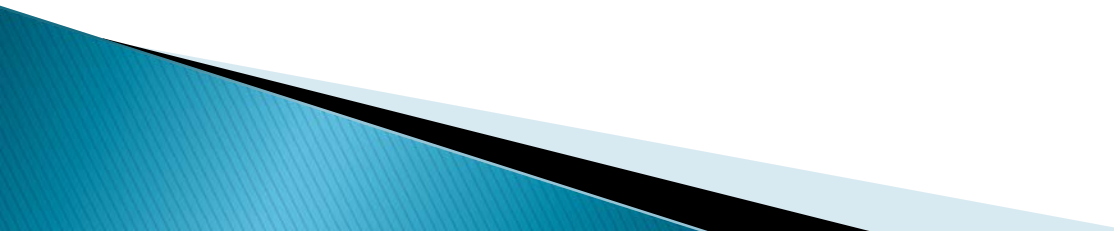



# Oregon Public Ports: Development, Leasing and Property Management

September 27, 2013  
Jeff Bennett, Attorney at law  
Jordan Ramis PC

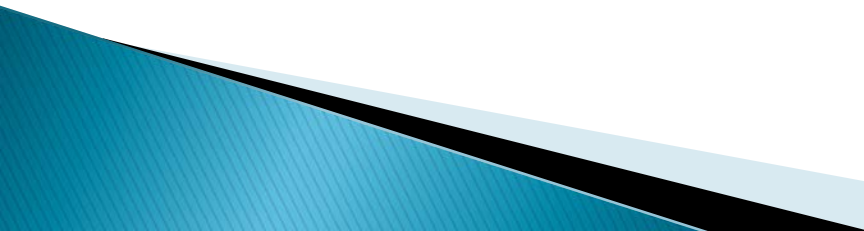
# Many Port Economic Development Objectives are Real Estate Driven

- ▶ Legislature recognized that Port's are uniquely suited to accommodate trade and economic development
  - ▶ Commerce requires strategic locations
  - ▶ Rivers, Highways, Railroads, Airports
  - ▶ Private Enterprise Not Equipped to carry out Public Objectives
- 

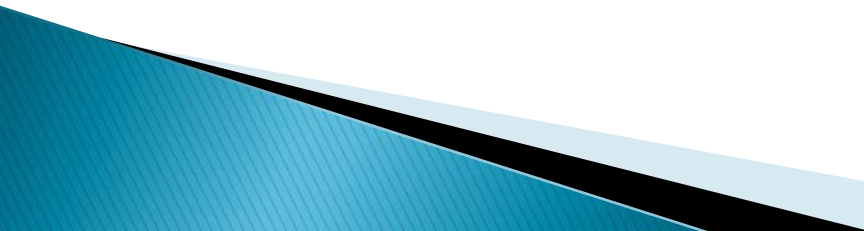
# Financial Sources/Constraints

- ▶ General tax levy ( $1/4$  of 1% taxable property plus GO bond interest obligations)
  - ▶ Special tax levy limitation ( $1/10$  of 1% of taxable property)
  - ▶ GO bonds (election; \$100K in emergencies w/out election)
  - ▶ \$1MM in 5-year secured notes
  - ▶ Revenue bonds (no election)
  - ▶ Local Option Tax for public improvements (election)
- 

# Other Money Sources

- ▶ Loans
  - ▶ Grants
  - ▶ Public/Private Partnerships
    - Redevelopment Transactions (private development/public funding)
    - Asset Management Transactions (public land/public activities, private use/operation)(e.g., marina, airport)
    - Private Development of Public Facilities
- 

# Diversity of Uses

- ▶ Marine Terminals, Docks and Piers
  - ▶ Commercial and Recreational Marinas
  - ▶ Industrial Sites and Parks
  - ▶ Hangars
  - ▶ Railroads
  - ▶ Office, Retail and Mixed Use Buildings
  - ▶ Tourism (Boat Launches, Lodging, Museums, and Event Space)
  - ▶ RV Parks and Campgrounds
- 

