

WASHINGTON PUBLIC PORTS ASSOCIATION

Port Governance and Management Guide

A comprehensive, practical handbook to assist port commissioners and senior staff as they govern, manage, and operate Washington State's public ports.

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PREFACE

“Experience is what you get when you didn’t get what you wanted.”

– **Randy Pausch**, American educator, professor of computer science, human-computer interaction, and design at Carnegie Mellon University

The Washington State Port Governance and Management Guide was created to consolidate the vast amount of information that is available and needed by Washington’s public ports, their elected commissions, and their appointed senior staff to successfully manage one of Washington state’s most critical types of special-purpose governments. The guide is a joint vision of the Washington Public Ports Association (WPPA), member company Maul Foster & Alongi (MFA), and Lifetime Member Jim Darling. All who envisioned this guide and contributed to it recognize the need to capture and make accessible the vast wealth of knowledge about ports in a single location for port leaders today and in the future.

During the drafting of the guide, a multitude of documents, reports, and previous publications were augmented by original research and interviews to compile the most comprehensive resource in support of the success of every Washington state port. In some cases, the language of select WPPA publications has been used verbatim.

This guide is a resource and cannot take the place of regulatory information or legal advice. Commissioners and staff are advised to refer to RCW Title 53 regarding port districts and their port counsel for specific information related to your port.

WPPA will host ongoing trainings for its members based on the content of the guide, which will be updated periodically to keep pace with the rapidly evolving port industry and the issues and policies that affect it. Readers are encouraged to share with WPPA any content in need of updates, as well as new and emerging topics of interest.

The guide is available as an interactive .pdf online and in print. Visit www.washingtonports.org to access and print the guide, or email WPPA at washington.ports@washingtonports.org to request a printed copy.

This guide would not have been possible without the contributions of WPPA member and partner organizations. The primary contributors include WPPA staff and former and current Washington State port executives, staff, and legal counsel.

A special thanks to the primary contributors to the Washington State Port Governance and Management Guide

Jim Darling, principal author and former Port of Bellingham executive director

Jim is a Life Member of the WPPA and served as its Chair of the Environment Committee for more than 11 years. He led the negotiations with the Washington State Department of Natural Resources on behalf of the port industry for the model Port Management Agreement and served on a host of other statewide and industry committees. Jim is a graduate of the University of Illinois with a bachelor's degree in Sociology/Finance and a Master's in Public Administration. He was adjunct professor at Western Washington University and was on the Huxley College Advisory Board. Jim continues to serve on multiple community boards and committees. Born in Seattle, Jim is a third-generation Washingtonian.

Abbi Russell, principal editor and project manager

Abbi has spent nearly 20 years working for and with public agencies, including serving in the U.S. Army, and working 12 years as a Public Information Officer for the Port of Vancouver USA and Washington State Department of Transportation. She has helped agencies, businesses, and nonprofits talk with their communities about issues large and small, including multimillion dollar transportation and energy projects, industrial and commercial development, major natural disasters, and more. Abbi holds a bachelor's degree in Public Affairs from Washington State University and is a senior communications and outreach specialist for Maul Foster & Alongi.

Abbi's work on the guide was greatly assisted by the hard work of fellow MFA communications specialists Charla Skaggs and Claire Moerder, and MFA graphic designers Ryan Cole and Cora Lee.

Frank Chmelik, primary resource, WPPA corporate counsel, and frequent contributor to WPPA port education forums

Frank has represented port districts, fire districts and business throughout Washington state for 30 years. For the past decade Frank and Chmelik Sitkin & Davis, P.S. has served as the general counsel for the Washington Public Ports Association. Frank authors the WPPA's monthly "Knowing the Waters" blog on municipal legal issues and provides legal advice to the WPPA staff and the executive committee.

Blending business, municipal, employment, land use, litigation and environmental law experience, members of the firm have worked with governments all over the state to help them operate efficiently and achieve their goals. Frank Chmelik started his legal career as a U.S. Army JAG Corps officer where he served as a prosecutor and defense counsel at Fort Lewis. He then worked for the Seattle law firm Karr Tuttle Campbell. In 1987, he moved to Bellingham where he co-founded the law firm of Chmelik Sitkin & Davis, P.S. Each year, since 1999, when the

selection began, Frank has been chosen by Washington Law & Politics Magazine as a “Super Lawyer®” representing the top 5% of the lawyers in Washington. Frank has served as a member of the American Bar Association’s House of Delegates and as a member of the American Bar Association’s Standing Committee on Military Law. In 2014 Frank was elected a Fellow of the American Bar Foundation. Frank holds a bachelor’s degree in economics and political science from Claremont Men’s College and earned his juris doctorate from the Hastings College of Law at the University of California.

Special thanks to Steve Taylor, President of Maul Foster & Alongi, and the firm’s 150 owner-professionals whose expertise and support made the guide possible

Maul Foster & Alongi is an integrated multidisciplinary professional organization consulting in planning and development services, GIS and data analysis, environmental, engineering, communications, and health and safety. MFA is a locally owned Pacific Northwest consulting firm established in Vancouver, Washington by Jim Maul, Tom Foster, and Neil Alongi. Since its inception in 1996, MFA has grown from four employees to more than 150 employees and now has offices in Vancouver, Seattle, and Bellingham, Washington; Portland, Lake Oswego, and The Dalles, Oregon; and Kellogg and Coeur d’Alene, Idaho. In 2013, MFA became a 100% employee-owned company.

In gratitude to the industry leaders who contributed their wisdom and experience

John Carter, Carter Consulting: Former Chief Financial Officer, ports of Bellingham and Everett

David Fleckenstein and staff: Washington State Department of Transportation Aviation Division

Don Goldberg: Director of Economic Development, Port of Bellingham

Bill Hager: Senior Planner, Maul Foster & Alongi; former Planning and Real Estate Director, Port of Bellingham

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With appreciation for the support, guidance, and excellent insights of WPPA staff



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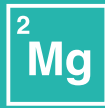
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THE GOVERNANCE ELEMENT

Commission



THE MANAGEMENT ELEMENT

Executive Director

1. GOVERNANCE AND MANAGEMENT

“A leader takes people where they want to go. A great leader takes people where they don’t necessarily want to go, but ought to be.”

–Rosalynn Carter

GOVERNANCE AND MANAGEMENT

Thoughtful governance and responsible management are the hallmarks of effective port authorities in Washington state. These organizational elements, when aligned and unified, result in the highest level of performance and public trust.

Chapter 1 explores the concepts of these governance and management elements. It presents principles and practical tools to further the alignment of these elements in today's Washington port authority.

More information about the specific roles of elected commissioners and appointed staff can be found in Chapter 3. Sailing historians, when referring to the early days of oceangoing shipping, describe the captain of a vessel as articulating the purpose of a voyage and mapping its route, while the boatswain was responsible for the vessel's performance, attending to its rigging and gear. This sailing analogy is not far off the respective roles of today's port commission and executive director. The Board of Commissioners (captain) defines the port's core mission and overall direction. The executive director (boatswain) manages operation of the port, moving it efficiently in the direction set by the commission. This is the essence of port governance and management in Washington state.

Like many complex organizations, understanding and subscribing to the proper functions of governance and management can be elusive for Washington port authorities. It is a challenge that requires continuous focus and adjustment by elected commissioners and appointed staff. With the rare exception of Washington's very small ports, some of which do not have compensated staff, the applicability of governance and management concepts is consistent across all ports.

Per Washington state statute, all actions, duties, and responsibilities fall to the elected Board of Commissioners, acting as a body of the whole, excepting those actions, duties and responsibilities delegated to a chief executive officer. In other words, the Board of Commissioners is responsible for governance and gives authority to the executive director to manage day-to-day port operations. The application of this statute is as diverse as the state's 75 public ports, and for good reason: Every single port in the state is different, and this statute provides the proper controls for the Board of Commissioners to decide how best to run their ports.

Ports utilize "executive director," "manager," and "chief executive officer" to characterize the staff member who reports directly to the commission and oversees the balance of the port's staff. For clarity, this manual will refer to this staff member as "executive director."



THE GOVERNANCE ELEMENT

The governance element is foundational to a port's existence. Governance involves continuously assessing and adjusting the port's strategic direction, adopting policies, allocating resources, responding to opportunities and risks, and establishing and maintaining a functioning culture that underpins the organization and its achievements. The success of the commission rests on the exercise of its authority, the quality of its decision making, and its willingness to be held accountable.

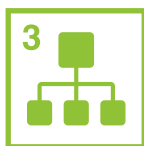
Individual commissioners set the tone of the organization. The key to setting the tone relies on commissioners acting deliberately and thoughtfully after reviewing the recommendations of their professional staff and considering public input.



THE MANAGEMENT ELEMENT

The management element is the operating arm of today's port. Management is responsible for executing the direction of the Board of Commissioners when they act as a body of the whole. The executive director is accountable to the commission for making policy, financial, and technical recommendations; executing policy and operational direction; overseeing staff and operations; and providing professional feedback on the port's progress, opportunities, and challenges.

For any port to function at peak efficiency, there must be trust and a teamwork-driven relationship between the commission and the executive director, as well as among the commissioners themselves. This aspect of management is critical to a port's daily functions and its overall success.



ORGANIZATIONAL STRUCTURE

The organizational structure of a port reflects the management element in operational detail. Ports are generally hierarchical organizations and tend to reflect some combination of three distinct structural models as described in Table 1.

Table 1

ORGANIZATIONAL STRUCTURE	DESCRIPTION	EVALUATION
Line of Business	Organized by financial performance and similarity of asset type, such as marinas or real estate, within individual business cost and revenue centers.	Provides strong financial performance metrics that can accommodate both asset and staff accountability.
Functional (Matrix)	Organized by area of expertise, such as finance or contract negotiation, but with one port-wide cost and revenue centered accounting approach.	Creates a sense of unity within the organization. Can be less useful in evaluating performance of assets.
Geographic	Organized by physical location, with distinct geographic-based cost and revenue centers (e.g., "North County").	Used less often in contemporary port management as it is less efficient and managers tend to be generalists.

The most common mix of these organizational structures in today's port is a combination of the functional and line-of-business structures. The functional structure captures traditional overhead skills such as human resources, finance, maintenance, lease negotiations, planning, and environmental. The line-of-business structure includes the operational and financial division of port assets, which generally include real estate, marine facilities, airfields, broadband, and the like.

It is also common in the mixed structure to create business-unit accounting systems to assess financial performance. These systems consider the overhead costs of operating a port as a cost of doing business that should be allocated to the line of business to accurately reflect the true cost performance. Allocating these overhead charges, as well as allocation of debt service and capital costs, provide a true cost-revenue picture. Port organization and budgets are discussed in more detail in chapters 3 and 4.

LEADERSHIP PRINCIPLES IN WASHINGTON PORTS

Washington ports are, by their nature and legal construct, complex organizations. They require leaders to have a breadth of governance and management skills if the organization is to be successful. This complexity arises from several conflicting organizational characteristics. On the one hand, ports are public institutions with all the legal requirements and public expectations of traditional local government. On the other hand, they are expected to conduct business in the private marketplace, with its competitive and often confidential tendencies. This can lead to tension that manifests itself in:

- **The tempo of decision-making, which must balance the urgency of market opportunities with the need for thoughtful deliberation**
- **The need to “play it close to the vest” while adhering to unwavering standards of transparency and openness**
- **The capacity to balance traditional products and services rooted in history and community expectations with societal expectations of staying current with today’s accelerating technology**

All these tensions are baked into the complexity of leading today’s Washington state port authority. Though formidable, these challenges are often what draw citizens to run for port office and attract professional managers to the industry. Fortunately, there are tested principles that have guided those in leadership positions of very successful port authorities.

KNOW WHEN TO LEAD AND WHEN TO BE LED

Misunderstanding the roles and dynamics of leadership is often the root cause of professional leadership changes in Washington state ports. In essence: Who is in charge, the elected commission or the professional manager who was recruited for their experience and previous success? The answer is simple: The elected commission is ultimately the final decisionmaker. But in practice, this is not quite so straightforward.

As described above, by statute all decisions are reserved to the commission acting as a body of the whole, except for what they formally delegate to the executive director (see more detail in Chapter 3). But the dynamic is much more nuanced. While there is certainly a formal governance relationship between the commission and the executive director, it must be recognized that there is a more subtle and informal relationship driven by personalities, experience, and expectations. It is incumbent upon the executive director to know when, how, and for which issues they should demonstrate leadership to the commission. At all times, the

executive director must keep in sight the approved boundaries of their authority—those clearly outlined in the delegation of powers—and avoid overstepping them. With time and experience, executive directors develop an intuitive sense of how close they are to the bounds of their authority while providing the bold and innovative leadership their commission has come to expect.

By the same token, the commission and individual commissioners have an obligation to know when to lead and when to be led by their elected colleagues or executive director. This, too, comes with experience, coupled with a sense of shared commitment to the organization's success.

If this dynamic is misunderstood and not practiced effectively, the result is quite often a change in leadership. A port's delegation of power is instrumental in establishing the formal boundaries of authority, but the subtleties of knowing when to lead and when to be led is an outcome of experience and an acute awareness of one's role in port leadership.

AFFORD THE COMMISSION THE ROOM IT NEEDS TO GOVERN

As previously discussed, the elected commission is the ultimate authority in a port's decision-making hierarchy, but the commission must be given room to govern as a body of the whole. This may seem obvious at first blush, but it is often a source of frustration and a major element in the collapse of a port's institutional harmony. Underlying this frustration are the complexity of issues facing today's ports and the makeup of a port's elected board. The decisions and issues that rise to the attention of a port commission are complex and sometimes controversial. Decisions on these issues must be made by a group of individuals acting as a body of the whole, but sometimes that body is made of individuals who joined the elected body to enact change. This can make it challenging to find common ground and make a consensus group decision.

Tempo and logistics must be considered and respected for successful group decision-making. This orchestration requires thoughtfulness and advanced planning to give the commission the space it needs to make critical decisions as a group.

Tempo is a function of the complexity and controversy surrounding a particular issue. That complexity is often attributable to the size of a financial commitment, reliance on market projections, project cost estimates, or real or perceived community impacts. It may also be a function of controversy among individual commissioners' positions or the port's constituents, or embedded in interest groups that may be polarized on a topic. Tempo is the pace at which a decision is made. It is unreasonable to expect an elected body to meet, discuss, and make a measured decision on a complex or controversial matter at too quick a pace.

British historian Northcote Parkinson, considered by some to be the authority on modern public administration, developed the Law of Triviality. Parkinson succinctly defined this law as meaning, "the time spent on any item of the agenda will be in inverse proportion to the sum involved."

Parkinson also advanced the notion that “work expands so as to fill the time available for its completion. If something must be done in a year, it’ll be done in a year. If something must be done next week, it’ll be done next week. If something must be done tomorrow, it’ll be done tomorrow.”

With all due deference to Parkinson, complex issues need to be afforded the time it takes to reach concurrence on a measured outcome. It is the obligation of port leadership to schedule deliberations on these topics over a series of meetings, if necessary, and on a timeline that is commensurate with the complexity and significance of the outcome. A successful approach may include consideration of an issue in a work study session or series of sessions before calendaring a formal meeting where a decision is to be made.

Likewise, the logistics of deliberations are important. Creating a physical setting to accommodate a healthy and productive discussion, such as a round table format, is critical. Even more critical is providing commissioners with complete, relevant, and effective background material in a timely manner to afford them sufficient time to prepare for deliberation. This requires comprehensive work by port staff to provide background material that accurately frames the issue, explores pros and cons, assesses impacts, identifies alignment with a port’s strategic direction, and is respectful toward opposing views. It is a failure of leadership to rush a critical decision or inadequately support a commission entering a deliberation while acting as a body of the whole. Room to govern requires adequate time and complete information.

BALANCE PROCESS AND CULTURE

There are two fundamental drivers that can contribute or detract from the successful operation of a port. The first is organizational process that guides a port’s actions and the second is the organizational culture that underlies those actions.

Organizational process is the body of adopted steps or defined actions an organization takes to accomplish its mission. In essence, these are the rules and policies that govern a port’s operation, formalized in keystone documents that are required by law or are industry best-management practices. As public agencies, ports operate in a reasonably regulated environment that still affords a great deal of flexibility and discretion in how a port can best serve its community. These keystone documents and practices are identified and discussed in more detail throughout this manual. Staying abreast of these process requirements and practices should be an annualized priority of a port.

Organizational culture is the medley of the beliefs, assumptions, values, and interpersonal dynamics that contribute to the unique character and environment of an organization. Culture is as significant as process and plays a crucial role in the overall economy and efficiency of a port’s operation. Culture can be elusive and its durability is often rooted in institutional history as well as the character of its governance and leadership. Organizational culture evolves as

societal norms and the industry change. The most effective port leaders are those who are in tune with these changes and thoughtfully adapt their organization's culture over time. Organizations with strong cultures can rely less on process to achieve success. However, there is always a certain amount of process required by law and demonstrated by successful industry practice.

Embracing process without resenting its presence and respecting the history and norms that constitute a port's culture are key ingredients to the successful operation of a port. Balancing these two fundamental drivers is essential.

SEEK ALIGNMENT FOR SUCCESS

One of the greatest disrupters to a port's success is misalignment. Misalignment can occur between members of a commission, between the commission acting as a body of the whole and its staff, and between the port and the community it serves or the market in which it competes.

The political construct of Washington ports anticipates a degree of individual divergence on the priorities and/or direction of the organization. However, it is expected that the port's Board of Commissioners will seek and find accord, allowing the port to move toward common goals and outcomes. This is the essence of deliberative democracy, which results in the opportunity for shared consensus to emerge. A critical feature of a healthy and productive port, shared consensus is only achieved when organizational process and culture both prioritize alignment.

Organizational alignment can be greatly enhanced and solidified through the adoption of and reliance on the port's suite of keystone documents. A port's strategic plan, its operating and capital budgets, and a current Comprehensive Scheme of Harbor Improvements (CSHI) are examples of documents that help create and maintain alignment when thoughtfully developed and continually referred to by leadership and staff.

PRACTICAL TOOLS FOR PORT LEADERS

There are a host of proven tools to align a port's governance and management elements.

Rely on Keystone Documents

Keystone documents are those documents that are either required by state statute or are highly recommended best management practices for Washington ports. They include a variety of policies and practices that require commission approval and strict adherence by staff. They range from the adoption of the annual operating and capital budget to leasing policies that assure consistency and thoughtfulness in how a port manages its affairs.

Keystone documents required by law include:

KEYSTONE DOCUMENT	REFERENCE CHAPTER
Annual Operating and Capital Budget	4
Comprehensive Scheme of Harbor Improvements	8
Tax Levy	4
Promotional Hosting Policy	10
Purchasing Policy	9
Public Records Policy	10

Keystone documents that are recommended best management practices include:

KEYSTONE DOCUMENT	REFERENCE CHAPTER
Strategic Plan and Annual Action Plan	8
Multi-year Financial Forecast for Operating and Capital	4
Financial Guidelines or Business Practices	4
Leasing Policies	3
Delegation of Powers	5
Environmental Policies	8
Communication Plan	0

Track meeting time

One of a port's most precious commodities is the time spent in formal and informal meetings. Not only is the actual time spent in meetings a valuable commodity, the content also matters greatly. Governance time is limited in any given year and the topics put on an agenda must be commensurate with the governance role of the commission.

Time management for the commission can be greatly enhanced by:

- Adopting a well-thought-out delegation of powers to assign certain decisions to the executive director
- Relying on an annual budget development process that provides a clear roadmap for the near- and mid-term
- Having confidence in an insightful strategic plan that identifies the port's direction for the mid- and long-term

Routine Commission Updates

One of the great challenges of complex organizations is maintaining effective communication between an elected body and staff. Effective communications enhances alignment between the elected board and the staff. Conversely, the absence of effective communications can lead to misalignment and difficult relationships.

There are many communication tools available to a port. One of the most effective is a periodic update to the commission from the executive director. Because of the pace of port activities, it is recommended that these reports be made weekly and in writing, whether via a digital tool, such as email, or a printed tool, such as a memo.

Weekly updates are subject to public disclosure. For dependability, they should be consistent, accurate, and delivered on the same day of the week or month. Updates should include any topics about which the commission desires or needs to be notified, specifically:

- Executive director reporting that is required by the delegation of powers (e.g., leases or purchases executed administratively within the executive director's authority)
- Copies of critical communications from external parties
- Updates on projects and initiatives
- Upcoming calendar events (e.g., public events, community events, meetings)
- Upcoming issues that require commission forethought
- Notes of interest about staff or community members (e.g., retirements, accomplishments, recognition) near- and mid-term

Annual Agenda Planner

Ports use a variety of approaches to pre-establish meeting agendas that traditionally involve some combination of the executive director acting in concert with the president of the commission. This approach can be augmented by creating an annual agenda calendar.

Under this approach, the management team develops an annual meeting calendar immediately following the approval of the annual operating and capital budget. This calendar forecasts the agenda topics to be addressed at each individual commission meeting throughout the year. Some of these topics are driven by annual prescribed processes and events, such as the consideration and adoption of the annual budget or tax levy, while some are driven by the typical progress on budgeted projects, purchases, and initiatives. In any case, a reasonable forecast of commission actions can be developed ahead of time to help commissioners and staff plan their individual schedules, balance limited resources, and provide an overall sense of structure and predictability.

Recommended steps to develop an annual agenda calendar include:

- Appoint staff leads: Following the adoption of the annual operating and capital budget, the executive director assigns management responsibility to individual staff members as project and issue leads.
- Develop an expected timeline: Staff leads develop individual project, initiative, or purchase timelines scheduled over the fiscal year and identify needed commission updates, decision points, and approval of such matters as bids, contracts, and agreements.
- Develop an annual commission calendar: The management team as a group reviews and calendars the months of the year when specific commission actions or progress updates are expected to occur.
- Review with the Commission: The executive director reviews the annual calendar with the commission, detailed by date and agenda topic for each meeting of the fiscal year, and revises as necessary.
- Set individual preliminary meeting agendas: Individual meeting agendas for formal sessions or work study sessions are finalized throughout the year based on the annual calendar. As the fiscal year progresses, agendas will be invariably modified and adjusted with the ebb and flow of progress.

SUMMARY

Chapter 1 reviewed the delicate and often elusive concepts of port governance and management. These elements, when aligned, give a port the greatest chance of being successful in achieving its goals and ambitions.

There are time-tested tools to support a port in achieving and sustaining organizational alignment. When these tools are used in concert with a clear understanding of the leadership principles that define a port's culture, a port's success is greatly enhanced, which helps it achieve much in support of its community.

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2. THE ORIGIN AND AUTHORITY OF WASHINGTON PORTS

“The government is us; we are the government, you and I.”
–Theodore Roosevelt

HISTORY

Port, from the Latin word 'portus' or harbor.

As one looks forward from the aft of a vessel, the starboard is the right side and the port is the left side. As most helmsmen were right-handed, sailing ships were once steered by a rudder located on the right side of the hull. This steering board became the starboard and signified the right side of a vessel. Its opposite, the left or port side, was the side of the vessel brought to moor at a dock in a safe harbor.

Chapter 2 explores the origins and history of Washington state public ports, beginning in the late 1800s; describes the activities of today's contemporary port; and identifies the authority under which Washington ports operate. Having a clear understanding of these formative concepts offers contextual perspective to today's port leaders.

The emergence of publicly owned ports in the early 20th century was the result of a nationwide grassroots reaction to the nation's laissez-faire approach to 19th century capitalism. The late 1800s saw unconstrained emergence of private industries such as railroads, which led to a rise of real and perceived monopolies. Port facilities were developed and managed by railroads and private business interests.

Quite often the cost of transferring cargo between land and water—and sometimes even the waterborne shipping costs—were built into rail freight rates. This was contributing to growing monopolies and the unconstrained development of America's shoreside harbor facilities. The waterfront was becoming an ineffective maze of privately owned rail lines, terminals, warehouses, and wharves. From the community's perspective, local waterfronts were becoming less accessible, crime was on the rise and the devolving environmental conditions made harbor areas undesirable urban liabilities.

The resulting reaction across the United States was backlash against the railroads and the private interests driving this trend. This backlash, fueled by the advent of the progressive political movement, gained momentum and gave rise to the creation of publicly owned port facilities. It was anticipated that, by introducing public control of the nation's working waterfronts, states and communities would gain fair and equitable access to these critical transportation facilities; rates and costs would be standardized; and coordinated development and operation would improve the efficiency of these scarce harbor shorelines.

Washington state was no different. Two significant policy issues emerged in the late 1800s as the newly constituted state began to evolve. The first was the battle over ownership and control of navigable harbor area tidelands, and the second was populist support for publicly owned port authorities.

Washington held its constitutional convention in 1889 and the State assumed control of the tidelands of Washington's navigable waters. Prior to this determination, those tidelands were held in trust by the federal government on behalf of the Territory of Washington, but there were significant and vocal private interests that claimed ownership. To determine the actual location and ownership of these state-owned aquatic lands, the Harbor Lands Commission was created. Amid a great deal of controversy, the Harbor Lands Commission eventually classified first-class tidelands in harbor areas across the state and generally determined that the tidelands were owned and controlled by the State of Washington.

During this same period the People's Party came to power in both houses of the state legislature. While only in power for one term, this populist movement laid additional groundwork for support of public ownership and governance of the state's waterfronts and shorelines. Washington's populist movement advocated for several reforms in labor rights, women suffrage, and prohibition as well as the public ownership of Washington ports. This movement resulted in the Port District Act of 1911.

Despite a failed first attempt to create public ports in 1909, the effort moved forward. On March 14, 1911, Governor Marion Hay signed newly approved legislation into law and Washington state's public port industry was born. The original act gave local voters the right to create a new, independent government body, governed by three elected commissioners, and authorized to construct and operate harbor improvements. The original act was specific as to the powers and authorities of Washington ports; over time those powers and authorities have expanded. This expansion of powers is further explored in this chapter.

With the Port District Act of 1911 in place, communities across the state began to consider and approve the creation of public ports. This movement gave rise to what remains the nation's largest system of port authorities, all controlled at the local level.

1911 TO 1919

The Early Public Port Years



Of note...

- In 1911 Carrie Shumway is elected to the Kirkland city council. She is the first woman in the state to be elected to a city council.
- In 1911, the City of Tacoma built the first publicly owned dock in the state to accommodate the mosquito fleet of passenger vessels. These small vessels provided vital transportation for people and freight throughout Puget Sound before the region established its robust system of roads and bridges.
- In 1913 the Northwest Federation of American Indians is organized to resolve tribal status and assert treaty rights.
- Prohibition took effect in Washington in 1916.
- The State Board of Health delivers its Spanish flu pandemic report to the Governor, noting 4,870 deaths in the last three months of 1919.

These ports were created...

Port of Seattle 1911
Port of Grays Harbor 1911
Port of Vancouver 1912
Port of Bremerton 1913
Port of Kennewick 1915
Port of Everett 1918
Port of Tacoma 1918
Port of Eglon 1918
Port of Kingston 1919

1920 TO 1929

The Prohibition Years



Courtesy UW Special Collections-Montlake Bridge Opens-1925

Of note...

- The 14th Census of the United States confirmed that Washington state's population growth had slowed dramatically since 1910.

- In 1922 the Great Northern Railway builds the Harpole Bridge to span the Palouse River in Whitman County.
- On March 26, 1926, Bertha Knight Landes is elected mayor of Seattle. She is the first woman executive of a major American city.
- In 1927 Boeing wins a US airmail contract which leads to a new generation of passenger aircraft and the launch of United Airlines.
- The 1920s saw the greatest expansion of public ports in the state, with one-third of the state's ports created.
- In June 1929 Mabel Adams becomes the first woman to graduate from Washington State College (renamed Washington State University in 1959) with a degree in Civil Engineering.

These Ports were created...

Port of Kalama 1920

Port of Silverdale 1920

Port of Brownsville 1920

Port of Bellingham 1920

Port of Longview 1921

Port of Allyn 1921

Port of Illahee 1922

Port of Olympia 1922

Port of Port Angeles 1922

Port of Manchester 1923

Port of Keyport 1923

Port of Grapeview 1923

Port of Waterman 1923

Port of Port Townsend 1924

Port of Mabana 1926

Port of Anacortes 1926

Port of DeWatto 1926

Port of Ilwaco 1928

Port of Willapa Harbor 1928

Port of Peninsula 1928

Port of Tracyton 1929

1930 to 1939

THE GREAT DEPRESSION YEARS

Of note...

- In 1930 Elizabeth Ayer becomes the first woman registered architect in Washington state.
- In 1931 a dance marathon closes in Seattle after 1,545 continuous hours. The City of

Bellingham moves to prohibit continuous dance marathons on moral, religious, and health-related grounds.

- In February 1932 Natalie Notkin, Foreign Books Librarian for the Seattle Public Library, is terminated for allegedly introducing communist publications to the library. The charges were later dismissed. Notkin went on to serve at the University of Washington Libraries until 1968.
- In 1929 Washington State College horticulturist Dr. Walter Clore recognized the state's potential for wine grape production. His work with the university and Washington farmers kickstarted what is now a \$5 billion industry for the state.
- The Great Depression first shattered the economy of Washington, but through prioritization of public investment, the state sees rapid industrial growth and emerges from the Depression as an aerospace powerhouse.
- Originally established as a national monument in 1909, Olympic National Park is established by President Franklin D. Roosevelt in 1938.

These Ports were created...

Port of Indianola 1933

Port of Camas Washougal 1935

1940 TO 1949

The War and Peace Years



Courtesy National Park Service- US Troops ski training at Mt Rainier – 1942

Of note...

- On February 3, 1940, Lieutenant Colonel Dwight D. Eisenhower reports for duty at Fort Lewis.
- On December 11, 1941, four days after the attack on Pearl Harbor, the United States declared war on the Japanese Empire.

- On March 22, 1941, two small service generators at Grand Coulee Dam go online for the first time.
- In 1942 Boeing Airplane Co. hires stenographer Florise Spearman and sheet metal worker Dorothy West Williams. The women are Boeing's first African-American employees.
- The Seattle Port of Embarkation begins operations at Pier A (later Pier 36) on Seattle's waterfront. Over the next 14 years, the Port of Embarkation becomes one of the United States Army's busiest terminals for moving troops and supplies overseas during World War II and the Korean War.
- On February 12, 1945, the first of 28 incendiary balloons launched from Japan and known to land in Washington are discovered 7 miles north of Spokane
- On January 1, 1946, the Forest Practice Act requires Washington loggers to plant trees to replace the logs that they have harvested.
- In 1947 Dorothy Stimson Bullitt purchases a small, little-known Seattle radio station. She arranges a swap for the call letters KING and within a few years expands it into one of the finest broadcasting empires in America.
- On January 22, 1949, University of Washington (UW) President Dr. Raymond B. Allen dismisses three professors for suspected associations with Communists.

These Ports were created...

Port of Ridgefield 1940

Port of Pasco 1940

Port of Klickitat 1944

Port of Shelton 1948

Port of Edmonds 1948

1950 TO 1959

Dawn of the Cold War and Civil Rights



Courtesy-MOHAI -Elvis Presley rocks the Northwest 1957

Of note...

- In 1950 Washington state's total population exceeds 2.37 million, an increase of 37% over 10 years.
- On January 21, 1952, the Seattle University Chieftains stun the basketball world by defeating the Harlem Globetrotters.
- On April 4, 1953, the first phase of Seattle's Alaskan Way viaduct opens to traffic.
- On January 28, 1954, iconic Dick's Drive-In opens to begin serving hamburgers, French fries, and milkshakes on NE 45th Street in Seattle's Wallingford District.
- On April 15, 1955, the Umatilla Bridge spanning the Columbia River between Umatilla, Oregon, and Plymouth, Washington, opens to traffic.
- In 1957 the Washington Legislature creates the Department of Natural Resources
- On March 9, 1959, the Legislature approves a new Planning Enabling Act that provides counties additional authority and procedures by which to regulate land development.
- Washington State College is officially renamed Washington State University on July 1, 1959.

These Ports were created...

Port of Friday Harbor 1950

Port of Chinook 1951

Port of Poulsbo 1951

Port of Walla Walla 1952

Port of Hoodspoint 1952

Port of Quincy 1952

Port of Clarkston 1958

Port of Orcas 1958

Port of Benton 1958

Port of Chelan County 1958

Port of Columbia 1958

Port of Douglas County 1958

Port of Garfield 1958

Port of Royal Slope 1958

Port of Mattawa 1958

Port of Wahkiakum No. 1 1958

Port of Whitman County 1958

1960 TO 1969

The Generation Gap and Counterculture Years



Courtesy of Seattle Public Library- Seattle Space Needle Construction-1961

Of note...

- In 1960 researchers at the University of Washington invent several important improvements to kidney dialysis equipment and technology
- On January 6, 1961, Seattle City Light completes the new Gorge High Dam on the Upper Skagit River to replace the original 1921 Gorge Dam.
- On April 21, 1962, the Century 21 Exposition opens in Seattle. Also known as the Seattle World's Fair, the 184-day event attracted 10 million people and resulted in the construction of several structures, including the Space Needle and the Alweg Monorail.
- On January 24, 1964, Matson Navigation Company's Hawaiian Builder, the first modern container ship sails out of Puget Sound
- On March 2, 1964, Native Americans protest the denial of treaty rights by staging a "fish-in" during which they catch salmon in the Puyallup River without state permits. Washington state law at that time contradicted Native Americans' treaty rights to fish using traditional methods, such as nets and traps.
- A January 7, 1968, story in the Seattle Post-Intelligencer describes how paying bills by computer is "just around the corner."

These Ports were created...

Port of Coulee City 1960

Port of Hartline 1960

Port of Wilson Creek 1960

Port of Grand Coulee 1960

Port of Warden 1960

Port of Woodland 1960

Port of Kahlotus 1961
Port of South Whidbey 1961
Port of Skamania County 1964
Port of Skagit 1964
Port of Sunnyside 1964
Port of Ephrata 1965
Port of Moses Lake 1965
Port of Coupeville 1966
Port of Othello 1966
Port of Wahkiakum No. 2 1966
Port of Lopez 1968

1970 TO 1979

Disco and the Rise of Technology



Courtesy Microsoft-Bill Gates and Paul Allen start Microsoft-1975

Of Note...

- The 1970 census shows that, for the first time since the first census of Washington Territory was taken in 1853, women outnumber men in the state.
- On January 1, 1970, President Richard Nixon signs the National Environmental Policy Act, sponsored by Senator Henry M. "Scoop" Jackson.
- The heady aroma of fresh-roasted coffee beans wafts in the air as Starbucks opens for business on March 30, 1971, at Pike Place Market in Seattle. Its founders pass out free sample cups of coffee to their first customers.
- At about 12:51 p.m. on April 5, 1972, an F3 tornado strikes eastern Vancouver, Washington, killing six people.
- On February 12, 1974, federal District Court Judge George Boldt issues an historic ruling reaffirming the rights of Washington's Indian Tribes to fish in accustomed places.
- On February 15, 1975, the initial phase of the Lower Granite Dam is completed.

- On March 27, 1976, the King County Multipurpose Domed Stadium, otherwise known as the Kingdome, opens to a crowd of 54,000 celebrants.
- In 1978 Gary Figgins's Leonetti Cellar produces the first successful premium wines in the Walla Walla Valley.
- On January 1, 1979, after nearly four years in Albuquerque, New Mexico, Bill Gates and Paul Allen move their fledgling computer-software company to Bellevue.

This Port was created...

Port of Pend Oreille 1978

1980 TO 1989

The Rise of Pop Culture



Courtesy of US Navy-Port of Everett agrees to sell 143 acres to the Navy-1987

Of note...

- In late April 1981 a cast and crew of more than 100 arrive in Port Townsend to begin filming the Paramount Pictures feature 'An Officer and a Gentleman.'
- In 1982 the Seattle-King County Convention and Visitors Bureau adopts Seattle's nickname, "The Emerald City."
- On April 2, 1984, diplomats from the United States and Canada sign the Skagit River Treaty, ending plans to build Ross Dam higher, which would have flooded parts of British Columbia.
- On January 28, 1986, the space shuttle Challenger explodes during take-off.
- On May 5, 1987, Port of Everett Commissioners unanimously vote to sell 143 acres of port property for \$43.5 million to the U.S. Navy for the purpose of building a homeport for the carrier USS Nimitz.
- On the evening of February 21, 1989, veteran rocker Neil Young and his band unleash a new song, "Rockin' in the Free World," at Seattle's Paramount Theatre.

- Parts of the Steven Spielberg movie 'Always,' starring Holly Hunter, Richard Dreyfuss, and John Goodman, were filmed at and around the Port of Ephrata's Ephrata Municipal Airport in the summer of 1989.

These Ports were created...

Port of Centralia 1986

Port of Chehalis 1986

Port of Grandview 1988

PORTS: WASHINGTON STATE AND BEYOND

Washington Ports

Today there are 75 port districts in Washington state with at least one in 33 of the state's 39 counties. The U.S. Coast Guard estimates there are 360 commercial ports serving the nation, making Washington's port system approximately 20 percent of that total. While there can be some debate about what constitutes a port and its activities and legal structure, the fact remains that Washington's system is significant within and beyond the state's boundaries. Our state's 75 public ports undertake a wide variety of responsibilities in serving their local community, and 2020 WPPA survey of ports across the state reveals the diversity of these services.

Water-related Port activities

More than half of Washington's ports operate recreational marinas and boat launches, with over a third providing commercial marina facilities. About 30% of ports report operating traditional commercial marine terminals, either for oceangoing or river-based vessels. A much smaller number—just over 10% of the state's ports—operate marine-passenger terminals.

Landside Port activities

Landside port activities are clearly the greatest single port activity across the state; virtually all ports own and operate commercial and/or industrial real estate assets. Coming in at a close second is the operation of general aviation airports; nearly half of ports invest in this transportation mode. One of the most significant contributions Washington ports make to the state's economy is the operation of commercial Part 139 airports. In 2020 five of the state's nine commercial airports are operated by port authorities.

Telecommunications

One of the most rapidly growing port activities is investment in the development of broadband telecommunications infrastructure. One-third of the state's ports report being involved in one capacity or another in broadband in 2020. At the dawn of the 21st century, some in the port industry liken the entrée of Washington's public ports into the world of telecommunications to the early 1900s movement for public control of what had historically been an industry controlled by private interests. Indeed, in many ways the movement of information and data today is the modern-day equivalent of transporting goods in support of the economy.

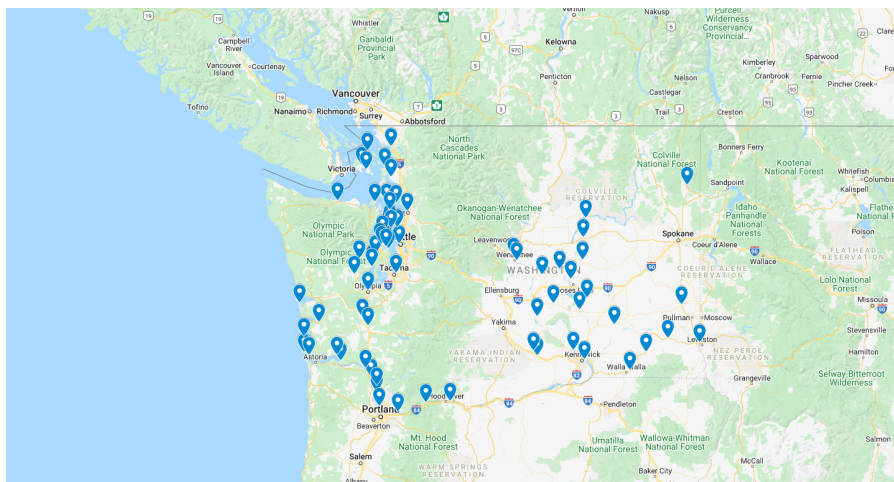
Economic development

These activities represent traditional and evolving lines of business by public ports. There are, however, a host of activities that Washington ports undertake that are more traditional local government activities. Specifically, almost 90% of ports report being involved in promoting economic development for their community and region. This activity is represented by brick-and-mortar investment in facilities, as well as in programmatic engagement in job growth or general economic resiliency. And related to this is the recognition that a healthy local economy includes the promotion of tourism—an activity in which nearly two-thirds of ports reported being engaged in 2020.

Likewise, over two-thirds of the state's ports build and/or operate parks and public-access facilities. A review of the industry's investment in these facilities confirms that this investment represents both a response to community demand as well as ports' desire to pay a dividend back to their communities for their support of the port's economic development activities. For many ports that operate business-to-business types of wholesale activities, such as shipping or large-scale industrial facilities, open space and public access opportunities provide a more retail touch. This can help ports connect with members of their community to inform and educate them about the port, its purpose and mission, and its contributions to the vitality of its community.

Environmental cleanup

The list of ports around the state that are pursuing environmental cleanup activities is growing: One-third of ports are engaged in cleaning up and restoring environmentally damaged properties and facilities either owned or acquired by the port. This type of brownfield redevelopment takes place at the intersection of environmental stewardship and economic development. The state of Washington has been instrumental in promoting this adaptive reuse practice by offering very flexible and focused grants through the state's Model Toxics Control Act. This and other innovative environmental programs will be discussed in more detail in chapters 4 and 7.



Map of Ports in Washington State

THE NATIONAL PORT INDUSTRY

Like in Washington state, ports are a vital component of the national economy. In 2020 ports across the U.S. employed over 13 million Americans, either directly or through induced jobs that are created by other private and public activities. Commercial waterborne activities alone contribute more than \$3 trillion to the economy, and port activities also generate tens of millions of dollars in federal, state, and local tax revenues each year.

The national port system is a conglomeration of public port authorities and private industrial facilities. This combination is unique on the world stage; most nations have a more centralized approach to governance, management, and finance of port facilities. For example, the Canada Ports Corporation has an oversight role with local Canadian ports, including carrying out periodic performance and financial reviews. In Japan the Ministry of Transport provides significant financial and technical support to local agencies to ensure the achievement of national commerce goals.

While there is not a centralized port oversight agency or national port policy in the U.S., the federal government does provide states and local jurisdictions with technical and financial support. Support through agencies such as the U.S. Coast Guard, the Maritime Administration (MARAD), the Federal Aviation Administration and the Corps of Engineers often comes in the form of grants for marine and aviation transportation facilities; construction and maintenance of critical infrastructure and oversight of national assets such as navigable waterways.

The regulatory powers of the federal government touch most local port operations through the conservation and protection of natural resources, such as shoreline habitat and aquatic environments. In a sense, our federal government plays a role in both checking local port activities by requiring mitigation of their impacts as well as financially and technically subsidizing efforts to expand the efficiency and reach of local ports.

AUTHORITY OF WASHINGTON PORTS

Washington ports are legislative creations of the State of Washington. The State of Washington derives its authorities and powers from the tenth amendment of the U.S. Constitution, which provides that powers not granted to the federal government shall be reserved to the states. The extent of states' rights versus those of the centralized federal government has been a topic of historic debate, but in the end the legal foundation of Washington state port authority is clear: The legal authority is defined, revised, and modified by the Washington State Legislature.

The state's port districts are "limited-purpose" governments with well-defined powers. They are distinct from cities and counties that are considered "general-purpose" governments in that limited-purpose governments such as ports were created for a special purpose and afforded very specific authorities. Ports, while their powers are extensive, are limited to pursuing those

activities that are specifically authorized by the State Legislature. In essence, ports can only do those things “on the list.” Other limited-purpose governments in Washington include fire districts and public utility districts.

Since the Washington Port District Act of 1911 was signed into law, the laws that enable port activities as well as restrict their actions have evolved into a well-understood palette of statutory authorities and requirements. These port-specific laws are principally captured in Chapter 53 of the Revised Code of Washington (RCW). However, it is important to note that a port’s authority and restrictions may also come from a reasonable inference of other state statutes, most notably RCW chapters 14 and 39.

There are also universal federal requirements and restrictions that apply to Washington state ports. Some of the more significant federal statutory implications are discussed in other chapters of this manual, including Chapter 7.

State statutes that directly or indirectly apply to Washington ports are extensive and constantly evolving. We discuss many of these in relevant detail throughout this manual. These statutes authorize ports to engage in traditional operations and place requirements on how ports manage their affairs. There are, however, bedrock governance principles, liabilities and powers afforded Washington port districts that are foundational and deserve special attention.

Taxation

Ports can tax privately owned properties at the rate of up to 45 cents per \$1,000 of assessed value to cover general operating costs, debt service and capital expenses. There are additional taxes a port can levy, such as an industrial development levy, harbor taxes, or taxes to retire general obligation bond issues. There are specific approval requirements for each of these that are discussed in more detail in Chapter 4.

Levying property taxes is often controversial for any local government. Ports are in the unique position of balancing the need for property taxes with the ability to generate earned revenues from their operations. Port property tax levies typically represent a very small portion of a property owner’s tax bill and ports are typically able to leverage those dollars into a great deal of economic and community benefit. Even still, these taxes can be controversial within the community. It behooves ports to communicate with district taxpayers consistently and transparently about the value generated from the property tax levy collected by their port. This can help taxpayers recognize how their investment in their port provides jobs and economic vitality for themselves and their community.

Condemnation

Like levying property taxes, the authority to condemn or acquire private and publicly owned property for public use—also known as eminent domain—can be the source of much

controversy. This government power was greatly debated during our nation's founding years. There was a realistic concern that the concept of eminent domain should be tempered with the condition that the government be required to compensate the property owner for the value of the acquisition.

What constitutes public use was originally limited to easily recognizable public uses such as roads, utilities, bridges, public buildings, and facilities. Over the decades that definition began to expand to include "public purpose" for such things as urban development. It eventually evolved to include the taking of private property for deployment to private parties for economic development outcomes. The definition of public use remains controversial across the nation.

Eminent domain was embraced in the Washington state constitution, which gives local governments, including port authorities, the right to take property for public use, provided the local government compensates the owner for the property's value.

Condemnation lawsuits are designed for the purpose of having the judiciary establish the amount of compensation. In addition, Washington courts are called on to place a judicial confirmation that the action is for a legitimate public purpose. The condemning port must prove:

the use is really public;
the public interest requires it; and
the property appropriated for it is necessary for that purpose.

Issuing Tax-Exempt Debt

Tax-exempt debt is an obligation of a state or political subdivision, such as a port authority, in which the interest earned by the debt purchaser is exempt from federal income tax. It usually is exempted from state income tax, too, but this is moot in Washington state as it does not have a state income tax

The ability to issue tax-exempt debt is a significant benefit to ports in financing their projects and initiatives. While the marginal benefit is not as great in times of lower national and global interest rates, it can still often amount to a one-third savings on the cost of debt. The actual marginal value is driven by the bond purchaser's federal income tax bracket, which makes this tool more attractive to institutional and high-net-worth investors. Tax-exempt bonds do have higher transactional costs for issuance; these can be rolled into the debt amortization.

There are a host of tax-exempt financing instruments available to ports, and these are discussed in more detail in Chapter 4.

Civil Liability

Port authorities and their elected and appointed officers today are subject to civil liability, but this was not always the case in Washington state. For decades the common law principle and monarchical relic, “the King can do no harm,” remained the basis of liability for state and local governments. Under that doctrine, Washington state and local governments essentially had sovereign immunity, and ports were immune from civil liability for negligent acts or omissions. That changed in the early 1960s when the immunity exemption was reversed.

There is one notable exception to a port’s exposure to liability for its actions: the Recreational Use Immunity statute (RCW 4.24.210). This statute exempts private and public landowners, including ports, from liability if the landowner can show:

1. the land was open to the public;
2. it is being used for recreational purposes; and
3. no fee for access was charged.

The statute includes a long list of exempt uses which are of special interest to Washington ports that operate marinas, multi-use paths, parks, and airfields. The exemption provided by this statute is a complicated legal issue that has and will continue to be argued in the state’s courts.

The Evolution of Port Authorities

In addition to these foundational governance powers and liabilities and after the initial creation of port authorities there have been significant expansions of port powers over the first one hundred years of their history in Washington. Since the initial creation of Washington public ports and their original foundational authorities there have been significant expansions of those authorities. Expansion of port powers and responsibilities have largely been the response to an evolving economy, ever changing technology, and progressive community and environmental standards.

Airfield operations (RCW14.07.010)

Port districts are authorized to develop facilities for landings, terminals, housing, repair and care of dirigibles, airplanes, and seaplanes.

Moorage facilities (RCW53.08.320)

Ports may construct and operate a wide range of moorage facilities for every species of watercraft, including transient vessels.

Streets, roads and highways (RCW53.08.330)

Any port district may construct, upgrade, improve or repair streets, roads or highways that serve port facilities.

Passenger-carrying vessels (RCW53.08.295)

Ports are authorized to maintain and operate passenger-carrying vessels on Puget Sound as well as navigable rivers, including intrastate rivers such as the Columbia River.

Leasing property (RCW53.08.070)

Leases for port facilities can be for a period of up to 50 years with an additional 30-year extension, unless the lease is for airport-related uses; those leases are limited to 70 years. If the property is under lease from the federal or state government, circumstances may allow a port to sublease the property for up to 90 years.

Park and recreation facilities (RCW 53.08.260)

A district may construct, improve, maintain and operate public park and recreation facilities that contribute to more fully utilizing traditional port facilities. Such capital improvements must be captured in the port's Comprehensive Scheme of Harbor Improvements and done in concurrence with a city or county.

Retain and compensate employees (RCW53.08.170)

The port commission has the authority to create and fill employee positions with appropriate compensation and benefits.

Police powers and fire protection services (RCW53.08.280) (RCW53.56.020)

Ports can stand up a police force to enforce all municipal, state and federal laws, if the port operates an airport or is a port of entry. Ports may also provide fire protection services through a career fire department for marine and aviation facilities.

Studies, investigations, surveys and promotion of facilities (RCW53.08.160)

The statutes allow ports to undertake the necessary studies, investigations and surveys to properly develop, improve and operate port facilities, properties and utilities. This statute further captures the authority of ports to actively promote their facilities and properties.

Pollution control facilities (RCW 53.08.040)

A district may maintain and operate facilities, including sewer and water utilities, that control or eliminate air, water or other pollution, including industrial wastes. In 2018 the statute was expanded and clarified to address air pollution caused by vehicles and vessels associated with cargo operations.

Industrial Development Districts (RCW 53.25)

Ports can create a geographic district defined by marginal lands, acquire property by purchase or condemnation, plan and develop property in the development district, and sell property. These focused powers are designed to advance the economic development and job potential value of idle and underutilized lands.

Local Improvement Districts (RCW 53.08.050) (39.46.030)

Ports can establish local improvement districts and levy special assessments against property in that district to construct local improvements.

Community renewal agency (RCW53.08.400) (RCW35.81)

A port district may contract with any city, town or county to exercise the powers of a community renewal agency. This unique authority is intended to provide a platform for a port and municipal government to partner on projects and initiatives that promote desired community development outcomes.

Community revitalization financing (RCW 53.08.49) (39.89.010)

Ports may participate in community revitalization efforts that include capturing incremental taxes generated as a result of improved property values.

Trade centers (RCW53.29.020)

Ports may acquire, develop and operate lands and buildings to accommodate trade center activities for the promotion of import and export trade and commerce.

Export trading companies (RCW53.31.030)

Ports may establish export trading companies to promote international trade.

Foreign Trade Zones (RCW 53.080.030)

Ports may apply to the United States to create a foreign trade zone within or adjacent to the district. The advantage of a foreign trade zone is that materials and commodities can be moved into the zone from outside the U.S. and held (in many cases) for manufacturing without paying duty and federal excise taxes. These taxes are paid once the material or commodity leaves the foreign trade zone and enters the U.S. for consumption.

Tourism and economic development (RCW 53.08.255)

Port authorities may utilize resources and facilities to attract visitors and encourage the expansion of tourism.

Economic development (RCW 53.08.245)

The public purpose of ports includes the authority to engage in economic development programs, including contracting with private, public and not-for-profit entities to advance workforce training and diversity.

Wholesale telecommunications (RCW 53.08.370)

A port district in existence on June 8, 2000, may construct, develop and operate any telecommunication facility within or outside of the district's boundaries for the district's own use, or to provide wholesale telecommunication services. The statutes specifically prohibit

ports from serving as the retail end user, however, that limitation is being debated in the 2021 legislative session which is further evidence that port authorities and powers are in a constant state of evolution.

Cooperative watershed management (53.08.420) (RCW39.34.210)

Ports may participate in and expend funds for water supply, water quality, water resources, and habitat protection through watershed management partnerships.

Toll bridges and tunnels (RCW53.34.010)

Port districts may, with the consent of the Washington State Department of Transportation, develop and operate toll bridges and tunnels necessary for the movement of freight or passengers within their district boundaries.

Chapter 2 provided a brief history of port evolution in Washington state since 1911; explored what contemporary ports are actively pursuing in 2020; and explored the authorities under which the state's ports operate. Further chapters of the Manual take deeper dives into port operations and their role in local communities as well as in the national economy.

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3. PORT ADMINISTRATIVE FUNCTIONS

“Management is efficiency in climbing the ladder toward success. Governance determines whether the ladder is leaning against the right wall.”

—Modified from Stephen Covey

PORT ADMINISTRATIVE FUNCTIONS

Administer: From the Latin word administrare, “to help, assist; manage, control, guide, superintend; rule and direct.”

The administrative functions of a port operate at the confluence of governance and management. These functions are the machinery that propels the port. From the deliberations of the commission and the analysis of the chief financial officer to the workings of the maintenance crew, running a modern port can be both challenging and rewarding.

It has been often said that there is no greater honor than to be in public service, even with all its flaws, challenges, and frustrations. Whether an elected official or appointed staff member, serving the community can be among the most rewarding experiences of one’s career and life.

Having a clear understanding of the respective administrative functions of elected port commissioners and compensated professional staff is foundational to the smooth and effective operation of today’s port authority. Clarity on these functional roles, when combined with the bedrock principles of leadership, results in success.

The concepts of governance and management are explored in some detail in Chapter I. The governance element defines the port’s core mission and overall direction and is the foundational responsibility of the elected port commission. The management element is the foundational responsibility of the executive director overseeing the staff as the operating arm of the port. These elements are more finely granulated in the day-to-day administrative functions of a Washington port authority.

Chapter III explores the administrative functionality of running a Washington port, a structure and process that is further defined in statute and steeped in over a century of widely used and well-vetted best practices.

KEY ROLES

The key administrative roles described below are defined by law and port practice. This makes them distinct from the important and necessary core organizational functions that are further described in this chapter.

Duties and Responsibilities of the Board: The Commission

A port commission is a quasi-judicial body (board) established through RCW 53. Acting as a body of the whole, the commission sets the tone and charts the direction of a port and evaluates the port’s progress. The commission is accountable to the community it serves and the electorate that voted it into office. In general, all powers afforded to Washington port

authorities are to be undertaken by the commission excepting those matters the commission specifically delegates to its professional staff. (RCW53.12.270)

The commission's basic duties and responsibilities include:

- Elect officers of the commission
- Adopt rules (i.e., bylaws) for governing the transaction of port business and running commission meetings
- Appoint professional staff and administrative oversight roles (e.g., executive director, auditor, attorney, and treasurer).
- Approve keystone documents (e.g., budget, tax levy, Comprehensive Scheme of Harbor Improvements, policies)
- Approve all formal actions that have not been formally delegated to the executive director (e.g., agreements, property acquisitions, bid contracts)
- Conduct and participate in port meetings and accept public comment
- Represent the port

The length of commissioners' terms vary. In general, commissioner terms are six years. However, in port districts that are countywide and have county populations that exceed 100,000 residents, the commissioners' terms are four years (RCW53.12.172). There are provisions in the statutes to reduce six-year commissioner terms to four years through a voter ballot initiative (RCW52.12.175). This provision was created in the 1990s and one of the consequences of shifting from six-year to four-year terms for countywide ports is that two out of three elected commissioners are subject to re-election every four years. This creates a circumstance in which a commissions' majority policy and project direction can change every 48 months. In today's lengthy capital project and regulatory environments, this can create some uncertainty that can hamper project funding and progress.

Most Washington state port commissions consist of three nonpartisan commissioners elected in staggered, six-year cycles. A few commissions have five members, which is a local option that requires voter approval.

Commissioners are elected from a geographically defined district. These geographic districts can be coterminous with the county districts for countywide port authorities or can be independently established in countywide or less-than-county districts. There are exceptions to this district allocation. For example, the five Port of Seattle commissioners are elected at large from throughout King County.

It is incumbent upon a port to periodically "redistrict its governmental unit, based on the population information from the most recent federal decennial (10 year) census" (Chapter 29A.76 RCW). The federal decennial census is undertaken pursuant to Article 1, Section 2

of the US.. Constitution and was last completed in 2020. The Washington State Legislature has created a five-member Redistricting Commission to oversee the redistricting process for state and local government districts. Ports have a statutory obligation to timely reflect census trends in their districts and balance any demographic changes with the receipt of new federal decennial census data provided by the state.

Individual commissioners are compensated for their service. The rates of compensation vary based on a specific port's gross operating revenue, as provided in the statutes. However, the commission can set compensation in lieu of the statutory provisions, and individual commissioners may waive all or any portion of their compensation (RCW53.12.260).

Acting as a 'Body of the Whole'

Individual commissioners have little authority when acting alone. When port commissions act, they must "act as a body of the whole" unless the commission has previously taken formal action to delegate specific authorities to an individual commissioner or the executive director.

The delegation of authority to the executive director is perhaps one of the most significant governance actions the commission can take. It solidifies the extent of management authority, reflects the level of trust between the elected board and the professional staff, and defines the culture and operational efficiency of the organization. The delegation of power as a critical governance tool is discussed below in more detail.

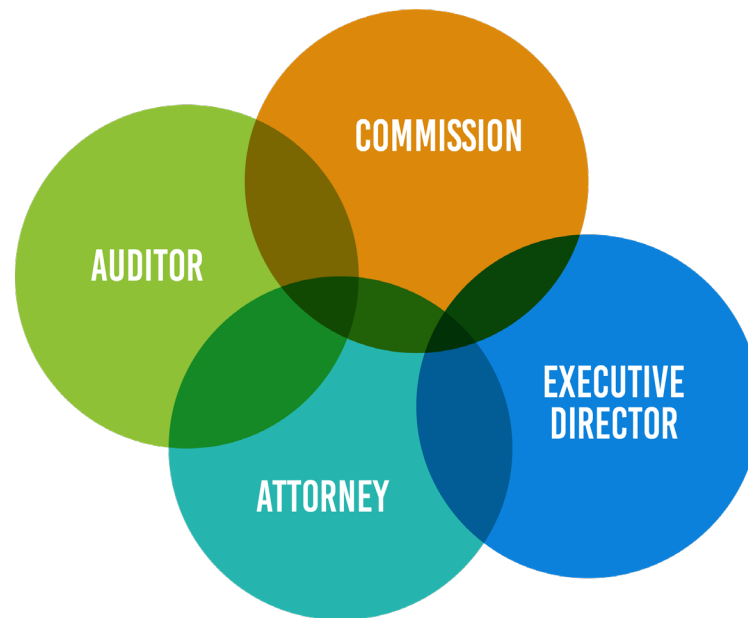
Commissioners and staff must be cognizant that their individual statements may be perceived by those outside the organization as having the agency's full authority. This perception can give rise to a sense of reliance on that statement.

This notion of real versus apparent authority can be problematic and the person who officially speaks for the port should be defined clearly in advance. Legally speaking, apparent authority refers to a situation where a reasonable third party would infer that an agent, elected official, or employee of a port, has the authority to act. Any agreement made in this situation would be bound by the employee's or commissioner's actions, even if the employee or commissioner had no real authority—expressed or implied. Real authority is assigned by statute or formally delegated by the appropriate officer of the port.

Checks and Balances

Inherent in the development of Washington's port statutes was the understanding of the need for checks and balances. The commission form of government is somewhat different than the structures of our national and state governments. Within those structures there is a clear distinction between the judicial, legislative, and executive branches, each with their own authorities and responsibilities, and purposely juxtaposed to create balance. The Washington port commission structure of government created a form of checks and balances

through the appointment of a port auditor and attorney, in addition to the executive director. The practical intent of the statutes was to create independent voices that report directly to the commission to advise them on compliance issues with statutory mandates and best practices. In a sense, this creates an internal check and balance on port decisions and operations.



