

1 FILE NO. 21A

PROPOSAL NO. 95-134S

2  
3 Sponsored by: Councilmember Karen Biskey

4 Requested by: County Executive/Public Works and Utilities Department

5  
6 **ORDINANCE NO. 95-134S**

7 **AN ORDINANCE OF THE PIERCE COUNTY COUNCIL CREATING THE**  
8 **ROCKY BAY SHELLFISH PROTECTION DISTRICT OF PIERCE**  
9 **COUNTY; ESTABLISHING THE BOUNDARIES OF THE DISTRICT; AND**  
10 **DIRECTING THE PIERCE COUNTY SURFACE WATER MANAGEMENT**  
11 **UTILITY, IN COORDINATION WITH OTHER GOVERNMENTAL**  
12 **ENTITIES, TO ESTABLISH A ROCKY BAY SHELLFISH PROTECTION**  
13 **PROGRAM PRIOR TO FEBRUARY 8, 1996.**

14 WHEREAS, on August 11, 1995, Pierce County received notification  
15 of a reclassification of certain portions of the commercial shellfish  
16 growing area of Rocky Bay, which is located on Puget Sound in Pierce  
17 County; and

18 WHEREAS, said notification was received from the Office of  
19 Shellfish Programs, of the Department of Health of the State of  
20 Washington; and

21 WHEREAS, RCW Chapter 90.72, "Shellfish District" directs the  
22 County to establish a Shellfish Protection District within 180 days  
23 of such a downgrade and to establish a program to address the  
24 reason(s) for the downgrade; and

25  
26 WHEREAS, the Tacoma-Pierce County Health Department determined  
27 that degradation of Rocky Bay water quality is primarily due to non-  
28 point sources; and

1 WHEREAS, Rocky Bay is contained in Key Peninsula, Gig Harbor,  
2 and Islands Watershed, for which a Non-Point Watershed Action Plan is  
3 currently being developed; and  
4

5 WHEREAS, pursuant to RCW Chapter 36.89 and Pierce County Code  
6 Chapter 11.02, the Storm Drainage and Surface Water Management  
7 Utility of Pierce County is responsible for providing management  
8 programs to remedy non-point surface water pollution as it exists in  
9 unincorporated areas of Pierce County; and  
10

11 WHEREAS, the Storm Drainage and Surface Water Management Utility  
12 of the Pierce County Public Works and Utilities Department, and the  
13 Tacoma-Pierce County Health Department support the formation of a  
14 Shellfish Protection District; and  
15

16 WHEREAS, Rocky Bay is a major shellfish producing watershed in  
17 Pierce County; and  
18

19 WHEREAS, non-point water pollution sources, including failing  
20 on-site sanitary sewage systems and agricultural surface water  
21 runoff, threaten the public health and safety of shellfish harvesting  
22 within the watershed of Rocky Bay; NOW, THEREFORE,  
23

24 BE IT ORDAINED by the Council of Pierce County:  
25

26 Section 1. The Pierce County Council hereby creates the Rocky  
27 Bay Shellfish Protection District as authorized in RCW Chapter 90.72.  
28

1 Section 2. The legal boundaries of the Rocky Bay Shellfish  
2 Protection District are as indicated in Exhibit "A" to this  
3 Ordinance, which is attached hereto and incorporated by reference.  
4

5 Section 3. The Pierce County Council hereby directs the Pierce  
6 County Surface Water Management Utility to perform as lead agency, in  
7 coordination with the Tacoma-Pierce County Health Department, the  
8 Washington State Department of Health, the Washington State  
9 Department of Ecology, Puget Sound Water Quality Authority, Mason  
10 County, Kitsap County, Conservation Districts and other appropriate  
11 entities, to establish a Rocky Bay Shellfish Protection Program.  
12

13 Section 4. The Pierce County Council further directs the Pierce  
14 County Surface Water Management Utility to prepare and present to the  
15 Council the Utility's shellfish protection program plan prior to  
16 January 5, 1996.

17 PASSED this 20<sup>th</sup> day of December, 1995.

18 ATTEST:

PIERCE COUNTY COUNCIL  
Pierce County, Washington

19  
20 Sandy Bassett, Acting  
21 Clerk of the Council

Seelye W. Wason  
Council Chair

22 Approved as to Form Only:

PIERCE COUNTY EXECUTIVE

23  
24 Wayne P. Fetting  
25 Deputy Prosecuting Attorney

David Stephens  
Approved  Vetoed  this  
26 21 day of Dec 1995.

27 PUBLIC HEARING NOTICE DATE: November 8, 1995  
EFFECTIVE DATE: January 5, 1996

1 EXHIBIT "A" TO ORDINANCE NO. 95-134S

2  
3 BOUNDARIES OF THE ROCKY BAY SHELLFISH

4 PROTECTION DISTRICT

5  
6 Township 22 North, Range 1 West including: all of Sections 13, 14, 15,  
7 22, 23, 24, 27, 34; and the Northwest Quarter of Section 25, the  
8 Northwest Quarter of Section 35, the Northeast Quarter of Section 26,  
9 the Northwest Quarter of Section 26, the Southwest Quarter of Section  
10 26 AND:

11  
12 Township 22 North, Range 1 East, including: the Northeast Quarter of  
13 Section 18, the Northwest Quarter of Section 18, and the Southwest  
14 Quarter of Section 18.

**AFFIDAVIT OF PUBLICATION**

State of Washington, County of Pierce, ss:  
James Martin-Almy or Jamie Martin-Almy, or Shannon Hirska, being first duly sworn on oath depose and say that they are publishers or publishers' authorized representatives of THE SOUTH PIERCE COUNTY DISPATCH, a weekly newspaper.

That said newspaper is a legal newspaper and it is now and has been for more than six months prior to the date of publication herein-after referred to, published in the English language continually as a weekly newspaper, in Eatonville, Pierce County, Washington, and it now and during all of said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the annexed is a true copy of this legal advertisement as it was published in regular issues (not in supplement form) of said newspaper

for 1 consecutive weeks. First publication was on the 10 day of January, 1996 and last publication was on the 10

day of January, 1996 and that such newspaper was regularly distributed to its subscribers during all of said periods.

