



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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July 10, 2019

Florence Lovric, Governor
John Lovric, Governor
Bart Lovric, Governor
Lovric's Sea-Craft, Inc.
3022 Oakes Avenue
Anacortes, WA 98221

Re: Early Notice of Release of Hazardous Substances and Preliminary Determination of Liability for Release at the following Contaminated Site:

- **Site Name:** Lovric's Sea-Craft, Inc.
- **Site Address:** 3022 Oakes Avenue, Anacortes, WA 98221
- **Cleanup Site ID:** 14900
- **Facility/Site ID:** 21847524
- **County Assessor's Property Tax Numbers:** P31735, P31738, P31740, P31741
- **DNR Lease Property:** (as described in Exhibit A of Lease Agreement No. 22-A02606)

Dear Florence Lovric, John Lovric, and Bart Lovric:

This letter is sent to you concerning information that the Department of Ecology (Ecology) has gathered regarding the Lovric's Sea-Craft, Inc. property, located at 3022 Oakes Avenue, Anacortes, WA 98221. Under the Model Toxics Control Act (MTCA), Ecology maintains a list of known or suspected contaminated sites. Ecology has made a determination based on our review of sediment sampling results from an approved Sampling and Analysis Plan (SAP) conducted at Lovric's Sea-Craft, Inc.(Site) on September 25 through 27, 2017. It is Ecology's decision to add this property to the list as a site known to be contaminated by hazardous substances.

Based on credible evidence, Ecology is also proposing to find the Site liable under MTCA for the release of hazardous substances at the Site. Any person whom Ecology finds, based on credible evidence, to be liable is known under MTCA as a "potentially liable person" (PLP).

This letter identifies the basis for Ecology's proposed finding and your opportunity to respond to that finding. This letter also describes the scope of your potential liability and the next steps in the cleanup process at the Site.

Proposed Finding of Liability

Ecology is proposing to find the Site liable under RCW 70.105D.040 for the release of hazardous substances at the Site. This proposed finding is based on the following evidence:

1. Lovric's Landing, LLC is the current "owner or operator" as defined in RCW 70.105D.020(22) of a "facility" as defined in RCW 70.105D.020(8). Skagit County Assessor Office records establish Lovric's Landing, LLC as current ownership. *See Enclosure 1*. Enclosure 1 includes parcel information from the Skagit County Assessor's office along with a site diagram.
2. Lovric's Sea-Craft, Inc. operates a commercial ship repair facility and marina that has been in existence since 1965. It was registered as a Washington Profit Corporation on July 11, 2003. Currently, repair and maintenance is performed on wooden, steel, aluminum, and fiberglass boats. New ship construction had been conducted at the site, but no longer takes place.
3. Facilities at the site include two marine railways that have historically drained directly to the Guemes Channel and a drainage pipe running beneath the East Building. There have also been two floating dry docks, material storage areas, and woodworking and metal fabrication shops.
4. Maintenance and repair activities conducted at the shipyard have included painting and high pressure washing of hulls, zinc replacement, sandblasting, application and removal of antifouling paint, and electrical and mechanical work. Process water and sand blast grit from high pressure washing conducted in the marine railways historically was released. Current operating procedures require marine railway work areas to be cleaned prior to tidal inundation.
5. Credible evidence exists indicating that a "release" of a "hazardous substance," as defined in RCW 70.105D.020(13) and (32), has occurred at the facility/Site, which poses a threat to human health or the environment. Results of sediment investigations at the Site have revealed the presence of hazardous substances at the Site exceeding MTCA cleanup levels.

6. Whatcom Environmental Services Inc. conducted sampling of sediments at the Site in September 2017. The results from Whatcom Environmental Services' sampling identified Sediment Management Standard (SMS) exceedances of MTCA Cleanup Screening Levels for:
 - a. copper,
 - b. benzoic acid, and
 - c. bis(2-ethylhexyl) phthalate.

The sampling results also reported tributyltin at levels exceeding Dredged Materials Management Program (DMMP) bioaccumulation standards at three locations.¹

7. Sampling results demonstrated that following chemicals also exceeded Sediment Cleanup Objectives in at least one location:
 - a. anthracene,
 - b. benzo(g,h,i)perylene,
 - c. chrysene,
 - d. fluoranthene,
 - e. fluorene,
 - f. indeno(1,2,3-c,d)pyrene,
 - g. phenanthrene,
 - h. LPAH – low molecular weight PAHs (WAC 173-204-562(2)(i)),
 - i. HPAH – high molecular weight PAHs (WAC 173-204-562(2)(j)), and
 - j. zinc.

Opportunity to Respond to Proposed Finding of Liability

In response to Ecology's proposed finding of liability, you may either:

1. Accept your status as a PLP without admitting liability and expedite the process through a voluntary waiver of your right to comment. This may be accomplished by signing and returning the enclosed form or by sending a letter containing similar information to Ecology; or
2. Challenge your status as a PLP by submitting written comments to Ecology within thirty (30) calendar days of the date you receive this letter; or
3. Choose not to comment on your status as a PLP.