# Legal Overtones: Three Fundamental Real Estate Components

Land Development

Leasing

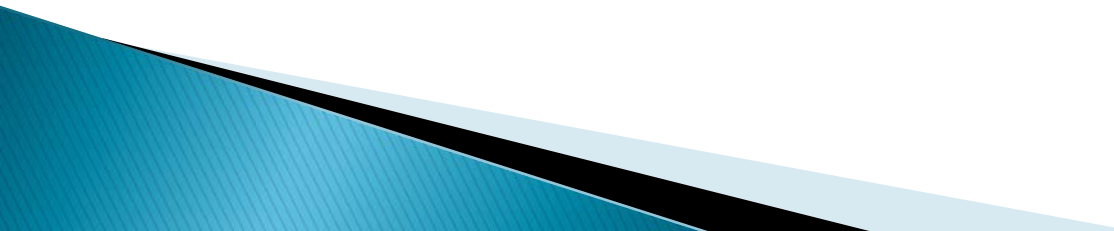
Property Management



# Site and Facility Development

- ▶ Strategic Planning
  - ▶ Asset Inventory and Identification
  - ▶ Land Acquisition and Disposition
  - ▶ Submerged Land Rights
  - ▶ Redevelopment Opportunities
  - ▶ Infrastructure (Transportation and Utilities)
  - ▶ Land Use
  - ▶ Financing
  - ▶ Common Areas
- 

# Land Acquisition and Disposition

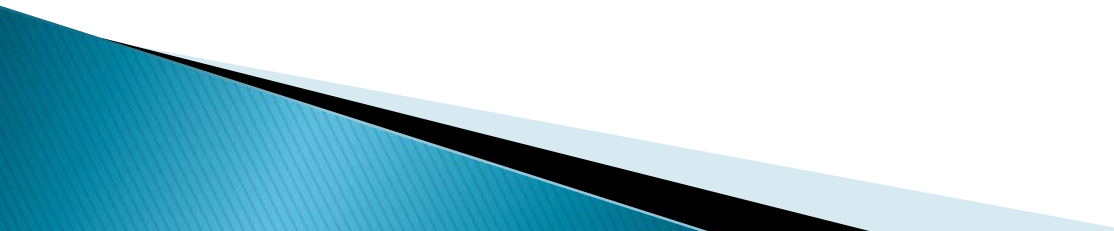
- ▶ Compliance with Strategic Plan
  - ▶ The Importance of having Real Estate A/D Policies and Processes
  - ▶ Have a Real Estate Team
  - ▶ The Art of Negotiation
  - ▶ Basic Agreement Forms (LOI, Option, PSA)
  - ▶ Appraisal
  - ▶ Due Diligence
- 



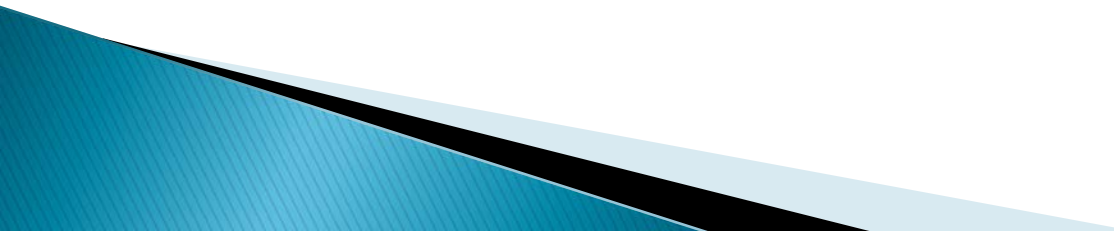
# Submerged Land Rights

- ▶ DSL Submerged Lands Leases
- ▶ Dovetail with Port right to regulate Navigation and Navigational Structures
- ▶ Existing DSL Activity of Interest
  - Filled Lands Claims