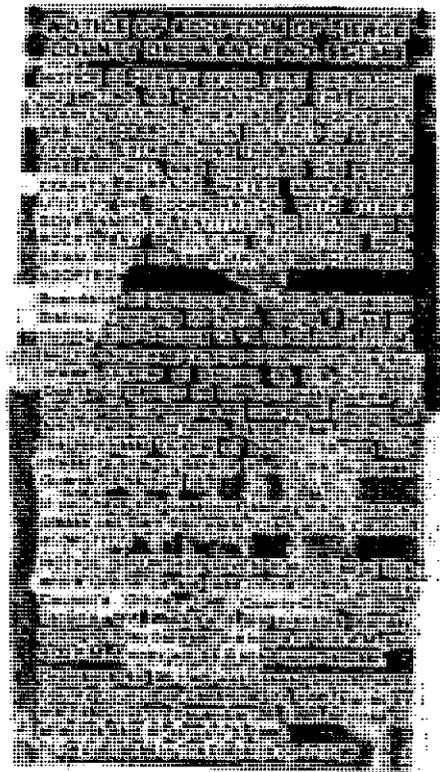
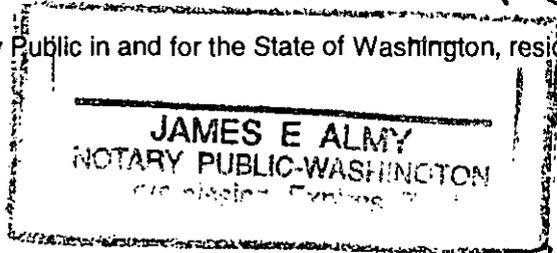
*Shannon Hirska*

Signature

Subscribed and sworn to before me this 10 day of January, 1996.

*James Almy*

Notary Public in and for the State of Washington, residing in Graham.



95-1345  
#1056



# Pierce County

Office of the County Council

930 Tacoma Avenue South, Room 1046  
Tacoma, Washington 98402-2176  
(206) 591-7777  
FAX (206) 591-7509  
1-800-992-2456

January 3, 1996

South Pierce County Dispatch  
P.O. Box 248  
Eatonville, WA 98328-0248

Enclosed for publication in your paper, issue(s) of January 10,  
1996, is the Notice of Adoption for Ordinance No. 95-134S.

Please submit bill for same, together with proof of publication  
in DUPLICATE and invoices in TRIPLICATE, to the Office of the Pierce  
County Council, 930 Tacoma Avenue, Room 1046, Tacoma, WA 98402.

Please submit your bill and affidavit IMMEDIATELY after the  
last date of publication.

Sincerely,

A handwritten signature in cursive script that reads "Sandy Bassett".

Sandy Bassett, Deputy Clerk  
Pierce County Council

encl



NOTICE OF ADOPTION  
OF PIERCE COUNTY ORDINANCE NO. 95-134S

NOTICE IS HEREBY GIVEN THAT ORDINANCE NO. 95-134S,

AN ORDINANCE OF THE PIERCE COUNTY COUNCIL CREATING THE ROCKY BAY SHELLFISH PROTECTION DISTRICT OF PIERCE COUNTY; ESTABLISHING THE BOUNDARIES OF THE DISTRICT; AND DIRECTING THE PIERCE COUNTY SURFACE WATER MANAGEMENT UTILITY, IN COORDINATION WITH OTHER GOVERNMENTAL ENTITIES, TO ESTABLISH A ROCKY BAY SHELLFISH PROTECTION PROGRAM PRIOR TO FEBRUARY 8, 1996, HAS BEEN ADOPTED.

Boundaries of the Rocky Bay Shellfish Protection District:  
Township 22 North, Range 1 West including: all of Sections 13, 14, 15, 22, 23, 24, 27, 34; and the Northwest Quarter of Section 25, the Northwest Quarter of Section 35, the Northeast Quarter of Section 26, the Northwest Quarter of Section 26, the Southwest Quarter of Section 26 AND: Township 22 North, Range 1 East, including: the Northeast Quarter of Section 18, the Northwest Quarter of Section 18, and the Southwest Quarter of Section 18.

If you have any questions about this ordinance, please call Gerri Rainwater, Clerk of the Council, at 591-7777.

NOTICE IS FURTHER GIVEN that copies of this entire Ordinance are filed in the Pierce County Council's Office, 1046 County-City Building, Tacoma, WA 98402, and are available Monday through Friday between the hours of 9:00 A.M. and 4:00 P.M. A copy will be mailed upon request.

Ordinance No. 95-134S was passed by the Pierce County Council on December 20, 1995, signed by the Executive on December 26, 1995, and has an effective date of January 5, 1996.

Publish: January 10, 1996

# AFFIDAVIT OF PUBLICATION

State of Washington, County of Pierce, ss:

James Martin-Almy or Jamie Martin-Almy, or Shannon Hirska, being first duly sworn on oath depose and say that they are publishers or publishers' authorized representatives of THE SOUTH PIERCE COUNTY DISPATCH, a weekly newspaper.

That said newspaper is a legal newspaper and it is now and has been for more than six months prior to the date of publication herein-after referred to, published in the English language continually as a weekly newspaper, in Eatonville, Pierce County, Washington, and it now and during all of said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the annexed is a true copy of this legal advertisement as it was published in regular issues (not in supplement form) of said newspaper

for 1 consecutive weeks. First publication was on the 8 day of November, 1995 and last publication was on the 8 ✓

day of November, 1995 and that such newspaper was regularly distributed to its subscribers during all of said periods.

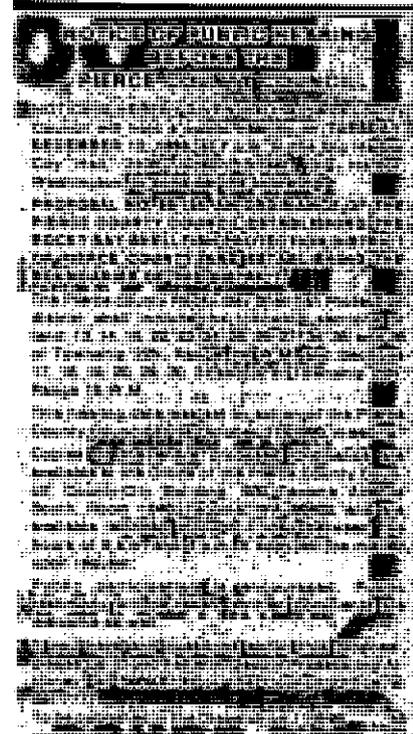
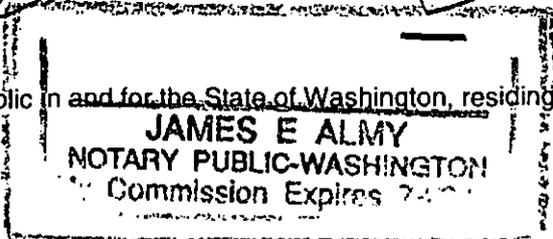
Shannon Hirska

Signature

Subscribed and sworn to before me this 8 day of November, 1995.

James E Almy

Notary Public in and for the State of Washington, residing in Graham.



95-134  
\$1056



# Pierce County

Office of the County Council

930 Tacoma Avenue South, Room 1046  
Tacoma, Washington 98402-2176  
(206) 591-7777  
FAX (206) 591-7509  
1-800-992-2458

November 1, 1995

South Pierce County Dispatch  
P.O. Box 248  
Eatonville, WA 98328-0248

Enclosed for publication in your paper, issue(s) of November 8, 1995, is the Notice of Public Hearing for Proposal No. 95-134.