¹ Lovric's has waived their option to conduct bioassays following results of the September, 2017 Sampling and Analysis Plan. See Ecology 2017. Robert Nolan, WQP-NWRO to Xuan Li, TCP-HQ/Aquatic Lands Cleanup Unit memo: Lovric's Sea-Craft Inc. (NPDES Permit WA-0501491; FSID 21847524), Sediment Sampling and Analysis Plan, September 12, 2017.

Please submit your waiver or written comments to the following address:

Department of Ecology
Arthur Kapell
Toxics Cleanup Program
PO Box 47600
Olympia, WA 98504-7600

After reviewing any comments submitted, or after 30 days if no response has been received, Ecology will make a final determination regarding your status as a PLP and provide you with written notice of that determination.

Identification of Other Potentially Liable Persons

If you are aware of any other persons who may be liable for the release of hazardous substances at the Site, Ecology encourages you to provide us with their identities and the reason you believe they are liable. Ecology also suggests you contact these other persons to discuss how you can jointly work together to most efficiently clean up the Site.

Responsibility and Scope of Potential Liability

Ecology may either conduct, or require PLPs to conduct, remedial actions to investigate and clean up the release of hazardous substances at a site. PLPs are encouraged to initiate discussions and negotiations with Ecology and the Office of the Attorney General that may lead to an agreement on the remedial action to be conducted.

Each liable person is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the release of hazardous substances at a site. If Ecology incurs remedial action costs in connection with the investigation or cleanup of real property and those costs are not reimbursed, then Ecology has the authority under RCW 70.105D.055 to file a lien against that real property to recover those costs.

Next Steps in Cleanup Process

In response to the release of hazardous substances at the Site, Ecology intends to conduct the following actions under MTCA:

1. A Site Hazard Assessment.
2. Listing the site on the confirmed or suspected hazardous site list.

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When appropriate Ecology staff resources are available, Ecology may initiate discussions into entering an Agreed Order to complete a Remedial Investigation and Feasibility Study and draft a Cleanup Action Plan for the site. Due to the presence of documented contamination at or adjacent to locations identified in the NPDES permit #, and DNR Lease # (exhibit B), the Toxic Cleanup Program recommends consultation during the planning phase of proposed activities that may disturb or relocate contaminated sediment, including but not limited to:

1. dredging,
2. piling removal/replacement,
3. railways maintenance activities, and
4. repairs to shoreline armoring.

For a description of the process for cleaning up a contaminated site under MTCA, please refer to the enclosed fact sheet.

Ecology's policy is to work cooperatively with PLPs to accomplish the prompt and effective cleanup of contaminated sites. Please note that your cooperation in planning or conducting remedial actions at the Site is not an admission of guilt or liability.


Site Listing

Ecology will be adding the Site to its list of confirmed and suspected contaminated sites. Information about the Site is enclosed. Please review this information for its accuracy and return your comments within thirty (30) days of receipt of this letter.

Contact Information

If you have any questions regarding this letter, or if you would like additional information regarding the cleanup of contaminated sites, please contact me at (360) 407-7242 or arthur.kapell@ecy.wa.gov. Thank you for your cooperation.

Sincerely,


Arthur Kapell
Cleanup Project Manager
Toxics Cleanup Program, Headquarters Region

Enclosures (3)

By certified mail: 9489 0090 0027 6066 5505 47

cc: Edward Ehler, Property Managr
John Level, ATG

Cleanup Site Details

Cleanup Site ID: 14900

Cleanup Site ID: 14900 Facility/Site ID: 21847524 UST ID: N/A [Site Page](#) [Site Documents](#) [View Map](#)
 Cleanup Site Name: LOVRICS SEA CRAFT INC [Glossary](#)
 Alternate Names: LOVICS SEA CRAFT, LOVRICS SEA CRAFT, LOVRICS SEA CRAFT INC

LOCATION

Address: 3022 OAKES AVE City: ANACORTES Zip Code: 98221 County: Skagit
 Latitude: 48.51040 Longitude: -122.64514 WRIA: 3 Legislative District: 40 Congressional District: 2 TRS: 35N 1E 23

DETAIL

Status: Awaiting Cleanup NFA Received? No Is PSI site? Yes
 Statute: MTCA NFA Date: N/A Current VCP? No Past VCP? No
 Site Rank: N/A NFA Reason: N/A Brownfield? No
 Site Manager: Kapell, Arthur Responsible Unit: Headquarters Active Institutional Control? No

CLEANUP UNITS

Cleanup Unit Name	Unit Type	Unit Status	Resp Unit	Unit Manager	Current Process
Loveric's	Sediment	Awaiting Cleanup	HQ	Kapell, Arthur	Ecology-supervised or conducted

ACTIVE INSTITUTIONAL CONTROLS

Instrument Type	Restriction Media	Restrictions/Requirements	Date	Recording Number	Recording County	Tax Parcel
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There are no current Institutional Controls in effect for this site.

