. The Phase 1 work program as described in Exhibit B should be completed within 18 months or sooner from the time of adoption of this ordinance. The Board of County Commissioners shall amend the work program at the conclusion of Phase 1 or sooner as needed.

**Section 5.** The Nisqually Reach Shellfish Protection District shall be administered by the Director of the Thurston County Office of Program and Budget Development and her or his designee(s) who shall coordinate with other Thurston County departments, the Thurston County Conservation District, and the cities of Lacey and Olympia to ensure implementation of the Nisqually Reach Shellfish Protection District programs and activities.

**Section 6. District Financing.** Any future Nisqually Reach Shellfish Protection District administration and program activities in excess of current funding levels shall be financed pursuant to the authority granted in Chapter 90.72.070 RCW.

**Section 7. Legislative Review.** Four (4) years after the date of adoption of this Ordinance, the Board of County Commissioners shall examine the adopted Nisqually Reach Shellfish Protection Program, gauge its effectiveness, and determine whether it should be modified or continued.

**Section 8. Severability.** If any term or provision of this Ordinance, or its application to any person or circumstance, is held to be invalid, illegal or unenforceable by any court or agency of competent jurisdiction, the remaining terms and provisions of this Ordinance, and the application of the provision to other persons or circumstances, shall not be affected thereby, but each remaining term and provision shall be valid and enforceable to the fullest extent permitted by law.

**Section 9. Effective Date.** This ordinance shall take effect immediately upon its adoption.

ADOPTED: December 17, 2001

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
Thurston County, Washington

Robert J. Boyman  
Clerk of the Board

[Signature]  
Chairman

APPROVED AS TO FORM:

