

**CONSERVATION FUTURES TAX REVENUE CANNOT BE USED FOR
PURCHASE OF DOWNTOWN SPOKANE YMCA**

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January 7, 2009, Revised April 2, 2009

TABLE OF CONTENTS

1. Introduction.	2
2. The Facts.	3
3. The Issue.	4
4. Analysis.	5
a. Legislative Purpose of the Conservation Futures Tax.	5
b. Rights and Interests in Property Pursuant to Specific State Laws.	6
I. RCW 84.34.210.	6
ii. RCW 84.34.220: This Section Is Not Implicated.	7
c. RCW 84.34.210: The Only Statute Which Might Apply.	7
I. The YMCA Is Not Timber Land.	7
ii. The YMCA Is Not “Farm and Agricultural Land”.	8
iii. The YMCA Is Not “Open Space Land”: The Main Analysis.	8
d. The YMCA Is Not Designated Open Space Land.	9
e. Is the YMCA “land area, the preservation of which in its	

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present use [serves a statutorily permitted function]”?. . .	10
I. The YMCA Is Not a “Land Area”.	10
ii. Ignoring the Land Area Limitation, Does the Land Area of the YMCA Preserved in its Present Use Fulfill One of the Functional Categories?.	11
5. Conclusion.	13

1. Introduction

For the last several months in 2008, leaders of Spokane have been considering the question whether Spokane County can use conservation futures tax revenue for the purpose of acquiring the YMCA located in downtown Spokane on the south bank of the Spokane River where North Howard Street crosses the river.

Some history of the Conservation Futures Tax and its uses can be found on the Spokane County website at <http://www.spokanecounty.org/-parks/content.aspx?c=1839>.

The county defines “Conservation Areas” – the areas conservation futures taxes are to be used for as:

The Conservation Areas, the term used in Spokane County, defines areas of undeveloped land primarily left in its natural condition. These areas may be used for passive recreational purposes, to create secluded areas, or as buffers in urban areas. As of 2008, Spokane County holds 4,525 acres on 12 different properties as Conservation Areas. The City of Spokane manages an additional 10 properties within city limits. These conserved lands include wetlands, farmlands, steep hillsides, river corridors, viewpoints and wildlife

habitats and corridors.²

2. The Facts

The property of the YMCA was donated to the YMCA by Washington Water Power (now Avista) many years ago. The building opened in January 1967 – 41 years ago. Its useful life, as is, has nearly ended, or perhaps has ended.

“At first, the YMCA was surrounded by railroad and industrial land.”³ Now, part of the property is contiguous to a park on the south. On the west one finds a power facility and parking area for the YMCA only. On the east the YMCA fronts North Howard Street, a street currently closed to general vehicle traffic but not closed to foot and limited vehicle traffic. The street has not been vacated.⁴

It has been reported that “[i]f Conservation Futures money is used, the county would stipulate that the YMCA building be demolished when it reaches its ‘end of life,’ estimated to be within 15 to 20 years.” *Id.* This is interesting because the property is being sold by the YMCA because it has reached the end of its useful life, at least insofar as the purposes of the YMCA are concerned which have been undertaken in the YMCA in the building. If the property still had a useful life it is doubtful the YMCA would

² CONSERVATION FUTURES, Spokane County Website at <http://www.spokanecounty.org/-parks/content.aspx?c=1839>.

³ J. Brunt, *Spokane County considers stepping up to help buy YMCA*, The Spokesman-Review, July 25, 2008.

⁴ My recollection is that North Howard Street has never been vacated. This, if it is true, will probably have a bearing on the issue presented. The YMCA is not and has not been a part of any open space land, probably not for a century or more. It is commercial property on a city street. It also is a commercial property which has appurtenant to it legal rights of ingress and egress and parking which access the street in the city of Spokane grid of streets just south of North Howard Street, that is, Post Street which extends north and south to other streets in the city street grid.

be building new facilities a few blocks away on North Monroe Street.

The article goes on to say this about the use of conservation futures tax revenues for the purchase of the YMCA:

But Dean Giles, chairman of the county parks subcommittee that analyzed the purchase, said the land clearly meets criteria set in state law. Although much of the property bought through the Conservation Futures program has been rural and undeveloped, rules allow purchase of land that can be used as open space and returned to its natural state, he said.

