

# BUYING REAL PROPERTY OUTSIDE OF PORT DISTRICTS AND PROPERTY ANNEXATION

PRESENTED BY  
Lisa Lowe and Frank Chmelik

REPRESENTED BY  
**Schwabe**



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# Purchasing Property Outside the Port District



# WHAT IS THE ISSUE?

## **The Premise:**

Port districts throughout the state sometimes desire to acquire real property or real property interests (easements, railroad rights of way,) outside of the port district.

## **The Question:**

Can and under what circumstances can port districts acquire real property or property rights?

# SOME STATUTES HAVE A BROAD REACH

- RCW 53.08.010. A port district may acquire . . . all lands, property, property rights, leases, or easements necessary for its purposes
- RCW 53.08.020 A port district may construct, condemn, purchase, acquire, add to, maintain, conduct, and operate . . . [a list of transportation facilities] . . . improvements relating to industrial and manufacturing activities within the district.
- RCW 53.08.030 A district may improve its lands . . . install, improve, and operate sewer and water utilities to serve its own property and other property owners.
- RCW 53.08.043. A port district may exercise all the powers relating to systems of sewerage authorized by RCW 35.67.010 and 35.67.020 for cities and towns

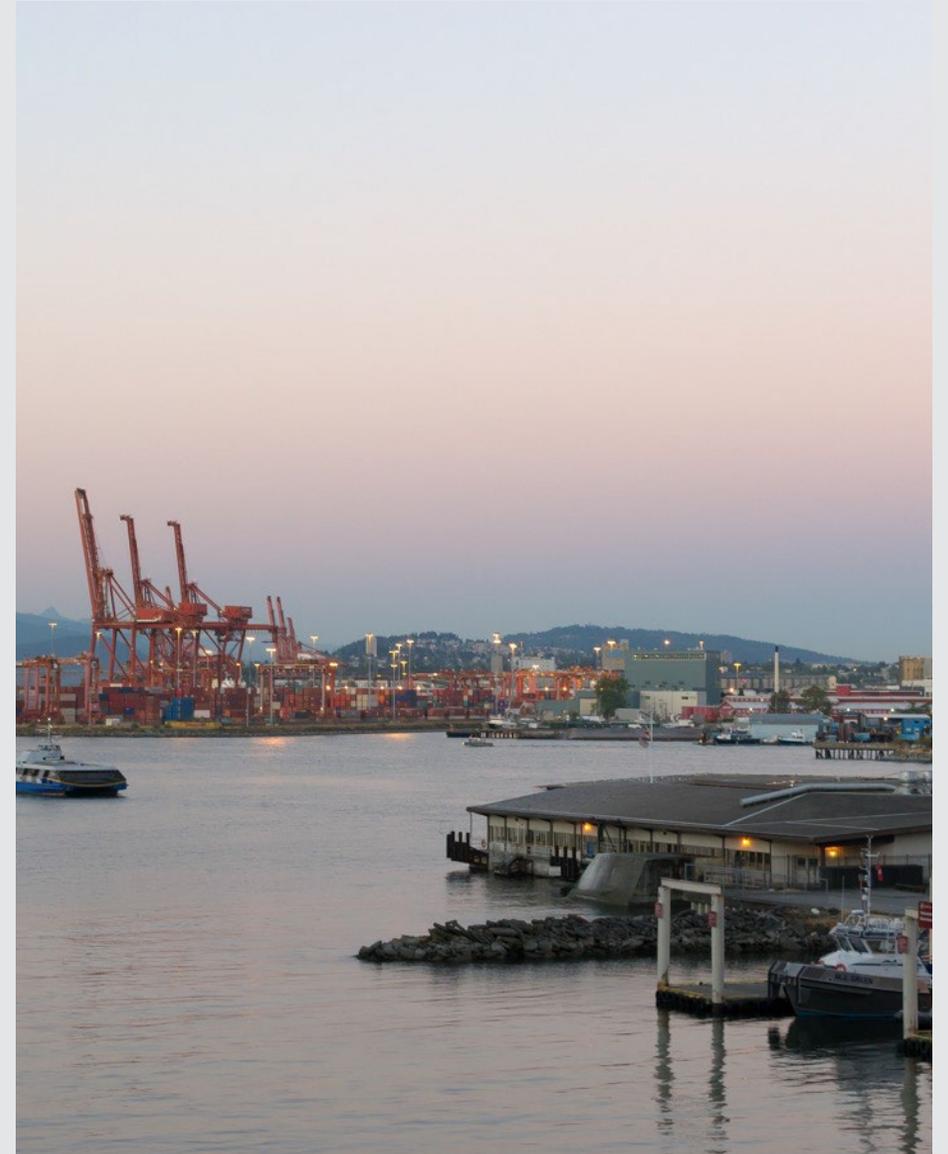
# SOME STATUTES ARE CLEARLY EXTRATERRITORIAL

