

**NOTICE OF PUBLIC HEARING
BEFORE THE THURSTON COUNTY BOARD OF HEALTH**

PURPOSE: Public hearing to receive testimony on a proposed ordinance to amend Article IV of the Thurston County Sanitary Code. Revisions are being considered to: define marine recovery areas in the sanitary code and to establish additional operation and maintenance requirements for on-site sewage systems within them; designate a marine recovery area and area of special concern called the Nisqually Reach Watershed Protection Area; establish exceptions to certain fees for on-site sewage systems on properties subject to Nisqually Reach Shellfish Protection District rates and charges for on-site sewage system operation and maintenance; and, to designate the Henderson Watershed Protection Area as a marine recovery area.

Copies of the proposed ordinance will be available beginning September 19, 2011 at the Thurston County Health Department, Environmental Health Division, Building 1, Thurston County Courthouse, 2000 Lakeridge Drive SW, Olympia, WA 98502; at the Nisqually Reach Watershed internet site at <http://www.co.thurston.wa.us/health/ehrp/nisqually.html>; and will be mailed upon request.

**DATE, TIME
and PLACE:** October 13, 2011 at 6:30 PM.
Thurston County Fairgrounds
Expo Center
3054 Carpenter Rd SE
Olympia, Washington

**CONTACT
PERSON:** Art Starry / Sue Davis
(360) 867-2587 and (360) 867-2643

DISABILITIES: Citizens with disabilities requiring special accommodation at the hearing should call (360) 786-5440 by 10:00 a.m. at least 3 days prior to the hearing. Citizens with hearing impairments may call the County's TDD line at (360) 754-2933.

Anyone interested may appear and be heard.

BOARD OF HEALTH
Lydia Hodgkinson
Clerk of the Board

ORDINANCE NO. _____

AN ORDINANCE amending Article IV, sections 3, 14.3.2.1.1, 16.4.9, 16.5.5, 21.4.5.2, 22, 27.1, and Appendix A of the Sanitary Code for Thurston County.

WHEREAS, the Board of Health adopts the following findings:

1. Pursuant to Chapter 70.05 RCW and Washington State Constitution Article XI, Section 11, the Board of Health (Board) has the power to enact rules and regulations as are necessary to preserve, promote and improve the public health.
2. Chapter 70.118A RCW authorizes local health jurisdictions to establish marine recovery areas imposing additional on-site sewage system requirements to reduce negative impacts of on-site sewage systems on shellfish growing areas that have been downgraded by the Washington State Department of Health.
3. In October 2000 the Washington State Department of Health downgraded seventy-four acres of commercial shellfish growing area in Nisqually Reach in Thurston County to a classification of "Restricted" because of water quality degradation.
4. In December 2001, as required by state law when a commercial shellfish growing area status is downgraded, Thurston County formed the Nisqually Reach Shellfish Protection District.
5. Within the Nisqually Reach commercial shellfish growing area between Johnson Point and the Nisqually River delta, 1,850 acres remain "Prohibited" to commercial shellfish harvest.
6. The Washington State Department of Health determined that degradation of the Nisqually Reach water quality is primarily due to nonpoint sources of water pollution.
7. Studies performed by the Washington State Department of Ecology (Nisqually River Basin Fecal Coliform Bacteria and Dissolved Oxygen Total Maximum Daily Load Study, May 2005), Washington State Department of Health (Sanitary Survey of Nisqually Reach, July 2006 and 2005 Shoreline Survey of the Nisqually Reach Shellfish Growing Area, October 2005) and Thurston County Public Health and Social Services Department (Nisqually Reach Pollution Source Identification Task 5. DNA Typing Analysis, May 2004) identified on-site sewage systems as a source of contamination contributing to the water pollution in Nisqually Reach.
8. Through dye testing of septic systems along the Nisqually Reach shoreline between 1994 and 1999, Thurston County Public Health and Social Service Department (Department) found that 26 to 29 percent of the systems were failing, which is a failure rate at least twice as high as the failure rate for all Thurston County marine shorelines.
9. On January 7, 2008, the Board adopted the *Thurston County On-site Sewage System Management Plan*, developed by an advisory committee, to comply with requirements of chapter 246-272A WAC and ch. 70.118A RCW.