‘It fits the spirit of the law, as well,’ Giles said. *Id.*

My analysis establishes that the use of conservation futures taxes to purchase the YMCA does not comply with the criteria of the conservation futures laws and certainly does not comply with the spirit of those laws.

3. The Issue

The taxes at issue are levied under RCW 84.34.230. Under that section, they are levied for a particular specifically defined statutory purposes. That is, for (a) “the purpose of acquiring conservation futures and other rights and interests in real property pursuant to RCW 84.34.210 and 84.34.220” and (b) “for maintaining and operating any property acquired with [such taxes].” RCW 84.34.230. In Spokane, these tax revenues are referred to as “conservation futures taxes.”

Thus, the issue is whether use of conservation futures tax revenue for the acquisition of the YMCA is for the purpose of securing “rights and interests in real property pursuant to RCW 84.34.210 and 84.34.220” or for (b) “for maintaining and operating any property acquired with [such taxes]”?

My analysis of the laws concerning the conservation futures taxes reaches the conclusion that conservation futures tax revenue cannot be used for the purpose of acquiring the YMCA.

4. Analysis

a. Legislative Purpose of the Conservation Futures Tax

RCW 84.34.200 (Acquisition of open space, etc., land or rights to future development by counties, cities, or metropolitan municipal corporations — Legislative declaration — Purposes.)⁵

The legislature finds that the haphazard growth and spread of urban development is encroaching upon, or eliminating, numerous open areas and spaces of varied size and character, including many devoted to agriculture, the cultivation of timber, and other productive activities, and many others having significant recreational, social, scenic, or esthetic values. Such areas and spaces, if preserved and maintained in their present open state, would constitute important assets to existing and impending urban and metropolitan development, at the same time that they would continue to contribute to the welfare and well-being of the citizens of the state as a whole. The acquisition of interests or rights in real property for the preservation of such open spaces and areas constitutes a public purpose for which public funds may properly be expended or advanced.

The principles of statutory construction, require a court to give effect to all of the language in a statute." *Becker v. Pierce County*, 126 Wn.2d 11, 17, 890 P.2d 1055 (1995). If the court looks only to the statute, the court examines the words of the statute and gives those words their plain and ordinary meaning. In this process, the will examine the legislative declaration of purpose to assist in determining that the plain meaning as the court would ascertain it is consistent with that declared purpose. *North Coast Air v. Grumman Corp.*, 111 Wn.2d 315, 321, 759 P.2d 405 (1988).

⁵ The parenthetical material is the title given to the section by the Washington Code Revisor. It is not part of the law.

What did the legislature seek to do when it created the conservation futures tax scheme? What legislative purpose is it that we find in the declaration of purpose language of the conservation futures tax law?

Its concern was the encroachment and elimination of “open areas and spaces of varied size and character” caused by “haphazard growth and spread of urban development.” Thus, it sought to create a taxation scheme whereby taxes specifically raised by the taxation would be used for the acquisition of “open areas and spaces of varied size and character” for the “preservation of such open spaces and areas.” RCW 84.34.230.

The declaration does not refer to property generally. It refers to a certain type of property – “open areas and spaces.”

It is also important to understand that the open areas and spaces are not those which are to be created out of the encroachment of urbanization. Rather, they are open areas and spaces to be kept from the encroachment of urbanization. *Id.*

The exact language of the statutes which follow the legislative declaration is specific with regard to how the purpose is to be fulfilled.

b. Rights and Interests in Property Pursuant to Specific State Laws

The tax revenue can be used to obtain “rights and interests in real property pursuant to RCW 84.34.210 and 84.34.220.” RCW 84.34.230 [emphasis added]. That is to say, the purposes for which the tax revenue is to be used are specifically limited to acquisition of rights and interests in real property as provided in the two sections identified, RCW 84.34.210 and 84.34.220.

i. RCW 84.34.210

The “rights and interests” “pursuant to RCW 84.34.210” is limited to “[a] selected open space land, [b] farm and agricultural land, and [c] timber land as such are defined in chapter 84.34 RCW for public use or enjoyment.” RCW 84.34.210 [emphasis added].

ii. RCW 84.34.220: This Section Is Not Implicated

The “rights and interests” “pursuant to RCW 84.34.220” consist of “rights in perpetuity to future development of any open space land, farm and agricultural land, and timber land which are so designated under the provisions of chapter 84.34 RCW and taxed at current use assessment as provided by that chapter,” also known as “conservation futures.” RCW 84.34.220.