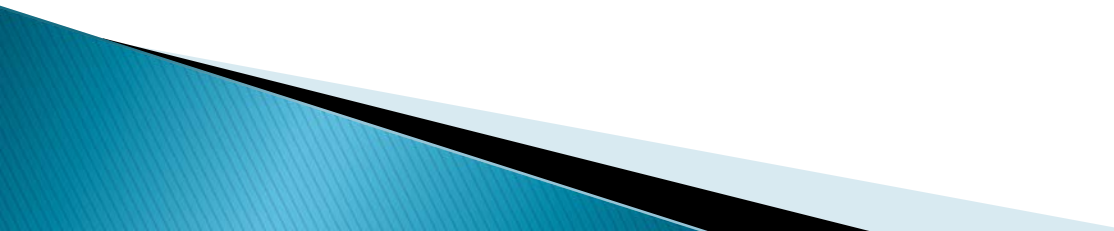
# Redevelopment Opportunities

- ▶ Adaptive Reuse Concepts
  - ▶ Sources of Funds (Public and Private)
  - ▶ Use of Disposition and Development Agreements
    - Project/Objectives
    - Development team
    - Cost, financing plan
    - Schedule
- 

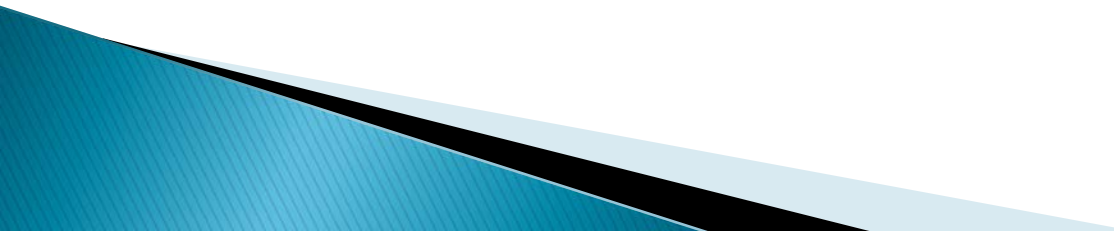
# Infrastructure (Transportation and Utilities)

- ▶ Construction of the Development Backbone
  - ▶ Public Components: Streets, Water, Sewer
  - ▶ Private Components: Power, Gas, Data, Rail
  - ▶ Special Use Components:
    - Airports, Piers and Docks
- 

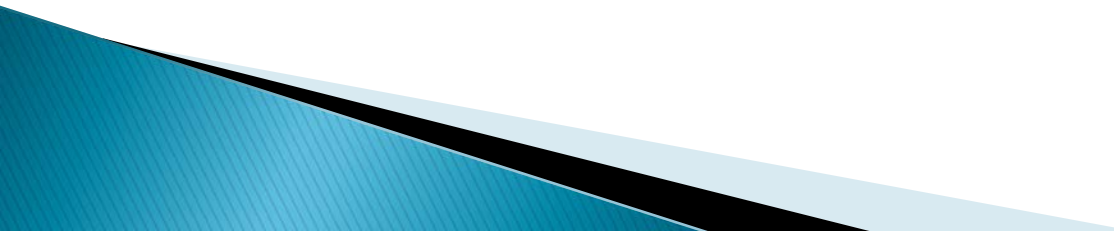
# Land Use

- ▶ Secure Necessary Plan and Zone Designations
  - ▶ Providing Shovel-ready Sites
  - ▶ Assisting with Design and Development Review
  - ▶ Assisting in the Permitting Process
  - ▶ Private (but public) Land Use Restrictions (i.e., CC&R's)
- 

# Common Areas

- ▶ Inventory
  - ▶ Assess Physical Condition
  - ▶ Identify Maintenance and Repair Costs
  - ▶ Capital Improvement/Replacement Plan
  - ▶ CAM Expenses Passed Through in Leases
- 

