



**Port of Port Townsend
Public Workshop
Wednesday, October 11, 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. Commission Roundtable No materials
- B. WPPA, Governance and Management Guide
 - Chapter 6 Economic Development4-23
 - Chapter 7 Property Restoration and Reuse24-40

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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6. ECONOMIC DEVELOPMENT

"The economy goes up, it goes down, it goes up, it goes down, nobody knows why. And I know this because I took economics, and I'd explain it to you, but I flunked that course. It's not my fault. They taught it at 8 o'clock in the morning."

(Modified)

—Lewis Black

ECONOMIC DEVELOPMENT

Economic development is a complex and often controversial topic, and it is not specifically defined in Washington State statutes. It is based on an understanding on what drives the economy and how the direction of the economy can be influenced. There are a host of opinions on the factors that underpin the mechanics of the economy. Most controversial is the role and extent of government intervention in what some believe should be a laissez-faire, self-correcting economic system.

Ports participate in economic development in two very important ways. One is through their participation as a community partner in programmatic economic development. Another is by making brick and mortar investments in facilities, infrastructure, and commercial or industrial real estate. Both roles contribute significantly to local, regional, and state economies. Fully grasping the ability of ports to influence the direction of the economy requires an understanding of what drives growth in a local economy. While there are a multitude of theories concerning the factors that influence an economy, what follows is a straightforward explanation to put a port's role in context.

A local economy is made up of a primary and secondary economy. A primary economy job is a job that provides goods and/or services to customers that are predominantly outside the community, bringing dollars (value) into the community that are then distributed locally. A secondary economy job is a job that provides a needed service to the community and, while essential to a healthy economy, typically does not bring outside value into the local economy but instead relies on local dollars.

Primary economy: For purposes of this discussion, the primary economy (or base economy) includes those fundamental economic activities such as mining, agriculture, forestry, fishing, manufacturing, processing, and tourism that all attract value into the local or regional economy from other economies. These are commonly known as tradeable sectors—that is, goods or services that are sold to other regions, states, or countries. In addition, major institutions, such as universities or large research facilities that operate on state or federal budgets, or significant retirement communities that import pension funds and investment returns into the local economy bring value.

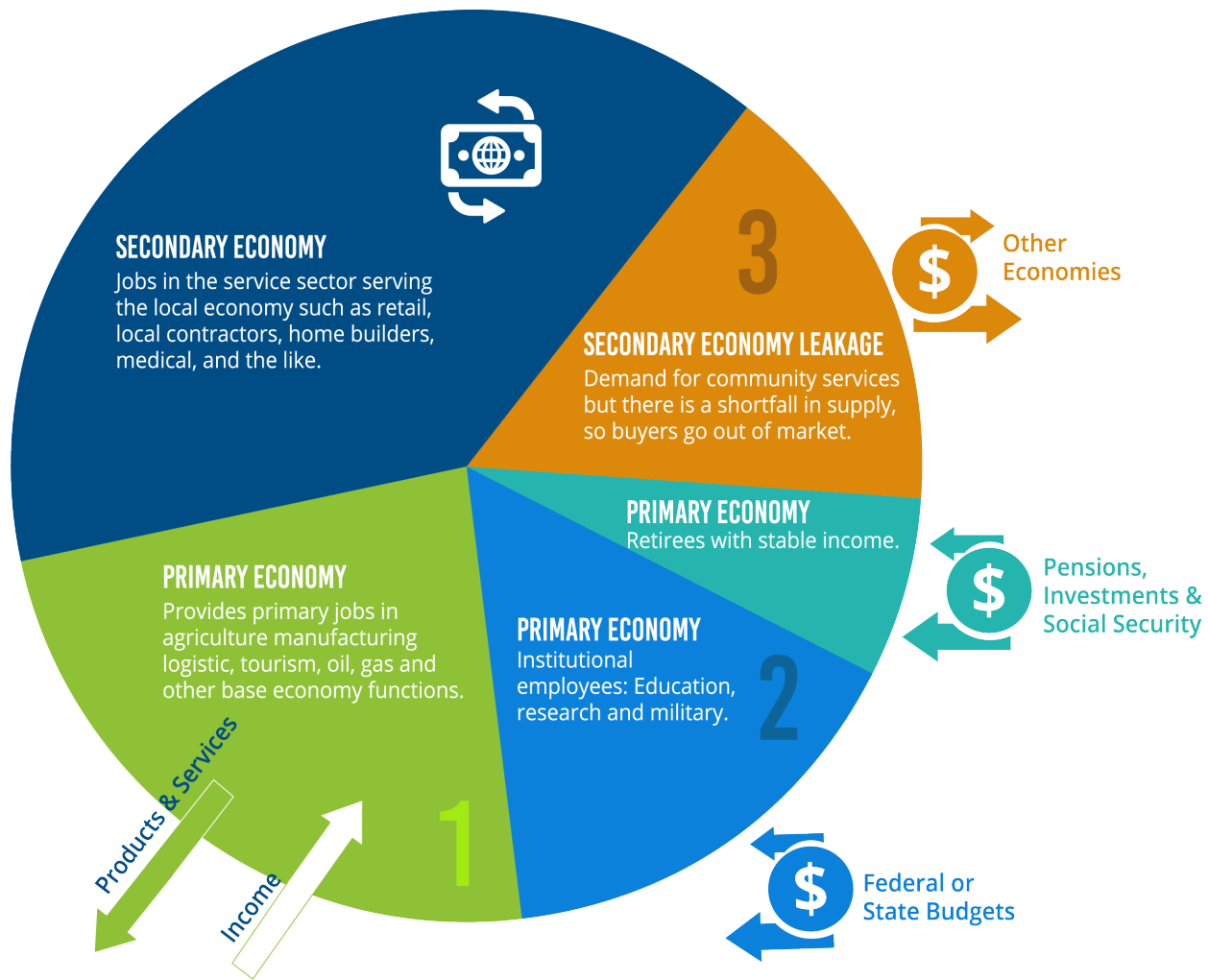
Secondary Economy: In addition to the primary economy, there is a secondary economy, consisting of the service sector that serves the needs of the local economy/community and derives its major value from within the local economy. The local sale of services and goods is considered a non-tradeable sector. It essentially cycles value within the local economy but does not substantially grow the local economy on its own. The secondary economy can increase local wealth, if it includes major regional services that attract dollars from other economies. Likewise, if there are shortfalls in the secondary economy, local dollars will leak to other economies.

Net worth: As a measure of economic health, the net worth of a diversified local economy grows when there is value imported into the economy from other economies. If there is little or no primary economic activity, or if there are shortfalls in the secondary economy, the net worth of an economy declines as dollars leave (or leak from) the local economy. Expanding the net worth of a community by growing and diversifying its primary economy provides (a.) the resources for higher quality public services such as police and fire protection, education, parks, and amenities, (b.) more job opportunities for local citizens at higher wage levels, and (c.) a level of insulation from economic downturns.

There is no doubt that exceptions to these concepts exist. However, they are presented to put the possible economic development roles of a port authority into perspective. The illustrations that follow highlight the various roles ports serve in stabilizing or growing their local economies.

It is also important to distinguish between economic development and business development. Economic development has the intended outcome of creating jobs, generating tax revenues, and facilitating economic activity for the health and welfare of a community or region. It considers socioeconomic factors such as health care, housing, childcare, and issues of equity. It is geographically focused and is largely driven by the public sector.

Business development focuses on business growth and stability to generate profits. It is market focused and is typically driven by the private sector; however, the lines are not very clear. Business development is undertaken in many communities through public-private partnerships and nonprofits such as chambers, economic councils, and business associations. To some degree, ports participate in both economic and business development. Their involvement is as public investors in the built environment, as well as through advancing programmatic priorities through community partnerships. Understanding the many factors that impact economic growth and stability is critical to ports' successful economic development effort.



Ports' Role in Economic Development

Economic Component	Ports Role	Examples	Notes
1	Attract or expand primary economy employers; construct facilities; advance workforce training; and ensure adequate transportation infrastructure.	Develop industrial subdivisions, construct warehouses and manufacturing facilities, operate rail and marine facilities, fund workforce training, and fund efforts to attract major employers.	Partner in local economic development programs OR a developer and operator of brick-and-mortar facilities.
2	Attract and or expand institutional primary market employers.	Work in concert with local partners to attract a major university campus or military installation.	Partner in local economic development programs
3	Develop facilities for secondary economy employers if there is leakage or the private sector is not responding.	Build commercial facilities for service sector.	A developer and operator of brick-and-mortar facilities.

Ports participate in programmatic economic development and pursue brick and mortar investment in facilities, infrastructure, and commercial or industrial real estate. In both cases, ports invest resources into advancing the overall health of the economy.