Let us first try to narrow the issues. Are we talking about buying a “conservation future?” No, clearly, the acquisition of the YMCA is not and cannot be, by definition, a “conservation future.” That is to say, an expenditure of funds for the YMCA could not be made under RCW 84.34.220. The money is not being used to prevent any future development in perpetuity and thus retain conservation aspects of “open space land, farm and agricultural land, and timber land which are so designated under the provisions of chapter 84.34 RCW.”

c. RCW 84.34.210: The Only Statute Which Might Apply

This brings us back to RCW 84.34.210 and whether the proposed purchase would fit within the meaning of the specific language of RCW 84.34.210. This takes us to the question of whether the YMCA property is that which is “open space land,” “farm and agricultural land,” or “timber land” as those terms are “so designated under chapter 84.34 RCW.” RCW Ch. 84.34.210.

I will approach the specific properties allowed in reverse order.

i. The YMCA Is Not Timber Land

Is the YMCA “timber land?” No, it is not. Timber land, under RCW 84.34.020 (3), is defined as follows:

"Timber land" means any parcel of land that is five or more acres or multiple parcels of land that are contiguous and total five or more acres which is or are devoted primarily to the growth and harvest of timber for commercial purposes. Timber land means the land only and does not include a residential homesite. The term includes land used for incidental uses that are compatible with the growing and harvesting of timber but no more than ten percent of the land may be used for such incidental uses. It also includes the land on which appurtenances necessary for the production, preparation, or sale of the timber products exist in conjunction with land producing these products.

Therefore, the YMCA is not timber land.

ii. The YMCA Is Not “Farm and Agricultural Land”

Is the YMCA “farm and agricultural land” under RCW 84.34.020? Farm and agricultural land is defined under subsection (8) as follows:

(8) "Farm and agricultural conservation land" means either:

(a) Land that was previously classified under subsection (2) of this section, that no longer meets the criteria of subsection (2) of this section, and that is reclassified under subsection (1) of this section; or

(b) Land that is traditional farmland that is not classified under chapter 84.33 or 84.34 RCW, that has not been irrevocably devoted to a use inconsistent with agricultural uses, and that has a high potential for returning to commercial agriculture.

Clearly, the YMCA is not “farm and agricultural land,”

iii. The YMCA Is Not “Open Space Land”: The Main Analysis

Now, we come to the question whether the YMCA is “open space land” as

that term is used in the statute.

There are two kinds of “open space land.”

Under RCW 84.34.020 (1) the term “open space land” consists of (a) actual open space land or (b) a “land area, the preservation of which in its present use would” fulfill one of the functions listed in the statute.

This is what RCW 84.34.020 actually says:

As used in this chapter, unless a different meaning is required by the context:

(1) "Open space land" means (a) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly, or (b) any land area, the preservation of which in its present use would (i) conserve and enhance natural or scenic resources, or (ii) protect streams or water supply, or (iii) promote conservation of soils, wetlands, beaches or tidal marshes, or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space, or (v) enhance recreation opportunities, or (vi) preserve historic sites, or (vii) preserve visual quality along highway, road, and street corridors or scenic vistas, or (viii) retain in its natural state tracts of land not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification, or (c) any land meeting the definition of farm and agricultural conservation land under subsection (8) of this section. . . .

d. The YMCA Is Not Designated Open Space Land

At this point we must ask ourselves whether the YMCA is “land area so designated [as open space] by an official comprehensive land use plan adopted by any city or county and zoned accordingly”?

As far as I know, the YMCA has never been designated as “open space” under the City of Spokane Comprehensive Plan. The area of the park in Downtown Spokane is designated open space under the current comprehensive plan but the YMCA is not zoned open space, indeed it is zoned CBD-6.

Section 11.19.194 CBD Central Business District Zone.

...