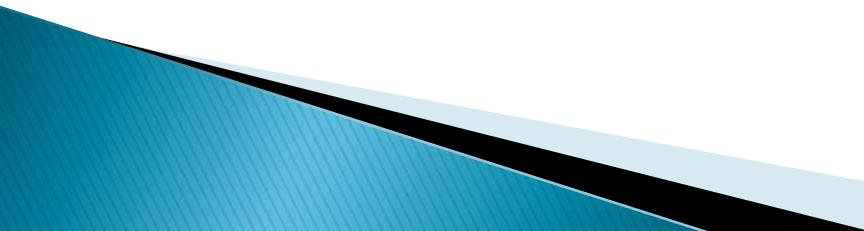
# Leasing

- ▶ Have a Policy
  - ▶ Options to Lease
  - ▶ The Letter of Intent (LOI)
  - ▶ Ground and Dock Leases
  - ▶ Building (Single and Multi-Tenant) Leases
  - ▶ Retail
  - ▶ Hangar Space
  - ▶ Marina Space
- 

# Options and LOI's


- ▶ Options Uncommon except for Grand Opportunities
- ▶ The LOI
  - Allows you to test waters with minimal expense
  - Includes Key Business Terms only (Premises identified, Term and Renewals, Rent Schedule, Construction Obligations, NNN/Full Service or in between), Special Rights

# Ground and Pier Leases

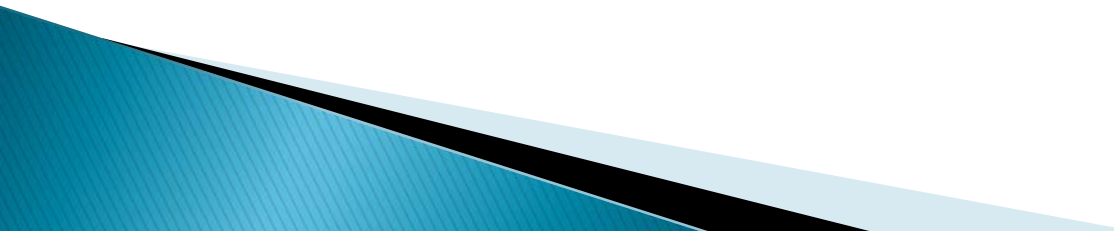
- ▶ Identify Premises
  - ▶ Who Repairs and Maintains What and When
  - ▶ Improvements / Alterations Process
  - ▶ Construction Obligations and Schedule
  - ▶ Insurance and Indemnity
  - ▶ Basic Services to Site
  - ▶ Use of Hazardous and Toxic Materials
  - ▶ Surrender
  - ▶ Ownership of Improvements
- 




# Building Leases (Single and Multi-Tenant)

- ▶ Have a Set of Forms
  - ▶ Use the Right Form
  - ▶ Require Contributions to CAM Expenses
  - ▶ Address Metering and Payment for Utilities
  - ▶ Allocate Repair and Maintenance Responsibilities (use the right lease form)
  - ▶ The Work Letter
  - ▶ Use and Clean Up of Hazardous and Toxic Materials
  - ▶ Synchronize Exclusivity of Use, Insurance and Indemnity provisions
- 

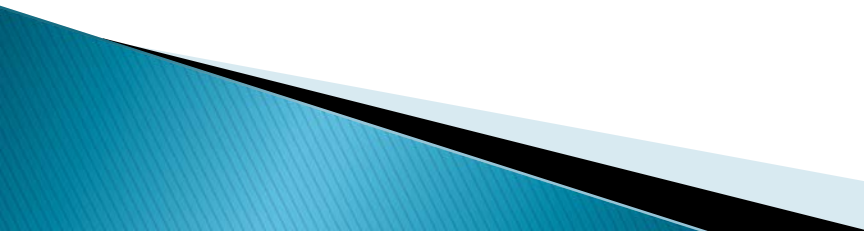
# Retail Leases

- ▶ Special Breed of Real Estate
  - ▶ Have a Retail Lease Form
  - ▶ Percentage Rent over Base Rent
  - ▶ Hours of Operation
  - ▶ Exclusive Use Provision
  - ▶ Continuous Operation
  - ▶ Tenant Improvements/Work Letter
- 