Please submit bill for same, together with proof of publication in DUPLICATE and invoices in TRIPLICATE, to the Office of the Pierce County Council, 930 Tacoma Avenue, Room 1046, Tacoma, WA 98402.

Please submit your bill and affidavit IMMEDIATELY after the last date of publication.

Sincerely,

  
Sandy Bassett, Deputy Clerk  
Pierce County Council

Attachment



NOTICE OF PUBLIC HEARING  
BEFORE THE PIERCE COUNTY COUNCIL

NOTICE IS HEREBY GIVEN that the Pierce County Council will hold a public hearing on **TUESDAY, DECEMBER 12, 1995**, at 7 p.m. in the Gig Harbor City Hall, 3105 Judson Street, Gig Harbor, Washington, to consider the following:

**PROPOSAL NO. 95-134, AN ORDINANCE OF THE PIERCE COUNTY COUNCIL ESTABLISHING THE ROCKY BAY SHELLFISH PROTECTION DISTRICT OF PIERCE COUNTY; AND ESTABLISHING THE BOUNDARIES OF THE DISTRICT.**

The Pierce County Rocky Bay Shellfish Protection district shall include the following sections of land: 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, and 36 of Township 22N, Range 1W W.M. and Sections 17, 18, 19, 20, 29, 30, 31 and 32 of Township 22N, Range 1E W.M.

This hearing date was set by action of the Pierce County Council at its October 31, 1995, meeting.

Copies of the entire proposed Ordinance are available in the Office of the Pierce County Council, County-City Building, 930 Tacoma Avenue South, Room 1046, Tacoma, WA 98402, and are available Monday through Friday between the hours of 9 a.m. and 4 p.m. A copy will be mailed upon request.

Public participation is encouraged. Public testimony will be taken. Written comments are welcome as well.

If you have any questions about this proposal, please call Lloyd Fetterly, Deputy Prosecuting Attorney, at 596-6730 or the Council Office at 591-7777.

Publish: November 8, 1995



# Pierce County

Office of the County Council

930 Tacoma Avenue South, Room 1046  
Tacoma, Washington 98402-2176  
(206) 591-7777  
FAX (206) 591-7509  
1-800-992-2456

*Sent to attached  
SP*

## PIERCE COUNTY COUNCIL PUBLIC MEETING NOTICE

PROPOSAL NO. 95-134, AN ORDINANCE OF THE PIERCE COUNTY COUNCIL ESTABLISHING THE ROCKY BAY SHELLFISH PROTECTION DISTRICT OF PIERCE COUNTY; AND ESTABLISHING THE BOUNDARIES OF THE DISTRICT.

**MEETING DATE:** TUESDAY, DECEMBER 12, 1995

**TIME:** 7 P.M.

**PLACE:** Gig Harbor City Hall  
3105 Judson Street  
Gig Harbor, Washington

**CONTACT:** Lloyd Fetterly, Deputy Prosecuting Attorney, at  
596-6730 or the Council Office at 591-7777.

This proposal is scheduled for final consideration at this meeting. The Council encourages public participation. Public testimony will be taken. Written comments are welcome as well.

Dated: November 1, 1995



95-134 IPL

^E

JOHN TRENT

PW&U

ANNEX

^E

DON PERRY

PW&U

WATER RESOURCES

GRAVELLY LAKE DR

^E

KEN CANFIELD

PW&U

STORM DRAINAGE & SWM

BRISTONWOOD DR

^E

LLOYD FETTERLY

PA

HESS BUILDING

^E

ROY HUBERT

WATERSHED MANAGER

SURFACE WATER MANAGEMENT

BRISTONWOOD DR

^E



# Pierce County

Office of the County Council

930 Tacoma Avenue South, Room 1046  
Tacoma, Washington 98402  
Tel. (206) 591-7777  
FAX (206) 591-7509  
1-800-992-2456

November 2, 1995

## NOTICE OF HEARINGS

### Rules and Operations Committee Meeting and Pierce County Council Hearing

RE: PROPOSAL NO. 95-134, AN ORDINANCE OF THE PIERCE COUNTY COUNCIL ESTABLISHING THE ROCKY BAY SHELLFISH PROTECTION DISTRICT OF PIERCE COUNTY; AND ESTABLISHING THE BOUNDARIES OF THE DISTRICT.

#### Rules & Operations Committee Meeting:

Date: Tuesday, November 7, 1995  
Time: 9:00 A.M.  
Place: Council Conference Room  
County-City Building, Room 1046  
930 Tacoma Avenue South  
Tacoma, WA 98402

Final consideration of Proposal No. 95-133 by the full Council has also been scheduled as follows:

Pierce County Council Meeting: Please note this meeting will be held in Council District No. Seven in lieu of the regular 4 p.m. meeting.

Date: Tuesday, December 12, 1995  
Time: 7:00 P.M.  
Place: Gig Harbor City Hall  
3105 Judson Street  
Gig Harbor, Washington

Both meetings are open public meetings. Your comments and questions are welcome. Written comments are welcome as well.

If you have any questions, please call Cynthia Schmidt at 596-6695.



Ipl for Proposal No. 94-125

^E

ROUTE TO:

John Trent, Director

Public Works & Utilities

Annex

^E

ROUTE TO:

Bob Snyder

Right-of-Way Division

Public Works & Utilities

Annex

^E

ROUTE TO:

Assessor-Treasurer's Office

Seg. Department

Annex

^E

ROUTE TO:

Debby Hyde, Director

Planning and Land Services

Annex

^E

ROUTE TO:

Thomas Ballard, County Engineer

Public Works & Utilities Department

Annex

^E



# Pierce County

Office of the County Council

930 Tacoma Avenue South, Room 1046  
Tacoma, WA 98402-2176  
(206) 591-7777  
FAX (206) 591-7509  
1-800-992-2456

December 14, 1995

TO: Councilmembers

FROM: Shawn Bunney, Legal Counsel 

SUBJECT: ORDINANCE NO. 95-134S

-----  
Three amendments are recommended for Ordinance No. 95-134S. Recommendation Nos. 1 & 2 would require the Surface Water Management Utility to report back to the Council by January 5, 1996, with a Rocky Bay shellfish protection program plan for adoption by the Council.

The third amendment is included at the request of Roy Huberd with SWM. Mr. Huberd requests the property description contained in "Exhibit A" be amended as attached to shrink the size of the district. Mr. Huberd believes the new property description more closely reflects the actual size of the watershed.