Brick and mortar investments are discussed in detail in Chapter V. They are used as revenue generators for the port and as contributors to a healthy economy.

Occasionally, ports subsidize their brick and mortar investments with levied property taxes, because the investment itself cannot produce a sustainable rate of return, or in some cases, ports agree to lease rates that are below market. Both these circumstances can cause tension within the private sector development community, which might view this as unfair competition. Ports justify this subsidized investment as advancing or stabilizing the economy by supporting jobs that might not materialize without subsidized rent.

Ports are advised to be as targeted and specific as possible concerning the expected positive economic impacts a subsidized investment will generate. Ports subject themselves to considerable criticism from the public when they make general statements that an investment “is good for the economy” or “creates family wage jobs.” Based on data driven analyses, more specific and well-defined strategies and outcomes, such as attracting a specific employer with a known number of new jobs or filling a real estate gap not met by the private sector development community, inspire more fiduciary confidence in the tax paying public.

This chapter focuses on the roles ports undertake in traditional programmatic economic development. The International Economic Development Council defines programmatic economic development as “ a program, group of policies, or a set of activities that seeks to improve the economic well being and quality of life for a community by creating and/or retaining jobs that facilitate growth and provide a stable tax base.”

In most communities, ports partner with other local, regional, and state agencies, as well as not- for- profit agencies such as chambers or economic development councils, to support economic growth and stability.

Historically, existing business expansion accounts for over 60% of newly created jobs. Newly created jobs through startups and new inbound employers account for approximately 40% of new job growth. For that reason, all successful economic development programs prioritize the support and needs of existing businesses.

The traditional activities of local programmatic economic development include:

- 1. Understanding and providing needed information and assistance** to attract, retain, or grow primary job employers.

This work generally consists of operating business assistance programs, coordinating

local infrastructure, and providing necessary data on local demographics, quality of life, education and training opportunities, real estate, permitting, and taxes.

2. **Market the community** to targeted employers or industries.

There are a host of methodologies to expose a community to potential primary job employers, including social media, direct recruitment, trade shows, joint efforts with the State, and location of trade offices in desired industry hubs.

3. Ensure that a **positive business environment** exists.

There are several factors a potential primary job employer considers before locating or expanding further in a community. These include proximity and access to markets via transportation infrastructure, ease of travel, local labor availability and skills, tax and regulatory environment, quality of life issues, overall cost of doing business, incentives, required infrastructure, and political support for the economy and jobs.

4. Developing the **local workforce**.

A skilled, educated, and trained workforce is critical to economic growth. Job demand without workforce supply is a nonstarter. Understanding the availability of a competent workforce is one of the key data points in understanding the local economy. Supporting the needed workforce is typically a collaboration of local governments (including ports), the business community, and educational/training institutions which include local school districts, trade schools, apprenticeships, and college/university programs. These workforce partners are often organized through as Workforce Council or Board.

An emerging issue for port authorities and the communities they serve is the availability of affordable workforce housing. Ports have traditionally shied away from participating in housing investments, as clear statutory authority has proved elusive. However, the exploding cost of housing has reshaped the industry thinking to view workforce housing as critical to workforce availability in any given community, and it is now considered a key component of a port's role in advancing a sustainable and healthy economy.

Economic development programs have varying degrees of success. Some communities generate an atmosphere that is antagonistic towards business development, or they don't follow through in their support of inbound or expanding primary economy employers. These communities do not fare well economically over the long term. At the other end of the spectrum, there are economic development programs that are targeted, strategic, and data based. These programs understand what drives their local economy and are realistic about its stability and growth.

In between, a myriad of efforts exist; however, the most successful communities understand their economy and make decisions in concert with their local government partners, based on data and not assumptions. This is of particular significance to a port that is contemplating a brick and mortar investment subsidy in addition to their programmatic economic development support. Results that closely mirror forecasts from either programmatic economic

development or brick and mortar investments pave the way to support future investments of public funds.

As mentioned previously, affordable workforce housing is an area of growing significance to a stable economy. Likewise, it is commonly accepted that availability of high-quality childcare increases parents' participation in the workforce, thereby increasing overall productivity. Like housing availability, childcare is critical to a healthy economy, but ports have limited authority to directly participate. They do have the ability to work with their community partners on both these important components of successful economic development.

PARTNERS FOR PORTS

Economic Development Agencies and Organizations

Economic development is a complex undertaking, with many players at all levels of government. Ports are authorized to enter into agreement with any public agency, including state and federal agencies, tribal nations, and other local governments, including those in other states. A port's relationship with other governmental entities can be captured in a partnership, such as a limited liability company or a nonprofit corporation. The port acts as the lead agency, and any powers and authorities held by the participating agencies are available to the joint entity. For certain purposes, such as economic development, ports can also enter into agreements with not-for-profit entities. The following list is a summary of key potential partners available to ports for programmatic economic development. Readers should note that for traditional brick and mortar investments, there are many funding partners that are discussed in more detail in Chapter IV.

Local/Regional

Associate Development Organizations (ADOs): ADOs serve as local economic development partners for the Washington State Department of Commerce. ADOs are local organizations designated by each county- elected governing board to coordinate business recruitment, retention, and expansion activities within their service area(s) and to provide export assistance. RCW 43.330.080 directs the Department of Commerce to proactively partner with ADOs throughout Washington. ADOs are charged with the traditional roles of economic development, from participating in the creation of economic development plans, to marketing their community or region, to collaborating with other local partners, to meeting workforce development needs. The Department of Commerce routinely forwards leads to ADOs, for inbound employers trying to locate in Washington. In 2021, four ports were selected by their county to serve as their ADO.

Chambers of Commerce: Not- for- profit corporations that are networks for public entities and businesses to promote business interests. The first U.S. Chamber was created in New York in 1768.

Cities/ Towns and Counties: Incorporated cities / towns and counties throughout Washington can invest public funds in a limited but meaningful manner to promote industrial and commercial growth. RCW 35.21.703 and RCW 36.01.085 respectively give cities and counties the authority to engage in economic development programs and initiatives. Providing infrastructure and regulatory incentives are two of the most notable areas for city and county participation.

Community Facilities District: RCW Chapter 36.145 provides financing for community facilities and local, subregional, and regional infrastructure.

Community Preservation and Development Authorities (CPDAs): RCW 35.21.745 provides for the creation of CPDAs by cities, towns, and counties to protect, preserve, and enhance the historical or cultural character of Washington communities that are impacted by external events and conditions.

Cultural Arts, Stadium, and Convention District: RCW Chapter 67.38 outlines the authority to construct, modify, and operate facilities for cultural arts, stadium, and convention uses.

Downtown Partnerships: Many communities across Washington have launched downtown partnerships to promote a healthy and vibrant downtown area. They are collaborations between businesses, municipal governments, and special purpose agencies, like ports.

Economic Development Councils: Not-for-profit corporations that are collaborations between the public and private sectors in a community, to advance economic development priorities.

Metropolitan Municipal Corporation: Provides essential services not adequately provided in metropolitan areas by existing agencies, including performing comprehensive planning.

Planning Commissions: These county or city boards are appointed to provide citizen review of planning matters such as zoning and specific development proposals, as well as oversight of community comprehensive plans and local land use regulation updates and modifications. They are key to the growth and expansion of business from a land use perspective.

Public Development Authorities: Cities/ towns and counties may form public development authorities (PDAs) to assist in administering grants, enhance government efficiencies, provide services, and improve general living conditions. They are quasi-municipal corporations authorized under RCW 35.21.730.759, generally used to undertake unusual endeavors the parent agency does not want to pursue.

Public Facilities District: RCW Chapters 36.100 and 35.57 provide authority to counties and cities to acquire, construct, and operate sports facilities, entertainment facilities, convention facilities or regional centers, and associated parking facilities.

Public Stadium Authority : Public stadium authorities develop stadium and exhibition centers.

Public Utility Districts: Structured in a similar way to port authorities, public utility districts can build and operate utility services including sewer, water, electricity, and telecommunications infrastructure. These districts act in addition to many special purpose utility districts that provide sewage transportation/treatment and solid waste collection/management.

Public Waterway District: Provides funding for owners of lands bordering any navigable waterway to improve its functionality.

River and Harbor Improvement District: RCW Chapter 88.32 provides the ability to fund any river, lake, canal, or harbor improvement proposed by the federal government.

Tourism Bureaus: Tourism is Washington's fourth largest industry. Many communities have local or regional tourism agencies that, like economic development councils, are a collaboration between public and private sectors. Cities and counties may form a tourism promotion area (TPA) to generate revenues for tourism promotion (RCW Chapter 35.101). Tourism bureaus are often funded by a local hotel-motel tax.