RCW 53.08.290. . . . a port district, in connection with the operation of facilities and improvements of the district, may perform all necessary activities related to the intermodal movement of interstate and foreign cargo . . . That such authority may only be exercised outside the boundaries of the port district if such extraterritorial rail services, equipment, or facilities are found, by resolution of the commission of the port district . . . .



# SOME STATUTES ARE CLEARLY EXTRATERRITORIAL

RCW 53.08.255. Any port district in this state, acting through its commission, has power to expend moneys and conduct promotion of resources and facilities in the district or general area . . .



# SOME STATUTES ARE CLEARLY EXTRATERRITORIAL

- RCW 53.08.295. A port district may acquire, lease, construct, purchase, maintain, and operate passenger-carrying vessels on Puget Sound, interstate navigable rivers of the state, and intrastate waters of adjoining states.
- RCW 53.08.330. Any port district in this state, acting through its commission, may expend port funds toward construction, upgrading, improvement, or repair of any street, road, or highway that serves port facilities. [In Washington State or an adjoining state – RCW 53.08.340]
- RCW 53.08.070. A port district in existence on June 8, 2000, may construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the district's limits

# SOME STATUTES ARE LIMITED TO THE PORT DISTRICT

- RCW 53.08.050. A district may establish local improvement districts within the district . . .
- RCW 53.08.060. A district may improve navigable and nonnavigable waters of the United States and the state of Washington within the district . . .



# BUT CONSIDER

- State ex. Rel. Keeler v. Port of Peninsula, 89 Wn.2d 764 (1978).
- The Court reasoned as follows:
- The purposes for which a port district may be formed are set forth in RCW 53.04.010. That statute limits activities for which port commissions are organized to those carried on “within the district.” The powers of a port district are set out in RCW 53.08. Because the powers are in turn related only to the authorized purpose of the district, these powers may only be exercised as provided by statute “within the district.”
- Never cited in the past 45 years

# AND ALSO CONSIDER RCW 53.08.450

- Enacted in 2000
- Property outside jurisdiction—Future property development—Communication plan.

(1) If a port district purchases property for a facility outside the port's jurisdiction, the port district or districts with responsibility for the future property development and use must prepare and implement a communication plan within sixty days after contracting with a site planning consultant. The communication plan must be reasonably calculated to provide property owners and other affected and interested individuals information for review and comment. The plan shall be made available through the planning and predesign phase. The communication plan shall include information about . . .

# THOUGHTS AND BEST PRACTICES

- Can a port acquire a property interest/facility outside of the port district where there is no nexus to the activities within the port district?
- Likely no unless there is specific and clear statutory authority.
- Can a port acquire a property interest/facility outside of the port district where there is a nexus to the activities within the port district?
- Likely yes, considering RCW 53.08.450 but carefully consider the Keller case.
- Best Practices:
  - Provide a complete analysis recognizing the business decision for the commission
  - Follow RCW 53.08.450
  - Make a solid record of how the acquisition relates to the port district
  - Other ideas????