AFFECTED MEDIA & CONTAMINANTS

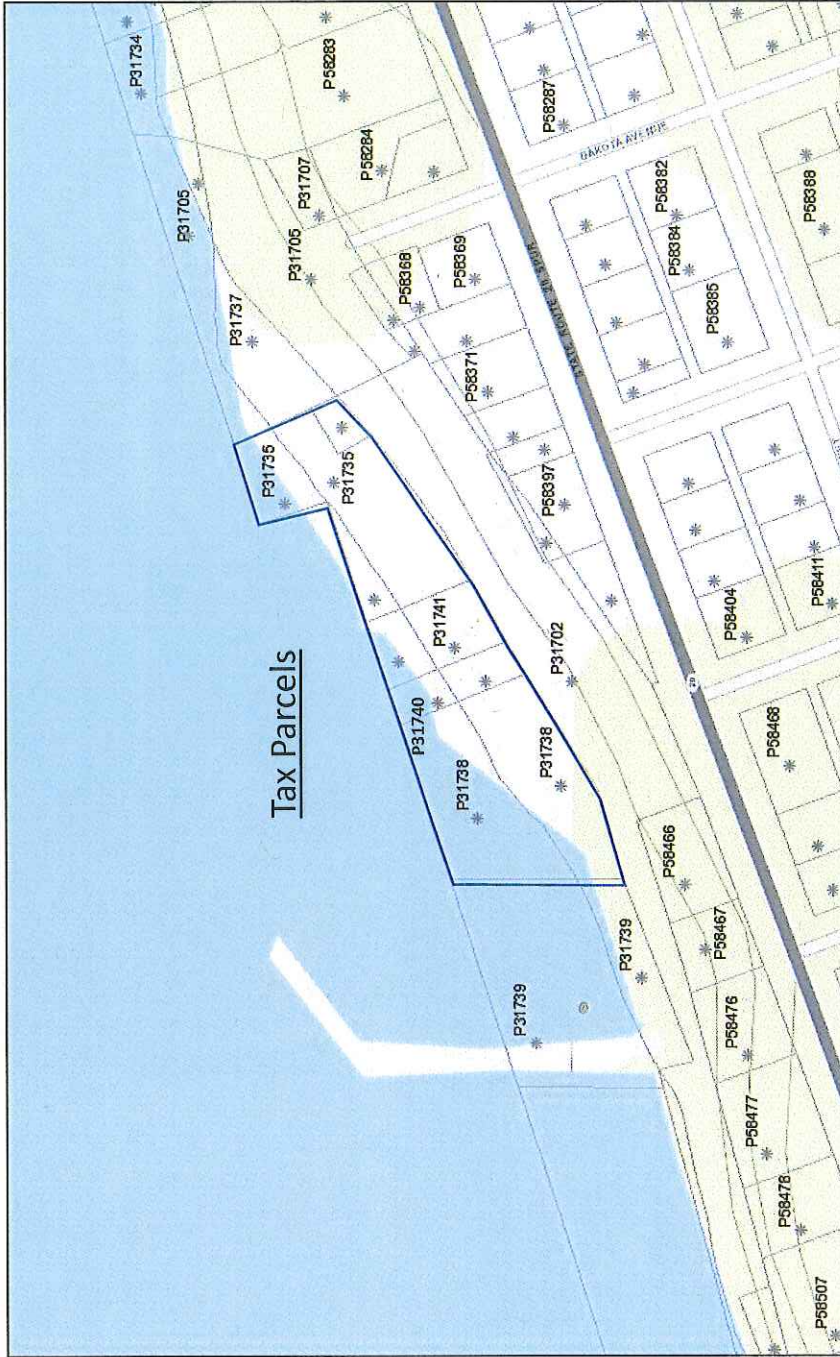
Contaminant	MEDIA					
	Soil	Groundwater	Surface Water	Sediment	Air	Bedrock
Corrosive Wastes				C		
Metals - Other				C		
Other Non-Halogenated Organics				C		
Polycyclic Aromatic Hydrocarbons				C		
Tributyltin				C		

Key:
 B - Below Cleanup Level C - Confirmed Above Cleanup Level RA - Remediated-Above
 S - Suspected R - Remediated RB - Remediated-Below

SITE ACTIVITIES

Activity	Status	Start Date	End Date/Completion Date
Site Discovery/Release Report Received	Completed		2/25/2019

Skagit County
Tax Parcels
comprising the
Lovric's "Site"
(not including
DNR Lease
property).

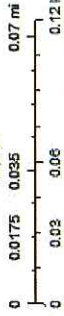


June 28, 2019

Legend

- County Boundary
- Tax Parcel Numbers
- Senior Citizen Accounts
- Mobile Home Only Accounts
- Land Accounts
- Building Only Accounts
- Tax Parcels

1:2,257



Data Accuracy Warning: All GIS data was created from available public records and existing map sources. Map results have been adjusted to achieve a best-fit alignment with the geographic location of geographic features. Map accuracy can be as great as 300 feet.