10. The *Thurston County On-site Sewage System Management Plan* states that both the Henderson Watershed Protection Area and the Nisqually Reach Shellfish Protection District should be recognized as a Marine Recovery Areas, and that development and implementation of on-site sewage system monitoring, maintenance and education programs will be a priority for Nisqually Reach.

11. The *Thurston County On-site Sewage System Management Plan* provides a strategy for marine recovery in Nisqually Reach that includes on-site sewage system monitoring, maintenance and education programs, modeled after the Henderson Watershed Protection Area program.

12. The presence of human sewage from failing on-site sewage systems in the waters of Nisqually Reach and its tributaries poses a risk to the public health of Thurston County residents and visitors.

13. An on-site sewage system operation and maintenance program will provide a means to address water quality degradation in Nisqually Reach resulting from on-site sewage systems.

14. Pursuant to Article IV, section 22 of the Sanitary Code for Thurston County, a marine recovery area and area of special concern should be established for the Nisqually Reach, to be known as the Nisqually Reach Watershed Protection Area, to minimize public health risk and implement enhanced operation and maintenance requirements for on-site sewage systems.

15. The Nisqually Reach Watershed Protection Area should include the portion of the Nisqually Reach Shellfish Protection District where on-site sewage systems are likely to impact water quality in Nisqually Reach.

16. The Thurston County Public Health and Social Services Department has determined that on-site sewage systems in the area south of McAllister Creek are not likely to significantly contribute to bacterial pollution in Nisqually Reach due to the hydrologic characteristics of the sub-basin, so this area should not be included in the Nisqually Reach Watershed Protection Area.

17. The Nisqually Reach Watershed Protection Area should include the area near the lower reach of the Nisqually River because septic system failures in the area have the potential to contribute pollution to the Nisqually Reach and are in close proximity to an area of the Nisqually Reach where commercial shellfish harvest has been downgraded to “prohibited” status.

18. The existing Henderson Watershed Protection Area area of special concern should be designated as a marine recovery area in accordance with the recommendations and proposed strategy of the *Thurston County On-site Sewage System Management Plan*.

19. The amendments will enable Thurston County to better preserve, promote and protect the public health.

NOW, THEREFORE, THE THURSTON COUNTY BOARD OF HEALTH HEREBY ORDAINS AS FOLLOWS:

Section 1. Article IV, section 3 of the Sanitary Code for Thurston County is hereby amended to include the following definition:

“Marine recovery area” means an area of definite boundaries where the health officer or board of health has determined that additional requirements for existing on-site sewage disposal systems may be necessary to reduce potential failing systems or minimize negative impacts of on-site sewage disposal systems.

Section 2. Article IV, Section 14.3.2.1.1 of the Sanitary Code for Thurston County is hereby amended to read as follows:

14.3.2.1.1 The Health Officer may waive the Health Officer’s inspection unless the OSS is within a marine recovery area, an area of special concern, or an area that poses an increased public health risk.

Section 3. Article IV, Section 16.4.9 of the Sanitary Code for Thurston County is hereby amended to read as follows:

16.4.9 Establish appropriate operation and maintenance requirements for OSS in areas posing increased public health risk, marine recovery areas, and areas of special concern in accordance with section 22 of this Article.

Section 4. Article IV, Section 16.5.5 of the Sanitary Code for Thurston County is hereby amended to read as follows:

16.5.5 OSS in marine recovery areas, areas of special concern, and areas of increased public health risk established in accordance with section 22 following the requirements adopted by the Board of Health; and

Section 5. Article IV, Section 21.4.5.2 of the Sanitary Code for Thurston County is hereby amended to read as follows:

21.4.5.2 The lot is outside ~~an~~ marine recovery areas, areas of special concern, and areas posing increased public health risk ~~established by the Board of Health~~; and

Section 6. Article IV, Section 22 of the Sanitary Code for Thurston County is hereby amended to read as follows:

SECTION 22 MARINE RECOVERY AREAS, AREAS OF SPECIAL CONCERN AND AREAS OF INCREASED PUBLIC HEALTH RISK.

