

1 Sponsored by: Councilmembers Derek Young and Douglas G. Richardson
2 Requested by: County Council
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8 **ORDINANCE NO. 2020-49**

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13 **An Ordinance of the Pierce County Council Amending the Pierce County**
14 **Shoreline Master Program in Response to the Order on**
15 **Compliance Issued by the Growth Management Hearings**
16 **Board in Case No. 18-3-0013c; Amending Title 18S of the**
17 **Pierce County Code (PCC), "Development Policies and**
18 **Regulations – Shorelines," and Title 18E PCC, "Development**
19 **Regulations – Critical Areas"; Adopting Findings of Fact;**
20 **and Setting an Effective Date.**

21
22 **Whereas**, the Pierce County Council adopted Ordinance No. 2013-45s4 on
23 March 10, 2015, establishing Title 18S of the Pierce County Code (PCC), "Development
24 Policies and Regulations – Shorelines"; and
25

26 **Whereas**, pursuant to Ordinance No. 2013-45s4, the Pierce County Council
27 updated various Chapters and Titles of the Pierce County Code including Title 18E
28 PCC, "Development Regulations – Critical Areas," for compliance with the Washington
29 State Shoreline Management Act; and
30

31 **Whereas**, Revised Code of Washington (RCW) 90.58.090 requires the
32 Washington State Department of Ecology (DOE) to review and approve locally adopted
33 Shoreline Master Programs (SMP) before they can become effective; and
34

35 **Whereas**, on May 31, 2018, Pierce County received "conditional approval" of its
36 SMP update from the DOE as adopted pursuant to Ordinance No. 2013-45s4; and
37

38 **Whereas**, the DOE's conditional approval of Pierce County's SMP update
39 included a list of required and recommended changes; and
40

41 **Whereas**, the Pierce County Council adopted Ordinance No. 2018-57s on
42 October 2, 2018, incorporating all of the DOE's required changes and many of the
43 DOE's recommended changes into the Pierce County Shoreline Master Program
44 update; and
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1 **Whereas**, following final approval from the DOE on October 12, 2018, the Pierce
2 County's Shoreline Master Program Comprehensive Update and Periodic Review
3 became effective on October 26, 2018; and
4

5 **Whereas**, on December 19, 2018, Taylor Shellfish Company, Inc. and Seattle
6 Shellfish, LLC jointly filed a petition for review to the Growth Management Hearings
7 Board (GMHB) challenging adoption of the Pierce County Shoreline Master Program;
8 and
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10 **Whereas**, on December 19, 2018, North Bay Partners, LLC filed a petition for
11 review to the GMHB challenging adoption of the Pierce County Shoreline Master
12 Program; and
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14 **Whereas**, on December 28, 2018, the GMHB consolidated the various appeals
15 under Case No. 18-3-0013c; and
16

17 **Whereas**, on May 7, 2019, the GMHB held a hearing on the merits of Case No.
18 18-3-0013c, and on June 17, 2019, issued a Final Decision and Order (FDO) finding
19 certain aspects of the County's SMP did not comply with the SMA and applicable
20 guidelines; and
21

22 **Whereas**, pursuant to the GMHB's FDO, a total of 31 legal issues were
23 evaluated (two legal issues raised constitutional claims outside of the Board's
24 jurisdiction and were not addressed), seven legal issues were explicitly abandoned by
25 the petitioners and were dismissed, and seven legal issues were dismissed by the
26 Board having found the Petitioners failed to meet their burden; and
27

28 **Whereas**, on September 10, 2019, the Pierce County Council adopted
29 Ordinance No. 2019-59 amending Title 18S PCC, "Development Policies and
30 Regulations – Shorelines" and Title 18E "Development Regulations – Critical Areas," in
31 response to the FDO issued by the GMHB; and
32

33 **Whereas**, on November 9, 2019, the DOE approved Pierce County's
34 amendments adopted pursuant to Ordinance No. 2019-59 taking final action and
35 requiring no further amendments; and
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37 **Whereas**, on December 9, 2019, Pierce County filed its Statement of Actions
38 Taken to Comply with the GMHB including a copy of Ordinance No. 2019-59 and all
39 exhibits; and
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41 **Whereas**, on December 23, 2019, the Petitioners (Taylor Shellfish Company,
42 Inc. and Seattle Shellfish, LLC) filed objections to the County's actions taken to comply
43 with the FDO and requested the GMHB issue an order of continued non-compliance;
44 and
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1 **Whereas**, on January 16, 2020, the GMHB conducted a telephonic compliance
2 hearing and on February 21, 2020, issued an Order on Compliance, resulting in a final
3 decision and order of the Board, finding that in adopting Ordinance No. 2019-59, the
4 County adequately addressed all but two of the areas of noncompliance and remanded
5 Case No. 18-3-0013c to Pierce County and the DOE to take additional action to comply
6 with the Board's Order on Compliance; and