Copyright: 2016

Map not to scale

Details for Parcel: P31735



Jurisdiction: ANACORTES

Zoning Designation: Please contact the city of ANACORTES for ANACORTES zoning information.

[Excise Affidavits](#) Document scans of excise affidavits

Parcel Number P31735	XrefID 350123-0-018-0001	Quarter 23	Section 35	Township 01	Range 01
Owner Information LOVRICS LANDING LLC 3022 OAKES AVE ANACORTES, WA 98221	Site Address(es) 3027 OAKES AV Anacortes, WA (Jurisdiction, State) Zip Code Lookup Site Address Information	Map Links Open in iMap Assessor's Parcel Map: PDF DWF			

Current Legal Description [Abbreviation Definitions](#)

ANACORTES TIDE LANDS TAX 6 BEG 97.3FT S & 203.3FT W OF INIT PT OF TR 2 PL 7 TH N 22DEG W 71FT TH S 70-44 W 320FT TH S 19-16 E 100FT TH S 7 0-44 W 173FT TH S 22DEG E 158FT TH N 58- 55 E 82FT TH N 50-10 E 165FT TH N 46-20 E 284.3FT TPB BEING PTN TR 2 PL M LESS TAX 6A

2018 Values for 2019 Taxes*

Building Market Value	\$147,300.00
Land Market Value	+\$574,200.00
Total Market Value	\$721,500.00
Assessed Value	\$721,500.00
Taxable Value	\$721,500.00

Sale Information

Deed Type	QUIT CLAIM DEED
Sale Date	2012-06-13
Sale Price	\$.00

2019 Property Tax Summary

2019 Taxable Value	\$721,500.00
General Taxes	\$6,808.67
Special Assessments/Fees	
Total Taxes	\$6,808.67

* Effective date of value is January 1 of the assessment year (2018)

[Legal Description at time of Assessment](#)

*Land Use		WAC 458-53-030	
Neighborhood	(6R46ANA) ANACORTES MARINA		
Levy Code	0900	Fire District	
School District	SD103	Exemptions	
Utilities	*SEP, WTR-P	Acres	0.00
Improvement 1 Attributes Summary			
Building Style	COMMERCIAL REAL PROPERTY		
Year Built		Foundation	
Above Grade Living Area	19,051 Square Feet	Exterior Walls	
Finished Basement		Roof Covering	
*Total Living Area	19,051 Square Feet	Heat/Air Conditioning	
Unfinished Basement		Fireplace	
*Total Garage Area		Bedrooms	
Bathrooms			

For additional information on individual segments see Improvements tab

* Land Use codes are for assessment administration purposes and do not represent jurisdictional zoning. Please contact the appropriate planning department in your jurisdiction for land use questions.

* Total living area includes above grade living area and finished basement area.

* Garage square footage includes all garage areas; basement garages, attached garages, detached garages, etc.

Assessment data for improvements is based on exterior inspections. Please contact the Assessor's office if the information does not accurately reflect the interior characteristics.

Details for Parcel: P31738



Jurisdiction: ANACORTES

Zoning Designation: Please contact the city of ANACORTES for ANACORTES zoning information.

[Excise Affidavits](#) [Document scans of excise affidavits](#)

Parcel Number P31738	XrefID 350123-0-021-0006	Quarter 23	Section 35	Township 01	Range 01
Owner Information LOVRICS LANDING LLC 3022 OAKES AVE ANACORTES, WA 98221	Site Address(es) 3022 OAKES AV Anacortes, WA (<i>Jurisdiction, State</i>) Zip Code Lookup Site Address Information	Map Links Open in iMap Assessor's Parcel Map: PDF DWF			

Current Legal Description [Abbreviation Definitions](#)

ANACORTES TIDE LANDS TAX 8AAA PTN WLY OF FOL BEG ON MEAN LI TR 2 PL 7 AT PT 437.07FT S & 609.80FT W OF INIT PT TR 2 TH S 58-55 W 148.2FT TH S 56-30 W 11.8FT TPB TH N 22DEG W 191.3 FT TO INER HARBOR LI EXC ANY PTN LY S O FN OF RLY LESS TAX 8AAB TR 2 TH S58 DEG 55' W 148.2

2018 Values for 2019 Taxes*

Building Market Value \$394,100.00
Land Market Value +\$613,800.00
Total Market Value \$1,007,900.00
Assessed Value \$1,007,900.00
Taxable Value \$1,007,900.00

Sale Information

Deed Type QUIT CLAIM DEED
Sale Date 2012-06-13
Sale Price \$.00

2019 Property Tax Summary

2019 Taxable Value \$1,007,900.00
General Taxes \$9,511.36
Special Assessments/Fees
Total Taxes \$9,511.36

* Effective date of value is January 1 of the assessment year (2018)