Transportation Districts: There are a multitude of city and county authorities that create and operate transportation districts to operate monorails, airports, ferry service, public transportation, freight rail, roads, and transit systems in incorporated and unincorporated areas.

Workforce Development Councils/ Boards: Nonprofit organizations that are governed at the local level and champion training and educating a skilled workforce to support the local economy. These local entities collaborate through the Washington Workforce Association (WWA).

Statewide

Centers of Excellence: Washington State Centers of Excellence link the state's business, industry, labor, and educational systems to create a highly skilled and readily available workforce critical to the success of Washington's economy. Each center is funded through the State Board for Community and Technical Colleges (SBCTC) and is housed at a community or technical college.

Community Economic Revitalization Board (CERB): CERB provides funding to local governments and tribes for public infrastructure which supports private business growth and expansion. Ports have historically held an appointed seat on the CERB Board.

Community Colleges, Technical Schools, and Universities: These educational institutions are engaged in research, business development, and workforce training and education.

Export Finance Assistance Center of Washington (EFACW): The EFACW was created by the Washington State Legislature in 1983 to provide free export finance advice and counseling assistance to small and medium sized exporters or prospective Washington -based exporters.

Governor's Office for Regulatory Innovation and Assistance (ORIA): ORIA works with other agencies to help businesses navigate Washington's business and environmental regulatory systems and to collaborate for innovative process improvements.

Impact Washington: Funded through the national Manufacturing Extension Partnership (MEP), Impact Washington leverages university resources, government relationships, and economic development partnerships to provide excellence in training, consulting, and customer service.

Office of Minority and Women's Business Enterprises (OMWBE): OMWBE is charged with certifying small, minority and women-owned businesses to facilitate their participation in public contracting and procurement.

Small Business Development Center (SBDC): The Washington SBDC is a network of expert business advisors working in communities across the state to help entrepreneurs or small business owners start, grow, or buy/sell a business. SBDC advisors provide one-on-one, confidential, no-cost advising on all phases of small business development and are often co-located with economic development specialists in community colleges, economic development agencies, or government agencies.

Washington Economic Development Association (WEDA): WEDA is committed to recovering, retaining, recruiting, and expanding jobs and re-investment in Washington . WEDA members include economic development organizations, cities, counties, ports, tribes, businesses, education, and community-based organizations that prioritize economic development.

Washington State Department of Agriculture: A state agency that promotes the agricultural economy.

Washington State Department of Commerce: The lead state agency charged with enhancing and promoting sustainable economic vitality throughout Washington. It provides support and funding for economic development planning, infrastructure, energy, public facilities, housing, public safety, business services, and international trade.

Washington State Department of Transportation (WSDOT): In addition to building, maintaining, and operating the state highway system, WSDOT is responsible for the state ferry system and works in partnership with others to maintain and improve local roads, railroads, and airports, as well as to support alternatives to driving, such as public transportation, bicycles, and pedestrian programs.

WorkSource: WorkSource is a statewide partnership of state, local, and nonprofit agencies that provides an array of employment and training services to job seekers and employers in Washington.

Federal/National

Brownfield Renewal Authority: Like community renewal agencies, Brownfield Renewal Authority is a municipal corporation empowered to guide and implement the clean-up and reuse of contaminated property. Ports can establish a brownfield renewal authority by resolution under the authority of RCW 70A.305.160. See Chapter VII for more details.

Bureau of Indian Affairs, Office of Indian Economic Development: Within the Bureau of Indian Affairs, the Office of Indian Economic Development supports the economic development of American Indian and Alaska Native (AI/AN) communities and their partners by offering access to capital and technical assistance.

U.S. Commercial Service: The U.S. Commercial Service is the lead national trade promotion agency. Commercial Service trade professionals help U.S. companies get started in exporting or increase sales to new global markets. The Commercial Service is dedicated to helping small- to medium-sized Washington companies develop international markets.

Community Renewal Agency: Under the authority of RCW 35.81.005, these renewal agencies can be created by any incorporated city, town, or county in Washington, and ports can partner with the municipality through an interlocal agreement. Community renewal agencies are broadly empowered to undertake projects that improve and stabilize blighted areas.

Department of Labor/American Job Centers: The Department of Labor offers employment and training programs that are coordinated locally through American Job Centers.

Economic Development Administration (EDA): As the only federal agency exclusively focused on economic development, the EDA supports locally driven economic development efforts with investments in planning, technical assistance, and infrastructure targeted to new and expanding businesses.

Export-Import Bank (EXIM): EXIM is the official export credit agency of the U.S. It is an Executive Branch agency charged with supporting American jobs by facilitating the export of U.S. goods and services.

Minority Businesses Development Agency (MBDA): Within the U.S. Department of Commerce, the MBDA assists socially or economically disadvantaged individuals who own or want to start a business. The MBDA provides funding for Minority Business Development Centers, Native American Business Development Centers, Business Resource Centers, and Minority Business Opportunity Committees.

SCORE: Funded by the U.S. Small Business Administration (SBA), SCORE is comprised of over 13,000 trained volunteers who serve as counselors, advisors, and mentors to aspiring entrepreneurs and business owners.

U.S. Department of Agriculture (USDA) Rural Development Program: The USDA Rural Development program offers technical assistance, loans, grants, and loan guarantees to support job creation, advance economic development, and promote services such as (a.) housing, (b.) first responder services and equipment, and (c.) water, electric, and communications infrastructure.

U.S. Small Business Administration (SBA): The SBA was created in 1953 to assist small business owners and entrepreneurs. SBA is the only cabinet-level federal agency fully dedicated to small business and provides counseling, capital, and contracting expertise.

TOOLS FOR PORTS

Comprehensive Economic Development Strategy (CEDS): The U.S. Economic Development Administration (EDA) requires local communities and regions to adopt an updated CEDS every five years to be eligible for EDA assistance under its Public Works and Economic Adjustment Assistance program. CEDS are created locally and are designed to build economic capacity, prosperity, and resiliency through collaboration.

Export Trading Companies: Ports can create export trading companies under the authority of RCW 53.31.040, for the purpose of promoting international trade by stimulating private businesses to enter the foreign trade economy, make export services more available, generate revenues to the port, and develop markets for trade products.

Opportunity Zones: The Tax Cuts and Jobs Act of 2017 introduced Opportunity Zones, to provide tax incentives for investors to fund businesses in underserved communities. Up to 25 % of the low-income census tracts in Washington can be designated as Opportunity Zones. There are 139 eligible tracts state-wide .

Foreign Trade Centers: Foreign trade centers (or world trade centers) can be established by ports to advance foreign trade by bringing together exporters, importers, and trade service providers. They are traditionally membership organizations that foster economic growth and opportunity based on trade activity.

Foreign Trade Zones (FTZ): FTZs are zones in which private businesses can operate to receive, store, assemble, and manufacture foreign merchandise without being subject to formal U.S. Customs entry procedures, duties, and federal excise taxes. Duties and taxes are not collectable until the merchandise leaves the FTZ and enters the U.S. economy. Merchandise exported from the FTZ to locations outside the U.S. is not subject to any duties or taxes.

Grants: There are many grants available to ports for infrastructure, transportation, and property development. These grants are discussed in more detail in Chapter IV.

Industrial Development Districts (IDD): Ports can create industrial development districts to further the development of marginal lands within the political boundaries of the port district. IDDs are traditionally used for brick and mortar investments, but they can be an important tool in a port's economic development arsenal. They are discussed in more detail in Chapter IV.

Industrial Development Corporations (IDC): Formed under the authority of RCW 39.84.030, IDCs are public corporations that a port can create to facilitate the issuance of tax-exempt non-recourse revenue bonds to finance private industrial development facilities within a port's political jurisdiction. These tax-exempt revenue bonds finance non-governmental activities within the private sector that satisfy a substantial public purpose. These financial instruments are non-recourse, meaning there is no risk or financial exposure to the IDC or to the port that created the IDC.

Model Toxics Control Act (MTCA): The Department of Ecology manages the MTCA program, which contains several grants available to support economic development investments that have an environmental nexus. One specific grant is the Integrated Planning Grant (IPG) that makes state funds available for evaluating property development and the associated economic impact it may have. MTCA grants are covered in more detail in Chapter VII.

Workforce Training: Workforce development is a critical component of a successful economic development program. Ports were historically seen as public investors and developers of wharves, docks, railroads, etc., but over the years, ports have been authorized to pursue a variety of economic development related initiatives. In 2019, Washington Legislature expanded RCW 53.08.245 to (a.) diversify the list of approved organizations for port districts to work with, including nonprofits and public and private entities, (b.) expand the definition of workforce development to include occupational training, job advancement, job retention, and occupational education, in addition to traditional job training and apprenticeship programs, and (c.) expand the reach of the statute to include workforce development for port tenants and port related economic activities.