CBD-6 Category. The CBD-6 category is applied to the North Bank, the area immediately north of the Spokane River. This is a mixed-use residential, commercial, hotel, recreation and entertainment area. Generally all uses are allowed, except auto-oriented and industrial.

Thus, the YMCA does not meet the definition of open space land as defined in RCW 84.34.020(1)(a).

e. Is the YMCA “land area, the preservation of which in its present use [serves a statutorily permitted function]”?

So now we have come to the question of whether the YMCA is “land area, the preservation of which in its present use would” would serve one of functions identified in RCW 84.34.020, that is found in RCW 84.34.020(1)(b). The YMCA can only be purchased with conservation futures taxes if the purchase fits within this definition of “open space land.” This second definition.

i. The YMCA Is Not a “Land Area”

Before we can look at one of the sub-categories, we have to determine whether the first requirement is met. Is the YMCA a “land area”? It is not, it is a building which occupies most of the parcel upon which the building rests. It cannot be considered a “land area.”

The term “land area” is a commonly used term. It is a term commonly used

by the Washington legislature. It means an area of land. It does not mean an improvement, a building, a structure, it does mean “real estate” though its meaning is included in the term real estate. It does not mean real estate in general. Land area is a species of real estate, a certain state of real estate. For examples of how the legislature has used the term “land area” *see* Appendix A below.

More important in assisting us in an understanding of the meaning of the term “land area” is the legislative declaration made at the time the conservation futures tax was implemented. In looking again at the declaration (RCW 84.34.200) I will focus on how the declaration uses and refers to the term “open areas and spaces” –

The legislature finds that the haphazard growth and spread of urban development is encroaching upon, or eliminating, numerous open areas and spaces of varied size and character, including many devoted to agriculture, the cultivation of timber, and other productive activities, and many others having significant recreational, social, scenic, or esthetic values. Such areas and spaces, if preserved and maintained in their present open state, would constitute important assets to existing and impending urban and metropolitan development, at the same time that they would continue to contribute to the welfare and well-being of the citizens of the state as a whole. The acquisition of interests or rights in real property for the preservation of such open spaces and areas constitutes a public purpose for which public funds may properly be expended or advanced. [Emphasis added.]

There can be no question that the legislature was, in using the term “land area”, referring to “open areas and spaces of varied size and character.” It was not referring to buildings on land. Such buildings would not and could not be characterized as “open areas and spaces.”

Thus, because the YMCA is not a land area, it cannot be purchased with conservation futures tax revenue.

ii. Ignoring the Land Area Limitation, Does the Land Area of the YMCA Preserved in its Present Use Fulfill One of the Functional Categories?

But, let us assume for the purposes of argument that it is a “land area.” The question then becomes whether the “land area” “in its present use would” fulfill one of the subcategory functions. The question will be asked as to each one of the function categories.

1. Does the land area of the YMCA in its present use “(I) conserve and enhance natural or scenic resources” ? – Clearly no.
2. Does the land area of YMCA in its present use “(ii) protect streams or water supply” ? -- Clearly no.
3. Does the land area of YMCA in its present use “(iii) promote conservation of soils, wetlands, beaches or tidal marshes”? – Clearly no.
4. Does the land area of the YMCA in its present use “(iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space”? – Clearly no, but I will come back to this section.
5. Does the land area of the YMCA in its present use “(v) enhance recreation opportunities”? -- Clearly no, but I will come back to this section.
6. Does the land area of the YMCA in its present use “(vi) preserve historic sites”? – clearly no.
7. Does the land area of the YMCA in its present use “(vii) preserve visual quality along highway, road, and street corridors or scenic vistas”? – Clearly no.
8. Does the land area of the YMCA in its present use “(viii) retain

in its natural state tracts of land not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification”? -- Clearly no.

At this point I expect an assertion that the YMCA will “(iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space” or “(v) “enhance recreation opportunities.”

These assertions would be in error because such generality is not what the statute speaks to allows. The statute refers to “land area, the preservation of which in its present use would” serve one of these functions. RCW 84.34.020(1)(b). In its present use, the land area of the YMCA does not “(iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space” or “(v) “enhance recreation opportunities.” The fact is the land area is not an open area, and it does not, cannot enhance, the area or the recreation opportunities. Further, the YMCA is to be torn down, it has reached it’s the end of its useful life.