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8 **Whereas**, the GMHB's compliance schedule includes a May 21, 2020, due date
9 for the County to comply with the Board's Order on Compliance; and

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11 **Whereas**, the Council has corrected a typographical error in Table 18S.60.030-1
12 as adopted by Ordinance No. 2019-59 which resulted in the inadvertent prohibition of
13 Aquaculture in the High Intensity Shoreline Environment Designation, contrary to Pierce
14 County Council and DOE intent; and

15
16 **Whereas**, the amendments included in this proposal are within the scope of the
17 State Environmental Policy Act analysis and range of alternatives considered in
18 adoption of Ordinance No. 2013-45s4, Ordinance No. 2018-57s and Ordinance No.
19 2018-59, and are more protective of the environment than Title 20 PCC, "Shoreline
20 Master Program for Pierce County," originally adopted on March 4, 1974, which has
21 been repealed in its entirety; and

22
23 **Whereas**, immediate action to comply with the GMHB's order is necessary to
24 ensure continued support of the County government and its existing institutions; **Now**
25 **Therefore**,

26
27 **BE IT ORDAINED by the Council of Pierce County:**

28
29 Section 1. Title 18S of the Pierce County Code, "Development Policies and
30 Regulations – Shorelines," is hereby amended as shown in Exhibit A, which is attached
31 hereto and incorporated herein by reference.

32
33 Section 2. Title 18E of the Pierce County Code, "Development Regulations –
34 Critical Areas," is hereby amended as shown in Exhibit B, which is attached hereto and
35 incorporated herein by reference.

36
37 Section 3. Findings of Fact are hereby adopted as shown in Exhibit C, which is
38 attached hereto and incorporated herein by reference.

39
40 Section 4. The Council recognizes that formatting, numbering, and citation
41 modifications to Exhibits A and B may be necessary as a result of amendments made
42 during the legislative process. To this extent, the Clerk of the Council is hereby
43 authorized to modify Exhibits A and B prior to final printing so that the Council's
44 amendments are accurately reflected throughout the document and formatting,
45 numbering, and citations are correctly shown.



1 Section 5. This Ordinance shall become effective 14 days following written
2 notice of final action by the Washington State Department of Ecology.

3
4 PASSED this 5th day of May, 2020.

7 ATTEST:

PIERCE COUNTY COUNCIL
Pierce County, Washington

10 Denise D. Johnson
11 Denise D. Johnson
12 Clerk of the Council

10 Douglas G. Richardson
11 Douglas G. Richardson
12 Council Chair

13 Bruce F. Dammeier
14 Bruce F. Dammeier
15 Pierce County Executive
16 Approved Vetoed _____, this
17 6th day of May,
18 2020.

23 Date of Publication of
24 Notice of Public Hearing: April 22, 2020

25 Effective Date of Ordinance: This Ordinance shall become effective 14 days following written notice of
26 final action by the Washington State Department of Ecology.



Only those portions of Title 18S that are proposed to be amended are shown.
 Remainder of text, tables, maps and/or figures is unchanged.

Chapter 18S.60

PERMITS AND APPROVALS

18S.60.030 Shoreline Permit Table.

- A. The following symbols are employed in Table 18S.60.030-1, the Shoreline Permit Table:
 1. Table header symbols indicate the following Shoreline Environment Designations: "N" = Natural, "C" = Conservancy, "R" = Residential, "H" = High Intensity, "AF" = Aquatic Freshwater, "AM" = Aquatic Marine.
 2. A shaded cell on the table indicates that the use, modification or development is allowed subject to the Shoreline Substantial Development Permit provisions specified in PCC 18S.60.040 or the criteria for an SD Exemption pursuant to PCC 18S.60.020.
 3. An "AC" in a cell on the table indicates that the use, modification or development is allowed subject to the Shoreline Administrative Conditional Use Permit provisions specified in PCC 18S.60.050. Such uses must obtain an Administrative Conditional Use Permit even if the development does not require a Substantial Development Permit.
 4. A "C" in a cell on the table indicates that the use, modification or development is allowed subject to the Shoreline Conditional Use Permit provisions specified in PCC 18S.60.060. Such uses must obtain a Conditional Use Permit even if the development does not require a Substantial Development Permit.
 5. A blank cell on the table indicates that the use, modification, or development is prohibited in the SED listed at the top of the column, or that the cell is not applicable. Prohibited development may also be called out in notes (1) through (8).