LIMITATIONS ON PORTS

Constitutional limitations on a port's activity are typically discussed when addressing economic development. The most notable of these limitations involve gifting of public funds and lending of credit.

Concern for this issue began in the 1800's when western state government entities extended

credit to railroads to build new facilities, with the goal of attracting and supporting economic growth. In some instances, these efforts were not successful as rail projects were abandoned or failed financially. This placed serious financial burdens on the government entities that had lent their financial support by extending credit.

As a result, drafters of the Washington State Constitution were deeply concerned about this potential drain on the public's resources and included Article 8, Sections 5 and 7 to specifically address these issues. Essentially, Article 8 insures that the potential loss of funds is only risked in the pursuit of the public interest, and the public is not left to underwrite failed private enterprises.

- ARTICLE 8, SECTION 5 CREDIT NOT TO BE LOANED. The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation.
- ARTICLE 8, SECTION 7 CREDIT NOT TO BE LOANED. No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm...

A two-step process is used to determine if an action is a gift of public funds:

1. Determine whether the funds are being expended to carry out a fundamental purpose of the government, and if so, whether there is donative intent.
2. Determine if the government entity received an adequate return for the transfer of funds or property.

Note that this limitation applies to funds as well as real property and assets. As such, any sale of government assets must follow statutory requirements for the sale of surplus property, in addition to following ports' internal policies. Washington's State Auditor highlights the review of these types of transactions for constitutional compliance, and if violations are found, an audit finding is issued, bringing with it a host of ramifications.

Rare exceptions to these limitations exist, such as "pass through" funds that flow to private entities through local governments.

As municipal corporations, ports are subject to these constitutional restrictions with a notable exception. Public funds may be used by port districts "for industrial development or trade promotion and promotional hosting" (Article 8, Section 8 of the Constitution).

GLOSSARY OF ECONOMIC DEVELOPMENT TERMS

501(c)(3) Organization: Designates approval given by the Internal Revenue Service to grant a nonprofit organization exemption from federal income tax, under Section 501(c)(3) of the Internal Revenue Code. Donations to such organizations are tax-deductible. The organizations described in 501(c)(3) are commonly referred to under the general heading of “charitable organizations.”

501(c)(6) Organization: Designates approval given by the Internal Revenue Service to grant a business league exemption from federal income tax, under Section 501(c)(6) of the Internal Revenue Code. Trade and professional associations are considered business leagues. The business league must be devoted to the improvement of business conditions for one or more lines of business, as distinguished from the performance of services for individual persons. No part of its net earnings may inure to the benefit of any private shareholder or individual, and it may not be organized for profit or to engage in any activity ordinarily carried on for profit.

Angel Investor: An investor who provides equity investment to start-up businesses.

Benchmarking: A quantifiable measure of economic competitiveness and quality of life that can be collected on a regular basis. Benchmarking is used to measure a region’s economic status and progress against comparable regions.

Business and Occupation (B&O) Tax: The Manufacturing B&O tax is calculated as a percent of gross receipts of products manufactured or sold in Washington. It exists in lieu of a Washington state income tax. There are some exemptions to the B&O tax.

Business Attraction: Efforts by local economic development organizations to encourage firms from outside their communities to locate headquarters or other operations within their jurisdictions.

Business Climate: The environment of a given community that is relevant to the operation of a business; it usually includes tax rates, attitudes of government toward business, and availability.

Business Creation: An economic development strategy that focuses on encouraging the formation of new companies that are locally based and will remain in the community and grow.

Business Incubator: An entity that nurtures and supports young companies until they become viable, providing them with affordable space, technical and management support, equity and long-term debt financing, and employment. The three basic objectives in creating an incubator are (1) to spur technology-based development, (2) to diversify the local economy, and (3) to assist in community revitalization.

Business Recruitment and Attraction: A traditional approach to economic development; to entice companies to relocate or to set up a new branch plant or operation in a state or locality. It is often referred to as “smokestack chasing.”

Business Retention: A systematic effort designed to keep local companies content at their present locations, which includes helping companies cope with changing economic conditions and internal company problems.

Capacity Building: Through technical assistance, networks, conferences, and workshops, capacity building refers to developing the ability of a community-based neighborhood organization to effectively design economic development strategies.

Clusters: A cluster is a regional concentration of related industries in a particular location. Clusters make communities or regions uniquely competitive for jobs and private investment. Clusters exist in locations where the economic activities for a set of related industries reach critical mass, forming links that have a meaningful impact on the performance of companies.

Comparative Advantage: An economy’s ability to produce a particular good or service at a lower opportunity cost than its trading partners.

Cost-Benefit Analysis: A method for evaluating the profitability of alternative uses of resources.

Cost Effective Analysis: Compares alternative projects or plans to determine the least costly way to achieve desired goals. Usually, an index or point system is developed to measure the effectiveness of a proposal in meeting its goals and objectives.

Demand-side Theory of Development: An explanation of economic development that focuses on (a.) discovering, expanding, and creating new markets, (b.) forming new businesses, (c.) nurturing indigenous resources, and (d.) involving government in the economy.

Eco-Industrial Park: A type of industrial park designed to encourage business interaction in ways that foster the reuse of waste streams, the recycling of inputs, and other eco-friendly mechanisms.

Economic Base: A method of classifying all productive activity into two categories: (1) basic industries which produce and sell goods that bring in new income from outside the area and (2) service industries which produce and sell goods that simply circulate existing income within the area.

Econometric Modeling: A qualitative method for analyzing the impact of a proposed action on the economy. A model permits testing the effects of an anticipated or hypothetical change.

Economies of Scale: The phenomenon of production in which the average cost of production declines as more of the product is produced.

Gap Financing: A loan required by a developer to bridge the gap between the amount of mortgage loan due upon project completion and the expenses incurred during construction. Essentially, gap financing covers the difference between what a project can support and the cost of development or purchase.

Industry Clusters: Geographic concentrations of related businesses that are complementary or competing. Regions identify clusters of targeted businesses for future planning and marketing efforts. There are two types: (1) buyer-supplier clusters and (2) shared resources clusters. **Investor Networks:** Investor networks match up potential investors with start-up firms needing capital.

Land Banking: A program that preserves industrial space for a city. A city or local development authority acquires and holds land until a developer steps forward with a proposal for its use as an industrial site.

Location Theory of Development: An explanation of economic development that emphasizes factors such as transportation, taxes, business climate, access to raw materials and labor, and quality of life as they relate to industrial location.

Long-Wave Theory of Development: An explanation of economic development contending that bursts of innovation lead to economic growth.

Mezzanine Capital: Funds or goods used to bridge the gap in resources from one stage of business to another. See also Gap Financing.

Microenterprise: A business that is “smaller-than-small.” Operated by a person on a full- or part-time basis, usually out of a home. Examples include carpenters, day-care providers, and caterers.

Microloans: Very small, short-term, unsecured loans given to people without credit history and/or the collateral necessary to obtain a conventional loan. These are available from either local lenders or the SBA’s 7(m) Microloan Program.

Multiplier: A quantitative estimate of a project’s impact, often measured in dollars, jobs created, or demand.

Multiplier Effect: The process of dollar and job generation because of a new or migrating business or project, or of a local business expanding production to exports. The multiplier effect accounts for new local income generated by local spending that came from outside a community.

Opportunity Cost: The revenue forgone by choosing one use of money and resources over another. The opportunity cost of investing in the stock market is the interest that the money could have earned while sitting in the bank.

Public-Private Partnerships: A public-private partnership is a collaboration between a government agency (such as a port) and a private sector company to build, finance, and operate facilities, infrastructure, and real assets. Also known as P3s.

Seed Capital: Equity investment supplied to help a company get off the ground. The money is almost always supplied by an entrepreneur and his/her family, friends, and relatives. Seed capital is used to help attract (or leverage) additional investment.

Second Wave: A strategic paradigm of economic development that focuses on creating new businesses and retaining firms already in the community.

Smokestack Chasing: The pursuit of traditional manufacturing businesses by local economic development organizations.

Start-Up: A company in the first stage of the evolution of a business.

Start-Up Capital: Funds that help nascent enterprises acquire space, equipment, supplies, and other inputs needed to launch a business.

Supply-Side Theory of Development: An explanation of economic development that focuses on (a.) reducing costs of production to lure capital to a new location, (b.) typical strategies including tax abatements, reductions, and exemptions, (c.) guaranteed and direct loans, and (d.) reduced regulation.

Sustainable Development: Development that does not destroy or eventually deplete a location's natural resources. Sustainable development helps ensure a better, healthier living environment and contributes to an area's quality of life, which is one of the main goals of economic development.