1. Ordinance No. 95-134S, page 3 of 3, line 15, delete the language "~~prior to February 8, 1996~~".
2. Ordinance No. 95-134S, page 3 of 3, add a new Section 4 to read as follows:

**"Section 4. The Pierce County Council further directs the Pierce County Surface Water Management Utility to prepare and present to the Council the Utility's shellfish protection program plan prior to January 5, 1996."**

3. Exhibit "A" to Ordinance No. 95-134S, page 1 of 1, replace the existing page with the attached new Exhibit "A":

SIB/lm

cc: Marie Raphael, Staff Director  
Research File

95134s.amd

*Passed  
12/20/95*



1 EXHIBIT "A" TO ORDINANCE NO. 95-134S

2  
3 BOUNDARIES OF THE ROCKY BAY SHELLFISH  
4 PROTECTION DISTRICT  
5

6 Township 22 North, Range 1 West including: all of Sections 13, 14, 15,  
7 22, 23, 24, 27, 34; and the Northwest Quarter of Section 25, the  
8 Northwest Quarter of Section 35, the Northeast Quarter of Section 26,  
9 the Northwest Quarter of Section 26, the Southwest Quarter of Section  
10 26 AND:

11  
12 Township 22 North, Range 1 East, including: the Northeast Quarter of  
13 Section 18, the Northwest Quarter of Section 18, and the Southwest  
14 Quarter of Section 18.  
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**DISCUSSION OUTLINE FOR:  
ROCKY BAY SHELLFISH PROTECTION DISTRICT/PROTECTION PROGRAM**  
Council Meeting  
December 20, 1995

*Presented at  
the 12/20/95  
Council  
meeting.*

**ROCKY BAY**

- Approximately 390 acres of tidelands
- 3.25 miles of shoreline
- 102 shoreline houses
- The 12,000 acre Rocky Bay Watershed includes 3 counties

**HISTORY**

- Shellfish growing area since 1967
- Water Quality routinely monitored by State DOH
- Water samples revealed increasing bacterial counts in marine waters
- This caused concern for a possible downgrade

**PRIOR TO DOWNGRADE**

- In 1991 State recommended that the Tacoma-Pierce County Health Department conduct a study of the Watershed
- February 1992 Tacoma-Pierce County Health Department applied for a Centennial Clean Water Fund Grant
- Tacoma-Pierce County Health Department is awarded \$124,000
- 18 month project began in May 1993

**RESULTS OF HEATH DEPARTMENT GRANT PROJECT**

- 72 septic systems surveyed
- 2 failing septic systems identified and corrected
- 69 farms identified and surveyed
- 2 stormwater concerns identified and addressed

**CONCLUSIONS**

- Not able to identify specific sources of pollution
- Pollution source is "Nonpoint Pollution"

**NONPOINT POLLUTION**

- Pollution that enters any waters from widespread water or land based activities (Cumulative Impact)
- Not easily identified direct discharges

**DOWNGRADE (Received August 12, 1995)**

- A portion of Rocky Bay was reclassified from open to prohibited
- Note: A majority of the Bay is still open

## LEGISLATION

- 1994 PSWQA Plan: Requires that a Closure Response Strategy be prepared within 60 days of downgrade, completed in October 1995.
- RCW Chapter 90.72: Requires that a Shellfish Protection District be formed and a Shellfish Protection program approved within 180 days of downgrade (February 17, 1996)

## INITIAL CLOSURE RESPONSE STRATEGY

- PURPOSE: To develop a plan which addresses some of the more immediate water quality issues
- Tacoma-Pierce County Health Department to survey septic systems of homes along the shoreline
- Conservation District to develop farm plans to implement Best Management Practices
- Additional water quality sampling and testing

## A SHELLFISH PROTECTION DISTRICT MUST BE FORMED

- County Council must pass an ordinance to form the shellfish Protection District, including a description of district boundaries
- Incorporates Kitsap and Mason counties support

## A SHELLFISH PROTECTION PROGRAM MUST BE ESTABLISHED TO INCLUDE:

- Tacoma-Pierce County Health Department will establish a Septic System Monitoring Program
- Pierce County Surface Water Management will monitor and encourage Best Management Practices for surface water runoff
- State Department of Health will provide routine water quality monitoring
- Conservation districts will continue to monitor farms, write farm plans and encourage Best Management Practices
- Pierce County Water Resources Division will begin a planning process to build a Watershed Plan for the entire Peninsula beginning in 1996.
- Possible funding sources
  - the legislative authority may finance the protection program through:
    - County tax revenue
    - reasonable inspection fees
    - similar fees for services specified
    - reasonable changes or rates specified in the protection program
    - Federal, State or private grants
  - RCW Chapter 90.72 does not allow for BOTH a Surface Water Management fee and a Shellfish Protection District fee to be collected

## A CURRENT LISTING OF CONTACT PEOPLE

Jerry Hendricks	Water Resources	(206) 596-2725 x 224
Roy Huberd	Water Resources	(206) 596-2725 x 225
Ken Canfield	Surface Water Management	(206) 596-2725 x 232
Lloyd Fetterly	Prosecuting Attorney	(206) 596-6730
Nedda Turner	Tacoma-Pierce County Health Department	(206) 591-6462
Jim Hoyle	Tacoma-Pierce County Health Department	(206) 596-2859
Don Lennartson	Washington State Dept. of Health, Shellfish Section	(360) 586-8127
Tom Schroedel	Pierce County Conservation District	(206) 536-2945
Sam Yekalom	Pierce County Planning and Land Services	(206) 591-7371
Kathy Minsch	Puget Sound Water Quality Authority	(360) 407-7320

DRAFT

MAJOR PARTICIPANTS IN THE  
SHELLFISH PROTECTION PROGRAM

Tacoma-Pierce County Health Department

The Tacoma-Pierce County Health Department (TPCHD) will seek to designate the Rocky Bay Watershed an "Area of Special Concern" as authorized by Chapter 246-272 WAC, *On-Site Sewage Systems Rules and Regulations*. In addition, TPCHD will request Board of Health approval to require a renewable Operational Permit for all septic systems in all Areas of Special Concern. The Operational Permit will provide a means of requiring the periodic inspection and maintenance mandated for Areas of Special Concern by the WAC. Cost of program implementation for the Rocky Bay Watershed will be approximately \$5,000 and will be funded by existing On-Site Sewage Program revenues. Program maintenance cost for the Rocky Bay Watershed will be approximately \$2,000 annually and will be funded by Operational Permit fees.

Kitsap Conservation District

Four farm sites in the Kitsap County portion of the Rocky Bay Watershed have been identified as having a high risk of water quality degradation. The Kitsap Conservation District will work with the owners of these and other sites, as identified through referral or observation of District staff, to develop farm plans for water quality and resource protection. This activity will cost approximately \$2,000 annually and will be funded through the Kitsap County Surface and Storm Water Management Program.