- 22.1 The Health Officer may investigate and take appropriate action to minimize public health risk in formally designated marine recovery areas, areas of special concern, or areas posing an increased public health risk established by the Board of Health such as
- 22.1.1 Shellfish protection districts or shellfish growing areas;
 - 22.1.2 Sole Source Aquifers designated by the U.S. Environmental Protection Agency;
 - 22.1.3 Areas with a critical recharging effect on aquifers used for potable water as designated under chapter 17.15 of the Thurston County Code (Critical Areas Ordinance);
 - 22.1.4 Designated public water supply wellhead protection areas;
 - 22.1.5 Up-gradient areas directly influencing water recreation facilities designated for swimming in natural waters with artificial boundaries within the waters as described by the Water Recreation Facilities Act, chapter 70.90 RCW;
 - 22.1.6 Areas designated by the Washington State Department of Ecology as special protection areas under WAC 173-200-090, Water Quality Standards for Ground Waters of the State of Washington;
 - 22.1.7 Wetland areas under production of crops for human consumption;
 - 22.1.8 Frequently flooded areas delineated by the Federal Emergency Management Agency; ~~and~~;
 - 22.1.9 Areas identified and delineated by the Board of Health in consultation with the Washington State Department of Health to address public health threats from OSS;
 - 22.1.10 Marine waters that are listed by the Washington State Department of Ecology under section 303(d) of the federal clean water act (33 U.S.C. Sec. 1251 et seq.) for low dissolved oxygen or fecal coliform; and
 - 22.1.11 Marine waters where nitrogen has been identified as a contaminant of concern by the health officer.
- 22.2 The Board of Health may impose more stringent requirements on any new development and corrective measures to protect public health upon existing developments in marine recovery areas, areas of special concern, or areas posing increased public health risk, including:
- 22.2.1 Additional location, design, and/or performance standards for OSS;

- 22.2.2 Larger land areas for new development;
 - 22.2.3 Prohibition of development;
 - 22.2.4 Additional operation, maintenance, and monitoring of OSS performance;
 - 22.2.5 Requirements to upgrade, alter or modify existing OSS;
 - 22.2.6 Requirements to abandon existing OSS; and
 - 22.2.7 Monitoring of ground water or surface water quality.
- 22.3 Within marine recovery areas, areas of special concern, or areas posing increased public health risk, in addition to the operation and maintenance requirements of section 16, the owner of an OSS is required to have an inspection conducted by a person approved, certified or authorized by the Health Officer who shall:
- 22.3.1 Inspect every OSS at least once every three years;
 - 22.3.2 Submit the following written information to both the Department and the property owner within 30 days following the inspection:
 - 22.3.2.1 Location of the tank, if not on file with the Department;
 - 22.3.2.2 Structural condition of the tank(s), including baffles, and OSS components;
 - 22.3.2.3 Depth of scum and solids in the tank;
 - 22.3.2.4 Problems detected with any part of the OSS;
 - 22.3.2.5 Maintenance needed;
 - 22.3.2.6 Maintenance provided at time of inspection; and
 - 22.3.2.7 Other information as required by the Department.
 - 22.3.3 Immediately report failures to the Department.
- 22.4 The Henderson Watershed Protection Area is designated as a marine recovery area and an area of special concern as set forth in Appendix A. The Henderson Watershed Protection Area, and all requirements for the Area set forth in this Article, as may be hereafter amended, shall terminate on December 31, 2017 unless re-enacted by the Board of Health.

22.5 The Nisqually Reach Watershed Protection Area is designated as a marine recovery area and an area of special concern as set forth in Appendix A. The Nisqually Reach Watershed Protection Area, and all requirements for the Area set forth in this Article, as may be hereafter amended, shall terminate on December 31, 2023 unless re-enacted by the Board of Health.

Section 7. Article IV, Section 27.1 of the Sanitary Code for Thurston County is hereby amended to read as follows:

27.1 Any person aggrieved by a decision, an inspection or notice made by the Health Officer shall have the right to appeal the matter as specified in Article I, except for (1) appeals of disciplinary actions taken pursuant to section 23 of Article IV, which shall be governed by section 27.2 and (2) determinations of the applicability of Henderson Watershed Protection Area and Nisqually Reach Watershed Protection Area requirements which shall be governed by Appendix A of this article.