# PROPERTY ANNEXATION

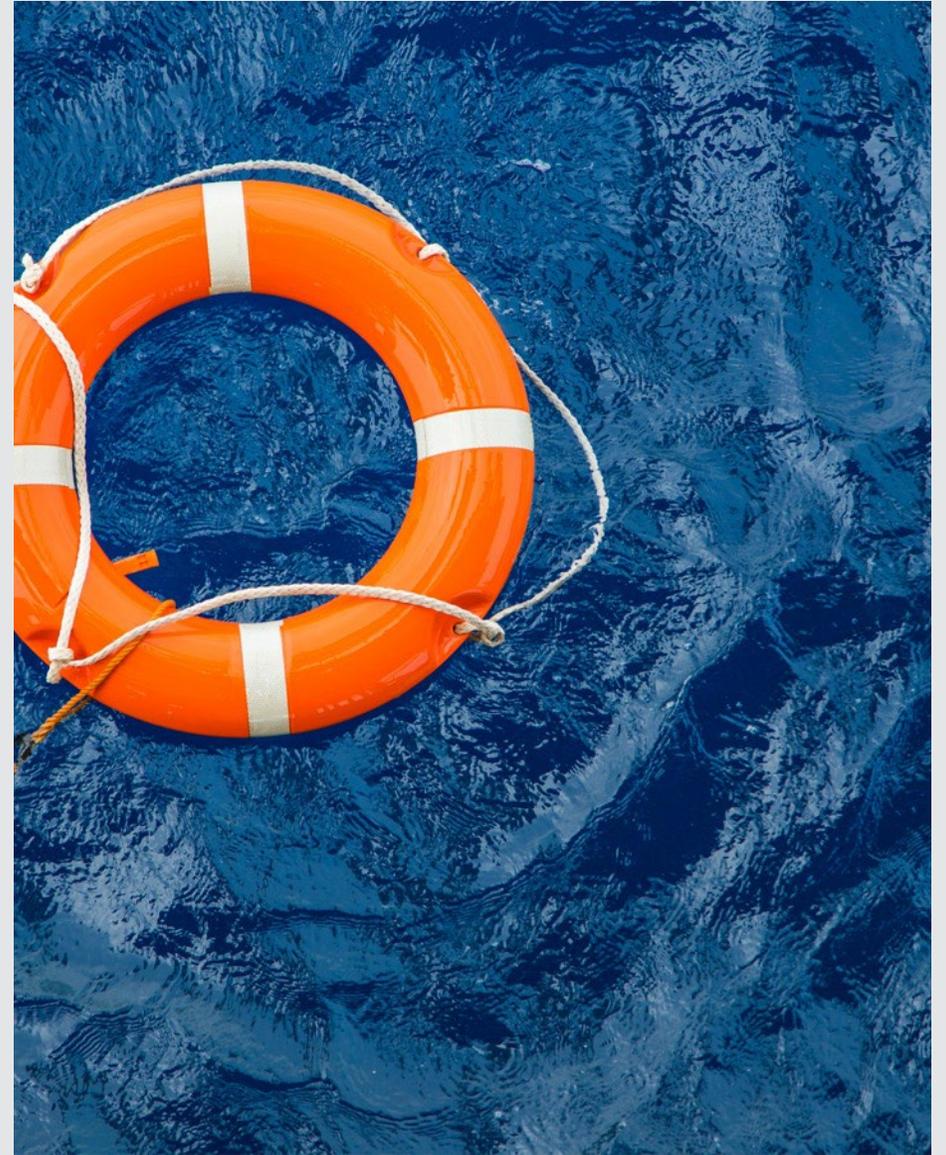


# SUMMARY

- A less-than-county-wide port district can annex contiguous real property within the county that is not within another less-than-county-wide port district.
- The annexation requires a majority of the voters within the to-be-acquired territory to indicate that they believe the annexing port district should be enlarged.
- This vote can occur at general or special election. The property annexed is not subject to or responsible for any outstanding bonds, warrants or other indebtedness of the port district.

# SUMMARY (CONT'D)

Alternative methods are available that allow a Board of County Commissioners to approve the petition in lieu of a vote of the public.



## A. IN GENERAL: RCW 53.04.080

RCW 53.04.080 provides the procedure for a less-than-county-wide port district to enlarge its boundaries. It provides:

- The commissioners of a less-than-county-wide port district shall file a petition that reflects the port district's desire to annex or include in its enlarged port district the whole of the territory embraced within the boundaries of such county, or such territory as described in the petition.

