

# 2024 Spring Meeting Training Module No 2

## A COMPREHENSIVE GUIDE TO PORT POWERS

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Port Powers

## **The Historic View**

Public Ownership of the Commercial Shoreline

**1911**

**Port - rail and water  
transportation – the  
“economic development”  
of the time.**

*Port districts for the  
development and  
regulation of a system of  
harbor improvements  
and rail and water  
transfer and terminal  
facilities*



## The 1911 Law

- Included powers to assess tax, bond for improvements, condemn or purchase property, lease its property and build improvements
- Required a Comprehensive Scheme of Harbor Improvements

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Port Powers

**Ports Are Special or “Limited” Purpose  
Municipal Governments**

## Limited Purpose Government

- Port districts are “limited purpose” municipal governments
- Legislature must authorize the purpose
- But authority may come from a reasonable inference of laws



## **Ports are Still “Special Purpose Municipal Governments” (with Extremely Broad Powers)**

- The legislature has decided what the port can and cannot do - Title 53 RCW
  - Very broad powers subject to future definition by projects undertaken by ports
  - Subject to continuous expansion by the legislature
- If there is a project, there usually is a power
  - Ultimately this is an analysis of the statutes and the appetite of the commission to define the bounds
  - The state auditor will review that “business decision”

## 1911 – 2024 – Evolution of Port Powers

- Port powers have expanded to meet the needs of the port districts' communities
- This evolution is ongoing today and will continue tomorrow
  - Interpretation of statutes
  - Legislative action

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Port Powers

**Ports Develop Infrastructure**

The Early and Still Vital Mission

# 1911

## **RCW 53.08.020 - The Basic Infrastructure Statute – “Acquisition and operation of facilities”**

- Transportation infrastructure
  - Air, water, rail, roads
- Harbors, marinas and airports
  - Virtually any harbor improvements
- Handling and storage facilities
  - Warehouses, cold storage facilities
- Improvements related to “industrial and manufacturing facilities”

Also in 1911

## **RCW 53.08.040 - Improvements for industrial and commercial purposes & pollution control**

- Port lands for industrial and commercial purposes
- **And amended in 1955, 1967, 1972, 1989, 2007 and 2011**
- Sewer and water utilities
- Pollution control facilities for anyone
  - Bonding for pollution control facilities

## And last amended in 2018 to allow:

“ . . .programs and activities that are intended to reduce air pollution from vehicles used in cargo transport to, from, and within district facilities; and programs and activities that are intended to reduce air pollution from cargo vessels within the district.”



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## 1911 - Improvements of Water and Waterways

(RCW 53.08.060)

- All navigable and non-navigable waterways

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Port Powers

**Ports Improve Property for Commercial  
Purposes**

The Evolving Mission

## RCW 53.08.040 - Improvements for “commercial purposes”

- Very broad concept of “commercial purposes”  
has now led to . . . .



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# Mixed use developments



# Rob Fix, Executive Director of the Port of Bellingham

## **The Mature (20 Year) Project**

The former Georgia-Pacific Corporation's pulp and paper mill site.

- Industrial to planned mixed use development
- Installation of infrastructure
- Environmental cleanup
- Even a beer garden and pump track