Tax Credit: Money directly subtracted from a tax bill after a tax liability has been incurred.

Tax Deferral: A policy that permits individuals whose property values have risen dramatically through no fault of their own to pay taxes based on old values.

Tax Increment Financing (TIF): A tool of economic development in which taxes that can be traced to a specific development are used to repay bonds that were issued to finance that development. When bonds are fully paid, the jurisdiction can begin to receive the additional tax revenue produced by the development.

Technical Assistance: Includes assistance in preparing grant applications, training staff, applying for loans, and marketing the product. It may also include assisting a small business to improve its product or manufacturing process. Technical assistance is generally aimed at general business planning or providing specific services that a small business typically cannot afford.

Under-employed: Includes all persons whose skills, education, or training qualifies them for a higher skilled or better paying job than they presently hold. It also includes persons only able to find part-time rather than full-time work in their fields.

Venture Capital: An investment for which there is a possibility of very substantial returns, as much as 40%, within a short period. It is usually invested in dynamic, growing, and developing enterprises, not in start-ups.

Workforce Housing: The Urban Land Institute (ULI) defines workforce housing as 60 – 120% of the Area Median Income (AMI), or moderate or middle income. The AMI is the midpoint of a region's income distribution—half of families in a region earn more than the median and half earn less than the median. Inflated housing markets aggravate the ability of the workforce to secure housing, especially for those with families.

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7. PROPERTY RESTORATION AND REUSE

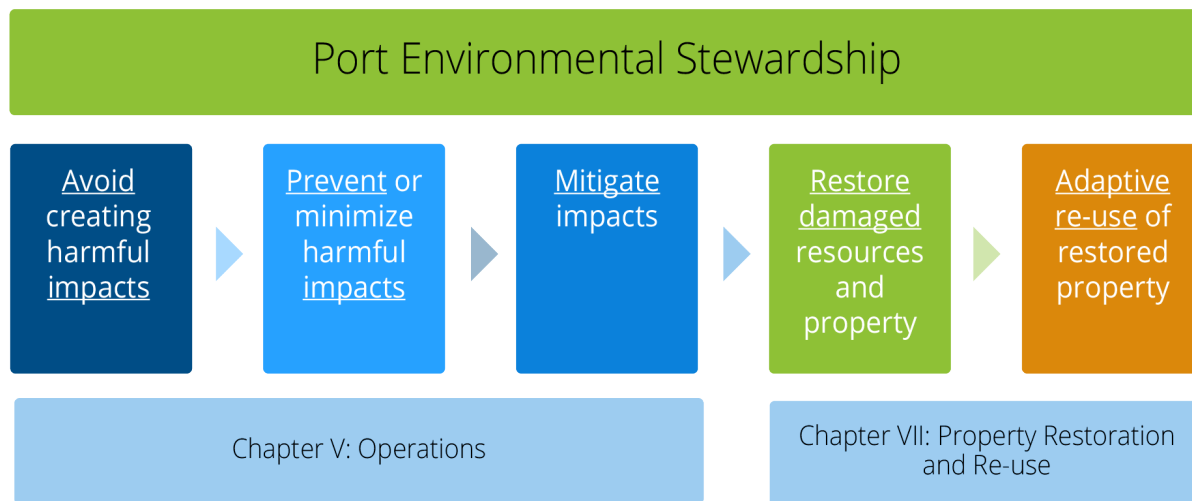
“We don’t have to sacrifice a strong economy for a healthy environment.”

—Dennis Weaver

PROPERTY RESTORATION AND REUSE

Chapter V discussed the principles of environmental stewardship that often result in the creation of an environmental function within a port's organizational structure. That environmental function is responsible for (a.) compliance with environmental regulations and best management practices, (b.); fostering an organizational value of environmental awareness and leadership, and (c.) subscribing to practices and decisions that reduce the port's environmental footprint.

Ports have been instrumental across Washington in not only avoiding negative impacts, but in restoring damaged resources. Most notably, ports have been statewide leaders in the adaptive reuse of contaminated properties, returning them to valuable community and economic use. Evolving port environmental stewardship is represented on the following illustration.



The Washington State Department of Ecology (Ecology) maintains a list of contaminated sites in the state, many owned by public agencies such as ports. A site as considered by Ecology is the entirety of the area in which contaminants have come to rest, regardless of property boundaries, legal descriptions, or ownership. This often complicates cleanups as the approach may include multiple property owners. These contaminated sites range from gas stations to dry cleaners to manufacturing facilities. Typically, a contaminated site found on port property will be attributed to oil and fuel spills, maintenance facilities such as boat repair facilities, or tenant manufacturing operations.

The negative impacts of contaminated properties reach beyond the site boundaries and can adversely affect neighborhoods, cities, and regions as eyesores that may harm human health and the environment, limit economic growth and investment, reduce property values and taxes, and contribute to blight.

This chapter explores traditional restoration (cleanup) and adaptive reuse of property (brownfields).

CLEANUP: RESTORING DAMAGED RESOURCES AND PROPERTY

In 1998, Washington voters passed Initiative 97, the Model Toxics Control Act (MTCA) Chapter 70.105D RCW, to address a growing concern for the contamination of Washington land and property. MTCA contains two critical features: (1) the fundamental regulatory structure governing cleanup of contaminated sites, and (2) creation of a grant and loan program to provide financial support to municipalities (including ports) that address potential liabilities. Funds for the program come from a tax on the first possession of hazardous substances, such as crude oil or pesticides, that are imported into Washington. These funds are held in a state trust. The tax is levied if the total amount in the trust account falls below \$7.5mm and is suspended if the amount in the trust exceeds \$15mm.

While the MTCA program addresses most contaminated sites under the direction of Ecology, there are exceptions that are addressed by other programs within Ecology:

- **Active spills** of hazardous substances are handled by Ecology's Spill Prevention, Preparedness, and Response Program.
- **Dangerous waste facilities** and sites with high concentrations of certain dangerous chemicals are managed by the Hazardous Waste and Toxics Reduction Program under the state Hazardous Waste Management Act and can also be addressed by the federal Resource Conservation and Recovery Act (RCRA).
- **Nuclear cleanup and radioactive waste** are handled by the Nuclear Waste Program.
- Some **former landfills** are handled by Ecology's Solid Waste Management Program.
- Some **large industrial sites** are handled by the Solid Waste Management Industrial Section. These sites may be cleaned up under state and federal programs.

In addition to many Ecology programs, Washington recently created a new state entity, the Pollution Liability Insurance Agency (PLIA), to specifically address the funding needs of property owners and operators to meet the financial responsibility of addressing the cleanup requirements for underground storage tanks. PLIA provides informal advice and assistance for the administration and technical requirements of MTCA and for producing rapid written opinions on remedial actions.

Ports should consider utilizing the PLIA program when their cleanup liability includes petroleum and storage tank issues.

In addition to these state programs that address specific types of sites, there are federal regulations that focus on the cleanup of heavily polluted sites:

- The most prominent federal law is commonly known as the Federal Superfund program or more technically, as the Comprehensive Environmental Response, Compensation and

Liability Act (CERCLA). It is administered by United States Environmental Protection Agency (EPA). Contaminated sites are listed on the National Priorities List (NPL) which includes upland properties and in-water contaminated areas. The Federal Superfund program does not address sites contaminated with petroleum products; those are left up to the states.

- Like state government, the federal government has additional laws relative to site cleanups, most notably the Resource Conservation and Recovery Act (RCRA). RCRA is the nation's primary law that governs the disposal of solid and hazardous waste. Signed into law in 1976, it is an amendment to the original Solid Waste Disposal Act of 1965. In essence, it gives the EPA the authority to control hazardous waste from cradle to grave. This includes the generation, transportation, storage, and disposal of hazardous waste.
- The Natural Resource Damage Assessment (NRDA) program is intended to restore natural resources that have been injured by long term or catastrophic contamination. A cleanup project under CERCLA or MTCA may be associated with an NRDA process and settlement, however all the liable parties may not be involved.

Sites that are on the federal National Priority List (NPL) will go through the federal EPA cleanup process. In 2019 there were over 1,300 Superfund sites on the National Priorities List.

Sites that are listed under Washington's MTCA program will go through the state's MTCA program. Ecology maintains a list of over 12,000 contaminated sites in the state of Washington. Approximately 1,000 of these sites are owned by public agencies; more than half of them have an estimated cleanup cost of less than \$2 million each. Most port site cleanups will fall under state regulation, under Ecology's jurisdiction.

The legal basis for responsibility for a site's cleanup—strict, joint and several liability—has its roots in both federal and state law.