Legal Description at time of Assessment

*Land Use				WAC 458-53-030
Neighborhood	(6R46ANA) ANACORTES MARINA			
Levy Code	0900	Fire District		
School District	SD103	Exemptions		
Utilities	*SEW, WTR-P	Acres	0.00	
Improvement 1 Attributes Summary				
Building Style	COMMERCIAL REAL PROPERTY			
Year Built		Foundation		
Above Grade Living Area	12,480 Square Feet	Exterior Walls		
Finished Basement		Roof Covering		
*Total Living Area	12,480 Square Feet	Heat/Air Conditioning		
Unfinished Basement		Fireplace		
*Total Garage Area		Bedrooms		
Bathrooms				
<i>For additional information on individual segments see Improvements tab</i>				

* Land Use codes are for assessment administration purposes and do not represent jurisdictional zoning. Please contact the appropriate planning department in your jurisdiction for land use questions.

* Total living area includes above grade living area and finished basement area.

* Garage square footage includes all garage areas; basement garages, attached garages, detached garages, etc.

Assessment data for improvements is based on exterior inspections. Please contact the Assessor's office if the information does not accurately reflect the interior characteristics.

Details for Parcel: P31740



Jurisdiction: ANACORTES

Zoning Designation: Please contact the city of ANACORTES for ANACORTES zoning information.

[Excise Affidavits](#) *Document scans of excise affidavits*

Parcel Number P31740	XrefID 350123-0-023-0004	Quarter 23	Section 35	Township 01	Range 01
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Owner Information
LOVRICS LANDING LLC
3022 OAKES AVE
ANACORTES, WA 98221

Site Address(es)

Map Links
[Open in iMap](#)
Assessor's Parcel Map:
[PDF](#) | [DWF](#)

Current Legal Description [Abbreviation Definitions](#)

ANACORTES TIDE LANDS TAX 8AB BAAP ON SLY LI TR 2 488.7FT S & 695.44FT W OF INIT PT TH S 58-55 W 48.2 FT TH S 56-30 W 11.8FT TH N 22-00 W 191.3FT TO INER HARBOR LI TH N 70-44 E ALG SD LI 59.24FT M/L TO NW C TH S 22-00 E ALG W LI FORMER OWNER 178.5FT TPB EXC PTN THOF IF ANY LY S OF N LI RLY RD R/W

2018 Values for 2019 Taxes*

Building Market Value	\$.00
Land Market Value	+\$138,600.00
Total Market Value	\$138,600.00
Assessed Value	\$138,600.00
Taxable Value	\$138,600.00

Sale Information

Deed Type	QUIT CLAIM DEED
Sale Date	2012-06-13
Sale Price	\$.00

2019 Property Tax Summary

2019 Taxable Value	\$138,600.00
General Taxes	\$1,307.96
Special Assessments/Fees	
Total Taxes	\$1,307.96

* Effective date of value is January 1 of the assessment year (2018)

Legal Description at time of Assessment

*Land Use		WAC 458-53-030	
Neighborhood	(6R46ANA) ANACORTES MARINA		
Levy Code	0900	Fire District	
School District	SD103	Exemptions	
Utilities		Acres	0.00
Improvement 1 Attributes Summary			
Building Style	COMMERCIAL REAL PROPERTY		
Year Built		Foundation	
Above Grade Living Area		Exterior Walls	
Finished Basement		Roof Covering	
*Total Living Area		Heat/Air Conditioning	
Unfinished Basement		Fireplace	
*Total Garage Area		Bedrooms	
Bathrooms			
<i>For additional information on individual segments see Improvements tab</i>			

* Land Use codes are for assessment administration purposes and do not represent jurisdictional zoning. Please contact the appropriate planning department in your jurisdiction for land use questions.

* Total living area includes above grade living area and finished basement area.

* Garage square footage includes all garage areas; basement garages, attached garages, detached garages, etc.

Assessment data for improvements is based on exterior inspections. Please contact the Assessor's office if the information does not accurately reflect the interior characteristics.

Details for Parcel: P31741



Jurisdiction: ANACORTES

Zoning Designation: Please contact the city of ANACORTES for ANACORTES zoning information.

[Excise Affidavits](#) *Document scans of excise affidavits*

Parcel Number	XrefID	Quarter	Section	Township	Range
P31741	350123-0-024-0003	23	35	01	

Owner Information
 LOVRICS LANDING LLC
 3022 OAKES AVE
 ANACORTES, WA 98221

Site Address(es)

Map Links
[Open in iMap](#)
 Assessor's Parcel Map:
[PDF](#) | [DWF](#)

Current Legal Description [Abbreviation Definitions](#)

(0.3900 ac) ANACORTES TIDE LANDS TAX 8B BAAP ON INER LI TR 2 PL 7 437.07 FT S & 609.80FT W OF I P THOF TH N 22DE GW 158.0FT TO OUTER LI SD TR 2 TH S 70-4 4W ALG OUTER LI SD TR 97.88FT TH S 22DEG E 178.9FT TO INER LI SD TR TH N 58-55 E ALG SD INER LI 100FT