Section 8. Article IV, Appendix A of the Sanitary Code for Thurston County is hereby amended to read as set forth in Attachment A, attached hereto and incorporated by reference.

Section 9. Effectiveness. This ordinance shall take effect immediately upon adoption.

Section 10. 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.

ADOPTED: _____.

ATTEST:

BOARD OF HEALTH
Thurston County, Washington

Clerk of the Board

Chairman

APPROVED AS TO FORM:
JON TUNHEIM
PROSECUTING ATTORNEY

Vice Chair

Jane Futterman
Deputy Prosecuting Attorney

Commissioner

ATTACHMENT A

Article IV, Appendix A

Henderson Watershed Protection Area

1. **Creation of Areas of Special Concern.** Pursuant to Article IV, section 22, the Sanitary Code for Thurston County, the Henderson Watershed Protection Area and Nisqually Reach Watershed Protection Area ~~is are~~ established as ~~an~~ areas of special concern and marine recovery areas.

2. **~~Henderson Watershed Protection Area Maps.~~**

The Henderson Watershed Protection Area includes all property where drainage flows toward Henderson Inlet within the area generally depicted on the map attached hereto as Appendix A-1. The official Henderson Watershed Protection Area Map is a parcel-specific map adopted as a part of this Article that shall be maintained by the Health Officer.

The Nisqually Reach Watershed Protection Area includes all property where drainage flows toward Nisqually Reach within the area generally depicted on the map attached hereto as Appendix A-2. The official Nisqually Reach Watershed Protection Area Map is a parcel-specific map adopted as a part of this article that shall be maintained by the Health Officer.

If any portion of a parcel is within the area, the entire parcel will be considered to be within the area.

The Health Officer shall review the ~~Henderson Watershed Protection Area~~ maps annually to update the boundary based on any new information obtained regarding drainage flow and location of OSS and other improvements.

3. **On-site Sewage System Regulations.** Any property served by an OSS where any portion of the OSS (including a building and any collection, transport, treatment, and soil dispersal components) is within ~~the Henderson Watershed Protection Area~~ watershed protection area will be required to comply with operation and maintenance requirements established for the Area. If any portion of an OSS lies within more than one watershed protection area, the OSS will be subject to the operation and maintenance requirements of only one watershed protection area as determined in accordance with policies and procedures adopted by the Health Officer.

4. **Operation and Maintenance Requirements.** The following operation and maintenance requirements shall apply to all OSS within the Henderson Watershed Protection Area and Nisqually Reach Watershed Protection Area:

(a) **Operational Certificates**

All OSS within the Area are required to have renewable Operational Certificates in accordance with Section 16 of this article. The Operational Certificates must be kept current and renewed on prescribed schedules. The Operational Certificate requirements shall include routine inspections and maintenance and submission of

inspection reports to the Health Officer.

An Operational Certificate shall not be issued or renewed for a OSS that is failing.

The Health Officer shall establish a schedule to phase in implementation of the Operational Certificate requirements within the Area.

(b) **High and Low Risk OSS Designation**

The Health Officer shall establish policies and procedures adopting criteria for ranking OSS as low or high risk and setting minimum inspection and evaluation requirements for OSS within the ~~Henderson W~~watershed ~~P~~rotection ~~A~~rea. The criteria to rank OSS shall be based on soil type, proximity to surface water and other appropriate criteria.

- (i) A High Risk OSS is an OSS that, if failing, would pose a high risk to public health by contributing to water quality degradation.
- (ii) A Low Risk OSS is an OSS that, if failing, would pose a lower risk to public health and would be less likely to contribute to water quality degradation.

(c) **Dye Test Evaluations**

For High Risk OSS, a dye test evaluation shall be required as a condition of the Operational Certificate to determine whether or not the OSS is failing. Dye test evaluations shall be required to be performed every other renewal cycle for the Operational Certificate.