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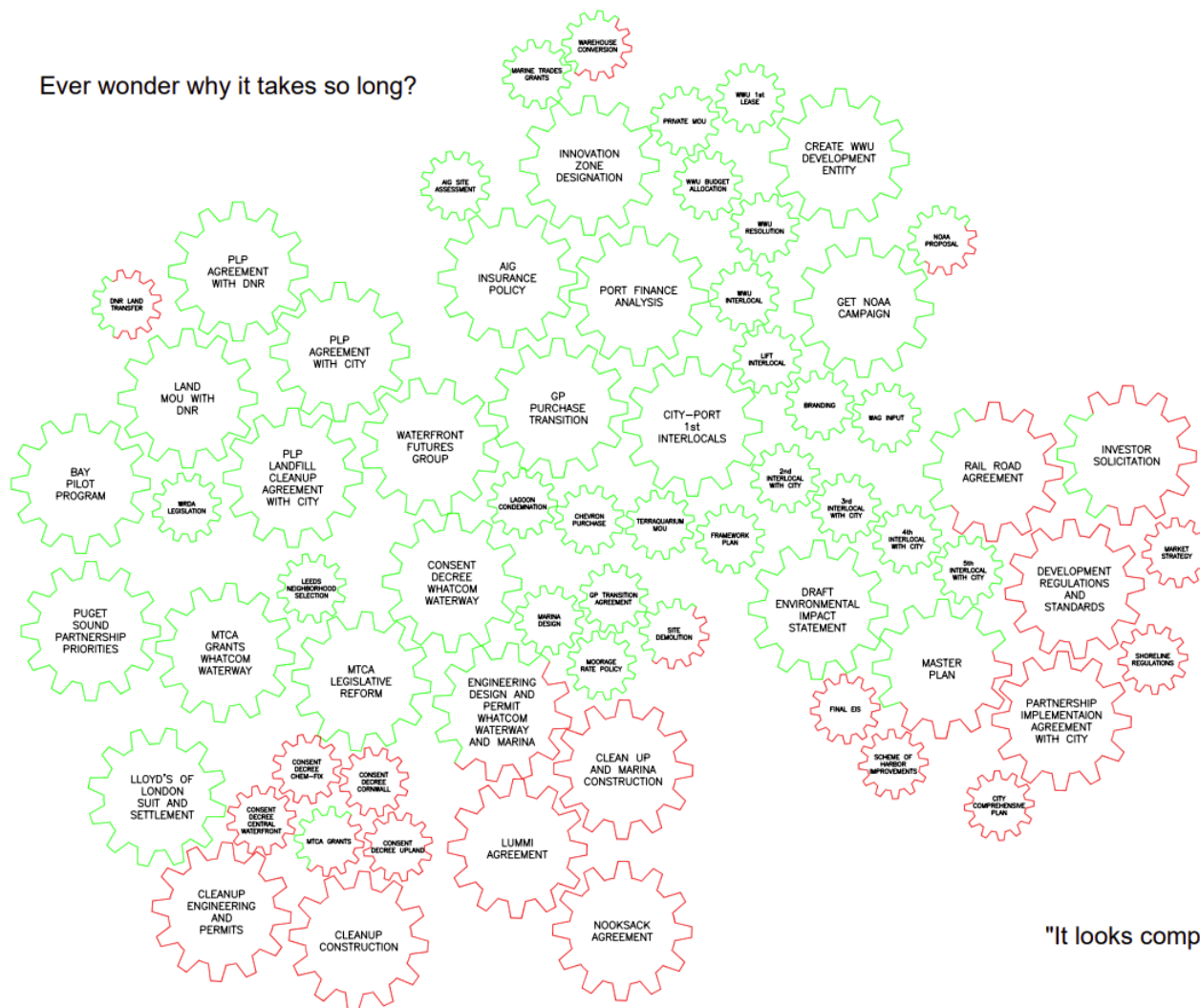





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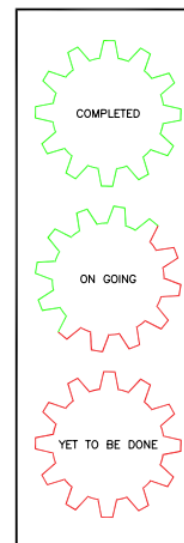
Ever wonder why it takes so long?



THE  
waterfront  
DISTRICT

BELLINGHAM  WASHINGTON

LEGEND



"It looks complicated because it is complicated"

Sara Young – Executive Director, the Port of Skagit

## The New Project

The former Northern State Hospital site redevelopment.

- Encourage private sector to create and sustain jobs
- Continue and promote public recreation use of SWIFT Center
- Protect environmentally sensitive areas, in particular Hansen Creek
- Acknowledge and protect historic significance of SWIFT Center
- Acknowledge and respect Upper Skagit Indian Tribal Nation's interest.