In whole or in part, CERCLA imposes liability on all parties for the presence of hazardous substances found at a site. This liability is retroactive without temporal constraint. It is strict in the sense that a claim of non-negligence or compliance with existing laws and regulations at the time the environmental damage occurred does not relieve the liability; and it is joint and several, meaning that one potentially responsible party (PRP) may be liable for the entire cleanup when the harm created by multiple parties cannot be separated.

Washington has similar liability allocations for persons who owned or operated a site or facility at the time of release, as well as for persons who later or currently own the site, even if they did not cause the contamination (RCW70.105D.040-1). Simply stated, to encourage cleanup action and discourage litigation, each person who is liable under MTCA is strictly, jointly, and severally liable to Washington State for all remedial action costs and for all natural resource damages resulting from the release or threatened release of hazardous substances at a site or facility (RCW70.105D.040-2).

This liability exists whether Ecology has formally named a person as a 'potentially liable person' (PLP) and regardless of whether Washington State chooses to compel cleanup at a site. Strict liability means that a person is liable for the costs of damages resulting from the release, without regard to fault. Taking possession of the site after the environmental damage occurred can still make a person liable. Joint and several liability means that each person is liable for all the costs of the remediation and damages, regardless of relative fault compared to other PLPs.

This notion of strict, joint, and several liability is often difficult to accept, but it has been adjudicated multiple times; it is the law of the land, at both the federal and state level. With that understanding, ports can successfully and expeditiously navigate the complex world of cleanups. Most notable is the ability of ports as a liable entity to seek contributions from other liable parties through settlement agreements. That agreed-upon distribution of liability, combined with the recovery of liability insurance, state/federal grants, and other sources makes property cleanups and remediation feasible.

Funding and financing sources for cleanups are discussed in more detail later in this chapter.

Ports are most likely to become involved in cleanups when they discover they have strict, joint, and several liability for a spill or ongoing environmental damage to property they own or operate. This is likely from fuel spills, leaking of stored hazardous materials, land disposal with inappropriate fill materials, urban runoff, or manufacturing and industrial activities by tenants. Recent port surveys revealed that virtually all ports own real estate for port operations or for leasing purposes. Therein lies the importance of tenant and port environmental compliance programs, discussed in more detail in Chapter V.

When purchasing property, ports are advised to conduct a Phase I Environmental Site Assessment (ESA) to determine if there is a potential for contamination. A Phase I ESA involves reviewing all records and gathering information about a site's past ownership and activities that may have involved hazardous substances or reported spills.

A Phase II ESA is a more detailed site study that includes collecting soil, groundwater, sediment, and/or air samples onsite to determine the extent of contamination, the types and probable sources of the contamination, the level of risk to humans, and the environment associated with the contamination. It is also to determine whether the contamination meets or exceeds levels that require cleanup.

Both the federal and state laws generally consist of the following components that are typically pursued in sequence:

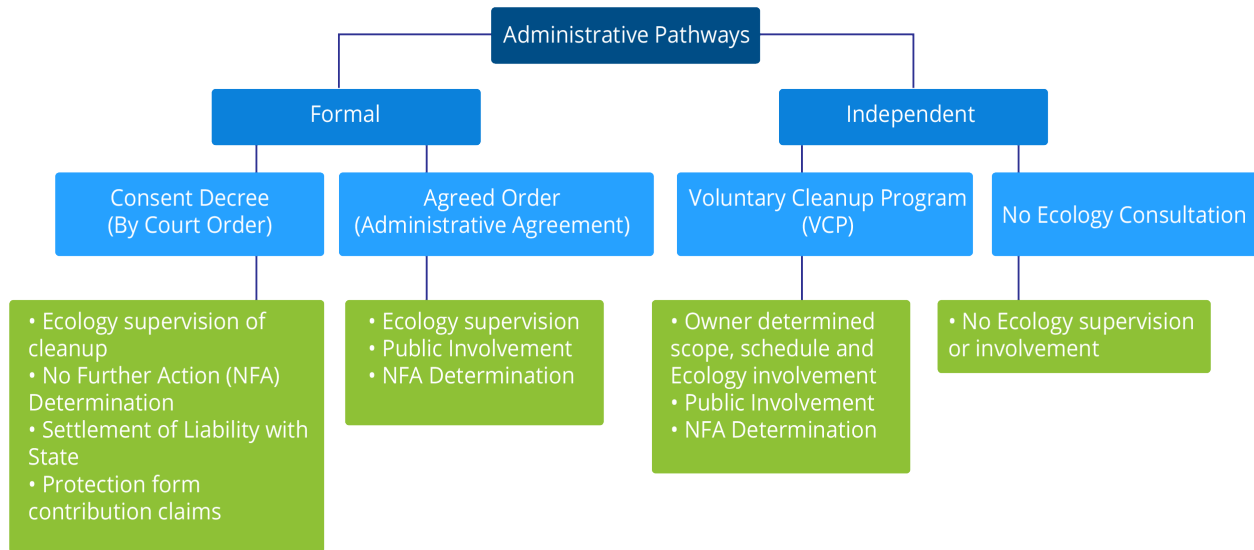
1. **Reporting Requirements:** These requirements generally determine when a report must be made concerning found contamination or an accidental release of contaminants, such as an oil spill. Ports are advised to report known or suspected releases of hazardous materials to Ecology.

2. **Remedial Investigation (RI):** A comprehensive assessment of the hydrological, geological, biological, and chemical conditions of the site. A remedial investigation often includes a review of historical practices and site records, as well as interviews with site operators and owners to inform site investigation. The site investigation is a detailed site study that includes collecting soil, groundwater, sediment and/or air samples on site to determine the nature and extent of contamination, the types and probable sources of the contamination, the level of risk to humans and the environment associated with the contamination and whether the contamination meets or exceeds levels requiring cleanup.
3. **Feasibility Study (FS):** A study of cleanup options that is based on a list of criteria and determines the best option for protecting human health and the environment. This option is called the preferred option.
4. **Record of Decision (ROD), Agreed Order (AO), or Consent Decree (CD):** The legal document that describes what the responsible parties must do to address the cleanup. A ROD applies to federally driven cleanups, and a CD applies to state driven cleanups. See the illustration further in this chapter that describes the administrative pathways to cleanup.
5. **Cleanup Action Plan (CAP)/Remedial Design:** The CAP contained in a ROD, AO, or CD describes the technical details for conducting the cleanup.
6. **Operations Maintenance and Monitoring Plan:** The ongoing maintenance and monitoring requirements following a cleanup to ensure its long-term effectiveness.
7. **No Further Action (NFA) Letter:** A government-issued letter indicating that there is no further action required following cleanup, often with a carve out for ongoing monitoring.

The State of Washington has developed standard methods for approaching and designing a cleanup.

Method	Applicability	Description
Method A	Routine cleanups with only a few hazardous substances. Smaller and simpler sites usually with no groundwater contamination.	Utilizes tables of cleanup levels for common hazardous substances.
Method B	Can apply to any site, but typically is used for sites with contaminants not included in Method A tables.	Uses risk assessment equations, applicable state and federal laws, and other requirements. Cleanup levels are based on residential land use and exposure to children, so are typically the most stringent.
Method C	Sites that will be used for industrial activities.	Uses risk assessment equations, specific to the contaminants and conditions of the site. The exposure levels are modeled for adult workers.

Ecology provides two administrative pathways to manage site cleanups: the formal process and the independent process. While both pathways share the targeted net effect of removing the sites from the state list of contaminated properties, they come with varying legal protections which impact future liability and risk. In addition, they impact the type and amount of potential grant funding that is available. Ports should carefully select their pathway forward while taking risk and funding into account.



When considering the acquisition of a contaminated site, ports should consider the risk they are assuming and determine whether they are comfortable addressing legal liability before acquisition. The following table illustrates the temporal nature of liability settlement relative to acquisition. It includes the possibility of receiving an NFA Letter from Ecology, or in the case of petroleum related sites, from PLIA.

ADAPTIVE REUSE-BROWNFIELDS

Communities across the country are challenged by underutilized, blighted properties that are encumbered by real or perceived environmental contamination, but that still hold potential for positive, adaptive reuse possibilities. These properties are known as “brownfields.” Cleanup and



redevelopment of brownfield properties can transform these liabilities into community assets that create jobs and tax revenues, eliminate blight, protect environmental and human health, and prevent urban sprawl. They are often small properties with low levels of environmental contamination, such as gas stations and dry cleaners. These properties have potential to be economically successful.

It is estimated that there are over a million brownfield sites nationwide. A national survey of U.S. cities found an average of 134 brownfield properties per community and as many as 20,000 sites per state. Most of the sites are smaller properties, with an average size of 6.5 acres.