2018 Values for 2019 Taxes*

Building Market Value	\$.00
Land Market Value	+\$237,600.00
Total Market Value	\$237,600.00
Assessed Value	\$237,600.00
Taxable Value	\$237,600.00

Sale Information

Deed Type	QUIT CLAIM DEED
Sale Date	2012-06-13
Sale Price	\$.00

2019 Property Tax Summary

2019 Taxable Value	\$237,600.00
General Taxes	\$2,242.20
Special Assessments/Fees	
Total Taxes	\$2,242.20

* Effective date of value is January 1 of the assessment year (2018)

Legal Description at time of Assessment

*Land Use				WAC 458-53-030
Neighborhood	(6R46ANA) ANACORTES MARINA			
Levy Code	0900	Fire District		
School District	SD103	Exemptions		
Utilities		Acres	0.00	
Improvement 1 Attributes Summary				
Building Style	COMMERCIAL REAL PROPERTY			
Year Built		Foundation		
Above Grade Living Area		Exterior Walls		
Finished Basement		Roof Covering		
*Total Living Area		Heat/Air Conditioning		
Unfinished Basement		Fireplace		
*Total Garage Area		Bedrooms		
Bathrooms				
<i>For additional information on individual segments see Improvements tab</i>				

* Land Use codes are for assessment administration purposes and do not represent jurisdictional zoning. Please contact the appropriate planning department in your jurisdiction for land use questions.

* Total living area includes above grade living area and finished basement area.

* Garage square footage includes all garage areas; basement garages, attached garages, detached garages, etc.

Assessment data for improvements is based on exterior inspections. Please contact the Assessor's office if the information does not accurately reflect the interior characteristics.



Focus

Model Toxics Control Act Cleanup Regulation: Process for Cleanup of Hazardous Waste Sites

In March of 1989, an innovative, citizen-mandated toxic waste cleanup law went into effect in Washington, changing the way hazardous waste sites in this state are cleaned up. Passed by voters as Initiative 97, this law is known as the Model Toxics Control Act, chapter 70.105D RCW. This fact sheet provides a brief overview of the process for the cleanup of contaminated sites under the rules Ecology adopted to implement that Act (chapter 173-340 WAC).

How the Law Works

The cleanup of hazardous waste sites is complex and expensive. In an effort to avoid the confusion and delays associated with the federal Superfund program, the Model Toxics Control Act is designed to be as streamlined as possible. It sets strict cleanup standards to ensure that the quality of cleanup and protection of human health and the environment are not compromised. At the same time, the rules that guide cleanup under the Act have built-in flexibility to allow cleanups to be addressed on a site-specific basis.

The Model Toxics Control Act funds hazardous waste cleanup through a tax on the wholesale value of hazardous substances. The tax is imposed on the first in-state possessor of hazardous substances at the rate of 0.7 percent, or \$7 per \$1,000. Since its passage in 1988, the Act has guided the cleanup of thousands of hazardous waste sites that dot the Washington landscape. The Washington State Department of Ecology's Toxic Cleanup Program ensures that these sites are investigated and cleaned up.

What Constitutes a Hazardous Waste Site?

Any owner or operator who has information that a hazardous substance has been released to the environment at the owner or operator's facility and may be a threat to human health or the environment must report this information to the Department of Ecology (Ecology). If an "initial investigation" by Ecology confirms further action (such as testing or cleanup) may be necessary, the facility is entered onto either Ecology's "Integrated Site Information System" database or "Leaking Underground Storage Tank" database. These are computerized databases used to track progress on all confirmed or suspected contaminated sites in Washington State. All confirmed sites that have not been already voluntarily cleaned up are ranked and placed on the state "Hazardous Sites List." Owners, operators, and other persons known to be potentially liable for the cleanup of the site will receive an "Early Notice Letter" from Ecology notifying them that their site is suspected of needing cleanup, and that it is Ecology's policy to work cooperatively with them to accomplish prompt and effective cleanup.

Who is Responsible for Cleanup?

Any past or present relationship with a contaminated site may result in liability. Under the Model Toxics Control Act a potentially liable person can be:

- A current or past facility owner or operator.
- Anyone who arranged for disposal or treatment of hazardous substances at the site.
- Anyone who transported hazardous substances for disposal or treatment at a contaminated site, unless the facility could legally receive the hazardous materials at the time of transport.
- Anyone who sells a hazardous substance with written instructions for its use, and abiding by the instructions results in contamination.

In situations where there is more than one potentially liable person, each person is jointly and severally liable for cleanup at the site. That means each person can be held liable for the entire cost of cleanup. In cases where there is more than one potentially liable person at a site, Ecology encourages these persons to get together to negotiate how the cost of cleanup will be shared among all potentially liable persons.

