

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE** amending the Henderson Inlet Shellfish Protection District and Nisqually Reach Shellfish Protection District Consolidated Work Program and fixing rates and charges in the Henderson Inlet Shellfish Protection District for an additional ten years.

WHEREAS, the Board of County Commissioners adopts the following findings:

1. Henderson Inlet is an important shellfish growing area in Thurston County.
2. In 2000, 2001, and 2005, the Washington State Department of Health downgraded hundreds of acres of commercial shellfish growing areas in Henderson Inlet in Thurston County because of bacterial contamination in Henderson Inlet. The Washington State Department of Health determined that the degradation of the Henderson Inlet water quality was primarily due to nonpoint sources of water pollution, including failing on-site sewage systems.
3. Studies performed by Thurston County and the State of Washington identified on-site sewage systems as a significant source of contamination contributing to the water pollution in Henderson Inlet.
4. On December 17, 2001, the Henderson Inlet Shellfish Protection District was created by Ordinance No. 12679, and a work program was adopted.
5. On November 21, 2005, pursuant to RCW 90.72.070, the Thurston County Board of County Commissioners adopted Ordinance No. 13470 fixing rates and charges to be collected for 10 years to fund an on-site sewage system operation and maintenance program.
6. The on-site sewage system operation and maintenance program started January 1, 2007
7. Improvements in water quality allowed the Washington State Department of Health to reopen commercial shellfish harvesting areas 2010, 2012 and 2016 totaling 366 acres.
8. The Henderson Inlet Watershed Protection Area septic systems program contributed to these water quality improvements.
9. The 2017 *Henderson Inlet Fecal Coliform Total Maximum Daily Load Water Quality Effectiveness Monitoring Report* states that significant declines in pollution and improvements in water quality were seen in spite of an increase in population in the watershed and an increase in development within the urban growth area. The Department of Ecology states this is one of the most positive results seen in any Washington state watershed.
10. In order to continue to maintain the areas of improved water quality, and attempt to expand the areas of Henderson Inlet open to shellfish harvest, the on-site sewage system operation and maintenance program should be continued, and should continue to be funded by rates and charges.

11. Beginning January 1, 2018, the rates and charges should be adjusted to more fairly distribute the program costs associated with the septic systems located on a property, to cover the costs of the work program, and to reduce dependency on grants and other funding sources.

12. The work program should include a pollution identification and correction strategy to seek to identify sources of water pollution and take appropriate and effective actions to correct the pollution problem.

13. The 2018 rates and charges are to be adjusted by a \$2.00 increase over the 2017 rates on property with a low risk on-site sewage system, a \$6.00 increase on property with a high risk system, and adding a \$10.00 charge per on-site sewage system for properties with more than one system.

14. The proposed rates and charges for the on-site sewage system operation and maintenance program are reasonable and are established at a level necessary to fund the program.

15. The Board of County Commissioners held a public hearing on September, 12 2017.

NOW, THEREFORE, the Board of Thurston County Commissioners hereby ordains as follows:

**Section 1. Work Program.** The Henderson Inlet Shellfish Protection District and Nisqually Reach Shellfish Protection District Consolidated Work Program is amended to read as set forth in Attachment A.

**Section 2. Definitions.** All terms used in this Ordinance that are defined in Article IV of the Sanitary Code for Thurston County, including Appendix A to Article IV, shall have the meanings given in the Sanitary Code.

**Section 3. On-site Sewage System Operation and Maintenance Program Financing.**

The Henderson Inlet on-site sewage system operation and maintenance program shall apply to the area designated as the Henderson Watershed Protection Area established as a marine recovery area and area of special concern in Article IV of the Sanitary Code for Thurston County. The program and activities of the Henderson Inlet Shellfish Protection District to address on-site sewage system operation and maintenance shall be financed as follows:

A. **Rates and Charges.** The following annual rates and charges shall apply to all properties served by on-site sewage systems where any portion of the wastewater system, including a building and any collection, transport, treatment or disposal component, is within the Henderson Inlet Watershed Protection Area. Large on-site sewage systems (LOSS) are regulated by the Washington State Department of Health are not subject to these rates and charges. If portions of

a single on-site sewage system, other than a community on-site system (COSS), are present on more than one parcel, the lien for rates and charges shall only apply to the parcel where the sewage originates, as determined by the Thurston County Environmental Health Division. For a COSS, the lien for rates and charges shall apply to each property where the sewage originates and each property with a dispersal component.