Pierce County Conservation District

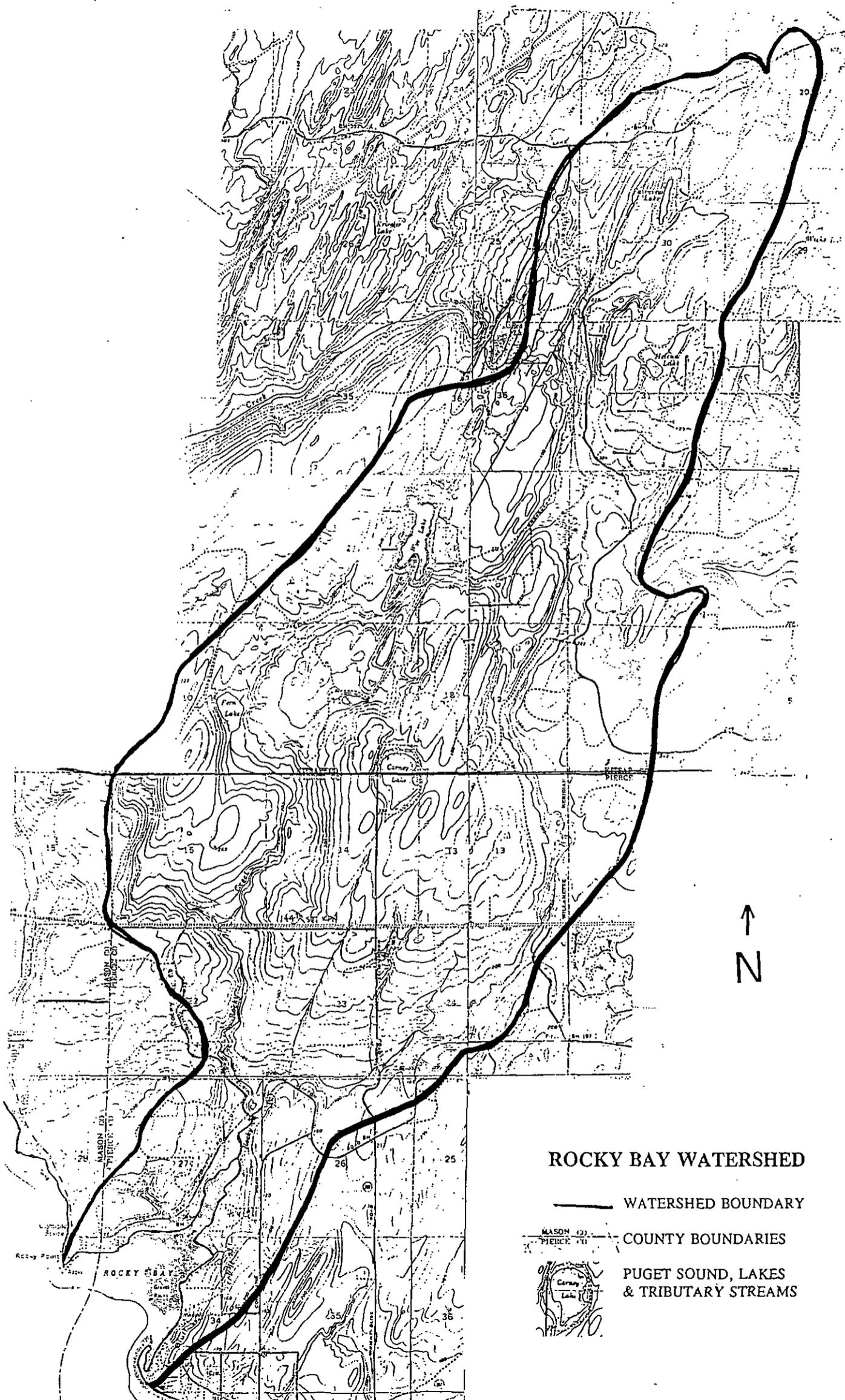
Five farm sites in the Pierce County portion of the Rocky Bay Watershed have been identified as having high potential for water quality degradation. The Pierce County Conservation District will work with the owners of these and other sites, as identified through referral or observation of District staff, to develop farm plans for water quality and resource protection. This activity will cost approximately \$2,000 annually and will be funded through the Pierce County Conservation District's Interlocal Agreement with Pierce County Surface Water Management.

Pierce County Surface Water Management

Pierce County Surface Water Management (SWM) will respond to service requests relating to stormwater. In addition, SWM will perform, or provide funding for, stormwater monitoring at approximately six locations during two storm events at locations to be determined in consultation with TPCHD, Pierce County Conservation District and the Washington Department of Health. Cost of this program will be approximately \$4,000 annually and will be funded by SWM fees.

Washington Department of Health

The Washington Department of Health (DOH) will conduct marine water sampling in Rocky Bay on a monthly basis. DOH will also conduct marine water sampling during storm events. The cost of this activity is estimated at \$6,000 annually and will be funded by the DOH Shellfish Program.



### ROCKY BAY WATERSHED

—— WATERSHED BOUNDARY

MASON CO. / PIERCE CO. COUNTY BOUNDARIES



PUGET SOUND, LAKES & TRIBUTARY STREAMS

# **Rocky Bay Shellfish Protection District**

## **Proposed Ordinance**

### **Executive Summary**

The State Department of Health notified Pierce County in early August that a portion of the Rocky Bay shellfish growing areas were downgraded. According to RCW 90.72 (Shellfish Protection Districts), the County must create a Shellfish Protection District within 180 days (February 11, 1996) of the downgrade.

Enclosed is the proposed ordinance to established the Rocky Bay Shellfish Protection District. Funding for the program will be derived from the following sources:

- Tacoma-Pierce County Health Department
- Conservation District
- Property owners and businesses
- Pierce County Surface Water Management

Pursuant to the ordinance, Surface Water Management is tasked with the management and the administering of the program to remedy nonpoint surface water pollution.

Since the Rocky Bay Watershed encompasses three (3) counties, intergovernmental agreements will be pursued to ensure the establishment of consistent programs throughout the entire watershed.

Authority recommendations for oil spill prevention and response shall not be duplicative of those responsibilities given the marine oversight board under RCW 90.56.450. The authority may incorporate the findings and recommendations of the marine oversight board into the plan or revisions of the plan submitted to the United States environmental protection agency pursuant to the federal clean water act, 33 U.S.C. Sec. 1330. [1991 c 200 § 502.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

**90.70.901 Severability—1985 c 451.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 451 § 14.]

Sunset Act application: See note following chapter digest.

**90.70.902 Implementation and requirements of plan not affected by repeal—1990 c 115.** Nothing in RCW 43.131.370 shall affect the implementation and requirements of the Puget Sound water quality management plan existing on June 30, 1995, or such other effective date of repeal of the laws referenced in RCW 43.131.370. The implementation of the plan on and after that date shall be the responsibility of such entities as are provided by the legislature. [1990 c 115 § 13.]

## Chapter 90.72

### SHELLFISH PROTECTION DISTRICTS

#### Sections

- 90.72.020 Shellfish tidelands.
- 90.72.030 Shellfish protection districts—Establishment—Governing body—Programs.
- 90.72.040 Shellfish protection districts—Creation—Boundaries—Cooperation with governmental entities—Abolition—Referendum to repeal creation—Certain fees not permitted.
- 90.72.045 Shellfish protection districts—Programs required after closure or downgrading of growing area classification.
- 90.72.060 Decisions addressing conflicting uses—Integration of the state environmental policy act and county ordinances and resolutions with programs.
- 90.72.065 Plans to control pollution effects of animal waste—Contracts with conservation districts.
- 90.72.070 Program financing—Activities not subject to fees, rates, or charges—Collection of charges or rates.
- 90.72.080 State water quality financial assistance—Priority to counties with shellfish protection districts.
- 90.72.900 Certain authority of counties not affected by chapter.
- 90.72.905 Severability—1992 c 100.