Rules Governing the Transaction of Business

It is incumbent upon port commissions to consider and adopt rules of procedure (bylaws) that further define how the commission will act as a body of the whole. In addition to adopting bylaws, port commissions are required to adopt an official seal to certify formal documents. (RCW 53.12.245)

The specific content of these bylaws is not statutorily specified. As the sideboards governing the transaction of a port's business, the bylaws define the specific workings of the commission as it sits as a body of the whole. The following topics are traditionally addressed in commission bylaws:

- Meeting standards of decorum, such as Roberts Rules of Order and the like
- Selecting commission officers
- Rules of order and agenda structure (regular, special, executive, and open meetings)
- Use of resolutions
- Minutes and public record
- Guidelines for public input
- Roles of officers
- Spokesperson

- Commitments to values, such as transparency and ethics
- Filing a commission vacancy consistent with state law
- Travel approval and conditions
- Appointments to outside boards, commissions, and advisory committees
- Commissioner absences
- Remote meetings

Commissioner Duties and Responsibilities

It may be of great value for a port district to develop a job description for port commissioners. It further clarifies responsibilities and provides additional distinction between the governance element and the management element. What follows is catalog of those likely duties and responsibilities, either formally adopted or found in best practices, for commissioners and, more specifically, commission officers.

All commissioners participate in:

- Selecting the commission president and secretary (RCW 53.12.245)
- Selecting the port treasurer, if it is not the county treasurer
- Adopting an annual budget and tax levy
- Approving the delegation of powers to the executive director
- Selecting and appointing the executive director, auditor, and attorney
- Routinely approving an updated Comprehensive Scheme of Harbor Improvements (CSHI)
- Approving specific actions outside the boundaries of the delegation of powers to the executive director
- Planning, prioritizing, and adopting the port's mission, priorities, and goals (see Chapter VIII for further discussion on strategic planning)
- Evaluating and approving port policies and procedures on topics including, but not limited to, finance, personnel, purchasing, promotional hosting, land acquisition, public records, leasing, and meeting logistics
- Receiving and processing formal and informal public input
- Staying abreast of industry and community trends and issues
- Representing the port at official events
- Conducting performance evaluations of the executive director

Ports are also required to elect a commission president and secretary. Through their bylaws, some port districts have also added a vice president position to serve in the absence of the standing president. It is common for ports to rotate officer appointments from a sense of equity. While there are not any specific statutory provisions detailing the roles of officers, it is assumed those responsibilities would be addressed in the bylaws.

Commission President

In addition to the general duties and responsibilities of each commissioner, the commission president potentially has several other responsibilities and duties:

- Presiding over all meetings, including executive sessions, and maintaining order and decorum
- Setting the tone and atmosphere of port meetings
- Managing public input and commission discourse
- Speaking on behalf of the port on views and positions held collectively by the commission following commission action
- Executing appropriate documents following full commission approval
- Creating a preliminary and final agenda for each meeting in conjunction with the executive director

Commission Secretary

- In addition to the general duties and responsibilities of each commissioner, the secretary potentially has additional responsibilities and duties:
- Overseeing the official documents of the port commission
- Overseeing distribution and retention of official records

Practical Tips for Port Commissioners

The job of a port commissioner can be daunting, yet it can also be highly rewarding. The following practical tips for port commissioners are the accumulation of the wisdom and insights of those who have served before.

The single most important characteristic of a commission working well together is **FOCUS**.

Follow through on all commitments.

Good intentions are the seeds of action, but follow-through makes it happen. Port commissioners are well-intentioned and motivated, but progress requires seeking consensus and a push for action.

Own the Commission's priorities established as a body of the whole.

Seek out alignment within the commission to prioritize the issues that are important and within range of accomplishment. Remain steadfast on those priorities while retaining the willingness to exercise flexibility as conditions change. Act as a body of the whole.

Communicate effectively, both internally and externally.

Communication is a two-way street. Internally it often requires the appropriate level of structured dialogue between the executive director and commissioners. Externally it requires

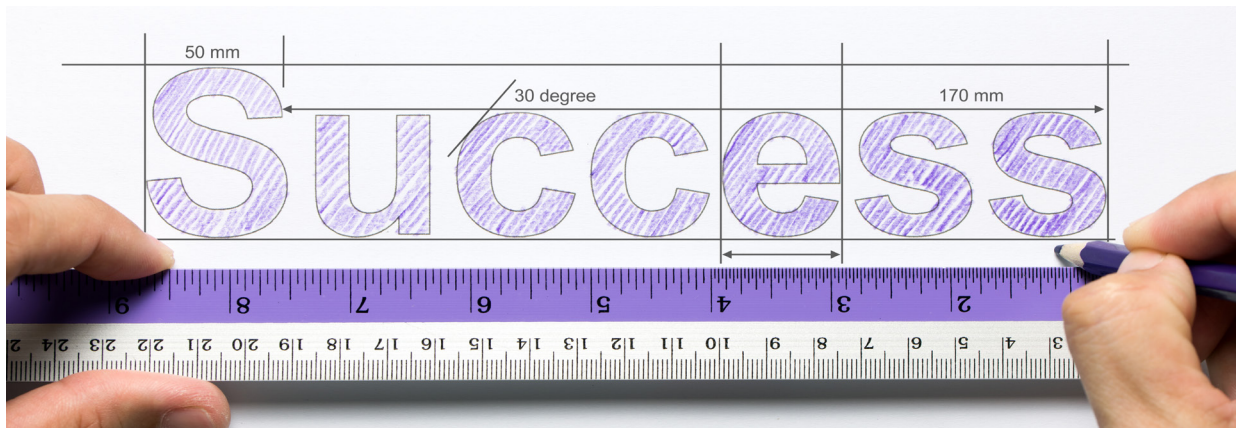
constant bridging of community, tenant, and constituent interests by commissioners to the staff. The simple rule of thumb is: No surprises!

Understand the issues and seek input from within and outside the port.

A port commissioner is not expected to know all the details of the myriad of issues and decisions that come forward. In preparing to act on an issue, a commissioner should seek guidance and input from fellow commissioners, the executive director, and staff, as well as from port tenants, customers, and the district's constituency.

Stick to governance and let the management team manage.

Port efficiency requires adherence to the appropriate governance role of the commission while respecting the management role of staff. The key to that efficiency is delegating to the staff and then respecting that delegation. Avoid micromanagement at all costs. Not everything needs commission attention, and it's important to be mindful of the commission's time.



Duties and Responsibilities of the Executive Director

The executive director is the port's principal employee and is selected and appointed by the commission. This selection and appointment are done with the clear expectations that the executive director is fully accountable to the commission and serves at its pleasure. The executive director is part of the commission's strategic team and serves as the bridge to staff, tenants, customers, and contractors.

It is incumbent upon the executive director to communicate fairly and consistently with each member of the commission. Information that is shared with one commissioner should be shared with all commissioners. This is a nonnegotiable standard of respect and communications that helps foster trust and efficiency.

Commissions are well-advised to conduct routine reviews of the executive director's performance. These evaluations should be done annually and provide a retrospective assessment of performance as well as the commission's expectations of future accomplishments. To maximize internal alignment, the executive director's performance

should be based on progress in accomplishing the commission's formal goals and priorities. Those goals and priorities are captured in a number of keystone documents including the port's budget, CSHI, and strategic plan. This is an inflection point in the organizational effort to achieve alignment on priorities.

It is quite common for ports to have a personal contract with the executive director as the port's chief executive officer. These contracts typically include key provisions that address term of employment, compensation and benefits, obligation for routine performance evaluations, termination and severance specifics, outside employment restrictions, contract renewal and modifications, travel and business expense approval process, conditions surrounding serving as spokesperson for the port, resignation notice, conflicts of interest, confidentiality, and dispute-resolution procedure.

One of the keystone governance documents that a commission approves by resolution is the delegation of powers to the executive director (RCW 53.12.270). Operating with a thoughtful delegation affords the commission and the executive director the clarity of responsibilities that minimizes conflict and improves alignment within the organization.

The commission has a valuable opportunity when crafting and approving a delegation of powers to determine where it will spend its limited commission time operating as a body of the whole and what actions and topics it reserves to itself. While on the surface it may appear to be a transfer of commission responsibility, it is in truth a re-affirmation of the commission's own desired and preferred role within the organization. This role focuses on the port's overall, long-term strategic direction, priorities, and vision, rather than the day-to-day management of the port. This is the governance role of defining the port's core mission and overall direction and setting its course for the future.

A delegation of powers to the executive director that provides an optimal balance for the commission traditionally includes delegation of these matters, often within limits established by the commission:

- Spending
- Expected financial performance metrics and reporting requirements
- Hiring and terminating of staff who report to the executive director
- Operational responsibility
- Secondary delegation to staff
- Disposition of surplus property
- Leasing property and fiscal security requirements
- Setting rates and fees
- Acquiring property
- Purchasing and contracting

- Spokesperson role

Executive Director Job Description

The job description for the executive director varies from port to port, however there are a number of industry standards for desired duties and responsibilities, experience, skills and training/education that are fairly common. These standards include:

- Duties and responsibilities
 - » Counseling and communicating with the commission
 - » Making specific recommendations to the commission
 - » Implementing the port's plans, strategies, and priorities
 - » Ensuring consistency with port policy
 - » Overseeing and motivating staff performance
 - » Ensuring a safe and healthy work environment
 - » Overseeing the port's financial performance
 - » Managing the port's real assets, including leases and fee structures
 - » Guiding the marketing of revenue-producing port assets
 - » Administering port contracts
 - » Guiding communications and public outreach
 - » Managing the port's programmatic efforts, such as economic development
 - » Developing effective relationships with the community, tenants, customers, and suppliers
 - » Ensuring regulatory compliance for port operations and facilities, including state audits
- Desired skills and experience
 - » Public speaking and presentations
 - » Technical and business writing
 - » General computer skills
 - » Personnel management, including performance assessments
 - » Negotiating expertise, including with labor contracts and real estate leases
 - » Ability to prioritize, analyze, and manage complex situations
 - » Port operations (i.e., marine, aviation, real estate, environmental remediation, economic development)
 - » Finance and public accounting

- » Legal standards for public agencies
- » At least ten years of senior management experience
- Desired education and training
 - » Formal education, including bachelor’s degree and possibly master’s degree in a relevant field (e.g., business administration, public administration, finance, economics)

Duties and Responsibilities of the Auditor

As a part of the necessary system of checks and balances to ensure the accountability of port funds, Washington state statutes have established a mandatory auditing process to monitor expenditures. RCW 53.36.010 requires the port commission appoint a port auditor for this purpose. The auditor reviews expenditures for compliance and coordinates the movement of funds with the port’s treasurer.

The auditor reports directly to the commission, and much like the port attorney, provides opinions on compliance matters. Quite often a port’s auditor also serves as the chief financial officer or lead accountant. In that financial capacity they report to the executive director and are part of the management team. This dual role and reporting structure—auditor to the commission and chief financial officer to the executive director—can be properly managed with dedication and transparency.

Duties and Responsibilities of the Attorney

Like the port’s auditor, the attorney reports directly to, and serves at the pleasure of, the commission. Port attorneys can be in-house employees or contract attorneys. The attorney’s primary role, as general legal counsel, is to provide legal advice to the commission as well as the staff regarding port operations, commercial matters, compliance issues, and risk exposure. There are occasions for which the port’s general counsel will need to be supplemented by special counsel on a particularly narrow topic or on an effort that takes considerable workload beyond the capacity of general counsel.

It is paramount for the attorney to be impartial to the business decisions a port commission makes and advise independently on the legality and risk exposure. The attorney is politically neutral to the actions and priorities of the commission.

Regarding staff, a good practice is the common understanding that the port attorney can share any staff-derived information with the commission but is under no obligation to share commission-derived information with the staff. This practice greatly enhances the essence of checks and balances for the port.

Selection and Role of the Treasurer

The county treasurer of the county in which a port district exists is, by law, the port's treasurer. However, if the port district's gross revenues, excluding taxes and capital grants, exceed \$100,000 for the last fiscal year, the commission, by resolution, may choose to select an alternative qualified treasurer who has experience in financial matters. That appointee must be bonded and required to act in concert with the port's auditor in reviewing and issuing distribution of port funds. (RCW 53.36.010)

The primary role of the port treasurer is to manage all funds and invest idle funds. It is becoming more and more common for local governments such as ports to have investment policies that dictate or restrict the types of investment vehicles in which the agency may invest idle funds. In the case of those ports that rely on their county treasurer for the investment of idle funds, it is likely the county has a written investment policy. (RCW 53.36.050)

The key components of an investment policy include:

- Performance standards and targets
- Reporting, review, and oversight
- Investment diversification to balance risk and exposure to loss
- Authorized and/or restricted types of investments
- Authorized financial institutions and/or brokers
- Delegation of authority and responsibility

Core Port Organizational Functions

Finance and Accounting forecast and metrics

Chapter IV addresses port finances, funding, and budgeting in greater detail. What follows is a general description of the distinct finance and accounting administrative functions of a port. It is important to first distinguish between accounting and finance.

Accounting is the practice of assessing what has happened in the past. The word "accounting" stems from the concept of accounting for the past. It is a rear-window view of the world and is critical to evaluating past performance and providing a platform for looking forward. It focuses on financial reporting in a uniform and standard format using approved and industry-accepted methodologies. These methodologies are developed by the Governmental Accounting Standards Board (GASB) and are the accepted standards used by local and state governments across the United States.

Finance derives from a French word that means, "to settle a debt." Finance is forward-looking and takes a strategic view of planning for the financial future of a port. It is a windshield view of the world and is essential in developing a financial strategy to address planned events, unforeseen circumstances, and new opportunities. Much of the work of financial analysis involves evaluating future investment options and determining the best debt instruments to

undertake capital work. Like accounting, it is a critical tool for managing today's port authority.

Ports that reach a certain size threshold will retain full-time finance directors or chief financial officers. Quite often the port's accounting function is within their purview, as is financial forecasting and project funding. In the WPPA 2020 port survey, approximately one-third of Washington ports indicate they have a finance director. Other key financial roles include bond counsel, external financial advisors, and bond underwriters, which are discussed in more detail in Chapter IV.

Human Resources

Human resources (HR) is another key administrative area. Its scope and size within an organization is a direct function of the number of employees. Ports must have a threshold number of employees to justify an in-house HR function. Many ports contract for these services or combine it with the duties of their attorney.

Notable HR functions include:

- Recruiting and hiring staff
- Developing job descriptions and establishing wage levels
- Soliciting and overseeing benefit programs
- Managing disciplinary investigations and terminations
- Negotiating collective bargaining agreements
- Managing performance appraisals
- Guiding training needs
- Overseeing workplace safety and regulatory compliance

Communications

Effective communications are one of the greatest challenges facing today's port. In the WPPA 2020 port survey, communication with the community was ranked as one of the greatest challenges for ports, along with local government relations, which can largely be a communication issue.

Communications is as specialized as HR or financial services. One of the challenges with effective communications is that everyone regards themselves as a communicator and the need for professional communications advice is often underappreciated and overlooked. This can cause unnecessary consternation and disruption.

Communications is an external and internal need. Ports must communicate effectively with their community, stakeholders, local agency partners, regulatory agencies, legislators, news media, and others. Likewise, they must communicate effectively with their staff, tenants, customers, contractors, labor partners, and others internal to day-to-day operations. These

two distinct audiences are undoubtedly interconnected: every staff member is a community member, labor partners also have the ear of their legislators, and so on.

Ports must strategically and consistently communicate relevant news and issues with internal and external audiences through channels that resonate with them. These could be multiple forms of digital communications as well as the old-fashioned paper flyer, depending on the audiences. How ports communicate matter as much as what they are communicating; if information is in the wrong place, it doesn't matter the content because no one will see it.

Communications should be proactive whenever it's possible and prudent to do so, but sometimes it makes more sense or is only possible to be reactive. Proactive, transparent, and consistent communications build a foundation on which ports can effectively interact with their stakeholders, customers, and community. It also creates understood and available pathways for stakeholders, customers, and the community to interact with the port. This promotes the port generally to its audiences and provides a framework so that when a port is proposing a new project, making a significant change, or managing potentially controversial issues in the public eye, the channels of information and collaboration are already established and trustworthy relationships built.

The golden rules of communications include:

- Choosing the appropriate spokesperson for the issue
- Planning ahead and knowing target audiences
- Communicating early and often; not leaving an information void
- Being consistent and clear; using plain language audiences will understand
- Following up: Doing what the port said it would do
- Being honest if something goes wrong and sharing how the port will correct it

Another important facet of communications is emergency communication planning around coping with and recovering from crisis situations, either manmade or natural. It is these times during which effective and timely communications are the most critical. Communication planning is discussed in more detail in Chapter VIII.

Environment

Prioritizing port stewardship of the environment has given rise to the retention of in-house environmental staff across Washington's port industry. Unlike HR, the decision to retain full-time in-house staff to address this growing need is a function of a port's involvement in environmental issues rather than its actual size.

Most ports are involved in environmental matters, whether they are investing in the adaptive re-

use of brownfield sites for economic benefits, remediation of historical contamination wherein the port is a liable party, or avoiding future liability through an aggressive compliance program. As one measure of port involvement in environmental matters, the 2020 WPPA survey revealed that a quarter of ports have used Washington State Model Toxics Control Act funds to address environmental concerns.

Approaches to environmental liability, responsibility, and opportunities are discussed in more detail in Chapter VII.

Planning (Permitting)

Planning is a traditional administrative function that is either managed with in-house staff or contracted out to specialty firms. Planning is essentially getting and being ready for the future: A future that is in alignment with the port's vision or in which the port will continue to thrive as external conditions change and new trends emerge.

A future in alignment with the port's vision requires planning for the preferred outcome. It involves creating and analyzing a range of scenarios from which the preferred outcome is prioritized. A common port example of preferred outcome planning is designing an industrial park. Preferred outcome planning is visionary and, while it cannot ignore real conditions and trends, it is considered a white-boarding exercise.

A future in which the port will continue to thrive faced with changing conditions and emerging trends requires response planning and preparation. Response planning for resiliency identifies emerging trends (threats or opportunities) and forecasts the impacts of these trends. It requires developing a range of response scenarios and associated preparations a port should make to continue to thrive amidst future change. Port examples of response planning include developing plans to accommodate sea level rise, significant changes in commercial real estate market demand, anticipated deterioration of port facilities, or catastrophic weather events. Response planning is rooted in being prepared for either external conditions that evolve over time or are abrupt in the case of more catastrophic events.

Thoughtful planning is a characteristic of a well-organized port and it requires prospective leadership of commission and staff. It is applicable to such needs as land use, commercial and industrial property development, port facility needs, staff succession, financial forecasting, environmental response, open space needs, communications approaches, regulatory demands, and overall strategy. These planning concepts are explored in more detail in future chapters of the Manual.

Facilities

Port facilities include a wide range of real assets, including commercial and industrial buildings, traditional infrastructure, emerging infrastructure such as dark fiber, marinas, docks and wharves, airfields, parks and open space, roadways, parking lots and structures, mitigation installations, rolling stock, fixed mechanical equipment, and technology systems. As noted

above, planning and proactively managing these facilities is critical to a port's long-term success.

Proactive management of port facilities include a number of proven practices and processes:

- **Life cycle costing:** The process of compiling all costs a real asset will incur or is expected to incur over its useful life, including the original investment and any anticipated salvage value.
- **Maintenance cost charge-back:** During the life of an asset, the cost to maintain it in working order is often charged back as a cost to the programmatic elements using the facility. For example, the use of a fixed cargo dock would be a cost allocated against the financial performance of a cargo operation. There exist both off-the-shelf and custom software systems to track these costs.
- **GIS inventory systems:** A geographic information system (GIS) framework is designed to gather, organize, analyze, and present data in easily understandable map and visualization layers. It is a very good approach to visually and spatially organize a port's physical assets, apply management information such as maintenance schedules, and track costs. It is a user-friendly tool for facility managers.

Port facility-management staff reflect a broad spectrum of skills and experience, ranging from structural and civil engineering to best-practice maintenance approaches. These skills and experience are often augmented by specialty firms that have a particular discipline focus.

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The background is a teal-tinted collage of financial and business-related images. In the top left, a portion of a black calculator is visible. The center features a 3D pie chart with several segments. Below the pie chart is a horizontal bar chart with a pen resting on it. The x-axis of the bar chart is labeled with 0, 50, 100, 150, and 200. In the upper middle, there is a line graph with a jagged path and a smoother trend line. The overall aesthetic is professional and data-oriented.

4. BUDGETING, FINANCE AND COMPLIANCE

“By failing to prepare, you are preparing to fail.”
–Benjamin Franklin

BUDGETING, FINANCE AND COMPLIANCE

A budget was originally used in England in the mid 1700's as a means of understanding and controlling governmental expenditures. The Chancellor of Exchequer presented the budget each year to the British Parliament which then acted to adopt the proposed budget. The origin for the term budget is from the French word, *bougette*, which translates, "leather briefcase or pouch." Documents detailing expense and tax proposals in both France and England were carried to governing bodies in these leather carriers.

Further described in Chapter III, finance derives from the French word for "to settle a debt"—in other words, to make a plan to settle a debt. Today, this is most often reflected in a port's multi-year financial projections which forecast cash flow, revenues, expenses, capital outlay, and debt for the entire entity, or in a plan of finance for a particular project investment.

Compliance, manifested in port audits, is a term that comes from the Latin verb, *complere*, or "making sure all parts are considered and nothing is lacking." Audit originates from the Latin root, *audir*, or "to hear." Essentially, an audit is to hear that everything is complete and proper.

These terms are intertwined in port governance and management. Financial considerations are at the core of decision making, whether evaluating past performance, maintaining the status quo, or expanding assets and operations.

This chapter explores these topics in some detail. Resources from current federal and state grant programs and loans are also included in this chapter.

ACCOUNTING STANDARDS

Any discussion of budgeting, finance, and compliance must begin with an understanding of the accounting structure that underpins the financial management of Washington ports. The Government Accounting Standards Board (GASB, pronounced "gaz-bee") is an independent, non-political organization founded in 1984 to promote clear, consistent, transparent, and comparable financial reporting for state and local governments. It establishes and improves standards of accounting for local governments—standards which are significantly different than those used by for-profit businesses. GASB's counterpart in the federal government is the Federal Accounting Standards Advisory Board (FASB).

Legislative bodies, taxpayers, purchasers of municipal bonds, and local governments rely on the consistency and standards established by GASB. It is governed by a seven-member board of qualified and experienced government accounting and finance professionals. GASB is not a government agency; it was created by the Financial Accounting Foundation (FAF) and a collection of state and local government associations to be the independent official source of generally accepted accounting standards for local government.

The collective mission of the GASB, the FASB, and the FAF is “to establish and improve financial accounting and reporting standards to provide useful information to investors and other users of financial reports and educate stakeholders on how to most effectively understand and implement those standards.”

Particularly when they are changed or modified, GASB standards can have a significant impact on Washington ports. Port financial staff and auditors should pay close attention to trends and pending changes in GASB standards. These GASB standards are the generally accepted accounting standards (GAAP) for local governments.

In Washington, the state auditor is charged by statute with formulating, prescribing, and installing a uniform system of accounting for every public institution and every public office, including port authorities (RCW43.09.200). The purpose for this uniformity across municipal governments is to allow for (a.) meaningful use and comparison of financial data, (b.) accounting and reporting resources for local government managers, and (c.) a consistent framework for financial reporting to a host of audiences including granting agencies, regulators, state Legislature, and the public.

This uniform system of accounting is developed by the state auditor and captured in the Budgeting, Accounting, and Reporting System (BARS) manual. The BARS manual is maintained by the state auditor and updated as needed after conferring with an advisory committee. The reporting standards in BARS are Washington’s GAAP for local governments, consistent with national GASB standards and published by GASB as they become effective.

The BARS manual provides a chart of accounts for ports. This chart is used to organize accounts and entries in port financial reporting and budgeting.

BUDGETING

The most significant keystone document that a port will utilize is its budget.

Washington State law requires every port to prepare an annual operating and capital budget for the upcoming fiscal year, defined as the calendar year (RCW 53.35). The development and adoption of a port budget is only the beginning of the budget’s utility and critical function. After adoption, a budget is a legal document that gives port officials the authority to incur obligations and pay expenses. When done properly, a budget (a.) allocates resources and expectations of generating income to lines of businesses, (b.) funds traditional governmental activities, and (c.) applies resources to administrative and overhead functions.

As a primary governance and management tool, a budget serves several critical uses for the port beyond the apparent allocation of resources:

- It provides a measurable platform to describe in reasonable detail internal alignment within a port on future priorities and goals.
- It communicates a port’s view of its near and midterm priorities to external audiences, including tenants, customers, other governments, the bond market, and the community.
- In concert with other keystone documents, it maps a clear route for a port’s immediate and longer-term direction.

Port budgets (a.) contain the forecasted and approved expenditures and revenues for operations, (b.) schedule planned capital acquisitions and projects, (c.) provide an explanation for the use of property taxes, and (d.) give a general orientation to the port’s strategic mission and vision.

To consider the budget a governmental formality, independent of strategic direction, is to invite misalignment and inefficiency.

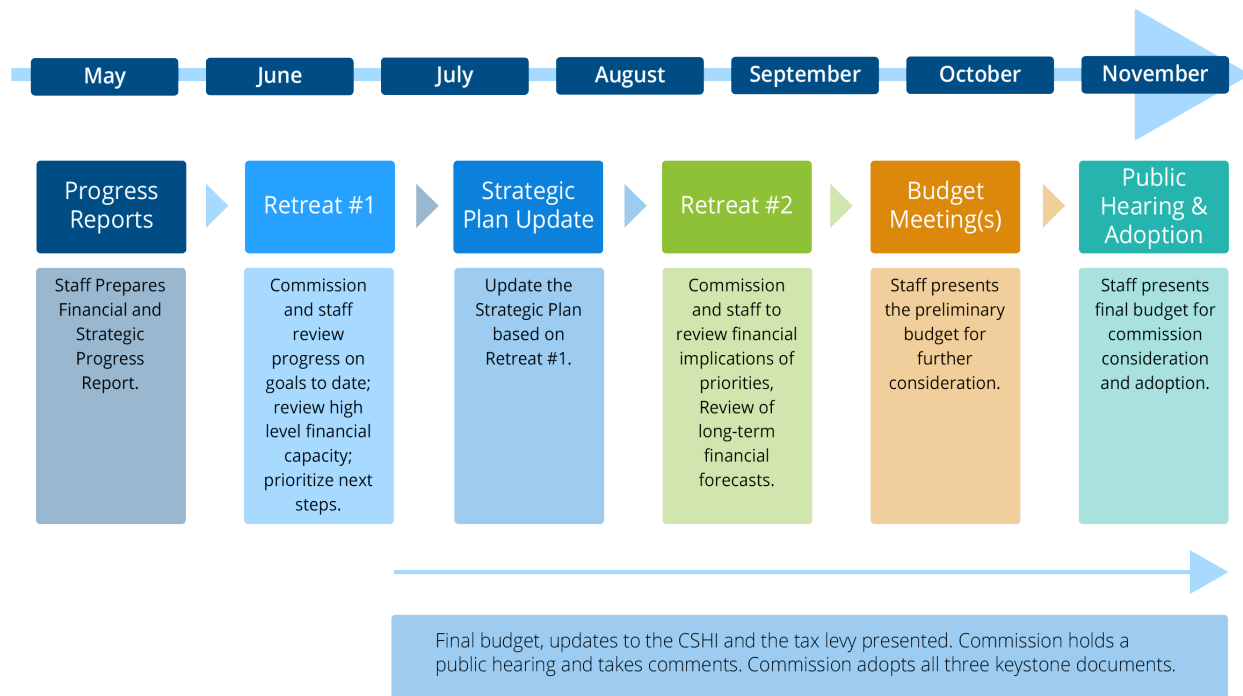
Schedule and Budget Adoption

Legal requirements for the timing of budget adoption are contained in the RCWs, but there are alternative adoption opportunities for ports. The prescribed schedule is as follows, unless a port opts for an alternative schedule.

September 15:	The preliminary budget is approved by the commission and filed for public review at the port’s offices. The tax levy rate is proposed within levy limits.
After adoption of the preliminary budget and proposed tax levy:	Notice is published that the preliminary budget is ready for review by the public. The preliminary budget is published once a week for two consecutive weeks. The first publication may be no less than nine days and no more than 20 days prior to the hearing date.
No earlier than October 31 and no later than the first Tuesday following the first Monday in November:	Public hearing on the preliminary budget and tax levy rate.
November 30:	Firm deadline to file the final budget with the county and to certify the upcoming tax levy rate.

Ports may adopt an alternate schedule that still requires the approved budget to be filed with the county legislative authority no later than the first Monday in December (RCW 53.35.045). However, the tax levy must be certified no later than November 30. This alternate schedule can also set alternate dates for preparing the preliminary budget. Requirements for public hearings with appropriate notice are still required under the alternative schedule (RCW53.35.020).

Beyond the legal requirements for budget and tax adoption, best port management practices suggest a more strategic approach to budget consideration and adoption. Specifically, budget preparation should be undertaken in concert with a review of the port’s strategic priorities. Budget adoption should also be coordinated with an annual update of the Comprehensive Scheme of Harbor Improvements (CSHI).



This strategic approach builds on a port’s foundational strategic direction and links the budget forecast with the update of the CSHI. Development of a budget that is linked to the port’s strategic plan is undoubtedly one of the most significant governance and management collaborations of a successful port.

Budget Structure

Port budgets have evolved over time; they are guided by accounting and finance standards that are constantly being revised. There is a generally accepted core template that reflects those industry standards and best management practices. Once a template is established, the annual effort to create subsequent budgets can focus less on formatting and more on strategic content and direction.

These are the components of a strategic budget. They are designed to encourage alignment within a port and to provide a clear and articulated understanding of the port’s intentions to its partners, customers, regulators, grantors, finance community, and most importantly, to the public.

I. Introduction

- » An introduction, written in letter format by the executive director or the commission, that sets the stage and tone of the budget that follows.

II. The Port

- » Description of the port and its operations, the breadth of its assets and facilities, its geographic boundaries, the state of the local economy, and the community setting.
- » A port organizational chart.

III. Strategic Direction

- » Inputs from the port's strategic plan, including its mission statement, vision, values, goals, and strategies. This provides a solid and functional link between the strategic planning process and budget adoption.

IV. Summary Budget

- » A summary of the budget with explanatory graphics that tell the port's financial story at a glance.

V. Annual Budget

- » Summary description of revenues and other sources of cash flow, organized by lines of business. Summary description of expenses and other cash uses, organized by lines of business and traditional governmental activities.
- » Summary description of capital expenditures, organized by lines of business and traditional governmental activities (net value of grants).
- » Detailed text description of lines of business and traditional governmental activities.

VI. Port Tax

- » Explanation of tax levy use, in context with other entities' taxing levies to put the port tax in perspective.

VII. Cash Flow Projection with Metrics

- » A multiyear, port-wide summary of cash flows, organized by lines of business and traditional governmental activities, to include overhead and administrative services or departments. Data should be included from the past five years, minimum, in addition to the current year's budget, and projected end-of-year performance.

Budgets are built around a chart of accounts that define the granular detail of the budget. As mentioned earlier, BARS provides a chart of accounts.

Ports Subject to FAA Grant Assurances

Airports that accept Federal Aviation Administration (FAA) grants must agree to certain grant assurances—this is covered in more detail in Chapter V: Operations. These grant assurances prescribe the eligible uses for net port revenues from a federally funded airport:

“All revenues generated by the airport, if it is a public airport, will be expended for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly related to the actual transportation of passengers or property.”

This condition may require that a port take a more surgical approach to forecasting and accounting for revenues and expenses associated with a FAA grant assurance.

FINANCE

Rigorous oversight of a port’s financial resources underpins the port’s ability to deliver on commitments and reach new milestones. There are many financial tools that have been well tested and are considered best management practices for Washington ports.

Financial Tools

Financial Guidelines (Policies)

While a port’s budget gives a detailed roadmap for achieving near- and long-term goals consistent with the port’s strategic plan and CSHI, financial guidelines (policies) provide a template for making decisions along the way. Specifically, financial guidelines provide a financial platform for evaluating current activities and proposals for future programs, projects, and activities. Financial guidelines should be adopted by commission resolution and reviewed and updated periodically as necessary. They provide continuity, bridging staff and commission changes to uphold financial stability over time.

The benefits of adopting financial policies include (a.) full transparency on how the port is managing its financial affairs, (b.) supporting desired bond ratings and reducing the cost of borrowing, (c.) managing and reducing risk, (d.) providing a reference during annual state audits, and (e.) assisting in compliance with established industry best practices.

Financial guidelines contained in a keystone document typically include these components:

- 1. Responsibilities of Executive Director:** Define the responsibility of the port’s executive director in ensuring that operating revenues are sufficient to cover all operating expenses, capital outlays, and debt covenants (bonds) on an annual basis. The executive director works from a position of oversight and may need to present the commission with recommended actions to address financial concerns.
- 2. Financial Updates:** The executive director should be required to provide periodic (quarterly) financial updates to the commission with plans to address pending expense exceedances or revenue shortfalls that would jeopardize the port’s financial stability, including drops in targeted cash reserve capacity.

3. **Staff Salaries:** A policy reflecting the commission's philosophy on staff salaries. This is applicable to situations in which the management of employee costs and benefits is either the responsibility of the executive director, as reflected in a delegation of powers, or reserved to the commission.
4. **Port Assets:** A policy reflecting the commission's approach to maintaining fixed assets and avoiding deferred maintenance. This policy may have references to the need and value of inventorying these assets. The policy should consider determining the value thresholds for capitalizing specific classes of assets.
5. **Property Taxes:** The commission policy regarding the intended use of property taxes or other special levies.
6. **Revenue Portfolio Target:** A statement on the need to secure a stabilizing and diversified revenue portfolio. This is, in essence, a statement of risk tolerance.
7. **Securities:** A definition of acceptable tenant securities (bonds, retainers, or deposits) for leases, etc.
8. **Rents and Fees:** The process and philosophy for establishing rents, tariffs, and user fees. Ports often have a leasing policy that addresses this issue. The policy should be aligned with the delegation of powers, as there may be instances within this policy statement in which the executive director can execute leases and fees.
9. **Debt Financing:** A policy regarding the circumstances in which the port would utilize debt financing. Details should include the type of debt and market conditions that would be acceptable for incurring debt.
10. **Investing:** The process and expectations regarding the investment of idle cash. It should be noted that most ports utilize the treasury services of their county government unless they have opted out.
11. **Uncollectible Receivables:** A policy and approach to the treatment of uncollectible receivables. This policy should define the steps, thresholds, and processes for collecting default payments.
12. **Cash Reserves:** Determination of sufficient cash reserves to meet unexpected and emergency expenses, provide debt coverage, and account for dips in net revenue.
13. **Travel/Expense Reimbursement:** In the absence of a travel policy, the port should establish a process for reimbursing employees, including commissioners, for travel and incidental costs. The policy should give commissioners and staff a clear sense of the expected limits, to avoid confusion on such matters as hotel rates, meals, and other travel costs (RCW 53.08.175). Note that ports are required to have an independent promotional hosting policy.

Like with all keystone documents, it is essential that a port's financial guidelines are coordinated with the powers, responsibilities, and limits of the executive director, as articulated in the port's delegation of powers. In some cases, ports have incorporated lease policies and rates into their financial policies, or they treat them independently.

Multiyear Financial Forecasts

Multiyear financial forecasts (cash flows) are predictions or knowledgeable estimates of future events and occurrences that are regularly updated and used as planning tools to inform decisions surrounding annual budgeting efforts. These forecasts are guidance tools, not accountability tools. In contrast, the annual budget can be used to assess performance, in which case it can be an accountability tool—one that supports accountability both within the port and to the community it serves.

When used as a planning document, a multiyear forecast is invaluable to a port, as it prepares annual budgets and plans of finance for specific projects, makes investment decisions, and evaluates the impact of external trends and events on the port. The construct of a multiyear port-wide forecast generally includes the following entries for a specific period that ranges from five to ten years or more:

- Beginning cash balance
- Conglomerated revenues from operations
- Conglomerated expenses from operations
- Net earned revenues
- Unearned revenues including taxes and interest income
- Net cash flow from operations
- Proceeds from borrowings (loans and bonds) and grants
- Debt payments
- Capital cash expenses
- Ending cash balance (capital)
- Net cash flow
- Reserves for operations and debt covenants
- Available cash

These projections should include metrics that facilitate the port's assessment of its future projected financial performance. Common metrics to be considered include:

- **Reserves:** The amount of projected operating reserves against a targeted amount. The traditional standard is three months operating income in available cash or other extremely liquid assets. These are contingency funds in the event of a catastrophe, an unanticipated downturn in a market, or failure of a major tenant, or to weather seasonal fluctuations in expenses and revenues. These reserves should be kept in addition to any needed debt reserves mandated by bond covenants.
- **Debt Service Coverage:** The ratio of available, uncommitted cash flow to the amount of

total debt payments against both principal and interest. Typical bond covenants require that the port maintain a minimum ratio of 1.35 in available cash to debt service payments. Some ports have opted to target a higher ratio to insure the financial stability of the district. It is not unusual to see internal debt coverage ratios ranging from 1.5 to 2.0 as a financial metric of that stability.

- **Debt to Equity:** The amount of total debt (liabilities) to equity (value of all port assets). It is a measurement to determine to what level a port is leveraged. The higher the number, the higher the port is leveraged.

Plan of Finance: Project Specific

A plan of finance is a comprehensive financial forecast reflecting the cost and revenue structure of a specific project or initiative, including estimated capital and operating project costs, sources and uses of funds, and a cash flow pro-forma. It is most often used as the basis for securing debt financing or advancing a commitment to a project or initiative. Plans of finance should be used to assess the opportunity and risks associated with a project investment. They are typically used for brick and mortar facility construction. Examples include construction of a new cargo terminal, extension to a marina, or development of a new commercial building.

FINANCING PROJECTS AND OPERATIONS: SOURCES OF CASH

Financing capital projects and operating costs is a strategic element that is at the core of a port's feasibility as an ongoing municipal entity. Sources of funds for port uses generally fall into two categories: earned and unearned revenues.

Traditionally, earned revenues are those that are generated from a port's lines of business. Unearned revenues are those that are generated from other sources, such as property taxes; they are used to underwrite the costs of lines of business, port overhead, and traditional government activities such as parks and open space. This is not always the case, as some ports fund their overhead and traditional governmental activities through net positive revenues from their lines of business.

Sources of Earned Revenue

As a source of cash, earned revenues are derived from operations, specifically asset/facility rents, fees, and the like. The more common types of rents and fees include:

- **Boat Launch:** The fees associated with launching smaller boats from trailers across a ramp.
- **Concession:** The fees and charges for operating a concession (food and retail) on port property.
- **Dockage:** The charge to use a fixed or floating dock, usually on a mid- or short-term basis. Dockage is typically charged in cargo operations.

- **Fiber:** Fees associated with the use of dark (inactive) fiber optic cables. In the future, ports may construct and operate last-mile fiber, which will be accompanied by user (retail) fees for internet connection.
- **Fuel:** Fees based on gallonage, for refueling at a marina or airport.
- **Landing:** Fees assessed per landing against recreational and commercial aircraft.
- **Moorage Fees for Slip Rentals:** Essentially, these are rents for the use of an in-water moorage within a marina. These moorage rates are often based on both length and width of a slip.
- **Parking:** Connected to a host of port facilities, fees for auto parking are often a considerable revenue earner.
- **Real Property Rents:** Rents for real property assets captured in a lease document. The lease conveys the right of control and occupancy of the underlying asset. While leases can be applied to a host of assets such as software licenses, mining rights, etc., in ports it is generally accepted to cover commercial and industrial real property assets.
- **Storage:** Use fees for laydown or warehouse storage facilities.
- **Utility:** Typically charged on pass-through fees of utility costs for tenants, slip holders, and the like.
- **Wharfage:** The charge for moving cargo across a dock or wharf.

From the 2020 WPPA Port Survey

- Funding is the number one challenge to responding ports.
- Two-thirds of Washington ports want to know more about securing grants.
- Ports primarily use state-administered grants, such as those from the Community Economic Revitalization Board or Model Toxics Control Act.
- Many innovative and challenging investment projects are on the horizon for ports across Washington.

Sources of Unearned Revenue

Unearned revenues include those sources of cash that are not directly attributable to a port's lines of business. They generally include taxes, interest on investments, grants, and the like.

PROPERTY TAXES

General Property Tax Levy

"I like to pay taxes. With them, I buy civilization." –Oliver Wendell Holmes, Jr.

Philosophy on ports' use of property taxes can be controversial and is often the source of great internal debate and discussion with the community.

The 1911 Washington State law that first authorized citizens to form port districts also authorized ports to levy an annual property tax levy of \$2 per \$1,000 on the assessed value of taxable property within the district. These taxes were to be used for general port purposes. These funds provided start-up money for facilities and for the operation of new ports, and they built a dependable reservoir of funds for construction of public assets. Since 1911, the Washington State Legislature has reduced the port property tax authorization to \$0.45 per \$1,000.

In addition to the limit on the overall levy rate, there is a 1% limit on the amount an individual taxing district can increase the property tax levy (the total amount of taxes that will be collected) each year. Property tax increases are not based on the increasing value of properties; they are based on the amount of the property taxes assessed in the prior year. The cash that a levy generates cannot increase by more than 1% per year, but that excludes taxes generated from new construction, state assessed utility property, or annexations to the district.

Ports can bank unused tax capacity; if after proper notice and a public hearing, a port elects not to use its full 1% allowed tax levy, it can adopt a resolution to bank that unused capacity for a future date (RCW 84.55).

A Note on Tax Levies

Most ports do not use their maximum allowable general tax levy. WPPA's 2019 Tax Levy and Compensation Survey revealed that the average tax levy was \$0.262 per \$1,000 of assessed value, for the 49 ports that responded. The lowest was \$0.03 and the highest was \$0.45. This analysis only applies to the general tax levy, not to special levies such as dredge and industrial development levies.

Ports use taxes to invest in brick and mortar projects that stimulate and grow the economy, and to fund traditional government activities that are not capable of generating sufficient earned revenue. When using taxes to stimulate and grow the economy, ports should be thoughtful in articulating the often “invisible” economic development benefits. Attention should be paid to defining the expected and specific visible outcomes of a tax-supported investment in economic development. Ports should clearly understand how this investment of publicly paid taxes grows the economy and builds real community wealth.

Washington State Property Tax Structure

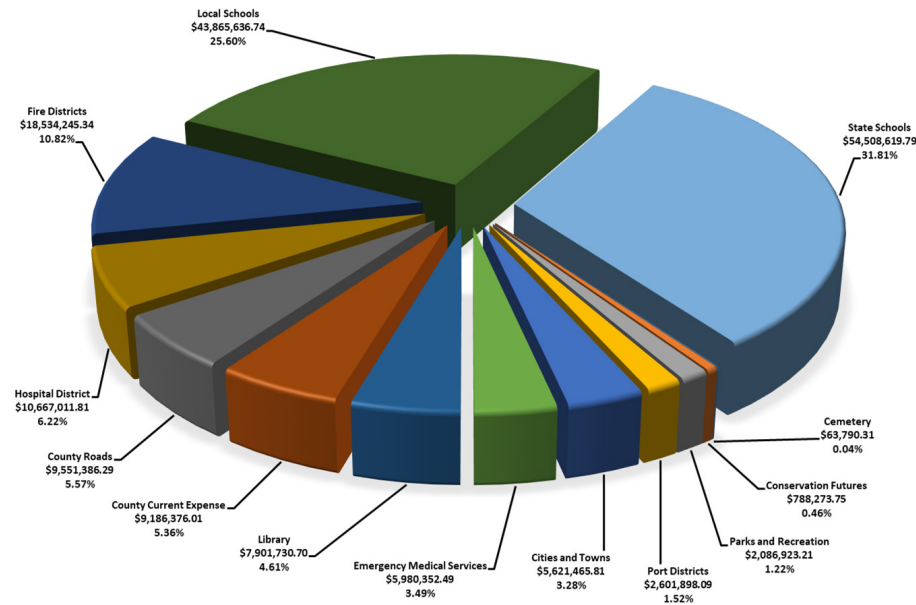
In general, property taxes account for about 30% of total state and local taxes across Washington. State law requires that county assessors assess property at 100% of its true and fair market value.

Real property includes land, improvements, structures, and certain equipment affixed to structures. Property is assessed using one of three approaches: market sales comparison, cost approach, or income approach. Personal property that is mobile is assessed as well, if it is used for business or commercial purposes. Assessors are required to physically inspect each property every six years.

Property tax rates are expressed in dollars per thousand dollars of assessed property value. Assessors set the levy rate based on the taxing district's budget request, the total assessed value of the taxing district, and any applicable levy limitations.

Property taxes can be appealed to the county's tax assessor; if a resolution is not reached, it can be formally appealed to the county's Board of Equalization. Property taxes are billed and payable by April 30 and October 31 of each year.

The illustration that follows represents a typical tax bill in Washington state. It clearly reveals that ports are a minor taxing entity, compared to other agencies such as school districts.



Example of property tax levy percentages by agency. Pierce County 2020.

Industrial Development Districts – Industrial Development Tax Levy

One of the unique tools Washington ports have to their avail is the creation of industrial development districts (IDD) and the levying of an IDD tax levy.

A port may create one or more IDDs within their political boundaries, with the intent of developing marginal lands within those geographic areas. The public policy reasoning for a port's establishment of an IDD (RCW 53.25.010) is that the economic security of the community is dependent on the proper development, or redevelopment, of these marginal and typically underperforming lands that the private sector alone cannot successfully address.

Washington statutes define these marginal lands as being characterized by one or more of these conditions:

1. An economic dislocation, deterioration, or disuse resulting from faulty planning.
2. The subdividing and sale of lots of irregular form and shape and inadequate size for proper usefulness and development.
3. The laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions.
4. The existence of inadequate streets, open spaces, and utilities.
5. The existence of lots or other areas which are subject to being submerged by water.
6. By a prevalence of depreciated values, impaired investments, and social and economic maladjustment to such an extent that the capacity to pay taxes is reduced and tax receipts are inadequate for the cost of public services rendered.
7. In some parts of marginal lands, a growing or total lack of proper utilization of areas, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to the public health, safety, and welfare.
8. In other parts of marginal lands, a loss of population and reduction of proper utilization of the area, resulting in its further deterioration and added costs to the taxpayer for the creation of new public facilities and services elsewhere.
9. Property of an assessed valuation of insufficient amount to permit the establishment of a local improvement district for the construction and installation of streets, walks, sewers, water, and other utilities.
10. Lands within an industrial area which are not devoted to industrial use, but which are necessary to industrial development within the industrial area.

Along with the very name of this authority, these statutes imply that the actions authorized are targeted toward industrial property. Washington statutes do not define the term industrial, just as they do not define harbor improvements. However, it is broadly accepted that commercial development is the new industrial development in today's evolving economy. A classic definition of industry broadly includes productive enterprises or organizations that produce or supply goods or services and are further classified as heavy and light. In the end, this is a determination reserved to the commission's judgement after evaluating all the circumstances.

The process for creating one or more IDD's, while not defined in Washington statutes beyond the need for a public hearing, should consider the following steps:

- ✓ Preliminarily identify potential property to be included in the district(s).
- ✓ Assess the property to determine if it is marginal property under the statutory definition. That assessment should be captured in a findings memorandum or similar document.

- ✓ Develop a communications strategy to inform the public.
- ✓ Conduct a public hearing(s) on the creation of the district(s) to take public input.
- ✓ By commission resolution, form the district(s).

District boundaries can be further adjusted, and Washington statutes provide additional clarification on that process.

Within the district, a port can exercise all its authorities, including condemnation and the creation of special levy assessments on private property for improvements such as needed infrastructure. These assessments are distinct and independent of an industrial development district tax levy, which is discussed below. It should be noted that any improvements beyond feasibility and planning studies must be articulated in a port's CSHI.

A port may assess an industrial development tax levy to fund improvements and activities associated with industrial development districts. This levy is in addition to its general operating levy and does not require a vote of the public. Similar to ports' general levy limit of \$0.45 per \$1,000 of assessed value, a port can levy up to an additional \$0.45 per \$1,000 of assessed value as an industrial development levy.

This additional levy can be collected for a limited time. Established by statute in 1957, the original construct limited a port to two six-year levy periods over the life of the port (RCW 53.36.100). Statutory changes in 2015 now permit collection of the same levy amount over two 20-year periods (RCW 53.36.160).

Both constructs are available to today's port authorities; however, the six-year construct expires in 2026 and will no longer be available to ports. Ports may still use it but are limited to a shrinking collection period as 2026 approaches. The Washington State Department of Revenue has issued an opinion that it is no longer available. Ports are advised not to pursue the six-year levy under RCW 53.36.100 because of this uncertainty. And in any case, the new construct is much more flexible.

The benefit of the 20-year model adopted in 2015 is its flexibility. The total amount of the tax can be collected from six to 20 years with varying collection rates, and a port can skip years of collection. This flexibility on the collection rate is determined by a port commission on an annual basis. However, the total amount of the levy remains the same as the total that could be collected under the original 1957 construct.

The 2015 statute calculation:

\$0.45 per \$1,000 of assessed valuation times six years or a total that can be collected over 20 years of \$2.70 per \$1,000 of assessed value in the baseline year ($\$0.45 \times 6 = \2.70).

The new construct assumes a fixed assessed value base within the port district, excepting an increase for new construction value and annexations, but not for inflationary growth in the overall assessed value base. The annual tax levy can vary up to a maximum of \$0.45 per \$1,000 of assessed value per year; it can be timed with the need for project and improvement funds, with the total over 20 years not to exceed \$2.70 per \$1,000 of assessed value.

An example calculation:

- 1. Port's total assessed value: \$4,000,000,000.**
- 2. Total \$1,000 of assessed value: \$4,000,000.**
- 3. Total tax available to be collected over 20 years: \$1,000 of assessed value X \$2.70 = \$10,800,000.**
- 4. Maximum available in any one year: \$1,000 of assessed value X \$0.45 = \$1,800,000.**

Like the original 1957 construct, the 20-year levy can be implemented for a second 20-year period. This action is subject to a petition of 8% of registered voters to require a public election. The process for implementing an IDD tax levy, while not specifically defined in Washington statutes beyond the need for a public hearing, should consider the following steps:

- ✓ Create a capital finance plan (CFP) as a best management practice to forecast the need for the additional revenues, in both amount and timing.
- ✓ Develop a communication strategy to explain the need to the community.
- ✓ As required by statute, hold at least one public hearing to receive public comments.
- ✓ Adopt a resolution by November 30 of each year, setting the amount of the IDD tax levy expressed as a dollar figure that will be assessed in the upcoming fiscal year. This is done each year until the \$2.70 per \$1,000 of assessed value in the base year is used.

Dredge Levy

Ports have the authority to collect a dredge levy for purposes of dredging, canal construction, or land leveling and filing purposes, up to a total amount of \$0.45 per \$1,000 of assessed value. This levy can only be implemented following the approval of a majority of electors. The process used must be consistent with the levy process utilized by first-class school districts, as described in RCW 29A.04.330.

Like any proposed tax increase, the levy must ultimately be approved following a public hearing. All improvements of this nature must be included in a port's CSHI. Similar to implementing an industrial development tax levy, the dredge levy process should include a clear assessment of need and a vigorous plan to reach out and communicate with the public.

INTEREST INCOME

Interest income is simply the interest earned on investments of idle cash in a port’s portfolio. This is likely a limited source of funds, as ports typically use all idle cash for capital projects.

BORROWING

To Borrow or Use Cash Reserves?

The question of whether a port should borrow is very much dependent on an individual port’s financial circumstances and the philosophy of its board of commissioners. The following table highlights the general pros and cons of borrowing vs. using cash and pay as you go. Evaluating the need for borrowed funds should be reflected in a port’s multiyear financial forecast.

	CASH FUNDING “PAY AS YOU GO”	DEBT FUNDING “PAY AS YOU USE”
ADVANTAGES	<ul style="list-style-type: none"> • Port avoids interest costs. • Port avoids continuing disclosure, calculating arbitrage, and other compliance requirements. 	<ul style="list-style-type: none"> • Future users share in the cost. • Build when it’s needed. • Cash is on hand for other opportunities.
DISADVANTAGES	<ul style="list-style-type: none"> • Can require a long wait, causing a port to miss the window of opportunity. • Less financial cushion. • May miss opportunities. 	<ul style="list-style-type: none"> • Debt payments may limit future budgetary flexibility. • Impact to credit ratings. • Issuance and compliance requirements can be burdensome.

Types of Borrowing: Bonds and More

Ports can borrow money in several different ways and retire the debt with revenues and fees, taxes, or special assessments.

There are four basic types of borrowing for ports:

- **Commercial loans** that are negotiated with a lending institution. These typically carry higher interest rates and are limited to smaller loans or shorter amortization periods. They are not used often by municipal governments, but they are available. Included in this category are tax anticipation notes and lines of credit.
- **Leasing** with the right to ownership is not a loan per se, but it functions as the same. These have higher interest rates built into lease rates and are not frequently used outside of funding a large fleet (equipment lease) or real property assets (lease to own).
- **Governmental program loans** such as those offered by the Washington State Department of Commerce or the U.S. Department of Agriculture. These are very focused as to uses and

offer limited amounts of loans, and terms can be challenging.

- **Municipal bonds** are the traditional borrowing mechanism for ports.

Municipal bonds (also referred to as munis) are the primary instruments that ports use to borrow. Municipal bonds are tax-exempt, meaning that there is no federal income tax levied against the bond holder that receives net interest income for the debt payments made by the port. The result is that these tax-exempt instruments usually carry lower interest rates, as investors have no federal tax liability and will accept lower returns.

Municipal bonds can be refunded or recalled unless the issuing terms prevent the debt balance from being paid off early. In addition, some bonds or borrowings can have balloon payments. Ports should be very cautious about balloon payments or the lack of ability to retire or refinance the debt before the term expires. There are taxable bonds that are used in a number of applications by the private and public sector, but they are generally not issued by ports. There are two basic types of tax-exempt bonds:

General Obligation (GO) bonds which are not secured against any specific asset or revenue stream but are backed by the “full faith and credit” of the port, which has the power to tax residents to pay bondholders. There are two types of GO bonds:

- **Limited tax general obligation (LTGO) bonds** can be approved by the commission but are limited to debt service payments using the port’s general tax levy. This creates a mathematical limitation (debt capacity) for borrowings of this type. These bonds are often referred to as non-voted debt.
- **Unlimited tax general obligation (UTGO) bonds**, also called voted debt, must be approved by at least 60% of voters, with a voter turnout that is equal to at least 40% of the voter turnout for the last general election. Voters must also approve an increase in property taxes beyond the authority of the commission.

Revenue bonds, which are not backed by the port’s taxing power but by revenues from a specific project or source. Some revenue bonds are non-recourse, meaning that if the identified revenue stream fades, the bondholder does not have any claim on port revenues. On the other hand, there are see through revenue bonds that primarily rely on identified project revenues but have a provision that the bondholder can rely on other port revenues, even taxes, for debt payments.

Security pledges are often required to backstop bonds, and the strength of the required security reflects the risk potential of the revenue stream used to retire a debt. The following table describes the various security pledges that may be required for various bond types.

TYPE OF PLEDGE	SECURITY PLEDGE	CONSIDERATIONS
GENERAL OBLIGATION	<ul style="list-style-type: none"> Secured by property taxes. Full faith and credit of port. 	<ul style="list-style-type: none"> Higher credit rating and lower issuance and interest costs. Commission- or voter-approved.
GENERAL REVENUE	<ul style="list-style-type: none"> Secured by a port's overall and total net revenue. 	<ul style="list-style-type: none"> Lower credit rating and higher issuance and interest costs. Commission approved. Larger debt coverage ratio.
SPECIAL REVENUE	<ul style="list-style-type: none"> Secured by a specific bond-funded project (e.g., tenant lease). 	<ul style="list-style-type: none"> Interest rates significantly higher due to narrower revenue commitment. Time consuming and costly to secure.

Key Roles in Debt Financing

There are several key roles in the process of borrowing or issuing bonds for a municipal government. These include:

- **Port CFO or Financial Lead:** Solicits other key positions through personal service contracts and oversees improvements to financial systems to support the port's good credit rating.
- **Bond Counsel:** Out of house attorney specializing in public debt matters who provides a written opinion on the port's authority to issue debt and ensures the port has met all state constitutional and statutory requirements.
- **Financial Advisor:** Provides advice to the port on market conditions, structuring and pricing debt, preparing official disclosure statements, and supporting credit rating presentations.
- **Bond Underwriters:** Manages the formal selling of debt instruments (bonds) or negotiation on a privately placed market. This role is often combined with the financial advisor.

Credit Ratings

To secure bond debt, a port will typically engage bond counsel, a financial advisor, and underwriters to manage the process of selling bonds on the market. The bond market will price the bond, essentially determining the interest rate a port will pay, based on the market's volatility and strong consideration for the risk associated with the source of funds the port will use to retire the debt. This risk is offset by the security pledges mentioned above, but it is also a function of the market's evaluation of the port's financial capacity, history of managing risk, and overall ability to manage its affairs. This evaluation is commonly known as a credit rating.

Credit ratings are issued by bond rating agencies such as Standard & Poor's, Moody's, Fitch Ratings, and the like. These agencies determine a port's credit rating based on a bond rating

presentation by the port or similar analysis. Ports are encouraged to consider establishing a credit rating if they anticipate borrowing.

The keys to maintaining a good bond rating include:

- ✓ Regular **communication** with the bond rating market.
- ✓ Continuous **improvement** of financial policies, budgets, and forecasts.
- ✓ Utilization of **best management practices** for ports, including maintaining up to date keystone documents.
- ✓ Taking immediate **action** if financial metrics change negatively.

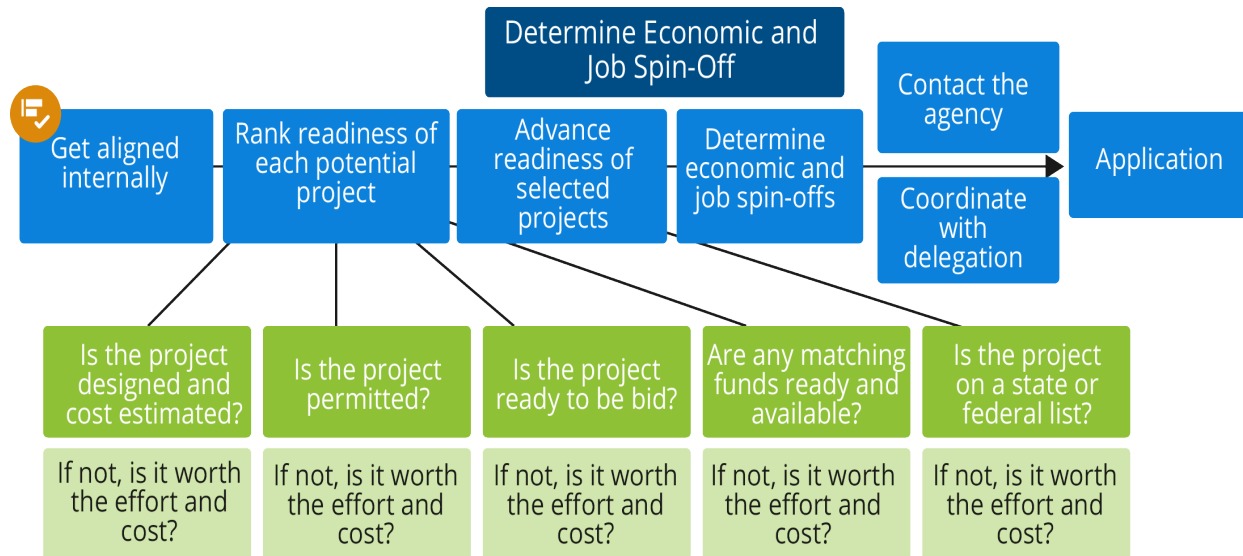
There are several other bond instruments available to ports. These include private activity bonds to finance non-governmental activities that have a substantial public purpose component, such as private industry expansion. These are designed to not afford any recourse against the port. The determination of these bonds' tax status is based on the type of activity being financed.