Each year, the rates and charges shall be determined by improvements present on the property on June 30th of the previous year.

1. For the year 2018, the following annual charges shall apply to each parcel:
  - a. Charges for single family residences or unit volume of sewage (UVS):
    - i. \$40 per single family residence or unit volume of sewage (UVS), plus an additional \$10 for every additional residential unit or UVS; or
    - ii. \$110 per single family residence or UVS served by a High Risk on-site sewage system, plus \$10 for every additional residential unit or UVS. Risk level is determined in accordance with Article IV, Appendix A of the Sanitary Code for Thurston County.

For sewage flow from sources other than a single-family residence, mobile home site in a mobile home park, food establishment or school, the number of UVS will be determined by the system design flow or, where none is established in Thurston County records, then other available data acceptable to the Health Officer, such as water-use figures or numbers of employees or plumbing fixtures.

- b. \$185 for each COSS dispersal component located off-site from where the sewage originates.
    - c. \$185 for each food establishment and school, except those served by a Large On-site Sewage System.
  2. For each subsequent year, the charges shall be automatically adjusted each January 1 by the percentage increase, if any, in the April Consumer Price Index for the previous year. The maximum increase shall be 3.5%. "Consumer Price Index" for the purposes of this section shall mean the Urban Wage Earners and Clerical Workers Index for the Seattle-Tacoma-Bellevue area. All adjustments to the rates and charges based on the Consumer Price Index shall be rounded to the nearest whole dollar. An alternative calculation for automatically adjusting the charges may be adopted by further action of the Board of County Commissioners.

**B. Exemptions**

1. Senior/disabled exemption. The rates and charges on any parcel owned by a person who is currently granted an exemption under RCW 84.36.381 through .385 shall be reduced by 100%.
2. Properties exempted by RCW 90.72.070:
  - a. A dairy animal feeding operation with a certified dairy nutrient management plan as required in chapter 90.64 RCW and any other commercial agricultural operation on agricultural lands as defined in RCW 36.70A.030 shall be subject to rates and charges of no more than \$500.00 per year.
  - b. Facilities permitted and assessed fees for wastewater discharge under the NPDES.
  - c. Lands classified as forest land under Chapter 84.33 RCW.
  - d. Lands classified as timber land under Chapter 84.34 RCW.

**C. Collection**

1. The rates and charges authorized by this ordinance shall be included in Thurston County's property tax statements and shall be collected by the Thurston County Treasurer along with and in the same manner as property taxes are collected, including foreclosure of delinquent liens.
2. The rates and charges, and any interest, shall be due and payable on or before the 30th day of April and shall be delinquent after that date; however, if one-half of the rates and charges are paid on or before the 30th day of April, the remainder shall be due and payable on or before the 31st day of October and shall be delinquent after that date.

**D. Lien.** The rates and charges imposed by this ordinance shall be a lien against the property charged, which lien shall be superior to all other liens and encumbrances except general taxes and local improvement district liens and special assessments. Such liens shall be effective on January 1 of each year.

**E. Delinquent charges.** Delinquent charges shall bear interest at the rate of 12% per annum, computed on a monthly basis and shall be included with the lien for the charges.

**F. Corrections.** If the Environmental Health Division Director, or the Director's designee, determines that the rates and charges assessed against any property were incorrect based on errors in billing, incorrectly identified property or the location of the wastewater system, the rates

and charges may be corrected, provided that no corrections shall be allowed more than three years after the date payment was due without delinquency. Changes in the risk level of an on-site sewage system that result in adjustments to rates and charges assessed against any property shall be prospective only and no refund shall be allowed.

G. **Sunset.** The provisions of this section, entitled “On-site Sewage System Operation and Maintenance Program Financing”, as may be hereafter amended, are repealed effective December 31, 2027 unless re-enacted by the Board of County Commissioners.