**90.72.020 Shellfish tidelands.** For purposes of this chapter, "shellfish tidelands" means all saltwater tidelands on which shellfish are grown or harvested for human consumption. [1985 c 417 § 2.]

**90.72.030 Shellfish protection districts—Establishment—Governing body—Programs.** The legislative authority of each county having shellfish tidelands within its boundaries is authorized to establish a shellfish protection district to include areas in which nonpoint pollution threatens the water quality upon which the con-

tinuation or restoration of shellfish farming or harvesting is dependent. The legislative authority shall constitute the governing body of the district and shall adopt a shellfish protection program to be effective within the district. The legislative authority may appoint a local advisory council to advise the legislative authority in preparation and implementation of shellfish protection programs. This program shall include any elements deemed appropriate to deal with the nonpoint pollution threatening water quality, including, but not limited to, requiring the elimination or decrease of contaminants in storm water runoff, establishing monitoring, inspection, and repair elements to ensure that on-site sewage systems are adequately maintained and working properly, assuring that animal grazing and manure management practices are consistent with best management practices, and establishing educational and public involvement programs to inform citizens on the causes of the threatening nonpoint pollution and what they can do to decrease the amount of such pollution. An element may be omitted where another program is effectively addressing those sources of nonpoint water pollution. Within the limits of RCW 90.72.040 and 90.72.070, the county legislative authority shall have full jurisdiction and authority to manage, regulate, and control its programs and to fix, alter, regulate, and control the fees for services provided and charges or rates as provided under those programs. Programs established under this chapter, may, but are not required to, be part of a system of sewerage as defined in RCW 36.94.010. [1992 c 100 § 2; 1985 c 417 § 3.]

**Findings—1992 c 100:** "The legislature finds that shellfish harvesting is important to our economy and way of life. Washington state is an international leader in the cultivation and production of shellfish. However, large portions of the state's productive recreational and commercial shellfish beds are closed to harvesting, and more are threatened, because of water pollution. The legislature finds that the problem of shellfish bed closures demands a public policy solution and that the state, local governments, and individuals must each take strong and swift action or this precious resource will be lost.

It is the goal of the legislature to prevent further closures of recreational and commercial shellfish beds, to restore water quality in saltwater tidelands to allow the reopening of at least one restricted or closed shellfish bed each year, and to ensure Washington state's commanding international position in shellfish production.

The legislature finds that failing on-site sewage systems and animal waste are the two most significant causes of shellfish bed closures over the past decade. Remedial actions at the local level are required to effectively address these problems.

The legislature finds that existing entities, including conservation districts and local health departments, should be used by counties to address the water quality problems affecting the recreational and commercial shellfish harvest.

The legislature finds that local action in each watershed where shellfish are harvested is required to protect this vital resource. The legislature hereby encourages all counties having saltwater tidelands within their boundaries to establish shellfish protection districts and programs designed to prevent any further degradation and contamination and to allow for restoration and reopening of closed shellfish growing areas." [1992 c 100 § 1.]

**90.72.040 Shellfish protection districts—Creation—Boundaries—Cooperation with governmental entities—Abolition—Referendum to repeal creation—Certain fees not permitted.** (1) The county legislative authority may create a shellfish protection district on its own motion or by submitting the question to the voters of the proposed district and obtaining the approval of a majority of those voting. The boundaries of the district shall be determined by the

... authority. The legislative authority may create more than one district. A district may include any area or areas within the county, whether incorporated or unincorporated. Counties shall coordinate and cooperate with cities, towns, and water-related special districts within their boundaries in establishing shellfish protection programs. Where a portion of the proposed district lies within an incorporated area, the county shall develop procedures for the participation of the city or town in the determination of the boundaries of the district and the administration of the district, including funding of the district's programs. The legislative authority of more than one county may by agreement provide for the creation of a district including areas within each of those counties. County legislative authorities are encouraged to coordinate their plans and programs to protect shellfish growing areas, especially where shellfish growing areas are located within the boundaries of more than one county. The legislative authority or authorities creating a district may abolish a shellfish protection district on its or their own motion or by submitting the question to the voters of the district and obtaining the approval of a majority of those voting.

(2) If the county legislative authority creates a shellfish protection district by its own motion, any registered voter residing within the boundaries of the shellfish protection district may file a referendum petition to repeal the ordinance that created the district. Any referendum petition to repeal the ordinance creating the shellfish protection district shall be filed with the county auditor within seven days of passage of the ordinance. Within ten days of the filing of a petition, the county auditor shall confer with the petitioner concerning form and style of the petition, and write a ballot title for the measure. The ballot title shall be posed as a question so that an affirmative answer to the question and an affirmative vote on the measure results in creation of the shellfish protection district and a negative answer to the question and a negative vote on the measure results in the shellfish protection district not being created. The petitioner shall be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner shall have thirty days in which to secure on petition forms the signatures of not less than twenty-five percent of the registered voters residing within the boundaries of the shellfish protection district and file the signed petitions with the county auditor. Each petition form shall contain the ballot title and full text of the measure to be referred. The county auditor shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the county auditor shall submit the referendum measure to the registered voters residing in the shellfish protection district in a special election no later than one hundred twenty days after the signed petition has been filed with the county auditor. The special election may be conducted by mail ballot as provided for in chapter 29.36 RCW.

(3) The county legislative authority shall not impose fees, rates, or charges for shellfish protection district programs upon properties on which fees, rates, or charges are imposed to pay for another program to eliminate or decrease

contamination in storm water runoff. [1992 c 100 § 3 c 417 § 4.]  
Findings—1992 c 100: See note following RCW 90.72.030.

**90.72.045 Shellfish protection districts—Program required after closure or downgrading of growing area classification.** The county legislative authority shall establish a shellfish protection district and establish a shellfish protection program to address causes of pollution within one hundred eighty days after the department of health, because of water quality degradation due to ongoing nonpoint source of pollution, has, after June 11, 1992, closed or downgraded the classification of a recreational or commercial shellfish growing area within the boundaries of the county. [1992 c 100 § 4.]  
Findings—1992 c 100: See note following RCW 90.72.030.

**90.72.060 Decisions addressing conflicting uses—Integration of the state environmental policy act and county ordinances and resolutions with programs.** Whenever a governmental entity makes a decision which addresses a matter in which there is a conflict between (1) on the one hand, a proposed development, proposed change in land use controls, or proposed change in the provision of utility services; and (2) on the other hand, the long-term use of an area for the growing or harvesting of shellfish, which area is within the boundaries of a shellfish protection district, then the governmental entity making the decision must observe the requirements of chapter 43.21C RCW and county ordinances or resolutions integrating the state environmental policy act of 1971 into the various programs under county jurisdiction. [1985 c 417 § 6.]