GRANTS

Grants from federal, state, and local programs represent a significant source of funds for both capital projects and innovative programs. However, there are three primary criteria used to determine the success of a grant application:

1. Is the project **shovel ready**, meaning that all permits are or can readily be acquired, and the applicant (the port) has the local match available and the capacity to undertake the work?
2. Does the project or program have general **community support**, or is there significant opposition?
3. Does the project or program **advance economic, community, or environmental progress**?

Getting a project or program ready to successfully apply for grant funding requires focus and alignment within the port. The following chart illustrates the internal process, with special relevance for when ports seek federal funding.



It is a port’s responsibility to determine if it is ready for a successful grant application. The following questions can help to guide this determination:

- Are you aligned internally?
- Are you willing to undertake the risk and cost of preparation?
- Is the project designed and the cost estimated?
- Can you clearly articulate the economic and job benefits?
- Is the project publicly supported?
- Is the project permitted?
- Is the project ready to be bid?
- Are the required matching funds ready and available?
- Have you coordinated with the granting agency?
- Is the project on a state or federal list?
- Have you connected with your state or federal delegation?

See Appendix A for grant programs organized by port line of business or traditional governmental activity.

COMPLIANCE

The Office of the Washington State Auditor (SAO) is responsible for auditing Washington’s more than 2,000 local governments, including port authorities. The SAO is a statewide elected office that is fourth in line of succession to the Governor (behind the Lieutenant Governor, the Secretary of State, and the Treasurer).

A port authority is required to provide an independent review of its financial statements alongside the results of its operations and cash flows, to determine if its financial statements present a reliable and accurate picture of the port's finances.

Like all local governments, a port is required to receive an audit of its financial statements if it (a.) receives over \$2 million in annual revenues, (b.) spends more than \$750,000 in federal financial assistance, which triggers a Federal Single Audit, or (c.) is specified in financing arrangements, such as bonds, loans, or grant agreements.

The auditor also conducts accountability reviews to determine if a port has adhered to applicable state laws, regulations, and its own policies and procedures.

With the passage of Citizen Initiative 900 in 2005, the SAO was authorized and funded to implement performance audits to determine if a state or local entity is operating according to statutory requirements and consistent with best industry practices that result in improved service delivery or financial effectiveness. As a practical matter, the SAO has focused on state agencies and programs. To support the intent of the Citizens Initiative the SAO has created the Center for Government Innovation.

Ports are required to submit end of year financial statements to the SAO within 150 days of the close of each fiscal year.

A typical SAO port audit consists of (a.) a title page that describes the frequency and purpose of the audit, (b.) a transmittal letter, signed by the auditor, that describes the process and communications to the port, and (c.) the actual audit results that confirm compliance. Any areas of concern identified by the auditor are captured as recommendations or findings. The auditor will make recommendations in the report on how to correct areas of concern or any other findings from the audit. These findings represent areas in which the auditors have significant concerns about the port's control of public resources.

GLOSSARY: FINANCE, ACCOUNTING, AND BUDGET TERMS

Account: A record of additions, deletions, and balances of individual assets, liabilities, equity, revenues, and expenses.

Accountability: A government's responsibility to justify to its citizenry the raising of public revenues and to account for the use of those public resources.

Accounts Payable: Amounts owed to others for goods and services received and assets acquired.

Accounting Period: A period at the end of which financial statements are prepared.

Accounts Receivable: Amounts due from others for goods furnished and services rendered. Such amounts include reimbursements earned and refunds receivable.

Accrual Basis: A method of accounting in which revenue is recorded in the period in which it is earned (whether it is collected in that period or not), and expenses are reported in the period when they are incurred (not matter when the disbursements are made). This method differs from the cash basis of accounting, in which income is considered earned when received and expenses are recorded when paid. All funds except governmental funds are accounted on the accrual basis, and governmental funds are accounted on a modified accrual basis.

Assessed Valuation: The value assigned to properties within a port district and used in computing the property taxes to be paid by property owners.

Assets: Any item of economic value owned by a governmental unit. The item may be physical in nature (tangible) or comprise a right to ownership (intangible) that is expressed in terms of cost or some other value.

Audit: The examination of some or all of the following items: documents, records, reports, systems of internal control, accounting procedures, and other evidence, for one or more of the following purposes: (a.) determining the propriety, legality, and mathematical accuracy of proposed or consummated transactions, (b.) ascertaining whether all transactions have been recorded, and (c.) determining whether transactions are accurately reflected in the accounts and statements drawn therefrom in accordance with accepted accounting principles.

Available Funds: Balances in the various fund types that represent non-recurring revenue sources. As a matter of sound practice, these funds are frequently appropriated to meet unforeseen expenses, for capital expenditures, or for other onetime costs.

Balance Sheet: A statement that discloses the assets, liabilities, reserves, and equities of a fund or government unit at a specified date.

Balanced Budget: A budget in which receipts are equal to or greater than outlays.

Bond: A means to raise money through the issuance of debt. A bond issuer/borrower promises in writing to repay a specified sum of money, alternately referred to as face value, par value, or bond principal, to the buyer of the bond on a specified future date (maturity date), together with periodic interest at a specified rate.

Bond Rating (Municipal): A credit rating assigned to a municipality, such as a port, to help investors assess the future ability, legal obligation, and willingness of the municipality (bond

issuer) to make timely debt service payments. Essentially, a credit rating helps prospective investors determine the level of risk associated with a given fixed-income investment. Rating agencies such as Moody's and Standard & Poor's use rating systems which designate a letter or a combination of letters and numerals to a particular credit rating. In this system, AAA is the highest rating and C1 is a very low rating.

Capital Outlay: A budget category that may be a part of a capital improvement program

Capital Project: A single project within the Capital Improvements Program.

Carry Forward: A portion or total of the unspent balance of an appropriation that is made available for expenditure in the succeeding year.

Cash: Any cash equivalent that can be readily converted into cash.

Cash Basis of Accounting: The basis of accounting whereby revenues are recorded when received in cash and expenditures (outlays) are recorded when paid, without regard to the accounting period to which the transactions apply.

Cash Reserves: The net cash that will be available for use in a rolling 12-month period. Ports traditionally target three months of operating costs in cash reserves, plus any additional need for debt covenants.

Chart of Accounts: A listing of the accounts available in the accounting system in which to record entries.

Consumer Price Index: A measure of the average change in prices over time in a fixed market basket of goods and services typically purchased by consumers.

Cost Center: A unit or organization for which costs are accumulated or computed. In Washington this may take several forms: (1) a significant activity within a department for which administrative control is desirable and/or necessary, (2) a designated area within a department with costs that are significant to the department's financing and budgeting, (3) an area or activity under a single supervisor with costs that can be controlled by direct budgeting to that supervisor. For ports this can be a business unit or line of business, or an individual asset or collection of like assets.

Debt Service: Interest and principal payments on debt.

Depreciation: The systematic and rational allocation of the costs of equipment and buildings (having a life of more than one year) over their useful lives. To match costs with related revenues in measuring income or determining the costs of carrying out program activities, depreciation reflects the use of the asset(s) during specific operating periods.

Expenditure: The spending of money by ports for the programs or projects within the approved budget.

Fiscal Year (FY): Any yearly accounting period. In Washington, ports are on a July 1 to June 30 fiscal year.

Freight Mobility Strategic Investment Board (FMSIB): A crucial funding tool for port infrastructure projects. Founded over 20 years ago, FMSIB has funded many port projects through the years and is a primary funding source for transportation related infrastructure.

Fund: A self-balancing group of accounts that includes revenues and expenditures.

Full Faith and Credit Debt: Debt for which the credit of the port implying the power of taxation is unconditionally pledged.

Generally Accepted Accounting Principles (GAAP): Mostly determined by the GASB for governments.

Governmental Accounting Standards Board (GASB): Determines the underlying principles to be used in accounting for governmental activities.

General Obligations: Bonds or other indebtedness of the city for which the pledge made for repayment is the full faith and credit of the port

Inflation: A rise in the general price level that results in a decline in the purchasing power of money.

Internal Controls: A system of controls established by the port that are designed to safeguard the port's assets and provide reasonable assurances as to the accuracy of financial data.

Levy Rate: The property tax rate used in computing the property tax amount to be paid.

Liabilities: Amounts owed for items received, services rendered, expenses incurred, assets acquired, construction performed (regardless of whether invoices have been received), and amounts received but not yet earned.

Liquidity: The ease with which an asset can be converted to cash at prevailing prices. For example, demand deposits (checking accounts) are more liquid than time deposits (savings accounts), but both are more liquid than real estate, plants, and equipment.

Non-Operating Revenues: Those revenues generated from sources other than operating activities (lines of business) such as tax receipts, interest earnings, and finance charges.

Operating Budget: The annual appropriation to maintain the provision of port services to the public.

Operating Expenditures: All charges incurred during a fiscal period for supplies, materials, services, and debt service.

Operating Revenues: Revenues generated from a port's activities (lines of business), such as aviation, real estate, marinas, marine terminals, waste water treatment, and broadband.

Personnel Services: The cost of salaries, wages, and related employment benefits.

Preliminary Budget: A budget which is proposed by staff to the commission and has not yet been adopted by the commission.

Revenue Bonds: Bonds sold by the port that are secured only by the revenues of a particular asset such as an industrial building, marina or cargo facility.

Warrant: An authorization for an action. A treasury warrant authorizes the treasurer to pay specific bills.

Zero Base Budgeting: A process emphasizing management's responsibility to plan, budget, and evaluate. Zero-base budgeting provides for analysis of alternative methods of operation and various levels of effort. It places new programs on an equal footing with existing programs by requiring that program priorities be ranked, thereby providing a systematic basis for allocating resources.

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A photograph of two port workers in a container yard. The worker on the left is wearing a yellow hard hat, a yellow safety vest over a blue shirt, and is standing on a metal step ladder while holding a clipboard and pen. The worker on the right is also wearing a yellow hard hat and a yellow safety vest over a blue shirt, and is holding a walkie-talkie. The background shows several stacked shipping containers. The entire image has a blue color overlay.

5. PORT OPERATIONS

“Far and away the best prize that life offers is the chance to work hard at work worth doing.”

—Theodore Roosevelt

PORT OPERATIONS

Washington ports have long been considered public enterprises. Since their inception over a century ago, the state's ports have operated at the unique intersection of governmental responsibility and entrepreneurial performance. They are empowered to promote economic development through return-based, market-oriented financial investments. Their historic success in this role has paved the path to additional legislative authority to expand further into the private marketplace.

With this expansion comes the growing challenge of balancing a port's mission in serving its community with the need to generate revenues or margin from its investments. Understanding and maintaining that balance is critical to a port's success and its acceptance by the community and the impacted private sector entities with which it interacts. (This concept of "mission versus margin" is discussed in the Strategic Planning section of Chapter VIII.)

LINES OF BUSINESS (LOB)

Port activities and investments that generate earned revenues while promoting general economic development represent a port's lines of business. They are evaluated on a return on investment (ROI) basis as a definitive and quantifiable metric to gauge their success. LOB port activities include commercial and industrial real estate, marinas, airports, broadband communication, marine terminals, and wastewater treatment. Determining and evaluating a port's LOB performance can be measured based on an individual asset investment such as a shipping terminal, a portfolio of like investments such as commercial real estate, or as a port-wide return on all LOBs combined. (Rates of return are discussed in more detail in Chapter IV.)

TRADITIONAL GOVERNMENTAL ACTIVITIES

Not every operational activity or investment a port makes results in a real financial ROI by generating earned revenues. There are certain port activities that do not generate adequate resources to be self-supporting, much less generate a positive cash flow. These activities can be characterized as more traditionally governmental in nature and must be underwritten by financial resources from port lines of business activities or through property taxes. They include such things as programmatic economic development, parks and open space, and environmental stewardship that is not connected to real property development and reuse. These activities have great public benefit but by their nature are incapable of generating sufficient earned revenues to cover all operating costs and provide a return on capital investment. Traditional governmental activities are important and often very critical to a port's success in promoting economic development and are distinct from lines of business activities. This distinction means that the measurements of success for these traditional governmental activities is more qualitative than quantitative.

In concert, a port's lines of business portfolio and its more traditional governmental activities are the sum of its operations. Chapter V: Port Operations explores the nature of these critical port functions.

It should be noted that there are no legislated requirements or standards for drawing any distinction between lines of business and more traditional governmental activities. However, each port is well-advised to thoroughly understand the design of their operational structure, how it performs financially, and why they have made or are considering specific investments.

As a port considers the breadth and depth of its portfolio and activities there is one other consideration: Ports consistently report that their communities do not completely understand what they do, despite their best efforts at communication and public outreach. This may well be due to the nature of their operations, which are either business-to-business (i.e., wholesale), or they have a more "retail touch" in which there is frequent contact with individual community consumers.

Wholesale business includes such portfolio investments as marine terminals, through which a port has contractual relationships with business and corporate entities. Retail touch-types of operations include portfolio investments such as commercial passenger airports or governmental activities such as parks. These retail touch operations afford an opportunity for people to personally interact with the port while using its facilities, allowing them to experience what the port does for its community. Ports that have little or no retail touch with their communities have less opportunity to directly interact with community members, which can result in less visibility and understanding of a port's role and functions.

This chapter provides a cursory review of the various lines of business and traditional governmental activities in which today's Washington state ports are engaged. They are discussed in descending order based on their prominence in WPPA's 2020 statewide port industry survey. A glossary of relevant terms is provided for each operating area.

Comparative Port Performance Metrics

Assessing the operational efficiency of a port is a local consideration, as the diversity of Washington port activities makes it challenging to identify external comparative performance metrics. The best metric with which to measure the success of a port's lines of business activities is the expected and achieved ROI. While this provides the best internal metric of success the diversity of Washington port activities makes it challenging to identify external comparative performance metrics between ports.

One approach to assessing comparative performance between ports is utilizing the common denominator of port staff size to generate relative and useful metrics. The annual 2019 WPPA Tax Levy and Compensation Report captures the most recent financial performance statistics from Washington's port industry. The raw data in that report reveals that, for the 25 largest Washington ports, the average annual earned revenue per employee* is \$373,000, with a range of \$88,000 to \$1,000,000. In terms of property taxes, the average annual tax receipts per employee** is \$129,000, with a range of no taxes collected to \$333,000 per employee.

The leveraging of property taxes is often considered an integral financial component in a port's efforts to advance economic development. For these 25 ports, the average dollars of earned lines of business revenue per each tax dollar levied† is \$6.20, with a range of \$0.27 to \$23.25. This ratio can be greatly impacted by a port's policy regarding the use of taxes for lines of business support versus more traditional governmental activities, such as parks and open space.

*Earned revenue per employee = Total port earned revenue from lines of business/Number of port employees

**Annual tax receipts per employee = Annual property tax receipts/ Number of port employees

LINES OF BUSINESS OPERATIONS

Chapter II explored the evolution of port authority—specifically, the expansion of port activities in the private marketplace. This section discusses port lines of business operations in greater detail.

Real Estate

“Real estate is the best investment in the world because it is the only thing they are not making anymore.” –Will Rogers

Real estate is a mainstay line of business for port operations. Nearly every port in Washington owns and leases commercial and industrial real estate, and the number of ports operating in commercial versus industrial real estate is about equal. Virtually all ports with a real estate portfolio lease property, and up to 70% routinely buy and sell property.

WPPA’s 2019 Real Estate Seminar survey found that one out of five ports responding reported generating 60% to 100% of their total earned revenues from their real estate portfolio. An equal number of ports reported that the revenue generated from their real estate portfolio represented less than 20% of their total earned revenue. WPPA’s 2017 economic impact study further revealed that smaller ports obtained virtually all their earned revenue from real estate investments. Large ports, on average, only generated 16% of their earned revenues from real estate, as they are more invested in large-scale transportation activities such as marine cargo and commercial aviation.

WPPA’s 2017 Washington State Public Ports Economic Impact and Jobs Analysis

- There were over 3,200 tenants operating through leases on port land. The largest single category was professional, scientific, and technical services, followed by specialty trade contractors.
- Port tenants support approximately 72,000 direct jobs and an additional 104,000 indirect and induced jobs, for a total of over 175,000 jobs. This represents approximately 5% of total jobs in Washington. Industrial and commercial land portfolios account for over half of the jobs for all port activities.
- The average compensation for port tenant workers (including non-monetary benefits) was \$73,100 per year.

As part of a lines of business analysis, ports should ask themselves why they operate in real estate. There are two fundamental reasons:

1. To **address demand** for facilities when there is a shortage of available inventory in their community, or when there is a need for a specific building or facility to serve a particular market or transportation sector.

2. As a **generator of earned revenue** to support (a.) the port's overhead costs, (b.) other lines of business activities that are underperforming, or (c.) more traditional governmental activities, such as programmatic economic development. Sufficient earned revenues can reduce or eliminate a port's dependency on property taxes.

Inherent in this discussion is a policy decision about lease rates. Are lease rates to be consistent with the market, theoretically generating a reasonable rate of return on the port's investment? Or are they designed to underwrite the cost to a particular employer, to attract and grow jobs in the community? Both policy positions are valid, yet there can be some uncertainty within a port regarding the targeted purpose and goal of their real estate investments. Because the private development community wants a level playing field, they may be critical of ports that offer below market lease rates, even with the understanding that lower rates can act as an investment designed to fill market or capacity gaps. Port policies that support below-market lease rates for job-producing businesses should be quantitatively articulated and routinely communicated to the public.

WPPA's 2019 Real Estate Seminar survey found that 92% of ports attempted to lease at market rates, which was a dramatic increase from the results of WPPA's 2015 seminar survey, when only 55% of ports attempted to lease at market rates.

A similarly contentious policy decision is whether or not a port will sell property. RCW 53.08 captures ports' authority to acquire and develop certain facilities and to acquire and directly lease lands and property. In response to WPPA's 2019 Real Estate Seminar survey, a quarter of ports reported a policy or an internal understanding that they would not sell property. Three quarters of ports reported securing a tenant before embarking on a new investment, effectively avoiding speculative investment.

The portfolio of real property assets can include these basic development approaches:

- **Curb line down:** Acquiring fully serviced and appropriately zoned land and making it available for lease or sale is a very common approach used by ports. In this approach, the port would acquire raw land, construct the needed infrastructure, and ensure that the asset is properly zoned and all other regulatory issues are addressed. The cost for pursuing this approach is relatively high, considering the possible lag time between the initial investment and the execution of a land lease or sale. Choosing this approach is determined by a port's relative capacity to invest patient capital.
- **Raw land:** Acquiring and making raw, unserved land available for lease or sale is a less common approach ports might use in situations that involve true public private partnership or a joint development agreement with a private party. For example, this approach would apply in the acquisition and lease or sale of a large tract of land that has not been fully serviced with traditional utilities and may not be appropriately zoned for the proposed use. The cost basis for this asset is relatively low.
- **Vertical development, above the curb line:** Acquiring and/or developing buildings and facilities for lease or sale "from the curb line up" is also a very common approach. In this

approach, most infrastructure would be installed and available and the port would build facilities to serve a specialized or specific market, based on market speculation or with a standing lease. Many ports build on speculation, which may reflect their capacity and tolerance for patient capital as the market demand comes to fruition. Unless there is a high-demand market, a less risky approach would be to build vertically only after a lease or sale is executed. This is the “build to suit” model. To allow for this approach, the potential tenant or buyer must have the luxury of a more relaxed operational timeline.

The choice of development approach should fundamentally reflect (a.) the risk tolerance of the port, (b.) its financial capacity, and (c.) the strength of market demand. Consideration should be given to a balanced portfolio that balances higher risk investments with lower risk investments.

Real Estate Development Checklist

Developing and managing port property can be a complex undertaking. It largely depends on the financial health of tenants and buyers, as well as the strength of the real estate market. The following checklist captures the many considerations a port should explore as it contemplates its real estate investments. Not all of these items are applicable to all properties, but this provides a scope of considerations for exploring a specific need or real estate investment.

Land Assemblage

- Is property acquisition needed to support the project, or does the port have all the land it requires?
- Do property lines need to be moved or created to support the project, through a lot line adjustment, short plat, long plat, subdivision, or binding site plan process?
- Is there access to the property through public right of way?
- Are there any easements on the property that will encumber development?

Land Use and Zoning

- Does the Land Use Designation in the local jurisdiction’s Comprehensive Plan align with the proposed future use?
- Is the proposed use allowed under current zoning code?
- Is a Conditional Use approval needed?
- Are there any zoning overlay districts?
- Is the project located within a Shoreline Jurisdiction? If so, is it consistent with those requirements?
- Are there any potential conflicts with adjacent uses?

Infrastructure

- Is there adequate transportation capacity to serve the development?

- Are off-site transportation improvements likely?
- Are transportation impact fees likely?
- Is there adequate capacity in the water system to serve the development?
- Are new water rights required?
- Is there adequate capacity in the sewer system to serve the development, or will there need to be on-site treatment?
- Do both water quality and water quantity need to be managed on-site?
- Is there adequate capacity in power systems to support the proposed development?
- Is there adequate telecommunication capacity to support the proposed development?

Environment and Cultural Resources

- Has a Phase I Environmental Site Assessment been completed for the property (See Chapter VII)
- How will any environmental liability be handled in property transactions?
- Is the property in a flood plain or floodway?
- Are there any protected critical areas on the property, such as wetlands or Habitat Conservation Areas?
- Are there any known historic or cultural resources on the property?

As noted earlier, virtually all Washington ports are active in real estate, and some have significant portfolios of industrial and commercial investments. Managing these portfolios can be challenging. WPPA's 2015 port survey revealed that about one half of ports employ a full-time real estate manager. For nearly all ports, a primary focus of the executive director is the oversight of real estate portfolios, which can substantially affect a port's financial performance and contribute to its mission of supporting the economy and promoting job growth.

Port commissions have a defining role in the management and oversight of a port's real estate portfolio, given their final authority to approve all leases and land purchases. However, they may delegate some level of that responsibility to the executive director, as defined in RCW 53.12.270. That delegation should be made carefully and thoughtfully, and staff should clearly understand that their negotiations are subject to commission approval.

The commission is well advised to address leasing issues through adopted financial guidelines, often referred to as leasing policies. Those guidelines should at a minimum address the following points:

- Lease terms
- Expected rate of return
- Specific lease rates

- Rental standards
- Security/insurance standards

While the Commission retains the authority to set terms and conditions, including lease rates, the Washington State Constitution prohibits “the gifting of public funds” by agreeing to below-market rates, such as the infamous \$1 lease. Ports should be cautious when setting below-market lease rates.

Real estate properties can be leased for a term of up to 50 years with an additional 30-year extension, for a total of 80 years. Real estate on an airfield can be leased initially for a term up to 75 years.

Clarity is critical to a port’s smooth operations. If a port is to achieve its desired outcomes, alignment is vital between the port’s commission and staff on the management and expectations of its real estate portfolio.

Asset Maintenance and Management

Regardless of size, managing a real estate portfolio with the accompanying infrastructure can be challenging. Effective asset management, commonly referred to as facility management, is a core fiduciary responsibility of ports, which hold built assets in trust for their communities.

Whether for real estate or other port lines of business and activities, asset management is broadly understood to include the items below. The costs of these should be reflected in the ROI.

- ✓ **Preventative maintenance** of buildings, facilities, equipment, and infrastructure to (a.) minimize the long-term life cycle cost of the asset, (b.) maximize the length of its useful life, and (c.) ensure that it functions safely and appropriately in support of the activity it is intended to serve.
- ✓ Providing **operative services** that allow the asset to perform on a day-to-day basis as intended. These services vary considerably depending on the type of asset, but they include safety considerations, regulatory compliance, waste handling, landscaping, pest control, cleaning, sanitation, and climate control, to name a few.

The complexity of asset management can be greatly enhanced by a systems approach. Underpinning a systems approach is a streamlined, interactive, location-based inventory of assets that can be visualized to better understand a host of condition and performance metrics. Visualization of key success indicators via a graphics dashboard can be extremely useful for routine commission updates and providing the necessary background on past performance when making forward looking decisions.

Identifying assets by location is a key tool in the effective maintenance and monitoring of a port's assets. Managing by location can be cost effective, reliable, and extremely accurate if using modern GIS software with flexible devices such as consumer tablets. Systems for this application are available off the shelf, and custom programs can be tailored to a specific portfolio. These tools can help to apply a systems approach to many port operations.

The following terms are commonly used in port real estate operations:

Appraised Value: An opinion of a property's fair market value, based on an appraiser's knowledge, experience, and analysis of the property.

Assessed Value: The valuation placed on a property by a public tax assessor for purposes of taxation.

Brokers and Agents: Real estate brokers have extensive formal training in real estate transactional work. They are licensed and often employ a team of real estate agents who work on transactions. Real estate agents are traditionally salespeople who work for a broker.

Building on Speculation: Commonly referred to as "spec building," the situation in which a port invests in vertical building without securing a tenant for the property. It is a higher risk proposition and should be pursued after considerable evaluation of the risk and the port's ability to absorb the risk. It is more common for a port to invest in raw land or curb line down developments.

Capital Lease Payment: A capital lease payment is a one-time tenant lease payment to a port that captures the future stream of rent payments traditionally due on a lease. It is calculated with a discounted cash flow and based on the projected payments over the term of the lease. It can be attractive both to tenants who are financing their investment and to tenant lenders who want to avoid the rent payment obligation, in the event that a tenant defaults on their lease.

Commercial Real Estate: Commercial real estate refers to land and buildings that house businesses, typically include office space, and have light industrial, retail, institutional, and government uses.

Discounted Cash Flow (DCF): A valuation method for estimating the value of an investment based on its expected future cash flows. DCF analysis attempts to evaluate an investment today, based on projections of how much money it will generate in the future.

Fair Market Value (FMV): The accurate representation of a property's value or worth based on market conditions that bracket the purchase price or lease rate. It should be noted that ports are subject to collecting Washington's Leasehold Tax (12.8%) on lease payments. The State assumes the Leasehold Tax is calculated based on FMV, and if the State determines the lease

is below FMV, the port itself may be responsible for the Leasehold Tax differential. Ports may also be subject to criticism from the private sector real estate community if they are leasing below FMV.

Gross Operating Income: The cash flow from an asset before any costs are allocated.

Highest and Best Use: The reasonable, probable, and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. This traditional financial margin definition does not always balance with a port's perspective on fulfilling its mission.

Industrial Real Estate: Industrial real estate includes all land and buildings that are utilized or suited for industrial activities. Such activities are defined as production, manufacturing, assembly, warehousing, research, light storage, distribution, and office requirements related to tangible goods rather than service-related users.

Mixed-Use Real Estate: Mixed-use commercial real estate refers to a building or land development that includes both residential and commercial space. For example, a structure with office space on the ground floor and apartment units on the top floor would be considered mixed-use residential or mixed-use office space. Considered as a concept in a 2019 land use study for the Interbay site in Seattle, industrial activities that include on-site workforce housing could promote industrial areas that stimulate jobs and other local business opportunities by allowing a greater mix of related, compatible office, retail, and industrial uses.

Net Return on Investment (ROI): A return metric to gauge an investment's performance by measuring annual net cash against the original cash (equity) investment after all costs are considered, including debt service, overhead cost allocation, and operating expenses. For example: Net Annual Cash (\$100,000) / Equity Invested (\$1 million) = ROI (10%)

Public-Private Partnerships: Otherwise known as P3, public-private partnerships are contractual arrangements that are formed between public (i.e., ports) and private-sector partners. These arrangements typically involve contracting with a private partner to renovate, construct, operate, maintain, and/or manage a facility or system, in whole or in part. It is common for the port to retain ownership of all or some portion of the real estate asset, with the private party generally investing its own capital to design and develop the properties. Typically, partners share the income resulting from the partnership.

Real Estate Infrastructure: Real estate infrastructure consists of the physical systems that underpin real estate development, including roads, lighting, traffic control, landscaping, broadband and internet connectivity, potable and process water; industrial waste treatment, sanitary sewers and sewage treatment facilities, and storm water treatment, retention, and conveyance.

Residential Real Estate: Residential real estate refers to real estate that is used for residential purposes, including single family homes, condominiums, duplexes, townhouses, and multi-family residences of varying sizes. As part of a mixed use industrial or commercial project, residential use may be acceptable for ports, but recent court rulings have precluded ports from undertaking standalone residential projects. Ports should carefully consider these rulings for residential use projects.

Marinas

“When you can’t control the winds, adjust your sails” –Unknown

The marina industry in Washington represents a broad range of facilities and operations. These include in-water and upland operations that support moorage for recreational and commercial vessels. They range from basic in-water small vessel storage and boat launches to extensive marine complexes that include hospitality, supply, repair, and maintenance services.

WPPA’s 2019 Recreational Boating Facility Guide found that 40% of Washington’s public moorage slips are operated by port authorities.

Recreational boating is a major industry in Washington, and over half of the State’s port authorities are invested in marina facilities that support the recreational boating sector.

- In 2020, some 220,000 recreational vessels were registered in Washington; three quarters of those vessels were located in Western Washington.
- 63% of the recreational fleet is registered in counties that border Puget Sound.
- 95% of recreational boats are less than 26 feet in length and can be trailered.

Washington’s commercial fleet is extensive and varied, largely comprised of the fishing fleet as well as other commercial activities such as marine tourism, transportation, spill response, law enforcement, customs, and research. A third of Washington’s ports provide moorage facilities to commercial vessels.

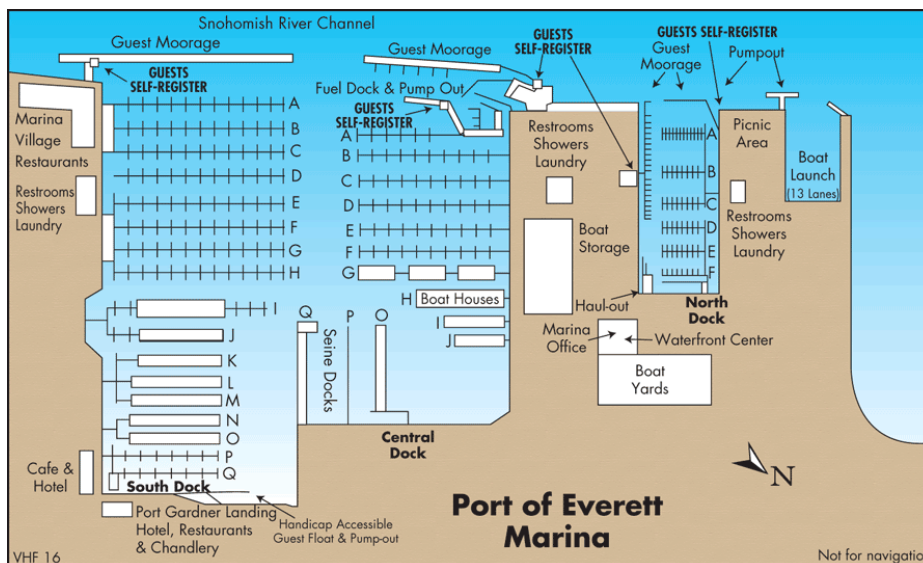
- For more than a century, fishing and seafood processing have been a prominent industry in the commerce and culture of Washington State. Vessels homeported in Washington harvest from a local and regional multi-species fishery that includes groundfish, halibut, albacore, salmon, and shellfish.
- Interstate fleets such as those in the ports of Seattle, Anacortes, Bellingham, and others actively fish the waters off Alaska, California, Oregon, and Canada.
- The Port of Seattle estimates that two thirds of the three hundred commercial fishing vessels homeported in their marinas fish in distant fisheries, such as those in Alaska.
- In total, the Seattle fleet alone supplies over 13% of the nation’s commercial fishing harvest.

- Washington's tribal fleet is composed of vessels from 20 Native American tribes. These vessels operate in fisheries that are co-managed by the tribes and supported by the Northwest Indian Fisheries Commission. Many of these vessels are homeported in Washington port marinas.

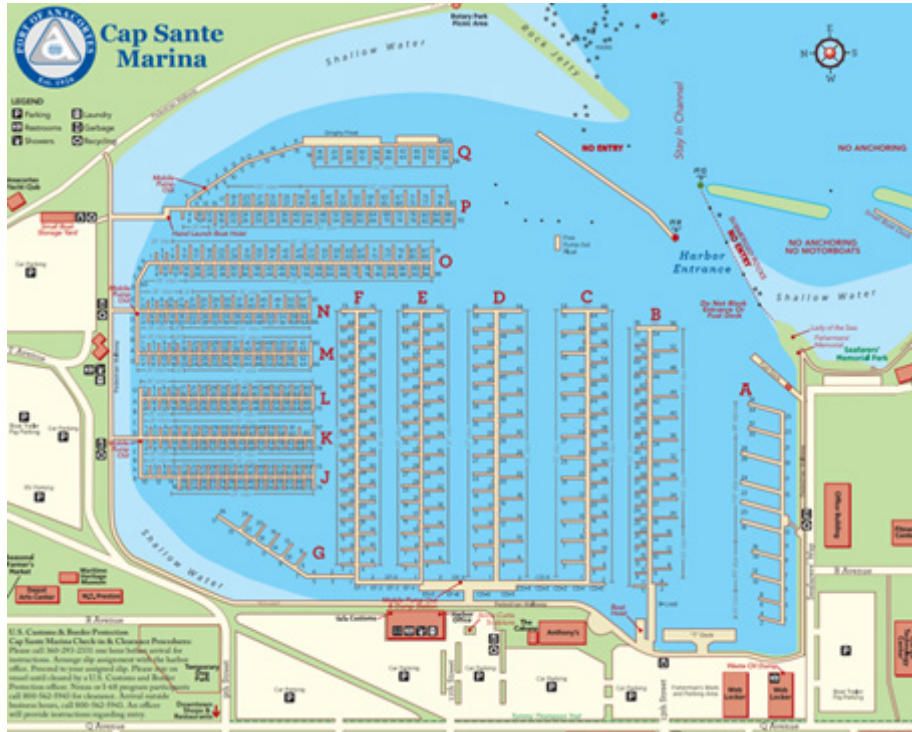
Marinas and the Economy

- In 2018, the recreational boating industry in Washington State had an estimated \$6.9 billion impact on the state's economy, with over 22,000 jobs in both the private and public sectors.
- In a 2013 study, the Port of Bellingham estimated that 1,800 direct local jobs were created by commercial fishing, primarily in upland processing activities.
- The fishing and processing industry in Pacific County alone contributes more than \$150 million to the local and state economies.
- The health of the many fisheries that support the Washington fishing industry is vital to the state's commercial and recreational fishing industry, which supports 67,000 jobs.
- The average benefit and compensation package in the tourism and recreational boating sector is \$48,700.

Marina design and operation is challenging, due to the corrosive and kinetic elements of working in both fresh and salt water, and it encompasses in-water and upland properties that house needed and desired chandlery services. In-water marina design is an established discipline that has evolved over centuries. Preliminary design considerations include (a.) target markets that define vessel demographics, (b.) environmental conditions such as tides, currents, wave surge, and winds, (c.) sea level rise and flooding projections, (d.) depth and draft limitations, (e.) regulatory requirements, and (f.) financing challenges.



The Port of Everett provides a good example of a marina layout for its homeported boaters and transient visitors. It identifies the key services and facilities available to customers and tenants. Image credit: Port of Everett



The Port of Anacortes marina facilities are well laid out, and services are readily available for homeported and transient customers Image credit: Port of Anacortes.

Slip characteristics are largely defined by the targeted vessel demographic. Marina layout is a balancing act that determines the efficient use of surface area for slips and access fairways. Upland development associated with the marina is mostly comprised of land use development efforts.

Specific components of in-water marina design include:

- Wave and tide attenuation structures, such as breakwaters.
- Marina vessel entrance and access.
- Slip, entrance, and fairway depths.
- Slip wind and current orientation, layout, and dimensions.
 - » Access fairways are typically 1.5 to 1.75 times boat or slip lengths.
- Moorage and fendering systems.
- Utilities, including electrical power, potable water, waste handling, and telecommunications.
 - » Electrical power needs are increasing, as larger vessels demand higher amperages.
- Emergency equipment.
- Access to fuel.

Developing on Washington's Shorelines

In concert with Washington State authorities, local communities provide oversight to the development of shorelines for marinas.

The Shoreline Management Act of 1971 (SMA) established a uniform set of rules governing the appropriate uses and development of shorelines throughout the state. The SMA enunciates a state policy for “management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses” (RCW 90.58.020).

Like the policies associated with the use of state owned aquatic lands, the SMA establishes three broad state policies for the use of shorelines:

- Encouragement of water-dependent uses.
- Protection of shoreline resources.
- Promotion of public access.

The SMA created a state-local government partnership that empowered communities to develop shoreline master programs to define policies and uses for local shorelines. The Department of Ecology provides technical assistance to communities and reviews local shoreline programs and permit decisions.

As discussed in Chapter VIII, ports are advised to coordinate with their community partners while developing and updating local shoreline regulations and policies that impact marina, marine terminal, and public access uses.

As regulatory conditions become more and more challenging for siting and permitting in-water facilities such as marinas and rubble mound or sheet steel wave attenuators, there is evidence of a rise in dry stack storage. Dry stack boat storage facilities are limited to power boats and have length restrictions, although newer robotic technologies can accommodate vessels up to 50 feet in length. As compared to in-water facility permitting, dry stack storage can offer reduced complications and arguably fewer environmental impacts. Dry stack storage facilities are most prominent in the southeast U.S., and they offer increased amenities and services to the recreational boater.

Approaches to operating and managing port marinas are as varied and complex as marinas themselves. The facilities, services, and management skills required to operate a recreational marina are somewhat different than those required to operate a commercial marina. Recreational marinas are by nature a hospitality business.

Both types of marina operations are an integral part of the local economy. They are capital-intensive, compete in the marketplace for market share, and may have multiple profit/cost activities that require varying disciplines. There are also seasonal variations that affect the level of periodic marina activity, including fish openings and Pacific Northwest weather patterns. These extremely abbreviated revenue windows can affect income generated from transient moorage and upland business services related to more active boating periods.

A marina's management team should be mindful of two important customer and market concepts:

- **Boats don't spend money, people do.**
- **Boaters see the marina from the water, not the harbor office.**

Both perspectives promote the idea that a marina is a customer-driven business with a distinct element of hospitality, and success is measured at the individual slip level. Marina customers value marina services, safety, moorage and facility functionality, staff responsiveness, and reasonable moorage rates.

Moorage rates are one of the most significant revenue streams at a marina, whether recreational or commercial. There are generally separate moorage rates for permanent, homeported boats and for shorter term, transient use.

There are two basic models for establishing moorage rates for homeported boats. The first model employs a formulaic approach to establish the rates on a **cost recovery basis**, and the second is a **market rate approach**.

The **cost recovery approach** determines annual costs, including (a.) the marina's total operating cost, (b.) capital cost, including debt service and major repairs, and (c.) fair share contribution to the port's overhead and administrative costs, spread out over the gross linear footage for all slips. This approach identifies a cost per foot of moorage and can be further refined by applying a premium to slips with extraordinary beam dimensions. It should be noted that ports utilizing this approach may find that their costs exceed regional market rates.

A sample formula:

(Marina Operating Expenses + Marina Maintenance & Repair Expenses + Allocated Overhead Expenses + Marina Annual Debt Service + Annual Cash Expenses for Capital Repairs) / Total Billable Lineal Feet / 12 = Monthly Mortgage Rate / Foot

The **market rate approach** bases moorage rates on surveys of the relevant competitive markets, establishing the marina's desired position in that market. Ports should be sensitive to the supply and demand dynamics that have recently trended toward higher demand for in-water larger vessel moorage. Because of this trend, ports should consider variable rates that

proportionately increase unit moorage rates for larger vessels. These vessels typically demand greater service levels, require more substantial moorage structures, and occupy greater surface area.

There is no right or wrong approach to pricing for marina operations. However, as for all lines of business activities, it is important that a port establish its financial goal for investing in this market. Is it (a.) to produce net income for other port uses, to recover all costs and break even, or is it (b.) to support a boating industry or lifestyle that requires a subsidy from other lines of business activities or the taxpayer? As for all lines of business, before establishing moorage rates, a port should confirm why it is in the marina business and how it wants to address its financial investment.

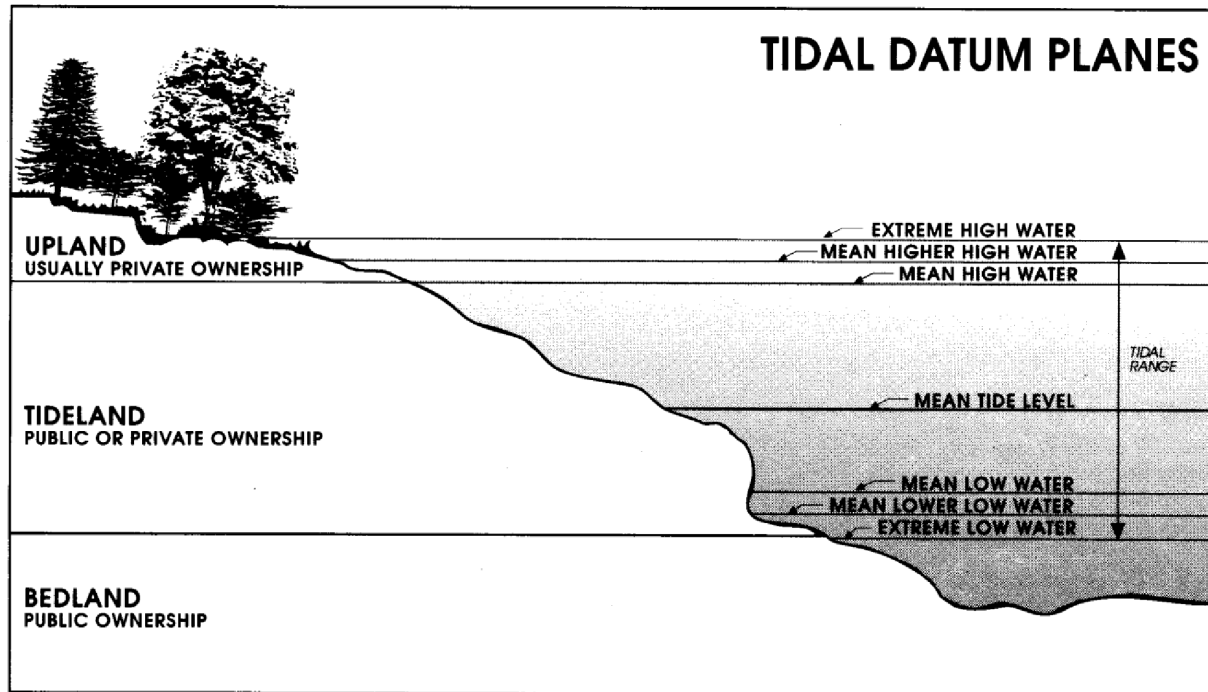
For reference, ports should turn to WPPA's 2019 Marina Committee Recreational Boating Facilities Guide; it provides the most recent statistics on port marinas across the state, including transient and homeport moorage rates.

The non-monetary value of a marina to the character of the community it serves is another key consideration, as marina views and activities are iconic attributes of a waterfront community. This is especially true when considering a marina's public accessibility. Washington State law provides liability insulation for port authorities that allow public access to marina facilities. This access must be balanced with boat owners' concerns for security and safety and their desired level of privacy while at the dock.

Port Management Agreements

Marinas are constructed at the nexus of uplands and tidelands, essentially creating access to navigable waters. Tidelands are the beds of the navigable waters in Washington's rivers, lakes, and marine water bodies. Ownership of these tidelands was originally assigned to the State in 1889. Since that time, Washington has largely maintained ownership of these assets, known as "State Owned Aquatic Lands" (SOAL), but it has also sold off many tidelands to public and private owners.

The responsibility for SOAL policy rests with the Harbor Line Commission, (RCW43.30.150/RCW 79.92.010), which is also the Board of Natural Resources (RCW43.30.030). The day-to-day management of SOAL is undertaken by the Department of Natural Resources (DNR), under the oversight of Washington's elected Commissioner of Public Lands.



Ivey, Steven. Aquatic Land Boundaries in Washington State. Land Surveyors Association of WA, 2012, 39.

Understanding tides and shoreline relationships

Upland areas are typically defined as property that is above the mean high-water elevation, based on historic tide tables. These properties are usually privately owned.

Tidelands are defined as the area between the mean high-water elevation and the extreme low-water elevation.

Bedlands are defined as submerged properties below the extreme low-water mark. State owned aquatic lands (SOAL) can take the form of (a.) bedlands that are always submerged, (b.) tidelands that are subject to the ebb and flow of water, and (c.) uplands that have been filled and impacted at the location of the mean high-water elevation. Use of these SOAL by ports can be managed through an agreement with the DNR, called a Port Management Agreement (PMA). The Board of Natural Resources has approved model PMAs, the first of which was adopted in 1984, with an updated version advanced in 1995. Thirty-one Washington ports have adopted PMAs.

It should be noted that a PMA is not a lease agreement between the State and a port to use SOAL. It is an agreement by which the port assumes the role of the DNR and takes on the oversight of SOAL, as if it were the State. In that oversight role, the port has the responsibility to (a.) manage this property in line with state policies, (b.) assume a level of responsibility for its environmental condition, and (c.) assume a perspective that is distinct from its other property management responsibilities.

This discussion of SOAL is applicable to other port uses, including the accommodation of marine terminals and public access such as shoreline parks. The legislative intent is that water-dependent uses of these SOAL will be the priority use.

Water-dependent use refers to a use which cannot logically exist in any location but the water. Examples include but are not limited to:

- water-borne commerce,
- terminal and transfer facilities,
- ferry terminals,
- large vessel construction, repair, and maintenance,
- moorage and launching facilities,
- aquaculture,
- log booming,
- fishing piers, and
- public access.

Non-water-dependent use refers to a use which can operate in a location other than the waterfront.

Examples include but are not limited to:

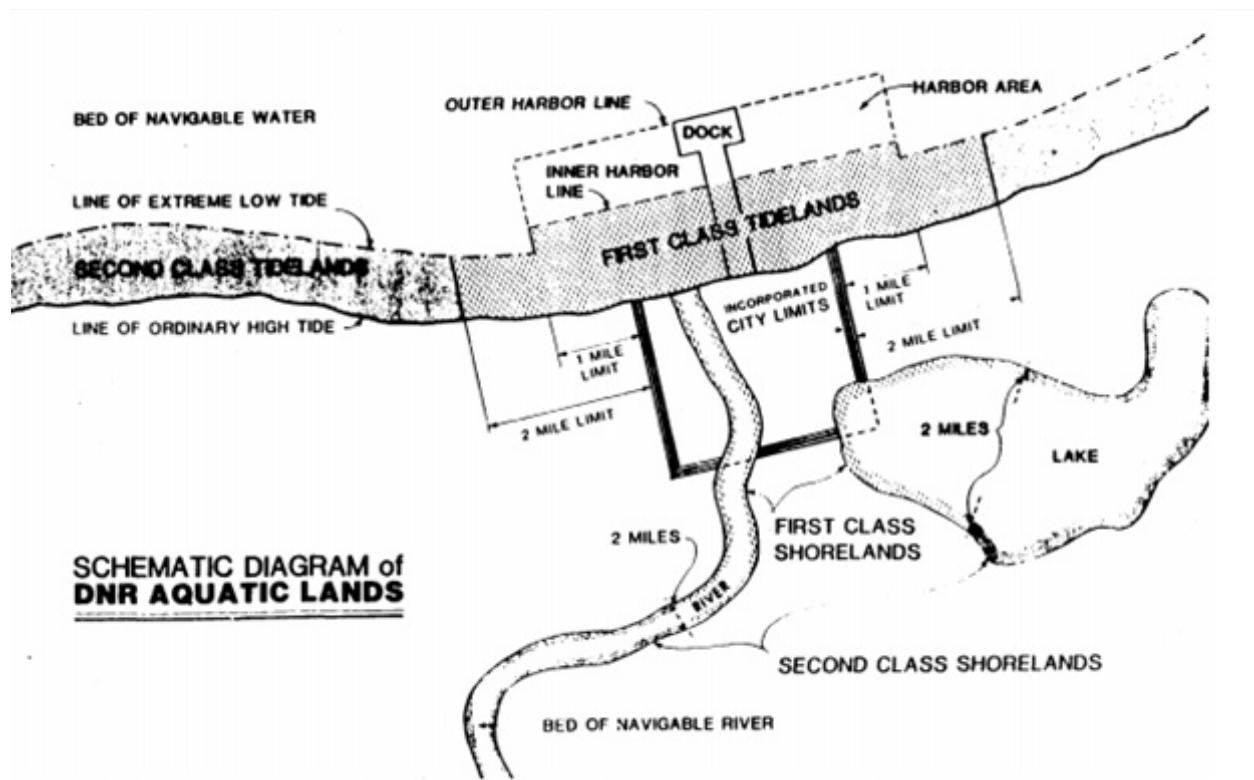
- hotels, condominiums, and apartments,
- restaurants and retail stores,
- small boat storage, and
- warehouses not associated with a marine terminal.

Model PMA's provide guidance in the management and oversight of SOAL, summarized below:

- The original 1984 PMAs had an indefinite term; the 1995 PMA has a 30-year term with a defined renewal process.
- The PMA is accompanied by exhibits that specifically map the subject SOAL. These exhibits identify filled tidelands that would appear to be uplands.
- Authority to manage SOAL is specifically delegated to the port; however, the port must apply state policies, which include using the State's statutory rent formulas and procedures.
- Ports can lease SOAL to third parties. If these leases mandate the termination of the PMA, the lease transfers to the State.
- If a port uses SOAL for its own water-dependent use, such as a marina, there is no rent due to the DNR.
- If a port leases SOAL to a third party for a water-dependent use, the port retains all lease revenues.
- If a port leases SOAL to a third party for a non-water-dependent use, then 85% of the lease revenue is paid to the State.

Current PMAs that were adopted based on the 1995 model are nearing their 20-year expiration. A host of issues are anticipated as the port industry and the DNR begin to negotiate the next generation of agreements. The use of SOAL for non-water-dependent uses is a key consideration.

It is also useful to understand the application and restrictions of the boundaries set by Washington's Harbor Line Commission. Facilities, including fill, are allowed on SOAL with the appropriate permits, inside of the inner harbor line, and when included in a port's PMA with the DNR. There are circumstances in which a port owns the tidelands, fee simple, and does not need a PMA. The inner harbor line is established by the Harbor Line Commission and is between the high-water elevation and the outer harbor line. The harbor area is bounded between the inner harbor line and the outer harbor line. The outer harbor line is set at the discretion of the Harbor Line Commission. Wharves and docks can be constructed between the inner and outer harbor lines, but nothing can be constructed outside of the outer harbor line, as these navigable waters of the State must not be obstructed.



Ivey, Steven. Aquatic Land Boundaries in Washington State. Land Surveyors Association of WA, 2012, 36.

Marinas and the Environment

Port marinas operate in an ecologically sensitive shoreline environment. Over the last several decades, environmental awareness, standards, and practices for marinas and boat operators have grown significantly. The Washington State Department of Ecology (Ecology) established Puget Sound as an official No Discharge Zone under federal and state rules. This rule prohibits ships and boats from discharging raw or partially treated sewage across 2,300 square miles of marine waters, as well as contiguous waters around Lake Washington and Lake Union in Seattle. Graywater from on-board sinks, showers and other non-toilet uses is not restricted by this rule.

Likewise, marinas have embraced a no-discharge standard. Establishing and recognizing conformance to these standards has resulted in the advent of several environmental programs that certify complying marinas.

Envirostars and Clean Marina Programs

Envirostars is a program launched to assist and support Washington businesses in reducing their environmental footprint and protecting their employees. The goals of the program are designed to reduce water and energy use, waste less and recycle more, prevent pollution, use non-toxic substances, support sustainable transportation, and encourage employee involvement in environmental matters.

Also known as Clean Marina, the Clean Marina Washington program was created in 2005 as an expansion of the Envirostars program. Since its inception, partnering agencies have worked directly with ports to develop and implement best practices for preventing marina pollution. As of January 2020, 81 marinas—one third of all marinas in Washington—were flying the “clean marina flag” demonstrating their contributions to preventing pollution and implementing best practices for environmental management.

Among other things, the program has developed standards of practice for:

- Fueling and spills
- Vessel maintenance and cleaning
- Waste management
- Derelict vessels
- Invasive aquatic species
- Float and dock maintenance

Clean Marina is a collaborative partnership between marina managers-owners, state agencies, and nonprofits. Partners include the DNR, Ecology, Sea Grant, Washington Parks, Puget Sound Keepers, the Northwest Marine Trade Association, and Envirostars.

In addition to the Clean Marina program, there are several other initiatives or programs that address the boating and maritime industry, including standards and practices for ports' marine terminals that are discussed further in this chapter:

- **Northwest Marine Trade Association**, whose mission is to promote the growth of recreational boating.
- **Washington Sea Grant**, a research institute at the University of Washington that was created in 1971 to advance the regional understanding and sustainable use of ocean and coastal resources, given that Washington's 15 coastal counties contain 70% of the state's 7.6 million population.
- **Washington Maritime Blue** was formed in December 2017 under the guidance of the Maritime Innovation Advisory Council. Its role is to ensure that Washington will be home to a thriving, sustainable, world-class maritime industry, through 2050 and beyond.

The following terms are commonly used in port marina operations:

Beam: The width of a vessel, which is combined with length to define moorage slip dimensions.
Boat Lifts/Haul Outs: Boat lifts or haul outs are often referred to as travel lifts (a manufacturing brand) and consist of rubber-tired, steel-framed structures that lift boats from the water in a sling and place them landside on blocking or dry cradles for maintenance, repair, or off-season storage. They have limited weight and size capacity.

Boatyards and Shipyards: Boatyards and shipyards provide upland maintenance and construction facilities for small and large vessels, respectively. Depending on the size of the vessel targeted, these facilities utilize cranes, rail, and submersible floating docks to transport or lift vessels.

Breakwaters: These are significant marine structures designed to reduce or eliminate tidal and current impacts within a marina, providing calm waters for moorage, maintenance, loading, and unloading within the marina. They are constructed as rubble mound structures, driven sheet piling, or floating wave attenuators, or some combination of these methods. Breakwaters are expensive and require significant permit lead times.

Chandlery Services: A ship chandler is a retail or wholesale dealer that specializes in supplies, commodities, equipment, or services for vessels. Recreational and commercial vessels both require upland chandlery services, such as web lockers for gear storage and maintenance, electronics and equipment suppliers, vessel maintenance and repair contractors, haul outs and boatyards, storage and parking facilities, fuel suppliers, waste pump outs, and more. Vessel owners, crews, and guests also require support services such as food and beverage vendors, temporary accommodations, ground transportation, boat charters, boat dealers and brokers, internet services, yacht and boating clubs, and local upland and weather information. Chandlery

services represent the total of services within or near a marina. Ports frequently supply the built commercial and industrial facilities to accommodate the chandlery market as tenants.

Crabbers: Boats specifically used and designed to catch crustaceans.

Commercial Moorage: There are a variety of operations and commercial vessels homeported in port marinas. The most prominent example is the commercial fishing fleet largely ported in Puget Sound. In addition to commercial fishing vessels, Washington's port marinas homeport a number of other commercial vessels, including vessels for marine tourism, transportation between coastal destinations, research and education, spill response, law enforcement, customs, vessel-based Air BnB, charters, and liveaboards.

Factory Ships: Large vessels that process fish hauls on board and deliver to markets.

First Class Tidelands: Tidal lands in front of the corporate limits of any city, between the line of ordinary high tide and either (a.) the inner harbor line, within one mile on either side of the city limits or (b.) the line of extreme low tide (or mean low tide for properties conveyed by the State prior to 1911), within two miles and outside one mile on either side of the city limits.

Fixed Docks: Fixed docks are typically used for mooring larger vessels and are either piers that protrude from the shoreline, or wharfs that run parallel with the shoreline. Like floats, docks are built of wood, steel, concrete or some combination.

Floats: Floats are docking structures that accommodate tidal ebb and flow. They are attached to wood or steel pilings to control their lateral movement and are constructed of wood or concrete, with concrete obviously having a longer expected lifetime.

Gangways: Gangways are the bridging structures that connect upland shorelines with floating marina facilities. Their length is governed by the extent of tidal fluctuations. Ports should be aware of the requirements of the Americans with Disabilities Act, which mandates accessibility standards for floats and vessel access.

Gillnetters: Fishing boats that employ the use of a gill net system to capture fish and can be operated manually or automatically. They tend to be smaller boats.

Harbor Area: The area between the inner harbor line and outer harbor line.

Homeporting: Homeporting refers to the port (marina) in which a recreational or commercial vessel is harbored. It is different from registry, which applies to larger vessels. Homeporting is a hospitality business; it requires a marina to provide ancillary support services to the specific vessel type.

Inner Harbor Line: The line established by the State, marking the seaward limit of first-class tidelands or first class shorelands within city limits and within one mile on either side of those city limits.

Launches: Launches or boat ramps are a common fixture for trailered vessels in river and marine bodies of water. They are often outfitted with floats to accommodate transient moorage of vessels. In typical situations, launch fees are not adequate to recover the operating and capital costs of these facilities.

Motorboats: Cabin cruisers, trawlers, and motor yachts are included in this class of vessels. They are powered by gas or diesel fuels and vary significantly in length and beam. Ordinary High Tide: Also known as mean high tide, the average elevation of all high tides over a period of 18.6 years.

Outer Harbor Line: The outer boundary of the harbor area within city limits, as established by the State. The area beyond cannot be given, sold, or leased by the State.

People Powered Crafts: The use of unpowered small crafts such as rafts, gondolas, kayaks, and paddle boards are on the rise. Their popularity should be recognized in both marina design and operation.

Purse Seiners: Purse seiners are commercial fishing vessels that use seine nets to fish pelagic species of fish found near the surface. Operators can close the capture nets from the bottom and unload them directly into the vessel.

Recreational Moorage: Recreational vessels are not engaged in revenue generating commercial activities. They are maintained for the recreational and travel use of their owners. As boat owner demographics change, there is a growing trend toward multi-party leasing programs for recreational vessels, including their use for weekend getaways without ever leaving the dock.

Riparian: Belonging or pertaining to lands abutting a stream or river.

Sailboats: As the name suggests, sailboats rely on harnessing wind power using cloth or synthetic sails—usually assisted by gas or diesel engines—to power monohull, catamaran, or multihull sailing vessels. Their significant sub-surface keel structures make their marina design requirements (i.e., depth and maneuverability) more significant.

Seaworthy Vessels: A common challenge of port marina operations is defining and mitigating the presence of vessels that are not considered seaworthy. These unfit vessels often threaten to sink at the dock, causing significant physical damage or impacting the environment through unwanted releases of fuels, oils, and waste products. The most common definition of

seaworthy is that the vessel must be capable of leaving and returning to the dock under its own power. Port marina operating policies often define “seaworthy” as a condition determined at the sole discretion of the harbormaster or marina supervisor.

Second Class Tidelands: All tidelands not classified as first-class tidelands.

Submerged Lands: Land that is covered by water some or all of the time.

Tidal Grids: In environments of great tidal variance, tidal grids are fixed structures that accept vessels at high tide, leaving the hull of the vessel exposed for maintenance and repair work as the tide recedes. These are inexpensive, yet limited maintenance facilities.

Transient Moorage: Often referred to as guest or visitor moorage, transient moorage represents the moorage demand of vessels that are transiting through the area and need moorage or have identified the marina as their destination. In Washington, weather conditions dictate that the transient moorage market is seasonally limited to approximately 100 – 120 days of summer, with limited shoulder seasons. Rates for transient moorage are typically higher, as marina owners and operators must recover their costs in less time than for year-round homeported vessels. For this reason, most Washington port marinas focus on homeported moorage, with limited moorage space for transient vessels.

Trawlers: Trawlers are a very common type of fishing boat. They use suspended nets at varying depths to catch an array of fish in shallow and deeper seas.