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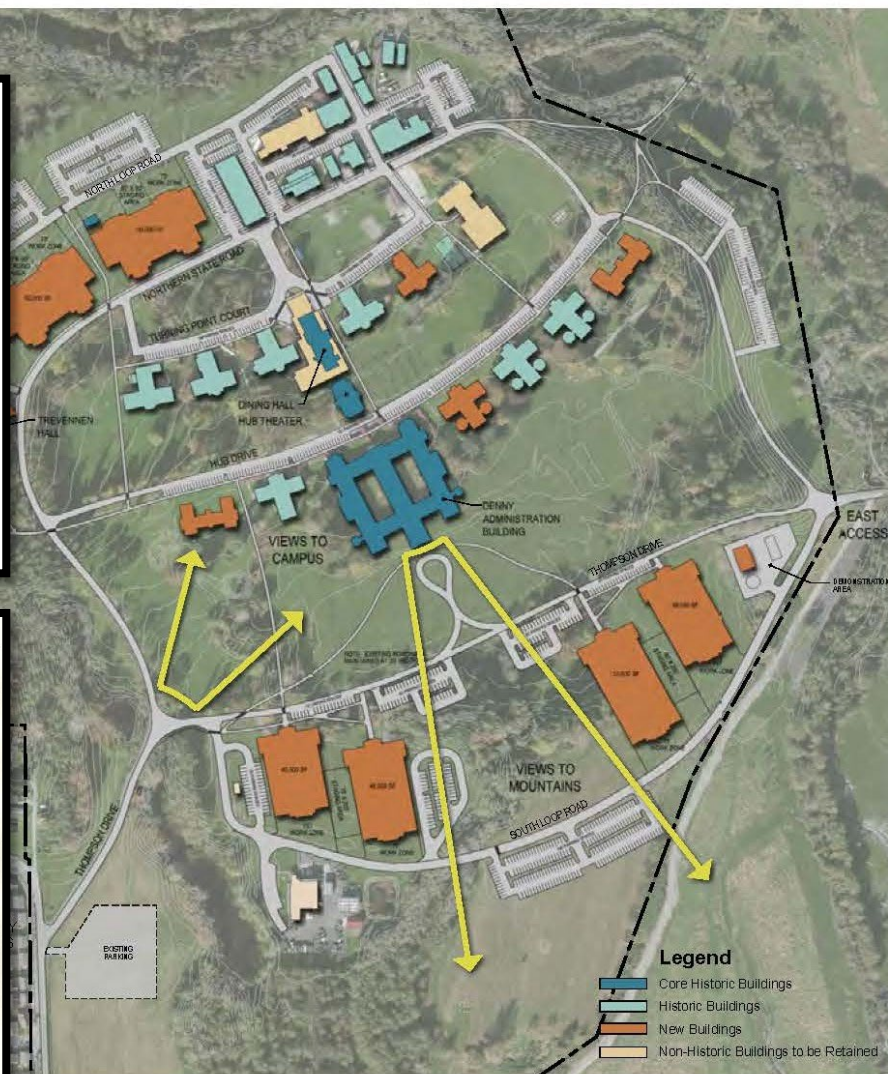


Figure 6.5. Site Plan of allowable development areas.

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Port Powers

## **Ports Plan Before They Build**

1911- Comprehensive Schemes of Harbor  
Improvements

(Chapter 53.20 RCW)

# Comprehensive Scheme of Harbor Improvements

(RCW 53.20.010)

Precedes any improvements

and no expenditure for the carrying on of any harbor improvements . . . unless and until the comprehensive scheme of harbor improvement has been so officially adopted by the port commission

Requires two notices and a public hearing

- The CSHI is the collection of all port planning documents
- Annual capital budget as an amendment
- Important step along with a SEPA analysis

Best Practice

- Update the Port's CSHI each year when approving capital projects
- Companion notice

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Port Powers

## **Powers Beyond Building**

The Evolution of Port Districts as Economic  
Development Engines



## 1947 - Studies, investigations and surveys

(RCW 53.08.160)

- All port property
- Industrial development in the port district
- But no port property can be developed by the port for agriculture or a dairy farm

# 1955 - Foreign Trade Zones

(RCW 53.08.030)

Ports can be the “FTZ Grantee”



- Foreign Trade Zones (“FTZ”) are secure areas under U.S. Customs and Border Protection (“CBP”) supervision
- United States' version of what are known internationally as free-trade zones
- Foreign and domestic merchandise
  - storage, exhibition, assembly, manufacturing, and processing