**90.72.065 Plans to control pollution effects of animal waste—Contracts with conservation districts.** Within available funding and as specified in the shellfish protection program, counties creating shellfish protection districts shall contract with conservation districts to draft plans with landowners to control pollution effects of animal waste. [1992 c 100 § 5.]  
Findings—1992 c 100: See note following RCW 90.72.030.

**90.72.070 Program financing—Activities not subject to fees, rates, or charges—Collection of charges or rates.** The county legislative authority establishing a shellfish protection district may finance the protection program through (1) county tax revenues, (2) reasonable inspection fees and similar fees for services provided, (3) reasonable charges or rates specified in its protection program, or (4) federal, state, or private grants. Confined animal feeding operations subject to the national pollutant discharge elimination system and implementing regulations shall not be subject to fees, rates, or charges by a shellfish protection district. Facilities permitted and assessed fees for wastewater discharge under the national pollutant discharge elimination system shall not be subject to fees, rates, or charges for wastewater discharge by a shellfish protection district. Lands classified as forest land under chapter 84.33 RCW and timber land under chapter 84.34 RCW shall not be subject to fees, rates, or charges by a shellfish protection district. Counties may collect charges or rates in the manner deter-

mined by the county legislative authority. [1992 c 100 § 6; 1985 c 417 § 7.]

Findings—1992 c 100: See note following RCW 90.72.030.

**90.72.080 State water quality financial assistance—Priority to counties with shellfish protection districts.** Counties that have formed shellfish protection districts shall receive high priority for state water quality financial assistance to implement shellfish protection programs, including grants and loans provided under chapters 43.99F, 70.146, and 90.50A RCW. [1992 c 100 § 7.]

Findings—1992 c 100: See note following RCW 90.72.030.

**90.72.900 Certain authority of counties not affected by chapter.** This chapter shall not be considered as diminishing or affecting the authority of a county to adopt and enforce programs or controls, within all or a portion of the county, to deal with nonpoint pollution. [1985 c 417 § 8.]

**90.72.905 Severability—1992 c 100.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 100 § 10.]

## Chapter 90.76

### UNDERGROUND STORAGE TANKS

#### Sections

90.76.005	Legislative finding and intent.
90.76.010	Definitions.
90.76.020	Department's powers and duties.
90.76.030	Administration and enforcement program.
90.76.040	Environmentally sensitive areas.
90.76.050	Delivery of regulated substances.
90.76.060	Investigation and access.
90.76.070	Enforcement.
90.76.080	Penalties.
90.76.090	Annual tank fee.
90.76.100	Underground storage tank account.
90.76.110	Preemption.
90.76.120	Annual report.
90.76.900	Captions not law.
90.76.901	Severability—1989 c 346.
90.76.902	Effective date—1989 c 346.
90.76.903	Expiration date—1989 c 346.

**90.76.005 Legislative finding and intent.** The legislature finds that leaking underground storage tanks containing petroleum and other regulated substances pose a serious threat to human health and the environment. To address this threat, the legislature intends for the department of ecology to establish an underground storage tank program designed, operated, and enforced in a manner that, at a minimum, meets the requirements for delegation of the federal underground storage tank program of the resource conservation and recovery act of 1976, as amended (42 U.S.C. Sec. 6901, et seq.). The legislature intends that state-wide requirements for underground storage tanks adopted by the department be consistent with and no less stringent than the objectives outlined in the federal regulations.

The legislature further finds that certain areas of the state possess physical characteristics that make them espe-

cially vulnerable to threats from leaking underground storage tanks and that in these environmentally sensitive areas, local requirements more stringent than the state-wide requirements may apply. [1989 c 346 § 1.]

**90.76.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department.

(3) "Federal act" means the federal resource conservation and recovery act, as amended (42 U.S.C. Sec. 6901, et seq.).

(4) "Federal regulations" means the underground storage tanks regulations (40 C.F.R. Secs. 280 and 281) adopted by the United States environmental protection agency under the federal act.

Except as provided in this section and any rules adopted by the department under this chapter, the definitions contained in the federal regulations apply to the terms in this chapter. [1989 c 346 § 2.]

**90.76.020 Department's powers and duties.** (1) By July 1, 1990, the department shall adopt rules establishing requirements for all underground storage tanks that are regulated under the federal act, taking into account the various classes or categories of tanks to be regulated. The rules must be consistent with and no less stringent than the federal regulations and consist of requirements for the following:

(a) New underground storage tank system design, construction, installation, and notification;

(b) Upgrading existing underground storage tank systems;

(c) General operating requirements;

(d) Release detection;

(e) Release reporting;

(f) Out-of-service underground storage tank systems and closure; and

(g) Financial responsibility for underground storage tanks containing regulated substances.

(2) By July 1, 1990, the department shall adopt rules:

(a) Establishing physical site criteria to be used in designating local environmentally sensitive areas;

(b) Establishing procedures for local government application for this designation; and

(c) Establishing procedures for local government adoption and department approval of rules more stringent than the state-wide standards in these designated areas.

(3) By July 1, 1990, the department shall establish by rule an administrative and enforcement program that is consistent with and no less stringent than the program required under the federal regulations in the areas of:

(a) Compliance monitoring, including procedures for recordkeeping and a program for systematic inspections;

(b) Enforcement;

(c) Public participation; and

(d) Information sharing.

(4) By July 1, 1990, the department shall establish a program that provides for the tagging of underground storage tanks. Tanks are not eligible for tagging unless the owner or operator is in compliance with the requirements of this

PIERCE COUNTY COUNCIL

REPORT OF STANDING COMMITTEE

Date 11/7/95

The Rules & Operations Committee of the Pierce County Council considered:

1345  
PROPOSAL NO. 95-134, AN ORDINANCE OF THE PIERCE COUNTY COUNCIL ESTABLISHING THE ROCKY BAY SHELLFISH PROTECTION DISTRICT OF PIERCE COUNTY; AND ESTABLISHING THE BOUNDARIES OF THE DISTRICT.