## **A. IN GENERAL: RCW 53.04.080 (CONT'D)**

The petition shall be filed with the county auditor. The auditor shall transmit the same to the county legislative authority, who shall submit such proposition at the next general election, or, if the petition requests, the county legislative authority shall at its first meeting after the date of filing the petition, by resolution, call a special election to be held per RCW 29A.04.320 and .330.

## **A. IN GENERAL: RCW 53.04.080 (CONT'D)**

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## A. IN GENERAL (CONT'D)

The notice of election shall state the boundaries of the proposed enlarged port district and the object of the special election. The voters within the proposed annexed territory shall approve or reject the proposition on special ballots per the statute.<sup>(1)</sup>

(1) Basically, the ballot will either allow “Yes” to enlargement of the port district or “No” to same.

## **A. IN GENERAL: RCW 53.04.080 (CONT'D)**

The election shall be held in each precinct wholly or partially embraced within the limits of the territory proposed to be annexed or included and shall be conducted and the votes cast thereat counted, canvassed, and returns thereof made in the manner provided by law for holding general or special county elections.

## A. IN GENERAL: RCW 53.04.100

RCW 53.04.100 provides:

- If a majority of all votes cast at any such election shall be “yes”, then the board of county commissioners shall enter an order declaring such port district enlarged to embrace within the limits thereof the territory described in the petition for such election and the port district shall be so enlarged.

## **A. IN GENERAL: RCW 53.04.100 (CONT'D)**

The port district commissioners shall have jurisdiction over the whole of said district as enlarged to the same extent, and with like power and authority as if the additional territory had been originally embraced within the boundaries of the existing port district.

# A. IN GENERAL: RCW 53.04.100 (CONT'D)

HOWEVER, none of the lands or property embraced within the additional territory shall be liable for tax assessment purposes for the payment of any outstanding bonds, warrants or other indebtedness of such original port district.