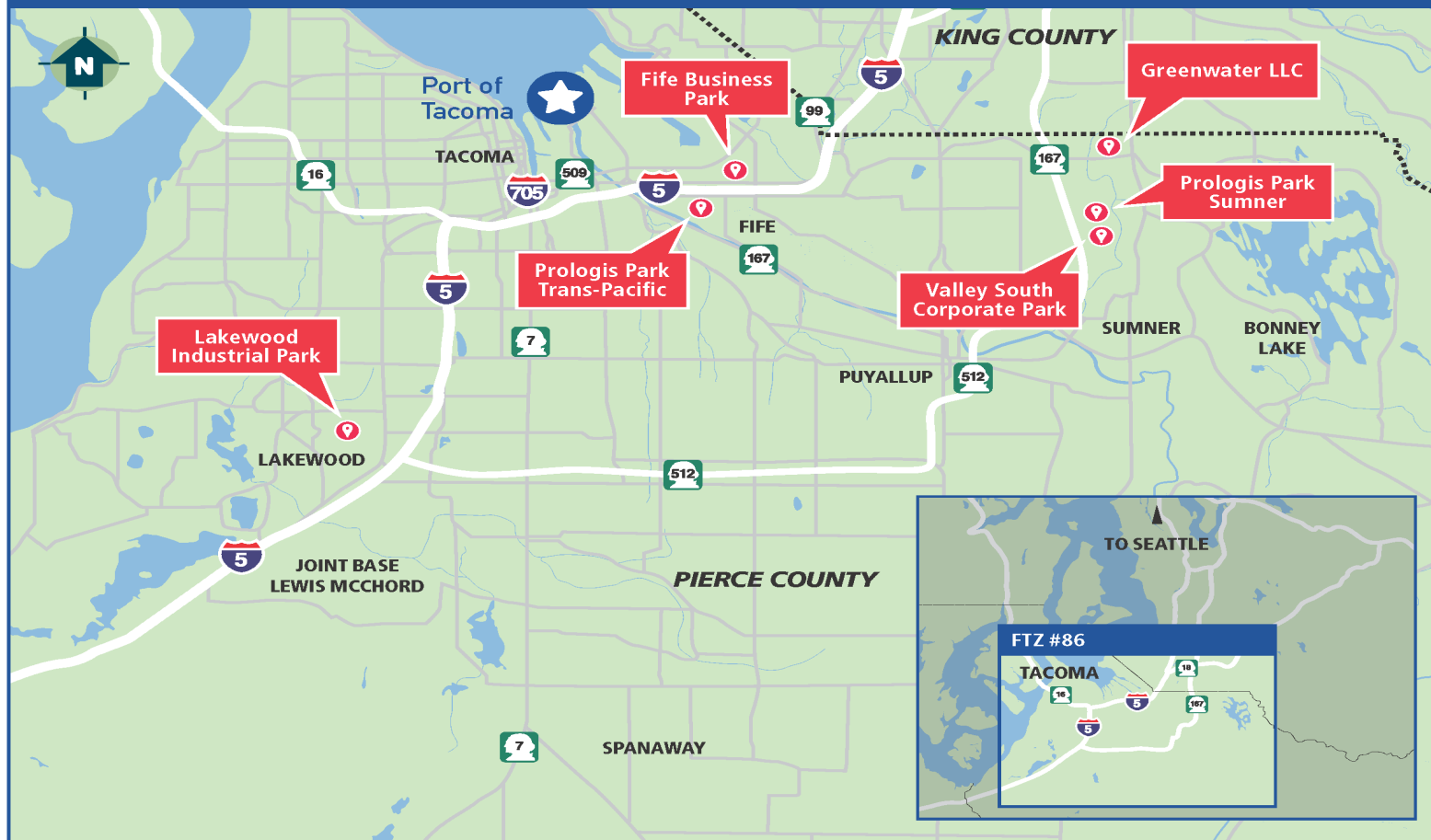
Subzones are normally private sites sponsored by the Grantee





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## FTZ #86



Existing Magnet sites



# 1955 -Local Improvement Districts (RCW 53.08.050)

- Install improvements
- Issue local improvement bonds
- Levy assessments over a 10-year period





## 1959 - Toll Bridges and Toll Tunnels

(Chapters 53.34 RCW)

- Contract for operation
- Issue revenue bonds



## 1965 - Park and Recreation Facilities

(RCW 53.08.270)

- Related to port facilities
- Approved by local county or city

## **1967- Own and operate tourism related facilities**

Public stadiums, convention, arts and tourism facilities (Chapter 67.28 RCW)





## 1975 - Pollution Control and Other Industrial Development Actions

- Allowed use of Port funds and bonding for private pollution control facilities within the district



## 1980- Intermodal Cargo Movement

(RCW 53.08.290)

- Ports may perform all necessary activities related to the intermodal movement of interstate and foreign cargo inside the port district
- And rail service outside the port district

## 1980 - Passenger Carrying Vessels

(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





- **1984 - Tourism Promotion and Tourism Related Facilities**

(RCW 53.08.255) 1984

Expend monies and conduct promotion of resources and facilities in the district or general area by advertising, publicizing, or otherwise distributing information to attract visitors and encourage tourist expansion

# 1985 - Economic Development

(RCW 53.08.245) 1985

- Engage in “economic development programs”
- Contract with nonprofits for economic development
- Programs for training



## **Very powerful tool – where is the outside of the envelope?**

- Small cities fund or other such outreach programs
- Port facilities for community events
- Participation in Chambers of Commerce and Economic Development Council
- Used with the Interlocal Cooperation Act to partner with other agencies



Jim Kuntz- Executive  
Director, Chelan-Douglas  
Regional Port Authority

Chelan and Douglas Counties –  
Wenatchee and surrounding  
areas

-Covid 19 Pandemic - direct  
cash grants to local businesses

## **2020 Covid Responses**

- **Issued 855 businesses in Chelan/ Douglas Counties checks totaling 4.5 million**
- **Regional Port seen as the “go to” agency in distributing funding to small businesses**
- **No administration fees charged by Regional Port**



But other governments and non-profits have discovered ports

- Festivals
- Swimming pools
- Homeless shelters
- Convention centers
- Marine trades groups