Uplands: The dry lands bordering a body of water, the outer boundary of which is ordinary high water.

Aviation

“Aviation is proof that given the will, we have the capacity to achieve the impossible.”

–Eddie Rickenbacker

In 1910, The Meadows Racetrack along the Duwamish River in Seattle was the premier venue for horse racing in the Pacific Northwest. It was that year that Charles K. Hamilton, an aviator known as the “Crazy Man of the Air,” took off from The Meadows and became the first to fly an airplane in Washington state. He was watched by a crowd of thousands. William E. Boeing may have been among Hamilton’s spectators.

Despite limited technical developments during World War I, early aviation remained a dangerous business with no safety standards or regulations. The Air Mail Act of 1925 launched the creation of a profitable commercial airline industry and by the 1930’s, four major domestic passenger service carriers were airborne. As air travel increased, several federal agencies and programs were created to address safety.

It was not until 1951 that a midair collision of two commercial passenger planes over the Grand Canyon prompted Congress to create the Federal Aviation Agency, which was established in 1958. In 1967, through a consolidation effort, the Department of Transportation was created and the Federal Aviation Agency of the 1950s was renamed the Federal Aviation Administration (FAA). Today, the FAA is responsible for the federal regulation and oversight of civil aviation in the U.S., specifically the operation of the nation's airports.

The U.S. has a well-organized and well-funded system of airports serving the needs of the traveling public and the nation's economy. This national system, the National Plan of Integrated Airport Systems (NPIAS), is managed by the FAA and consists of over 3,300 existing and proposed airports that are eligible for funding under the Airport Improvement Program. The list of eligible airports is updated every two years. There are also more than 16,000 identified airports in the U.S. that are considered non-NPIAS facilities. These are largely general aviation airports and serve an equally important role in serving travelers and the economy.

The FAA Seattle Airports District Office (ADO) is the regional federal office that oversees airport development and funding in the states of Washington and Oregon.

Aviation in Washington State

At the state level, the Washington State Department of Transportation (WSDOT)'s Aviation Division was initially formed as the Washington State Aeronautics Commission in 1947 and operated as an independent entity until 1977. At that time, the Commission was dissolved, and its staff and duties were consolidated—along with the departments of Highways and Ferries and the Toll Bridge Authority—into the newly created Department of Transportation. It was known as the Aeronautics Division until the mid-1990s, when its name was changed to the Aviation Division.

The Aviation Division continues to operate under WSDOT and now falls under the Multimodal, Development and Delivery offices, grouped by transportation modes, construction, safety, and planning. More recently, the Aviation Division has expanded its capabilities to include a staffed airport revolving-loan program, to assist the state in the adoption of advanced air mobility technology, including unmanned aircraft systems, electric fixed wing aircraft, and electric vertical takeoff and landing aircraft (eVTOL). Public-use airports in the state remain a focus of the Aviation Division. The priorities and goals of the WSDOT Aviation Division (also known as WSDOT Aviation) are captured in the Washington Aviation System Plan (WASP), last updated in 2021.

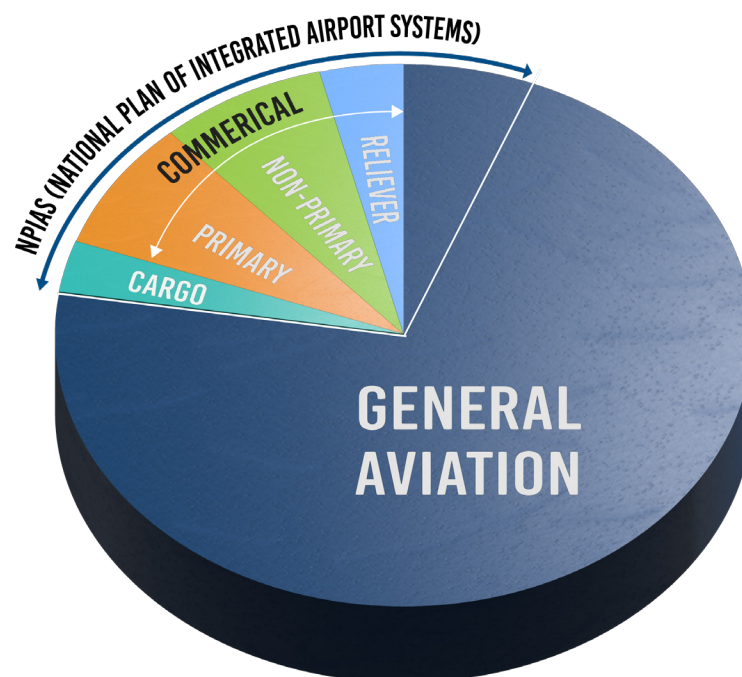
While the FAA provides safety, operational oversight, and funding for the nation's airports included in the NPIAS, the State provides funding and technical support to both NPIAS and non-NPIAS public-use airports in Washington through the WSDOT Aviation Division. In addition, WSDOT Aviation provides coordination for FAA and State funding through the State Capital Improvement Program (SCIP), which collects and prioritizes airport sponsors' five-year project

requirements. WSDOT Aviation also engages with the State's larger commercial passenger airports when circumstances warrant.

One of WSDOT Aviation's focus areas is assisting airports in addressing issues that occur outside of an airport's property lines but could impact aviation activities. Typically, this includes land use issues, such as property development, that could negatively impact airport operations. There are public-use airports in 37 of Washington's 39 counties. Today, 28 ports operate

Aviation Impacts

- Washington's 134 public-use airports account for 407,042 jobs, \$26.8 billion in labor income, and \$107 billion in total impact to the state's business economy.
- In 2015, construction, wholesale, retail, and services at port-specific airports accounted for 5,790 jobs and more than \$3.4 billion in revenue.
- Approximately 16,280 jobs are directly tied to airports and commercial aviation.
- Across Washington, aerospace manufacturing accounts for 3,200 jobs and nearly \$1.9 billion in revenue.
- Examples of major Washington industries that utilize air freight exports include aerospace, medical devices, and cherries.
- Air freight exports totaled \$9 billion in 2015 and accounted for 13.1% of all exports through port district lands.



The U.S. has a vast airport system serving a variety of needs at the local, state, regional, and national levels.

The FAA utilizes these definitions to distinguish between airport use and size:

- **Commercial:** Refers to publicly owned airports with scheduled air carrier service and at least 2,500 annual enplanements.
- **Primary airports** are commercial passenger facilities with more than 10,000 passenger enplanements per year. Large hub primary airports accommodate more than 1% of the nation's enplanements per year; medium hubs accommodate 0.25 – 1.0%; small hubs accommodate 0.05 – 0.25%; and non-hubs accommodate less than 0.05%, but more than 10,000 enplanements per year.
- **Non-primary commercial service airports** are commercial passenger facilities that accommodate 2,500 – 10,000 enplanements per year. They are also known as non-hubs.
- **Reliever airports** are facilities designated by the Secretary of Transportation to relieve congestion at commercial service airports and provide general aviation access to the general community.

Cargo: Refers to airports that serve aircraft that provide air transportation of cargo with a total annual landing weight of 100 million tons or more. Landing weight refers to the weight of the aircraft transporting cargo within a state, between states, or internationally. An airport can be both a commercial service and cargo service airport.

General Aviation: Refers to public-use airports that do not have scheduled passenger service or that have less than 2,500 annual passenger boardings. These account for approximately 88% of the airports included in the NPIAS.

In addition to these classifications, there are additional FAA categories for non-primary airports, based on the ownership and operation of their general aviation facilities:

National: National airports support the national airport system by providing communities with access to national and international markets throughout the U.S. National airports have very high levels of aviation activity, with many jets and multiengine propeller aircraft.

Regional: Regional airports support regional economies by connecting communities to regional and national markets. They are generally located in metropolitan areas and serve relatively large populations. Regional airports have high levels of aviation activity, with some jets and multiengine propeller aircraft. The metropolitan areas in which regional airports are located can be Metropolitan Statistical Areas with an urban core population of at least 50,000, or Micropolitan Statistical Areas with a core urban population between 10,000 and 50,000.

Local: Local airports supplement local communities by providing access to markets within a state or immediate region. Local airports are most often located near larger population centers, but not necessarily in metropolitan or micropolitan areas. Most flying at local airports

is by piston aircraft, in support of business and personal needs. These airports typically accommodate flight training, emergency services, and charter passenger service.

Basic: Basic airports link the community with the national airport system and support general aviation activities, such as emergency response, air ambulance service, flight training, and personal flying. Most flying at basic airports is self-piloted, using propeller-driven aircraft for business and personal reasons. They often fulfill their role with a single runway or helipad and minimal infrastructure.

WSDOT Aviation updated its state airport classifications in the 2017 WASP, which classified airports based more on their primary aviation activities. Not to be confused with the federal classification system, the state classification system identified:

- **Major Airports:** commercial; aircraft and aerospace manufacturing
- **Regional Airports:** corporate general aviation and passenger commuter service
- **Community Airports:** general aviation, personal use, and pilot training
- **Local Airports:** general aviation personal use, pilot training, and agricultural applications
- **General Use Airports:** general aviation; personal, recreational, and backcountry flights

Airport Planning

“The goal of a master plan is to provide guidelines for future airport development which will satisfy aviation demand in a financially feasible manner, while at the same time resolving the aviation, environmental and socio-economic issues existing in the community.” –FAA

Like many port facilities, airports are capital intensive, with high operating and maintenance costs that require rigorous planning and development strategies. Airport planning is a systematic process that establishes guidelines for efficient airport development that is consistent with local, state, and national goals. A key objective of airport planning is to assure the effective use of airport resources to satisfy aviation demand in a financially feasible manner. Airport planning can be as broad as the national system plan or more centrally focused, such as a Master Plan for a specific airport.

Airports are required to have up-to-date Airport Master Plans. Existing or potential shortcomings in an airport or its existing plan trigger the need for an updated Master Plan. These deficiencies can result from demand exceeding capacity, the introduction of new aircraft types, or the emergence of a critical environmental problem. The airport sponsor’s strategic vision or business plan for the airport may drive the need for a planning study. In addition, national, state, or regional planners may have identified issues requiring the airport sponsor’s attention. Or, in some cases, previous planning efforts may not have effectively studied impacts, market conditions, or other planning considerations.

Undertaking a Master Plan for NPIAS airports is an effort that can be funded by an FAA grant.

However, this requires that the scope of work for developing the Master Plan receive prior approval from the FAA.

The Master Plan process is guided by the FAA and results in projections of future passenger and aviation activity growth and the preparation of an Airport Layout Plan (ALP). The major analytical elements of a Master Plan update include the following:

- Inventory of existing airport conditions
- Aviation activity forecasts
- Demand/capacity analysis
- Facility requirements and identification of issues
- Definition and evaluation of airport development alternatives
- Environmental overview of proposed development
- Airport layout plan
- Capital improvement program

Some planning elements are not eligible for FAA funding. These include:

- Asset management planning
- Aviation business park analysis
- Business plans
- Economic benefit studies
- Information technology (IT) master plan or analysis
- Marketing studies
- Minimum standards development
- Rates & charges analysis
- Rules & regulations development
- Snow removal plans
- Strategic business plans

The Airport Layout Plan (ALP) and the Capital Improvement Plan (CIP), as major components of the Master Plan, are essential keystone documents in obtaining either federal or state grant funding.

Developed as part of the overarching Master Plan process, drawings included in the ALP provide a graphic depiction of existing and proposed airport facilities, as determined by reviewing and analyzing alternatives for activity forecasts and facility requirements. Minor

changes to the ALP are allowable without undertaking a complete Master Plan update, but they do require approval by the FAA.

The ALP should include:

- ✓ Comprehensive boundaries and proposed additions to areas that are owned or controlled by the sponsor (i.e., airport owners and operators).
- ✓ The location and nature of existing and proposed airport facilities and structures.
- ✓ The locations of existing and proposed non-aviation areas and improvements within the airport.

A current, FAA-approved ALP that outlines the proposed airport development is a prerequisite for receiving a grant. Any sponsor who has received a grant for airport development is obligated by grant assurances to regularly update the ALP. In addition, airport planning and development projects that involve federal resources require an environmental determination. Federal regulations necessitate that the FAA evaluate the environmental consequences of all proposed developments on the approved ALP.

The WSDOT Aviation Division will also consider partially funding projects that originate from an airport’s ALP and are included in its CIP.

Because of these complexities, it is critical that ports and their advisors coordinate early and often with the FAA and/or the WSDOT Aviation Division, as applicable, to identify significant or evolving planning issues and to determine the type and magnitude of effort required to address them.

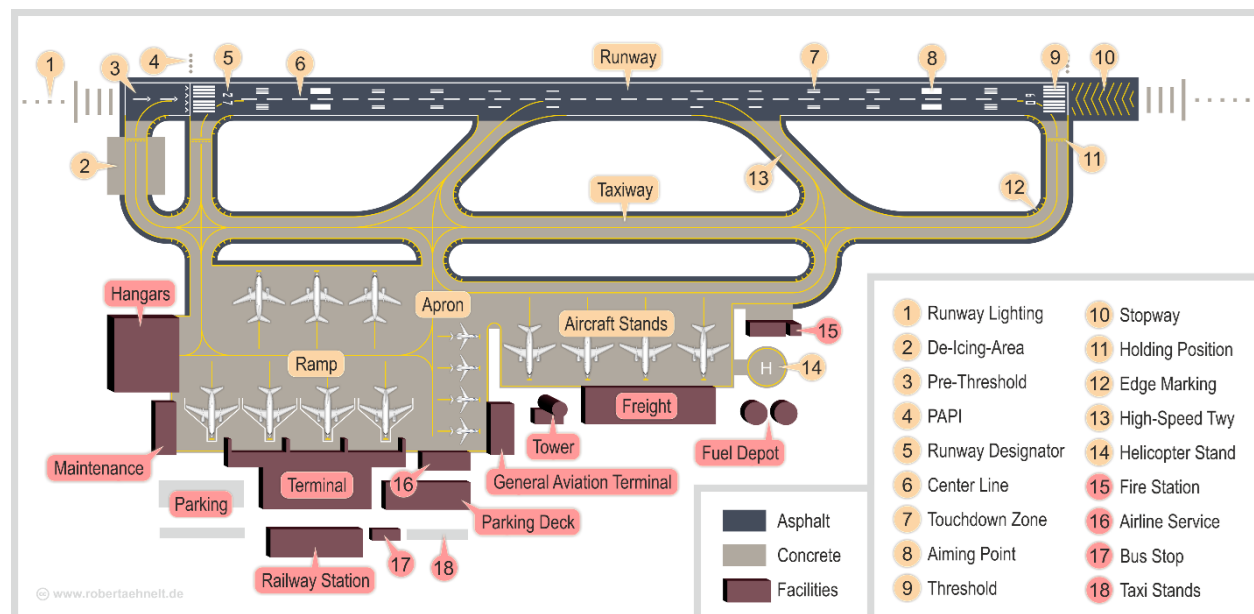


Illustration of commercial airport components. Author: Robert Aehnel (hyperlink: <http://www.robtaehnel.de/>). Source: Airport infrastructure (hyperlink: https://commons.wikimedia.org/wiki/File:Airport_infrastructure.png). License: CC BY-SA 3.0.

Approximately every three years, WSDOT Aviation conducts a system-wide pavement study to assess the relative condition of pavements for selected Washington airports. The program serves to identify system pavement needs, shape programming decisions for federal and state grants, provide information for legislative decision making, and assist airport sponsors in making informed planning decisions. The program also develops accurate pavement inventories and identifies necessary maintenance, repair, rehabilitation, and reconstruction projects.

In addition to proper planning, airport and aviation security are critical to an airport's operation.

Airport security refers to techniques and methods, such as perimeter fencing, that are used to protect passengers, staff, aircraft, and field equipment from accidental or malicious harm from crime, terrorism, and other threats. Aviation security is a combination of measures to safeguard civilian aviation against the threat of any unlawful interference with its safe operation.

The FAA regulates aviation safety and pilot certification, and it operates the nation's air traffic control system, including individual control towers. The Transportation Security Administration (TSA) regulates aviation security and operates the nation's passenger screening checkpoints. Both agencies have distinct roles in the secure operation of an airport.

Grant Funding

Like the state's highway system, Washington's system of public-use airports is a critical component of the state's transportation infrastructure. Also like the highway system, public-use airports require constant maintenance and improvements to meet the needs and demands of the traveling public. Simply put, there is not enough available funding to meet current aviation system needs.

Beyond annual operating revenue streams or ports' ability to borrow through commercial loans based on general obligation or revenue bonds, there are two primary sources of capital for airports:

- The WSDOT Airport Aid Program (AAP) funds airports that are only eligible for this program.
- The FAA Airport Improvement Program (AIP) funds any eligible airport.

Authorized under RCW 47.68.090, the WSDOT AAP is funded by an 11-cent-per gallon fee on aviation fuel, along with aircraft registration fees and excise taxes. It should be noted that commercial aircraft fuel use is exempted from this tax. Any city, county, political subdivision (i.e., port authorities), airport authority, federally recognized Indian tribe, public corporation, or person(s) that owns and operates a public-use airport included in the Washington Aviation System is considered an eligible airport sponsor who may apply for AAP grant funds.

AAP grant funds may be used for the planning, acquisition, construction, improvement, and maintenance of airports. All project work must be available for public use and shown on the approved Airport Layout Plan (ALP). All projects must be included in WSDOT Aviation's five-year SCIP. AAP grant funds cannot be used for private revenue producing structures, such as private hangars.

The SCIP captures airport funding needs for all of Washington's public-use airports. It includes airport project requirements that address both individual airport needs and FAA recommendations for airports in the NPIAS. The SCIP tackles the challenge of strategically targeting limited state and federal resources by better identifying and prioritizing aviation-related projects. This process helps WSDOT Aviation and local governments communicate with decision-makers about the need for continued and increased investments into Washington's airport system.

Each fall, WSDOT Aviation collects CIPs from airport sponsors through Washington's Airport Information System. This alleviates to the burden of duplicating communication with the FAA and WSDOT. Both agencies work together to provide a timely response to airport sponsors regarding their CIP requests.

WSDOT Aviation typically works to balance available AAP funds equally between years. Roughly 50% of the total grant funds available will be programmed during each year of the state's biennium. The maximum grant amount WSDOT Aviation can issue any individual sponsor is \$750,000.

Most AAP grants supplement AIP grants. For NPIAS listed airports that receive an AIP grant, WSDOT's AAP works to leverage federal funds by contributing up to five percent of the project cost, with the airport sponsor contributing five percent for a total grant match of ten percent. For non-NPIAS airports, the AAP requires a minimum five percent match from the airport sponsor.

The FAA's grant program includes capital funding for airports in the NPIAS. Eligible projects are identified by the AIP.

For large and medium primary hub airports, the AIP grant covers 75% of eligible costs, or 80% for noise program implementation. For small primary, reliever, and general aviation airports, the grant covers a range of 90-95% of eligible costs, based on statutory requirements.

AIP eligible projects include improvements related to enhancing airport safety, capacity, security, and environmental concerns. In general, sponsors can receive AIP funds for most airfield capital improvements or rehabilitation projects, and in some specific situations, for terminals, hangars, and nonaviation development. In addition, certain planning, surveying, and design efforts may be eligible. Like all federal agency programs, AIP funded projects must also

meet federal environmental and procurement requirements. Operational costs for an airport, such as salaries, equipment, and supplies, are not eligible for AIP funding.

Airports that have accepted federal funds to purchase land or construct facilities are considered federally obligated airports. These airport operators are required to comply with federal grant assurances, some of which relate to tenants and businesses operating on airport property, including outside the fence line.

Significant obligations under these federal grant assurances include:

- Approved uses of airport revenue
- Proper maintenance and operation of airport facilities
- Protection of approaches
- Keeping good title of airport property
- Compatible land use
- Availability of fair and reasonable terms without unjust discrimination
- Adhering to the approved airport layout plan
- Self-sustainability
- Sale or disposal of federally acquired property
- Using acceptable accounting and record-keeping systems
- Compliance with civil rights requirements

Airport Revolving Loan Program

Washington's Community Aviation Revitalization Loan Program was initially established by state Legislature in 2019 and funded with \$5 million. The revolving loan program was created to provide alternative funding for revenue producing capital projects that help public-use, general aviation airports become more self-sustainable. Revenue producing projects are generally not eligible for FAA grant funding, and many general aviation airports have limited access to funding resources for these projects.

The legislation directed WSDOT to establish an eight-person board to develop the program and select projects for funding.

This revolving loan program provides loans of up to \$750,000 at 2% interest, to airports with less than 75,000 annual commercial enplanements, as reported to the FAA. Loan periods can be set to a maximum of 20 years, with an optional loan repayment grace period of up to three years. Loan recipients must commit to provide public access to the airport for a period of time equivalent to 1.5 times the length of the loan. Eligible projects can include hangars, fueling facilities, business parks on airport property, paid parking facilities, passenger amenities, and

other revenue generating or cost cutting developments that help make the airport more self-sustaining and less dependent on public funding.

Airports must apply to the Board for loan consideration. An application must (a.) be supported by the port district, city, or county in which the project is located, and (b.) clearly identify the source of funds intended to repay the loan.

Although consideration is not limited to the points below, the Board must consider the following criteria when evaluating a loan application:

- A specific private developer or expansion is ready to occur and will occur only if the aviation facility improvement is made.
- The project results in the creation of jobs or private sector capital investment, as determined by the Board.
- The project improves opportunities for the successful maintenance, operation, or expansion of an airport or adjacent airport business park.
- The project results in the creation or retention of long-term economic opportunities.
- The project results in leveraging additional federal funding for an airport.

As of 2020, the program has received 26 applications totaling \$14.9 million. The Board has selected and entered into loan agreements for 11 projects totaling \$4.7 million. The program's success likely contributed to the loan program being permanently signed into law under SB 5031 in May 2021 and funded with an additional \$5 million under SHB 1080.

Commercial Aviation Coordination Commission

Washington's Commercial Aviation Coordination Commission is of particular interest to port authorities. Established by state Legislature, the Commission tasked WSDOT's Aviation Division with providing staff support for coordinating and administering the commission's work. Intended to address the projected need for additional capacity due to ever-increasing air transportation operations in Washington, this work has focused on identifying a location for a new primary commercial aviation facility to alleviate pressure on Seattle-Tacoma International Airport.

By 2023, the Commission will develop that recommendation, and will also recommend additional ways to accommodate capacity needs at other facilities. The results of this effort will undoubtedly have a significant impact on Washington ports.

The following terms are commonly used in airport operations:

Advisory Circular (AC): A series of external FAA publications that distribute non-regulatory information, guidance, and policies.

Air Cargo: All commercial air express and air freight, except for airmail and air parcel post.

Air Carrier: A commercial operator providing transport of passengers or property for compensation or hire, utilizing aircraft with more than 30 seats and certified in accordance with Federal Aviation Regulations.

Air Traffic Control: Air traffic control provides in-flight and on-ground aircraft movement and safety direction.

Aircraft Operation: Any aircraft arrival or departure, including touch-and-go operations.
Airport Layout Plan (ALP): A critical planning tool that depicts existing facilities and planned development for an airport.

Airspace: The area above ground in which aircraft travel. It is divided into corridors, routes, and restricted zones for the control and safety of air traffic.

Apron: A designated area within an airport for the parking, loading, fueling, or servicing of aircraft.

Commercial Aviation: Aircraft activity licensed by state or federal authority to transport passengers and/or cargo on a scheduled or non-scheduled basis.

Deplanement: A term applying to passengers and cargo leaving an arrived aircraft.

Enplanement: A term applying to passengers and cargo boarding a departing aircraft.

Fixed Base Operator: Typically, a tenant or contractor that provides fueling and other services to general aviation and commercial aircraft and pilots.

General Aviation (GA): All aviation activities except those performed by a commercial air carrier or the military.

IFR Conditions: Weather conditions below the minimum prescribed for flight under Visual Flight Rules (VFR).

Instrument Landing System (ILS): A landing approach system that establishes a course and descent path to align an aircraft with a runway for final approach.

Instrument Flight Rules (IFR): Rules that govern flight procedures when ceiling and visibility are below 1,000 feet and three miles, respectively.

Noise Contour: A line connecting points of equal noise exposure.

Operation: Any airborne arrival or departure of an aircraft to or from an airport. “Touch-and-go” practice landings are considered two operations.

Part 139 Airports: Title 14, Code of Federal Regulations, Part 139 (14 CFR Part 139) established certification requirements for airports serving scheduled air carrier operations in aircraft designed for more than 9 passenger seats but less than 31 passenger seats.

Precision Instrument: A term used to describe an approach using horizontal and vertical guidance. This term also describes the runway for using this type of approach and the markings on that runway.

Runway Protection Zone (RPZ): An area off the runway end to enhance the protection of people and property on the ground.

Sponsors: Owners and operators of public airports that receive grants.

Terminal Building: The building on an airport which is used to transition between surface and air transportation.

T-Hangar: A T-shaped aircraft storage building that provides economical shelter for a single aircraft.

Tie Downs: An area on an airport specifically designed for the outdoor storage of aircraft.

Touch-and-Go Operations: An aircraft operation for practice or testing purposes, characterized by a landing touchdown and continued takeoff without stopping.

Traffic Pattern: The flow of traffic that is prescribed for aircraft landing at, taxiing on, or taking off from an airport.

Visual Flight Rules (VFR): Rules under which aircraft are operated by visual reference to the ground and fly on a “see and be seen” principle.

Wind Cone (Sock): Conical wind direction indicator.

Broadband

“The Internet is becoming the town square for the global village of tomorrow.” –Bill Gates

Envisioned as a “galactic network” by MIT professor J.C.R. Licklider and further advanced by the packet switching theory developed by MIT professor Leonard Kleinrock, the early concepts of the internet were born in the 1960s.

Rooted in congressional authority, the Federal Communications Commission (FCC) serves as the country's central regulator of broadband networks. The Telecommunications Act of 1996 generally empowers the FCC to regulate internet service providers (ISPs) similarly to its historic oversight of telephone providers as public utilities.

Today, port broadband investment—primarily in dark (inactive) fiber—is the fastest growing line of business for the state's ports. In 2020, one-third of ports reported being involved in dark fiber, in one capacity or another.

Many consider dark fiber infrastructure investments to be the shipping lanes and rail corridors of tomorrow's economy. It is now considered essential infrastructure. This designation highlights the newest and fastest growing port line of business: data transportation in the information economy. Ports can own any part of the network necessary to create an open access system that reaches all the way to the end user.

Pricing and physical access are two of the most significant user barriers to connecting to this essential infrastructure. Provider monopolies are common in the telecom service industry, particularly in rural markets where potential returns are not sufficient to drive private sector investment in new infrastructure. The combination of outdated infrastructure and lack of market pressure often leads to substandard service levels and higher prices in rural markets.

Broadband capacity and access are better in Washington than in some states, but there's still room for improvement in cost, quality, and last-mile access.

- In early 2021, Speedtest, the global leader in independent broadband testing reported that the United States has the 14th fastest download speed for fixed fiber internet service at 182 Mbps, compared to a worldwide average of 98 Mbps.
- Washington is the 16th most connected state in the United States, with a statewide internet speed average of 60 Mbps. However, there is still a digital divide within the state, as some geographic areas are much less connected than others.
- Even though there are 242 internet providers in the state, there are 338,000 citizens without access to a wired connection capable of at least 25 Mbps in download speeds. There are also 529,000 citizens who currently only have access to one provider, making it impossible for them to switch. Another 103,000 have no wired internet provider at all.
- In 2019, the FCC reported that the digital divide is even greater on tribal lands, with less than half of tribal households having access to high-speed broadband services. Washington State has 29 federally recognized tribes.

As reported by the Washington State Broadband Office in its 2020 Biennial Report, the equitable growth and success of the state's economy will be greatly hampered without equal access to high-quality, affordable broadband, especially in the wake of the COVID-19 pandemic. The 2020 Report, which can be accessed through the Department of Commerce's website, provides a detailed description of broadband coverage, or lack thereof across the state.

The Washington Legislature has set ambitious and essential targets for providing broadband, including that all Washington businesses and residences will have access to at least one broadband provider with download speeds of at least 150 Mbps and corresponding upload speeds.

Internet: Interconnected networks

No party owns the internet. It is a global collection of networks, big and small, that connect to form a single entity: the internet.

Every computer or individual device that is connected to the internet is part of that network. These devices are connected to the internet through an internet service provider (ISP). In work environments, individual computers are frequently connected through a local area network (LAN), which is connected to the internet through an ISP. ISPs provide access to extensive networks at three levels: long-haul networks, middle mile networks, and last-mile networks.

To provide internet service to an end user, an ISP needs access to a complete circuit formed by copper or fiber optic cable that carries data transmissions between an end user and a colocation facility or meet-me space. In turn, that facility houses switching equipment capable of moving data to and from a Point of Presence (PoP), as data is uploaded or downloaded to and from the internet. Data is aggregated at these colocation facilities (also called data centers or central offices) and transferred to long-haul fiber optic networks that carry large amounts of data between the local community and the regional telecom exchange. In Washington, the largest of these facilities is the Westin Exchange in Seattle, where internet traffic is collected, transferred between networks, and routed to internet markets around the world as needed. A smaller, regionally significant exchange also exists in Spokane.

Ports in Washington typically enter the picture at the local colocation facility. These often take the form of a telecom hut and data center, where Port-owned fiber optic cable can connect with an ISP's electronic equipment responsible for data transmission over a lit (active) fiber optic network. Ports are typically engaged in building and operating both mid- and last-mile fiber optic infrastructure to create open access fiber optic networks from a local PoP to an end user.

Ports may also choose to own and operate the local colocation facility. This is often an essential component of the Port's telecom network, as it allows the Port to sell rack space to any ISP in an open access manner, such that any provider can stage electronics and access network infrastructure. An ISP purchasing rack space in a port owned colocation facility will

also need to purchase backhaul capacity on one of the few long-haul networks (owned by large telecom carriers) throughout the state, to facilitate the movement of data from their local network operated on port infrastructure to the regional telecom exchange.

Washington state ports were first granted statutory authority to build, acquire, and operate telecommunications systems in 2000. At that time, their powers were limited to rural ports providing wholesale telecommunications services. In 2018, this wholesale authority was expanded to all ports in the state, including the authority to work within or outside their district, but clarified to apply solely to the leasing of dark fiber optic infrastructure. In 2021, HB 1336 granted legal authority to municipalities (including ports) to offer retail broadband service to subscribers in the same manner as a private internet provider.

In the last 20 years, Washington ports exercising their telecom authority have focused on leasing dark fiber infrastructure on an open access platform to retail service providers. Leasing dark fiber is similar to the traditional port business of leasing brick and mortar buildings and other tangible infrastructure. Through public ownership of the physical infrastructure, ports can reduce significant barriers to entry for ISPs looking to enter a new telecom market: the capital costs and right-of-way access necessary to build this infrastructure. By operating the network in an open access manner, such that any licensed retail provider can lease fiber and colocation space on a non-discriminatory basis and at fair prices, the model encourages competition in underserved markets, which in turn drives higher service levels and lower pricing for end users.

It remains to be seen how the addition of retail authority will affect the work of ports engaged in telecom. In markets where there is no viable ISP ready and able to provide services, it may make sense for a port to purchase the electronic equipment necessary to operate a lit fiber optic network and assume the role of ISP themselves, as some public utility districts (PUDs) around the state have done. In other cases, the expanded authority may allow ports to work directly with other government entities, or to pursue federal funding currently available only to retail service providers.

Given that telecom is a dynamic industry, ports should consider the risks as much as the benefits of investing in broadband. What is true of this industry today may not be true tomorrow: Mergers, acquisitions, shifts in private sector business models, and aggressive tactics to push out competition can all upset the market. Electronics quickly become obsolete and regularly require new investments. These risks can be somewhat mitigated if ports limit their investment to fiber optic cable ownership and avoid electronics.

Ports are managing these risks through collaborative partnerships. Examples include SkagitNet LLC, a partnership between the Port of Skagit and the Skagit PUD to construct and operate fiber infrastructure, and Petrichor LLC, a multiport partnership led by the Port of Whitman to connect underserved communities throughout the state. Ports considering investments in broadband should participate in the WPPA broadband committee to learn more and share in the combined

knowledge and resources of the state's port industry.

Broadband funding can be supplemented by available grant programs. Most notably, Washington's Community Economic Revitalization Board (CERB) and Public Works Board (PWB) offer ports competitive grants and low interest loans to promote the expansion of access to broadband service. Both programs can be used for feasibility planning studies as well as construction, and both programs focus their impact on rural markets and unserved or underserved communities. The PWB program also prioritizes tribal community needs, while CERB prioritizes business connectivity and job creation.

In RCW 43.160.020, rural populations are defined as those counties with a density of fewer than 100 persons per square mile, or a county smaller than 225 square miles. In addition, cities within an urban county with a population of less than 20,000 are considered eligible for funds.

Like other targeted infrastructure needs, Washington's broadband loan and grant programs are augmented by federal resource sharing. Federal participation can be significant, as broadband is a high national priority as the nation emerges from the COVID-19 pandemic, with connectivity spotlighted as an essential service.

Of all the port operational lines of business, broadband is expanding the fastest, largely due to demand, its potential impact on the economy, and policy shifts in favor of publicly owned infrastructure that is operated on an open access business platform.

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A Short History of Wireless Communications

A cellular network or mobile network is a wireless communication network. While physically wired internet service is the focus of this section, mobile telecommunications are critical to port operations, which makes an understanding of the growth in wireless technology valuable. “G” stands for generation, as mobile networks upgrade their infrastructure, and new levels of connectivity emerge that move more data faster.

1G - First Generation (Late 1970s – 1980s)

This was the first generation of cell phone technology. The very first generation of commercial cellular network was introduced in the late 1970s, with fully implemented standards being established throughout the 1980s. 1G is an analog technology, and because the internet did not yet exist commercially, 1G phones were used for voice only.

2G - Second Generation (Early 1990s)

Cell phones received their first major upgrade when they went from 1G to 2G. The main difference between 1G and 2G mobile telephone systems is that the radio signals used by a 1G network are analog, while 2G networks are digital. This allowed for communicating by text as well as by voice.

3G - Third Generation (Late 1990s – early 2000s)

This generation set the standards for most of the wireless technology on the market. Web browsing, email, video downloading, picture sharing, and other Smartphone technology were introduced in the third generation. Introduced commercially in 2001, the goals for third generation mobile communication were to facilitate greater voice and data capacity, support a wider range of applications, and increase data transmission at a lower cost. It allowed cell phones to connect to the internet.

4G - Fourth Generation (Late 2000s)

Compared to 3G, 4G is a very different technology, made practical only by advancements to wireless communication technology in the early 2000s. Its purpose is to provide high speed, high quality, and high capacity to users while improving security and lowering the cost of voice and data services. Practically speaking, it permitted the transmission of high-definition mobile TV, gaming services, video conference calls, and podcasts.

5G - Fifth Generation (Now)

With an emphasis on speed, 5G is the newest generation, but the benefits of a fast 5G network go beyond downloading videos and games—commercial applications are vast. The speed and low latency of 5G are expected to help transform virtually all industries, ranging from manufacturing to healthcare. 5G technologies will support autonomous vehicles, more sophisticated robotics, medical innovation, aviation, and much more.

The following terms are commonly used in the broadband industry:

Bandwidth: How much data can be transferred at one time; usually measured in Mbps (megabits per second). Bandwidth is often confused with internet speed.

Backbone: The internet is really a network of networks, and the large trunk lines that connect them are referred to as the “backbone.” It can also be thought of like the highway system: the interstate highways are the backbones that connect regions with highway networks of their own.

Broadband: High speed internet service.

Cable Internet: Cable is a high-speed connection that enables users to access the internet. It uses the same type of cable connection to access cable TV.

Colocation Facility: A data center where ISPs can rent rack space to connect computing electronics with fiber optic cable, for the purposes of moving internet data between networks or server storage. Also called meet-me spaces, carrier hotels, or central offices (a legacy telephone term).

Cloud Storage: Third party servers that are made available for digital data/file storage.

Dark Fiber: Pre-existing underground infrastructure (fiber optics) that does not yet have the hardware or software to enable it to run internet services.

Data: A general term to describe content that someone might upload or download to their computer or phone via the internet, such as videos, emails, web pages and music.

Dial Up: A type of internet connection that uses the phone lines. Dial up is the slowest, cheapest form of internet access.

Fiber Optics: A type of internet connection that is made up of thin glass fibers that transmit data.

Hotspot: An area where there is a wireless (Wi-Fi) internet signal.

Internet Protocol: The computer language that allows all the above-mentioned technologies to speak to each other. Before the invention of Internet Protocol (IP), telephone networks could only transfer data on other telephone networks, cable networks on other cable networks, and so on. IP makes the transfer of data technology-neutral, allowing networks everywhere to transfer data anywhere.

Internet Service Provider (ISP): A company that provides internet access.

Local area network (LAN): A collection of devices connected together in one physical location, such as a building, office, or home. A LAN can be small or large, ranging from a home network with one user to an enterprise network with thousands of users and devices in an office or school.

Last-mile: The term that describes the last link connecting the provider's network to the customer's premises, either a house or a business. The last mile is the most expensive part of the network to build or upgrade, because of the number of units involved.

Latency: The amount of delay for data to make a round trip. Usually measured in milliseconds.

Megabits per second (Mbps): The measure of broadband speed.

Modem: A piece of equipment that changes analog waves to digital, so they can display on your computer. A modem connects you to the internet.

Open Access Network: A fiber optic network in which individual fiber optic strands are leased to any internet service provider, without discrimination, at fair pricing.

Peering and transit agreements: Agreements that govern moving one entity's data traffic over another entity's network. With peering agreements, network owners allow each other's traffic to move over their networks at no cost or in a cost-sharing arrangement. With transit agreements, the entity that wants to move the data (i.e., an ISP or a content provider like Netflix) must pay the network owner to use their network.

Point of Presence (POP): A point of presence is a demarcation point, access point, or physical location at which two or more networks or communication devices share a connection.

Router: An optional piece of equipment that sits between your modem and computer and transfers the wireless signal to other computers on your network.

Wi-Fi: A term used for wireless internet or wireless signal.

Wireless: A short name for fixed wireless, as opposed to mobile wireless. Fixed wireless technology transmits data between two fixed antennas using radio waves, including microwaves. Unlike Wi-Fi, the radio beams are often kept narrow to keep up the strength of the signal. Antennas are preferably set up high on buildings, since line of sight is necessary.

Marine Terminals

“For the only way in which a durable peace can be created is by worldwide restoration of economic activity and international trade.” –James Forrestal

Approximately one third of the state’s ports operate commercial cargo marine terminals, according to WPPA’s 2020 survey, and about one out of seven operate passenger facilities. Whether providing cargo or passenger facilities, port marine terminals are an integral component of Washington’s economy.

Marine Cargo and Passenger Trade in Washington

- Economic activity from marine terminal operations supports 3,300 direct jobs, with a further 6,300 jobs supported through secondary impacts from wage spending by marine terminal employees and business-to-business spending from marine terminal companies. This results in a total of 9,600 jobs that are supported by marine terminal operations on port district lands.
- In 2016, the state of Washington exported \$79.6 billion in goods.
- Customers in 214 countries and territories buy Washington-made goods and services.
- Washington is the 9th largest exporter of agricultural goods.
- Following the COVID-19 pandemic, the state of the international trade economy is in flux, and there is a new focus on international trade balances and national trade and tariff policies.
- In addition to international trade, domestic trade with Hawaii, Puerto Rico and Alaska is significant.
- The average benefit and compensation package for port tenant workers in the maritime sector is \$103,200.
- From 1999 to 2015, the number of cruise ship passengers who visit Washington through the Port of Seattle has increased from 7,000 to 898,000, a compound annual growth rate of 35.9%.
- For every cruise ship that sails from Seattle, passengers collectively spend an average of \$400,000 in Washington at other businesses and attractions. In 2015, cruise ships that homeported in Seattle supported \$77.5 million in visitor spending in the region on such items as accommodations and retail purchases.

Marine terminal development is a well-established yet complex endeavor. This complexity is driven by the long lead times to navigate permitting and regulatory issues, as well as the very high capital cost for construction and ongoing dredging and maintenance. Whether developing cargo facilities, ranging from river barge facilities to post Panamax complexes, or river or coastal passenger terminals, the following fundamental design considerations apply to most projects:

- ✓ Understanding the current and future market demand, with a temporal adjustment that takes long lead times into account.
- ✓ Establishing a realistic timeline that factors in the multi-year nature of these projects.
- ✓ Selecting appropriate facility location that considers both upland and in-water connectivity.
- ✓ Identifying the vessel type likely to serve the targeted market, today and in the future. The expected vessel inventory will inform the design process regarding berth design, shoreside loading/unloading equipment, depths, and docking systems.
- ✓ Evaluating the upland connectivity and land-side transportation modes that economically support the movement of goods or passengers.
- ✓ Determining the capacity needs for upland storage and transfer facilities, including required infrastructure.
- ✓ Identifying the operating approach to the facility and whether the port's role will be as operator or landlord.
- ✓ Considering a public-private partnership to help mitigate the permitting and financial risk.
- ✓ Developing a plan of finance for the facility.
- ✓ In large or controversial projects, capturing preliminary decision data in a risk assessment accompanied by a public outreach strategy.

Key to developing marine terminals on Washington's shorelines are the regulatory environment and the proprietary framework on the use of aquatic lands. The use of state owned aquatic lands through a port management agreement (PMA) is discussed earlier in this chapter.

The complexities, investment needs, and timeframes for marine terminal development are substantial. Investments for new or expanded marine terminals and associated facilities, whether cargo or passenger, will require extensive engagement with an experienced team of consulting professionals.

Marine Cargo

More than 80% of the world's purchasing power resides outside of the U.S., so the nation's economic wellbeing is largely dependent on maintaining participation in the international marketplace. Washington ports play a key role in the state's international trade profile.

Marine terminals are supported by extensive rail, truck, and barge networks that move cargo to and from inland destinations. Rail is typically utilized for moving cargo more than 500 miles, or for moving heavier commodities over short distances. Long-haul rail segments are operated by some 700 railroads that operate common carrier freight service in the U.S. on over 160,000 miles of track. Of these railroads, there are a handful of Class I railroads (seven in the U.S. and Canada), and there are 22 regional and 584 local/short-line railroads.

Whether in the marine terminal or in a satellite location, rail terminal facilities are used for interim storage, loading or unloading, and transloading activities in support of the movement of cargo. A number of Washington ports have developed rail infrastructure to connect their terminals to the Class I Carriers. These range from simple dead-end spurs to extensive corridors that enhance the competitiveness of their cargo operations.

Trucks are used primarily to move cargos within the state and can accommodate varying weights. Trucks move an estimated 70% of breakbulk cargo and an estimated 95% of all logs transported. Barges connect the Upper Columbia and Snake rivers with the Lower Columbia River, forming a critical connection for wheat farmers. The Columbia-Snake River System allows Washington-grown agricultural products to move from farm to domestic and international markets, and it creates price competition between modes of transportation.

Public ports have taken two distinct approaches to operating and managing their cargo facilities. The first is as a **landlord port**, in which the port leases the underlying property or built facilities to private marine terminal operators (MTOs). These MTOs might focus on a particular commodity, be affiliated with a specific cargo carrier, or handle a diversity of commodities. Due to the capital cost of commodity handling equipment, these leased terminals are traditionally focused on one type of commodity. Commodities may include container, dry bulk (e.g., coal, grain), liquid bulk (e.g., petroleum, chemicals), break bulk (e.g., large machinery, steel), or roll on-roll off (e.g., automobiles). The MTO is often a stevedoring company.

The second approach is as an **operating port**, in which the port authority owns the handling equipment, negotiates contracts, retains the necessary labor, and manages the loading and unloading process.

Nearly all port cargo operations in Washington, Oregon, and California utilize organized labor, whether they are a landlord port or an operating port. This is very different from U.S. Gulf and East Coast port operations, which include multiple unions as well as non-union operations. There is little doubt that marine terminal development is challenging, largely because of the risks associated with permitting these facilities. Ports are advised to proceed with caution and consider joint venture partnerships with the private sector to mitigate the inherent risks.

Passenger Terminals

Marine passenger terminals fall into two fundamental categories.

Cruise terminals come in many sizes. These facilities can accommodate small and large vessels engaged in travel tourism, whether localized or interstate. Localized waterborne tourism includes such activities as whale watching, event tours, and marine ecological education.

Ferry terminals are characterized by commuter traffic that is local, regional, or interstate.

In addition to the traditional marine infrastructure required to accommodate these specialty vessels, there are a host of hospitality and service facilities that passengers expect. For instance, site development includes extensive accommodation of vehicle parking, and location decisions are often driven by upland surface transportation options such as passenger rail, bus lines, and connector roads. Passenger rail service in the U.S. is largely provided by Amtrak, although there are other private and public carriers.

Like cargo terminals, these passenger facilities are capital intensive. Ferry terminals are often financially underpinned by local or governmental transportation agencies such as the Alaska Marine Highway System in Bellingham. There is a growing resurgence in small commuter facilities, reminiscent of the “Mosquito Fleet” that operated in Puget Sound between the 1880s and the 1920s. Cruise terminals are supported through contracts with cruise lines.

Ferry terminals and cruise terminals are significant to the local economy, by supporting either the day-to-day transportation needs of local commuters or jobs connected to the growing tourism industry.

Safety and Security

There are two significant federal agencies that are notably involved in the oversight of the U.S. maritime industry: The Federal Maritime Commission (FMC) and the Department of Transportation Maritime Administration (MARAD). Created in 1961, the FMC works to ensure that a competitive and reliable international ocean transportation supply system supports the U.S. economy and protects the public from unfair and deceptive practices associated with the waterborne movement of international trade. MARAD was created in 1950. It supports the availability of maritime transportation infrastructure and further promotes and fosters the maritime industry to meet the nation’s economic and security needs. MARAD is an excellent resource for Washington ports considering federal grant support for their maritime facilities.

In addition, there are two federal agencies that oversee the security and safety of the maritime sector; the U.S. Coast Guard and Customs and Border Protection. Considered a military operation as it can be redirected to a traditional defense role, the Coast Guard is the nation’s oldest seagoing service. It is responsible for search and rescue, maritime law enforcement, care and maintenance of maritime aids to navigation, ice breaking, environmental protection,

and port security. Customs and Border Protection is charged with providing a comprehensive approach to border management and control, combining customs, border security, and agricultural protection into one coordinated and supportive effort. At maritime facilities, they screen all foreign visitors and employees, returning Americans, and imported cargo.

The following glossary of terms are commonly used in the operation of marine terminals:

Apron: The area immediately in front of or behind a wharf shed, on which cargo is handled. On the “front apron,” cargo is unloaded from or loaded onto a ship. Behind the shed, cargo moves over the “rear apron” into and out of rail cars or trucks.

Backhaul: To haul a shipment back over part of a route which it has already traveled; a marine transportation carrier’s return movement of cargo, usually opposite from the direction of its primary cargo distribution, or head haul. Backhaul rates are typically less than the head haul, but having a backhaul cargo can often make the difference between a profitable voyage and taking a loss.

Barge: A large, flat-bottomed vessel used to carry cargo from a port to shallow-draft waterways. Barges are not self-propelled; they are pushed or pulled by tugboats.

Berth: (verb) To bring a ship to a berth. (noun) The wharf space at which a ship docks. A wharf may have two or three berths, depending on the length of incoming ships.

Beneficial Cargo Owner (BCO): The BCO is the party that ultimately owns the product being shipped. This can be different from either the producer or the ultimate consumer. This is an important distinction, as this is the party that the port will often negotiate with as it seeks to develop its property.

Bill of Lading: A contract between a shipper and carrier, listing the commercial terms for moving freight between specified points.

Bollard: A short, stout device (resembling a fire hydrant) used to secure a vessel’s mooring lines to the dock or wharf.

Bonded Warehouse: A building designated by U.S. Customs authorities for storage of goods without payment of duties to Customs until goods are removed. See also Foreign Trade Zone (FTZ).

Box: Slang term for a shipping container.

Breakbulk Cargo: Any cargo that doesn’t easily fit into a container. This non-containerized cargo can be shipped in large wooden crates, bales, pallets, or other units to be loaded onto or

discharged from ships or other forms of transportation. Examples include structural steel like I beams, steel coils, pipe, machinery, linerboard, and wood pulp.

Broker: A person who arranges for transportation of loads for a percentage of the revenue from the load.

Bull Rail: The edge of the dock or wharf that is closest to where a vessel is moored. This rail, historically made of a large timber (16" x 16"), is today made typically of concrete. The bull rail established the demarcation line between work on the docks and work aboard the vessel, a distinction in common use with longshore labor.

Bulk Cargo: Loose cargo (dry or liquid) that is loaded (shoveled, scooped, mechanically conveyed, or pumped) in volume directly into or out of a ship. Examples include grain, coal, and oil.

Cargo: The goods or products carried by a ship, barge, train, truck, or plane. See also Freight.

Consolidator: The person or firm that consolidates cargo from shippers into a container that will deliver the goods to several buyers.

Container: A shipping container is a box made of aluminum or steel used to transport cargo by ship, rail, truck, or barge. Common dimensions are 20' x 8' x 8' (called a TEU or twenty-foot equivalent unit). Typical lengths also include 40', 45', and 53'.

Container Terminal: A specialized facility where ocean container vessels dock to discharge and load containers. Specialized cranes are used to load and unload containers. These cranes have a safe lifting capacity of 35-40 tons, with booms reaching up to 120 feet to reach the outside cells of vessels. Most of these cranes operate on rail tracks or have articulating rail trucks on each of their four legs, enabling them to traverse along the terminal and work various bays on the vessel. This also more than one crane to work a single vessel simultaneously. Most terminals have direct rail access and container storage areas and are served by highway carriers.

Cruise: At least one night on board on a seagoing vessel that has a capacity of at least 100 passengers. Transportation (the cruise ship) is the core element of the experience instead of a simple conveyance.

Customs Broker: This person prepares the needed government documentation for importing goods. The broker (also known as a customhouse broker) is licensed by the Treasury Department to clear goods through U.S. Customs.

Demurrage: A penalty fee assessed when cargo is not moved before the free time allowance

ends. Demurrage can be assessed to vessels, railcars, and cargo sitting idle at a port storage area.

Dock: (verb) To bring in a vessel to tie up at a wharf berth. One parks a car but docks a ship. (noun) A structure built along or at an angle from a navigable waterway, so that vessels may lie alongside to receive or discharge cargo. Sometimes, the whole wharf is informally called a dock.

Dock Workers: The general term for people who work on and around the docks. See also Longshoremen and IWLU.

Dockage: A charge by a port authority for the length of water frontage used by a vessel tied up at a wharf.

Draft: The depth of a vessel, taken from the level of the waterline to the lowest point of the hull.

Drayage: Transport by truck for short distances, i.e., from wharf to warehouse.

Dry Bulk: Minerals or grains moving without mark or count. Examples are potash, industrial sands, wheat, soybeans, and peanuts. These commodities can be loaded from storage piles in the vicinity of the dock or directly from trucks or railcars, without intermediate storage.

Duty: A government tax on imported merchandise.

Elevator: A complex including storage facilities, computerized loading, inspection rooms, and docks to load and unload dry bulk cargo such as grain.

Fender Piles: The pilings on the outer edge of the wharf function like the fenders on a car. They are there to absorb the shock of a ship as it docks at the wharf and to protect the structural pilings that support the wharf. If the fender piles are made from timbers, they are called sacrificial piles since they are designed to be discarded after they are broken.

Foreign Trade Zone (FTZ) A foreign trade zone (FTZ) is a site within the U.S. (in or near a U.S. Customs port of entry) where foreign and domestic goods are held until they ready to be released into the economy. If the final product is imported into the U.S., duties and taxes are not due until the goods are released into the U.S. market. Merchandise may enter a FTZ without a formal Customs entry or the payment of Customs duties or government excise taxes. In the FTZ, goods may be stored, tested, sampled, repackaged or relabeled, cleaned, combined with other products, repaired or assembled, etc.

Freight: The goods or cargo moved by a vessel or other mode. Freight can also be used to describe the amount of money the vessel owner is paid to move the cargo.

Freight Forwarder: An individual or company that coordinates the movement and storage of cargoes. See also Customs Broker.

Head Haul: The primary cargo movement from origin to destination. If it were not for the head haul cargo, the carrier would not consider the voyage. Once a head haul cargo is under consideration, carriers will try to book a backhaul cargo to make the overall voyage more profitable.

Intermodal: Technically, intermodal shipping simply refers to moving freight by two or more modes of transportation. Typically, goods will remain in the same container.

International Longshore and Warehouse Union (ILWU): The predominate dockside union on the U.S. West Coast.

Landlord Port: At a landlord port, the port authority builds the wharves, which it then rents or leases to a terminal operator, usually a stevedoring company. The operator invests in cargo handling equipment (i.e., forklifts, cranes, etc.), hires longshore laborers to operate lift machinery, and negotiates contracts with ocean carriers (i.e., steamship services) to handle the unloading and loading of ship cargoes. See also Operating Port.

Longshoremen: Dock workers who load and unload ships or perform administrative tasks associated with the loading or unloading of cargo. Longshore gangs are hired by stevedoring firms to work the ships. See also Dock Workers and ILWU.

Manifest: The ship captain's list of individual goods that make up the ship's cargo. This formal document is often prepared by a Freight Forwarder or a Customs Broker.

Marine Terminal Operators (MTOs): MTOs lease property or built facilities from a port and provide the labor and equipment to manage cargo handling operations for carriers.

Operating Port: An operational port in which the port authority builds the wharves, owns the cranes and cargo-handling equipment, and hires the labor to move cargo in the sheds and yards. A stevedore hires longshore labor to lift cargo between the ship and the dock, where the port's laborers pick it up and bring it to the storage site. See also Landlord Port.

Pier: A structure which juts out into a waterway from the shore, for mooring vessels and cargo handling. Sometimes called a finger pier.

Project Cargo: This type of cargo is typically oversized and/or very heavy. It is typically part of a large capital project and can be either an import or an export. A special corridor for this type of cargo has been developed in the Columbia River area called the high, wide, and heavy corridor: www.hwhcorridor.com.

RoRo Cargo: Wheeled cargo, such as tractors and automobiles, that roll on and roll off a ship or barge.

Spur: A short, usually dead-end section of track used to access a facility or loading/unloading ramp. It also can be used to temporarily store equipment.

Stevedoring Services: The organization and management of loading and unloading marine cargo, including managing upland material storage, handling in preparation for dockside work, and retaining the necessary labor and equipment.

Tariff: The schedule or system of duties imposed by a government on the import/export of goods; also, the charges, rates, and rules of a transportation company, as listed in published industry tables.

TEU: A 20-foot standard unit to describe a ship's carrying capacity or a terminal's capacity. A standard forty-foot container equals two TESSs.

Tonnage: This word has multiple meanings in the marine world:

- A. **Cargo Tonnage:** Ocean freight is frequently billed based on weight or measurement tons. Weight tons can be expressed in terms of short tons of 2,000 pounds, long tons of 2,240 pounds, or metric tons of 1,000 kilograms (2,204.62 pounds). Measurement tons are usually expressed as cargo measurements of 40 cubic feet (1.12 cubic meters) or cubic meters (35.3 cubic feet).
- B. **Vessel Tonnage:** The carrying capacity of a vessel is referred to as her "deadweight tonnage" (dwt). Typical smaller cargo vessels in the Pacific Northwest (PNW) are in the "handy size," roughly 30,000 dwt. Larger containerships in the PNW can reach up to 150,000 dwt. The volumetric measure of a vessel is referred to as her "gross registered tonnage" (grt), which is a measurement sometimes used in the grain trade, and for some RoRo operations.

Transit Shed: The shed on a wharf is designed to protect cargoes from weather damage and is used only for short-term storage. Warehouses operated by private firms house goods for longer periods.

Tugboat: Strong v-hull shaped vessels used for either maneuvering ships into and out of port, or for towing barges. Large vessels do not possess adequate maneuverability to safely come alongside docks. Tugboats provide additional power and finesse to safely moor vessels. Towboats are tugboats that have a square front, making them especially efficient for pushing barges through inland waters. Towboats can also be used for assisting large vessels in mooring to a dock.

Unit Train: Also called a block train, a unit train carries a block of railcars from one point of origin to one destination point, without any intermediate sorting. Railroads use unit trains to reduce their operating costs, and (in theory) pass some of these savings on to the cargo owner. Over time, unit trains have become longer and longer, which has put significant stress on marine facilities that are expected to accommodate these longer trains, which today can run up to 10,000 feet.

Wharf: The place at which ships tie up to unload and load cargo. The wharf typically has front and rear loading docks (aprons), a transit shed, open storage areas, truck bays, and rail tracks.

Wharfage Fee: A charge assessed by a pier or wharf owner for handling incoming or outgoing cargo.

Pollution Control Facilities (Wastewater)

“Water is life’s matter and matrix, mother and medium. There is no life without water.” –Albert Szent-Gyorgyi

To facilitate food production and processing, public port districts make significant investments in supportive infrastructure, including process water treatment. These pollution control facilities include a host of waste management, control, and disposal technologies designed to reduce or eliminate pollution. Washington ports are leaders in this arena, employing new technologies such as UV treatment as an alternative to chlorination and exploring the re-use of digester off-gases for industrial purposes.

Supporting the Agriculture Sector

- Washington is home to some of the most productive agricultural regions in the world, producing more than 300 crops each year.
- In the last decade, 2,000 new jobs have been created on the 250-acre Port of Pasco processing center, representing 6% of total employment in Franklin County.
- In 2020, the Port of Sunnyside expanded its treatment capacity to include a new membrane reactor system which will double the capacity of its current treatment plant in support of an expanding portfolio of processing tenants.
- The Port of Mattawa expanded their specialized treatment of wine effluent, and the local processor grew from 60 jobs to over 400 full- and part-time positions in a decade.

Wastewater generated from food production and agricultural activities is among the most difficult and costly waste to manage. This type of wastewater can contain large quantities of nutrients, organic carbon, nitrogenous organics, inorganics, and suspended and dissolved solids, and it has high biochemical and chemical oxygen demands. It must be treated to levels that will not damage receiving waters due to excessive nutrients or oxygen demand when directly discharged. The discharge from these facilities is subject to effluent guideline requirements and National Pollutant Discharge Elimination System (NPDES) permits. Plant-food processing wastes are typically lower strength and greater volume than animal processing and animal production.

There are readily available treatment technologies including both oxidative and anaerobic processes. Designing these facilities is a large economic development consideration for ports, as they are traditionally in support of advancing an industry and its associated jobs. Like many technology-based facilities, industrial wastewater treatment plants depend on location decisions and demand contractual considerations, due to high capital costs, possible long-term indebtedness, and stability of the target market.

Operating a pollution control facility requires special expertise and training. Ecology is responsible for the certification of waste treatment facility operators and provides additional ongoing training.

The following terms are commonly used in the operation of wastewater treatment facilities:

Aeration: The process of adding air to water. In wastewater treatment, air is added to refresh wastewater and to keep solids in suspension. With mixtures of wastewater and activated sludge, adding air mixes and provides oxygen for the microorganisms treating the wastewater.

Anaerobic Digestion: Wastewater solids and water (about 5% solids, 95% water) are placed in a large tank where bacteria decompose the solids in the absence of dissolved oxygen.

Biochemical Oxygen Demand (BOD): The rate at which organisms use the oxygen in water or wastewater while stabilizing decomposable organic matter under aerobic conditions. In decomposition, organic matter serves as food for the bacteria, and energy results from its oxidation. BOD measurements are used as a measure of the organic strength of wastes in water.

Biosolids: A primarily organic solid product produced by wastewater treatment processes that can be beneficially recycled. The word “biosolids” is replacing the word “sludge.”

Chlorination: The application of chlorine to water or wastewater, generally for the purpose of disinfection, but frequently for accomplishing other biological or chemical results.

Digester: A tank in which sludge is placed to allow decomposition by microorganisms. Digestion may occur under anaerobic (more common) or aerobic conditions.