Dye test evaluations shall be conducted in accordance with policies and procedures adopted by the Health Officer.

Dye test evaluations may be performed only by authorized Department staff or other persons approved by the Health Officer as having the necessary training and expertise. The Health Officer shall establish minimum qualifications for individuals to be approved to perform dye test evaluations. Before starting a dye test evaluation, private evaluators shall submit a dye test plan to the Health Officer for approval. Failure to follow adopted procedures will result in withdrawal of approval to perform these evaluations.

5. **Conversion of OSS to public sewer.** The Board of Health may require the abandonment of OSS and connection to public sewer systems where the following conditions exist:

- (a) The area is within the City of Lacey or Olympia or their urban growth areas; and
- (b) The public sewer system has the capacity and the connection is permitted by the sewer utility; and

- (c) A groundwater or surface water pollution problem has been confirmed in excess of state or federal water quality limits or adopted county action levels; the pollutant of concern is associated with OSS; and the area is ~~(+)~~ within the aquifer recharge area or the surface water drainage basin where the water quality problem exists;
- (d) ~~6.5.4~~ The Health Officer determines the OSS are, more likely than not, significant contributors to the pollutant level based on the density, design or condition of the OSS and/or the geology where the OSS are located.

Where the above criteria are met and the Board of Health determines that connection to sewer is necessary to protect surface water, ground water, or otherwise protect public health based on aquifer vulnerability, water quality correction and water contamination prevention information, the Health Officer shall issue an order to the owners of properties served by OSS in the affected area to connect to sewer or abandon the existing OSS. The Health Officer shall establish a reasonable schedule for compliance. The Health Officer shall make a request to the Board of Health to impose a moratorium on all new OSS within the affected area, in conjunction with the order to abandon the OSS and connect to public sewer. The Health Officer shall notify property owners of the order where OSS permits have been approved but the systems have not yet been constructed.

6. **Owner Request for Review.** Once a year there will be a review period for property owners to request review of whether the Henderson Watershed Protection Area requirements apply to their properties.

- (a) Property owners may request review of the following:
 - (i) Whether their property is served by an OSS;
 - (ii) Whether their property drains toward Henderson Inlet or Nisqually Reach;
 - (iii) Whether the location of any portion of their OSS is within the Henderson Watershed Protection Area;
 - (iv) Whether their OSS is a high-risk OSS or a low-risk OSS.

No other review or appeal will be allowed.

- (b) Applications for review shall be submitted to the Environmental Health Division Director, or Director's designee, on a form provided by the Department. The applicant may submit any information (maps, photographs, details) to support the adjustment requested.

The burden of proof shall be on the applicant to show that the adjustment sought should be granted.

The Director will consider all information submitted by the applicant and any information on file with the Department regarding the property. The Director may request a meeting with the applicant and Department staff to consider available information regarding the review.

- (c) Applications for review must be received by April 30th of each year. For applications received by April 30th, the Director will issue a letter of determination by June 30th. If the Director determines that an adjustment is warranted, the adjustment shall be made effective for the next year after the date of the determination.

The determination is final and there shall be no further right of administrative appeal.