**Section 4. 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 5. Effective Date.** This ordinance shall take effect immediately on the date adopted below.

ADOPTED: \_\_\_\_\_.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
Thurston County, Washington

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Chair

APPROVED AS TO FORM:

JON TUNHEIM  
PROSECUTING ATTORNEY

\_\_\_\_\_  
Vice-chair

\_\_\_\_\_  
Jane Futterman  
Sr. Deputy Prosecuting Attorney

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Commissioner

# Henderson Inlet Shellfish Protection District And Nisqually Reach Shellfish Protection District Consolidated Work Program

The Henderson Inlet and Nisqually Reach Shellfish Protection District Work Programs are 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 and Henderson Inlet. The Consolidated work program outlines the necessary steps needed to accomplish the requirements of RCW 90.72.030.

The Consolidated Work Program utilizes a phased approach in addressing the causes of fecal coliform contamination.

Phase 1: The first phase of the Consolidated 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 and Henderson Inlet.
    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 and Henderson Inlet 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, Nisqually Reach and Henderson Inlet watersheds.
  2. Sample McAllister, Woodard and Woodland Creeks.
  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 and Henderson Inlet.
  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.

- I. Continue public involvement:
  - A. Combine the two shellfish district stakeholder groups into one committee for both districts; and
  - B. Operate in an advisory role to the Board of County Commissioners and City Councils; and
  - C. Assist in developing a Phase 2 implementation work plan; and
  - D. Track completed actions with effectiveness in improving water quality; and
  - E. Meet only when necessary; and
  - F. The Board of County Commissioners will annually evaluate whether to continue the committee.
- II. The county and cities will continue their normal work programs that address bacteria loading in water.
  - A. Activities in Phase I, Section II will continue while the implementation work plan is being developed.
  - B. Implementation work plans will be submitted to the Board of County Commissioners for consideration as project details are identified.
- III. Continue to coordinate with other agencies identified in Phase 1, Section III.
- IV. Work Program Implementation.

In June 2003, the Board asked the Combined Shellfish Protection Districts' Stakeholder Group to develop an Implementation Work Plan. While doing this work the committee has recognized that there is a tremendous amount of work occurring that will help reduce the bacterial loading in Henderson Inlet and the Nisqually Reach. The Stakeholder Group recommends continuing with the same level of the current work and has provided a list of additional actions that are needed.

The following items are adopted to carry out recommendations of the Stakeholder Committees set forth in the "Henderson Inlet and Nisqually Reach Shellfish Protection Districts Implementation Work Plan" report dated March 1, 2005.

- A. Septic System Additional Work Needed:

Failed onsite sewage systems (OSS) contribute fecal coliform bacteria and other forms of harmful contamination into the Henderson Inlet and the Nisqually Reach. There is currently no adequate mechanism in place by Thurston County to monitor or control the operation and maintenance of all onsite systems. Additional work is still needed to address the contribution of bacteria by on-site septic systems including:



1. Approve the continuation of staff working on developing a Septic System Operation and Maintenance Proposal for the Henderson Inlet Watershed. Prepare appropriate documents to implement the program for consideration of adoption by the Board of Health.
2. Consider expanding the program into the Nisqually Reach District once the O&M program is implemented in Henderson Inlet Watershed.
3. With approval of an On-site Sewage System Operation and Maintenance program for the Henderson Inlet watershed in the Sanitary Code for Thurston County, Henderson Inlet Shellfish Protection District rates and charges will be an appropriate mechanism to provide a consistent funding source. Rates and charges should be established at a reasonable level to carry out an operation and maintenance program for on-site sewage systems in areas that may be contributing to the fecal coliform contamination of Henderson Inlet.
4. With establishment of the Nisqually Reach Watershed Protection Area as a Marine Recovery Area and Area of Special Concern in the Sanitary Code for Thurston County, Nisqually Reach Shellfish Protection District rates and charges will be an appropriate mechanism to provide a consistent funding source to fund an on-site sewage system operation and maintenance program. Rates and charges should be established at a reasonable level to carry out an operation and maintenance program for on-site sewage systems in areas that may be contributing to the fecal coliform contamination of Nisqually Reach