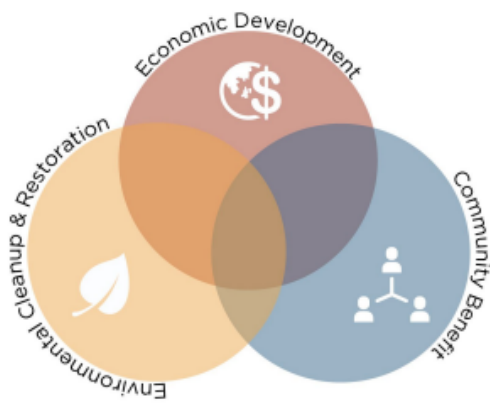
The two primary challenges to the cleanup and redevelopment of brownfield properties are cost and liability concerns, both of which contribute to risk and uncertainty. Environmental cleanup adds to the typical costs of real estate development planning, entitlement, and construction.

The legal and procedural steps necessary for investigating, cleaning, acquiring, and reusing contaminated sites can be expensive and time consuming. In practice, whether sites are remediated and reused or not usually comes down to financial feasibility—if the potential future revenues are greater than the costs of remediation, or if the community benefits justify the investment. This is particularly challenging with small brownfield properties where the limited square footage of development potential may not justify the costs of environmental cleanup.




Adaptive reuse capitalizes on restoring damaged assets to create new job opportunities, generate increased taxes, and generally return undervalued properties and facilities to productive economic and community use. Over the years, the brownfield approach has evolved from cleanups focused on addressing legal liability, to cleanups that also carry known and predictable economic and community benefits. The evolution of brownfield cleanups is summarized as follows:

- **First Generation (cleanups):** First generation cleanups were focused exclusively on cleanup and allocation of legal liability, and they led to negative market impacts and regulatory inflexibility. The net result was that cleanups were stalled, as liable parties pursued legal action to delay any actual cleanup.
- **Second Generation (brownfields):** Regulators and site owners recognized the economic benefits of property cleanup and redevelopment, which resulted in public-private partnerships and greater regulatory flexibility. This resulted in regulatory reforms in the 1990s and early 2000s, including Washington's voluntary cleanup programs (VCP), specifically designed to promote redevelopment and limit liability of innocent purchasers.
- **Third Generation (adaptive reuse):** Third generation brownfield cleanups integrate environmental cleanup and economic revitalization with community benefits. Community benefits can include partnership building, open space, public access, and more. This approach leads to more sustainable development and generates much broader support

for project implementation. Partnership building with state and federal agencies, nongovernmental organizations (NGOs), community groups, educational institutions, and concerned citizens can likely expedite the review process and open opportunities for funding. Through adaptive reuse, the resulting environmental, economic, and community benefits differentiate third generation brownfield efforts from earlier cleanup projects. This model aligns with the traditional triple bottom line approach to sustainable development, which evaluates projects' economic, environmental, and social impacts.



The cleanup and redevelopment of brownfields is an important component of repositioning communities and local/regional economies to address legacy issues and take advantage of new opportunities. Brownfield properties fall into three general categories of redevelopment potential, based on value-to-cost comparison.

Category	Description	Results
	Market value of redeveloped property far exceeds costs.	Private real estate market likely to complete cleanup and redevelopment.
	Redevelopment revenues close to covering development and environmental costs.	Project not feasible for private market to undertake. Some public investment can make it viable.
	Environmental liability far greater than property value.	Difficult to redevelop. Requires significant public investment or change in market.

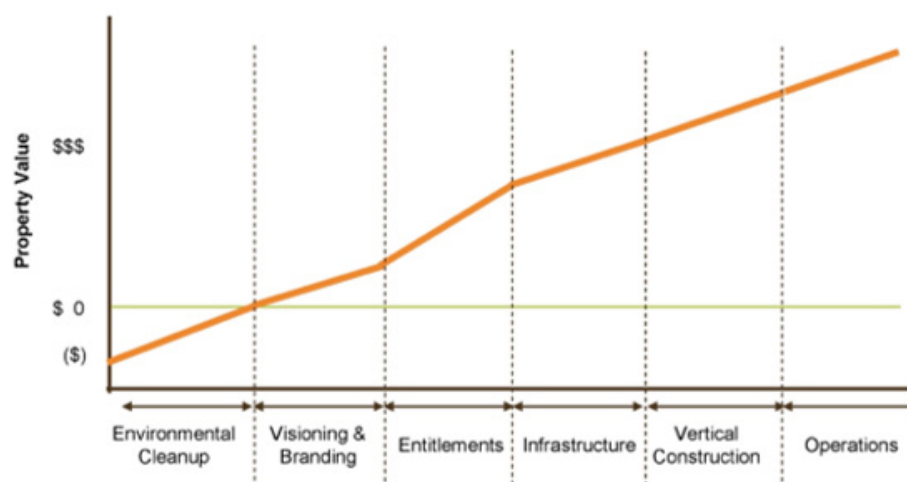
In communities with strong real estate markets and high land prices, it is more typical for the private sector to undertake brownfield challenges, as the market will bear the additional cleanup costs. In some instances, the market is very close to carrying the cost of cleanup, and in some markets, the cost to value ratio of a property turns upside down. It is in these latter two circumstances that public agencies such as ports, with access to grant funding and patient capital, might be particularly suited as brownfield developers.

Adaptive reuse is an approach to redeveloping existing property and facilities that, for a host of reasons, are underperforming. These underperformers are not only contaminated, but often suffer from multiple other constraints such as inappropriate entitlements, lack of infrastructure, lack of market vision, or a combination of these and other factors.

Considerations for undertaking a brownfield site redevelopment include:

1. **Understand and Manage Risk:** Concern about the risk of liability for contamination is one of the major reasons why contaminated properties sit idle. Knowledge of a site's physical characteristics gleaned through (a.) field investigations and records searches, (b.) identifying previous operators and owners to possibly spread out the risk, (c.) securing commitments to grant funding, (d.) obtaining pre-acquisition liability settlements, and (e.) partnering with key entities all contribute to managing risk. There are commercially available insurance products that can minimize a port's exposure to unexpected cleanup requirements, cost overruns, and third-party damage claims. These types of policies are complex and everchanging alongside the risk market, but they are worth exploring as a tool to minimize risk.
1. **Begin with the End in Mind:** Develop a vision for the property that the community or market can embrace. A solid vision will drive the cleanup and remediation design and help reduce development costs. The vision should resonate with community desires and expectations.
1. **Establish a Strong Project Team:** Brownfield projects are technically complicated and economically challenging. Building a core team of dedicated port staff and consultants is key to a successful outcome. A dedicated team will embrace the vision for a site with increased community and economic value. A qualified team should have strategic leadership, experience in environmental science and engineering in the state, in-depth knowledge of state and federal environmental laws, and demonstrated strengths in land use planning, natural resources, cultural expertise, and public involvement.
1. **Develop a Financing Proforma:** Developing a plan of finance, or financing proforma, is essential to success. There are great number of financing opportunities for brownfields; having an early roadmap to those opportunities is paramount.

Financing brownfield developments has become more fluid as the value of 3rd generation brownfields has increased in communities, the private marketplace, and the regulatory world. To better apply funding sources to projects, a review of where project value is created is critical. The chart that follows compares the relative value increases of a brownfield project.



The general sources of brownfield funding include:

- **Public:** Multiple public sources exist for both comprehensive and component funding of brownfield site redevelopment projects. These sources are found in federal and state programs, and each differs in applicability to and requirements of the grantee. Funding sources are either grants with a match requirement or support for a loan. Loan support comes in the form of interest rate buy-downs or guarantees that are essential for traditional commercial financing.
- **Private Philanthropy:** Environmental grant programs under private foundations could potentially be applied to redevelopment of brownfield sites, especially those intended for a public or open-space use. The distribution of these funds is mission-driven, so the foundation program's priorities and the intended purposes of the redevelopment must be very closely aligned.
- **Specialized Commercial Lending Institutions:** With the advent of more restrictive banking regulations, the number and availability of these loan sources are limited. Quite often, institutions are mission-driven to target certain objectives, such as improving low-income communities or supporting green jobs; however, their lending requirements and credit tests make their loans less applicable to the brownfield industry, particularly for sites where the environmental liability exceeds the market value of the redeveloped property.
- **PLP Contributions:** As discussed previously, the legal principles of strict, joint, and several liability apply in both state and federal cleanup projects. Research into prior PLPs that were site owners or operators often results in settlements to fund appropriate and assignable liability to address historic contamination remediation costs.
- **Insurance Recovery:** Seeking contamination coverage from commercial general liability insurance policies has become more commonplace, particularly in states (such as Washington) which have a legal structure that favors the position of the insured. Liability coverage may be available in policies predating the mid-1980s, after which explicit exclusions for environmental contamination were written into insurance policies.