Effluent: Wastewater or other liquid—raw (untreated), partially, or completely treated—flowing from a reservoir, basin, treatment process, or treatment plant.

Headworks: The facilities where wastewater enters a wastewater treatment plant. The headworks may consist of bar screens, comminutors, a wet well, and pumps.

Influent: Wastewater or other liquid—raw (untreated) or partially treated—flowing into a reservoir, basin, treatment process, or treatment plant.

National Pollutant Discharge Elimination System (NPDES) Permit: This permit is the regulatory agency document issued by either a federal or state agency, designed to control all discharges of pollutants from all point sources and storm water runoff into U.S. waterways. A treatment plant that discharges to a surface water will have a NPDES permit.

Primary Treatment: A wastewater treatment process that takes place in a rectangular or circular tank and allows the substances in wastewater that readily settle or float to be separated from the water being treated.

Traditional Governmental Activities

As discussed earlier, not every operational activity will result in a real financial ROI by generating earned revenues. There are certain port activities that do not generate adequate resources to be self-supporting, much less generate a positive cash flow. These activities must be underwritten by financial resources from port lines of business activities or through property taxes. These are characterized as traditional governmental activities.

Programmatic Economic Development

“You never change things by fighting the existing reality. To change something, build a new model that makes the existing model obsolete.” –R. Buckminster Fuller

Economic development is a primary function of Washington ports; virtually all ports are active in one way or another. It is defined as a concerted effort by local, state, and federal agencies, including ports, to influence the direction of private and public investment toward opportunities and outcomes that lead to sustained economic growth and job creation.

Economic development by ports is advanced in two ways:

- Investment in brick and mortar facilities and assets such as marine terminals and real estate that create jobs and stimulate the economy, as described earlier in this chapter. These are a port’s lines of business.
- Financial support and engagement in programmatic efforts, typically in concert with other agencies, not-for-profit organizations, and educational institutions, that focus on local and regional efforts to create jobs and stimulate the economy. This is a port engaging in traditional governmental operations.

Washington statutes firmly state that it is “in the public purpose for all port districts to engage in economic development programs.” (RCW 53.08.245) To achieve this, ports may contract with nonprofits, private parties, and other public entities. Washington ports have historically focused on the role of job creation in programmatic economic development, and they are specifically authorized to engage in occupational job training and placement, job advancement and retention, pre-apprenticeship training, and other education programs. While workforce development is a key focus, ports participate in a host of other programmatic activities, including private investment attraction, business expansion, studies, and regulatory impact analysis.

There are a number of ports selected to fill a more defined economic development role in their community by serving as their county’s Associate Development Organization (ADO). ADOs serve as the local economic development partner for the Washington State Department of Commerce. These ADOs are designated by each county to coordinate business recruitment, retention, and expansion activities within their service area(s), as well as to provide export assistance. ADOs also support research, planning, and implementation of regional and local economic development strategies.

Programmatic economic development is a far-reaching and often complex topic. Chapter VI is dedicated to this topic and includes a complete glossary of terms.

Parks, Recreation, and Open Space

“City parks serve, day in and day out, as the primary green spaces for the majority of Americans.” –Bruce Babbitt

From major metropolitan areas to rural towns, the character of our urban parks has evolved over the last century and a half. In her article on Urban Parks of the Past and Future, Professor Galen Cranz of the University of California, Berkeley, identified distinct periods in this evolution.

From the mid-1800s to roughly 1900, large parks located on the edge of urban areas were the core of the **Pleasure Grounds era**, with pastoral landscapes that offered interaction with nature without venturing too far into the wilderness. These were the designs of great park architects such as Fredrick Olmsted. But these parks were hard to get to, and in the late 1800s, the nation saw growth in small parks that were located closer to tenement districts that housed the growing numbers of industrial workers. These small parks led to the **Reform Park era**, intended to provide places to congregate and socialize, largely targeted to growing immigrant communities.

In 1930, a new era was ushered in, led by Robert Moses, the renowned New York commissioner of parks. He recognized the need and demand for more recreational opportunities and solidified the notion that parks and open space are a true governmental activity. The **Recreational Facility era** saw growth in public stadiums, sports facilities, and more active

interaction with park users. This new view of public recreation gave way to the **Open Space era** of trails and green space associated with other land uses such as today's marinas, terminals, and mixed-use developments.

Washington ports are authorized to develop and operate public park and recreation facilities when they support and enhance the utilization of (a.) harbors, (b.) wharves and piers, (c.) air, land, and water passenger terminals, and (d.) transfer terminals (RCW 53.08.260). As discussed further in Chapter VIII, Washington's Shoreline Management Act (SMA) requires public access along state shorelines where it is not incompatible or unsafe with the adjoining uses. SMA also allows ports to develop open space and parks as public access mitigation for the construction of shoreline facilities such as marine terminals.

Ports must receive approval to develop park facilities from the regional parks department (county, city, parks and recreation, or another responsible district). Many city and county comprehensive plans under the Growth Management Act contain open space and park sections. As those plans are developed, ports have an opportunity to include their own park plans in these area comprehensive plans. Ports are also advised to include planned improvements in their Comprehensive Scheme of Harbor Improvements.

For a long time, parks were thought of simply as places for recreation, preservation of open space, and social gatherings. However, the role of parks in cities and urban metropolitan areas has become much greater as the scope and impact of parks increasingly influences quality of life, economic development, health, and many other aspects of urban life.

Parks contribute to a port's community in the following ways:

- **Economic development:** The social benefits of parks are well understood, but the economic contribution by parks is less visible. By speaking directly to tourism and enhancing the attractiveness of an area and its contained assets, parks and open space contribute to economic development and are often anchors in attracting private investment.
- **Green infrastructure:** These open spaces can serve as buffers for flooding and sea level rise, as they (a.) protect built assets, (b.) perform as cost-effective critical components in stormwater control, management, and treatment, and (c.) function as active irrigation installations.
- **Healthier population:** With increasing health care costs and a growing awareness of the benefits of an active lifestyle, parks and open space offer spatial opportunities for recreation and activity.
- **Educational opportunities:** Parks, trails, and open space can utilize interpretive postings to educate the users and visitors about the natural and built environment. These are opportunities for the port to tell their story, as well: a story of contributing to the economy while enhancing the natural environment.



The Port of Kalama has developed a 24-acre active recreational facility, including an exhibition area. Image credit: Port of Kalama

Urban planners now view parks and open space as serving a healthy economy. They can catalyze a community by bringing attention to the important economic work of adjacent commercial and industrial facilities, soften the landscape of the built environment, provide a platform to communicate to the community, and act as mitigation investments that advance economic development.

Parks and the Economy

- Parks and recreation improve the quality of life in communities and benefit the local economic development of a region. More than 80% of corporate executives responding to a 2019 Area Development survey rated quality-of-life features as an important factor when choosing a location for a headquarters, factory, or other company facility.
- 94% of adults responding to the March 2020 National Recreation and Park Association (NRPA) Park Pulse poll support their local government investing in infrastructure improvements that promote economic activity in their community.
- Researching visitor spending, an August 2017 NRPA Park Pulse poll found that people seek out park and recreation amenities such as beaches, parks, trails, and secluded, relaxing places when choosing a travel destination.

Today's Washington ports view their park and open space facilities as amenities to support commercial development and tourism and to accommodate local events. They can also be a significant lifestyle draw when attracting new or expanding employers.

The state Recreation and Conservation Funding Board was created in 1964 by a vote of the citizens of Washington. The governor-appointed board is composed of five citizens and the directors (or designees) of three state agencies: Department of Fish and Wildlife, Department of Natural Resources, and the Parks and Recreation Commission. The Funding Board has four broad grant programs available to ports, including:

- Boating facilities.
- Land and water conservation.
- Off road vehicle activities.
- Wildlife and recreation, including funds for trails, parks, and water access.

The following terms are commonly used in the development and operation of parks and open space:

Access: The public's ability to physically use land or water.

Active Recreation: Recreation that is predominately powered by human muscle.

Bioretention: A versatile stormwater treatment system that collects, filters, and infiltrates stormwater runoff from impervious surfaces.

Bioswales: Channels that collect runoff from small drainage areas. Bioswales differ from other bioretention practices, as they are designed to be conveyance treatment devices, not storage devices.

Constructed Wetlands: These manmade wetlands mimic the functions of natural wetlands to capture runoff, improve water quality, and provide wildlife habitat. Constructed wetlands filter stormwater by slowing down water flow and trapping sediments and pollutants.

Dispersed: Recreation that is scattered or spread across the landscape and not concentrated at a specific site. Examples include trail uses, camping, walking, cycling, and jogging.

Natural Areas: Also referred to as natural resource areas, natural areas are lands set aside for preservation of significant natural resources, remnant landscapes, open space, and visual aesthetics or buffering.

Park: Land or an area set aside for a special purpose, particularly for leisure or recreation.

Passive Recreation Areas and Trails: Passive recreation areas are generally minimally developed or undisturbed natural areas that allow for nonspecific uses requiring little dedicated infrastructure or space.

Permeable Pavements: This pavement alternative infiltrates, treats, and/or stores rainwater where it falls. Permeable pavements provide an alternative to conventional pavement systems and can be made of pervious concrete, porous asphalt, or permeable interlocking pavers.

Rainwater Harvesting: Collecting or storing rainwater for later use, such as for irrigating lawns or gardens.

Recreation: Those leisurely and voluntary activities that aid in promoting entertainment, pleasure, play, relaxation, or instruction.

Trail: A path, route, way, right-of-way, or corridor that is posted, signed, or designated as open for travel or passage by the public, but not normally designated as open for the transportation of commercial goods or services by motorized vehicles. A trail is a recreational facility that also can serve as a non-motorized route for transportation.

Urban Tree Canopy: The structure of a tree that reduces and slows stormwater by intercepting precipitation in leaves and branches. Tree roots stabilize soil; trees also take in carbon dioxide and release oxygen.

Vegetated Buffers: Healthy, vegetated buffers adjacent to waterways improve water quality and overall stream health by filtering and slowing stormwater runoff.

Environmental

“The nation behaves well if it treats its natural resources as assets which it must turn over to the next generation increased, and not impaired, in value.” –President Theodore Roosevelt

In contrast to the built environment, the natural environment encompasses all living and nonliving things that occur naturally. It includes the interaction of all living species, climate, weather, and natural resources that affect human survival and economic activity. As community and economic developers, Washington ports undoubtedly find themselves at this intersection of the environment and the economy.

The nation’s awareness of the value of the natural environment grew throughout the twentieth century, reaching the national stage in the 1960s and 1970s.

Published in the early 1960s, Rachel Carson’s book *Silent Spring* advanced the notion that technological progress and industrialization is so fundamentally at odds with natural processes that it must be regulated and curtailed. In June 1969, following decades of industrial pollution

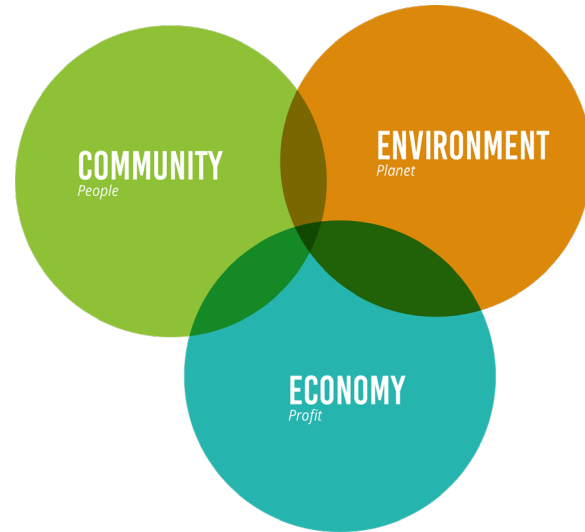
on Cleveland's Cuyahoga River, an oil spill burst into flames; the image was captured on the cover of Time magazine. Earth Day was first recognized in April 1970, created by Wisconsin Senator Gaylord Nelson, who strongly advocated for increasing environmental awareness across the country, forcing the issue into the national agenda.

The National Environmental Policy Act was signed into law by President Richard Nixon in early 1970. Later that year, he created the Environmental Protection Agency (EPA) to consolidate several federal agency environmental responsibilities into one organization. Appointed by President Nixon, the first EPA administrator was William Ruckelshaus who, after his public service career, practiced law in Seattle and continued to be a voice for environmental protection. He served several other presidents in a variety of environmentally related capacities, including Presidents Reagan, Clinton, and Bush, before receiving the Presidential Medal of Freedom from President Barack Obama in 2015.

This rise in **environmental stewardship** has become part of a port's triple bottom line consideration in its decision making: people, profit, and the planet, otherwise known in the port industry as community, economy, and the environment.

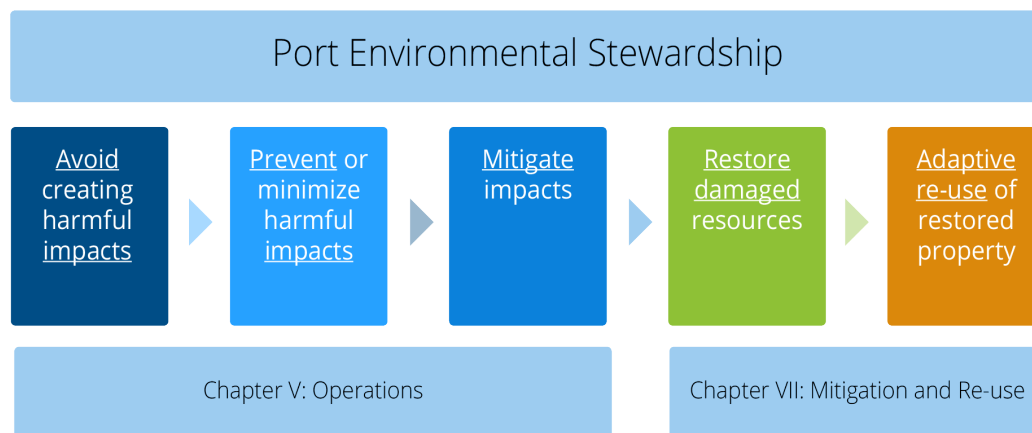
The principles of environmental stewardship include:

- Expressing, as an organizational value, commitment throughout the organization to **sustainable design, development, and operation of port assets.**
- Adhering to a commitment of ensuring **compliance with environmental regulations** for port operations and tenant activities.
- Developing and fostering implementation of **environmental management systems and policies** which create standards for pollution prevention, energy efficiency, and improved environmental performance.
- Creating and energizing strategic **goals for reducing the ecological footprint** of port operations.
- **Demonstrating environmental leadership** within the community and industries in which a port operates. Port leadership and participation in addressing environmental challenges is typically focused on climate change, sea level rise, air pollution, and water quality degradation.



The hierarchy of environmental stewardship as laid out below provides guidance to ports as they make decisions that have an environmental consideration:

1. **Avoid harmful impacts** from the port’s actions, investments, and operations.
2. If avoidance is not possible, **prevent or minimize harmful impacts**.
3. If there are unavoidable harmful impacts, **mitigate those impacts** at a greater than 1:1 ratio.
4. If there have been harmful impacts, **restore the damaged resources** when possible through remediation.
5. When designing remediation, consider the **adaptive re-use of the restored property** to a community asset (i.e., parks or open space) or an economic contributor, or by returning it to natural pre-development conditions.



Washington ports are arguably the state’s largest landlord of commercial and industrial properties, hosting a wide range of property uses through leases. Those tenants are often engaged in activities that have the potential to negatively impact the environment. To manage potential impacts, ports are well advised to adopt policies and programs to proactively oversee their tenant’s activities and correct potentially damaging behavior and processes.

Commonly known as environmental compliance assessment programs, these programs monitor tenant activities through regular on-site inspections, include compliance language in lease documents, and provide education and information on best management practices.

Ports should note that under Washington state law, there is “joint and several liability” for any environmental damage incurred on port property. Essentially, the legal construct is that as property owner, the port is 100% liable for the actions of its operators (tenants). As operators, tenants share that same 100% liability. There has been significant administrative and judicial clarity on this joint liability; nonetheless, ports are well advised to avoid complacency in this regard.

The key environmental issues facing today's ports that are monitored by port staff and the WPPA Environmental Committee include, but are not limited to:

- **All known, available, and reasonable methods of prevention, control, and treatment of stormwater (AKART):** These stormwater standards apply to point and non-point discharge of stormwater in boatyards, marine terminals, marinas, commercial and industrial properties, and airports.
- **Changes in environmental liability and case law.**
- **Climate change:** Adaptation and mitigation.
- **Coastal flooding:** Changes to policies and rules regarding coastal flood maps.
- **Derelict vessels:** Grants and management.
- **Dredge Material Management Program (DMMP):** Puget Sound and the Columbia River.
- **HPA:** Hydraulic Project Approvals.
- **Invasive species:** Expansion and impacts.
- **Marine Spatial Planning:** Balancing human activity and the marine environment.
- **Model Toxics Control Act (MTCA):** Stability and availability of grant funding for remediation.
- **Natural resource damage:** Policy and approaches.
- **No Discharge Zone:** Impacting waters of Puget Sound, as determined by the Department of Ecology.
- **Oil spills:** Regulations.
- **Puget Sound Partnership:** Programs and projects.
- **Solid waste management.**
- **State Environmental Policy Act (SEPA):** Oversight and expansion.
- **Wetlands:** Rule making and permitting.

Environmental considerations are a far-reaching and often complex topic. Washington ports have pursued a growing commitment to environmental stewardship as community support and expectations have shifted to prioritize a proactive environmental agenda. The statewide port industry has embraced that priority. While stewardship, including a strong commitment to prevention, is foundational to that responsibility, the remediation of historically contaminated property has been championed by the state's ports.

Chapter VII is dedicated to the topic of mitigation, restoration (remediation), and adaptive re-use of environmentally impacted property. Property remediation and re-use is a distinct environmental function within a port and crosses over to other lines of business. The availability of unique grant funding programs in Washington through the Department of Ecology has created a unique focus for ports as they navigate the adaptive re-use of contaminated

property. The breadth of port involvement in this environmental focus area warrants the in-depth discussion in Chapter VII.

The following terms are commonly used in discussions about port environmental considerations. An expanded glossary of terms is presented in Chapter VII.

Sustainable Development: Traditionally defined as meeting the needs of the present without compromising the ability of future generations to meet their own needs.

Environmental Management: Managing natural resources through policies and practices designed to protect natural values and resources while providing a platform for economic use.

Direct Climate Impacts: Changes that occur as a result of warming trends, cooling trends, or extreme weather events. Examples include a lack of snow to operate mountain resorts, melting glaciers in mountainous regions, and floods, landslides, and wildfires.

Indirect Environmental Change Impacts: These are the byproducts of climate change. Global temperature changes may create water shortages, a loss of biodiversity, impacts to landscape aesthetics, and damage to infrastructure through extreme weather events.

Ecological Footprint: The impact of a person, community, or activity on the environment, expressed as the amount of biologically productive land and water required to produce the goods consumed and to assimilate the wastes generated.

Environmental Stewardship: The responsible use and protection of the natural environment, through conservation and sustainable practices that enhance ecosystem resilience and human well-being.

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6. ECONOMIC DEVELOPMENT

“The economy goes up, it goes down, it goes up, it goes down, nobody knows why. And I know this because I took economics, and I’d explain it to you, but I flunked that course. It’s not my fault. They taught it at 8 o’clock in the morning.”

(Modified)

–Lewis Black



ECONOMIC DEVELOPMENT

Economic development is a complex and often controversial topic, and it is not specifically defined in Washington State statutes. It is based on an understanding on what drives the economy and how the direction of the economy can be influenced. There are a host of opinions on the factors that underpin the mechanics of the economy. Most controversial is the role and extent of government intervention in what some believe should be a laissez-faire, self-correcting economic system.

Ports participate in economic development in two very important ways. One is through their participation as a community partner in programmatic economic development. Another is by making brick and mortar investments in facilities, infrastructure, and commercial or industrial real estate. Both roles contribute significantly to local, regional, and state economies. Fully grasping the ability of ports to influence the direction of the economy requires an understanding of what drives growth in a local economy. While there are a multitude of theories concerning the factors that influence an economy, what follows is a straightforward explanation to put a port's role in context.

A local economy is made up of a primary and secondary economy. A primary economy job is a job that provides goods and/or services to customers that are predominantly outside the community, bringing dollars (value) into the community that are then distributed locally. A secondary economy job is a job that provides a needed service to the community and, while essential to a healthy economy, typically does not bring outside value into the local economy but instead relies on local dollars.

Primary economy: For purposes of this discussion, the primary economy (or base economy) includes those fundamental economic activities such as mining, agriculture, forestry, fishing, manufacturing, processing, and tourism that all attract value into the local or regional economy from other economies. These are commonly known as tradeable sectors—that is, goods or services that are sold to other regions, states, or countries. In addition, major institutions, such as universities or large research facilities that operate on state or federal budgets, or significant retirement communities that import pension funds and investment returns into the local economy bring value.

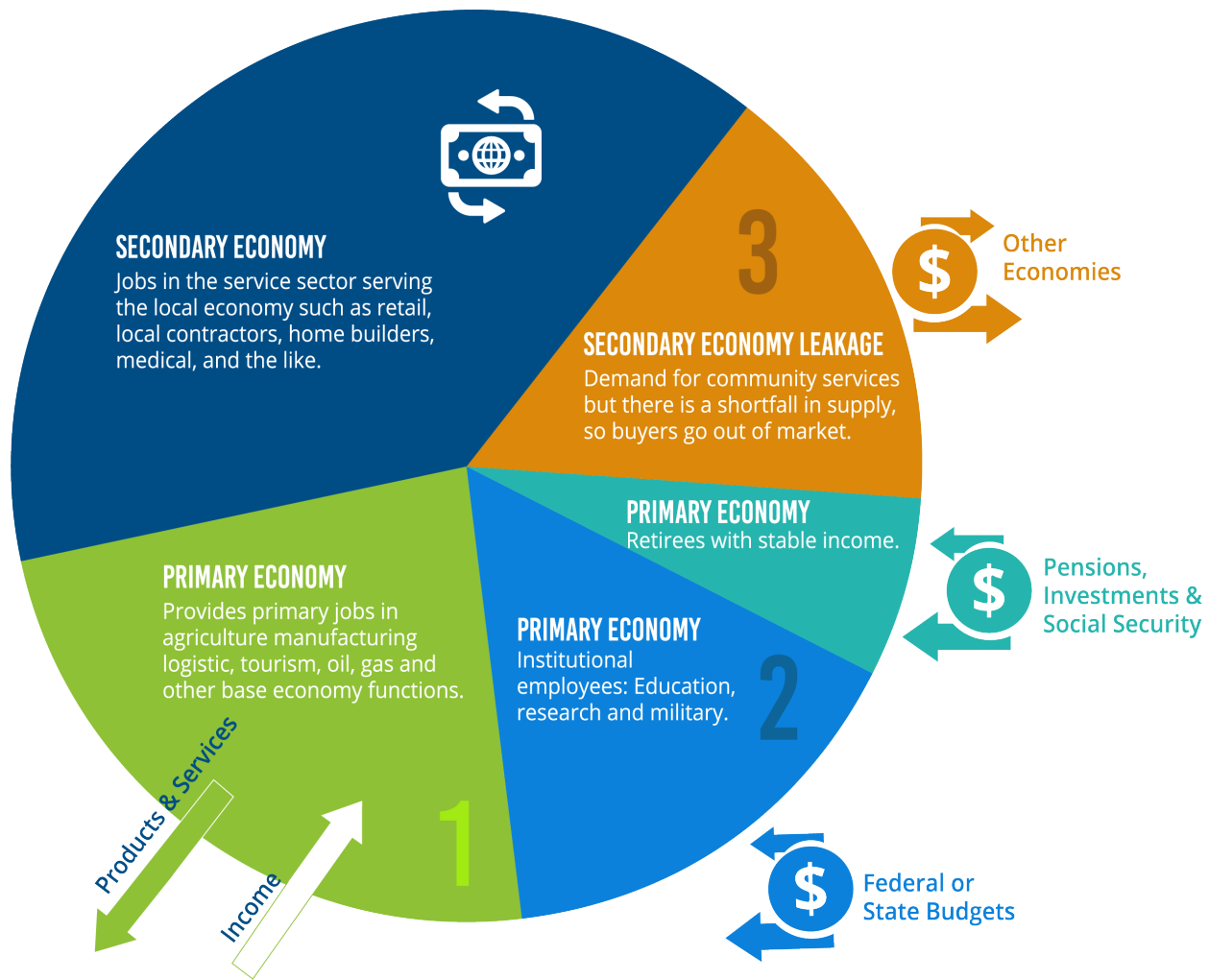
Secondary Economy: In addition to the primary economy, there is a secondary economy, consisting of the service sector that serves the needs of the local economy/community and derives its major value from within the local economy. The local sale of services and goods is considered a non-tradeable sector. It essentially cycles value within the local economy but does not substantially grow the local economy on its own. The secondary economy can increase local wealth, if it includes major regional services that attract dollars from other economies. Likewise, if there are shortfalls in the secondary economy, local dollars will leak to other economies.

Net worth: As a measure of economic health, the net worth of a diversified local economy grows when there is value imported into the economy from other economies. If there is little or no primary economic activity, or if there are shortfalls in the secondary economy, the net worth of an economy declines as dollars leave (or leak from) the local economy. Expanding the net worth of a community by growing and diversifying its primary economy provides (a.) the resources for higher quality public services such as police and fire protection, education, parks, and amenities, (b.) more job opportunities for local citizens at higher wage levels, and (c.) a level of insulation from economic downturns.

There is no doubt that exceptions to these concepts exist. However, they are presented to put the possible economic development roles of a port authority into perspective. The illustrations that follow highlight the various roles ports serve in stabilizing or growing their local economies.

It is also important to distinguish between economic development and business development. Economic development has the intended outcome of creating jobs, generating tax revenues, and facilitating economic activity for the health and welfare of a community or region. It considers socioeconomic factors such as health care, housing, childcare, and issues of equity. It is geographically focused and is largely driven by the public sector.

Business development focuses on business growth and stability to generate profits. It is market focused and is typically driven by the private sector; however, the lines are not very clear. Business development is undertaken in many communities through public-private partnerships and nonprofits such as chambers, economic councils, and business associations. To some degree, ports participate in both economic and business development. Their involvement is as public investors in the built environment, as well as through advancing programmatic priorities through community partnerships. Understanding the many factors that impact economic growth and stability is critical to ports' successful economic development effort.



Ports' Role in Economic Development

Economic Component	Ports Role	Examples	Notes
1	Attract or expand primary economy employers; construct facilities; advance workforce training; and ensure adequate transportation infrastructure.	Develop industrial subdivisions, construct warehouses and manufacturing facilities, operate rail and marine facilities, fund workforce training, and fund efforts to attract major employers.	Partner in local economic development programs OR a developer and operator of brick-and-mortar facilities.
2	Attract and or expand institutional primary market employers.	Work in concert with local partners to attract a major university campus or military installation.	Partner in local economic development programs
3	Develop facilities for secondary economy employers if there is leakage or the private sector is not responding.	Build commercial facilities for service sector.	A developer and operator of brick-and-mortar facilities.

Ports participate in programmatic economic development and pursue brick and mortar investment in facilities, infrastructure, and commercial or industrial real estate. In both cases, ports invest resources into advancing the overall health of the economy.

Brick and mortar investments are discussed in detail in Chapter V. They are used as revenue generators for the port and as contributors to a healthy economy.

Occasionally, ports subsidize their brick and mortar investments with levied property taxes, because the investment itself cannot produce a sustainable rate of return, or in some cases, ports agree to lease rates that are below market. Both these circumstances can cause tension within the private sector development community, which might view this as unfair competition. Ports justify this subsidized investment as advancing or stabilizing the economy by supporting jobs that might not materialize without subsidized rent.

Ports are advised to be as targeted and specific as possible concerning the expected positive economic impacts a subsidized investment will generate. Ports subject themselves to considerable criticism from the public when they make general statements that an investment “is good for the economy” or “creates family wage jobs.” Based on data driven analyses, more specific and well-defined strategies and outcomes, such as attracting a specific employer with a known number of new jobs or filling a real estate gap not met by the private sector development community, inspire more fiduciary confidence in the tax paying public.

This chapter focuses on the roles ports undertake in traditional programmatic economic development. The International Economic Development Council defines programmatic economic development as “ a program, group of policies, or a set of activities that seeks to improve the economic well being and quality of life for a community by creating and/or retaining jobs that facilitate growth and provide a stable tax base.”

In most communities, ports partner with other local, regional, and state agencies, as well as not- for- profit agencies such as chambers or economic development councils, to support economic growth and stability.

Historically, existing business expansion accounts for over 60% of newly created jobs. Newly created jobs through startups and new inbound employers account for approximately 40% of new job growth. For that reason, all successful economic development programs prioritize the support and needs of existing businesses.

The traditional activities of local programmatic economic development include:

- 1. Understanding and providing needed information and assistance** to attract, retain, or grow primary job employers.

This work generally consists of operating business assistance programs, coordinating

local infrastructure, and providing necessary data on local demographics, quality of life, education and training opportunities, real estate, permitting, and taxes.

2. **Market the community** to targeted employers or industries.

There are a host of methodologies to expose a community to potential primary job employers, including social media, direct recruitment, trade shows, joint efforts with the State, and location of trade offices in desired industry hubs.

3. Ensure that a **positive business environment** exists.

There are several factors a potential primary job employer considers before locating or expanding further in a community. These include proximity and access to markets via transportation infrastructure, ease of travel, local labor availability and skills, tax and regulatory environment, quality of life issues, overall cost of doing business, incentives, required infrastructure, and political support for the economy and jobs.

4. Developing the **local workforce**.

A skilled, educated, and trained workforce is critical to economic growth. Job demand without workforce supply is a nonstarter. Understanding the availability of a competent workforce is one of the key data points in understanding the local economy. Supporting the needed workforce is typically a collaboration of local governments (including ports), the business community, and educational/training institutions which include local school districts, trade schools, apprenticeships, and college/university programs. These workforce partners are often organized through as Workforce Council or Board.

An emerging issue for port authorities and the communities they serve is the availability of affordable workforce housing. Ports have traditionally shied away from participating in housing investments, as clear statutory authority has proved elusive. However, the exploding cost of housing has reshaped the industry thinking to view workforce housing as critical to workforce availability in any given community, and it is now considered a key component of a port's role in advancing a sustainable and healthy economy.

Economic development programs have varying degrees of success. Some communities generate an atmosphere that is antagonistic towards business development, or they don't follow through in their support of inbound or expanding primary economy employers. These communities do not fare well economically over the long term. At the other end of the spectrum, there are economic development programs that are targeted, strategic, and data based. These programs understand what drives their local economy and are realistic about its stability and growth.

In between, a myriad of efforts exist; however, the most successful communities understand their economy and make decisions in concert with their local government partners, based on data and not assumptions. This is of particular significance to a port that is contemplating a brick and mortar investment subsidy in addition to their programmatic economic development support. Results that closely mirror forecasts from either programmatic economic

development or brick and mortar investments pave the way to support future investments of public funds.

As mentioned previously, affordable workforce housing is an area of growing significance to a stable economy. Likewise, it is commonly accepted that availability of high-quality childcare increases parents' participation in the workforce, thereby increasing overall productivity. Like housing availability, childcare is critical to a healthy economy, but ports have limited authority to directly participate. They do have the ability to work with their community partners on both these important components of successful economic development.

PARTNERS FOR PORTS

Economic Development Agencies and Organizations

Economic development is a complex undertaking, with many players at all levels of government. Ports are authorized to enter into agreement with any public agency, including state and federal agencies, tribal nations, and other local governments, including those in other states. A port's relationship with other governmental entities can be captured in a partnership, such as a limited liability company or a nonprofit corporation. The port acts as the lead agency, and any powers and authorities held by the participating agencies are available to the joint entity. For certain purposes, such as economic development, ports can also enter into agreements with not-for-profit entities. The following list is a summary of key potential partners available to ports for programmatic economic development. Readers should note that for traditional brick and mortar investments, there are many funding partners that are discussed in more detail in Chapter IV.

Local/Regional

Associate Development Organizations (ADOs): ADOs serve as local economic development partners for the Washington State Department of Commerce. ADOs are local organizations designated by each county- elected governing board to coordinate business recruitment, retention, and expansion activities within their service area(s) and to provide export assistance. RCW 43.330.080 directs the Department of Commerce to proactively partner with ADOs throughout Washington. ADOs are charged with the traditional roles of economic development, from participating in the creation of economic development plans, to marketing their community or region, to collaborating with other local partners, to meeting workforce development needs. The Department of Commerce routinely forwards leads to ADOs, for inbound employers trying to locate in Washington. In 2021, four ports were selected by their county to serve as their ADO.

Chambers of Commerce: Not- for- profit corporations that are networks for public entities and businesses to promote business interests. The first U.S. Chamber was created in New York in 1768.

Cities/ Towns and Counties: Incorporated cities / towns and counties throughout Washington can invest public funds in a limited but meaningful manner to promote industrial and commercial growth. RCW 35.21.703 and RCW 36.01.085 respectively give cities and counties the authority to engage in economic development programs and initiatives. Providing infrastructure and regulatory incentives are two of the most notable areas for city and county participation.

Community Facilities District: RCW Chapter 36.145 provides financing for community facilities and local, subregional, and regional infrastructure.

Community Preservation and Development Authorities (CPDAs): RCW 35.21.745 provides for the creation of CPDAs by cities, towns, and counties to protect, preserve, and enhance the historical or cultural character of Washington communities that are impacted by external events and conditions.

Cultural Arts, Stadium, and Convention District: RCW Chapter 67.38 outlines the authority to construct, modify, and operate facilities for cultural arts, stadium, and convention uses.

Downtown Partnerships: Many communities across Washington have launched downtown partnerships to promote a healthy and vibrant downtown area. They are collaborations between businesses, municipal governments, and special purpose agencies, like ports.

Economic Development Councils: Not-for-profit corporations that are collaborations between the public and private sectors in a community, to advance economic development priorities.

Metropolitan Municipal Corporation: Provides essential services not adequately provided in metropolitan areas by existing agencies, including performing comprehensive planning.

Planning Commissions: These county or city boards are appointed to provide citizen review of planning matters such as zoning and specific development proposals, as well as oversight of community comprehensive plans and local land use regulation updates and modifications. They are key to the growth and expansion of business from a land use perspective.

Public Development Authorities: Cities/ towns and counties may form public development authorities (PDAs) to assist in administering grants, enhance government efficiencies, provide services, and improve general living conditions. They are quasi-municipal corporations authorized under RCW 35.21.730.759, generally used to undertake unusual endeavors the parent agency does not want to pursue.

Public Facilities District: RCW Chapters 36.100 and 35.57 provide authority to counties and cities to acquire, construct, and operate sports facilities, entertainment facilities, convention facilities or regional centers, and associated parking facilities.

Public Stadium Authority : Public stadium authorities develop stadium and exhibition centers.

Public Utility Districts: Structured in a similar way to port authorities, public utility districts can build and operate utility services including sewer, water, electricity, and telecommunications infrastructure. These districts act in addition to many special purpose utility districts that provide sewage transportation/treatment and solid waste collection/management.

Public Waterway District: Provides funding for owners of lands bordering any navigable waterway to improve its functionality.

River and Harbor Improvement District: RCW Chapter 88.32 provides the ability to fund any river, lake, canal, or harbor improvement proposed by the federal government.

Tourism Bureaus: Tourism is Washington's fourth largest industry. Many communities have local or regional tourism agencies that, like economic development councils, are a collaboration between public and private sectors. Cities and counties may form a tourism promotion area (TPA) to generate revenues for tourism promotion (RCW Chapter 35.101). Tourism bureaus are often funded by a local hotel-motel tax.

Transportation Districts: There are a multitude of city and county authorities that create and operate transportation districts to operate monorails, airports, ferry service, public transportation, freight rail, roads, and transit systems in incorporated and unincorporated areas.

Workforce Development Councils/ Boards: Nonprofit organizations that are governed at the local level and champion training and educating a skilled workforce to support the local economy. These local entities collaborate through the Washington Workforce Association (WWA).

Statewide

Centers of Excellence: Washington State Centers of Excellence link the state's business, industry, labor, and educational systems to create a highly skilled and readily available workforce critical to the success of Washington's economy. Each center is funded through the State Board for Community and Technical Colleges (SBCTC) and is housed at a community or technical college.

Community Economic Revitalization Board (CERB): CERB provides funding to local governments and tribes for public infrastructure which supports private business growth and expansion. Ports have historically held an appointed seat on the CERB Board.

Community Colleges, Technical Schools, and Universities: These educational institutions are engaged in research, business development, and workforce training and education.

Export Finance Assistance Center of Washington (EFACW): The EFACW was created by the Washington State Legislature in 1983 to provide free export finance advice and counseling assistance to small and medium sized exporters or prospective Washington -based exporters.

Governor's Office for Regulatory Innovation and Assistance (ORIA): ORIA works with other agencies to help businesses navigate Washington's business and environmental regulatory systems and to collaborate for innovative process improvements.

Impact Washington: Funded through the national Manufacturing Extension Partnership (MEP), Impact Washington leverages university resources, government relationships, and economic development partnerships to provide excellence in training, consulting, and customer service.

Office of Minority and Women's Business Enterprises (OMWBE): OMWBE is charged with certifying small, minority and women-owned businesses to facilitate their participation in public contracting and procurement.

Small Business Development Center (SBDC): The Washington SBDC is a network of expert business advisors working in communities across the state to help entrepreneurs or small business owners start, grow, or buy/sell a business. SBDC advisors provide one-on-one, confidential, no-cost advising on all phases of small business development and are often co-located with economic development specialists in community colleges, economic development agencies, or government agencies.

Washington Economic Development Association (WEDA): WEDA is committed to recovering, retaining, recruiting, and expanding jobs and re-investment in Washington . WEDA members include economic development organizations, cities, counties, ports, tribes, businesses, education, and community-based organizations that prioritize economic development.
Washington State Department of Agriculture: A state agency that promotes the agricultural economy.

Washington State Department of Commerce: The lead state agency charged with enhancing and promoting sustainable economic vitality throughout Washington. It provides support and funding for economic development planning, infrastructure, energy, public facilities, housing, public safety, business services, and international trade.

Washington State Department of Transportation (WSDOT): In addition to building, maintaining, and operating the state highway system, WSDOT is responsible for the state ferry system and works in partnership with others to maintain and improve local roads, railroads, and airports, as well as to support alternatives to driving, such as public transportation, bicycles, and pedestrian programs.

WorkSource: WorkSource is a statewide partnership of state, local, and nonprofit agencies that provides an array of employment and training services to job seekers and employers in Washington.

Federal/National

Brownfield Renewal Authority: Like community renewal agencies, Brownfield Renewal Authority is a municipal corporation empowered to guide and implement the clean-up and reuse of contaminated property. Ports can establish a brownfield renewal authority by resolution under the authority of RCW 70A.305.160. See Chapter VII for more details.

Bureau of Indian Affairs, Office of Indian Economic Development: Within the Bureau of Indian Affairs, the Office of Indian Economic Development supports the economic development of American Indian and Alaska Native (AI/AN) communities and their partners by offering access to capital and technical assistance.

U.S. Commercial Service: The U.S. Commercial Service is the lead national trade promotion agency. Commercial Service trade professionals help U.S. companies get started in exporting or increase sales to new global markets. The Commercial Service is dedicated to helping small- to medium- sized Washington companies develop international markets.

Community Renewal Agency: Under the authority of RCW 35.81.005, these renewal agencies can be created by any incorporated city, town, or county in Washington, and ports can partner with the municipality through an interlocal agreement. Community renewal agencies are broadly empowered to undertake projects that improve and stabilize blighted areas.

Department of Labor/American Job Centers: The Department of Labor offers employment and training programs that are coordinated locally through American Job Centers.

Economic Development Administration (EDA): As the only federal agency exclusively focused on economic development, the EDA supports locally driven economic development efforts with investments in planning, technical assistance, and infrastructure targeted to new and expanding businesses.

Export-Import Bank (EXIM): EXIM is the official export credit agency of the U.S. It is an Executive Branch agency charged with supporting American jobs by facilitating the export of U.S. goods and services.

Minority Businesses Development Agency (MBDA): Within the U.S. Department of Commerce, the MBDA assists socially or economically disadvantaged individuals who own or want to start a business. The MBDA provides funding for Minority Business Development Centers, Native American Business Development Centers, Business Resource Centers, and Minority Business Opportunity Committees.

SCORE: Funded by the U.S. Small Business Administration (SBA), SCORE is comprised of over 13,000 trained volunteers who serve as counselors, advisors, and mentors to aspiring entrepreneurs and business owners.

U.S. Department of Agriculture (USDA) Rural Development Program: The USDA Rural Development program offers technical assistance, loans, grants, and loan guarantees to support job creation, advance economic development, and promote services such as (a.) housing, (b.) first responder services and equipment, and (c.) water, electric, and communications infrastructure.

U.S. Small Business Administration (SBA): The SBA was created in 1953 to assist small business owners and entrepreneurs. SBA is the only cabinet-level federal agency fully dedicated to small business and provides counseling, capital, and contracting expertise.

TOOLS FOR PORTS

Comprehensive Economic Development Strategy (CEDS): The U.S. Economic Development Administration (EDA) requires local communities and regions to adopt an updated CEDS every five years to be eligible for EDA assistance under its Public Works and Economic Adjustment Assistance program. CEDS are created locally and are designed to build economic capacity, prosperity, and resiliency through collaboration.

Export Trading Companies: Ports can create export trading companies under the authority of RCW 53.31.040, for the purpose of promoting international trade by stimulating private businesses to enter the foreign trade economy, make export services more available, generate revenues to the port, and develop markets for trade products.

Opportunity Zones: The Tax Cuts and Jobs Act of 2017 introduced Opportunity Zones, to provide tax incentives for investors to fund businesses in underserved communities. Up to 25 % of the low-income census tracts in Washington can be designated as Opportunity Zones. There are 139 eligible tracts state-wide .

Foreign Trade Centers: Foreign trade centers (or world trade centers) can be established by ports to advance foreign trade by bringing together exporters, importers, and trade service providers. They are traditionally membership organizations that foster economic growth and opportunity based on trade activity.

Foreign Trade Zones (FTZ): FTZs are zones in which private businesses can operate to receive, store, assemble, and manufacture foreign merchandise without being subject to formal U.S. Customs entry procedures, duties, and federal excise taxes. Duties and taxes are not collectable until the merchandise leaves the FTZ and enters the U.S. economy. Merchandise exported from the FTZ to locations outside the U.S. is not subject to any duties or taxes.

Grants: There are many grants available to ports for infrastructure, transportation, and property development. These grants are discussed in more detail in Chapter IV.

Industrial Development Districts (IDD): Ports can create industrial development districts to further the development of marginal lands within the political boundaries of the port district. IDDs are traditionally used for brick and mortar investments, but they can be an important tool in a port's economic development arsenal. They are discussed in more detail in Chapter IV.

Industrial Development Corporations (IDC): Formed under the authority of RCW 39.84.030, IDCs are public corporations that a port can create to facilitate the issuance of tax-exempt non-recourse revenue bonds to finance private industrial development facilities within a port's political jurisdiction. These tax-exempt revenue bonds finance non-governmental activities within the private sector that satisfy a substantial public purpose. These financial instruments are non-recourse, meaning there is no risk or financial exposure to the IDC or to the port that created the IDC.

Model Toxics Control Act (MTCA): The Department of Ecology manages the MTCA program, which contains several grants available to support economic development investments that have an environmental nexus. One specific grant is the Integrated Planning Grant (IPG) that makes state funds available for evaluating property development and the associated economic impact it may have. MTCA grants are covered in more detail in Chapter VII.

Workforce Training: Workforce development is a critical component of a successful economic development program. Ports were historically seen as public investors and developers of wharves, docks, railroads, etc., but over the years, ports have been authorized to pursue a variety of economic development related initiatives. In 2019, Washington Legislature expanded RCW 53.08.245 to (a.) diversify the list of approved organizations for port districts to work with, including nonprofits and public and private entities, (b.) expand the definition of workforce development to include occupational training, job advancement, job retention, and occupational education, in addition to traditional job training and apprenticeship programs, and (c.) expand the reach of the statute to include workforce development for port tenants and port related economic activities.

LIMITATIONS ON PORTS

Constitutional limitations on a port's activity are typically discussed when addressing economic development. The most notable of these limitations involve gifting of public funds and lending of credit.

Concern for this issue began in the 1800's when western state government entities extended

credit to railroads to build new facilities, with the goal of attracting and supporting economic growth. In some instances, these efforts were not successful as rail projects were abandoned or failed financially. This placed serious financial burdens on the government entities that had lent their financial support by extending credit.

As a result, drafters of the Washington State Constitution were deeply concerned about this potential drain on the public's resources and included Article 8, Sections 5 and 7 to specifically address these issues. Essentially, Article 8 insures that the potential loss of funds is only risked in the pursuit of the public interest, and the public is not left to underwrite failed private enterprises.

- ARTICLE 8, SECTION 5 CREDIT NOT TO BE LOANED. The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation.
- ARTICLE 8, SECTION 7 CREDIT NOT TO BE LOANED. No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm...

A two-step process is used to determine if an action is a gift of public funds:

1. Determine whether the funds are being expended to carry out a fundamental purpose of the government, and if so, whether there is donative intent.
2. Determine if the government entity received an adequate return for the transfer of funds or property.

Note that this limitation applies to funds as well as real property and assets. As such, any sale of government assets must follow statutory requirements for the sale of surplus property, in addition to following ports' internal policies. Washington's State Auditor highlights the review of these types of transactions for constitutional compliance, and if violations are found, an audit finding is issued, bringing with it a host of ramifications.

Rare exceptions to these limitations exist, such as "pass through" funds that flow to private entities through local governments.

As municipal corporations, ports are subject to these constitutional restrictions with a notable exception. Public funds may be used by port districts "for industrial development or trade promotion and promotional hosting" (Article 8, Section 8 of the Constitution).

GLOSSARY OF ECONOMIC DEVELOPMENT TERMS

501(c)(3) Organization: Designates approval given by the Internal Revenue Service to grant a nonprofit organization exemption from federal income tax, under Section 501(c)(3) of the Internal Revenue Code. Donations to such organizations are tax-deductible. The organizations described in 501(c)(3) are commonly referred to under the general heading of “charitable organizations.”

501(c)(6) Organization: Designates approval given by the Internal Revenue Service to grant a business league exemption from federal income tax, under Section 501(c)(6) of the Internal Revenue Code. Trade and professional associations are considered business leagues. The business league must be devoted to the improvement of business conditions for one or more lines of business, as distinguished from the performance of services for individual persons. No part of its net earnings may inure to the benefit of any private shareholder or individual, and it may not be organized for profit or to engage in any activity ordinarily carried on for profit.

Angel Investor: An investor who provides equity investment to start-up businesses.

Benchmarking: A quantifiable measure of economic competitiveness and quality of life that can be collected on a regular basis. Benchmarking is used to measure a region’s economic status and progress against comparable regions.

Business and Occupation (B&O) Tax: The Manufacturing B&O tax is calculated as a percent of gross receipts of products manufactured or sold in Washington. It exists in lieu of a Washington state income tax. There are some exemptions to the B&O tax.

Business Attraction: Efforts by local economic development organizations to encourage firms from outside their communities to locate headquarters or other operations within their jurisdictions.

Business Climate: The environment of a given community that is relevant to the operation of a business; it usually includes tax rates, attitudes of government toward business, and availability.

Business Creation: An economic development strategy that focuses on encouraging the formation of new companies that are locally based and will remain in the community and grow.

Business Incubator: An entity that nurtures and supports young companies until they become viable, providing them with affordable space, technical and management support, equity and long-term debt financing, and employment. The three basic objectives in creating an incubator are (1) to spur technology-based development, (2) to diversify the local economy, and (3) to assist in community revitalization.

Business Recruitment and Attraction: A traditional approach to economic development; to entice companies to relocate or to set up a new branch plant or operation in a state or locality. It is often referred to as “smokestack chasing.”

Business Retention: A systematic effort designed to keep local companies content at their present locations, which includes helping companies cope with changing economic conditions and internal company problems.

Capacity Building: Through technical assistance, networks, conferences, and workshops, capacity building refers to developing the ability of a community-based neighborhood organization to effectively design economic development strategies.

Clusters: A cluster is a regional concentration of related industries in a particular location. Clusters make communities or regions uniquely competitive for jobs and private investment. Clusters exist in locations where the economic activities for a set of related industries reach critical mass, forming links that have a meaningful impact on the performance of companies.

Comparative Advantage: An economy’s ability to produce a particular good or service at a lower opportunity cost than its trading partners.

Cost-Benefit Analysis: A method for evaluating the profitability of alternative uses of resources.

Cost Effective Analysis: Compares alternative projects or plans to determine the least costly way to achieve desired goals. Usually, an index or point system is developed to measure the effectiveness of a proposal in meeting its goals and objectives.

Demand-side Theory of Development: An explanation of economic development that focuses on (a.) discovering, expanding, and creating new markets, (b.) forming new businesses, (c.) nurturing indigenous resources, and (d.) involving government in the economy.

Eco-Industrial Park: A type of industrial park designed to encourage business interaction in ways that foster the reuse of waste streams, the recycling of inputs, and other eco-friendly mechanisms.

Economic Base: A method of classifying all productive activity into two categories: (1) basic industries which produce and sell goods that bring in new income from outside the area and (2) service industries which produce and sell goods that simply circulate existing income within the area.

Econometric Modeling: A qualitative method for analyzing the impact of a proposed action on the economy. A model permits testing the effects of an anticipated or hypothetical change.

Economies of Scale: The phenomenon of production in which the average cost of production declines as more of the product is produced.

Gap Financing: A loan required by a developer to bridge the gap between the amount of mortgage loan due upon project completion and the expenses incurred during construction. Essentially, gap financing covers the difference between what a project can support and the cost of development or purchase.

Industry Clusters: Geographic concentrations of related businesses that are complementary or competing. Regions identify clusters of targeted businesses for future planning and marketing efforts. There are two types: (1) buyer-supplier clusters and (2) shared resources clusters.
Investor Networks: Investor networks match up potential investors with start-up firms needing capital.

Land Banking: A program that preserves industrial space for a city. A city or local development authority acquires and holds land until a developer steps forward with a proposal for its use as an industrial site.

Location Theory of Development: An explanation of economic development that emphasizes factors such as transportation, taxes, business climate, access to raw materials and labor, and quality of life as they relate to industrial location.

Long-Wave Theory of Development: An explanation of economic development contending that bursts of innovation lead to economic growth.

Mezzanine Capital: Funds or goods used to bridge the gap in resources from one stage of business to another. See also Gap Financing.

Microenterprise: A business that is “smaller-than-small.” Operated by a person on a full- or part-time basis, usually out of a home. Examples include carpenters, day-care providers, and caterers.

Microloans: Very small, short-term, unsecured loans given to people without credit history and/or the collateral necessary to obtain a conventional loan. These are available from either local lenders or the SBA’s 7(m) Microloan Program.

Multiplier: A quantitative estimate of a project’s impact, often measured in dollars, jobs created, or demand.

Multiplier Effect: The process of dollar and job generation because of a new or migrating business or project, or of a local business expanding production to exports. The multiplier effect accounts for new local income generated by local spending that came from outside a community.

Opportunity Cost: The revenue forgone by choosing one use of money and resources over another. The opportunity cost of investing in the stock market is the interest that the money could have earned while sitting in the bank.

Public-Private Partnerships: A public-private partnership is a collaboration between a government agency (such as a port) and a private sector company to build, finance, and operate facilities, infrastructure, and real assets. Also known as P3s.

Seed Capital: Equity investment supplied to help a company get off the ground. The money is almost always supplied by an entrepreneur and his/her family, friends, and relatives. Seed capital is used to help attract (or leverage) additional investment.

Second Wave: A strategic paradigm of economic development that focuses on creating new businesses and retaining firms already in the community.

Smokestack Chasing: The pursuit of traditional manufacturing businesses by local economic development organizations.

Start-Up: A company in the first stage of the evolution of a business.

Start-Up Capital: Funds that help nascent enterprises acquire space, equipment, supplies, and other inputs needed to launch a business.

Supply-Side Theory of Development: An explanation of economic development that focuses on (a.) reducing costs of production to lure capital to a new location, (b.) typical strategies including tax abatements, reductions, and exemptions, (c.) guaranteed and direct loans, and (d.) reduced regulation.

Sustainable Development: Development that does not destroy or eventually deplete a location's natural resources. Sustainable development helps ensure a better, healthier living environment and contributes to an area's quality of life, which is one of the main goals of economic development.

Tax Credit: Money directly subtracted from a tax bill after a tax liability has been incurred.
Tax Deferral: A policy that permits individuals whose property values have risen dramatically through no fault of their own to pay taxes based on old values.

Tax Increment Financing (TIF): A tool of economic development in which taxes that can be traced to a specific development are used to repay bonds that were issued to finance that development. When bonds are fully paid, the jurisdiction can begin to receive the additional tax revenue produced by the development.

Technical Assistance: Includes assistance in preparing grant applications, training staff, applying for loans, and marketing the product. It may also include assisting a small business to improve its product or manufacturing process. Technical assistance is generally aimed at general business planning or providing specific services that a small business typically cannot afford.

Under-employed: Includes all persons whose skills, education, or training qualifies them for a higher skilled or better paying job than they presently hold. It also includes persons only able to find part-time rather than full-time work in their fields.

Venture Capital: An investment for which there is a possibility of very substantial returns, as much as 40%, within a short period. It is usually invested in dynamic, growing, and developing enterprises, not in start-ups.

Workforce Housing: The Urban Land Institute (ULI) defines workforce housing as 60 – 120% of the Area Median Income (AMI), or moderate or middle income. The AMI is the midpoint of a region's income distribution—half of families in a region earn more than the median and half earn less than the median. Inflated housing markets aggravate the ability of the workforce to secure housing, especially for those with families.

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7. PROPERTY RESTORATION AND REUSE

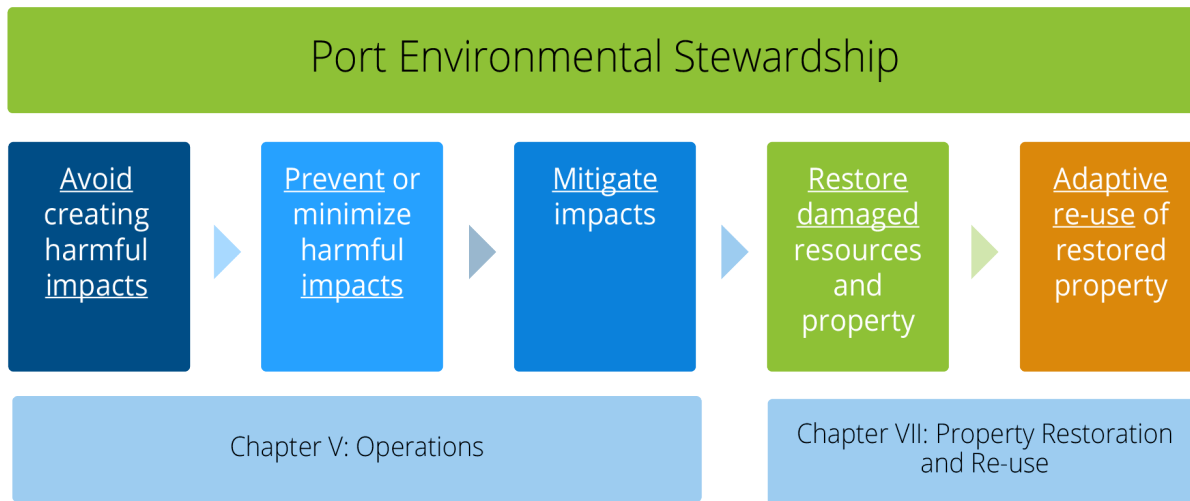
“We don’t have to sacrifice a strong economy for a healthy environment.”

–Dennis Weaver

PROPERTY RESTORATION AND REUSE

Chapter V discussed the principles of environmental stewardship that often result in the creation of an environmental function within a port’s organizational structure. That environmental function is responsible for (a.) compliance with environmental regulations and best management practices, (b.); fostering an organizational value of environmental awareness and leadership, and (c.) subscribing to practices and decisions that reduce the port’s environmental footprint.

Ports have been instrumental across Washington in not only avoiding negative impacts, but in restoring damaged resources. Most notably, ports have been statewide leaders in the adaptive reuse of contaminated properties, returning them to valuable community and economic use. Evolving port environmental stewardship is represented on the following illustration.



The Washington State Department of Ecology (Ecology) maintains a list of contaminated sites in the state, many owned by public agencies such as ports. A site as considered by Ecology is the entirety of the area in which contaminants have come to rest, regardless of property boundaries, legal descriptions, or ownership. This often complicates cleanups as the approach may include multiple property owners. These contaminated sites range from gas stations to dry cleaners to manufacturing facilities. Typically, a contaminated site found on port property will be attributed to oil and fuel spills, maintenance facilities such as boat repair facilities, or tenant manufacturing operations.

The negative impacts of contaminated properties reach beyond the site boundaries and can adversely affect neighborhoods, cities, and regions as eyesores that may harm human health and the environment, limit economic growth and investment, reduce property values and taxes, and contribute to blight.

This chapter explores traditional restoration (cleanup) and adaptive reuse of property (brownfields).

CLEANUP: RESTORING DAMAGED RESOURCES AND PROPERTY

In 1998, Washington voters passed Initiative 97, the Model Toxics Control Act (MTCA) Chapter 70.105D RCW, to address a growing concern for the contamination of Washington land and property. MTCA contains two critical features: (1) the fundamental regulatory structure governing cleanup of contaminated sites, and (2) creation of a grant and loan program to provide financial support to municipalities (including ports) that address potential liabilities. Funds for the program come from a tax on the first possession of hazardous substances, such as crude oil or pesticides, that are imported into Washington. These funds are held in a state trust. The tax is levied if the total amount in the trust account falls below \$7.5mm and is suspended if the amount in the trust exceeds \$15mm.

While the MTCA program addresses most contaminated sites under the direction of Ecology, there are exceptions that are addressed by other programs within Ecology:

- **Active spills** of hazardous substances are handled by Ecology's Spill Prevention, Preparedness, and Response Program.
- **Dangerous waste facilities** and sites with high concentrations of certain dangerous chemicals are managed by the Hazardous Waste and Toxics Reduction Program under the state Hazardous Waste Management Act and can also be addressed by the federal Resource Conservation and Recovery Act (RCRA).
- **Nuclear cleanup and radioactive waste** are handled by the Nuclear Waste Program.
- Some **former landfills** are handled by Ecology's Solid Waste Management Program.
- Some **large industrial sites** are handled by the Solid Waste Management Industrial Section. These sites may be cleaned up under state and federal programs.

In addition to many Ecology programs, Washington recently created a new state entity, the Pollution Liability Insurance Agency (PLIA), to specifically address the funding needs of property owners and operators to meet the financial responsibility of addressing the cleanup requirements for underground storage tanks. PLIA provides informal advice and assistance for the administration and technical requirements of MTCA and for producing rapid written opinions on remedial actions.

Ports should consider utilizing the PLIA program when their cleanup liability includes petroleum and storage tank issues.

In addition to these state programs that address specific types of sites, there are federal regulations that focus on the cleanup of heavily polluted sites:

- The most prominent federal law is commonly known as the Federal Superfund program or more technically, as the Comprehensive Environmental Response, Compensation and

Liability Act (CERCLA). It is administered by United States Environmental Protection Agency (EPA). Contaminated sites are listed on the National Priorities List (NPL) which includes upland properties and in-water contaminated areas. The Federal Superfund program does not address sites contaminated with petroleum products; those are left up to the states.

- Like state government, the federal government has additional laws relative to site cleanups, most notably the Resource Conservation and Recovery Act (RCRA). RCRA is the nation's primary law that governs the disposal of solid and hazardous waste. Signed into law in 1976, it is an amendment to the original Solid Waste Disposal Act of 1965. In essence, it gives the EPA the authority to control hazardous waste from cradle to grave. This includes the generation, transportation, storage, and disposal of hazardous waste.
- The Natural Resource Damage Assessment (NRDA) program is intended to restore natural resources that have been injured by long term or catastrophic contamination. A cleanup project under CERCLA or MTCA may be associated with an NRDA process and settlement, however all the liable parties may not be involved.