## 1989 - Trade Centers and Export Trading Companies

(Chapters 53.29 & 53.31 RCW)

- Build the facilities
- Provide the services
  - International market research and consulting
  - Warehousing, financing and insurance



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## 1990 - Street, Roads and Highways

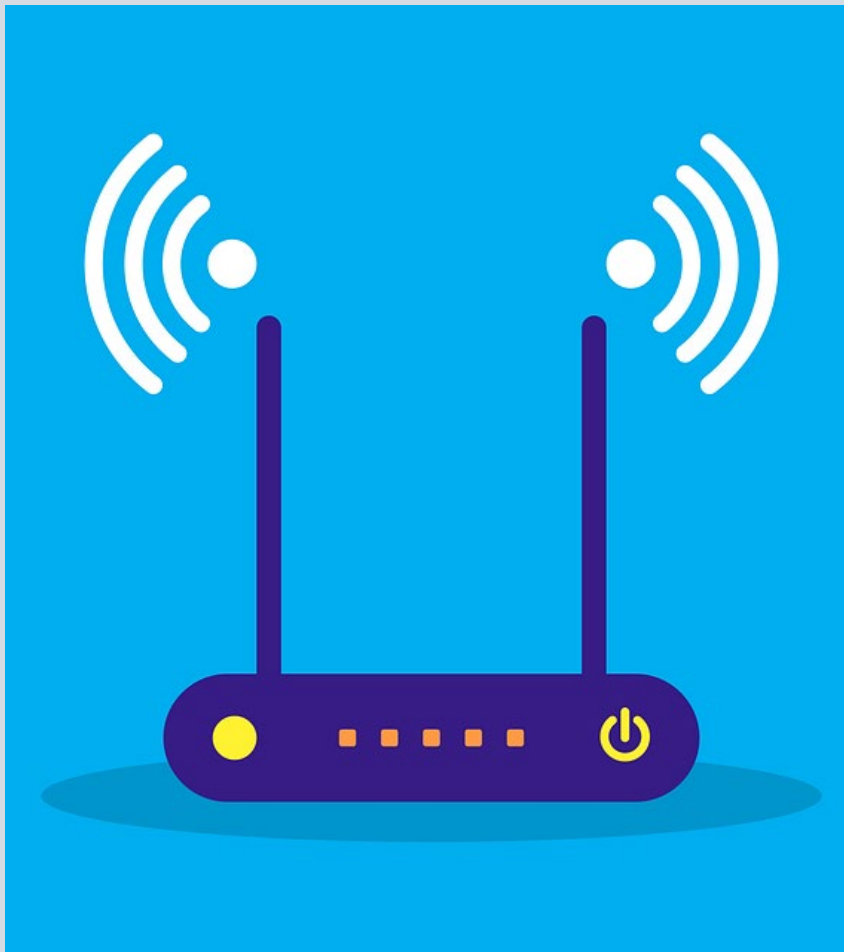
(RCW 53.08.330)

Construction, upgrading, improvement, or repair of any street, road, or highway that serves port facilities



## 2018 -Telecommunications Facilities (RCW 53.08.370)

- Construct, purchase acquire telecommunications and internet services
- No sale to end user
- "Rural port district" means a port district located in a county with an average population density of fewer than one hundred persons per square mile as of June 8, 2000



- 2018 –Any port district
- 2019 Wholesale Broadband
- 2021 Retail broadband

## Sara Young, Executive Director of Port of Skagit

- SkagitNet, LLC
  - Formed May 16, 2018
  - Joint Venture of Port and PUD
- Petrichor Broadband, LLC
  - Formed January 14, 2020
  - Provides broadband implementation support to public entities and tribes throughout the state and beyond



## 2001 - Grays Harbor Pilot Boats

(RCW 53.08.390)

Port districts in Grays  
Harbor or Willapa  
Harbor only

# Associate Development Organizations

(RCW 43.330.010)

The lead agency in each  
county for economic  
development



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Port Powers

**Redeveloping**

Port Districts as Community and Brownfield  
Redevelopers



# 1955 -Industrial Development Districts

(Chapter RCW 53.25)

Create a geographic district defined by “marginal lands”

- Acquire the property by purchase, condemnation or from the county
- Plan and redevelop the property
- Sell the property



## 1983 -Industrial Development Corporation

(RCW 39.84.030)

- Industrial Development revenue bonds
- Pass through financing



## 2002 - Community Renewal Agency

(RCW 53.08.400 and Chapter 35.81)

- Agreement with City or County
- Port acts as the community renewal agency



## 2013 - Brownfield Renewal Authority (RCW 70.105D.160)

- Separate legal entity
- Recognizes that brownfield renewal is the new “urban redevelopment”