Note on Insurance Recovery

Two federal environmental laws, the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation, and Liability Act, adopted in 1976 and 1980, respectively, forever changed perspectives on environmental contamination. In concert, these acts created a legal obligation: anyone who owned or operated a contaminated site or was responsible for transporting hazardous materials that impacted the site had strict, joint, and several liability for the contamination on the property and its subsequent cleanup, regardless of the cost or their culpability in causing the pollution.

Commercial general liability policies historically did not specifically exclude coverage for this new and increased exposure for environmental damage; however, beginning in the mid-1980s, insurance companies began to exclude coverage as more and more court decisions found that liability protection extended to environmental damage caused by sudden and accumulated contamination.

As a result, the insured could access policy coverage by making claims against carriers before these exclusions were put into place. To make a claim, there must be a threat of regulatory action or other proof of loss, such as a third-party claim, to engage in insurance coverage discussion with a carrier. State or federal agency regulatory action that identifies impacts on groundwater is often sufficient to trigger a claim.

Common ways to approach the process include retaining a consulting firm that specializes in historical insurance recovery and/or legal counsel, either on a fee basis or by negotiating a percentage of claim resolution.

The determination of claim coverage aligns the existence of liability insurance in effect and the presence of contamination on the property. The policy may well have expired, but the historical coverage is still in place. These liability insurance settlements can be substantial.

A compendium of environmental and brownfield funding sources is contained in Appendix A.

GLOSSARY OF ENVIRONMENTAL TERMS

Abatement: Reduction in degree or intensity.

Agreed Order: A legal document issued by Ecology which formalizes an agreement between the department and PLPs for the actions needed at a site.

Brownfield: Real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

BTEX: An acronym for benzene, toluene, ethylbenzene, and xylenes, a group of hazardous substances that are commonly associated with gasoline and other petroleum products.

Carcinogen: Any substance or agent that produces or tends to produce cancer in humans.

Cleanup: Actions taken to deal with a release or threatened release of hazardous substances that could affect public health and/or the environment. The term “cleanup” is often used broadly to describe various response actions or phases of remedial responses, such as a remedial investigation/feasibility study.

Cleanup Action Alternative: One or more types of treatment technology, containment actions, removal actions, engineered control, institutional control, or other types of remedial actions (also known as cleanup action components), used individually or in combination to achieve a cleanup action at a site.

Clean Action Plan (CAP): A document that describes selected cleanup method(s) and specifies cleanup standards and other requirements. It is based on information and technical analyses generated during the RI/FS, also weighing consideration of public comments and community concerns. A draft CAP (DCAP) is made available for public review and comment before finalizing.

Cleanup Level: The concentration of hazardous substance in soil, water, air, or sediment that is determined to be protective of human health and the environment, under specified exposure conditions.

Cleanup Rule: The Cleanup Rule sets standards and procedures for cleaning up contaminated sites under Washington’s environmental cleanup law, the Model Toxics Control Act (MTCA).

Consent Decree (CD): A legal document that is approved and issued by a court, formalizing an agreement reached between the state and the PLP(s) on what will take place during the RI/FS and/or cleanup action. A CD is similar to an Agreed Order, except that a CD goes through the courts. CDs are subject to public comment. If a CD is substantially changed, an additional comment period is provided.

Direct Climate Impacts: Changes that occur as a result of warming trends, cooling trends, or extreme weather events. Examples include a lack of snow to operate mountain resorts, melting glaciers in mountainous regions, and floods, landslides, and wildfires.

Ecological Footprint: The impact of a person, community, or activity on the environment, expressed as the amount of biologically productive land and water required to produce the goods consumed and to assimilate the wastes generated.

Engineering Controls: Containment and/or mitigation systems designed to prevent or limit the movement of or exposure to hazardous substances.

Environmental Management: Management of natural resources through policies and practices designed to protect natural values and resources while providing a platform for economic use. Environmental Stewardship: Responsible use and protection of the natural environment through conservation and sustainable practices to enhance ecosystem resilience and human well-being.

Feasibility Study (FS): A companion study for the RI in which different cleanup technologies and their costs are identified and evaluated based on criteria established during the RI. These two steps are often combined and referred to as the RI/FS.

Groundwater: Water in a saturated zone or stratum beneath the surface of land, or below a surface water; water that fills spaces between soil and rock particles underground.

Hazardous Sites List: A semiannual list of ranked contaminated sites slated for cleanup under the MTCA.

Independent Cleanups: Property owners conduct independent cleanups on their own, or with help from Washington's VCP. Independent cleanups still meet MTCA standards, but property owners set their own timelines. Owners can ask for help through the VCP but do not have to. Their only requirement is to hold public meetings or comment periods if a site is to be delisted.

Indirect Environmental Change Impacts: These are the byproducts of climate change. Global temperature changes may create water shortages, loss of biodiversity, impacts to landscape aesthetics, and damage to infrastructure through extreme weather events.

Institutional Controls: Measures to limit or prohibit activities that may interfere with the integrity of a cleanup action or result in exposure to hazardous substances.

Interim Action: A cleanup action that only partially addresses the cleanup of a site. An interim action is typically either:

1. A remedial action that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed; or
2. A remedial action needed to complete a Site Hazard Assessment or an RI/FS, or to design a cleanup action.

Maximum Contaminant Level: The maximum concentration of a contaminant that is allowed in drinking water, as established by the EPA under the Federal Safe Drinking Water Act.

Model Toxics Control Act (MTCA): Washington legislation passed in 1988, with the purpose of identifying, investigating, and cleaning up facilities where hazardous substances have been released. It defines the role of Ecology and encourages public involvement in the decision-making process. MTCA regulations became effective on March 1, 1989, and they are administered by Ecology.

Monitored Natural Attenuation (MNA): Monitoring the reduction of contaminants through natural processes over time.

Monitoring Wells: Special wells drilled at specific locations on or off a hazardous waste site, where groundwater can be sampled at selected depths and studied to determine the direction of groundwater flow and the types and amounts of contaminants present.

Natural Background: The concentration of a hazardous substance consistently presents in the environment that has not been influenced by localized human activities.

Phase I Environmental Site Assessment: Essentially a desk review of all records and knowledge associated with a site's past ownership and activities that may have involved hazardous substances or reported spills. These are economical early assessments of potential issues.

Phase II Environmental Site Assessment: A more detailed site study that includes collecting soil, groundwater, sediment, and/or air samples on site to determine the extent of contamination, the types and probable sources of the contamination, the level of risk to humans and the environment associated with the contamination, and whether the contamination meets or exceeds levels requiring cleanup.

Potentially Liable Person: Based on credible evidence, any person whom Ecology finds to be liable under authority of RCW 70.105D.040.

Remedial Action (or Cleanup Action): Construction work to clean up a contaminated site. Examples include (a.) removal of contaminated soils or sediment for treatment or disposal at an offsite location, (b.) pumping and treating of contaminated ground water, (c.) sealing off contaminated soils or sediment beneath a cap or barrier, (d.) adding chemicals or enhancing the growth of microorganisms that break down contamination in place.

Remediation Levels: Remediation levels are not the same as cleanup levels. A cleanup level defines the concentration of hazardous substances above which a contaminated medium (e.g., soil) must be remediated in some manner (e.g., through treatment, containment, or institutional controls). On the other hand, a remediation level defines the concentration (or other method of identification) of a hazardous substance in a particular medium, above or below which a particular cleanup action component (e.g., soil treatment or containment) will be used. By definition, remediation levels exceed cleanup levels.

Risk Assessment: Evaluation of the adverse health effects to humans (e.g., the potential to cause cancer and noncancer health effects) and the environment posed by contamination at a hazardous waste site.

Site: As considered by Ecology, a site is the entirety of the area in which contaminants have come to rest, regardless of property boundaries, legal descriptions, or ownership. This often complicates cleanups, as the approach may include multiple property owners.

Site Development Plan: The ultimate planned development use for a brownfield project, to provide documentation for land use entitlements, permits, and construction.

Sustainable Development: Traditionally defined as meeting the needs of the present without compromising the ability of future generations to meet their own needs.

Vapor Intrusion: When potentially hazardous vapors migrate into buildings from sources, such as soil or groundwater, that are contaminated with volatile (vapor forming) chemicals. If these volatile chemicals are sufficiently toxic, they can impact indoor air quality, causing unhealthy levels of hazardous substances.

Voluntary Cleanup Program (VCP): Voluntary cleanups are initiated by persons responsible for the contamination at a site, without prompting by Ecology. Voluntary cleanups may be conducted (a.) completely independently of Ecology, (b.) mostly independently but with some Ecology assistance or review, or (c.) with detailed Ecology oversight, under a signed legal agreement such as an Agreed Order or CD.

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