Sites that are on the federal National Priority List (NPL) will go through the federal EPA cleanup process. In 2019 there were over 1,300 Superfund sites on the National Priorities List.

Sites that are listed under Washington's MTCA program will go through the state's MTCA program. Ecology maintains a list of over 12,000 contaminated sites in the state of Washington. Approximately 1,000 of these sites are owned by public agencies; more than half of them have an estimated cleanup cost of less than \$2 million each. Most port site cleanups will fall under state regulation, under Ecology's jurisdiction.

The legal basis for responsibility for a site's cleanup—strict, joint and several liability—has its roots in both federal and state law.

In whole or in part, CERCLA imposes liability on all parties for the presence of hazardous substances found at a site. This liability is retroactive without temporal constraint. It is strict in the sense that a claim of non-negligence or compliance with existing laws and regulations at the time the environmental damage occurred does not relieve the liability; and it is joint and several, meaning that one potentially responsible party (PRP) may be liable for the entire cleanup when the harm created by multiple parties cannot be separated.

Washington has similar liability allocations for persons who owned or operated a site or facility at the time of release, as well as for persons who later or currently own the site, even if they did not cause the contamination (RCW70.105D.040-1). Simply stated, to encourage cleanup action and discourage litigation, each person who is liable under MTCA is strictly, jointly, and severally liable to Washington State for all remedial action costs and for all natural resource damages resulting from the release or threatened release of hazardous substances at a site or facility (RCW70.105D.040-2).

This liability exists whether Ecology has formally named a person as a ‘potentially liable person’ (PLP) and regardless of whether Washington State chooses to compel cleanup at a site. Strict liability means that a person is liable for the costs of damages resulting from the release, without regard to fault. Taking possession of the site after the environmental damage occurred can still make a person liable. Joint and several liability means that each person is liable for all the costs of the remediation and damages, regardless of relative fault compared to other PLPs.

This notion of strict, joint, and several liability is often difficult to accept, but it has been adjudicated multiple times; it is the law of the land, at both the federal and state level. With that understanding, ports can successfully and expeditiously navigate the complex world of cleanups. Most notable is the ability of ports as a liable entity to seek contributions from other liable parties through settlement agreements. That agreed-upon distribution of liability, combined with the recovery of liability insurance, state/federal grants, and other sources makes property cleanups and remediation feasible.

Funding and financing sources for cleanups are discussed in more detail later in this chapter.

Ports are most likely to become involved in cleanups when they discover they have strict, joint, and several liability for a spill or ongoing environmental damage to property they own or operate. This is likely from fuel spills, leaking of stored hazardous materials, land disposal with inappropriate fill materials, urban runoff, or manufacturing and industrial activities by tenants. Recent port surveys revealed that virtually all ports own real estate for port operations or for leasing purposes. Therein lies the importance of tenant and port environmental compliance programs, discussed in more detail in Chapter V.

When purchasing property, ports are advised to conduct a Phase I Environmental Site Assessment (ESA) to determine if there is a potential for contamination. A Phase I ESA involves reviewing all records and gathering information about a site’s past ownership and activities that may have involved hazardous substances or reported spills.

A Phase II ESA is a more detailed site study that includes collecting soil, groundwater, sediment, and/or air samples onsite to determine the extent of contamination, the types and probable sources of the contamination, the level of risk to humans, and the environment associated with the contamination. It is also to determine whether the contamination meets or exceeds levels that require cleanup.

Both the federal and state laws generally consist of the following components that are typically pursued in sequence:

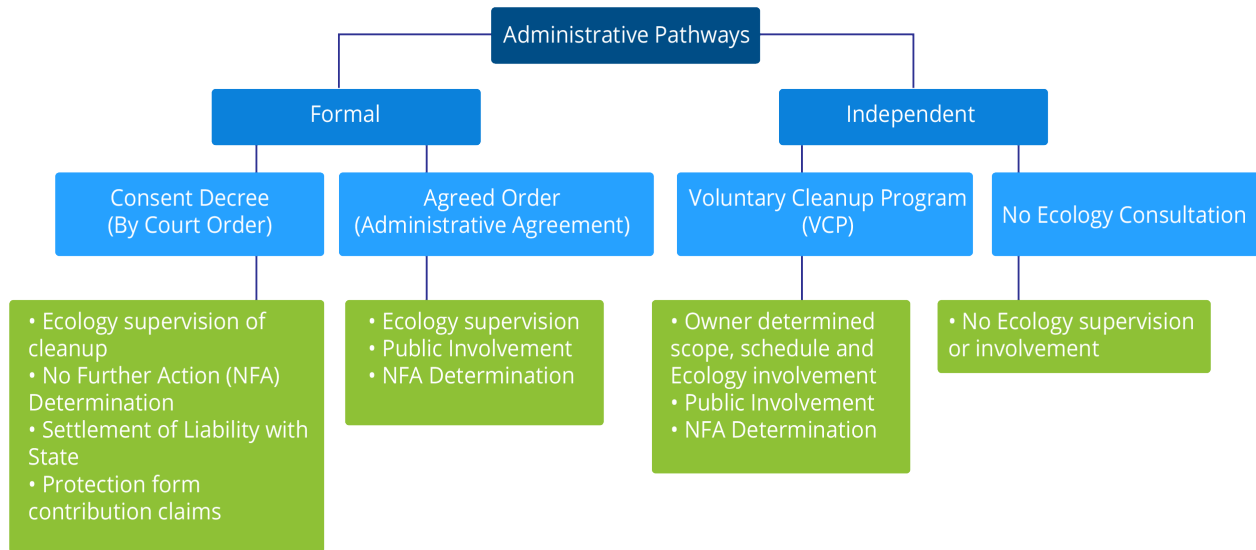
- 1. Reporting Requirements:** These requirements generally determine when a report must be made concerning found contamination or an accidental release of contaminants, such as an oil spill. Ports are advised to report known or suspected releases of hazardous materials to Ecology.

2. **Remedial Investigation (RI):** A comprehensive assessment of the hydrological, geological, biological, and chemical conditions of the site. A remedial investigation often includes a review of historical practices and site records, as well as interviews with site operators and owners to inform site investigation. The site investigation is a detailed site study that includes collecting soil, groundwater, sediment and/or air samples on site to determine the nature and extent of contamination, the types and probable sources of the contamination, the level of risk to humans and the environment associated with the contamination and whether the contamination meets or exceeds levels requiring cleanup.
3. **Feasibility Study (FS):** A study of cleanup options that is based on a list of criteria and determines the best option for protecting human health and the environment. This option is called the preferred option.
4. **Record of Decision (ROD), Agreed Order (AO), or Consent Decree (CD):** The legal document that describes what the responsible parties must do to address the cleanup. A ROD applies to federally driven cleanups, and a CD applies to state driven cleanups. See the illustration further in this chapter that describes the administrative pathways to cleanup.
5. **Cleanup Action Plan (CAP)/Remedial Design:** The CAP contained in a ROD, AO, or CD describes the technical details for conducting the cleanup.
6. **Operations Maintenance and Monitoring Plan:** The ongoing maintenance and monitoring requirements following a cleanup to ensure its long-term effectiveness.
7. **No Further Action (NFA) Letter:** A government-issued letter indicating that there is no further action required following cleanup, often with a carve out for ongoing monitoring.

The State of Washington has developed standard methods for approaching and designing a cleanup.

Method	Applicability	Description
Method A	Routine cleanups with only a few hazardous substances. Smaller and simpler sites usually with no groundwater contamination.	Utilizes tables of cleanup levels for common hazardous substances.
Method B	Can apply to any site, but typically is used for sites with contaminants not included in Method A tables.	Uses risk assessment equations, applicable state and federal laws, and other requirements. Cleanup levels are based on residential land use and exposure to children, so are typically the most stringent.
Method C	Sites that will be used for industrial activities.	Uses risk assessment equations, specific to the contaminants and conditions of the site. The exposure levels are modeled for adult workers.

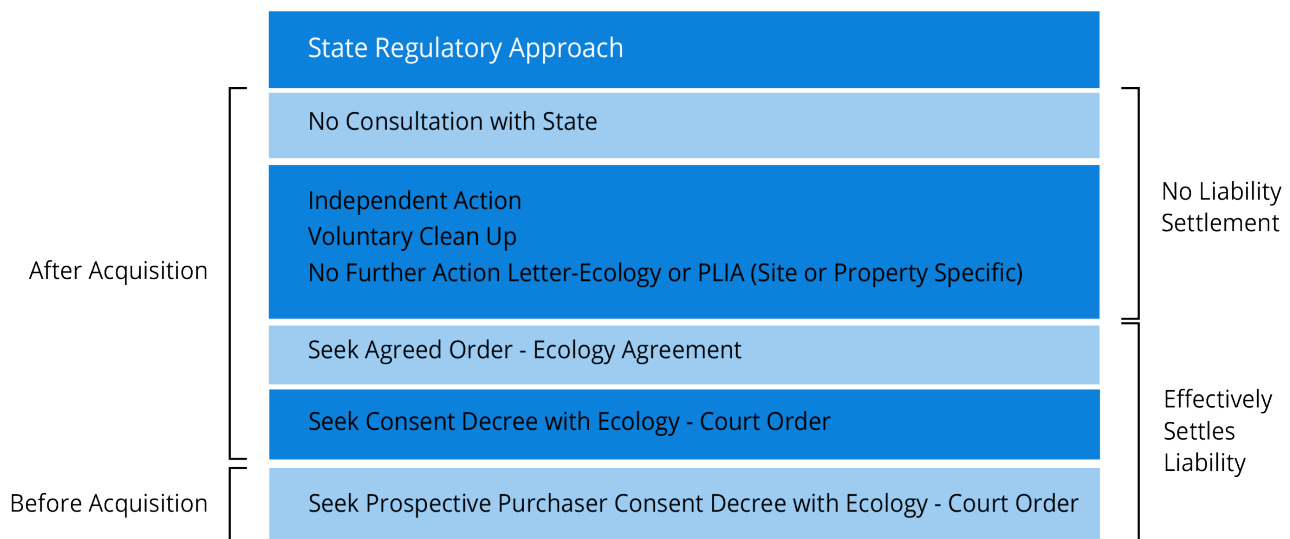
Ecology provides two administrative pathways to manage site cleanups: the formal process and the independent process. While both pathways share the targeted net effect of removing the sites from the state list of contaminated properties, they come with varying legal protections which impact future liability and risk. In addition, they impact the type and amount of potential grant funding that is available. Ports should carefully select their pathway forward while taking risk and funding into account.



When considering the acquisition of a contaminated site, ports should consider the risk they are assuming and determine whether they are comfortable addressing legal liability before after acquisition. The following table illustrates the temporal nature of liability settlement relative to acquisition. It includes the possibility of receiving an NFA Letter from Ecology, or in the case of petroleum related sites, from PLIA.

ADAPTIVE REUSE-BROWNFIELDS

Communities across the country are challenged by underutilized, blighted properties that are encumbered by real or perceived environmental contamination, but that still hold potential for positive, adaptive reuse possibilities. These properties are known as “brownfields.” Cleanup and



redevelopment of brownfield properties can transform these liabilities into community assets that create jobs and tax revenues, eliminate blight, protect environmental and human health, and prevent urban sprawl. They are often small properties with low levels of environmental contamination, such as gas stations and dry cleaners. These properties have potential to be economically successful.

It is estimated that there are over a million brownfield sites nationwide. A national survey of U.S. cities found an average of 134 brownfield properties per community and as many as 20,000 sites per state. Most of the sites are smaller properties, with an average size of 6.5 acres.

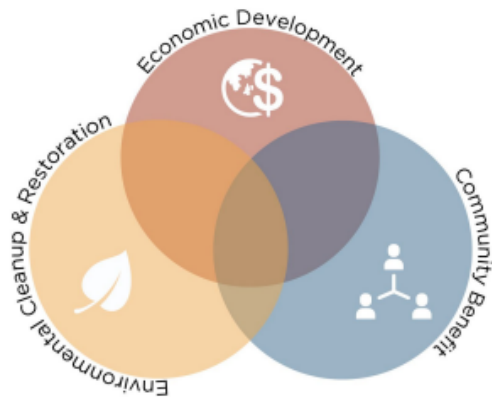
The two primary challenges to the cleanup and redevelopment of brownfield properties are cost and liability concerns, both of which contribute to risk and uncertainty. Environmental cleanup adds to the typical costs of real estate development planning, entitlement, and construction.

The legal and procedural steps necessary for investigating, cleaning, acquiring, and reusing contaminated sites can be expensive and time consuming. In practice, whether sites are remediated and reused or not usually comes down to financial feasibility—if the potential future revenues are greater than the costs of remediation, or if the community benefits justify the investment. This is particularly challenging with small brownfield properties where the limited square footage of development potential may not justify the costs of environmental cleanup.

Adaptive reuse capitalizes on restoring damaged assets to create new job opportunities, generate increased taxes, and generally return undervalued properties and facilities to productive economic and community use. Over the years, the brownfield approach has evolved from cleanups focused on addressing legal liability, to cleanups that also carry known and predictable economic and community benefits. The evolution of brownfield cleanups is summarized as follows:

- **First Generation (cleanups):** First generation cleanups were focused exclusively on cleanup and allocation of legal liability, and they led to negative market impacts and regulatory inflexibility. The net result was that cleanups were stalled, as liable parties pursued legal action to delay any actual cleanup.
- **Second Generation (brownfields):** Regulators and site owners recognized the economic benefits of property cleanup and redevelopment, which resulted in public-private partnerships and greater regulatory flexibility. This resulted in regulatory reforms in the 1990s and early 2000s, including Washington's voluntary cleanup programs (VCP), specifically designed to promote redevelopment and limit liability of innocent purchasers.
- **Third Generation (adaptive reuse):** Third generation brownfield cleanups integrate environmental cleanup and economic revitalization with community benefits. Community benefits can include partnership building, open space, public access, and more. This approach leads to more sustainable development and generates much broader support

for project implementation. Partnership building with state and federal agencies, nongovernmental organizations (NGOs), community groups, educational institutions, and concerned citizens can likely expedite the review process and open opportunities for funding. Through adaptive reuse, the resulting environmental, economic, and community benefits differentiate third generation brownfield efforts from earlier cleanup projects. This model aligns with the traditional triple bottom line approach to sustainable development, which evaluates projects' economic, environmental, and social impacts.



The cleanup and redevelopment of brownfields is an important component of repositioning communities and local/regional economies to address legacy issues and take advantage of new opportunities. Brownfield properties fall into three general categories of redevelopment potential, based on value-to-cost comparison.

Category	Description	Results
●	Market value of redeveloped property far exceeds costs.	Private real estate market likely to complete cleanup and redevelopment.
●	Redevelopment revenues close to covering development and environmental costs.	Project not feasible for private market to undertake. Some public investment can make it viable.
●	Environmental liability far greater than property value.	Difficult to redevelop. Requires significant public investment or change in market.

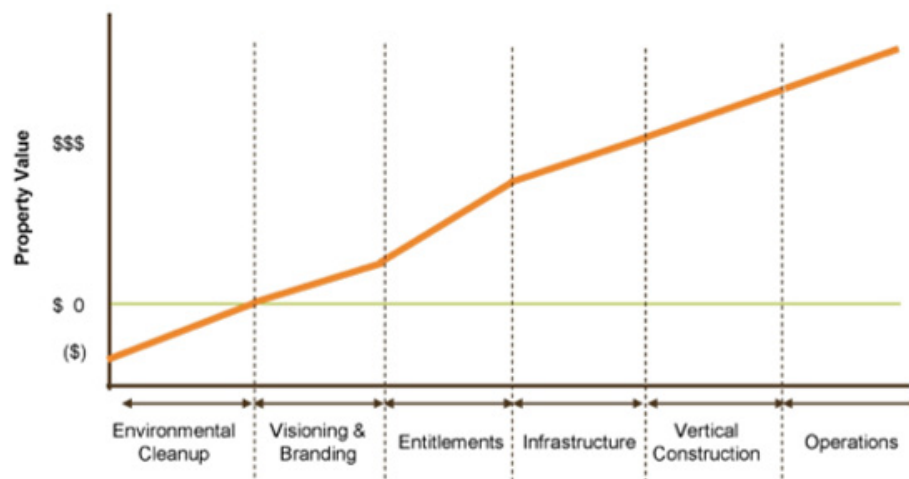
In communities with strong real estate markets and high land prices, it is more typical for the private sector to undertake brownfield challenges, as the market will bear the additional cleanup costs. In some instances, the market is very close to carrying the cost of cleanup, and in some markets, the cost to value ratio of a property turns upside down. It is in these latter two circumstances that public agencies such as ports, with access to grant funding and patient capital, might be particularly suited as brownfield developers.

Adaptive reuse is an approach to redeveloping existing property and facilities that, for a host of reasons, are underperforming. These underperformers are not only contaminated, but often suffer from multiple other constraints such as inappropriate entitlements, lack of infrastructure, lack of market vision, or a combination of these and other factors.

Considerations for undertaking a brownfield site redevelopment include:

- 1. Understand and Manage Risk:** Concern about the risk of liability for contamination is one of the major reasons why contaminated properties sit idle. Knowledge of a site's physical characteristics gleaned through (a.) field investigations and records searches, (b.) identifying previous operators and owners to possibly spread out the risk, (c.) securing commitments to grant funding, (d.) obtaining pre-acquisition liability settlements, and (e.) partnering with key entities all contribute to managing risk. There are commercially available insurance products that can minimize a port's exposure to unexpected cleanup requirements, cost overruns, and third-party damage claims. These types of policies are complex and everchanging alongside the risk market, but they are worth exploring as a tool to minimize risk.
- 1. Begin with the End in Mind:** Develop a vision for the property that the community or market can embrace. A solid vision will drive the cleanup and remediation design and help reduce development costs. The vision should resonate with community desires and expectations.
- 1. Establish a Strong Project Team:** Brownfield projects are technically complicated and economically challenging. Building a core team of dedicated port staff and consultants is key to a successful outcome. A dedicated team will embrace the vision for a site with increased community and economic value. A qualified team should have strategic leadership, experience in environmental science and engineering in the state, in-depth knowledge of state and federal environmental laws, and demonstrated strengths in land use planning, natural resources, cultural expertise, and public involvement.
- 1. Develop a Financing Proforma:** Developing a plan of finance, or financing proforma, is essential to success. There are great number of financing opportunities for brownfields; having an early roadmap to those opportunities is paramount.

Financing brownfield developments has become more fluid as the value of 3rd generation brownfields has increased in communities, the private marketplace, and the regulatory world. To better apply funding sources to projects, a review of where project value is created is critical. The chart that follows compares the relative value increases of a brownfield project.



The general sources of brownfield funding include:

- **Public:** Multiple public sources exist for both comprehensive and component funding of brownfield site redevelopment projects. These sources are found in federal and state programs, and each differs in applicability to and requirements of the grantee. Funding sources are either grants with a match requirement or support for a loan. Loan support comes in the form of interest rate buy-downs or guarantees that are essential for traditional commercial financing.
- **Private Philanthropy:** Environmental grant programs under private foundations could potentially be applied to redevelopment of brownfield sites, especially those intended for a public or open-space use. The distribution of these funds is mission-driven, so the foundation program's priorities and the intended purposes of the redevelopment must be very closely aligned.
- **Specialized Commercial Lending Institutions:** With the advent of more restrictive banking regulations, the number and availability of these loan sources are limited. Quite often, institutions are mission-driven to target certain objectives, such as improving low-income communities or supporting green jobs; however, their lending requirements and credit tests make their loans less applicable to the brownfield industry, particularly for sites where the environmental liability exceeds the market value of the redeveloped property.
- **PLP Contributions:** As discussed previously, the legal principles of strict, joint, and several liability apply in both state and federal cleanup projects. Research into prior PLPs that were site owners or operators often results in settlements to fund appropriate and assignable liability to address historic contamination remediation costs.
- **Insurance Recovery:** Seeking contamination coverage from commercial general liability insurance policies has become more commonplace, particularly in states (such as Washington) which have a legal structure that favors the position of the insured. Liability coverage may be available in policies predating the mid-1980s, after which explicit exclusions for environmental contamination were written into insurance policies.

Note on Insurance Recovery

Two federal environmental laws, the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation, and Liability Act, adopted in 1976 and 1980, respectively, forever changed perspectives on environmental contamination. In concert, these acts created a legal obligation: anyone who owned or operated a contaminated site or was responsible for transporting hazardous materials that impacted the site had strict, joint, and several liability for the contamination on the property and its subsequent cleanup, regardless of the cost or their culpability in causing the pollution.

Commercial general liability policies historically did not specifically exclude coverage for this new and increased exposure for environmental damage; however, beginning in the mid-1980s, insurance companies began to exclude coverage as more and more court decisions found that liability protection extended to environmental damage caused by sudden and accumulated contamination.

As a result, the insured could access policy coverage by making claims against carriers before these exclusions were put into place. To make a claim, there must be a threat of regulatory action or other proof of loss, such as a third-party claim, to engage in insurance coverage discussion with a carrier. State or federal agency regulatory action that identifies impacts on groundwater is often sufficient to trigger a claim.

Common ways to approach the process include retaining a consulting firm that specializes in historical insurance recovery and/or legal counsel, either on a fee basis or by negotiating a percentage of claim resolution.

The determination of claim coverage aligns the existence of liability insurance in effect and the presence of contamination on the property. The policy may well have expired, but the historical coverage is still in place. These liability insurance settlements can be substantial.

A compendium of environmental and brownfield funding sources is contained in Appendix A.

GLOSSARY OF ENVIRONMENTAL TERMS

Abatement: Reduction in degree or intensity.

Agreed Order: A legal document issued by Ecology which formalizes an agreement between the department and PLPs for the actions needed at a site.

Brownfield: Real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

BTEX: An acronym for benzene, toluene, ethylbenzene, and xylenes, a group of hazardous substances that are commonly associated with gasoline and other petroleum products.

Carcinogen: Any substance or agent that produces or tends to produce cancer in humans.

Cleanup: Actions taken to deal with a release or threatened release of hazardous substances that could affect public health and/or the environment. The term “cleanup” is often used broadly to describe various response actions or phases of remedial responses, such as a remedial investigation/feasibility study.

Cleanup Action Alternative: One or more types of treatment technology, containment actions, removal actions, engineered control, institutional control, or other types of remedial actions (also known as cleanup action components), used individually or in combination to achieve a cleanup action at a site.

Clean Action Plan (CAP): A document that describes selected cleanup method(s) and specifies cleanup standards and other requirements. It is based on information and technical analyses generated during the RI/FS, also weighing consideration of public comments and community concerns. A draft CAP (DCAP) is made available for public review and comment before finalizing.

Cleanup Level: The concentration of hazardous substance in soil, water, air, or sediment that is determined to be protective of human health and the environment, under specified exposure conditions.

Cleanup Rule: The Cleanup Rule sets standards and procedures for cleaning up contaminated sites under Washington’s environmental cleanup law, the Model Toxics Control Act (MTCA).

Consent Decree (CD): A legal document that is approved and issued by a court, formalizing an agreement reached between the state and the PLP(s) on what will take place during the RI/FS and/or cleanup action. A CD is similar to an Agreed Order, except that a CD goes through the courts. CDs are subject to public comment. If a CD is substantially changed, an additional comment period is provided.

Direct Climate Impacts: Changes that occur as a result of warming trends, cooling trends, or extreme weather events. Examples include a lack of snow to operate mountain resorts, melting glaciers in mountainous regions, and floods, landslides, and wildfires.

Ecological Footprint: The impact of a person, community, or activity on the environment, expressed as the amount of biologically productive land and water required to produce the goods consumed and to assimilate the wastes generated.

Engineering Controls: Containment and/or mitigation systems designed to prevent or limit the movement of or exposure to hazardous substances.

Environmental Management: Management of natural resources through policies and practices designed to protect natural values and resources while providing a platform for economic use. **Environmental Stewardship:** Responsible use and protection of the natural environment through conservation and sustainable practices to enhance ecosystem resilience and human well-being.

Feasibility Study (FS): A companion study for the RI in which different cleanup technologies and their costs are identified and evaluated based on criteria established during the RI. These two steps are often combined and referred to as the RI/FS.

Groundwater: Water in a saturated zone or stratum beneath the surface of land, or below a surface water; water that fills spaces between soil and rock particles underground.

Hazardous Sites List: A semiannual list of ranked contaminated sites slated for cleanup under the MTCA.

Independent Cleanups: Property owners conduct independent cleanups on their own, or with help from Washington's VCP. Independent cleanups still meet MTCA standards, but property owners set their own timelines. Owners can ask for help through the VCP but do not have to. Their only requirement is to hold public meetings or comment periods if a site is to be delisted.

Indirect Environmental Change Impacts: These are the byproducts of climate change. Global temperature changes may create water shortages, loss of biodiversity, impacts to landscape aesthetics, and damage to infrastructure through extreme weather events.

Institutional Controls: Measures to limit or prohibit activities that may interfere with the integrity of a cleanup action or result in exposure to hazardous substances.

Interim Action: A cleanup action that only partially addresses the cleanup of a site. An interim action is typically either:

1. A remedial action that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed; or
2. A remedial action needed to complete a Site Hazard Assessment or an RI/FS, or to design a cleanup action.

Maximum Contaminant Level: The maximum concentration of a contaminant that is allowed in drinking water, as established by the EPA under the Federal Safe Drinking Water Act.

Model Toxics Control Act (MTCA): Washington legislation passed in 1988, with the purpose of identifying, investigating, and cleaning up facilities where hazardous substances have been released. It defines the role of Ecology and encourages public involvement in the decision-making process. MTCA regulations became effective on March 1, 1989, and they are administered by Ecology.

Monitored Natural Attenuation (MNA): Monitoring the reduction of contaminants through natural processes over time.

Monitoring Wells: Special wells drilled at specific locations on or off a hazardous waste site, where groundwater can be sampled at selected depths and studied to determine the direction of groundwater flow and the types and amounts of contaminants present.

Natural Background: The concentration of a hazardous substance consistently presents in the environment that has not been influenced by localized human activities.

Phase I Environmental Site Assessment: Essentially a desk review of all records and knowledge associated with a site's past ownership and activities that may have involved hazardous substances or reported spills. These are economical early assessments of potential issues.

Phase II Environmental Site Assessment: A more detailed site study that includes collecting soil, groundwater, sediment, and/or air samples on site to determine the extent of contamination, the types and probable sources of the contamination, the level of risk to humans and the environment associated with the contamination, and whether the contamination meets or exceeds levels requiring cleanup.

Potentially Liable Person: Based on credible evidence, any person whom Ecology finds to be liable under authority of RCW 70.105D.040.

Remedial Action (or Cleanup Action): Construction work to clean up a contaminated site. Examples include (a.) removal of contaminated soils or sediment for treatment or disposal at an offsite location, (b.) pumping and treating of contaminated ground water, (c.) sealing off contaminated soils or sediment beneath a cap or barrier, (d.) adding chemicals or enhancing the growth of microorganisms that break down contamination in place.

Remediation Levels: Remediation levels are not the same as cleanup levels. A cleanup level defines the concentration of hazardous substances above which a contaminated medium (e.g., soil) must be remediated in some manner (e.g., through treatment, containment, or institutional controls). On the other hand, a remediation level defines the concentration (or other method of identification) of a hazardous substance in a particular medium, above or below which a particular cleanup action component (e.g., soil treatment or containment) will be used. By definition, remediation levels exceed cleanup levels.

Risk Assessment: Evaluation of the adverse health effects to humans (e.g., the potential to cause cancer and noncancer health effects) and the environment posed by contamination at a hazardous waste site.

Site: As considered by Ecology, a site is the entirety of the area in which contaminants have come to rest, regardless of property boundaries, legal descriptions, or ownership. This often complicates cleanups, as the approach may include multiple property owners.

Site Development Plan: The ultimate planned development use for a brownfield project, to provide documentation for land use entitlements, permits, and construction.

Sustainable Development: Traditionally defined as meeting the needs of the present without compromising the ability of future generations to meet their own needs.

Vapor Intrusion: When potentially hazardous vapors migrate into buildings from sources, such as soil or groundwater, that are contaminated with volatile (vapor forming) chemicals. If these volatile chemicals are sufficiently toxic, they can impact indoor air quality, causing unhealthy levels of hazardous substances.

Voluntary Cleanup Program (VCP): Voluntary cleanups are initiated by persons responsible for the contamination at a site, without prompting by Ecology. Voluntary cleanups may be conducted (a.) completely independently of Ecology, (b.) mostly independently but with some Ecology assistance or review, or (c.) with detailed Ecology oversight, under a signed legal agreement such as an Agreed Order or CD.

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8. PLANNING

“Give me six hours to chop down a tree and I will spend the first four sharpening the ax.”

—Abraham Lincoln—American lawyer and statesman, 16th President of the United States

PLANNING

Planning began to emerge as a professional discipline in the United States in the early 1900s, driven by changes in technology and the economy. As manufacturing was concentrated in urban areas and population density grew in U.S. cities, environmental and social conditions deteriorated. Obvious and unsustainable land-use conflicts demanded more thoughtful development.

The Washington state citizens' initiative that led to the creation of the public port system in the late 1800s was the direct result of the unplanned and haphazard private development of the state's waterfronts. Thoughtful development in Washington and the U.S. required a rational approach to growth, and the American urban planning movement took root.

Federal, state, and local laws and regulations have evolved over the last century to address the potential impacts of growth and development. As a result, traditional land use and development planning is steeped in evaluating impacts on society, the natural environment, and the human experience. Evaluating those impacts is embedded in today's complex and robust permitting system. Any discussion of land-use and development planning for ports must include an understanding of the regulatory framework that requires assessment of impacts as well as the robust permitting system that underpins development.

Land-use and development planning are fundamental components of port and community planning. There are also a host of other critical, port-wide planning efforts that guide and prepare a port to effectively respond to external events or chart a course in advancing its unique mission. Chapter VIII explores these elements of port-wide planning:

- Strategic planning (Setting the course for the port's present and future)
- Comprehensive Scheme of Harbor Improvements (Informing the public of the port's management of public assets)
- Land use and environmental impact planning and permitting (Understanding the impacts of proposed projects and activities)
- Communications and public involvement planning (Informing the community and involving community members in port plans and activities)
- Emergency and resiliency planning (Being prepared to manage and recover from the unexpected)

Other operational planning efforts are addressed elsewhere in the manual:

- Financial planning is covered in Chapter IV: Budgeting, Finance and Compliance (Providing

the resources)

- Operational planning for airports, real estate, parks and recreation, broadband, marinas, marine terminals, and more is covered in Chapter V: Operations (Implementing the vision)



STRATEGIC PLANNING

“Coming together is a beginning; keeping together is progress; working together is success.”

–Ford Motor Company

Strategic planning for public ports is developing true alignment on multi-year priorities and effectively embracing them to link the present to the future. The strategic planning process is often of greater value in developing alignment on port priorities than the resulting plan, mainly because the process is something that requires the active participation of the commission with the senior staff. It cannot be delegated.

Strategic planning requires commissioners and staff to carefully assess, look ahead, and create a strategic, preferred future for the port and the community it serves. Thinking strategically balances looking back to historic data and past efforts with looking forward to a

vision of a preferred, shared future.

At its heart, strategic planning first must ask: Why? Like most local governments, ports tend to initially gravitate to discussing and exploring what they intend on doing. While identifying what



a port will do is essential, this must be clearly based on the understanding of why a port is pursuing a particular course or action. And identifying how a port will accomplish its ambitions and goals is equally important to success. The why, what, and how are the essential components of integrated strategic planning.

The traditional architecture of strategic plans builds on the port's mission: why the port exists within its community. The plan builds on that foundation of purpose and further explores how the port will accomplish what it needs and wants to accomplish. There are a variety of terms used to define the components of a strategic plan. The following definitions are traditional strategic planning terms.

Mission: The mission statement clearly describes why the port exists, and typically who and what it serves. The mission is not the port's brand; it defines the brand. A mission statement should have a 10- to 20-year life. If the mission is redefined more frequently than this, there can often be a lack of alignment on why the port exists. Defining the mission is ultimately driven and determined by the commission.

Values: Values define how a port will undertake its work and who and what it values (e.g., port district residents, customers, tenants, the environment, safety, financial performance, transparency). Strong and institutionalized organizational values are very powerful and effective in guiding the behavior of a port. Like mission statements, value statements are longer-lasting and change less frequently. Identifying a port's values, like defining a port's mission, is ultimately driven by the elected commission.

Goals: Goals describe what a port wants to achieve. A goal is a destination that, once achieved, speaks to the success of the organization. The most effective goals are those that are quantified, measurable, and have a timing component. Goals must be realistic and achievable, and the best goals define a specific destination rather than an effort to move in a certain direction. Goals typically have a longevity of three to five years to completion, but this varies significantly with each goal's nature and complexity. Establishing goals is a collaboration between the staff and commission.

Strategies: Strategy is the route and mechanism the port employs to reach its goals. There may be more than one strategy for a particular goal. Strategies are typically recommended by staff and supported by the commission.

Tactics: Tactics are a set of maneuvers designed to advance a strategy. There can be several tactics to support a strategy and they are typically scheduled within a fiscal year. Since they execute the overall direction identified by the commission, tactics are the purview of staff. A port **Annual Action Plan** accompanies the **Strategic Plan**. The Annual Action Plan provides additional details as to who in the organization is responsible for making progress on specific strategies and tactics as well as when they will be completed. Progress reports on the overall Strategic Plan and the Annual Action Plan should be scheduled throughout the fiscal year and be instrumental to creating the annual operating and capital budgets.



Keystone Document

A port **Strategic Plan** and an accompanying **Annual Action Plan** define the **why, how, and what** of a port’s existence. It is a best management practice that is the platform for internal alignment among the members of the commission members, between the commission and staff, and between the port and the community it serves.

Strategic Assessment Tools

There are several key tools a port can utilize in exploring its overall strategy, specific goals, or the performance of individual assets or lines of business. These tools can help a port in evaluating its overall approach to its work.

Mission vs. Margin

While ports rely to varying degrees on the financial resources acquired through a property tax levy, they are usually more dependent on earned revenues from port operations. Ports must balance their need for these earned revenues (their financial margin) with their commitment to their mission, which is often qualitatively evaluated on economic prosperity throughout the community it serves, environmental sustainability, and community development.

The strategic planning pyramid provides a visual platform to evaluate and position port investments in programs, lines of business, or individual assets (e.g., buildings, docks) on the comparative scales of margin and mission.



The horizontal axis positions an investment’s contribution to the port’s mission, ranging from “Little or No Community Benefit” to “Great Community Benefit.” This is a qualitative evaluation.

The vertical axis positions the investment’s financial performance, ranging from “Losing Money” to “Break Even” to achieving the port’s “Full Return” target. This is a quantitative evaluation based on an all-cost-included return on investment (ROI) model.

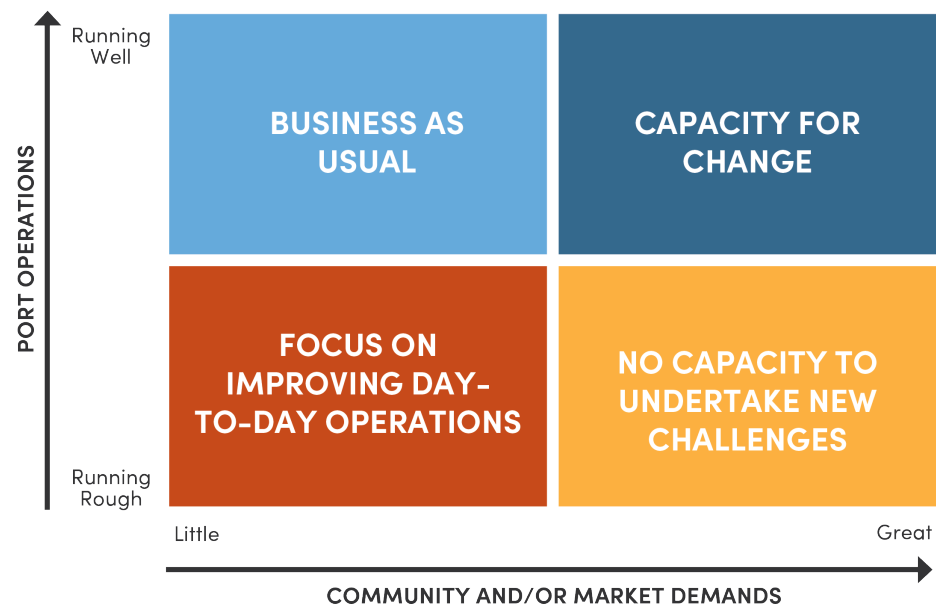
Once positioned on the platform, an investment will land in one of four quadrants:

- **Resource Creator:** This investment generates excess financial resources to the port for other uses and provides some public benefit in serving the port’s mission. (Example: Small manufacturing facility with limited employment that provides positive cash flow from the lease.)
- **Avoid:** This investment does not break even and must be subsidized with other port revenues or property taxes, and it has little if any public benefit. (Example: Small manufacturing facility with limited employment that does not generate net positive cash flow and, in fact, takes a port subsidy.)
- **Proceed Carefully:** This investment does not break even and must be subsidized with other port revenues or property taxes but does have significant public benefit. (Example: A waterfront park that is open to the public but requires property taxes to operate.)
- **Where You Want to Be:** This investment provides positive cash flow and has significant public benefit. (Example: A commercial, Part 139, airport that generates positive cash flow to the port and requires no subsidy.)

Assessing Capacity

Ports are entrepreneurial in nature and often have the default reaction of taking on new opportunities, requests, or needs in their community. To be successful in expanding their reach or workload, ports must perform an objective assessment of their capacity to undertake any new initiative, investments, or operational expansion.

The figure below provides a visual platform on which to evaluate a port's capacity to expand its reach. Capacity is defined by staff workload, staff experience and skills, financial capacity, risk tolerance, and political support.



The horizontal axis positions the opportunity's community and or market demand from "Little" to "Great." The vertical axis positions the opportunity's demand on port operations (effectiveness and efficiency) from "Running Rough" to "Running Well."

Once positioned on the platform, an investment will land in one of four quadrants:

- **Business as Usual:** This opportunity can be easily accommodated within the organization but has little market or community demand. (Example: A small group of port retail marine tenants request the port's participation in a joint advertising campaign.)
- **Focus on Improving Day to Day Operations:** This opportunity has little support in the community or market demand and the port is already having capacity challenges. (Example: A community boating group requests that port staff regularly attend their weekly evening meetings.)
- **No Capacity to Undertake New Challenges:** This opportunity has great support from the community, but the port is having challenges in addressing its current commitments and workload. (Example: A local industry group asks that the port purchase and develop a large shuttered industrial site to create a new technology industrial park.)

- **Capacity for Change:** This opportunity has great support from the community and the port has significant staff capacity and skill as well as ample debt capacity. (Example: An inbound large new employer asks that the port joint venture with them in construction of a new manufacturing facility to take advantage of a local higher-education technology training program.)

Institutionalizing the Port's Strategic Plan: Avoiding Shelf Art

Like achieving strategic alignment, maintaining strategic alignment takes a true organizational effort. These are practical suggestions to institutionalizing a port's adopted Strategic Plan so that it does not become irrelevant and quickly forgotten.

1. Incorporate the goals adopted by the commission into the performance evaluation of the Executive Director. In turn, the Executive Director can include them in the performance evaluations of senior staff and key personnel. This provides clarity and alignment on direction.
2. Within statutory restraints, create an incentive for the entire port team to be rewarded or otherwise celebrate achieving a goal or set of goals. These are excellent milestones to capture at an annual employee event or at the time of a key commission action related to the goal(s).
3. Include a statement in formal staff recommendations to the commission on how an action will advance a goal or strategy. Major recommendation components include:
 - » Action requested (can be the actual motion for the minutes)
 - » Background
 - » Analysis (if needed)
 - » Fiscal impact
 - » Strategic value
 - » Recommendation
4. Review strategic plans and progress in the accompanying action plan at key times, including before the development of the annual budget, to update the organization's strategies and priorities. Annual strategic retreats can track progress over time and prepare for the future.
5. As often as possible, include key strategic messages in internal and external communications.
6. Post the mission, values, and goals in prominent locations where staff, customers, community members, and others can see them. Locations could include the port office lobby, commission meeting room, maintenance facilities, and staff common areas.

THE COMPREHENSIVE SCHEME OF HARBOR IMPROVEMENTS (CSHI)

“What’s the use of measuring speed if you don’t go in the right direction?” –Unknown

The effort to create public port authorities that started in the mid-1890s with the progressive movement and failed in both 1907 and 1909 was finally successful in 1911 with the passage of the Port District Act. It gave sweeping powers to these newly created port commissions to meet the needs of growing international trade and bring structured, rational planning and use to the state’s waterfronts. Yet there were concerns from the business community about the extent of this government reach. In response to these concerns and to support transparency, the State Legislature included the legal requirement that every port must seek community input on its capital plans and fund expenditures through a formal public hearing.

As a result, the Port District Act of 1911 required every port to develop and adopt a Comprehensive Scheme of Harbor Improvements (CSHI) prior to expenditure of port funds for any property or facility improvements (RCW 53.20). This requirement, which predated open public meeting laws, was fundamental to port transparency in 1911 and still is today, making the CSHI, like the annual budget, a legally required keystone document. The original concept of a CSHI was at the forefront of the public trust doctrine between public ports and the communities they serve.

53.20.010 Adoption of harbor improvement plan. “It shall be the duty of the port commission of any port district, before creating any improvements hereunder, to adopt a comprehensive scheme of harbor improvements in the port district, after a public hearing thereon, of which notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the port district, and no expenditure for the carrying out of any harbor improvement shall be made by the port commission other than necessary salaries, including engineers, clerical and office expenses of the port district, and the cost of engineering, surveying, preparation and collection of data necessary for the making and adoption of the general scheme of harbor improvements in the port district, unless and until the comprehensive scheme of harbor improvements has been so officially adopted by the port commission.”

The term “scheme” generally connotes a conceptual emphasis rather than a detailed analysis. The purpose of the CSHI is to openly inform port district constituents of the nature and extent of any anticipated improvements.

The wording of the original 1911 legislation has created some confusion and concern over the years. The term “scheme” was used in the legislation to denote a port’s intentions to reflect its large-scale plan to construct physical improvements with public monies. As English vernacular has evolved, the term “scheme” has sometimes been associated with a plan that

is devious or crafty and intended to accomplish something illegal or dishonest. But in its legislatively intended use, the term defines a plan or program of action, and the CSHI required by Washington statute is fundamentally a planning opportunity and legal requirement for ports to share information with the communities they serve.

As public port authorities were created across the nation in the early 1900s to improve the development and use of America’s waterfronts, the focus was understandably on “harbors.” “Harbors” described the principal port infrastructure at the time. Then and now, harbors are facilities, natural or manmade, that provide maritime operations with physical protection from wind, tidal currents, and waves. Contemporary port infrastructure has expanded well beyond the harbor infrastructure of the early 1900s, and it continues to evolve. The legislative intent of the original statute is as valid today as it was in 1911: to require ports to share with the public—in advance of expenditures—its plans to invest in any type of physical improvement, from commercial buildings to dark fiber.

A 2020 WPPA survey revealed that only two-thirds of responding ports had a current CSHI. Ports are well-advised to adopt a process to maintain a current CSHI and incorporate it into their annual budget adoption cycle. Best management practices include an update of the CSHI in parallel with the annual adoption of the port’s budget and tax levy. Just like making midyear adjustments to the budget, updates can be made, as needed, to the CSHI during the fiscal year following an additional public hearing. Additionally, the public notice requirements for a hearing to take public comments on the CSHI are identical to those of considering and adopting annual port operating and capital budgets (as well as the tax levy).

The required content of a CSHI primarily consists of a generalized discussion and inventory of the Port’s existing and planned physical assets and improvements. A CSHI need not include detailed construction plans and other items, such as salaries and the cost of engineering, surveying, and data collection, as those costs are specifically exempt from inclusion.

Previous guidance included a port’s strategic plan in its CSHI (strategic planning is discussed in more detail below). The components of a port strategic plan include the mission statement, goals, and priorities, as well as financial and business priorities. Strategic plans typically have a shelf life of three to five years and may not lend themselves to an annual update within the CSHI. Likewise, financial priorities and business plans have different purposes and may not be on the same adoption and update cycle as a CSHI. An alternative to including strategic and financial priorities in the CSHI is to separate those as freestanding keystone documents. Financial planning is discussed in more detail in Chapter IV.

RCW 58.20.010 requires port districts to conduct a public hearing prior to adoption of their CSHI. Notice of the public hearing must be published once a week, for two consecutive weeks, in a newspaper of general circulation within the port district, and at least ten days prior to the hearing date. A resolution adopting the CSHI will generally include references to how the public

hearing was advertised, when it occurred, and whether there were public comments received and considered. Lastly, a State Environmental Policy Act non-project review process is required for an adopted comprehensive plan to comply with RCW 53.20 (see discussion of SEPA, below).

The contents of the CSHI are straightforward:

- Introduction that describes the port within the context of its community
- Map of port owned lands
- Inventory and description of all existing port facilities
- Description of planned improvements
- Capital improvement plan that should mirror the port’s capital budget

As mentioned above, previous guidance has advised ports to include their strategic plan in the development of the CSHI. Today’s best management practice is to separate the strategic plan as a standalone document. However, the key components of the Strategic Plan can be referenced in the CSHI to give the community a better understanding of the port’s direction and

At minimum, a scheme of harbor Improvement should include:



Keystone Document

The **Comprehensive Scheme of Harbor Improvements (CSHI)** is a keystone port document that is mandated by law (RCW 53.20). It provides an opportunity for the public to learn about and formally comment on a port’s intentions to expend public monies for capital improvements.

priorities.

UNDERSTANDING LAND-USE AND ENVIRONMENTAL IMPACT LAWS

“It does not do to leave a live dragon out of your calculations, if you live near one.”

– J.R.R. Tolkien

Planning the development of a geographic area or more specific site requires thoughtful consideration of the impacts of the development on the natural and built environments. It can be development-driven, with a known and desired proposed use, on a focused development area with an expected completion date. Or development can be conceptual and forward-thinking in nature, considering the impacts if and when the site is developed. This is land-use planning that is often undertaken in advance of known project actions.

In either case, it is essential to understand the evolution of federal, state, and local land-use laws. These laws can significantly impact project scheduling, be costly, and are often politically and socially contentious. They have been evolving over the last 100 years and were created to understand, lessen, or avoid the impacts of unchecked development.

This planning evolution was initially empowered in 1926 with a landmark U.S. Supreme Court case (Village of Euclid, Ohio vs. Ambler Realty Co.) that established the principle and practice of land-use zones in the United States. Until that time, the concept of zoning and land-use restrictions was only considered an efficient planning exercise that received lukewarm support in state courts.

This case was the first federal test and established the legal precedent and constitutional justification for zoning. It implied that comprehensive planning could regulate, among other things, the height, bulk, scale, and density of allowable uses within certain geographic zones. This established the police powers of government to regulate land use for the benefit of the community and the environment.

The following chronology describes the historical timing, relationship, and significance of major federal, state, and local land-use and environmental impact laws that affect Washington ports. A number of these Washington laws were the result of formal citizen initiatives that were authorized by state law in 1912.

1917 Washington Hydraulic Code

Purpose: Fish and fish habitat protection.

In 1917 the State Legislature created the first office of the **State Hydraulic Engineer** to supervise all public waters in the state and their appropriation, diversion, and use. Petitions to

obstruct water flow had to be approved by the State Hydraulic Engineer.

Over the years, the laws protecting and managing water flow have evolved. Today the **Washington Hydraulic Code** is in place to protect fish and their natural habitat from the impacts of in-water development. Administered by the Washington State Department of Fish and Wildlife (WDFW), the code requires a Hydraulic Project Approval (HPA) for all work that uses, diverts, obstructs, or changes the natural flow or bed of any freshwater or saltwater body. For work that occurs below the ordinary high-water line, WDFW will require the impacts to fish to be mitigated and or minimized in the same general location. This policy is known as in-place and in-kind mitigation.

A state HPA is typically required before federal 404 or 401 water quality certifications will be issued.

1935 Advent of Police Powers for Land and Building Regulations

Purpose: Washington cities and counties are authorized to establish, by ordinance, standards regarding the development of land and the construction of buildings to protect the general well-being of the community.

Washington cities and counties derive their ability to police land and building development from the State Constitution, Article 11, Section 11, which states, “any county, city, town or township may make and enforce within its limits all such local police, sanitary, and other regulations as are not in conflict with general laws.” Washington State’s regulations were bolstered with the landmark Supreme Court case of 1926 addressing the ability of local governments to exercise police powers.

In 1935 the planning enabling statutes (RCW 35.63) were adopted by the Legislature. They defined the regulatory roles and processes that are largely in place today.

1969 Washington Subdivision Laws

Purpose: Protect the public health, safety and welfare of the community from irrational and unimpeded land division and development.

The State adopted the first subdivision laws (RCW 58.17) in the 1960s. These laws created a process to consider the subdivision of land into distinct parcels. That process, which has evolved significantly, provided for various levels of approval and established development standards. Development standards are designed to protect the public health, safety, and welfare of the community. Subdivisions are considered “short plats” if they are four lots or less; they are otherwise “long plats.” RCW 36.70A.040 further provides that cities that have approved a comprehensive plan can increase the number of lots within a short plat to nine.

Eventually these laws were amended to include binding site plans and planned area developments for commercial and multifamily development. Binding site plans are an alternative to traditional subdivisions and may only be used for industrial or commercial use, mobile home parks, and condominiums. General site-plan review typically involves physical details that relate to a specific site and the type of use proposed. It addresses such things as landscaping, design, parking location, and other site-specific issues. Site-plan review typically applies to commercial and industrial development and multifamily projects of a certain size, but not single-family projects. Site plan review may be required before or concurrent with a building permit, a conditional use approval, or other type of land-use review process. Under these requirements, ports that lease property must create a legal lot or binding site plan.

1970 U.S. National Environmental Policy Act

Purpose: Avoid or mitigate any environmental impacts of development or programs.

The National Environmental Policy Act (NEPA) found growing support during the environmental movement of the 1960s and 1970s and was signed into federal law on January 1, 1970, by then-President Richard Nixon. NEPA is a significant body of law and has grown significantly over the decades since its passage.

According to the Office of NEPA Planning & Compliance, “the stated purposes of NEPA are to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.”

The fundamental concept of NEPA is that government actions should avoid negative environmental impacts if they can and mitigate them if they cannot. And if that’s not possible, the actions should be denied. All this to be done with full public involvement and disclosure.

NEPA laws apply to:

- Any federal projects, such as a federal dam or highway
- Any project requiring a federal permit
- Any project receiving federal funding

Every federal agency must adopt its own procedures to meet the requirements and intent of NEPA and perform as the “lead agency” under the law. In general, the NEPA process requires the preparation of an Environmental Assessment (EA) followed by a finding of no significant impact (FONSI). If there are significant impacts, the process requires preparation of an Environmental Impact Statement (EIS). An EIS is a much more rigorous impact study effort

than an EA and includes a great deal of public engagement, including the ability to provide early input on the breadth of scope of the EIS.

1971 Washington State Environmental Policy Act

Purpose: To promote and ensure harmony between people and the environment.

The State of Washington first adopted the State Environmental Policy Act (SEPA) in 1971. SEPA was largely modeled on the principles, processes, and purposes of the federal NEPA

SEPA is intended to ensure that environmental values are considered during state and local agency decision-making processes. When SEPA was adopted, state lawmakers identified four primary purposes:

- Declare a state policy that will encourage productive and enjoyable harmony between people and their environment.
- Promote efforts that will prevent or eliminate damage to the environment and biosphere.
- Stimulate public health and welfare.
- Enrich understanding of the ecological systems and natural resources important to Washington state and the nation.

To meet these purposes, state SEPA rules direct state and local agencies acting in their lead agency capacity to:

- Consider environmental information (impacts, alternatives, and mitigation) before committing to a particular course of action.
- Identify and evaluate probable impacts, alternatives, and mitigation measures, emphasizing important environmental impacts and alternatives (including cumulative, short-term, long-term, direct, and indirect impacts).
- Encourage public involvement in decisions.
- Prepare environmental documents that are concise, clear, and to the point.
- Integrate SEPA with existing agency planning and licensing procedures so procedures run concurrently rather than consecutively.
- Integrate SEPA with agency activities at the earliest possible time to ensure planning and decisions reflect environmental values, avoid delays later in the process, and seek to resolve potential problems.

Ports can serve as lead agency for their own projects. As such, they are subject to all the principles and requirements of SEPA. Ports opting for this responsibility must adopt their own SEPA policies and protocols. In cities and counties, the SEPA review entity is typically the appointed plan commission, a professional hearing examiner, or the city or county council. If a permit must be approved by another government and/or agency, the entity can request joint- or lead-agency SEPA status.

SEPA is used to evaluate physical projects, such as construction projects, or programmatic

proposals, such as city and county comprehensive plans, zoning actions, or development regulations.

A SEPA review has similar process components to NEPA. The process includes:

- Completion of an environmental checklist, including addressing the proposed project or programmatic action's location and impacts.
- Issuance of a threshold determination by the lead agency regarding the proposal's likelihood of causing adverse environmental impacts.
- Issuance of a final threshold determination by the lead agency after public and agency reviews have been completed.

The final threshold determination will result in one of the following:

- **Determination of Nonsignificance (DNS):** The project or programmatic plan will not have a significant environmental impact and may proceed.
- **Mitigated Determination of Nonsignificance (MDNS):** The project or programmatic plan must mitigate its impacts, which are specified by the lead agency.
- **Determination of Significance (DS):** The project or programmatic plan must undertake a full environmental impact study and analysis before a SEPA decision can be made. It requires the preparation of an EIS. The EIS must consider an "alternatives analysis," including a no-action option, to fully evaluate the impacts, mitigation opportunities, and best approach to minimize impacts. EIS efforts are significant, costly, and lengthy.

It should be noted that when both NEPA and SEPA apply to a project or programmatic plan, the appropriate agencies usually identify a go-forward approach so as not to duplicate efforts.

1971 Washington Shoreline Management Act

Purpose: Designed to ensure the State's shorelines remain an amenity available to all citizens for all time and protect them from development.

The Shoreline Management Act (SMA), driven by citizen initiative, was created by the Legislature to address "a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the State's shorelines." Shorelines are defined as all waters of the State, including marine waters, lakes over a certain size, and associated wetlands, excepting small streams.

There are special provisions for "shorelines of statewide significance" that are major resources benefiting all citizens of the state. These shorelines of significance must be protected for optimal utilization, recognizing the statewide interest over local interest and the protection of shoreline ecology. Shorelines also include those boundaries of wetlands, including swamps, bogs, and similar saturated soil lands.

In 1995 the SMA was integrated into Washington's Growth Management Act (GMA) effort for planning purposes and regulatory control (see Growth Management Act, below). The planning function and regulatory control is accomplished at the local level with strong oversight by the State. In 2003 the Department of Ecology, charged with managing the State's role in shoreline management, adopted new rules to incorporate current scientific thinking about the State's shorelines and further integrate planning efforts into GMA.

The SMA requires that local governments undertake a detailed shoreline inventory and adopt a Shoreline Master Program (SMP) that categorizes shoreline segments by use and treatment. Since 1995 these SMPs have been an element of GMA planning. Recent developments in SMA allow local jurisdictions to pre-designate shoreline uses and restrictions within adopted urban growth areas that are likely to be annexed. Ports should actively participate with local jurisdictions when SMPs are developed or updated. Participation helps ensure that anticipated port projects are introduced into the planning process early and also helps ports secure a deeper understanding of the longer-term direction of a community.

All developments and uses within the shorelines of the State (within 200 feet from the ordinary high-water mark and associated wetlands) must be consistent with SMA policies and local SMPs, but only "substantial developments" must acquire a substantial development permit. Substantial developments are those that exceed \$5,000 in fair market value or otherwise impede the public's access to the State's shorelines.

1972 U.S. Coastal Zone Management Act

Purpose: Preserve, protect, develop, and where possible, restore or enhance the resources of the nation's coastal zone, including the Great Lakes.

The Coastal Zone Management Act (CZMA) of 1972 established a federal program administered by the National Ocean and Atmospheric Administration (NOAA) to help states plan and manage the development and protection of coastal areas through the creation of a Coastal Zone Management Program (CZMP). The program balances competing land and water issues through state coastal management programs, providing a greater understanding of estuaries and how humans impact them. The CZMA is primarily a planning act rather than an environmental protection or regulatory act. Under its provisions, states can receive matching grants from the federal government to develop and implement coastal zone programs as long as the programs meet with federal approval.

1972 U.S. Clean Water Act

Purpose: Protect surface water quality

The federal Clean Water Act (CWA) is the principal federal law addressing surface water quality. It was the result of growing public awareness and concern about controlling water pollution and it substantially amended the earlier Federal Water Pollution Control Act of 1948.

It employs a variety of regulatory and non-regulatory tools to limit direct discharge of pollutants into waterways, finance municipal wastewater treatment facilities, and manage stormwater runoff from streets, construction sites, and farms. These tools are used to achieve the overall goal of the act, which is to restore and maintain the chemical, physical, and biological integrity of the navigable waters of the United States so they can support the protection and propagation of shellfish, fish, and wildlife.

Many provisions of the CWA are regulated by the USEPA. In some cases, the USEPA has delegated its authority to state agencies; in Washington the authority is delegated to Ecology or to other federal agencies, such as the United States Army Corps of Engineers (USACE). Although WDFW regulates hydraulic projects, it has no authority to administer provisions of the CWA.

Section 404 permit: A CWA Section 404 permit, administered by the USACE, is required for all in-water work, including wetlands. Nationwide permits are authorized for general categories of activities that result in no more than minimal individual and cumulative adverse environmental impacts. Individual permits are issued for project work that is not covered by one of these general permits and may have more significant environmental impacts. In its most recent analysis in 2018, the USACE determined that the average processing time for nationwide permits was 45 days and 264 days for individual permits. Projects completed under a nationwide permit are preferred.

The USACE makes provisions for a Joint Aquatic Resources Permits Application (JARPA), which is designed to coordinate various local, state, and federal in-water permit needs.

Section 401 Water Quality Certification: These permits are processed and issued by Ecology to determine that a project complies with state water-quality standards. The USACE will not issue a Section 404 permit without obtaining a Water Quality Certification from the State. The JARPA process can be used for this effort as well.

Section 303(d) of the Clean Water Act: This section authorizes the EPA to assist states, territories and authorized tribes in listing impaired waters and developing Total Maximum Daily Loads (TMDLs) for these water bodies from point and nonpoint sources of pollution. A TMDL establishes the maximum amount of a pollutant allowed in a waterbody and serves as the starting point or planning tool for restoring water quality. This is the standard that Ecology uses to consider water quality certifications.

National Pollutant Discharge Elimination System (NPDES): An NPDES permit is, in essence, a license to discharge a specified amount of a pollutant into a receiving water under certain conditions and requirements (e.g., pollutants contained in stormwater discharge). There are two basic permits: an individual permit issued for a specific facility for a period of time before the permit holder must reapply (typically five years), or a general permit that covers a group of

dischargers with similar qualities and impacts in a defined geographic area.

Regarding stormwater discharge permits, the conditions include that the permit holder develop and follow a Stormwater Pollution Prevention Plan and Best Management Practices to eliminate or minimize the potential to contaminate stormwater. By agreement, the USEPA has authorized the State of Washington through Ecology to issue NPDES permits consistent with the State's water quality standards. This agreement does not apply to federal facilities and tribal lands for which NPDES permits are issued by the USEPA.

1973 U.S. Endangered Species Act

Purpose: Protect endangered or threatened species and provide a means for conservation of their habitats.