Ecology must notify anyone it knows may be a “potentially liable person” and allow an opportunity for comment before making any further determination on that person’s liability. The comment period may be waived at the potentially liable person’s request or if Ecology has to conduct emergency cleanup at the site.

Achieving Cleanups through Cooperation

Although Ecology has the legal authority to order a liable party to clean up, the department prefers to achieve cleanups cooperatively. Ecology believes that a non-adversarial relationship with potentially liable persons improves the prospect for prompt and efficient cleanup. The rules implementing the Model Toxics Control Act, which were developed by Ecology in consultation with the Science Advisory Board (created by the Act), and representatives from citizen, environmental and business groups, and government agencies, are designed to:

- Encourage independent cleanups initiated by potentially liable persons, thus providing for quicker cleanups with less legal complexity.
- Encourage an open process for the public, local government and liable parties to discuss cleanup options and community concerns.
- Facilitate cooperative cleanup agreements rather than Ecology-initiated orders. *Ecology can, and does, however use enforcement tools in emergencies or with recalcitrant potentially liable persons.*

What is the Potentially Liable Person’s Role in Cleanup?

The Model Toxics Control Act requires potentially liable persons to assume responsibility for cleaning up contaminated sites. For this reason, Ecology does not usually conduct the actual cleanup when a potentially liable person can be identified. Rather, Ecology oversees the cleanup of sites to ensure that investigations, public involvement and actual cleanup and monitoring are done appropriately. Ecology’s costs of this oversight are required to be paid by the liable party.

When contamination is confirmed at the site, the owner or operator may decide to proceed with cleanup without Ecology assistance or approval. Such “independent cleanups” are

allowed under the Model Toxics Control Act under most circumstances, but must be reported to Ecology, and are done at the owner's or operator's own risk. Ecology may require additional cleanup work at these sites to bring them into compliance with the state cleanup standards. Most cleanups in Washington are done independently.

Other than local governments, potentially liable persons conducting independent cleanups do not have access to financial assistance from Ecology. Those who plan to seek contributions from other persons to help pay for cleanup costs need to be sure their cleanup is "the substantial equivalent of a department-conducted or department-supervised remedial action." Ecology has provided guidance on how to meet this requirement in WAC 173-340-545. Persons interested in pursuing a private contribution action on an independent cleanup should carefully review this guidance prior to conducting site work.

Working with Ecology to Achieve Cleanup

Ecology and potentially liable persons often work cooperatively to reach cleanup solutions. Options for working with Ecology include formal agreements such as consent decrees and agreed orders, and seeking technical assistance through the Voluntary Cleanup Program. These mechanisms allow Ecology to take an active role in cleanup, providing help to potentially liable persons and minimizing costs by ensuring the job meets state standards the first time. This also minimizes the possibility that additional cleanup will be required in the future – providing significant assurances to investors and lenders.

Here is a summary of the most common mechanisms used by Ecology:

- **Voluntary Cleanup Program:** Many property owners choose to cleanup their sites independent of Ecology oversight. This allows many smaller or less complex sites to be cleaned up quickly without having to go through a formal process. A disadvantage to property owners is that Ecology does not approve the cleanup. This can present a problem to property owners who need state approval of the cleanup to satisfy a buyer or lender.

One option to the property owner wanting to conduct an independent cleanup yet still receive some feedback from Ecology is to request a technical consultation through Ecology's Voluntary Cleanup Program. Under this voluntary program, the property owner submits a cleanup report with a fee to cover Ecology's review costs. Based on the review, Ecology either issues a letter stating that the site needs "No Further Action" or identifies what additional work is needed. Since Ecology is not directly involved in the site cleanup work, the level of certainty in Ecology's response is less than in a consent decree or agreed order. However, many persons have found a "No Further Action" letter to be sufficient for their needs, making the Voluntary Cleanup Program a popular option.
- **Consent Decrees:** A consent decree is a formal legal agreement filed in court. The work requirements in the decree and the terms under which it must be done are negotiated and agreed to by the potentially liable person, Ecology and the state Attorney General's office. Before consent decrees can become final, they must undergo a public review and comment period that typically includes a public hearing. Consent decrees protect the potentially liable person from being sued for "contribution" by other persons that incur cleanup expenses at the site while facilitating any contribution claims against the other persons when they are responsible for part of the cleanup costs. Sites cleaned up under a consent decree are also exempt from having to obtain certain state and local permits that could delay the cleanup.