The essential point is the preservation the property in its present use would not provide the benefit sought. And, it simply would not serve the purpose of the legislation. The purpose being to acquire “open areas and spaces.”⁶

5. Conclusion

As has been shown, conservation futures tax revenue generated pursuant to RCW 84.34.230 cannot be used to acquire the YMCA.

The YMCA is not timber land or agricultural land. It is not open space land as used in the statute because it is not designated open space RCW 84.34.020(2)(a) and because it is not “land area, the preservation of which in

⁶ See discussion of the legislative purpose declaration *supra* at 4.

its present use would” would serve one of the functions identified in RCW 84.34.020(2)(b).

Appendix A

#1

Revised Code of Washington

TITLE 53 PORT DISTRICTS

CHAPTER 53.25 INDUSTRIAL DEVELOPMENT DISTRICTS —
MARGINAL LANDS

RCW 53.25.040 (1) A port commission may, after a public hearing thereon,
of which at...

... *land area* therefrom, if the *land area* to be deleted was acquired by the
port district with its own funds or by gift or transfer other than pursuant to
RCW 53.25.050 or 53.25.060. As to any *land area* ... 53.36.100 within ninety
days of the effective date of the port commission action deleting the *land*
area from the industrial district. *Land areas* deleted from an industrial
development district under ...

#2

Revised Code of Washington

TITLE 84 PROPERTY TAXES

CHAPTER 84.34 OPEN SPACE, AGRICULTURAL, TIMBER LANDS —
CURRENT USE — CONSERVATION FUTURES

RCW 84.34.020 As used in this chapter, unless a different meaning is
required by the...

... space land" means (a) any *land area* so designated by an official
comprehensive land use plan adopted by any city or county and zoned
accordingly, or (b) any *land area*, the preservation of which in its ...

#3

Revised Code of Washington

TITLE 36 COUNTIES

CHAPTER 36.79 ROADS AND BRIDGES — RURAL ARTERIAL

PROGRAM

RCW 36.79.040 Funds available for expenditure by the board pursuant to RCW 36.79.020....

... in the following manner: (1) One-third in the ratio which the *land area* of the rural areas of each region bears to the total *land area* of all rural areas of the state; (2) Two-thirds in the ratio ...

#4

Revised Code of Washington

TITLE 14 AERONAUTICS

CHAPTER 14.08 MUNICIPAL AIRPORTS — 1945 ACT

RCW 14.08.120 In addition to the general powers conferred in this chapter, and without....

... may lease such space, land, area, or improvements, or construct improvements, or take leases back for financing purposes, grant concessions on such space, land, area, or improvements, all for ...

#5

Revised Code of Washington

TITLE 79A PUBLIC RECREATIONAL LANDS

CHAPTER 79A.55 SCENIC RIVER SYSTEM

RCW 79A.55.010 The definitions set forth in this section apply throughout this....

... of water or a section, segment, or portion thereof. (4) "River area" means a river and the *land area* in its immediate environs as established by the participating agencies not exceeding a width of one ...

#6

Revised Code of Washington

TITLE 79 PUBLIC LANDS

CHAPTER 79.10 LAND MANAGEMENT AUTHORITIES AND POLICIES

PART 4 COOPERATIVE FOREST MANAGEMENT AGREEMENTS

RCW 79.10.410 The department is hereby authorized and directed to determine, define,....

... define, and declare informally the establishment of a sustained yield unit, comprising the **land area** to be covered by any such cooperative agreement and include therein such other lands as may be ...

#7

Revised Code of Washington

TITLE 76 FORESTS AND FOREST PRODUCTS

CHAPTER 76.13 STEWARDSHIP OF NONINDUSTRIAL FORESTS AND WOODLANDS

RCW 76.13.110 (1) The department of natural resources shall establish and maintain a....

... watershed administrative units in which significant portions of the riparian areas or total **land area** are nonindustrial forests and woodlands; (d) Estimates of the number of forest practices ...

#8

Revised Code of Washington

TITLE 70 PUBLIC HEALTH AND SAFETY

CHAPTER 70.120 MOTOR VEHICLE EMISSION CONTROL

RCW 70.120.150 The director:

... regarding the motor vehicle traffic in a noncompliance area to determine the smallest **land area** within whose boundaries are present registered motor vehicles that contribute significantly to the ...