Note: For illustrative purposes in the following table, proposed new language is shown in yellow highlight.

Table 18S.60.030-1. Shoreline Permit Table						
Uses, Modifications and Development	Shoreline Environment Designation (SED)					
	N	C	R	H	AF	AM
N=Natural, C=Conservancy, R=Residential, H=High Intensity, AF=Aquatic Freshwater, AM=Aquatic Marine						
Aquaculture (See PCC 18S.40.040 for Aquaculture Policies and Regulations)						
All Aquaculture	C (1)	C (1)	C (1)	C (1)	C (1)	C (1)



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Chapter 18S.70 – Appendix C Aquaculture Application Requirements

Applications for aquaculture use or development shall include all information necessary to conduct a thorough evaluation of the proposed aquaculture activity. Information required of all applicants shall include a Site Plan, a Description of the Project, a Baseline Information Study, an Assessment of Impacts, and documentation of property ownership or of owner permission to conduct activities. Applicants proposing more complex projects may be required to provide an expanded list of information. The results of the Baseline Information Study and Assessment of Impacts shall be used to determine monitoring requirements.

E. Monitoring Plan necessary to ensure compliance with a Shoreline Permit Application.

1. A monitoring plan shall be developed ~~that includes performance standards that are specific to the aquaculture proposal and the results of the baseline review of the proposed farm site.~~

2. The monitoring plan shall be prepared by a qualified independent third party professional to determine compliance with the established performance standards or conditions of the shoreline permit.

a. The County will establish a monitoring schedule as a condition of each permit approval. ~~Proposed Pperformance standards, monitoring protocols and contingencies shall be included in the monitoring plan. Performance standards will generally be met by demonstrating that no consistent adverse changes occur over the course of multiple harvest activities. The results of the operational monitoring may trigger a range of actions, including, but not limited to, changes to:~~

~~(1) The allowable size of the operation;~~

~~(2) The planting schedule; and~~

~~(3) The width of required buffers or setbacks.~~

b. The duration and frequency of monitoring will be unique to each proposal; however, in general, monitoring shall occur in conjunction with bed preparation and harvest activities and for a period of time sufficient to verify compliance with ~~performance standards~~ the shoreline permit approval. Duration and frequency shall be reduced when the applicant demonstrates that, ~~relative to their proposal, these activities, whether singly or in combination, do not serve as a potential stressor to the following functional attributes of the intertidal zone: reduction in forage fish habitat, alteration to benthic community structure, reduction in forage availability and migration habitat, or reduction in water quality~~ the aquaculture activity remains in compliance with the shoreline permit.

c. Monitoring frequency should be commensurate with the complexity and intensity of the aquaculture method(s) utilized and the sensitivity of the shoreline.



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*Only those portions of Title 18E that are proposed to be amended are shown.
Remainder of text, tables, maps and/or figures is unchanged.*

18E.40.040 Fish and Wildlife Habitat Conservation Area Standards.

E. Forage Fish Spawning and Herring Holding Areas.

1. Regulated activities waterward of the ordinary high water mark (OHWM), in areas of confirmed spawning habitat, shall be ~~prohibited~~ **suspended during spawning periods** unless the applicant demonstrates that spawning is not occurring or approval is obtained from WDFW.
2. Regulated activities in areas where a survey demonstrates that no spawning is occurring are still subject to avoidance and minimization requirements of PCC 18E.40.050.