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Port Powers

**The Leasing and Selling Power**

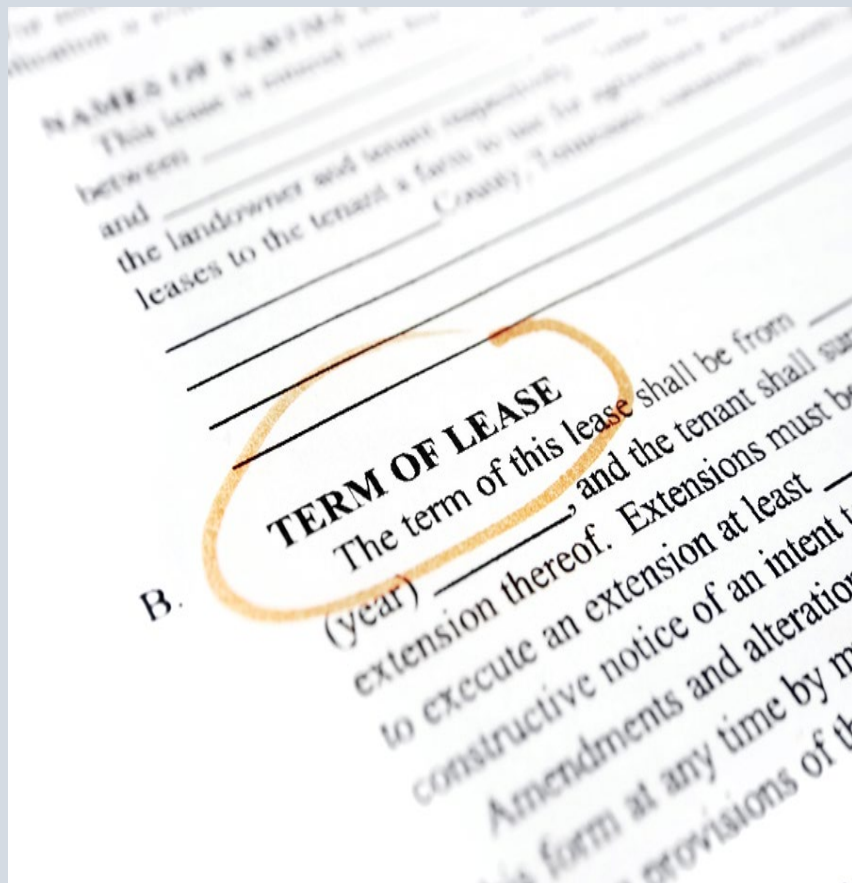
Port Districts as Landlords and Developers

## 1911 -Port Leasing (RCW 53.08.080)

“For such purposes and upon such terms as the commission deems proper”

- Very powerful statute





Fifty years with options(s)  
up to thirty years = 80  
years

Airport lands = 75 years

Capitalize lease payments



## 1911 - Sale of Property – RCW 53.08.090

- 1955 - Sale by contract
  - 4% down
  - 4% per year (24 years)
  - 6% interest

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Port Powers

**Promotional Hosting**



## 1967 Promotional Hosting (Article VIII, Section 8 and RCW 53.36.120-150)

“The use of public funds by port districts in such manner as may be prescribed by the legislature for industrial development or trade promotion and promotional hosting shall be deemed a public use for a public purpose”

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Port Powers

**Agreements With Governments**

Ports and the Interlocal Cooperation Act

# Interlocal Cooperation Act

(Chapter 39.34 RCW and RCW 53.08.240)



## **Any public agency**

- State or federal government
- Indian nation
- Other local governments
- Any local government of another state

## **Formation**

- Lead agency, nonprofit corporation, partnership of limited liability company

## Purpose

- Any powers that each agency has and that both agencies have
- Effectively expands port district powers especially in light of broad port powers
- Allows ports to take a lead role with other governments (and ports) for contracting, leasing, and marketing

## **January 2020- Functional Consolidation**

- **As of January 1, 2020 the Ports of Chelan County and Douglas County functionally consolidated and operates as an independent government entity.**
- **Still two separate commissions but operate as a six-person board of directors for CDRPA.**
- **One staff, one budget, two tax levies**

**Idea borrowed from fire district practice before the legislature created “regional fire authorities” in 2004**



## Value for Property Transfers

- Not “fair market value” but rather “true and full value”
- A more flexible concept
- Can include a wide variety of factors
- Commission’s “true and full value” determination

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Port Powers

**Condemnation**

Ports taking property

# 1911 - Condemnation AKA Eminent Domain



- Government takes property interest and pays fair market value
- Port can condemn another government's property for a "superior purpose"