The federal Endangered Species Act (ESA) was enacted by Congress in 1972 in response to concerns over the decline of a number of fish and wildlife species. Congressional action was the outcome of a global conference on the international trade in endangered plant and animal species. The Act was preceded by the 1966 Endangered Species Preservation Act, which provided limited protection to native species in the United States.

The ESA is administered by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS). The USFWS has primary jurisdiction of terrestrial and freshwater species, while NMFS has jurisdiction over marine species such as salmon and marine mammals. Federal agencies are required to consult with one of these two agencies prior to funding, authorizing, or taking action that might harm an ESA-listed species or degrade their habitat. Potential impacts on species or their habitats must be evaluated through a Biological Evaluation or a Biological Assessment. This is known as a Section 7 ESA review, and the reviewing federal agency will make one of three determinations: the action has no effect on species and habitat; the action is not likely to adversely affect species and habitat; or the action is likely to adversely affect species and habitat.

Ports are engaged in many activities and development actions that have a federal nexus that triggers a Section 7 ESA review. These can include seeking federal permits, using federal grant funds, or activities that are subject to actions taken directly by a federal agency. Projects that require Federal Aviation Administration review or funding and projects that dredge federal waterways are two examples of activities that are subject to this type of review process and determination.

1984 Washington Dredged Material Management Program

Purpose: Provide a predictable solution to the challenge of dredge material disposal that is protective of the environment while generating revenue to the State.

The Dredged Material Management Program (DMMP) is an interagency approach to the management of dredged material in Washington State. There are four state and federal agencies participating in the current program:

- USACE Northwest District as the lead agency
- EPA Region 10
- Ecology
- The Washington State Department of Natural Resources (DNR)

Together the DMMP agencies are responsible for evaluating dredged material and for co-management of DMMP disposal sites. Dredged material evaluation guidelines were originally developed for the Puget Sound Dredged Disposal Analysis program in the mid-1980s and expanded to cover Grays Harbor and Willapa Bay in 1995. To accommodate assessment of the impacts of dredge material disposal in the waters of Washington, the State has adopted Sediment Management Standards.

Disposal is approved at specific open-water sites that are either dispersive or non-dispersive. DNR manages disposal sites on state-owned aquatic lands and gives its permission through Site Use Authorization following the issuance of all required permits. DNR charges a fee for disposal based on volume and as approved by State statutes.

1990 Washington Growth Management Act

Purpose: Requires cities and counties to adopt development regulations and plans to ensure there is adequate built infrastructure to support growth and that growth does not result in serious damage to sensitive environmental resources.

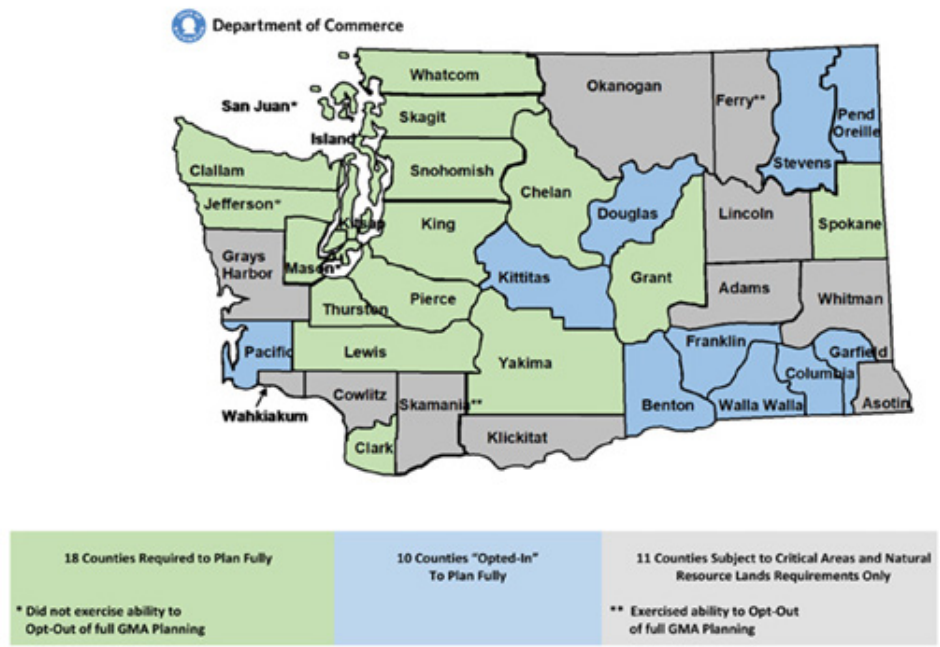
The Growth Management Act (GMA) was originally adopted in 1990 and reinforced with additional legislation in subsequent years. The act (RCW 36.70A) represents the ongoing efforts of the State to manage its growth.

Up until the early 1950s, urban planning was largely limited to land-use zoning and building code efforts. In the 1950s and 1960s, urban planning increasingly emphasized transportation planning due to the development of interstate freeways and growing transit problems. Beginning in the late 1980s, cities and counties were faced with multiple challenges, including increased urban growth (especially in Puget Sound), recognition that resources and critical areas needed to be protected, and growing need for public services in Washington's economically depressed areas. These circumstances, accompanied by a sharp rise in population, also gave way to urban sprawl into rural areas, which significantly impacted agriculture and rural lifestyles. These conditions increased public and legislative support to adopt the 1990 GMA, which modeled itself after the State's successful SEPA and shoreline programs.

Over the years, several amendments have been made to these major environmental-impact and planning regulations:

- 1995, 1996, 2002, and 2003: Amendments authorize intense development of some rural areas, such as infill development for areas already containing intense development and major industrial development.
- 1995 and 2003: Amendments provide that the local shoreline master program goals and policies must be consistent with the community’s comprehensive plan and must provide a level of protection to environmentally sensitive areas (i.e., critical areas).
- 1995: Amendment requires that GMA regulations that protect critical areas (e.g., wetlands, frequently flooded areas, geo-hazard areas, fish and wildlife habitat conservation areas, and aquifer recharge areas used for potable water) must now be supported by “best available science.” Best available science essentially means credible scientific evidence.
- 1997: Amendment created what’s commonly known as the “Buildable Lands Program.” This program requires some of the state’s largest counties and their cities to evaluate and monitor the effectiveness of local GMA regulations and to address shortcomings.
- 1996 and 1998: Amendments require cities and counties to address general aviation airports and state-owned transportation facilities in their comprehensive plans.
- 2004: Amendments included a provision allowing the state to expedite review of local GMA policies and regulations; new restrictions on industrial land banks; and an exemption from GMA urban density requirements for national historic reserves.

The jurisdiction’s comprehensive plan is the foundational document upon which all future land-use decisions and project approvals are made. (Comprehensive plans are not to be confused with the Comprehensive Scheme of Harbor Improvements, a document reserved for ports as part of their capital expenditure process. Only the state’s fastest growing counties and



cities must fully plan under GMA and adopt a comprehensive plan. Full planning is optional for other counties and triggered by a majority vote of their elected county boards. However, all communities that are not subject to the full planning requirements of GMA must develop regulations that protect critical areas and natural resources areas. Ports should confirm with their county if they are subject to the full planning requirements of GMA.

Cities and counties are required to update their comprehensive plan every eight years. Key considerations of these comprehensive plans that are of relevance to ports include:

- **Land-use element:** Sets the direction of future growth in a community and is usually depicted as a future land-use map. The future land-use map, which is policy-oriented, is then implemented in large part by the official zoning map, a regulatory tool.
- **Essential public facilities:** The comprehensive plan must address essential public facilities that are difficult to site. These include traditional port facilities such as airports; regional transportation facilities (RCW 47.06.140); and waste-handling facilities. Comprehensive plans and development regulations cannot preclude the siting of essential public facilities—they must include criteria for siting them.
- **Levels of service:** Comprehensive plans also include level of service standards that are required to serve the projected population of the community, whether community members are incoming or outgoing. These are specifically targeted to transportation facilities that are ranked from A through F. However, some communities can also opt to plan for level of service for such things as parks and open spaces, schools, stormwater, police, and fire protection.

Baseline mandatory comprehensive plan elements include:

1. Land-use (zoning), including defining urban growth areas
2. Housing
3. Capital facilities
4. Utilities
5. Rural development (for rural counties only)
6. Transportation
7. Port container facilities with annual port incomes in excess of \$60 million (RCW 36.70A.085)

Optional comprehensive plan elements that can be included, assuming the community has the resources to plan for them, include:

1. Economic development
2. Parks and recreation
3. Conservation
4. Solar energy

Ports should understand their local county and city comprehensive planning processes. Guidance for ports' involvement in their local comprehensive planning processes includes:

- Identifying port-essential facilities in the comprehensive plan.
- Understanding the regulatory overlay on all port-owned property, including critical areas, natural resource areas, and urban growth boundaries.
- Including the port's plans regarding parks and open spaces during plan updates to enhance funding opportunities.
- Encouraging regional economic development planning.
- Understanding and influencing the classification, assumptions, and forecasting of off-port transportation and utility facilities (e.g., roads and sewers) that would impact port operations.

5. Recreation

6. Subarea plans (e.g., neighborhoods, rural villages)

7. Port facilities with annual port incomes of \$20 million to \$60 million per year (RCW 36.70A.070)

1997 Washington Watershed Management Act

Purpose: Allows local governments, citizens, state agencies, and tribes to organize themselves by river basin and develop watershed management plans to better manage limited water resources.

Established in 1997 with oversight provided by Ecology, the Watershed Management Act (RCW 90.82) brings together various interests to create a water supply plan for a specific major river basin, known as a Water Resource Inventory Area. These efforts first developed watershed plans and then switched focus to watershed management.

Washington's efforts to protect its valuable water supply date back to early legislative action in 1917. The early policy approach to water embraced the notion that the common waters of the State were owned by all Washingtonians and regulated for beneficial use. That original approach required landowners to acquire a surface-water "water right" from the state. It was later amended to require landowners to obtain an additional water right for groundwater. Growth and the increasing demand for additional water supply has made this issue more contentious.

Allocating water is a general community and regional planning challenge and ports—especially rural ports— are advised to monitor developments in this issue. Watershed planning addresses competing needs for surface waters, such as those for fish habitat, and may well impact a port's ability to expand or otherwise impact these sensitive habitats.

2005 Executive Order 05-05: Historic Preservation

Purpose: Provide a framework for assessing how development will impact significant and historic places in Washington.

This executive order initiated by Governor Christine Gregoire requires all state agencies implementing or assisting capital projects using funds appropriated in the State's biennial Capital Budget to consider how future proposed projects may impact significant cultural and historic places. To do so, agencies are required to notify the Washington State Department of Archeology and Historic Preservation, the Governor's Office of Indian Affairs, and interested tribes, and afford them an opportunity to review and provide comments about potential project impacts. The goal is for the State be proactive in protecting history for future generations and to use taxpayer money wisely by avoiding unnecessary damage and loss of significant sites, structures, buildings, and artifacts.

THE PERMIT & REGULATORY CHECKLIST

"Hope is not a strategy." ~Vince Lombardi

As illustrated above, there are significant regulatory overlays and environmental impact assessments for public ports to consider as they plan the use of lands and facilities today and for the future. But how does all this manifest itself in site development planning? Understanding the permitting impact of the regulatory overlay is fundamental to efficient and successful site and facility planning and development. Chapter V explores specific site and facility development in more detail. The table below lists the permits or regulatory considerations and their general applicability to upland or in-water/near-water development.

REGULATORY CONSIDERATION	UPLAND PROPERTY	IN-WATER OR NEAR-WATER
State Environmental Policy Act	Checklist is required for all non-exempt development	Checklist is required for all non-exempt development
Critical Areas Review	<p>RCW 36.70A.030(5) defines five types of critical areas:</p> <ol style="list-style-type: none"> 1. Wetlands 2. Areas with a critical recharging effect on aquifers used for potable water 3. Fish and wildlife habitat conservation areas 4. Frequently flooded areas 5. Geologically hazardous areas 	<p>RCW 36.70A.030(5) defines five types of critical areas:</p> <ol style="list-style-type: none"> 1. Wetlands 2. Areas with a critical recharging effect on aquifers used for potable water 3. Fish and wildlife habitat conservation areas 4. Frequently flooded areas 5. Geologically hazardous areas
Shoreline Permit	For all non-exempt projects within 200 feet of ordinary high water mark and their associated wetland areas	Few in-water exemptions
REGULATORY CONSIDERATION	UPLAND PROPERTY	IN-WATER OR NEAR-WATER
Fill and Grading Permit	Required depending on quantity	Required and difficult if protected. Compensation required if wetland area.
Floodplain Development Permit	Required if in flood area. Check FEMA maps.	Required if in flood area. Check FEMA maps.
Demolition Permit	Required	Required
Local Stormwater Permit	Required for most development that involves disruption of soils or construction of buildings, streets, parking. A report by a civil engineer may be required in addition to a plan of facilities and a pollution prevention plan.	
Building Permits	Most cities and counties have adopted the international building code and Fire Codes	Most cities and counties have adopted the international building code and Fire Codes

Local Historic Preservation	Applicable if structure is listed on a local registry or within an adopted historic district	
State Hydraulic Project Approval		Required when construction or activities conducted in or near state waters will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state
Clean Water Act Section 401 Water Quality Certification	Certification verifying compliance with water quality requirements and the 401 permit.	
Executive Order 05-05: Historic Preservation	Good practice. Required for state or federal funding.	
State Stormwater Permit for Construction, General, and Industry	Avoids or limits the amount of pollution that drains into lakes, rivers, and marine waters.	
State-Owned Aquatic Lands Approval		Discussed further in Chapter V
REGULATORY CONSIDERATION	UPLAND PROPERTY	IN-WATER OR NEAR-WATER
Clean Water Act Section 404 – Fill Permit	Regulates the discharge of dredged or fill material into waters of the U.S., including wetlands unless the use is exempt.	
Rivers and Harbors Act Section 10 River & Harbor	Construction activity that requires excavation and/or discharge of dredged or fill material in waters of the U.S.	
National Environmental Policy Act	Required with federal permit and possibly federal funding	
Endangered Species Act Section 7 Consultation	Required if development will impact an endangered species present	
National Historic Preservation Act	Requires consultation and possible permit for historic structures or culturally important properties	

CITY AND COUNTY CULTURE

A great deal of the permitting involved in advancing port properties is under the authority of city and county municipal governments. Cities, counties, and ports all share a common dedication to the well-being of the communities they serve, but their approach and function are necessarily different. It is important to underscore some of the fundamental differences between cities and counties as general-purpose local governments and ports as special-purpose local governments. For example:

- Cities and counties do not have to contend with the fleeting nature of market opportunity and so do not share the same market urgency as ports.
- City and county calendars and timelines are driven in large part by regulatory considerations.
- At their core, cities and counties are regulatory organizations and are not as entrepreneurial as ports.

Ports must fully understand these cultural differences and develop positive working relationships with their cities and counties. A good relationship is foundational to making progress on regulatory planning and project review. This is especially true when a city or county is updating its comprehensive land-use plans under GMA.

TRIBAL TREATY RIGHTS

Any discussion of assessing impacts and securing permits for port projects must include the recognition of the role and authority of tribal governments in the permitting process.

There are 26 federally recognized tribes in Washington State. Their reservations were mostly created in the mid-1880s and later expanded. Today, tribal lands account for more than 8% of Washington's land base. Tribal authority generally stems from federal treaties with the United States. As such, they are not an institutional or governance creation of the U.S. constitution or any state empowerment: They are sovereign nations. They act as sovereign nations in their relationship to the State of Washington and its political subdivisions, such as ports, cities, and counties. Individual tribes may have their own constitutional framework, adopted by their membership.

Unlike state or local governments, which are created from the U.S. constitution, tribal nations do more than provide traditional governmental functions and services. They work to protect tribal culture and their sovereign treaty rights within and outside the boundaries of their reservations. The Centennial Accord of 1989 between Washington State and federally recognized tribes within the State defined the government-to-government working relationship between each sovereign tribe and the State.

The interests of tribes are manifested in planning processes in two ways. The first is in the

overall land-use planning processes that occur under state and local authority, such as GMA. Ports are encouraged to establish working relationships with their neighboring tribes and to collaborate with them on forward-looking or permit-consideration projects to understand and address concerns early in the process.

The second way tribal interests manifest in port planning is through federal planning and permitting processes, such as Section 401 in water permits issued by the USACE. Tribes have special standing in their legal relationship to the federal government. This unique relationship between the U.S. government and each tribal nation mandates that the federal government must afford an opportunity for tribes to participate in the decision-making process to ensure that tribal interests are given due consideration in any actions that may significantly affect protected tribal resources, rights, or lands. This means that federal permitting, if required for port projects, must take tribal considerations into account. All federal entities have a trust responsibility to protect tribal lands, as well as water and habitat that support the meaningful exercise of off-reservation “usual and accustomed” hunting, fishing, and gathering rights.

Meaningful consultation with tribal nations begins long before a project or planning effort is initiated. Tribal staff resources can be limited, and staff are often involved in complex and large-scale projects that require a great deal of their attention. Through genuine and long-term collaborative relationships, ports can develop working relationships with tribes that will result in less contention and more beneficial outcomes for both parties and the communities they serve.

COMMUNICATION PLANNING & PUBLIC INVOLVEMENT

Communication is the act of transferring information from one person, place, organization, or group to another. Every communication involves at least a sender, a message, and a recipient. In public agencies with a priority on effective citizen and stakeholder engagement, communication is often complex. It must be a two-way street that includes strategy, aspects of timing, the exchange of ideas and information, the reflection of input to diverse audiences, and forward-looking tactics that set up the community, public agency, and the planning process for long-term success.

Public Involvement and Participation

Public involvement and participation are foundational to the governance and operation of Washington’s public ports. Engaging the public in meaningful ways is a constant challenge. It requires strategic planning, consistent delivery, and follow-through. There are a host of public involvement requirements in Washington state for a public agency seeking to secure permits, consider budgets, adopt taxes, make land-use decisions, and more. Most of these processes involve open public meetings, the mechanics of which are discussed in more detail in Chapter 10.

IAP2 Spectrum of Public Participation



IAP2's Spectrum of Public Participation was designed to assist with the selection of the level of participation that defines the public's role in any public participation process. The Spectrum is used internationally, and it is found in public participation plans around the world.

INCREASING IMPACT ON THE DECISION					
	INFORM	CONSULT	INVOLVE	COLLABORATE	EMPOWER
PUBLIC PARTICIPATION GOAL	To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions.	To obtain public feedback on analysis, alternatives and/or decisions.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision making in the hands of the public.
PROMISE TO THE PUBLIC	We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will look to you for advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.

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There is also a culture of public participation in the Pacific Northwest, and ports are encouraged to think beyond requirements to what the community wants and needs to hear from its port to feel informed and engaged, and for the port's process to be successful. The International Association for Public Participation (IAP2), considered the industry leader in public participation strategies, developed an effective spectrum to consider the level of participation needed for projects and processes. This spectrum been used by communications practitioners for at least 20 years and is built on these principles:

- The belief that those who are affected by a decision have a right to be involved in the decision-making process.
- An agency promises that the public's contribution will influence the decision.
- The process promotes sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision-makers.
- Public participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision.
- Input is sought from participants in designing how they participate.
- Participants are provided the information they need to participate in a meaningful way.

- Participants understand how their input affects decisions that are made.

The table below relates the IAP2 spectrum to port goals and tactics.

PUBLIC PARTICIPATION GOAL	THE PORT'S COMMITMENT	EXAMPLES OF APPLICABILITY
Inform Provide balanced and objective information to assist the public in understanding the problem, alternatives, opportunities and/or solutions	Keep the public informed over time and as conditions change.	Website and newsletter.
Consult Obtain public feedback on analysis, alternatives and/or decisions.	Keep the public informed, listen to and acknowledge concerns and aspirations, and provide feedback on how the public input influenced the port's decision.	Statutorily required budget, tax levy, or CSHI formal hearing.
Involve Work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	Ensure the public's concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how the public's input influenced the decision.	Scoping the breadth and depth of an Environmental Impact Statement required by the SEPA process.
Collaborate Partner with the public in each aspect of the decision, including the development of alternatives and the identification of the preferred solution.	Look to the public for advice and innovation in formulating solutions and incorporate the public's advice and recommendations to the maximum extent possible.	Advisory committee on marina or airfield operations.
Empower Place final decision-making power in the hands of the public.	Implement what the public decides.	Often used with an appointed utility-rate-setting commission. Rarely used in port settings.

Communications Planning and Tools

The core considerations in developing a communications plan are:

1. Why is it necessary for the port to communicate on this topic?
2. Who are the target audiences?
3. What are the goals for the communication and the project/process?
4. What are the desired outcomes?
5. What is the content of the messaging?
6. How will the communication be made?

There are a host of passive and active communication tools that ports can use for internal and external communications.

Website: Properly designed websites serve as an information hub for customers, tenants, and potential partners as well as a portal for the public. They help increase transparency and accessibility of information for port audiences and serve as a base from which other communications and public participation tools stem.

Written newsletters, blogs, and social media posts: Telling a port's stories is increasingly important to helping audiences understand the role and importance of ports within their communities. Written mediums allow ports to tell all or part of the story, link to partners and resources, and direct audiences to additional information. Social media has a particularly prominent role as people seek quick bites of information and visuals on multiple digital platforms.

Pop-up information booths and drop-in venues: These can be temporary and quirky impromptu store fronts; standalone booths, or gathering locations designed to share information and connect people to their port. They are strategically installed in a neighborhood or community space that will attract visitors. They can be inexpensive and very effective in reaching audiences where they are in the community.

Open houses: Public agencies have relied on open houses for decades, and their effectiveness varies by audience, location, and topic. Many agencies took their open houses online because of the COVID-19 pandemic and saw increased attendance due to improved accessibility for a variety of audiences (e.g., differently abled, shift workers, caregivers). However, digital access issues remain for low-income, rural, and other audiences. Open houses of any kind should be used in conjunction with other strategies to help ensure broad, equitable communications and opportunities for public input.

Community meetings: Ports can rely on the built-in audiences and interests of partner, community, and industry groups by scheduling appearances at their venues and meeting times. These may include city and county councils, chambers of commerce, neighborhood associations, trade associations, community organizations, and others.

EMERGENCY AND RESILIENCY PLANNING

"The time to repair the roof is when the sun is shining." – John F. Kennedy

Resilience, as it relates to port districts, is the capacity of the organization to survive, adapt and grow in the face of both chronic stresses and acute shocks. Chronic stress for ports is manifested through over-taxed infrastructure, declining financial capacity, markets that are shifting geographically while port districts remain geo-fixed, and natural phenomena such as climate change. Acute shocks include catastrophic natural events such as earthquakes or tsunamis, isolated and impactful events such as major fires or acts of violence, and global incidents such as the COVID-19 pandemic or terrorism.

There are a host of models for emergency and resiliency planning, but most include some consideration for:

- **Robustness:** The ability of the port to withstand a given level of stress and/or demand
- **Redundancy:** The measure of the port's ability to rely on backup systems or infrastructure
- **Resourcefulness:** The port's capacity to mobilize resources to respond to a disruptive event
- **Rapidity:** The port's dexterity in responding rapidly to an event to avoid damage and further degradation to systems and infrastructure

Emergency planning defines the specific and immediate reaction to a disruptive event. State law (RCW 38.52.070) requires each political subdivision in the state (defined as any city, town, or county) to plan for emergency response and establish a local emergency management organization or be a member of a joint local emergency management organization consistent with the state comprehensive emergency management plan and program. Washington's cities, towns, and counties are well-versed in emergency planning and management.

Ports are encouraged to participate actively with their regional coordinating agency. These planning efforts are well-structured and have access to additional resources through federal agencies (i.e., FEMA) and state organizations. Ports should adopt appropriate emergency response plans and train in preparation for an actual emergency. Some port facilities, such as airports, have more defined emergency preparation standards.

Resiliency planning is an emerging practice and theory. Western Washington University has expanded its Disaster Reduction and Emergency Planning program with the recent creation of the Resilience Institute. The Institute focuses on research and best practices to reduce the social and physical vulnerability to natural hazards and events, either chronic or acute. For ports, addressing resiliency starts with an assessment of potential risks followed by identifying strategies to respond and absorb the risk without experiencing irreversible harm to the organization itself or the community it serves.

Ports should consider adopting standalone resiliency plans or include goals and strategies in their strategic plans that address their specific risks, whether those are economic, structural, or natural in origin. Resiliency planning takes the long view, requiring that the port identify potential risks and better understand how they should be prepared in the event those risks materialize.

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9. PORT PURCHASING AND CONTRACTING

“If you think it’s expensive to hire a professional to do the job, wait until you hire an amateur.”

–Red Adair

PORT PURCHASING AND CONTRACTING

Formal government procurement dates to the ancient Egyptians and Romans, who used scribes to document transactions as they began to trade with private suppliers. The earliest U.S. contracting began with contracts to provide food rations to western outposts in 1798. It wasn't until the expansion of the military during World War II that formal federal government procurement became the norm.

Like all states, Washington has adopted a series of legal requirements for state and local government purchasing and contracting. In essence, government purchasing requirements ensure that (a.) any contracted service, work, or product is obtained competitively, (b.) the process is transparent, and (c.) true value is received. These concepts are often perceived to conflict with speed and efficiency in securing services, work, and products, but the drive for fairness prevails.

This chapter is organized by the type of service or commodity a port acquires on the open market. The types of procurements made by ports generally fall into one of these categories:

- Professional architecture and engineering services
- Personal services
- Purchasing of goods, equipment, supplies, and materials
- Purchased services
- Public works construction

Additional considerations are reviewed following the discussion of these categories.

Fairness lies at the core of all port procurement and purchasing that uses public funds. In addition to ensuring actual fairness in the purchasing and procurement process, ports should also ensure that the process is perceived to be fair to proposers and stakeholders. If a port conducts an open competition with a transparent, documented selection process, proposers and stakeholders can verify that all qualified proposers received fair consideration and that the selection was based on the published evaluation criteria. Prior experience with a port might give a firm a competitive advantage, but this is not in itself an unfair advantage. Ports should be cautious not structure selection processes in ways that would give those firms an unfair advantage.

CATEGORIES OF PROCUREMENT AND PURCHASING

Professional Services – RCW 39.80

Professional services are provided by state-licensed architects (RCW 18.08), engineers (RCW 18.43), land surveyors (RCW 18.43), and landscape architects (RCW 18.96). RCW 39.80 mandates a specific process to acquire these services except in the case of emergency public work.

Professional Services: Procurement

Step 1. Publish the Port's requirement for professional services and seek annual submission of qualifications for architect and engineering services.

RCW 39.80.040 requires government agencies (including ports) to “encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data.” The announcement should include the port's projected requirements for any category or type of professional services, a concise statement of the general scope and nature of the work, and a representative at the agency that can provide further details (RCW 39.80.030). For annual selections, a port can select more than one on-call service provider.

Example: A port may publish an annual announcement requesting “on-call engineering services for the routine repair and maintenance of port docks and wharves” or a one-time announcement for “the Main Street dock rehabilitation project.”

Best Practice: Publish the announcement in local newspapers, post it on the port's website, and disseminate the announcement to known firms. RCW 39.08.040 requires that the “procedures and guidelines shall include a plan to ensure that minority and women-owned firms and veteran-owned firms are afforded the maximum practicable opportunity to compete for and obtain public contracts for services. The level of participation by minority and women-owned firms and veteran-owned firms shall be consistent with their general availability within the professional communities involved.”

Best Practice: There is no specified form or timeframe for these solicitations. The solicitation is typically called a request for qualifications (RFQ). Project-specific solicitations can sometimes be called a request for proposals (RFP) instead of an RFQ. In any event, enough time should be afforded to receive quality responses, and the size and urgency of the project should be factored into the solicitation. In normal circumstances, 30 days is an adequate timeframe, and this can always be extended if circumstances warrant.

Best Practice: The port should provide enough information to attract responses from qualified service providers. The RFP may include such things as:

- Background on the port and project or the annual need.
- Anticipated scope of work (annually or by project) with adequate detail to negotiate a fee.
- Estimated schedule and approach to evaluate and select the most qualified firm.
- Anticipated overall project timeline.

- Preferred qualifications and experience of the desired firm, including licenses.
- Proposer's experience and project history.
- Submittal instructions, including deadlines.
- Evaluation criteria beyond experience, such as project management, meeting deadlines, staff capacity, licensing, and history of contract performance for other agencies.
- Port standard terms and conditions.
- Special considerations and references.
- Reference documents.

Step 2. Select the most qualified professional service provider.

The port should select the most qualified provider based upon either the port's annually compiled list of providers or responses to the announcement for a particular project.

Step 4. Negotiate a scope of work and a contract.

Once a provider has been selected, negotiate the scope of work, the fee, and the contract. The port can move on to the next-best provider if these negotiations are not concluded. Note that the fee can be part of these negotiations.

Best Practice: Develop and utilize a standard port contract for professional services. Do not use the contract from the provider or an "industry standard" contract such as an American Institute of Architects (AIA) standard professional services contract.

Personal Services – RCW 53.19

Unlike any other Washington municipal government, port districts must follow a process to hire providers of personal services, which are services provided by a consultant with professional or technical expertise to accomplish a specific study, project, task, or other work statement.

Each port commission is required to adopt a policy for the procurement of personal services, and it must be based upon the guidelines developed by the "municipal research [and] services center, in cooperation with the Washington public ports association" (RCW 53.19.080). Lawyers are exempt from this policy. The intent of RCW 53.19 is commission involvement in developing a policy for personal service contracting that encourages a competitive and accountable contracting process.

Best Practice: While the statute exempts contracts for less than \$50,000, the best practice is to adopt a procedure that demonstrates a competitive and accountable process for all port personal service contracts. For smaller contracts, this could be a simple procedure such as a memorandum from the contracting officer addressing these issues.

All personal services contracts must follow a process of competitive selection, excepting:

- Contracts less than \$50,000.
- Emergency contracts (discussed further below).
- Sole source contracts (discussed further below).
- Other classes of services or groups of service contract types that the port commission has determined a competitive selection would be not appropriate or cost effective.
- Contracts awarded to companies that furnish a service for which the tariff is established by the utilities and transportation commission or another public entity.
- Intergovernmental agreements awarded to any governmental entity, whether federal, state, or local.
- Contracts for services that are necessary to conduct collaborative research if prior approval is granted by the funding source.

Best Practice: The most common exemption used is sole source, in which case the personal services are provided by a particular provider—for example, an environmental consultant who has worked on several port sites, or a human resource consultant who has already worked with the port. Sole source contracting decisions should be documented in a memorandum and taken to the commission for approval.

RCW 53.19 specifies the minimum policy requirements for personal services contracts based on estimated contract size. Ports may adopt more rigorous requirements through their purchasing and procurement policies.

CONTRACT AMOUNT	EVIDENCE OF SOLICITATION	FORMAL SOLICITATION THROUGH RFP	COMMISSION APPROVAL REQUIRED
Under \$50,000.			May be delegated to executive director.
\$50,000 to \$200,000.	Required by law.		May be delegated to executive director.
Over \$200,000.		Required by law.	Recommended, but can be delegated to executive director.

Personal Services: Procurement

These services are based on a firm's response to a port-issued Request for Proposals (RFP), which includes a request for a cost proposal. For contracts estimated below \$50,000, the solicitation process can be tailored to meet project needs unless commission-adopted purchasing policies dictate otherwise.

A formal RFP typically applies to contracts over \$50,000 and contains the following key components:

- Background on the port and project.
- Anticipated scope of work on which the proposed fee is based.
- Request for proposed fee.
- Estimated project schedule.
- Preferred qualifications and experience of the desired firm.
- Proposer's experience and project history.
- Submittal instructions, including deadlines.
- Evaluation criteria beyond experience, such as project management, meeting deadlines, staff capacity, and history of contract performance for other agencies.
- Port standard terms and conditions.
- Special considerations and references.
- Reference documents.

Purchasing of Goods, Equipment, Supplies, and Materials

There are no specific guidelines for the procurement of goods, equipment, supplies, and materials in Washington statutes. However, ports are encouraged to adopt purchasing guidelines through commission action. If the acquisition of these items occurs in conjunction with public works projects, ports must follow the requirements for public works construction.

This category of procurement includes items such as office supplies, vehicles, materials for ordinary maintenance projects, computers, and the like. These types of purchases often border on being considered a public works project for which there are statutorily prescribed procurement requirements. As a result, this can be an imprecise area of port procurement. For example, a phone system installed in a port office is a purchase of goods, whereas a sprinkler system is a public work. How a purchase is classified depends on whether the item is installed by the seller. In another example, a port may purchase marina floats as materials and have them delivered to a port parking lot. These floats can then be installed under a public works contract, which allows the port to pick the best float on the market.

Best Practice: Develop a policy for purchasing goods, equipment, supplies, and materials. For some large purchases, a port may have an interest in purchasing a certain brand of equipment

to facilitate ease of parts and maintenance activities—for example, purchasing forklifts from one manufacturer. For other large purchases, a policy may require an RFP that includes equipment specifications.

Purchased Services

Routine and necessary functions such as waste collection, mowing, and litter pickup are considered purchased services. They are repetitive, straightforward, and involve the completion of specific tasks or projects that involve minimal decision making. These services should not be confused with personal services, which are more intellectual in nature.

There are no state requirements for the acquisition of these services. But similar to the acquisition of materials and supplies, purchased services should be acquired through processes spelled out in ports' purchasing policies and adopted by the commission.

For both purchased services and the acquisition of equipment, materials, and supplies, ports should adhere to the standard appearance of fairness.

Public Works Construction

A public work is paid for by a municipality (including ports) and includes all work, construction, alteration, repair, or improvements other than ordinary maintenance (RCW 39.04.010). Ports can use their own labor to complete a project; however, if the estimated project cost exceeds \$40,000, the port must determine if the project can be accomplished less expensively by contracting it out.

There are several sub-categories of public works contracting:

Unit Priced Contract

Also known as on-call contracts, unit priced contracts allow ports to competitively contract through a bid process for a limited number of projects or trades over a defined time period, with a maximum of three years. It affords a great deal of credibility for repetitive, well-defined public work (RCW 53.08.120 3a). These contracts are awarded to the lowest responsible bidder and must invite at least one proposal from a minority or woman owned enterprise.

Minimal Bid or Small Works Roster Under \$300,000 (RCW 53.08.120)

A process by which a port or other municipality may solicit bids on work without going through a formally advertised bid process. Ports can develop a small works roster and then solicit competitive bid proposals for a specific project from selected contractors listed on their roster. The port's roster must be updated twice a year by soliciting interested vendors through a notice in a newspaper of general solicitation. (RCW 39.04.190).

Ports should distribute requests from contractors, so the work is evenly available over time to all contactors on the roster. Projects cannot be divided into smaller units of work to qualify for this process. Ports should solicit at least three proposals from contractors whenever possible for each independent project. Retainage and performance bond requirements may be waived. Ports must solicit proposals from minority contractors during each solicitation, if they are available during each solicitation. Single general rosters can be used for all types of works, or multiple rosters can be developed within specialty areas. Ports should solicit annually to develop their rosters; the solicitation process should be advertised in a newspaper of general circulation (RCW39.04.155). The port commission should integrate procedures for small works rosters into their procurement and purchasing policy. Cities and counties can allow ports to use their rosters through an interlocal agreement.

Competitive Formal Bids Over \$300,000

For projects with estimated costs over \$300,000, ports must solicit formal bids on a competitive basis. For projects with estimated costs below \$300,000, ports have the option of considering a small works contract. Requirements for competitive bid packages include project specifications, a bid guarantee, and performance and payment bonds. Bid packages must be sealed at submission. The contract must be awarded to the lowest responsible bidder.

Bid bonds must be submitted to the port in the form of a cashier's check, money order, or surety bid bond, for a minimum of 5% of the bid amount. No bid shall be considered unless accompanied by a bid proposal deposit that meets these standards. Along with sureties satisfactory to the commission and otherwise conditioned as required by law, to legally perform a contract, a performance bond must be submitted for no less than 25% of the contract price (RCW 53.08.130). Ports may require larger performance bonds, as approved in their purchasing policies.

Exceptions to the formal bidding requirements are made in instances of emergencies; these are discussed later in this chapter.

The following table summarizes the various public works construction approaches to securing work.

CATEGORY	DOLLAR LIMIT	SOLICITATION
Professional Services	Not applicable.	RFQ.
Personal Services	Under \$50,000.	Not applicable; RFP with fee.
	\$50,000 to \$200,000.	Evidence of a competitive selection; RFP with fee.
	Over \$200,000.	Formal competition required; RFP with Fee.
	Sole source.	Justification that there is only one source for the work.
Materials & Supplies	Not applicable.	There are no statutory requirements, but there should be an appearance of fairness.
Purchased Services	Unit Price Contracts	Solicit competitive proposals based on a construction unit or hourly rate for repetitive work. Limited to a three-year period with the option to extend for one year.
Public Works Projects	Unit Price Contracts	Solicit competitive proposals based on a construction unit or hourly rate for repetitive work. Limited to a three-year period with the option to extend for one year.
	Small Works Roster, \$40,000 to \$300,000.	Can solicit bids in lieu of formal competition; use sparingly.
	Competitive Formal Bids: over \$300,000.	Formal advertising, bid package, and notice to contractors.
Emergency Contracts	Used rarely and only in extreme circumstances.	

APPROVAL	TYPES
Commission, unless delegated to the executive director.	Architectural, engineering, land surveying, and landscape architecture.
Commission, unless delegated to the executive director; usually within the authority of the executive director.	Nonprofessional services (as defined by statutes) such as land use, environmental and strategic planning, legal services, and human resources.
Commission, unless delegated to the executive director.	Nonprofessional services such as land use, environmental and strategic planning, legal services, and human resources.
Commission approval recommended.	Nonprofessional services such as land use, environmental and strategic planning, legal services, and human resources.
Secure Commission approval before start of work.	Only one firm is available for a particular scope of work.
Commission should adopt purchasing policy to address this category of procurement.	Routine, necessary, and continuing functional services that are routine, repetitive, and specific such as waste hauling, mowing, and litter pick up.
Commission should adopt purchasing policies for this category of procurement.	All work, construction, alteration, repair, or improvements other than ordinary maintenance.
Commission should adopt purchasing policies for this category of procurement.	All work, construction, alteration, repair, or improvements other than ordinary maintenance.
Commission should adopt purchasing policy to address this category of procurement.	All work, construction, alteration, repair, or improvements other than ordinary maintenance.
Commission approval required unless waived by policy.	All work, construction, alteration, repair, or improvements other than ordinary maintenance.
Seek concurrence with Commission at next special or regular meeting. Make contracts available to public within seven days of execution.	Should be a process for which authority in the Delegation of Power lies with the executive director. Based on response to a set of unforeseen events that pose an immediate and severe threat to property, bodily injury, or loss of life.

ADDITIONAL CONSIDERATIONS

Basis of Compensation: Professional and Personal Project Contracts

The selection of the basis of compensation is at ports' discretion and should be addressed in an RFP. It can significantly affect the risk allocation between the port and consultant. Consultants may suggest alternative arrangements in their proposals. If those alternative arrangements are acceptable to the port, all finalists should be afforded the opportunity to provide revised pricing based on the compensation options.

Common compensation arrangements for professional and personal contracts include the following:

- **Time and material** contracts are convenient for getting the work started quickly, but they offer the least accountability for the consultant because payment is not tied to deliverables or project completion. Essentially, all risk is allocated to the port. If a time and material contract is requested, it may indicate that fixed pricing of the scope is difficult. Ports should consider a startup contract to better define the scope and budget. Proper management of time and materials contracts requires prompt, detailed review of the consultant's time sheets and use of resources. At a minimum, a time and material contract should also include a not-to-exceed amount and milestone deliverables. These not-to-exceed amounts can be tied to a specific task or an overall contract amount in which projected fees may be transferred from task to task, provided they do not exceed the entire contract not-to-exceed amount.
- **Fixed price** contracts offer greater certainty and lower risk to the port but may result in an overall greater cost because the consultant needs to include a larger contingency.
- **Cost plus fixed fee (cost plus)** arrangements are based on the consultant's actual costs plus a fixed fee upon completion of deliverables. For larger contracts, a cost analysis should be performed; this requires detailed scrutiny of the consultant's accounts. Cost plus compensation arrangements offer no incentive to explore cost saving innovations. Note that cost plus arrangements create an incentive for consultants to increase overall costs and are prohibited in federally funded contracts.
- **Fee per transaction** is a low-risk arrangement for both port and consultant, so long as the transaction services are well-defined both in the contract and in the business culture.
- **Fee plus expenses** arrangements are typically used with personnel search firms or for expert testimony during litigation. In any case, ports should always define allowable expenses and establish a dollar limit.

The bottom line is that ports need strong project management. Letting consultants work on open-ended contracts is not advised and can lead to runaway costs.

Emergency Contracts

Emergency contracts (RCW 53.19.010) can be issued in response to unanticipated threatening conditions or events that could result in bodily harm, death, or significant damage to facilities and assets.

The person or persons designated to act in the event of an emergency by the governing body of a port in purchasing policies or delegation of powers may declare that an emergency exists. This person is traditionally the executive director. They are then authorized to waive competitive bidding requirements and award all necessary contracts on behalf of the port to address the emergency.

If a contract is awarded without competitive bidding due to an emergency, the commission must enter a written finding of the existence of an emergency into record no later than two weeks following the award of the contract. Documented justification for emergency contracts shall be provided to the commission when the contract is filed. Staff are advised to notify the commission immediately of the emergency declaration and the proposed course of administrative action.

Ports should also notify their insurance carriers of the events.

Sole Source Contracts: Personal Services

Sole source contracts are difficult to justify outside of emergency conditions. They cannot be used under any circumstances for public works projects. Sole sourcing should be included in a port's commission-adopted purchasing policies. For sole sourced contracts of \$50,000 or more, documented evidence must be developed and available for public inspection. That evidence should make it abundantly clear that the port attempted to identify potential consultants and that the fees negotiated were appropriate for the work (RCW 53.19.040).

Minority and Women Owned Business

The Washington State Office of Minority and Women's Business Enterprises (OMWBE) certifies small businesses owned and controlled by minority, women, and socially and economically disadvantaged persons. OMWBE certifies businesses to help increase contracting opportunities for certified businesses with state and local governments.

State Joint Purchasing

The Washington State Department of Enterprise Services (DES) oversees more than 1,500 vendors supplying goods, equipment, and services through master contracts. These contracts are available to ports; using them allows ports to avoid the time and cost associated with a competitive selection. DES offers training sessions for local governments to better understand how to gain access to these master contracts. These contracts provide for such things as equipment, IT services, and customer survey services, to name a few.

Public Disclosure Considerations

Submitted proposals become property of the port and are considered public records which may be subject to disclosure in accordance with Washington public disclosure laws. Language to this effect should be included in an RFP. Note that under RCW 42.56.060, public entities and employees are not liable for any loss or damage based on disclosure of records if the agency/employee “acted in good faith in attempting to comply with the provisions of this chapter.”

Sales and Use Taxes

The applicability of sales and use taxes varies greatly with the type of work and or materials being acquired. Ports are advised to explore specific applications of these taxes for each solicitation.

Federal Contracts

Recipients of federal funds must comply with applicable federal consultant contract requirements in addition to Washington port personal services contracting laws. To the extent that Washington ports receive federal funds, it is typically in the form of grants issued by the Federal Aviation Administration, Department of Homeland Security, or Federal Highway Administration, typically through WSDOT. Some Environmental Protection Agency grant funds are awarded through the Washington State Department of Ecology, but these awards typically do not include additional consultant contracting requirements. It is also important to ensure that ports comply with the Davis Bacon Act wage requirements.

Consultant vs. Employee

Before contracting for personal services, ports should consider including language in the contract and procedures for monitoring the contract to help ensure that the consultant is in fact an independent contractor and will not be considered a port employee. This issue is enough of a problem that specific legislation was enacted in 2002, making it an unfair practice to misclassify an employee to avoid providing or continuing to provide employment-based benefits (RCW 49.44.170). The general rule according to the IRS is that an individual is an independent contractor if the person for whom the services are performed has the right to control or direct only the result of the work, not the method of accomplishing the result. However, out of an abundance of caution, ports should refer to the Washington State Department of Retirement Systems checklist to clarify the issue.

SURPLUSING PORT PROPERTY

RCW 53.08.090 governs the sale of port district property. The statute provides that port property can only be sold when the property (real or personal) is “no longer needed for district purposes.” This is commonly described as “surplus” property, and the action is commonly called “surplusing.”

The port commission, by written resolution, may authorize the port district's executive director to sell port property with a value of less than \$10,000. This written resolution can only be in force for one calendar year. The best practice is to routinely include this resolution in the list of actions the port commission takes during the first meeting of the year. This allows the executive director to take such actions as selling old equipment or boats seized for non-payment of marina charges.

Before surplusizing the property, the port district's executive director must:

- Itemize and list the property to be sold.
- Provide written certification to the commission that the listed property is no longer needed for district purposes.
- Not break up property worth \$10,000 or more into smaller components to drop it below the statutorily restricted value.

It is permissible for the port district to hold one auction and sell individually any number of items, each with a value of less than \$10,000. However, when in doubt, take the action to the commission.

For property that has a value of more than \$10,000, the statute provides that the port commission must adopt a resolution declaring the property "no longer needed for district purposes." When that is accomplished, it may be sold.

The statute does not require any particular method of sale for either real or personal property. Ports should adopt a policy that requires a transparent process to ensure the port receives fair value for public property. A public auction, an advertisement with requests for bids, or the use of a real estate agent to market real property are all methods that help ensure the process is transparent and that the port receives fair value. Whatever method a port district chooses, it is important to document the process and the facts that support the port receiving fair value.

The port's policy should include a section addressing the ability of port employees and their immediate family members to purchase surplus port property. Note that the "Code of Ethics for Municipal Officers – Contract Interests" found in RCW Chapter 42.23 prohibits port commissioners and likely the executive director from ever purchasing port property. Anyone involved in the port's decision to surplus property should also be precluded from purchase. If the proposed sale property (typically real property) is referenced in the port's Comprehensive Scheme of Harbor Improvements, the comprehensive scheme must be modified "to find the property surplus to port needs." This requires a public hearing, held in accordance with RCW 53.20.010.

If the proposed sale property is within the geographic boundary of an industrial development district, the property must be sold in accordance with the procedures in RCW Chapter 53.25, or

the property must first be deleted from the industrial development district, as provided in RCW 53.25.040.

GLOSSARY OF PROCUREMENT AND PURCHASING TERMS

Application (Proposal/Submittal): An application contains a completed statement of qualifications or proposal, together with a request to be considered for the award of one or more contracts for personal services, submitted in response to either an RFQ/RFP or a notice or advertisement for a consultant services roster. This can also be called a proposal or submittal.

Bid Guarantees: Also known as bid bonds or bid deposits, bid guarantees are monetary deposits that contractors must submit along with their bids. This discourages successful bidders from backing out of a contract. Bids must be accompanied by a bid guarantee of at least 5% in the form of a cashier's check, money order, or surety bond (RCW 53.08.130).

Bid Protests: Contractors have the right to protest a bid. Legislation passed in 2019 requires the port to provide copies of bids when requested (RCW 39.04.105). Further, court decisions have clarified that the protest can only result in an injunction against the award. Protests cannot result in damages to the protesting bidder or force the port to award to the protesting bidder. According to the statutes, the port always reserves the right to reject all bids in the face of a protest.

Competitive Solicitation for Personal Services: A documented, formal process that provides equal and open opportunity to qualified parties and culminates in a criteria-based selection, in which criteria other than price may be the primary basis for consideration. The criteria may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services. RCW 53.19.010(2).

Competitive Solicitation for Professional Services: A documented, formal process that provides equal and open opportunity to qualified parties and culminates in selection of the firm deemed to be the most highly qualified to provide the services required for the proposed project, based on criteria established by a port district. These criteria may include ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services. The criteria may not include price. After selection of the most highly qualified firm, a port should enter into price negotiations with the selected firm.

Consultant: A consultant is an independent individual or firm contracting with a port to perform

a service or render an opinion or recommendation, according to the consultant's methods and without being subject to the control of the port, except as to the result of the work. RCW 53.19.010(3).

Contract Retainage: Requires contract retainage on "public improvement contracts."

Emergency: A set of unforeseen circumstances beyond the control of the port that either present an immediate or imminent threat to the proper performance of essential functions, or may result in bodily injury, loss of life, material loss, or damage to property if immediate action is not taken. RCW 53.19.010(4).

Evidence of Competition: Documentation demonstrating that the port has solicited responses from multiple firms in selecting a consultant. RCW 53.19.010(5). The port district's own policies and procedures may be more restrictive than statutory requirements, but not less restrictive.

Ordinary Maintenance: Maintenance work performed by the regular employees of the port. It is important to note that this definition, while standard according to the Washington Department of Labor and Industries (L&I), is not widely accepted. Ports are advised to seek specific determinations on the consideration of ordinary maintenance.

Personal Services: Professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement, which may not reasonably be required in connection with a public works project meeting the definition in RCW 39.04.010(4). "Personal service" does not include purchased services as defined in RCW 53.19.010(8) or professional services procured using the competitive selection requirements in chapter 39.80 RCW (A&E). RCW 53.19.010(6).

Performance Bonds: RCW 39.08.010 requires public works contracts to use performance and payment bonds to guarantee that the contractor or the surety itself will complete the project and pay all subcontractors, workers, and suppliers.

Personal Services Roster: A database of consultants desiring to provide personal services to a port district, established in response to a notice or advertisement. This database may be provided and maintained by a single agency, group of agencies, or a non-agency service provider, with interlocal agreements or other appropriate documents. The consulting services roster may also be used in conjunction with criteria established by an agency to further select a group of consultants for an "on-call" roster.

Prevailing Wage: Prevailing wages are the hourly wages, overtime pay, and usual benefits paid to the majority of workers in a particular trade or occupation. The rates vary by county and type of labor, and they are determined and enforced by Washington L&I based on collective bargaining agreements or—if collective bargaining agreements are not available—wage surveys

or other methods. Davis Bacon prevailing wage requirements are applicable in cases in which federal grants are utilized or the project is considered a federal project.

Professional Services Roster: A database of consultants desiring to provide professional services to a port district, established in response to a notice or advertisement and including statements of qualification (SOQs) that a port district can use to evaluate consultants for professional services the port district wishes to obtain. This database may be provided and maintained by a single agency, group of agencies, or a non-agency service provider, with interlocal agreements or other appropriate documents.

Professional Services (A&E): Professional services rendered by any person, other than as an employee of the agency, contracting to perform activities within the scope of the general definition of professional practice in chapters 18.08 (Architects), 18.43 (Engineers and Land Surveyors), or 18.96 (Landscape Architects) of the RCW. RCW 39.80.020(5). Professional services are procured using the qualifications-based selection requirements in chapter 39.80 of the RCW.

Public Work: Public work includes all work, construction, alteration, repair, or improvement other than ordinary maintenance that is executed at the cost of the state or any municipality, including ports.

Purchased Services: Services provided by a vendor to accomplish routine, continuing, and necessary functions. Purchased services include but are not limited to (a.) services for equipment maintenance and repair, (b.) operation of a physical plant, (c.) security, (d.) computer hardware and software maintenance, (e.) data entry, (f.) key punch services, and (g.) computer time-sharing, contract programming, and analysis. RCW 53.19.010(8).

Request for Information (RFI): An RFI process is useful when the possible solutions to a port's need are variable or when the market for solutions is unknown. For example, a small port may want to automate its time and attendance system but does not know if cost-effective solutions are available. The RFI gives consultants the opportunity to describe their qualifications, available products, and cost ranges without having to develop detailed proposals. The information received from the RFI process may then result in a more detailed RFP process.

Request for Proposals (RFP): An RFP is the most common procedure used in the competitive solicitation of personal services. An RFP asks consultants to submit a specific approach or proposal meeting the port's stated need, and it may request identification of key personnel, price, and schedule information. Proposals are evaluated based on a combination of price, qualifications, and quality factors.

Request for Qualifications (RFQ): An RFQ is used to identify consultants available to address a port's stated need or generally qualified to perform a category of services. Price is not a factor in the initial screening of qualifications. The RFQ may request that consultants provide

a specific proposal or may simply request a statement of the firm's overall capabilities and qualifications of personnel. An RFQ process may also be used as a preliminary evaluation procedure for complex personal service procurements, in which the most qualified firms are selected and then requested to submit price proposals. The final selection may be based on a combination of price and qualifications.

Responsible Bidder: Responsible bidders are defined in RCW 39.04.010 and 39.04.350. They must meet a number of mandatory criteria, including being registered, having industrial workers insurance and worker's compensation coverage, and having a state excise tax registration, to name a few.

Responsive Bid: Applies to small works rosters and formal competitive bids. Responsive bids are bids that are submitted on time with all the information the port requested.

Retainage: RCW 60.28.011 requires agencies to withhold up to 5% of the value of a public improvement contract as retainage until the project is completed and the contract is accepted. This provides a financial incentive for contractors to finish a project, and it provides a limited amount of financial protection for the involved parties.

Services Reasonably Required in Connection with a Public Works Project: There are many services that would otherwise be considered as personal services but may be reasonably required in connection with a public works project and do not meet the general definitions of professional services.

Sole Source Consultant: A consultant providing professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the personal service. Justification shall be based on the uniqueness of the service, sole availability at the location required, or warranty or defect correction service obligations of the consultant. RCW 53.19.010(9).

Supplemental Bidder Responsibility Criteria: RCW 39.04.350 provides specific guidance to ports on the definition of a responsible bidder by providing criteria for identifying a responsible bidder and requiring that a bidder must certify their compliance with these criteria. A port may rely on the bidder's certification. Among other things, these criteria require that bidders be properly licensed, have appropriate insurance, and are not disqualified from bidding on any public works project.

Surplus property: RCW 53.08.090 provides that personal or real port property can be sold when the property is "no longer needed for district purposes." This is commonly described as "surplus" property, and the action is commonly called "surplusing." The port commission may, by resolution, authorize the sale of surplus property. Value limits and other requirements apply, and ports are encouraged to review the RCW and consult legal counsel when considering surplus property.

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The background is a solid teal color. In the lower right quadrant, there is a graphic of concentric, overlapping circles that resemble ripples on water, centered around a small dark spot. The circles are lighter in color than the background, creating a subtle pattern.

10. TRANSPARENCY AND ETHICS

“Liberty flourishes, not when government is weak,
but when government is accountable.”

–David Brin

TRANSPARENCY AND ETHICS

Transparency derives from the medieval Latin for “to show light through;” more specifically, the Latin roots trans—across, beyond, and through—and parere—to come in sight or appear. In today’s terminology, transparency implies that a decision or action is easily seen, recognized, and detected.

Ethics derives from the Greek word ethos, or “way of living,” and the Latin for “customs.” Philosophically, ethics defines what is good for both the individual and for society. It establishes the duties and actions that individuals and institutions owe themselves and one another. Further, it guides decision making for a public institution such as a port.

This chapter explores several topics that contribute to transparency and strong ethics in Washington’s public ports.

Transparency and ethics are woven into every aspect of governing and managing today’s ports. They are manifested in every port action and require constant vigilance from elected officials and port staff. Many circumstances require a particularly heavy emphasis on transparency and ethics.

Although the appearance of fairness in port commission decisions does not fall under the traditional Appearance of Fairness doctrine that Washington courts have applied to land use and property rights decisions, appearance still matters in these settings. Whether that appearance is connected to a real or perceived conflict, it is important, and it may impact the foundational trust the public has in a port. Ports often make difficult decisions and take controversial actions. The depth of the public’s confidence in a port’s integrity is critical to that port’s effectiveness in serving the community.

When combined with a deep respect for transparency, organizational alignment, a well-developed culture, good decisions, and respectful and efficient commission meetings enhance a port’s standing in the community—which can be thought of as a port’s “political bank account.” When a community trusts its port commission and staff, it is more likely to support—or at least not oppose—port initiatives and decisions. Conversely, poorly run or disrespectful commission meetings, sloppy work, and lacking transparency erode community trust. Resulting distrust of a port makes community opposition to its priorities and vision more likely.

This chapter addresses issues important to developing and maintaining an ethical port culture, including specific aspects of port meetings and public records.

PORT ETHICS AND CONFLICTS OF INTEREST

Conflicts of Interest: Prohibited Use of Public Office

Appearances matter. Experience shows that the best practice is for port staff and commissioners to disclose even perceived conflicts of interest.

RCW 42.23 prohibits municipal officers from using their position to obtain special privileges or exemptions, or being “beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer.” There are limited exceptions to these prohibitions, and merely disclosing the interest or not participating in a discussion or vote on a contract does not cure a violation of the law. The term municipal officers includes all elected and appointed officials, deputies, and assistants, of all municipal and quasi-municipal jurisdictions, including ports, and essentially refers to port commissioners and management staff.

Individual ports can also adopt internal ethics policies that may be more restrictive than the state law while clarifying its application to all port employees. Care should be taken when adopting substantive ethical requirements or processes that go beyond state law and apply to elected officials.

The penalties for violating RCW 42.23 are significant. Violations may induce financial civil penalties up to \$500, possible forfeiture of office, and voiding of contracts and other governance actions taken in violation of the statute.

In addition to the fundamental prohibition of being “beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, the law specifically prohibits municipal officers from taking four types of actions (RCW 42.23.070):

1. Using their position to secure special privileges or exemptions for themselves or others.
2. Giving, receiving, or agreeing to receive, directly or indirectly, any compensation, gift, reward, or gratuity from a source other than the employing municipality, for a matter connected with or related to the officer’s services as such an officer.
3. Accepting employment or engaging in business or professional activity that they might reasonably expect would require or induce them by reason of their official position to disclose confidential information acquired in their official position.
4. Disclosing or otherwise using for their personal gain or benefit confidential information gained by reason of their position.

A contract interest is defined by the statutes and prohibits a direct or indirect interest in a contract at the time the contract is made, by or under the supervision of an elected or

appointed municipal officer. A contract includes any kind of agreement involving sales, leases, or property purchases. There is no exemption for a municipal officer to disclose a contract interest or recuse themselves except in the case of a “remote interest” as defined in RCW 42.23.040.

A remote interest provides an exemption as long as the party with the remote interest discloses that interest and recuses themselves from participating in the decision. This should be included in the official written record of the port. For example, a contract with a nonprofit corporation of which a port commissioner is a non-salaried officer would not be considered a conflict. However, the fact that the interest is there must be noted in the port commission’s minutes.

There is an exemption in the statute for a port official leasing from the port, including marina moorage or tie-down fees at the airport, provided there is a court-supervised process to set the value and affirm the lease amount is correct. In practice, many port officers keep boats in port marinas or aircraft in port hangers and have not followed a court-supervised process. Instead, these ports rely on the rate setting process that sets a common rate for all users. This approach has been neither tested by the courts nor addressed by the State Auditor’s Office. Careful consideration should be used when addressing this issue.

Elected officials should use caution in holding two elected offices simultaneously. This is allowed as long as the offices are not incompatible. However, negative perception is always possible, which can erode a port’s public credibility.

Ports should consider adopting internal ethics policies which further define potential conflicts of interest, real or perceived. Those policies should address a number of potential conflict areas so that the commission, management team, and staff have a clear understanding of the geography of ethical behavior, and it is not left up to the individual to discern what can be complex laws and definitions. For example: Is it appropriate for an employee to bid on surplus port equipment at an auction, whether or not that employee participated in the surplus decision?

It should be noted that elected port commissioners are considered port employees for purposes of many state and federal laws, such as those outlawing sexual harassment or creating a hostile work environment. Therefore, port commissioners should receive the same training as port staff on these matters.

Although this is not a legal requirement, ports should pay Labor and Industry premiums on the compensation (not expenses) paid to port commissioners. These premiums are low, and they provide worker’s compensation coverage for any port commissioner injured while on port business. This provides coverage for the commissioner and helps protect the port from lawsuit for injuries or death sustained by a commissioner while on port business.

Port commissioners generally seek legal advice on questions of potential conflicts. It is a best practice to raise any issues in a commission meeting and either reiterate the attorney's advice or, if the attorney is present, ask the attorney to restate the advice. Even if a commissioner's participation in an action would not be a statutory conflict of interest, they should recuse themselves on the record when there is even a hint of a conflict, to preserve the appearance of fairness.