EDWARD G. HOLM  
PROSECUTING ATTORNEY

[Signature]  
Commissioner

[Signature]  
Jane Futterman  
Deputy Prosecuting Attorney

[Signature]  
Commissioner

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Exhibit A

Map of Nisqually Reach Shellfish Protection District Boundaries

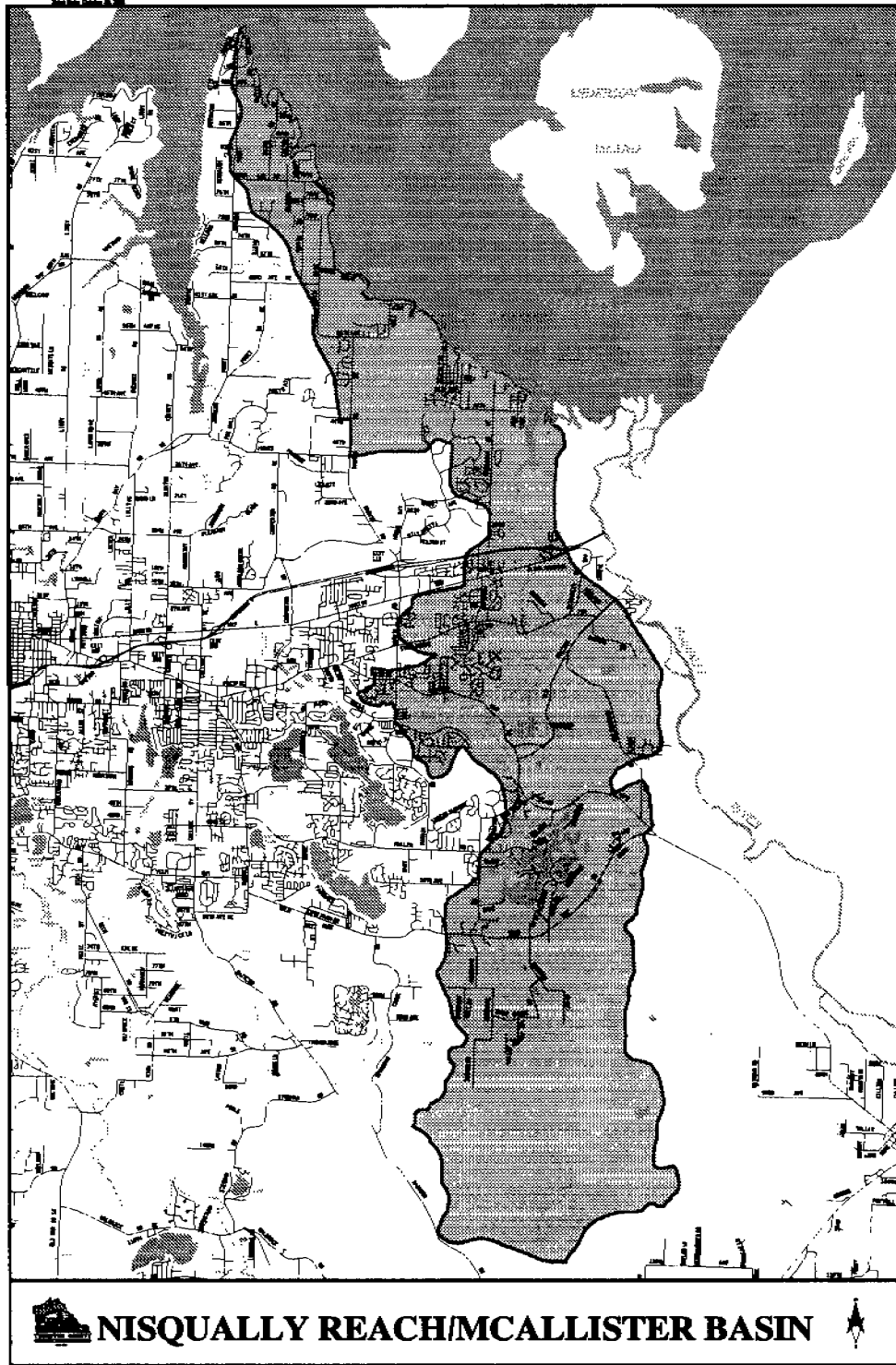


Exhibit B  
Nisqually Reach Shellfish Protection District  
Work Program

The Nisqually Reach Shellfish Protection District Work Program is a first step leading to the development of a long-term strategy addressing fecal coliform contamination of recreational and commercial shellfish beds in the Nisqually Reach. The Nisqually Reach Shellfish Protection District Work Program outlines the necessary steps needed to accomplish the requirements of RCW 90.72.030.

The Nisqually Reach Shellfish Protection District Work Program utilizes a phased approach in addressing the causes of fecal coliform contamination.

Phase 1: The first phase of the Nisqually Reach Shellfish Protection District Work Program includes the following activities within the authority of Thurston County:

I. Continue Public Involvement:

- A. Build a public-involvement strategy that ensures the public remains involved in the decision making process.
- B. In concert with the public develop a long-term strategy in the Phase 2 Work Program that includes but is not limited to:
  - 1. Defining the problem.
  - 2. Goals and objectives to address the problem.
  - 3. Actions necessary to address fecal contamination in the Nisqually Reach.
  - 4. A timeline for implementation.
  - 5. Funding options, if needed, to implement the long-term strategies in the Phase 2 Work Program.
- C. Route land-use development proposals within the Nisqually Reach Shellfish Protection District boundaries to interest groups for review and comment.
- D. Decide how to continue public involvement during implementation of Phase 2.

II. Efforts to correct known sources of fecal coliform utilizing existing programs, regulations, and resources will include recognition and implementation of the “Response Strategy For Shellfish Growing Area Downgrades in Henderson Inlet and the Nisqually Reach” as funding and resources allow.

- A. Failing Septic Systems: The Environmental Health Division will continue its current programs.
  - 1. Identify and seek corrections to failing systems by using complaints, evidence of failed systems, voluntary inspections, and existing permit-review processes.
  - 2. Provide loans to help qualified homeowners repair failing septic systems.
  - 3. Ensure that certified septic system owners are properly operating and maintaining their systems in accordance with their operational certificates.

- B. Stormwater: The Thurston County Storm and Surface Water Utility will in coordination with other jurisdictions:
  1. Continue building capital projects within shellfish watersheds and continue to operate and maintain existing county-owned stormwater facilities within the watersheds to address water quality and stormwater discharges.
  2. Focus public information and education programs on methods residents can use to help reduce the amount of fecal coliform bacteria that ends up in stormwater runoff.
  3. Explore innovative project solutions aimed at reducing the amount of fecal coliform bacteria that is transported in stormwater.
- C. Land-Use enforcement: The Board of County Commissioners is committed to continue improving enforcement to seek compliance with existing land-use regulations and permit conditions, Critical Areas Ordinance, Sanitary Code and Building Code
- D. Agriculture: The Thurston Conservation District and the Thurston County Environmental Health Division will coordinate in performing the following activities.
  1. Encourage farm owners to voluntarily use best management practices.
  2. Promote compliance with existing regulations and the county’s nonpoint pollution ordinance by following up on complaints and acting upon existing agreements between the Thurston Conservation District, the state Department of Ecology, and Thurston County.
- E. Water Quality Testing: The Environmental Health Division will perform the following activities to gain more information to assist in developing the Phase 2 Work Program. The following water quality-testing program will occur.
  1. Sample storm events in the McAllister Creek and Nisqually Reach watershed.
  2. Sample McAllister Creek.
  3. Help identify fecal coliform source types through DNA testing.
  4. Ecology and the county will coordinate water quality studies to support developing total maximum daily loads and wasteload allocations for bacteria in Nisqually Reach.
  5. Report test results to assist in developing the Phase 2 Work Program.

III. Continued coordination of the work of the district with the Thurston Conservation District; City of Lacey; City of Olympia; Washington State Departments of Ecology, Health, and Transportation; tribal governments; Thurston County Departments of Water and Waste Management; Public Health and Social Services; Roads and Transportation Services; and Office of Program and Budget and Development Services.

Phase 2: Phase 2 will utilize the information and outcomes from Phase 1 to implement programs to achieve the goals and objectives developed through the public involvement process in Phase 1.