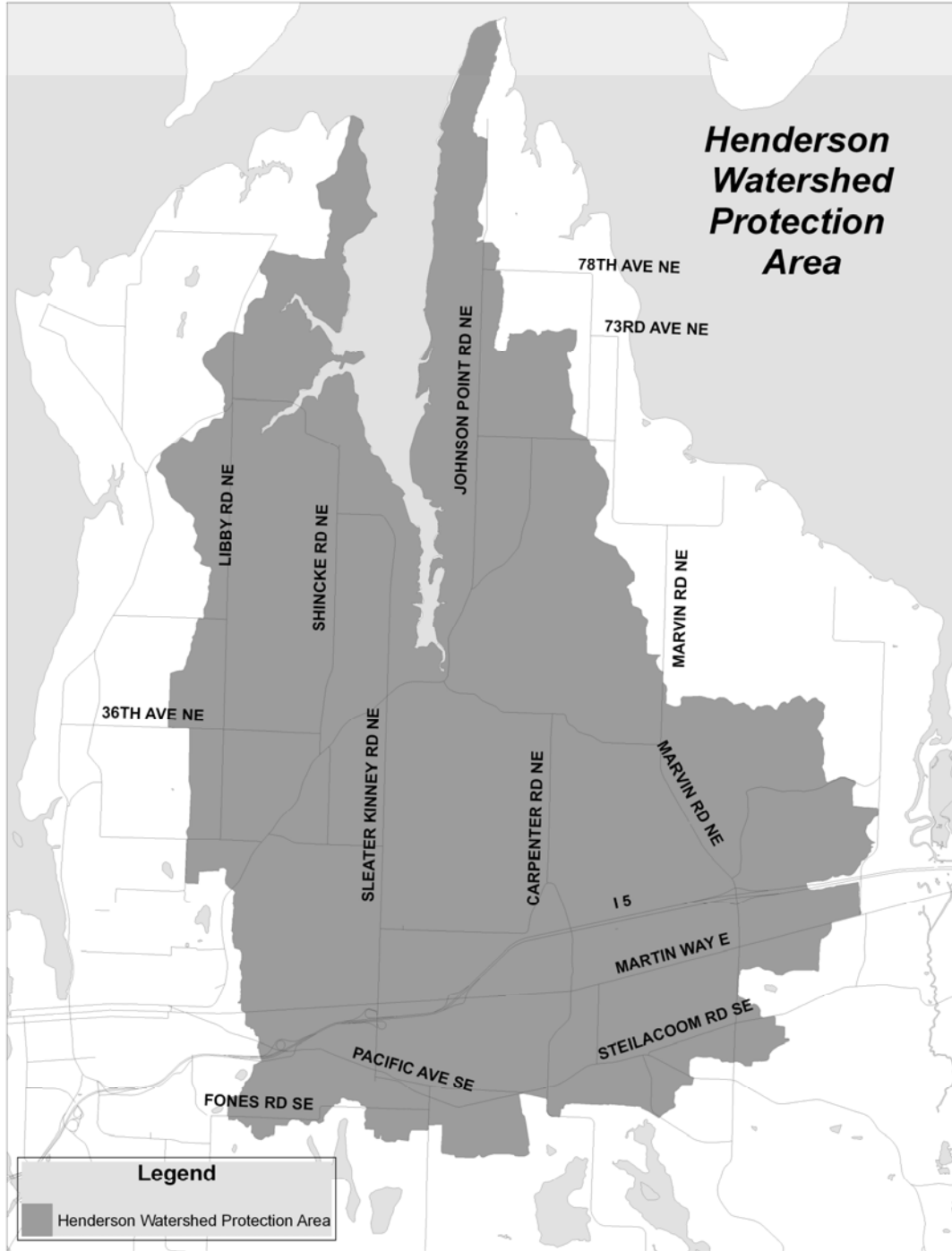
7. **Corrections and Adjustments.** As new information is obtained ~~and~~, based on the adopted policies, procedures, and program criteria, the Health Officer may make appropriate adjustments and corrections to properties included in the Area, OSS risk rankings, conditions in Operational Certificates, and other appropriate adjustments; except for expansion of the ~~Henderson Watershed Protection Area~~ boundary which would require legislative action by the Board of Health. Property owners affected by any corrections and adjustments shall be notified of such corrections and adjustments at least 30 days prior to the effective date of those changes.

8. **Fees.** The Operational Certificate renewal fee and Areas of Special Concern Annual Regulatory Fees set forth in Article I, Appendix A of this code shall not apply within the ~~Henderson Inlet Shellfish Protection District watershed protection areas. Parcels in the Henderson Watershed Protection Area~~ that are subject to shellfish protection district rates and charges ~~for an of the Henderson Inlet Shellfish Protection District On-site Sewage System Operation and Maintenance program.~~

9. **Program Evaluation.** Five years after creation of ~~the Henderson Weach watershed Protection Area~~, the Health Officer will conduct an evaluation of the program and activities and submit a report to the Board of Health.

Appendix A-1

Henderson Watershed Protection Area Map



Appendix A-2

Nisqually Reach Watershed Protection Area Map