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Port Powers

**Operating The Port Marinas**

Ports as special landlords

# 1983 - Provide Rules for Port Marinas

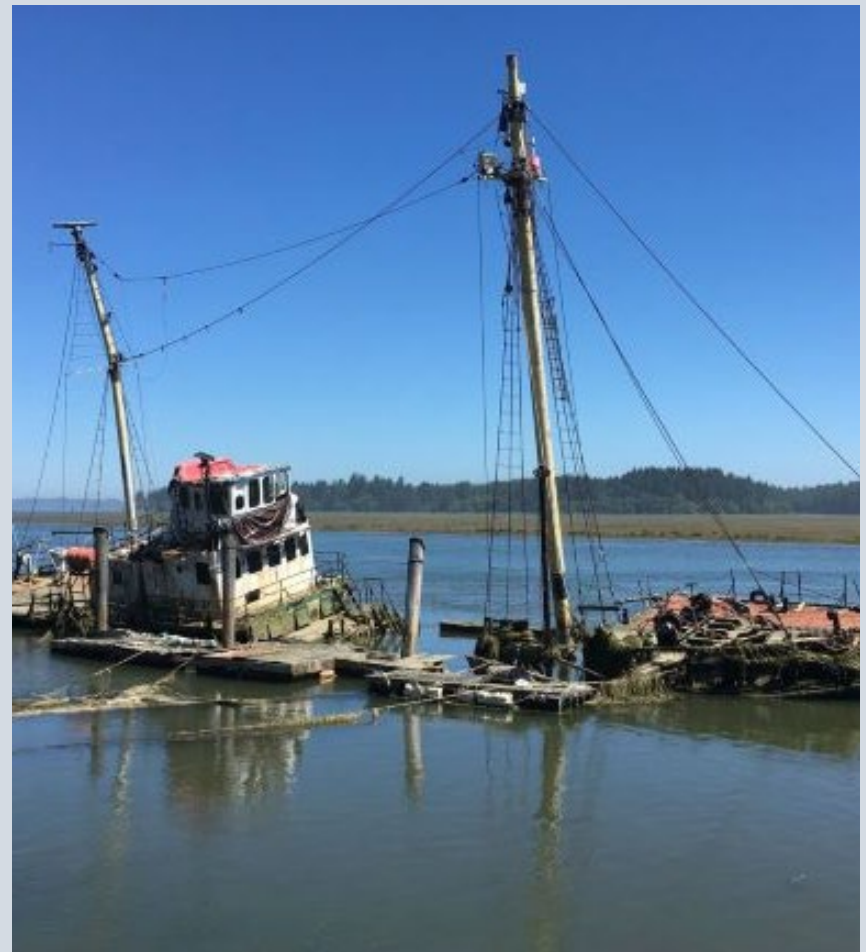
(RCW 53.08.320)

- Includes the right to require insurance
- Seaworthy vessels
- Procedures to seize vessels
- Conspicuously posted Marina Rules and Regulations



## 2002 – Abandoned or Derelict Vessel Removal

On any aquatic lands  
(public or private) within  
the port district





## 2021 - RCW 53.08.480

- Needed for participation in derelict vessel removal program

## RCW 53.08.320

- Allows for the seizure and sale of boats for failure to pay marina charges
- Federally documented vessels with a ship's mortgage are problematic

## **1961- City or County May Adopt and Criminalize Port Marina Rules and Regs**

(RCW 53.08.220)

(1) . . . and request the adoption, amendment, or repeal of such regulations as part of the ordinances of the city or town . . . or county, if such properties or facilities be situated outside any city or town

(2)(a). . .any violation of the regulations described in subsection (1) of this section is a misdemeanor



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# Port Powers

## **Public Work Contracting**



## 1955 – Contracts for Labor and Material

- Public work contracts
- “Best bid”
- Work by port employees
- 2018 - Unit price contracts

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Port Powers

**Regulate The Port's Airport**

## 1945 -Exclusive Jurisdiction to Regulate, Control and Operate Airports

RCW 14.08.330

-be under the exclusive jurisdiction and control of the municipality or municipalities controlling and operating it

**or so we thought**

Filo Foods v. City of SeaTac –  
2015 – Washington Supreme  
Court



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Port Powers

**Exercising Port Powers**

Know the Curb Lines and Express Yourself

# Constitutional Prohibition

(Article VII, Section 7)

- Requires a “donative intent”
- Too cheap of rent signifies “donative intent” or rental to a “good cause” for cheap rent



Public presentations with “experts” and “community leaders” creates a record

- Economic development value
- Trade and tourism
- Importance to community



Clearly written “action memos” that provide the port’s thinking and rationale

- Requires consistent analysis
- Makes a record for the future port managers, the state auditor and the public

