



**DEPARTMENT OF
NATURAL RESOURCES**

NORTHWEST REGION
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November 22, 2021

Betsy Wareham
West Sound Marina
PO Box 119
Orcas, WA 98280

Subject: West Sound Marina's Proposed Quality Assurance Project Plan
(Aquatic Lands Lease Number 20-B12555)

Dear Ms. Wareham:

Thank you for keeping Washington Department of Natural Resources (DNR) up to date on your proposed plan to assess the presence of contaminated sediments at West Sound Marina. Sediments contaminated by hazardous substances that are located within the area leased by West Sound Marina, through Aquatic Lands Lease #20-B12555, were originally identified by sediment sampling that you conducted last year in accordance to your lease. DNR recently received a copy of a Quality Assurance Project Plan (QAPP) prepared for West Sound Marina by Coho Environmental. The QAPP describes procedures for collecting additional sediment samples to delineate the lateral extent of contamination and to conduct bioassay testing of contaminated sediments.

Section 8 of your Lease requires that hazardous substances on state-owned aquatic lands be adequately assessed, reported, and managed in accordance with applicable law, which includes the Washington State Model Toxics Control Act (MTCA), Chapter 70.105D RCW. This Lease obligation includes taking all actions necessary or advisable to clean up hazardous substances both within the leasehold and, if applicable, on adjacent state-owned aquatic lands. Restoring the leasehold property promptly by cleaning up identified hazardous substances as directed by regulatory authorities is a condition of the Lease. Under MTCA, the Department of Ecology (Ecology) has the regulatory authority to require remediation or removal of identified hazardous substances and to determine the adequacy of remedial actions. DNR does not have regulatory authority under MTCA and must defer to Ecology.

DNR staff contacted Ecology sediment experts multiple times to request that Ecology accept West Sound Marina into the Voluntary Cleanup Program (VCP). Unfortunately, due to the complex nature of the cleanup, Ecology has been unwilling to do so. The remaining options for

Ms. Wareham
November 22, 2021
Page 2 of 2

West Sound Marina under MTCA are to do an independent cleanup without the benefit of Ecology's oversight or approval, or to conduct an Ecology-supervised cleanup under an agreed order with Ecology.

DNR does not object to West Sound Marina performing investigative work, such as the work proposed in your QAPP, under the MTCA independent remedial actions rule (WAC 173-340-515). A remedial action that results in a No Further Action (NFA) determination or removal of the site from Ecology's Confirmed and Suspected Contaminated Sites List and/or Hazardous Sites List would meet your Lease obligations. However, DNR will not provide an opinion for the QAPP that you have submitted or for any other independent remedial action that is proposed or conducted without the oversight or approval of Ecology. West Sound Marina would be taking a risk that independent remedial actions, including the proposed QAPP, conducted without the benefit of Ecology's oversight or approval may not be adequate or appropriate to meet regulatory requirements and Lease obligations. To ensure timely compliance with your Lease requirements, West Sound Marina ultimately should work with Ecology to identify adequate cleanup procedures that would lead to a NFA determination and/or delisting of the site by Ecology.

Taking into consideration that West Sound Marina is working towards selling the marina and upland property, and the current buyer wants an NFA prior to closing of the sale, an Ecology-supervised cleanup is a less risky approach than conducting an independent cleanup without Ecology oversight or approval. DNR remains open to discussing any reasonable approach to remediation or removal of contaminated sediments that receives approval from the regulatory agency, Ecology. Please note that DNR may not approve remedial designs that prohibit or limit future uses of the leasehold property or adjacent state-owned aquatic lands and such designs may result in new long-term authorization requirements.

DNR looks forward to continued cooperation on West Sound Marina's cleanup efforts. Please contact me by phone at 360-630-1297, or email at gabriel.harder@dnr.wa.gov if you have questions regarding this letter.

Sincerely,

/S/-due to COVID-19

Gabe Harder, Aquatic Land Manager
Aquatic Resources Division, Orca-Straits District
919 N. Township St.
Sedro-Woolley, WA 98284

c: TRO/District File: 20-B12555