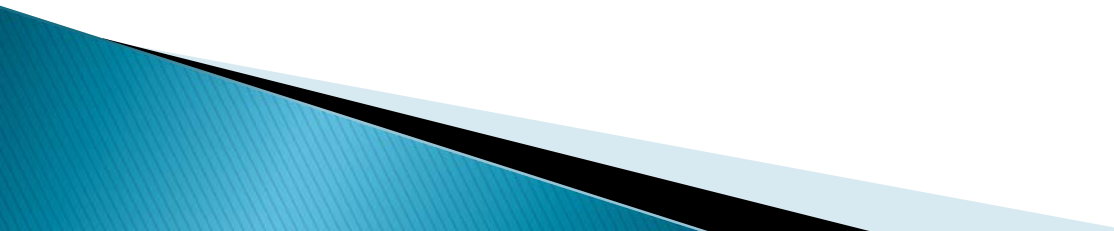
# Hangar Space

- ▶ Tie to Specific Aircraft
  - ▶ Use Limitations (no painting, dismantling, overhaul, refueling, deicing, or storage of flammables)
  - ▶ Compliance with Airport Policies and FAA Regulations
  - ▶ Accept in AS IS Condition
  - ▶ CGL and Aircraft Liability Insurance
  - ▶ Environmental Management/Liability
  - ▶ Indemnity
- 

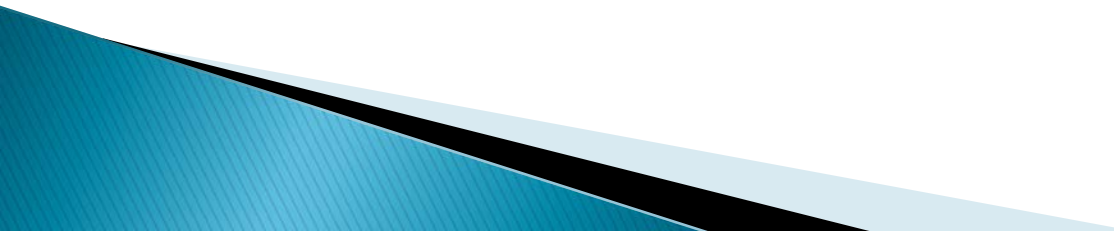
# Marina Space

- ▶ Incorporate Rate Schedule
  - ▶ Tie to Specific Boat; Non-Assignment
  - ▶ Accept marina area AS IS; No Alterations of Slip
  - ▶ Safe Mooring/Maintain Boat
  - ▶ Right to Perform Emergency Services at User expense
  - ▶ Indemnity and Release
  - ▶ CGL and Watercraft Liability Insurance
  - ▶ Lien Rights on Default
- 

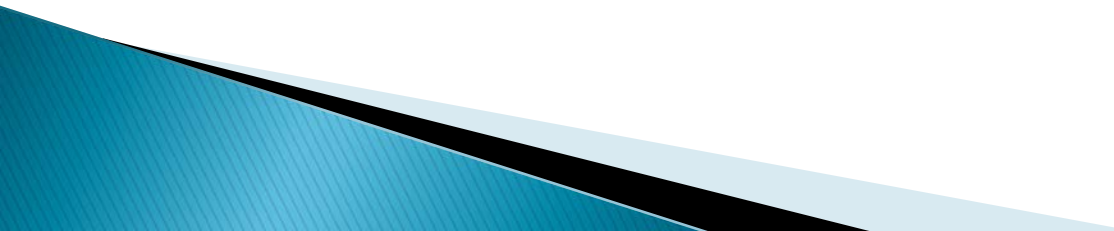
# Property/Asset Management

- ▶ Understand the Leases
  - ▶ Allocate Responsibility for Administration
  - ▶ Communication with Tenants
  - ▶ Lease Administration
  - ▶ Lease Enforcement
- 

# Lease Administration

- ▶ Monitor Performance
  - ▶ Confirm Insurance
  - ▶ Lease Amendments
  - ▶ Communicate with Port Counsel
  - ▶ Document Workouts
- 

# Lease Enforcement

- ▶ Reinstate Performance Obligations
  - ▶ Issue Appropriate Default Notices
  - ▶ Do Not Accept Partial Rent
  - ▶ Communicate with Port Counsel
  - ▶ Lockouts and Evictions (getting possession)
  - ▶ Suit for Damages (getting money)
- 

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