#9

Revised Code of Washington

TITLE 57 WATER-SEWER DISTRICTS

CHAPTER 57.02 GENERAL PROVISIONS

RCW 57.02.050 Whenever the boundaries or proposed boundaries of a district include or...

... the district is located shall be delegated to the officers of the county in which the largest *land area* of the district is located, except that elections shall be conducted pursuant to general ...

#10

Revised Code of Washington

TITLE 36 COUNTIES

CHAPTER 36.93 LOCAL GOVERNMENTAL ORGANIZATION — BOUNDARIES — REVIEW BOARDS

RCW 36.93.170 In reaching a decision on a proposal or an alternative, the board shall....

... but not be limited to the following: (1) Population and territory; population density; *land area* and land uses; comprehensive plans and zoning, as adopted under chapter 35.63, 35A.63, or 36.70 RCW ...

#11

Revised Code of Washington

TITLE 35A OPTIONAL MUNICIPAL CODE

CHAPTER 35A.63 PLANNING AND ZONING IN CODE CITIES

RCW 35A.63.100 After approval of the comprehensive plan, as set forth above, the....

... buildings and structures, size of yards, courts, open spaces, density of population, ratio of *land area* to the area of buildings and structures, setbacks, area required for off-street parking ...

#12

Revised Code of Washington

TITLE 35A OPTIONAL MUNICIPAL CODE

CHAPTER 35A.14 ANNEXATION BY CODE CITIES

RCW 35A.14.330 The legislative body of any code city acting through a planning agency....

... the formation of neighborhood or community units; to secure an appropriate allotment of *land area* in new developments for all the requirements of community life; to conserve and restore natural beauty ...

#13

Revised Code of Washington

TITLE 35 CITIES AND TOWNS

CHAPTER 35.86A OFF-STREET PARKING — PARKING COMMISSIONS

RCW 35.86A.010 It is hereby determined and declared:

... and housing has become unnecessarily and uneconomically dispersed; (d) Limited and valuable *land area* is under used. All of which cause loss of payrolls, business and productivity, and property values ...

#14

Revised Code of Washington

TITLE 35 CITIES AND TOWNS

CHAPTER 35.63 PLANNING COMMISSIONS

RCW 35.63.090 All regulations shall be worked out as parts of a comprehensive plan....

... the formation of neighborhood or community units; to secure an appropriate allotment of *land area* in new developments for all the requirements of community life; to conserve and restore natural beauty ...

#15

Revised Code of Washington

TITLE 35 CITIES AND TOWNS

CHAPTER 35.58 METROPOLITAN MUNICIPAL CORPORATIONS

RCW 35.58.2712 Any municipality, as defined in RCW 35.95.020, may be eligible to receive....

... of such payment shall be commensurate with the number of residents in and the size of the *land area* of such municipality and the number and size of school districts in such municipality and shall not ...

#16

Revised Code of Washington

TITLE 35 CITIES AND TOWNS

CHAPTER 35.13 ANNEXATION OF UNINCORPORATED AREAS

RCW 35.13.177 The legislative body of any city or town acting through a planning....

... the formation of neighborhood or community units; to secure an appropriate allotment of *land area* in new developments for all the requirements of community life; to conserve and restore natural beauty ...

#17

Revised Code of Washington

TITLE 17 WEEDS, RODENTS, AND PESTS

CHAPTER 17.10 NOXIOUS WEEDS — CONTROL BOARDS

RCW 17.10.900 Any weed district formed under chapter 17.04 or 17.06 RCW prior to the....

... votes, if the weed district will continue to operate under the chapter it was formed. The *land area* of any dissolved weed district becomes subject to the provisions of this chapter. Any district ...

#18

Revised Code of Washington

TITLE 14 AERONAUTICS

CHAPTER 14.08 MUNICIPAL AIRPORTS — 1945 ACT

RCW 14.08.200 (1) All powers, rights, and authority granted to any municipality in this....

... except by authority of all the appointing governing bodies, but the board may lease space, *land area*, or improvements and grant concessions on airports for aeronautical purposes, or other purposes ...