FINDINGS OF FACT

The Pierce County Council finds that:

1. The Pierce County Council adopted Ordinance No. 2013-45s4 on March 10, 2015, establishing Title 18S of the Pierce County Code (PCC), "Development Policies and Regulations – Shorelines".
2. Pursuant to Ordinance No. 2013-45s4, the Pierce County Council updated various Chapters and Titles of the Pierce County Code including Title 18E PCC, "Development Regulations – Critical Areas," for compliance with the Washington State Shoreline Management Act.
3. Revised Code of Washington (RCW) 90.58.090 requires the Washington State Department of Ecology (DOE) to review and approve locally adopted Shoreline Master Programs (SMP) before they can become effective.
4. On May 31, 2018, Pierce County received "conditional approval" of its SMP update from the DOE as adopted pursuant to Ordinance No. 2013-45s4.
5. The DOE's conditional approval of Pierce County's SMP update included a list of required and recommended changes.
6. The Pierce County Council adopted Ordinance No. 2018-57s on October 2, 2018, incorporating all of the DOE's required changes and many of the DOE's recommended changes into the Pierce County Shoreline Master Program update.
7. Following final approval from the DOE on October 12, 2018, the Pierce County's Shoreline Master Program Comprehensive Update and Periodic Review became effective on October 26, 2018.
8. On December 19, 2018, Taylor Shellfish Company, Inc. and Seattle Shellfish, LLC jointly filed a petition for review to the Growth Management Hearings Board (GMHB) challenging adoption of the Pierce County Shoreline Master Program.
9. On December 19, 2018, North Bay Partners, LLC filed a petition for review to the GMHB challenging adoption of the Pierce County Shoreline Master Program.
10. On December 28, 2018, the GMHB consolidated the various appeals under Case No. 18-3-0013c.
11. On May 7, 2019, the GMHB held a hearing on the merits of Case No. 18-3-0013c, and on June 17, 2019, issued a Final Decision and Order (FDO) finding certain aspects of the County's SMP did not comply with the SMA and applicable guidelines.



- 1 12. Pursuant to the GMHB's FDO, a total of 31 legal issues were evaluated (two legal
2 issues raised constitutional claims outside of the Board's jurisdiction and were not
3 addressed), seven legal issues were explicitly abandoned by the petitioners and
4 were dismissed, and seven legal issues were dismissed by the Board having found
5 the Petitioners failed to meet their burden.
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- 7 13. On September 10, 2019, the Pierce County Council adopted Ordinance No.
8 2019-59 amending Title 18S PCC, "Development Policies and Regulations –
9 Shorelines," and Title 18E PCC, "Development Regulations – Critical Areas" in
10 response to the FDO issued by the GMHB.
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- 12 14. On November 9, 2019, the Department of Ecology approved Pierce County's
13 amendments adopted pursuant to Ordinance No. 2019-59 taking final action and
14 requiring no further amendments.
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- 16 15. On December 9, 2019, Pierce County filed its Statement of Actions Taken to
17 Comply with the GMHB including a copy of Ordinance No. 2019-59 and all
18 exhibits.
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- 20 16. On December 23, 2019, the Petitioners (Taylor Shellfish Company, Inc. and
21 Seattle Shellfish, LLC) filed objections to the County's actions taken to comply with
22 the FDO and requested the GMHB issue an order of continued non-compliance.
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- 24 17. On January 16, 2020, the GMHB conducted a telephonic compliance hearing and
25 on February 21, 2020, issued an Order on Compliance, resulting in a final decision
26 and order of the Board, finding that in adopting Ordinance No. 2019-59, the County
27 adequately addressed all but two of the areas of noncompliance and remanded
28 Case No. 18-3-0013c to Pierce County and the Department of Ecology to take
29 additional action to comply with the Board's Order on Compliance.
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- 31 18. The GMHB's compliance schedule includes a May 21, 2020, due date for the
32 County to comply with the Board's Order on Compliance.
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- 34 19. The Council has corrected a typographical error in Table 18S.60.030-1 as adopted
35 by Ordinance No. 2019-59 which resulted in the inadvertent prohibition of
36 Aquaculture in the High Intensity Shoreline Environment Designation, contrary to
37 Pierce County Council and Department of Ecology intent.
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- 39 20. The amendments included in this proposal are within the scope of the State
40 Environmental Policy Act analysis and range of alternatives considered in adoption
41 of Ordinance No. 2013-45s4, Ordinance No. 2018-57s and Ordinance No. 2018-59
42 and are more protective of the environment than Title 20 PCC, "Shoreline Master
43 Program for Pierce County," originally adopted on March 4, 1974, which has been
44 repealed in its entirety.
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- 46 21. Immediate action to comply with the GMHB's order is necessary to ensure
47 continued support of the County government and its existing institutions.
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