B. Stormwater Additional Work Needed:

Henderson Inlet and the Nisqually Reach receive stormwater runoff from urban portions of Lacey and Olympia, rural and agricultural portions of Thurston County, and Interstate 5. Stormwater runoff from urban areas and roads has been well documented to capture and convey bacteria. Stormwater and urban stream fecal coliform bacteria concentrations routinely exceed the shellfish standard (14 bacteria per 100 milliliters) by one to three orders of magnitude. During major storm events, when stormwater dominates stream flows, travel times between the urban environment and shellfish beds are short (a few hours or less), resulting in limited dilution and bacteria die-off. Under low slack tide conditions, brackish water containing a high percentage of stormwater covers shellfish beds.

1. Consider adopting the revised Regional Stormwater Manual.
2. Consider the continuation of developing Low Impact Development regulations and standards.
3. Direct staff to consider using proven innovative technology in County stormwater facilities if they effectively remove bacteria from the discharge.
4. Provide the recommendation of not allowing urban densities in the rural area to the cluster development task force.

5. Direct staff to seek funding opportunities to expand the current program in providing pet waste supplies to more subdivisions.

C. Land Use Additional Work Needed:

Water quality is a land use issue. With the possible exception of bacteria from wildlife, the contamination that has produced the downgrades of shellfish beds has resulted entirely from land development. This impact will increase as growth continues. Governments have a direct influence through regulations and policies on how land will be used. However, even though the government may have regulatory authority over some of the many types of land uses, citizens still need to have a sense of stewardship and take personal responsibility for the activities they engage in on their private and public lands.

1. Provide the Shellfish Protection Districts' land use recommendations to those groups working on Low Impact Development and the LAMIRD (Limited Area of More Intensive Rural Development) work groups.
2. Assess the effectiveness of existing County land use regulatory enforcement in coordination with other projects by:
  - a. Reviewing and identifying specific regulations that warrant penalty adjustments.
  - b. The review should include an evaluation of the need, efficacy, and potential funding sources for additional enforcement officers.

D. Adaptive Management Additional Work Needed:

Adaptive management is an ongoing process for continually improving management policies and practices by learning from the outcomes of program activities. It is a way to treat those policies and practices as experiments, and improve surface water management by learning from the ecosystems being affected. Adaptive management is most accurately defined as a strategy that actively incorporates scientific experimentation into management, however, most often in real-world practices; it is limited to incorporating performance assessments that rely on scientific methods to evaluate how well the actions achieved their objectives.

Develop an adaptive management strategy once the TMDL process is completed and as major categories of recommendations are approved and implemented.

E. Governance:

The stakeholders have invested a lot of personal time and energy in developing the Reports and Recommendations and the Implementation Work Plan and are interested in their implementation. They would also like to participate in providing input into further work needed and oversight in the implementation of those recommendations accepted by the Board of County Commissioner.

Direct the Shellfish Protection District Stakeholder Committee to continue to meet as necessary to:

1. Recommend to the Board the Annual Shellfish Protection Fund Work Plan.
2. Provide oversight in implementation of the plan.
3. Annually, determine whether the implementation of the recommendations is achieving the necessary reduction in bacteria. If the water quality does not improve, then recommend to the Board further actions necessary to do so.

Phase 3 for Henderson Inlet Shellfish Protection District:

The Septic System Operation and Maintenance Program has shown to be effective in reducing the contribution of bacteria by on-site sewage systems. Beginning January 1, 2018, the on-going programs performed in Phase II will be continued along with additional water quality monitoring to include the following elements:

1. Identify and seek corrections to failing on-site sewage systems.
2. Ensure that on-site sewage system owners are properly operating and maintaining their systems in accordance with their operational certificates.
3. Provide education and outreach opportunities for on-site sewage system owners to learn how to maintain and operate their systems.
4. Develop and implement a pollution identification and correction strategy to include more intensive water quality monitoring in areas with documented water quality problems. The strategy will seek to identify the sources of the pollution and take appropriate and effective actions to correct the pollution problem.
5. Ordinance changes needed to implement the programs and strategies will be presented for consideration of adoption by the Board of Health.