The Committee recommendation is:

- DO PASS
- DO PASS AS AMENDED
- DO PASS AS SUBSTITUTED
- FORWARD WITH NO RECOMMENDATION
- REFER TO \_\_\_\_\_
- DO NOT PASS
- POSTPONE INDEFINITELY
- CONTINUED
- POSTPONE TO A DATE CERTAIN
- CHANGE IS NECESSARY

Scott W. Waack For  Against   
Chair

Ken Madson For  Against   
Vice Chair

Bill Stoner For  Against   
Member

COMMENTS:

\_\_\_\_\_

- Minority Report:      yes \_\_\_\_\_ (attached)      no
- Interested Party list: none \_\_\_\_\_ / yes  (attached)
- Attachment(s) From Meeting: none \_\_\_\_\_ / yes  (attached)
- Notified of final hearing date: yes       no \_\_\_\_\_
- Final Version Names: clean 951345C.ORD blacklined 951345.ORD

Staff Contact: Shawn Bunney

Committee Contact: Cynthia Schmidt



# Pierce County

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November 7, 1995

TO: Rules & Operations Committee Members:  
Sally W. Walker, Chair  
Ken Madsen, Vice Chair  
Bill Stoner, Member

FROM: Shawn Bunney, Research Analyst 

SUBJECT: ROCKY BAY SHELLFISH PROTECTION DISTRICT

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On August 11, 1995, the Washington State Department of Health downgraded the classification of Rocky Bay shellfish area covering portions of Pierce, Mason, and Kitsap Counties. Downgrading automatically triggers State statutory timelines upon which the Council is required to act. Under Chapter 90.72 RCW, the "county legislative authority" is required to (1) "create" a shellfish protection district and (2) "establish" a shellfish protection program to address causes of pollution. These two requirements must be met within 180 days from downgrading.

Ordinance No. 95-134, as written, will satisfy the first requirement creating the district; however, the second requirement of establishing a shellfish protection program is not addressed. The County Council has full jurisdiction and authority to manage, regulate, and control its programs, and to fix, alter, regulate, and control the fees for services provided and charges or rates with few exceptions. RCW 90.72.030. The Council may appoint a local advisory council to advise the Council in the preparation and implementation of shellfish protection programs. Id. The program itself may include any elements the Council deems appropriate including quality controls on storm water runoff; monitoring, inspection, and repair of on-site sewage systems; animal grazing and manure management practices; and educational and public involvement programs. Id. (Many of these elements are already covered by other governmental programs.)

The Tacoma-Pierce County Health Department and Pierce County Surface Water Management, in coordination with other governmental entities, have already started the planning process to develop a program to address problems of pollution in Rocky Bay. Whatever program is ultimately developed will also need to integrate Kitsap County and Mason County for the portions of Rocky Bay lying outside the County jurisdictional boundary.



Memo To: Rules Operations Committee  
November 7, 1995  
Page 2

Proposed Ordinance No. 95-134S changes the original proposal to meet both minimum state requirements of creating the district and establishing a program to address the pollution problems in Rocky Bay. This substitute would designate Pierce County Surface Water Management as lead; a decision apparently Fran McNair made a couple of months ago. Nedda Turner (T-PCHD) and Roy Huberd (SWM) are here to answer any questions you may have.

SIB/lm

cc: Cynthia Schmidt, Deputy Clerk I  
Research File



# PROPOSED ORDINANCE OR RESOLUTION DATA SHEET

TO BE NUMBERED BY THE  
CLERK OF THE COUNCIL

Proposal

NO. 95-1345

Direct questions to Gerri Rainwater, Clerk of the Council, at 591-7777.

1. DATE PREPARED <u>September 29, 1995</u>	2. EXECUTIVE'S SIGNATURE <u>Doug S. [Signature]</u>	3. PRIME SPONSOR, (COUNCIL MEMBER SIGNATURE) <u>Karen S. Biskey</u> <del>XXXXXXXXXXXXXXXX</del>
4. DATE RECEIVED IN COUNCIL CLERK'S OFFICE <u>10-18-95</u>	5. REQUESTING DEPARTMENT <u>Public Works &amp; Utilities</u>	
	6. DEPARTMENT HEAD'S SIGNATURE <u>John O. Trent 10.11.95</u>	PHONE
	7. DRAFTED BY (NAME & DEPARTMENT) PHONE <u>Lloyd P. Fetterly, Deputy Prosecuting Attorney</u> <u>Civil Division PH: 206-596-6730 FAX: 206-596-6713</u>	

8. ORDINANCE  RESOLUTION       9. EFFECTIVE DATE DESIRED A.S.A.P.    non-emergency ordinance

10. COMPLETE TITLE OF ORDINANCE OR RESOLUTION: An Ordinance of the Pierce County Council to Form the Rocky Bay Shellfish Protection District of Pierce County and to Establish the Boundaries of the District.

11. LIST ANY SPECIAL ADVERTISING OR POSTING REQUIREMENTS INVOLVED IN PROCESSING THIS ORDINANCE/RESOLUTION: None.      N/A

12. CODE STATUS: N/A    1) New Chapter/Section \_\_\_\_\_    2) Amends \_\_\_\_\_    3) Repeals \_\_\_\_\_

13. SUMMARY AND INTENT OF THIS LEGISLATION.  
To establish a Shellfish Protection District, in order to implement best management practices to control non-point source water pollution in the watershed of Rocky Bay in unincorporated Pierce County. The purpose of the District is to develop and emplement a management plan to reduce and control known sources of water pollution within the watershed, including pollutants that introduce bacteria and viruses into the waters of the watershed.

14. SOURCE DOCUMENTS: LIST ALL MATERIALS INCLUDED AS BACKUP INFORMATION:      N/A

(A) National Shellfish Sanitation Program  
 Manual of Operations, Part I,      c RCW Chapter 90.72  
 Section "C", Growing Area Survey & Classification      d RCW Chapter 69.30  
 Dept. of Health/Tacoma Pierce County Health Dept. letter of 8/15/95.      e WAC Chapter 246-282

15. FISCAL IMPACT:

A. TOTAL COST OF LEGISLATION FOR CURRENT FISCAL YEAR:      COUNTY \$ \_\_\_\_\_ FEDERAL \$ \_\_\_\_\_ STATE \$ \_\_\_\_\_

B. ESTIMATED COST OF LEGISLATION IN FUTURE YEARS:      COUNTY \$ \_\_\_\_\_ FEDERAL \$ \_\_\_\_\_ STATE \$ \_\_\_\_\_

C. COSTS INVOLVED ARE FOR: Best Management Practices; Monitoring and testing Water Quality

D. ESTIMATED INCREASE IN REVENUE AS RESULT OF LEGISLATION FOR CURRENT YEAR: \_\_\_\_\_

E. ESTIMATED INCREASE IN REVENUE AS RESULT OF LEGISLATION FOR FUTURE YEARS: \_\_\_\_\_

F. SOURCE(S) OF REVENUE: Tacoma-Pierce County Health Department; Property owners & Businesses; Conservation District; Surface Water Management

THIS LEGISLATION HAS NO FISCAL IMPACT

16. A COPY OF THIS ORDINANCE/RESOLUTION IN FINAL FORM SHOULD BE SENT TO THE FOLLOWING:

1. John O. Trent, Director, PW & U Department

2. Donald T. Perry, Manager, Water Resources, Environmental Resources, PW & U

3. Kenneth Canfield, Manager, Storm Drainage & Surface Water Management

4. Lloyd P. Fetterly, Deputy Prosecuting Attorney, Civil Division, Pierce

5. Roy Hubert, Watershed Manager, Storm Drainage & Surface Water County