## Watch for “Hot Button Issues”

- Special deals for “worth groups”
- Free moorage or other services
  - Volunteer labor from nonprofit (RCW 35.21.278)
- Failure to enforce Port agreements
- Discounts to classes of citizens
- Transactions with commissioners
- Personal use of Port assets

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Port Powers

## **And the Powers Grow**

Meeting Community Needs and Making New  
Laws

## Chris Herman – Deputy Director, WPPA

- How an idea ends up as a law
- Why every idea cannot become a law
- What is on the horizon



# So, you want to run a bill?

## **Acquisition and operation of facilities.**

A port district may construct, condemn, purchase, acquire, add to, maintain, conduct, and operate sea walls, jetties, piers, wharves, docks, boat landings, and other harbor improvements, warehouses, storehouses, elevators, grain-bins, cold storage plants, terminal icing plants, bunkers, oil tanks, ferries, canals, locks, tidal basins, bridges, subways, tramways, cableways, conveyors, administration buildings, fishing terminals, together with modern appliances and buildings for the economical handling, packaging, storing, and transporting of freight and handling of passenger traffic, rail and motor vehicle transfer and terminal facilities, water transfer and terminal facilities, air transfer and terminal facilities, and any combination of such transfer and terminal facilities, commercial transportation, transfer, handling, storage and terminal facilities, and improvements relating to industrial and manufacturing activities within the district, and in connection with the operation of the facilities and improvements of the district, it may perform all customary services including the handling, weighing, measuring and reconditioning of all commodities received. A port district may also construct, condemn, purchase, acquire, add to and maintain facilities for the freezing or processing of goods, agricultural products, meats or perishable commodities. A port district may also construct, purchase and operate belt line railways, but shall not acquire the same by condemnation.

Amending RCW 53.08.020 is not advisable

# And the process is easy, right?

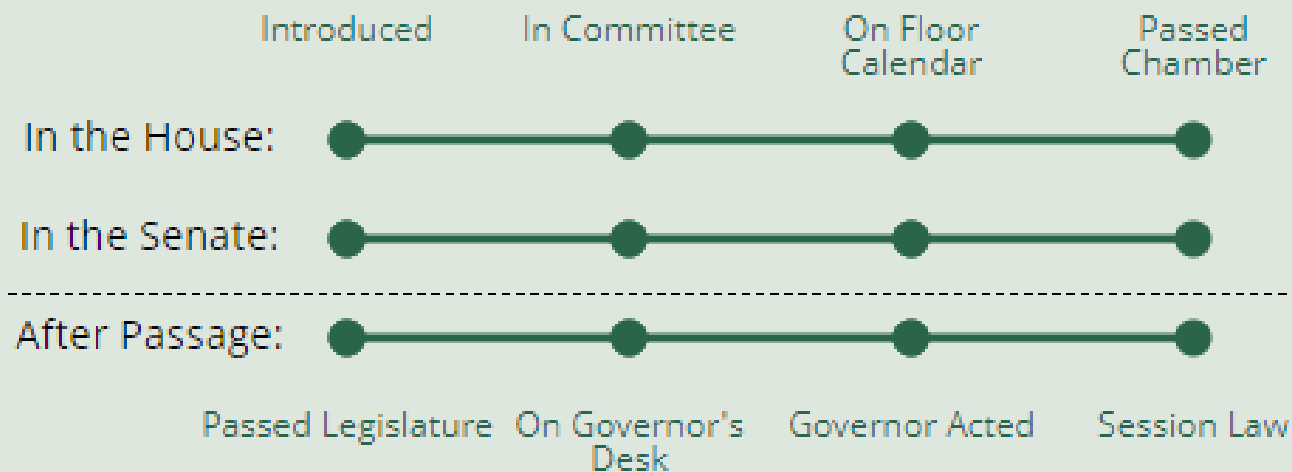
**Current Version:**

**Engrossed Substitute - ESHB 1050**

**Current Status:**

**C 342 L 23**

**Where is it in the process?**



Each dot is a step in the process...a chance for the bill to not

# WPPA has a process for vetting potential legislation

- WPPA Legislative Committee
- Interim Legislative Agenda Setting begins in June and culminates by BOT adoption at the WPPA Annual Meeting
- Legislative ideas circulate various ways including through WPPA Standing Committees

- 2008
  - Property development outside the port district
- 2015
  - Northwest Seaport Alliance
- 2018
  - Wholesale telecommunications
- 2023
  - Coordination between qualified cargo and passenger ports
  - Joint levy (Chelan Douglas Regional Port Authority)
  - Retail telecommunications

And lest you forget a Port District can always have a .....



## 1974 - Port Police Force

(RCW 53.08.280)

Must operate an airport or be a port of entry

## Thank You

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# Port Powers Questions?