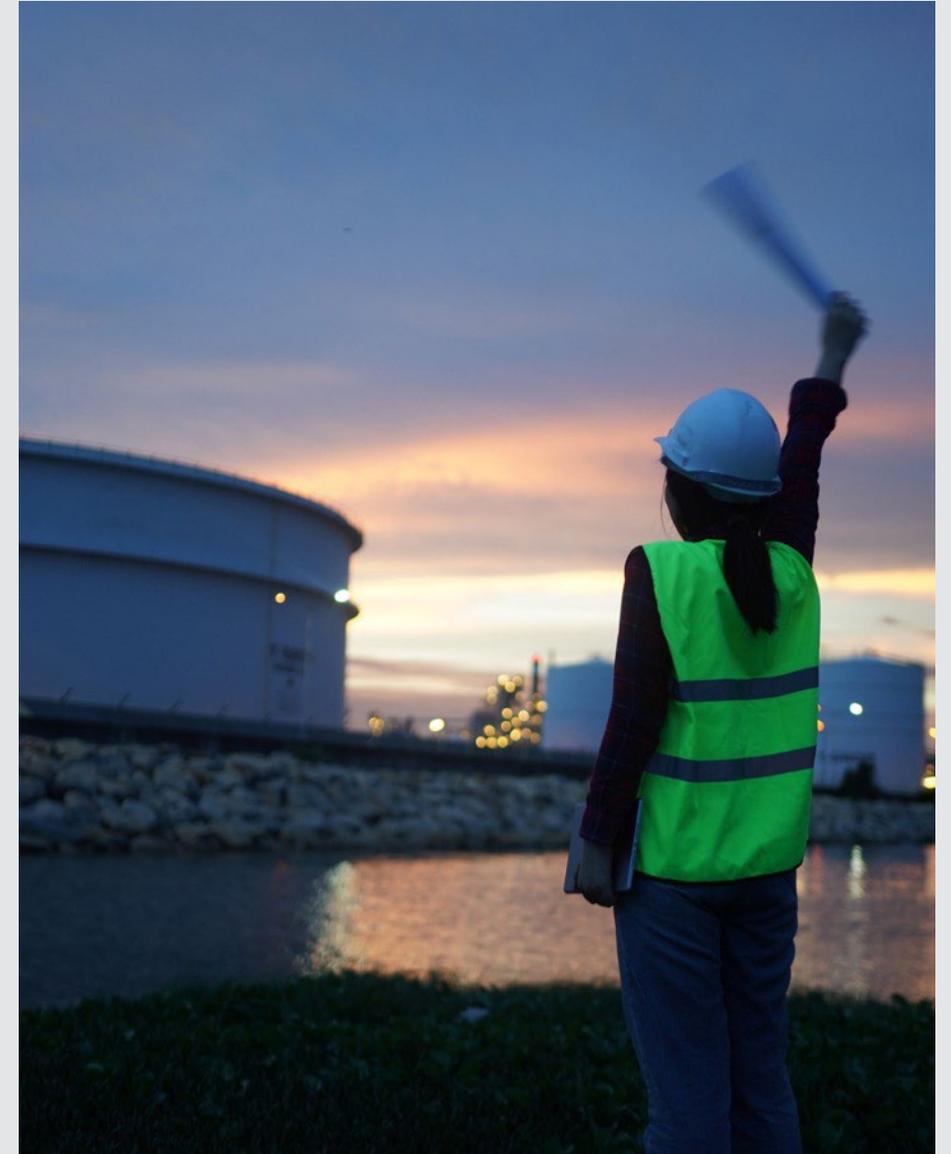
## B. ALTERNATIVE ANNEXATION METHODS

- Alternative Annexation Methods (RCW 53.04.150 - .190): If a port district is located in a county with a population of less than 90,000 and located in either the Interstate 5 or Interstate 90 corridor:
- It may petition for annexation of an area that is:
  - contiguous to its boundaries
  - not located within the boundaries of any other port district, and
  - contains no registered voters. <sup>(2)</sup>

(2) In the alternative if these conditions exist, the port district may, with consent of all the owners of the property to be annexed, petition for annexation.

## B. ALTERNATIVE ANNEXATION METHODS (CONT'D)

If these conditions are met, the petition may be heard by the Board of County Commissioners at a public hearing. No vote of the public is necessary.



# C. LIMITATIONS ON BOUNDARIES

- Limitations on Boundaries: At this time, there is no mechanism for one less-than-county-wide port district to annex territory within another less-than-county-wide port district without the consent of the other port district (See RCW 53.04.120).
- RCW 53.04.120 states that if one port district owns real property adjacent to or within  $\frac{1}{4}$  mile of its district's boundaries and the real property is located within another port district, the port districts can agree to transfer the property to the owner port district.
- In other words, this statute allows boundary adjustments between port districts without going through the annexation process. This can be done only upon unanimous vote of the commissions of both port districts.<sup>(3)</sup>
- The Port also has no authority to annex real property outside of the county where it is located.

(3) Please note that this statute does NOT allow the Port to acquire property outside of its boundaries, UNLESS (1) the property is contiguous to or within  $\frac{1}{4}$  mile of the port district AND (2) the property is located within another adjacent port district. If the property to be acquired does not meet these requirements, the Port has no authority to acquire the property without annexation.

## D. NONCONTIGUOUS TERRITORY

- Noncontiguous Territory: In 1984, the Attorney General issued an opinion stating that the statute does not authorize a port district to annex noncontiguous territory located elsewhere within the county.
- The AG quoted case law from other states holding that a municipal corporation's power to annex noncontiguous property is only present if specifically granted by the legislature.
- In our own state, certain cities are authorized to annex noncontiguous properties for specific purposes. There is no such language in 53 RCW et. Seq.

# THANK YOU! QUESTIONS?

**Lisa Lowe**



Shareholder  
Phone 360-905-1434  
[alowe@schwabe.com](mailto:alowe@schwabe.com)

**Frank Chmelik**



Principal – CSD Attorneys at  
Law  
Phone 360-223-5633  
[fchmelik@CSDLaw.com](mailto:fchmelik@CSDLaw.com)