



**Port of Port Townsend
Public Workshop
Wednesday, April 12, 2023, 9:30 AM**

**To be held in person at the Point Hudson Pavilion Building, 355 Hudson Street, Port Townsend
and also online**

Via <https://zoom.us/> – or call (253) 215-8782, use Webinar ID: 862 6904 3651, Password: 911887

AGENDA

- A. City Presentation Tactical Infill Housing: Building Residential Capacity
- B. WPPA, Governance and Management Guide –Chapter 2 Origin & Authority of
Washington Ports and Chapter 8 Planning2-56

This workshop is open to Commissioners, Management, other Port staff, Consultants and the public. It is not the opportunity to give public testimony, but if Commissioners request input from individuals in the audience, those people may speak. The principal purpose of the workshop is to allow Port staff and the Board of Commissioners to communicate with each other and/or Consultants, answer Commission questions, and get the Commission's opinions and input regarding the subject topic(s).



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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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.

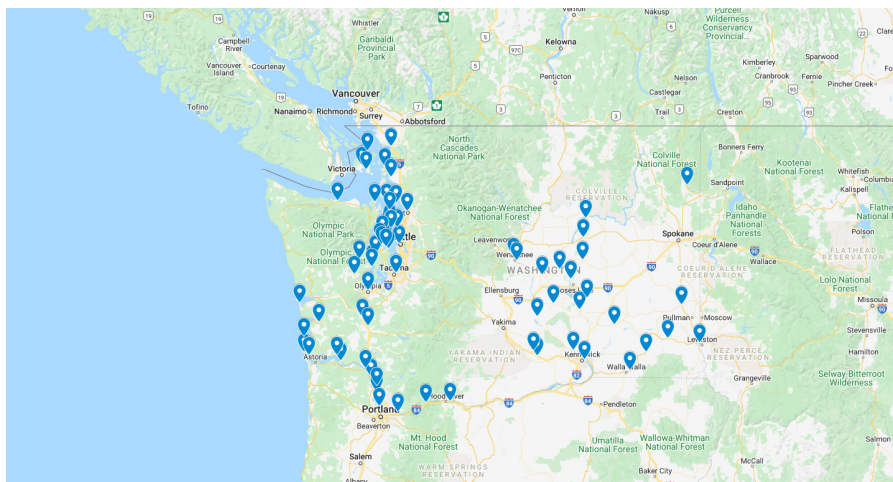
Economic development

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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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.

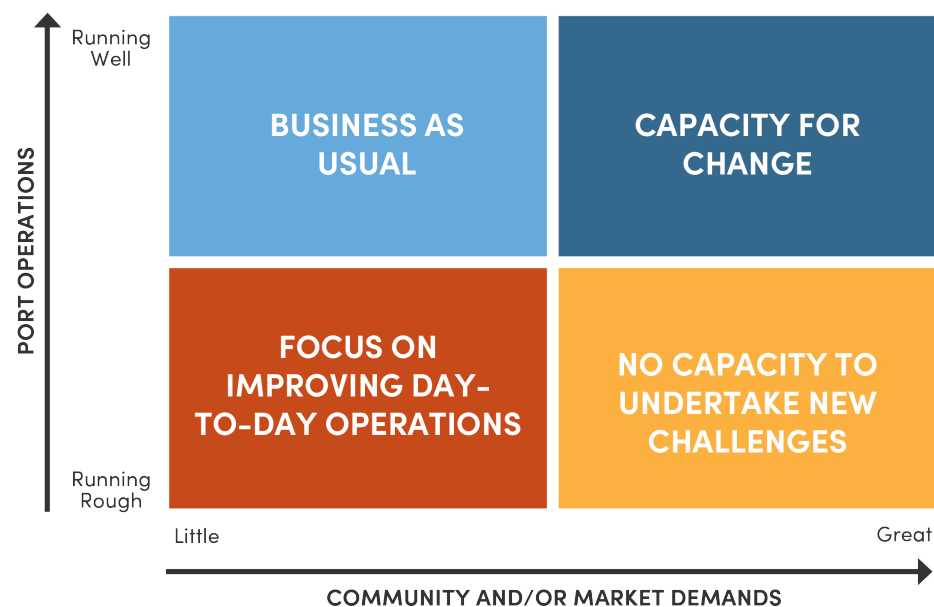
Once positioned on the platform, an investment will land in one of four quadrants:

- **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.

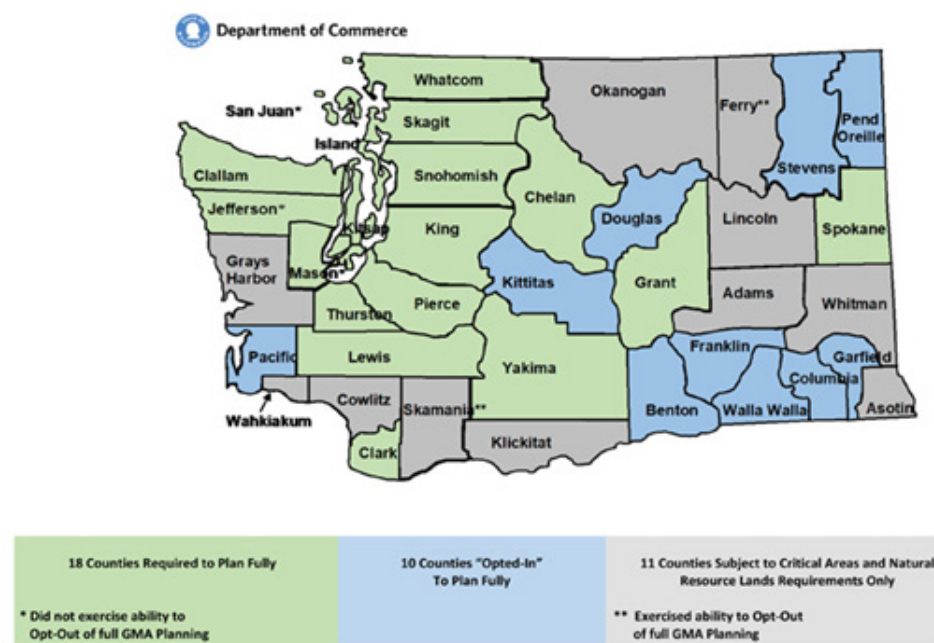
The Growth Management Act (GMA) was originally adopted in 1990 and reinforced with additional legislation in subsequent years. The act (RCW 36.70A) represents the ongoing efforts of the State to manage its growth.

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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