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- **De Minimus Consent Decree:** Landowners whose contribution to site contamination is “insignificant in amount and toxicity” may be eligible for a de minimus consent decree. In these decrees, landowner typically settle their liability by paying for some of the cleanup instead of actually conducting the cleanup work. Ecology usually accepts a de minimus settlement proposal only if the landowner is affiliated with a larger site cleanup that Ecology is currently working on.
 - **Prospective Purchaser Consent Decree:** A consent decree may also be available for a “prospective purchaser” of contaminated property. In this situation, a person who is not already liable for cleanup and wishes to purchase a cleanup site for redevelopment or reuse may apply to negotiate a prospective purchaser consent decree. The applicant must show, among other things, that they will contribute substantial new resources towards the cleanup. Cleanups that also have a substantial public benefit will receive a higher priority for prospective purchaser agreements. If the application is accepted, the requirements for cleanup are negotiated and specified in a consent decree so that the purchaser can better estimate the cost of cleanup before buying the land.
 - **Agreed Orders:** Unlike a consent decree, an agreed order is not filed in court and is not a settlement. Rather, it is a legally binding administrative order issued by Ecology and agreed to by the potentially liable person. Agreed orders are available for remedial investigations, feasibility studies, and final cleanups. An agreed order describes the site activities that must occur for Ecology to agree not to take enforcement action for that phase of work. As with consent decrees, agreed orders are subject to public review and offer the advantage of facilitating contribution claims against other persons and exempting cleanup work from obtaining certain state and local permits.

Ecology-Initiated Cleanup Orders

Administrative orders requiring cleanup activities without an agreement with a potentially liable person are known as **enforcement orders**. These orders are usually issued to a potentially liable person when Ecology believes a cleanup solution cannot be achieved expeditiously through negotiation or if an emergency exists. If the responsible party fails to comply with an enforcement order, Ecology can clean up the site and later recover costs from the responsible person(s) at up to three times the amount spent. The state Attorney General’s Office may also seek a fine of up to \$25,000 a day for violating an order. Enforcement orders are subject to public notification.

Financial Assistance

Each year, Ecology provides millions of dollars in grants to local governments to help pay for the cost of site cleanup. In general, such grants are available only for sites where the cleanup work is being done under an order or decree. Ecology can also provide grants to local governments to help defray the cost of replacing a public water supply well contaminated by a hazardous waste site. Grants are also available for local citizen groups and neighborhoods affected by contaminated sites to facilitate public review of the cleanup. See Chapter 173-322 WAC for additional information on grants to local governments and Chapter 173-321 WAC for additional information on public participation grants.

Public Involvement

Public notices are required on all agreed orders, consent decrees, and enforcement orders. Public notification is also required for all Ecology-conducted remedial actions.

Ecology's Site Register is a widely used means of providing information about cleanup efforts to the public and is one way of assisting community involvement. The Site Register is published every two weeks to inform citizens of public meetings and comment periods, discussions or negotiations of legal agreements, and other cleanup activities. The Site Register can be accessed on the Internet at: www.ecy.wa.gov/programs/tcp/pub_inv/pub_inv2.html.

How Sites are Cleaned Up

The rules describing the cleanup process at a hazardous waste site are in chapter 173-340 WAC. The following is a general description of the steps taken during the cleanup of an average hazardous waste site. Consult the rules for the specific requirements for each step in the cleanup process.

1. Site Discovery: Sites where contamination is found must be reported to Ecology's Toxics Cleanup Program within 90 days of discovery, unless it involves a release of hazardous materials from an underground storage tank system. In that case, the site discovery must be reported to Ecology within 24 hours. At this point, potentially liable persons may choose to conduct independent cleanup without assistance from the department, but cleanup results must be reported to Ecology.

2. Initial Investigation: Ecology is required to conduct an initial investigation of the site within 90 days of receiving a site discovery report. Based on information obtained about the site, a decision must be made within 30 days to determine if the site requires additional investigation, emergency cleanup, or no further action. If further action is required under the Model Toxics Control Act, Ecology sends early notice letters to owners, operators and other potentially liable persons inviting them to work cooperatively with the department.

4. Hazard Ranking: The Model Toxics Control Act requires that sites be ranked according to the relative health and environmental risk each site poses. Working with the Science Advisory Board, Ecology created the Washington Ranking Method to categorize sites using data from site hazard assessments. Sites are ranked on a scale of 1 to 5. A score of 1 represents the highest level of risk and 5 the lowest. Ranked sites are placed on the state Hazardous Sites List.

3. Site Hazard Assessment: A site hazard assessment is conducted to confirm the presence of hazardous substances and to determine the relative risk the site poses to human health and the environment.

5. Remedial Investigation/Feasibility Study: A remedial investigation and feasibility study is conducted to define the extent and magnitude of contamination at the site. Potential impacts on human health and the environment and alternative cleanup technologies are also evaluated in this study. Sites being cleaned up by Ecology or by potentially liable persons under a consent decree, agreed order or enforcement order are required to provide for a 30 day public review before finalizing the report.

6. Selection of Cleanup Action: Using information gathered during the study, a cleanup action plan is developed. The plan identifies preferred cleanup methods and specifies cleanup standards and other requirements at the site. A draft of the plan is subject to public review and comment before it is finalized.

7. Site Cleanup: Actual cleanup begins when the cleanup action plan is implemented. This includes design, construction, operation and monitoring of cleanup actions. A site may be taken off the Hazardous Sites List after cleanup is completed and Ecology determines cleanup standards have been met.