Nepotism

Nepotism is defined as showing favoritism to relatives of those in a decision-making position, such as a port commissioner or manager. This could be in terms of employment or contracts for goods and services with the port. The term has roots in papal history dating back to the 1400s—in early Italian, it is a variant of the word *nepote*, meaning “nephew.”

If a relative relies upon a port officer for support, RCW 42.23 would apply to the port's employment of that relative because the port officer would be “indirectly beneficially interested” in said employment. Other than that narrow application, Washington State law does not specifically address nepotism, except in some labor related laws and administrative codes that prohibit discrimination based on marital status. It is common for local governments to adopt their own set of standards that address nepotism in a code of ethics. This comes from an abundance of concern for the appearance of fairness.

Giving and Receiving Gifts

The issue of gifts is of great ethical concern and involves the acceptance of gifts given to a port, its staff, or its commission, as well as a ports' ability to gift public resources to others.

Port commissioners and appointed staff at all levels should be very cautious in accepting gifts from third parties such as tenants, consultants, or contractors. There are two types of gifts that a port or its commission or employees may be offered.

The first is a gift to the port, such as donated land or equipment. RCW 53.08.110 provides the statutory authority for port districts to receive gifts of “real and personal property.” However, the statute provides only for the port commission's authority to accept gifts. Unless the authority to accept gifts on behalf of the port has been delegated, accepting a gift to the port requires commission action.

From the donor's perspective, a gift to a port carries the benefits of a federal tax donation. The IRS allows a taxpayer to donate to qualified organizations, which includes port authorities as political subdivisions of the state. The gift must be used to support a substantial government function and can include, for example, the difference in value of land that is offered to the port at less than market value. In these cases, the port may be required to certify or document the transaction. Ports should be cautious when certifying the value of a donation for tax purposes. While ports are considered an eligible government under the internal revenue code, there is

defined guidance from the IRS on establishing value.

The second type of potentially acceptable gifts are those of nominal value that are offered to port commissioners or any port employee, such as meals, tickets to sporting events, or the like. RCW 42.23 states that “no municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the officer’s services as such an officer unless otherwise provided for by law.” The term municipal officer is defined to include both elected and appointed officers, as well as their deputies and assistants.

Interestingly, the state has provided an interpretation of the law that accepting nominal gifts, defined as anything valued less than \$50, does not violate the equivalent statute applicable to state employees. However, this exception only applies to state officers and employees, leaving acceptance of gifts of nominal value ambiguous for port officers and employees. For that reason, ports should address this issue in their internal code of ethics. In general, gifts for municipal employees are considered of nominal value if they are valued less than \$25.

During the holiday season, port consultants, contractors, customers, and tenants may deliver gift baskets of food or alcohol to the port. These gift baskets can be returned, donated to a charity, provided as a door prize at an employee meeting, or put into the employee lunchroom for all to share. These practical approaches avoid direct gifting to an individual commissioner or employee. The same practical approach can be used throughout the year for tickets to sporting events or concerts, so long as the value is nominal. Again, a port ethics policy is needed here to define acceptable conduct.

Ports can pay for employee events that recognize employee performance or longevity, accomplishments of the port, or to provide training for employees. A port can cover the total cost of such an event, excluding alcohol. Ports can also provide nominal gifts such as plaques or port logo hats or jackets to employees to celebrate longevity or accomplishments. Once again, ports should consider adopting a policy that further defines their internal events practices, including the definition of “nominal value.”

Gifts of Public Funds

In addition to accepting gifts, there are specific restrictions on ports’ gifting public funds and resources to other parties. The Gift of Public Funds Doctrine refers to a broad set of prohibitions contained in the Washington State Constitution:

ARTICLE 8, SECTION 7: CREDIT NOT TO BE LOANED. “No county, city, town, or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company, or corporation, except for the necessary support of the poor and infirm...”

The purpose of these constitutional prohibitions is to ensure that no state or local municipal resources, including port resources, are used to benefit private interests in which the public interest is not primarily served.

While this seems straightforward in prohibiting a port from lending money, giving gifts, or lending port credit to a private party, the reality is complicated, particularly for such things as joint venture efforts. To clarify these situations, there is a three-step analysis that can be applied:

Question #1: Are the funds being expended to carry out a fundamental purpose of the port as captured in the statutes defining the authorities of ports? If so, there is no gift of public funds—ancillary benefits are not prohibited.

Question #2: If the answer to Question #1 is “no,” did the port have a donative intent?

Question #3: Did the port receive an adequate return in value for the transfer of resources?

Ports are encouraged to be cautious in this regard and consult their legal counsel in advance of any such consideration, no matter how small or insignificant.

Promotional Hosting

Promotional hosting has been included in this chapter as it raises questions of ethics in how it is utilized by ports. Pursuant to RCW 53.36.120-150, ports are uniquely authorized to spend public resources on promotional hosting to promote industrial development or trade within their district. It should be noted that the term industrial, when applied to today’s economy, includes commercial development as well.

Promotional hosting expenditures include customary meals, refreshments, lodging, and transportation in connection with business meetings, social gatherings, and/or ceremonies honoring events or persons. It may also include expenditures on entertainment and souvenirs of nominal value. Ports are the only local government with this authority. Such actions are not considered a gift of public funds, but there are statutory limits in RCW 53.36.130.

Limitations on promotional hosting expenditures

PORT'S GROSS OPERATING REVENUES, EXCLUSIVE OF PROPERTY TAXES	PROMOTIONAL HOSTING EXPENDITURE LIMIT PER PORT FISCAL YEAR
\$250,000 or less	\$2,500
\$250,000 to \$2.5 million	1% of gross operating revenues
\$2.5 million to \$5 million	\$25,000, plus 0.5% of operating revenues in excess of \$2.5 million
Over \$5 million	\$37,500, plus 0.25% of operating revenues in excess of \$5 million

Ports must adopt a promotional hosting policy to further define the specifics of their promotional hosting activities and to prohibit commissioners from unilaterally making such expenditures without the majority formal approval of the sitting commission. The promotional hosting expenses of a port are carefully reviewed and scrutinized in annual audits.

Disclosing Information

Local government officials are prohibited from disclosing information gained by reason of their official position. This is of note when considering the availability of information obtained during an executive session. By nature, executive sessions are meetings in which confidential information is discussed. RCW 42.23.070 prohibits municipal officers from disclosing “confidential information gained by reason of the officer’s position.” Therefore, it is a violation of RCW 42.23.070 to disclose information gained in an executive session—such disclosure is prohibited even if there is no personal gain to the discloser. Importantly, RCW 42.23.050 provides that violation may be grounds for forfeiture of office.

Nondisclosure Agreements

Nondisclosure or confidentiality agreements have increased as port customers, potential tenants, and other businesses want to hold discussions or negotiations with a port while keeping certain documents confidential. For example, it is now common for a large prospective commercial or industrial tenant to demand such an agreement as a condition of beginning even preliminary discussions about available sites with a port.

Agreements are normally approved by the port’s commission in an open public meeting. This presents a challenge when a business seeks a confidentiality agreement that extends to the mere fact that the business is talking to the port. In addition, the Public Records Act mandates that virtually any document received by a port is a public record, and its status as a public record cannot be changed by agreement. This means that any documents provided to the port district become public records, even with confidentiality and nondisclosure agreements. Ports should consult with their legal counsel on how they will respond to such requests from the private sector.

With the increased popularity of nondisclosure or confidentiality agreements, ports should consider giving their executive director the authority to execute these agreements. However, the port should have a form agreement already developed by legal counsel that is compliant with the Open Public Meetings Act and the Public Records Act.

Campaigning

There is a strict prohibition on the use of a port’s public facilities to support or oppose a ballot measure or a candidate for office. Facilities is broadly defined to include office space, warehouses, stationary, postage, equipment, vehicles, publications, port mailing lists, and most notably, port employees during work hours. The original prohibition was part of Initiative 276,

adopted by voters in 1972. The Washington Public Disclosure Commission (PDC) was also created in 1972 to help interpret the laws that emerged from Initiative 276.

Simply stated, elected or appointed personnel of a port cannot work on a political campaign or otherwise support or oppose a measure or candidate during work hours or use a port's facilities (RCW42.17A.555).

The law does not prohibit elected officials or appointed port staff from expressing their own personal views, as long as that expression does not involve the use of port facilities or is made while they are clearly on the clock. Practical advice includes:

- State statutes prohibit the use of public facilities by an elected official or any government employee to support or oppose candidates or ballot measures. This includes the use of employees of the port during working hours and the use of public property such as stationery, postage, equipment, vehicles, office space, client or tenant lists, or agency documents not made available to the public.
- Campaign signs cannot be placed on port property; however, campaign signs may be placed on port-owned property that is leased by a tenant (leasehold property). The regulation of any sign on leasehold property should be addressed in lease documents.
- Port commissioners running for office should be cautious about using images, photos, or videos taken from the port's website or social media files.
- Elected officials such as port commissioners may provide a link from their campaign website to the port's website; however, there needs to be a clear break between the two sites, requiring leaving one site and entering another.
- The Washington Administrative Code explains that RCW 41.17A.555 does not prevent an agency from "(a.) making its facilities available on a nondiscriminatory, equal access basis for political uses or (b.) making an objective and fair presentation of facts relevant to a ballot proposition" if such action "is part of the normal and regular conduct of the office or agency." The Public Disclosure Commission (PDC) has also held that the use of agency meeting facilities is permitted when the facility is merely a "neutral forum" where the activity is taking place, and the public agency in charge of the facility is not actively endorsing or supporting the activity that is occurring.
- Port commissioners and staff can wear campaign pins or buttons if there is a port policy in place that allows the same. Port-issued uniforms cannot be worn by port employees assisting in a campaign or to support or oppose a ballot proposition.

As with most laws, there are exceptions:

- » Like all elected legislative bodies, the port commission may vote on a motion to support or oppose a ballot proposition, if and only if they have properly issued notice that the meeting will take up the issue, and members of the port commission or the public are given equal time to express any opposing view.
- » Port commissioners may make public statements in support or opposition to a ballot at an open press conference.

- » Ports can prepare and present an objective and neutral analysis of the impacts of a particular ballot proposition; specifically, how it might impact the port's operations, income, or projects. Ports should err on the side of objectivity and fairness.

The Guidelines for Local Government Agencies in Election Campaigns (Public Disclosure Law Re: Use of Public Facilities in Campaigns) are available from the PDC.

Holding Dual Offices

While not specifically addressed in Washington statutes, there is a long-standing common-law doctrine that emanated from the Washington Supreme Court in the 1950s that no one should hold two incompatible public offices at one time. Like the gifting of public resources test, there is a two-step process to define a potential incompatibility:

Question #1: Does an individual simultaneously hold more than one public office?

Question #2: If so, are the public offices incompatible with one another?

A public office was further defined by the courts as one in which the position (a.) must be created by the state constitution, state legislature, or a local government body, (b.) must possess as a part of its duties a portion of the power of the governmental body which created it, to be used for public benefit, (c.) the powers and duties of the position must be outlined and defined by the governmental body which created it, (d.) the position's duties must be performed independent of a superior power other than the law, and (e.) the position must not be temporary. In short, this applies to port commissioners, and it can be reasonably assumed to include senior management and administrative personnel.

To determine if the offices are incompatible, one would have to be subordinate to the other, i.e., being a port staff member as well as a port commissioner, or performing both offices' duties and loyalty to different organizations would have to give rise to inconsistent and conflicting loyalties to the public served by each agency (i.e., being both a port commissioner and the mayor of a city within the port district). On the other hand, a person being both a school board member and a fire district commissioner is an example of holding dual, yet compatible offices. The problem for port commissioners is that the powers of port districts are so broad that they can impact nearly all other governments within the port district.

There are no specific penalties or fines for violation of this doctrine, but courts can and have ordered individuals to vacate one or more of the incompatible public offices at issue.

Commissioner Compensation

Like promotional hosting, commissioner compensation has been included in this chapter as it often raises questions of ethics in how elected commissioners set and apply their own compensation and benefits. The issue of commissioner compensation is very complicated, and ports are advised to consult with their legal counsel to clarify the applicability of state law, which has recently been amended and is subject to future change.

RCW 53.12.260 sets port commissioners' per diem and monthly compensation. It provides that each port commissioner is entitled to \$90 for each day or portion of a day that they are in actual attendance of official meetings or in the performance of other duties of the port. The statute is a bit confusing because that number has risen since 2007, has been adjusted for inflation every five years by Washington's Office of Financial Management (OFM), and is now set at \$128 dollars per month. Further, the maximum annual number of per diem events for ports with gross operating revenue below \$25 million dollars is 96. The maximum annual number of per diem events for ports with gross operating revenue at or above \$25 million is 120.

The statute defines a per diem event as time spent "(a.) in actual attendance at official meetings of the port district commission, or (b.) in performance of other official services or duties on behalf of the district." Port commissions should adopt a policy defining other official services or duties. For example, if a commissioner chooses, but is not required to attend a county council meeting, is that a per diem event?

In addition, port commissioners are entitled to monthly compensation based on the size of the port, measured as gross operating revenues. These amounts are shown in the table below.

GROSS OPERATING REVENUES OF THE PORT	MONTHLY COMMISSIONER COMPENSATION
More than \$25 million	\$500/month
\$1–25 million	\$200/month

Like per diem, these monthly compensation amounts have been adjusted for inflation every five years since 2007 by OFM. They are now set at \$713 and \$285, respectively.

Note that the 2020 amendment to RCW 53.12.260 has resulted in some confusion. The clear reading of the statute as amended in 2020 sets the numbers at \$90/\$200 and \$500, respectively, but OFM has instead opted to focus on the intent behind the 2020 amendment. So far there have been no court challenges, but ports should consult with their legal counsel when setting per diem and compensation amounts. In any event, the next adjustment is possible on January 1, 2024, then once every five years thereafter.

Despite the very involved structure set forth in sections 1 (per diem) and 2 (monthly

compensation) of section 3, RCW 53.12.260 allows the port commission to override the amounts in sections 1 and 2 and set a different number. However, as established in Washington's constitution, the compensation of an individual commissioner cannot be reduced or increased during that commissioner's term of office. This prohibition does not apply to the automatic adjustments in sections 1 (per diem) and 2 (monthly compensation) in the statute. Therefore, if a commission elects to raise the per diem rate, extend the number of eligible days, or increase the monthly compensation, such an increase will only take effect as to each commissioner after the next election. The same rule applies for reductions. The effect of the constitutional limitation is that if the commission enacts a change in compensation, commissioners will not be paid differently until all the commission positions have gone through an election.

RCW 53.12.265 allows port commissioners to waive all or a portion of their salary. Salaries of port commissioners are not eligible for the state Public Employees' Retirement System (PERS) unless they were enrolled prior to May 1, 1976.

RCW 53.08.170 provides that any port providing insurance benefits to its employees "may provide health and accident insurance, life insurance with coverage not to exceed that provided district employees, and business-related travel, liability, and errors and omissions insurance, for its commissioners, which insurance shall not be considered to be compensation."

Whistleblower Protection

Through RCW 42.41, the Washington State Legislature has determined that, when not prohibited by law, local government employees should be encouraged to disclose improper governmental actions of elected and appointed officials. The statute requires that local governments adopt and post a policy regarding the right to report alleged improper governmental action, which can substitute for the statutory requirements if the policy meets the intent of the law.

The identity of a reporting employee is to be kept confidential unless they authorize disclosure. The agency or individuals cannot take retaliatory action against an employee making a report.

Federal whistleblower programs are administered by the Occupational Safety and Health Administration.

Travel and Expense Reimbursement

Port employees and commissioners frequently expend funds for personal travel and other miscellaneous expenses in the normal course of their activities with the port. RCW 53.08.175 provides the authorization for commissioners and staff to be reimbursed for appropriate expenses if properly documented. These can be expenses incurred within or outside of the port's political boundaries. Ports can issue port credit cards for such purposes. RCW 53.08.176 requires that ports adopt, by resolution, a set of policies with specific direction on the form of

verification and documentation of expenses for reimbursement. If per diem rates are used in lieu of actual reimbursement, then the federal per diem rates established by the U.S. General Services Administration must not be exceeded.

As a practical matter, port policies on expenses and travel should include clear guidance and expectations on things such as hotel room choice, meal choices, treatment of spousal expenses, and the like.

As noted in this chapter, ports are uniquely authorized to expend funds for promotional hosting purposes. Since these are frequently part and parcel of travel and event expenses, port policies addressing travel should include clear guidance on promotional hosting expenses.

Code of Ethics for Public Employees

Municipal governments, such as ports, can develop and adopt a code of ethics for employees. These locally adopted codes supplement Washington State law without conflicting with it. In general, they provide additional clarity and can address ethical issues not covered by state law. Ports should act carefully when considering a code of ethics or adopting ethical standards for elected port commissioners.

Loss of Port Funds

Ports do not often lose or lose track of port funds, whether the loss is known or suspected. However, if anomalies are discovered when processing reimbursements or paying things such as expense vouchers, the port should follow these steps:

- ✓ **Contact the port auditor.** Each port is required to have a commission-appointed port auditor; usually, this is the chief financial officer. This person has a dual role: as port auditor, they report to the port commission, and as CFO, they report to the executive director. The port auditor will be the person who leads the actions for these situations.
- ✓ **The port auditor should contact the port attorney.** Like the port auditor, the port attorney is appointed by and reports directly to the port commission. The port attorney can provide guidance to the port auditor.
- ✓ **Provide notice to the executive director.** The executive director or port manager should be notified. Keep in mind that at this point, the situation may not yet rise to the level of a known or suspected loss of public funds.
- ✓ **Port auditors should investigate.** Not all anomalies prove to be a known or suspected loss of public funds. Sometimes a set of fresh eyes can help resolve the issue, or what looks like a loss may in fact be a failure to follow procedures or be otherwise explainable. The port auditor may ask for additional investigation, additional analysis, or additional details.
- ✓ **Notify the commissioners.** At some point, no later than when the port auditor has determined that there is a known or suspected loss of public funds, the commission should be notified, and authorization obtained to make the report to the State Auditor's Office (SAO) in compliance with RCW 43.09.185.

- ✓ **File a report with the SAO consistent with RCW 43.09.185.** This statute requires an immediate report to the SAO of any “known or suspected loss of public funds.” Note there is not a minimum value—the statute indicates all losses. The report can be made online via the SAO’s website or by calling the port’s SAO contact.
- ✓ **Report the situation to the port’s insurance carrier.** Most ports have insurance that will cover the loss. In addition, a loss may result in employee discipline or termination. Some employment insurance policies include a waiver of a deductible for employee claims for wrongful termination, if the insurance company is notified before the personnel action is taken.
- ✓ **Consider remedial actions.** If there is a problem—either an actual loss or an anomaly that gets resolved—consider changing policies or procedures to fix the issue. Where there is a loss, the best practice is to adopt a fix as soon as possible. Experience shows the SAO’s office appreciates proactive action to fix a system or procedure.

The SAO will conduct a review and determine whether the loss was a mistake. If a determination is made that funds were taken unlawfully, the SAO may refer the issue to local law enforcement. If a port declines to pursue an action to recover lost funds, the SAO may refer the matter to the State Attorney General’s Office, which can itself begin an action in the name of the port. If the SAO issues a report, it is a public record.

PUBLIC MEETINGS

The Open Public Meetings Act (OPMA) was passed in 1971, requiring meetings be open to the public from gavel to gavel (RCW42.30). The intent of OPMA is to ensure the public is informed about decisions being made by their elected representatives. Per RCW42.30.030, any time a quorum of elected officials from the same governing body meet, they are subject to OPMA and the meeting must be open to the public. This applies even if they are participating remotely by phone or in a digital meeting format.

OPMA requirements apply to retreats, committee meetings of the commission, workshops, and study sessions. An email exchange in which a majority of the commission are discussing port matters is considered a public meeting. One on one briefings by staff to individual commissioners are not subject to OPMA.

Discussing port matters is considered action by the commission. Action includes taking public testimony, deliberations of any kind, discussions about topics, reviews of port issues, and evaluations. OPMA is applicable whether or not any final action is taken. Final action is a collective positive or negative decision or vote by a majority of the commission or a committee of the commission. These final actions are typically taken by adopting a motion or resolution. Final action must be taken in public even if the deliberations occurred in a legal executive session. Secret ballots are not permitted.

Commissioners often travel to and from meetings together and occasionally, there is a majority present. Discussing port matters during these times would be considered action and is prohibited. OPMA does not apply to organizations that are not required to follow OPMA, such as the WPPA. If more than one (or 3 out of 5) of a port's commissioners plan to attend a WPPA meeting, the meeting is considered and advertised as a special meeting or study session. A majority of commissioners cannot meet during a WPPA event to discuss port issues unless that meeting is properly advertised and open to the public.

There are three basic types of commission meetings:

I. Regular Meeting: Regular meetings are those that occur on a set periodic schedule which is established by motion or resolution. This schedule should be on file and posted on the port's website and social media (if applicable) at the beginning of each fiscal year. Agendas are now required to be developed and posted online at least 24 hours in advance of the start of a meeting, unless the port does not have a website or employs less than ten full-time employees (RCW 42.30.077). Agendas can be modified at the start of a meeting. If an item surfaces without being on the agenda and action is taken, it is still a valid action.

Regular meetings can be constructed as work-study sessions in which no formal action will be taken. The benefit of work-study sessions is that a particular topic can be discussed in extensive detail without the pressure of having to make a decision at that time. Work-study sessions tend to be more conversational in nature, which allows for a thorough exchange of ideas and resolutions to questions and concerns about the topic.

II. Special Meetings: A special meeting is any meeting that is not a regular meeting. They can be called by the presiding officer or a majority of the members of the commission. Written notice must be given at least 24 hours in advance of the special meeting. Notice must be given to each member of the governing body unless they have waived this requirement in advance—for example, if they know they will be at a hard-to-reach vacation destination. Notices of special meetings must also be given to each newspaper of general circulation, radio, and TV station having a notice request on file, and they must be prominently displayed at the main entrance of the port's principal location and at the meeting site, if different than the principal location. Like for regular meetings, the announcement and agenda of topics to be discussed must be posted on the port's website, unless the port doesn't have one or employs less than ten full-time employees. Actions at special meetings are limited to what is on the agenda, and each commissioner must receive notice of a special meeting. This can present a problem when a commissioner is away on vacation and not reachable. RCW42.30.080 allows a commissioner to sign a written waiver of notice, which is a good practice before traveling to somewhere where notice would be difficult to provide.

III. Emergency Meetings: Ports can call special emergency meetings to deal with true emergencies. An emergency meeting would be considered a variation of a special meeting. An emergency exists when there is an immediate threat that involves potential injury or death

to persons, or significant damage to real property assets. Further, an emergency necessitates time considerations that make normal noticing impractical and likely to increase the chance of additional injury or damage. These emergency meetings often run concurrently with the notice of an emergency issued by the port's executive director, as reflected in the delegation of powers. Within the construct of commission meetings, there can be special sessions to address specific matters:

Executive (Closed) Sessions: Executive sessions are either special meetings or part of a regular meeting. The topics that can be considered must be specifically allowed by OPMA, including:

- Buying or selling real estate when public knowledge would likely adversely affect the price from the agency's perspective. Recent Washington Supreme Court action held that (a.) discussions of the sale of real estate must be limited to the minimum acceptable price to sell or lease the property, (b.) any general discussion of factors that are the basis for that minimum price must occur in public session, and (c.) after those considerations are discussed in open session, the commission may discuss in executive session how those factors directly impact the minimum price.
- Reviewing negotiations on the performance of publicly bid contracts for which public knowledge would likely increase the agency's costs.
- Reviewing the performance of existing employees.
- Evaluating the qualifications of an applicant for public employment.
- Meeting with legal counsel regarding litigation or potential litigation if (a.) the port's legal counsel is present in person or by phone, (b.) there is litigation or potential litigation that is likely to result in the port or the port's commission becoming a party, and (c.) public discussion of the matter is likely to result in adverse legal or financial consequence to the port (RCW42.30.110).
- Discussing matters of national security.

Notice rules that apply to public meetings also apply to executive sessions. Before the executive session begins, the public meeting is convened and the presiding officer announces (a.) that the board is going into executive session, (b.) the purpose of the session and the reason it is exempt, and (c.) the length of time the session will last. When the session ends, the presiding officer returns the meeting to public session and discloses the nature of the executive session for the record. The presiding officer may then proceed to other agenda items or adjourn the meeting if there is no other business before the board.

Executive sessions should be held sparingly, and ports are advised not to hold one at every regular port commission meeting. It should be obvious to port staff and the public why the commission is going into an executive session and what actions may follow the session. An abundance of caution should be taken to minimize the perception of government operating in secret, while not compromising important matters that are appropriate to be discussed in executive sessions.

Public Hearings: Public hearings are very formal in nature and are intended for receiving public testimony on specific issues. Public hearings are conducted as special meetings and noticed as special meetings or as part of regular meetings. In either case, there are special notice provisions for public hearings that specify the exact time and location for a particular topic on the agenda to receive public comment. For example, a regular meeting can be adjourned at a noticed time for a given period to hold a public hearing and take public testimony. Following that set time, the regular meeting can be called back into session. Public hearings are specifically required for certain actions, such as establishing an Industrial Development District, considering the annual budget, or the tax levy. There are statutory and regulatory requirements for both federal and state level decisions on specific topics that require a public hearing.

Meeting protocols for formal public hearings are very structured, as summarized below:

- The hearing chair is very important to a successful hearing. The chair can be the commission president, port staff, or a professional hearing officer. The hearing chair calls the hearing to order and explains the purpose of the hearing and the procedures to be followed. The chair is responsible for conducting the hearing in a fair, evenhanded manner, and should request that all questions and comments be addressed through them.
- A summary description of the hearing topic is given by the chair, a member of the port staff, or a port consultant. All visual aids, such as maps and slides showing specific sites or development proposals must be visible to everyone in the hearing room.
- The chair opens the hearing for public testimony after the introductory briefing. Typically, the chair will ask attendees to sign up if they wish to testify and then call for testimony based on the order of the sign-in sheet.
- In most cases, the hearing will be closed following the public testimony and a decision will not be rendered. Minutes of the hearing must be kept, and voice recordings are very desirable. These records should be kept as part of the decision-making record. There are specific requirements and standards imposed by the Washington State Archivist that should be reviewed during the public hearing planning stage.

Workshops and Retreats

Whether at the port's principal location or offsite and digitally remote, workshops and retreats are considered special meetings unless they occur at the location and time of a regular meeting. All OPMA notice requirements apply to workshops and retreats. The difference for a workshop or retreat is in the structure of the meeting and the physical setup of the meeting space. Physical setup should utilize seating that encourages discussion and suspends the organizational hierarchy so that attendees feel comfortable in sharing their opinions and perspective. Decisions are rarely made at workshops or retreats.

These less-formal meetings provide an excellent opportunity for commissioners and staff to fully discuss issues to a depth not always possible in a formal meeting with a full agenda. This

format often lends itself to using a professional facilitator to move the discussion forward and drive to an outcome. Typical topics for workshops and retreats include strategic plan development, budget discussions of a strategic nature, large and complex project review, and generally, preparatory discussions prior to challenging and significant decisions.

Port Advisory Committees

Port advisory committees such as topic-focused task forces provide an excellent approach to soliciting organized input and recommendations from user groups such as marina customers, tenants, pilots, and the general public. While these committees are invaluable, there must be a clear understanding that their advice and recommendations are just that—advisory. Conflict often arises when the commission does not follow advisory committee or task force recommendations. This creates tension which can be avoided if the role of the appointed group is clarified from the onset.

Port advisory committees that are not formed by a majority of elected commissioners do not need to follow OPMA requirements. However, to maintain the integrity of the advisory process, they may elect to create minutes and follow some reasonable notice standards and meeting protocols.

Meeting Mechanics

RCW 53.12.245 requires that a port commission “by resolution adopt rules governing the transaction of its business.” These resolutions address such things as the duties of the president, vice president, and secretary, how agendas are prepared, and how actions are taken. It is best practice to avoid overly complex procedures, such as adopting Robert’s Rules of Order. Adopting a simple process is preferable, such as having a port staff read a motion, followed by discussion and then a vote.

Agendas and consent agendas are often established by the presiding officer of the commission—the president, in conjunction with the executive director. Ports may adopt policies, bylaws, and/or rules of order that prescribe the port’s preference on agenda determination. If the agenda is not addressed in its entirety, meetings can be formally adjourned to be continued at a specific time and place. Many port commissions include a “consent agenda” as a part of their regular agenda. A consent agenda contains a list of routine and non-controversial items. The entirety of the consent agenda and all its items are approved with one motion, although all commissioners reserve the right to remove an item that needs further discussion. The consent agenda is a time saving process that allows more time for discussion on other more complex or controversial items.

Minutes of public meetings must be promptly recorded and available for public inspection; however, minutes of executive sessions are not required. While there are no prescribed standards for minutes, industry practice is well developed and addresses the most significant

issue: the level of detail. All official actions, such as motions, must be captured verbatim. To ensure accurate capture of official actions, it is recommended that agenda items be accompanied by staff recommendations in the form of the verbatim motion to be considered. This helps to avoid confusion during and after the meeting.

Meeting preparation includes providing background information on each agenda topic to the commission with ample time for review prior to the meeting. In most cases, background information is given by staff to the commission, in a commission packet. Staff recommendations are focused on needed actions and should include:

- Specific action requested (verbatim motion).
- Background.
- Pros and cons.
- Financial implications.
- Consistency with strategic direction, budget and/or the port's Comprehensive Scheme of Harbor Improvements.
- Other considerations.
- The staff recommendation.

Meeting protocols include the organization of the meeting, as reflected in the agenda, and the physical setup of the meeting space. The best meetings include (a.) thoughtful preparation by way of pre-meeting briefings and background material, (b.) careful choreography of the topics, presentations, and expected discussion, and (c.) assigning a spokesperson to each topic for any post-meeting questions.

- Apart from statutorily required public hearings, it should be noted that ports are not obligated to include public input at their regular meetings. However, in the public's best interest, virtually all ports include opportunities for public testimony at their regular meetings. That opportunity can be provided at the beginning of a meeting before any action on the agenda is taken, during the time a particular action is under consideration, or at the end of the meeting. There is no right or wrong in this regard, but it is common sense to schedule public input at the beginning of a meeting before any action is taken. This can help minimize disruption to the commission's deliberations.
- Room setups traditionally include a real or perceived separation of space between the commission, the staff, and the public. Audio or video equipment is often positioned to be visible by all in attendance. Work-study sessions tend to be less formal, and room setup for these types of sessions should encourage an exchange of ideas in more of a roundtable layout, in which staff and the commission are encouraged to freely participate in the discussion.
- Disruptive attendees at a meeting can be removed by law enforcement. If the meeting is highly disrupted, the commission can terminate and reconvene the meeting. In any case, nondisruptive attendees and the news media may remain.

First Meeting of the Year Checklist

At the first meeting of the new fiscal year, commissioners could consider the following checklist:

- ✓ Set the time and place of commission meetings for the next year, including work-study sessions.
- ✓ Appoint the officers of the commission. This would include not only officers but also representatives to other organizations such as local chambers of commerce, WPPA, and the local council of governments.
- ✓ Consider affirming the appointment of the port auditor and the port attorney.
- ✓ Consider any revisions to the commission's resolution governing the transaction of its business.
- ✓ Consider any revisions to the port's Delegation of Powers Resolution.

Resolutions

As discussed in Chapter I, commission time is a very limited resource. Ports may find it useful to periodically track the amount of time spent on differing types of actions or topics, such as awarding construction bids, approving leases, or setting policy and strategic direction. Tracking the time commissioners must spend in meetings over a set period may be informative to a port in updating its delegation of powers or amending its meeting protocols to help it run more efficiently.

PUBLIC RECORDS

Public Records Act

The Washington State Public Records Act (PRA) (RCW 42.56) traces its roots to a 1972 citizen initiative that created Washington's Public Disclosure Commission (PDC) to provide transparency in campaign funding and expenditures. That initiative has since been superseded by the PRA.

The PRA requires that all public records maintained by state and local agencies, including ports, be made available to all members of the public, with some exemptions. Violations of the PRA can be expensive, including the award of claimant's attorney's fees and financial penalties of up to \$100 for each day the violation exists.

The public policy basis for the PRA is foundational to good government. The statute reads:

“The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected.” RCW 42.56.030.

To manage the port’s public records requests, each port must appoint a Public Records Officer (PRO); this can be an employee or an official of another agency. The duties of the PRO include serving as the point of contact for members of the public that request public records, and overseeing compliance with the statute. The public must be able to readily identify a port’s PRO from a posting on the port’s website, at its place of business, or in its publications.

Public records that can be requested are defined to include “any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” In today’s world, this includes not only traditional written records, but also photos, maps, videos, voicemails, webpage and social media content, emails, and text messages. While there are exemptions, this is a broad definition intended to be all-inclusive. There is a carve out for records that are held by volunteers to the port who (a.) do not serve in an administrative capacity, (b.) have not been appointed by the port to a port board, commission, or internship, and (c.) do not have a supervisory role or have been delegated any port authority.

“Any writing” includes emails, regardless of from where they are sent. As a result, port employees and commissioners are advised to use a port email account that is subject to disclosure, rather than a personal email account. This practice separates port business from personal emails that do not involve port business.

In addition to appointing a PRO, ports are required to adopt and publish policies that capture their rules of procedure regarding the PRA, consistent with Washington statutes. This policy should (a.) specifically address the treatment and retention of records—emails specifically, (b.) include a fee schedule for creating records copies, and (c.) specify a minimum number of hours per week for records inspection (at least 30 hours/week).

The Office of the Secretary of State provides detailed information on archiving public records.

Withholding Public Records and Documents

While the PRA mandates that all documents and records held by a local government must be

made available to the public, there are narrow exemptions. There are certain public records or documents that can be withheld in whole or part from disclosure. Documents that can be withheld pursuant to Washington statutes can still be released, pending port commission approval. This area of the law is extremely complicated. The release or withholding of specific documents must be evaluated carefully, and the decision must be made on a case-by-case basis. There is, for example, certain personal information such as social security numbers or credit card numbers that cannot be released.

An interesting trend is for governments to adopt an open records policy. That is to say, all the government's records are available electronically for anyone to see, except records deemed to be exempt from disclosure. Requestors are then directed to the website to access most records.

Ports are encouraged to consult with legal counsel when addressing public records requests, and especially when determining which records may be exempt from disclosure.

TRAINING REQUIRED BY LAW

Washington State law requires that new members of governing bodies, including port commissions, receive training on both OPMA and PRA. Further, the law requires commissioners to receive refresher training on these issues at least every four years. This training can be online, in person, or through other acceptable means, and it should be documented for the record. Washington State provides many resources for this purpose, and WPPA periodically provides the training.

Beyond state requirements, OPMA and PRA training are beneficial for commissioners for many reasons, including the fact that violations can result in actions against the individual and the port. According to RCW 42.30.205 and 42.56.152, violations of OPMA can result in a \$100 civil penalty against individuals, a reward of legal costs to the party seeking the remedy, and the action taken at the meeting in violation becoming null and void.

GLOSSARY OF TRANSPARENCY AND ETHICS TERMS

Action: All transactions of a governing body's business, including receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final action.

Ethics: The principles of conduct governing an individual or a group.

Executive Session: Closed session of a port commission as part of a regular or special meeting. Discussion is limited to specific topics authorized by statute. No action can be taken.

Final Action: A collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, regarding a motion, proposal,

resolution, order, or ordinance.

Governing Body: The multimember board, commission, committee, council, or other policy rule-making body of a public agency or any committee thereof, when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

Meeting: All meetings of a quorum of a city council, board of county commissioners, or other governing body (including certain kinds of committees) gathering with the collective intent of transacting the governing body's business.

Public Agency: Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of Washington.

Public Record: Any writing that is prepared, owned, used, or retained by any state or local government agency, and which contains information that relates to the conduct of government or the performance of any governmental or proprietary function.

Regular Meeting: A recurring meeting held pursuant to a schedule fixed by resolution.

Special Meeting: All meetings other than regular meetings.

Writing: Includes not only traditional written records, but also photostats, photographs, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic and punched cards, discs, drums, diskettes, sound recordings, and other documents, including existing data compilations from which information may be obtained or translated.

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APPENDIX A



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Chapter IV: Budgeting, Finance and Compliance

Appendix A: Funding Section

Aviation

WSDOT Airport Aid Grants Program (AAG)

Eligibility	Applicability	Match/Equity	Limits
NPIAS and non-NPIAS airports.	Funds the planning, acquisition, construction, improvement, and maintenance of airports in WSDOT Aviation’s five-year Statewide Capital Improvement Plan.	5% match.	\$750K maximum.
<p>Notes: Funds must be used for projects accessible for public use and displayed on the Airport Layout Plan (ALP). AAG funding used for meeting matching requirements for federal grants shall not exceed one-half of the federal matching fund requirements (10% matching funds required for FAA Airport Improvement Grants).</p>			

FAA Airport Improvement Program (AIG)

Eligibility	Applicability	Match/Equity	Limits
Operators of airports included in the National Plan of Integrated Airport Systems (NPIAS).	Funds planning, development, or noise compatibility projects at or associated with individual public-use airports, including heliports and seaplane bases.	5-25% match.	Varies, depending on the type of project.
<p>Notes: Public-use airports are airports open to the public that are (a.) publicly owned, (b.) privately owned but designated as a reliever by the FAA, or (c.) privately owned but having scheduled service and at least 2,500 annual enplanements. Sponsors must be able to comply with grant assurances as defined by the FAA.</p>			

Broadband Internet

Washington State Department of Commerce CERB Planning Program

Eligibility	Applicability	Match/Equity	Limits
Cities, towns, counties, federally recognized tribes, municipal and quasi-municipal corporations, public port districts, and	Provides funding for studies to evaluate high-priority economic development projects and rural broadband projects. When considering planning grants, the Board gives priority to projects that could result in a type of project eligible for CERB construction funds.	20% match.	\$50K per applicant.

special purpose districts.			
Notes: Land acquired or developed must be kept and maintained for public outdoor recreation use for at least 50 years. Long term obligations for structures or facilities will be tied to an agreed upon service life for the structure or facility.			

Washington State Department of Commerce CERB Rural Broadband

Eligibility	Applicability	Match/Equity	Limits
Cities, towns, counties, federally recognized tribes, municipal and quasi-municipal corporations, public port districts, and special purpose districts.	Offers loans to support the construction and planning of broadband projects in rural counties and communities only .	20% cash match.	\$2M loan, with grants available up to 50% of the total award.
Notes: Interest rates vary between 1-3%, with loan terms of up to 20 years. Applicants must be able to demonstrate feasibility with a supporting study, which can be funded by a CERB Planning Grant. Speeds provided must meet a minimum of 25 Mbps up/5 Mbps down, or greater for certain infrastructure types.			

National Telecommunications and Information Administration (NTIA) Broadband Infrastructure Program Grants

Eligibility	Applicability	Match/Equity	Limits
States and political subdivisions of states.	Funds construction of competitively and technologically neutral projects for the deployment of fixed broadband service in a census block with at least one household or business that does not have access to 25Mbps/3Mbps internet, especially in rural areas.	No match required, but NTIA will favorably consider applications that contribute a non-federal cost share of at least 10%.	Awards between \$5M and \$30M.
Notes: Applicants must be a covered partnership between a state or one or more political subdivisions of a state and a provider of fixed broadband service. One or more providers may be within a covered partnership. \$288M was available in the 2021 Notice of Funding Opportunity (NOFO).			

Marinas

Federal Funding:

Land and Water Conservation Fund: under the National Parks Service through Washington State Recreation and Conservation Office (RCO)

Eligibility	Applicability	Match/Equity	Limits
Local governments, including special purpose districts.	Funds acquisition of valuable recreation and habitat lands before they are lost to other uses and developing recreation areas for a growing population.	50% match, 10% of which is non-state and non-federal.	\$960K.
<p>Notes: Two programs exist under this Fund: the State Program and the Legacy Program. <i>State Program:</i> Pass-through funds provided to states for acquisition and development of outdoor recreational areas; all communities may apply. <i>Legacy Program:</i> Pass-through funds provided to states to help communities of 50,000 or more people acquire and develop land to create or invigorate public parks and other outdoor spaces; priority is given to projects in economically disadvantaged areas which lack outdoor recreation opportunities. Completion of a comprehensive recreation or conservation plan is required prior to applying for funding.</p>			

Clean Vessel Act (CVA) Grant Program: under the U.S. Fish and Wildlife Service pass-through to Washington State Parks Boating Program

Eligibility	Applicability	Match/Equity	Limits
Public, private, and tribal-owned boating facility operators, cities, towns and counties, port districts, state agencies, tribes, and qualified nonprofit organizations.	Funds the construction, renovation, and operation and maintenance (O&M) of sewage disposal facilities used solely by recreational boaters. CVA grant funds provide reimbursement of eligible costs after construction is complete.	25% match.	<p>\$300K for construction/renovation of facility.</p> <p>\$120K for purchase of pumpout boats.</p> <p>\$60K per vessel annually for pumpout vessel O&M.</p> <p>\$10K per marina for facility O&M.</p>
<p>Notes: Funded facilities must be open to the public during normal business hours, located in an area that is easily accessible and usable by all boats typically using the facility, and have directional signage visible from the water. Facilities may not charge users more than \$5 per pump-out. Fees must be accounted for and used solely for the purpose of maintaining the facility or equipment. Funding is prioritized to facilities that do not charge a fee.</p>			

State Funding:

Boating Facilities Grant Program: under Washington State RCO

Eligibility	Applicability	Match/Equity	Limits
State and local agencies, parks and recreation districts, public utility districts, port districts, and tribes.	Funds planning, acquisition, and development of boating facilities for small boats (26 feet or less).	25% match, with 10% coming from non-state and non-federal sources. No match required for state agencies.	\$1M.
Notes: Property acquired, developed, or renovated with grant funds must be kept for public outdoor recreation use in perpetuity. \$14.9M is available during the 2022-2023 biennium.			

Boating Infrastructure Grant Program: under Washington State RCO

Eligibility	Applicability	Match/Equity	Limits
State and local agencies, parks and recreation districts, public utility districts, port districts, tribes, and qualified private marina operators.	Funds the development or renovation of boating facilities targeting boats 26 feet or larger.	25% match. For applicants other than state and tribal agencies, match must be from a non-state, non-federal source.	Tier 1: \$5,000 - \$192,086. Tier 2: \$200,001 - \$1,440,645.
Notes: Property developed or renovated with grant funding must be kept for the useful life of the facility. \$2.2M was available for the 2021-22 cycle.			

Aquatic Lands Enhancement Account: under Washington State RCO

Eligibility	Applicability	Match/Equity	Limits
Local, state, and tribal agencies with the authority to acquire and develop public open space, habitats, or recreation facilities.	Funds acquisition, improvement, or protection of aquatic lands for public purposes. May also be used to provide or improve public access to the waterfront.	25% match.	\$1M.
Notes: Property acquired, developed, or renovated with ALEA funds must be kept for public outdoor recreation use in perpetuity. \$9.1M is available for the 2022-23 cycle.			

Washington Wildlife and Recreation Program: Recreation Projects: under Washington State RCO

Eligibility	Applicability	Match/Equity	Limits
Local, state, and tribal agencies with the authority to acquire and develop public open space, habitats, or recreation facilities.	Funds acquisition of valuable recreation and habitat lands before they are lost to other uses and developing recreation areas for a growing population.	25% match.	\$1M.
Notes: Land acquired or developed must be kept and maintained for public outdoor recreation use for at least 50 years. Long-term obligations for structures or facilities will be tied to an agreed-upon service life for the structure or facility.			

Marine Terminals

Federal Grants:

Port Infrastructure Development Grants: under the U.S. DOT Maritime Administration (MARAD)

Eligibility	Applicability	Match/Equity	Limits
Port authorities, states or political subdivisions of states, tribal governments, public agencies, special purpose districts with a transportation function, groups of eligible entities, or a lead entity partnered with a private entity or group of entities.	Provides grants to improve facilities within or outside of and directly related to operations or an intermodal connection of coastal seaports, inland river ports, and Great Lakes ports. Funds projects that will improve the safety, efficiency, or reliability of the movement of goods into, out of, around, or within a port.	20% match from non-federal sources.	\$57M maximum award. \$1M minimum award.
Notes: Port gate, road, rail, berth, and fixed landside improvements in support of cargo operations are eligible projects. Costs associated with planning activities, environmental mitigation measures, freight intelligent transportation systems, and digital infrastructure systems are eligible if those components support an eligible project. \$230M was appropriated for the 2021 program.			

Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Transportation Discretionary Grants: under the U.S. DOT; formerly known as BUILD and TIGER

Eligibility	Applicability	Match/Equity	Limits
State, local, and tribal governments, port authorities, and other political subdivisions of state or local governments.	Funds surface transportation projects that foster safety, maintain infrastructure in a state of good repair, benefit the economy, advance environmental sustainability, and improve quality of life.	20% match from non-federal sources.	<p>\$25M.</p> <p>No more than \$100M may be awarded to projects within one state.</p> <p>No more than \$30M will be awarded to planning, preparation, or design of projects that will not result in construction, of which \$10M is set aside to directly benefit areas of persistent poverty.</p>
Notes: \$1B was appropriated for the 2021 RAISE Grant Program.			

Pollution Control Facilities

Clean Water State Revolving Fund (CWSRF)

Eligibility	Applicability	Match/Equity	Limits
Local governments, special purpose districts (i.e., ports and water/sewer, conservation, and irrigation districts), tribes, and higher education institutions.	Provides loan funding for preconstruction and construction costs associated with the construction of publicly owned wastewater and stormwater facilities, and for nonpoint source pollution control activities.	No match required.	<p>\$43M maximum per applicant.</p> <p>\$7M for Step 4 (combined design and construction) projects.</p> <p>Maximum \$5M in FP loans.</p>
Notes: Interest rates are typically up to 3%. Term of loan is between 5-30 years; however, the term cannot exceed the usable life of a project. Funding is split between wastewater and stormwater facility construction (75%), nonpoint source pollution control activities (20%), and preconstruction activities for hardship communities.			

Stormwater Financial Assistance Program (SFAP)

Eligibility	Applicability	Match/Equity	Limits
Counties, cities, towns, and port districts.	Facility projects must provide stormwater treatment and/or	25% match, with a 15% match for	\$5M per funding cycle.

	flow control for stormwater generated from existing hard surfaces. Activity projects are limited to stormwater pollutant source control projects that enhance existing stormwater programs and provide water quality benefits that extend beyond the grant period.	hardship communities. Match can include cash, donations that become long term property of the sponsor, and CWSRF funds. Property can also apply with Ecology approval.	
Notes: Funds can only be used to reduce impacts from existing urban development.			

Centennial Clean Water Program (Centennial)

Eligibility	Applicability	Match/Equity	Limits
Counties, cities, towns, special purpose districts, tribes, and higher education institutions.	Provision of grants for wastewater infrastructure and nonpoint source pollution control projects. Facility projects are limited to wastewater facility preconstruction, construction projects in qualified hardship communities, and onsite sewage systems repair or replacement.	No match required for wastewater facilities. 100% match for OSS repair and replacement. 25% match for nonpoint source activities.	\$5M per funding cycle for wastewater facility projects. \$500M for nonpoint source pollution control projects.
Notes: Funds can only be used to reduce impacts from existing urban development. Match can be cash or in-kind for nonpoint source grants of less than \$250K, or cash only for grants between \$250K - \$500K.			

Section 319 Grant Program

Eligibility	Applicability	Match/Equity	Limits
Counties, cities, towns, special purpose districts, tribes, and higher education institutions.	Addresses nonpoint sources of water pollution through watershed planning, implementation of best management practices, water quality monitoring, and outreach and education. Typically used for meeting state match.	25% match.	\$500K per applicant.

Notes: Funds can only be used to reduce impacts from existing urban development. Match can be cash or in-kind for nonpoint source grants of less than \$250K, or cash only for grants between \$250K - \$500K.

Real Estate

CERB Prospective Development Program: under Washington State Department of Commerce

Eligibility	Applicability	Match/Equity	Limits
Counties, cities, towns, ports, and tribes.	Provides loan funding for public improvements in support of private business development in rural communities and tribes, including installation of infrastructure, port facilities, and construction of buildings/site prep activities.	50% cash match.	Loan maximums are \$2M per project. Grants available up to 25% of the total award.
<p>Notes: Interest rates vary between 1-3% with 20-year term. Applicants must complete an economic feasibility study demonstrating private business development as a result of publicly funded improvements prior to application. Applicants must also demonstrate a need for CERB assistance and that no other timely source of funding is available.</p>			

CERB Committed Private Partner Program: under Washington State Department of Commerce

Eligibility	Applicability	Match/Equity	Limits
Counties, cities, towns, and port districts.	Provides loan funding for public improvements in support of private business development where proposed development is contingent on CERB funds. Will fund installation of infrastructure, port facilities, and construction of buildings/site prep activities.	20% match.	\$3M maximum loan with 25% of total award in grants.
<p>Notes: Loan rates vary between 1-3% with a 20-year term. Applicants must provide evidence that a private expansion or development is ready to occur and is contingent on CERB funding, that the project will create a significant number of permanent jobs or private investment, and that the median hourly wage will exceed that of the county in which the project is located.</p>			

Short Line Railroads

Federal Funding:

Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Program: under the U.S. DOT

Eligibility	Applicability	Match/Equity	Limits
State, local, and tribal governments, port authorities, and other political subdivisions of state or local governments.	Funds surface transportation projects that foster safety, maintain infrastructure in a state of good repair, benefit the economy, advance environmental sustainability, and improve quality of life.	20% match from non-federal sources.	\$25M. No more than \$100M may be awarded to projects within one state. No more than \$30M will be awarded to planning, preparation, or design of projects that will not result in construction, of which \$10M is set aside to directly benefit areas of persistent poverty.
Notes: \$1B was appropriated for the 2021 RAISE Grant Program.			

State Funding:

Freight Rail Assistance Program (FRAP): under WSDOT

Eligibility	Applicability	Match/Equity	Limits
Counties, cities, port districts, economic development councils, and public/private railroads.	Funds larger public and/or private rail projects where it is difficult to gain a contribution and where the rail location or project is of strategic importance to the local community and the state.	None required.	No maximum. State legislature determines the allocation of funding. \$7.04M was allocated in the 2021-2023 biennium.
Notes: Applicants must provide a business plan for their project, including a cost/benefit calculation to ensure the generation of public benefits, and they must demonstrate how the project will maintain or improve the freight rail system in Washington and benefit the state's interest.			

Freight Rail Investment Bank (FRIB): under WSDOT

Eligibility	Applicability	Match/Equity	Limits
Public agencies only.	Funds loans for smaller projects or portions of larger projects where state funding will lead to the completion of the project.	20% match.	\$250K maximum loan.
Notes: Applicants must provide a business plan for their project, including a cost/benefit calculation to ensure the generation of public benefits.			

Economic Development

EDA Planning and Local Technical Assistance Program

Eligibility	Applicability	Match/Equity	Limits
<p>EDA-eligible entities, i.e., states, local governments, special purpose districts, recognized tribes, public/private entities working with eligible applicants, and higher education institutions.</p>	<p>Planning Program: Funds work through designated planning organizations to create and implement regional economic development plans that build capacity and guide the economic prosperity and resiliency of an area or region.</p> <p>Local Technical Assistance Program: Increases capacity of organizations to undertake and promote effective economic development programs through projects such as feasibility studies, impact analyses, disaster resiliency plans, and project planning.</p>	<p>Planning Program: 20-40% match.</p> <p>Local Technical Assistance Program: 20-50% match.</p>	<p>Median for Planning Program: \$70K.</p> <p>Median for Local Technical Assistance Program: \$100K.</p> <p>No maximum prescribed in NOFO.</p>
<p>Notes: Applicants are recommended to contact their EDA representative before submitting an application. Applicants should describe how the EDA investment will complement, leverage, or otherwise align with other public and private investments to implement the project.</p>			

EDA American Rescue Plan Act (ARPA) Economic Adjustment Assistance Grants

Eligibility	Applicability	Match/Equity	Limits
<p>EDA-eligible entities, i.e., states, local governments, special purpose districts, recognized tribes, public/private entities working with eligible applicants, and higher education institutions.</p>	<p>Funds investments in technical assistance, planning, workforce development, entrepreneurship, public works, and infrastructure development. Funding should support long term, regionally relevant projects that promote collaboration, growth, and resilience within a community, and provide connections between rural and urban areas.</p>	<p>20% match typically; no match required for tribes or jurisdictions with limited resources or taxing capacity.</p>	<p>None defined, but guidance from EDA suggests awards in range of \$500K to \$5M.</p>
<p>Notes: Applicants should be able to demonstrate how their project furthers the EDA's investment priorities, which are: <i>equity, recovery and resilience, workforce development,</i></p>			

manufacturing, technology-based economic development, environmentally sustainable economic development, exports, and foreign direct investment.

EDA ARPA Good Jobs Challenge

Eligibility	Applicability	Match/Equity	Limits
States, local governments, special purpose districts, tribes, public/private entities working with a political subdivision of a state, and higher education institutions.	Designed to get Americans back to work by establishing or strengthening regional workforce training systems to train workers with in-demand skills through sectoral partnerships.	No match required, but projects that leverage other funds will be more competitive.	\$25M maximum. Range of \$5M to \$25M.
<p>Notes: Applicants should be willing and able to establish partnerships with backbone organizations, strategic partners, and industry partners to create a regional workforce training system that supports the training of workers, leading to placement into well-paying jobs with benefits. Funding will support three distinct phases: (1) system development, during which backbone organizations and system lead entities are developing systems and partnerships, (2) program design, during which skills training curriculum, materials, and technical expertise are developed or acquired, and (3) program implementation, during which workforce training and wraparound services are provided by the partnership.</p> <p>Applicants are strongly encouraged to contact their EDA representative for application assistance.</p>			

U.S. EPA Environmental Workforce Development and Job Training Grants

Eligibility	Applicability	Match/Equity	Limits
General purpose units of local government, land clearance authorities or other quasi-governmental entities, government entities created by state legislature, regional councils, or groups of general purpose units of local government, redevelopment agencies, states, federally recognized tribes, and nonprofit organizations.	Training of unemployed and under-employed residents of areas affected by the presence of brownfields, in skills needed to secure full-time employment in the environmental field.	No match required, but projects that leverage other funds will be more competitive.	\$200K maximum award.

Notes: The majority of funding is allocated to brownfield assessment, cleanup, and hazardous substance-related training. Funding recipients must provide HAZWOPER training (either 8 hr. refresher or 40 hr. course) to attendees.

Environmental Improvements and Remediation

U.S. EPA Brownfield Assessment Grants

Eligibility	Applicability	Match/Equity	Limits
General purpose units of local government, land clearance authorities or other quasi-governmental entities, government entities created by state legislature, regional councils, or groups of general purpose units of local government, redevelopment agencies, states, federally recognized tribes, and nonprofit organizations.	Community-Wide Assessment: Assessment activities when a specific site is not identified, and the applicant plans on spending grant funds on more than one brownfield site in their community.	No match required, but projects that leverage other funds will be more competitive.	\$500K maximum award.
	Site-Specific Assessment: Assessment activities associated with one site.		\$200K maximum, with potential waiver up to \$350K.
	Assessment Coalition: Designed for one "lead" eligible entity to partner with two or more eligible entities that have limited capacity to manage their own EPA cooperative agreement.		\$600K maximum award.
Notes: Funding may be used to assess sites contaminated by hazardous substances, pollutants, contaminants (including hazardous substances co-mingled with petroleum), and/or petroleum. Assessment Coalition grants were not solicited in FY 2022 grant competition.			

U.S. EPA Brownfields Cleanup Grants

Eligibility	Applicability	Match/Equity	Limits
General purpose units of local government, land clearance authorities or other quasi-governmental entities, government entities created by state legislature, regional councils, or groups of general purpose units of local government, redevelopment	Funds cleanup activities at brownfield sites contaminated with hazardous substances, pollutants, contaminants (including hazardous substances co-mingled with petroleum), and/or petroleum.	20% match; tribes, nonprofit organizations, and government entities with populations of less than 50,000 people may request a waiver of cost sharing requirements.	\$500K maximum award; EPA will consider requests on an extremely limited basis for waivers up to \$650K in funding for addressing only one brownfield site.

agencies, states, federally recognized tribes, and nonprofit organizations.			
Notes: Applicants must own the site for which funding is applied. Applicants may only submit one application per funding cycle. All funds must be spent within a three-year performance period.			

Washington Coast Restoration and Resiliency Initiative: under Washington State RCO

Eligibility	Applicability		Match/Equity	Limits
Cities, counties, conservation districts, ports, and state and federal agencies serving the Washington coast.	Funds the implementation of ecological restoration projects, with a focus on addressing the highest priority restoration and resiliency needs while stimulating economic growth and creating jobs in coastal communities.		No match required.	\$2M.

Notes: Funds can be used for (a.) acquisition of land, access, or other property rights, (b.) restoration projects, such as fish passage, diversion, habitat improvements, beaver reintroduction, stream bank stabilization, etc., (c.) project planning, or (d.) a combination of these elements. Funding can only be used within the geographic boundaries of the Coast Salmon Partnership, which includes any watershed between Cape Flattery and Cape Disappointment that drains directly into the Pacific Ocean, or within the boundaries of one of the four Coastal Marine Resource Committees: Grays Harbor County, North Pacific Coast (including portions of Clallam and Jefferson Counties), Pacific County, or Wahkiakum County.

Integrated Planning Grants (IPG): under Washington State Department of Ecology (Ecology)

Eligibility	Applicability	Match/Equity	Limits
Local government entities.	Supports efforts in conducting the first steps in the cleanup and redevelopment process by helping to create an integrated project plan. The IPG reduces uncertainty about contamination at a property while integrating administrative processes and analysis of investments needed for post-cleanup redevelopment of a site.	No match required but sponsors are responsible for covering eligible costs if not funded at 100% of eligible costs.	\$200K for a single site. \$300K for multiple sites.

Notes: Projects must encompass a site regulated under MTCA and located within the jurisdiction of the applicant. Applicants must have access to the site or obtain such access in accordance with a schedule in the grant agreement. The scope of work must not be required under order or decree from Ecology.

Oversight Remedial Action Grant: under Washington Ecology

Eligibility	Applicability	Match/Equity	Limits
Local government entities.	Provides funding to investigate and clean up contaminated sites under an enforcement order, agreed order, or consent decree, especially at sites that are a high priority for Ecology.	50% cost share. +25% state cost share for economically disadvantaged applicants. +15% state cost share for projects using innovative technology. Up to 90% state cost share for projects under \$5M and when additional funding would mitigate an unfair economic hardship or result in redevelopment and economic development that would otherwise not occur.	No maximum. However, projects exceeding \$20M in cleanup costs may be subject to extended grant agreements if funding cannot be spent within one biennium.
Notes: Applicants must have access to site or the ability to obtain such access in accordance with a schedule in the grant agreement.			

Parks, Recreation and Open Space

Aquatic Lands Enhancement Account (ALEA): under Washington State RCO

Eligibility	Applicability	Match/Equity	Limits
Local, state, and tribal agencies with the authority to acquire and develop public open space, habitats, or recreation facilities.	Provides funding to acquire, improve, or protect aquatic lands for public purposes. Funding may also be used to provide or improve public access to the waterfront.	25% match.	\$1M.
Notes: Property acquired, developed, or renovated with ALEA funds must be kept for public outdoor recreation use in perpetuity.			

Washington Wildlife and Recreation Program: Recreation Projects: under Washington State RCO

Eligibility	Applicability	Match/Equity	Limits
Local, state, and tribal agencies with the authority to acquire and develop public open space, habitats, or recreation facilities.	Acquisition of valuable recreation and habitat lands before being lost to other uses and developing recreation areas for a growing population.	25% match.	\$1M.
<p>Notes: Land acquired or developed must be kept and maintained for public outdoor recreation use for at least 50 years. Long term obligations for structures or facilities will be tied to an agreed upon service life for the structure or facility.</p>			

