

# **SUMMARY GUIDE TO FORGING PUBLIC/PRIVATE PARTNERSHIPS AND ALLIANCES FOR MORE SUSTAINABLE WATERFRONT DEVELOPMENT AND PROPERTY MANAGEMENT**

By  
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**And Property Management**

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## **SUMMARY GUIDE TO FORGING PUBLIC/PRIVATE PARTNERSHIPS AND ALLIANCES FOR MORE SUSTAINABLE WATERFRONT DEVELOPMENT AND PROPERTY MANAGEMENT**

### **Because larger scale Waterfront Development and Property Management:**

- 1) Requires navigating multiple, complex and interdependent Planning, Governmental, Regulatory, Political, Environmental, Institutional, Physical, Financial, Market, Implementation, and Operational factors;
- 2) Usually involves 10 to 25 year gestation periods from conception to significant implementation; and,
- 3) Involves three overlapping and iterative *phases* to effectuate waterfront projects:
  - (A) The conceptual, or ***Development Planning Phase***;
  - (B) The consensus building or ***Political Phase***; and,
  - (C) The development/property management or ***Implementation Phase***

**THEREFORE:** Targeted strategic public/private “partnerships,” often involving nonprofit and community groups, are nearly always necessary to effectuate waterfront development projects. Forging such “partnerships” requires extensive ***Deal Making/Deal Counseling*** skills to assure interests of participating entities are addressed initially and, as conditions change, over time too. Accomplishing this requires an understanding and awareness, and sensitivity to the following realities.

### **1) POTENTIAL “PARTNERS” FOR YOUR PARTICULAR WATERFRONT DEVELOPMENT MAY NOT BE IMMEDIATELY APPARENT**

(A) Partnerships are often necessary: within the private sector itself; within the public sector itself; and, certainly, between and sometimes among the private and public sectors. Be pragmatic but use “Full Peripheral Vision” in identifying partners. Partners can include any public (including Government and Not for Profit groups) or private entity that you know is interested or can exercise positive or negative influence over your waterfront. Owners of interests in the specific waterfront land and adjacent properties be they individuals, or public or private entities, are a logical place to start. Importantly, ***even*** those entities you may at ***first view as “Opponents”*** may be a source of partners.

(B) Understand well, and beforehand, the differences between contractual and advisory relationships. ***Do not confer*** stakeholder status on an entity not deserving such status. Conversely, private sector entities need to take care not to “slight” community/governmental representatives, and nurture relationships for the longer term with important needed players within a community, county and beyond. As to the foregoing, do not underestimate the ability, and often the necessity, for the public sector entity(ies) to play the lead role in dealing with community interests. Such a public sector role, however, must be done in consultation with the other public and private partners.

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(C) Assess if the leadership of potential partners has previously shown ability to make decisions based on ***factual information*** versus being constrained too much by a particular ideology. Some individuals and entities may espouse unidimensional ideologies such as: “Private Owners Should Alone Determine Use of Their Land,” or, “All Waterfronts should be Passive and/or Public Open Spaces”, or “Waterfronts should only be for water-dependent uses” or “Waterfronts should not be built on,” or, “Whatever the Market says is doable should alone dictate Waterfront uses.”

(D) Assess if such narrow views are subject to reasonable compromise or adjustment and/or whether each potential partner has an interest in something positive really happening in a time frame sensitive to the needs of you and other potential partners. Early on, seek to involve a broad range of potentially supportive community interests, including business, historic preservation, environmental, labor, recreational, arts, entertainment and park groups, hopefully led by well-intentioned individuals.

2) **THE OBJECTIVES AND INTERESTS OF EACH POTENTIAL PARTNER IN A PARTICULAR WATERFRONT DEVELOPMENT NEED TO BE IDENTIFIED, ARTICULATED, AND UNDERSTOOD.** This process may enhance the ability to create productive alliances. Regarding governmental partners, taxes, job creation and quality of life improvements (for example, removal of deteriorated waterfront structures, creation of parks and open space) are usually objectives.

If the governmental entities involved recognize they can receive “income” or “sales” taxes as well as “property” taxes, then job creation and direct and indirect economic activity will be more compelling public objectives, even if property tax reductions are needed to entice private investment. Overall, be alert that partners’ objectives may change over time. Open communication and periodic “self-evaluation” by each partner can help to establish effective mid-course corrections for the entire partnership.

3) **THE TIMING FACTORS UNDER WHICH THE VARIOUS POTENTIAL PARTNERSHIP ENTITIES OPERATE ARE NOT THE SAME.**

For example:

(A) The **Various levels of government** operate on cycles sensitive to the frequency of elections affecting them. While in the U.S.A. these are usually in two and/or four year cycles, be alert to election timing at each level which can periodically produce, in effect, an electoral cycle as short as one year. Be equally sensitive to varying budgetary cycles as well.

In the earliest stages, the private sector needs to find out fast, and long before entering into public-private contractual negotiations and relationships, **both**:

- 1) The major municipal, county and state master planning, environmental, zoning and other regulatory requirements and any unique issues, usually local, likely to impact a contemplated waterfront development project and/or site; and,
- 2) The position(s) of community or issue-specific organizations regarding zoning and related issues, and unique site or community conditions.

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Ascertain whether the zoning or other regulations are new or long established. Are they under legal challenge or untested in the courts and/or publicly supported by the community?

The private sector must address these issues early on and not assume that changes it wants will be implemented just because they are “market driven”. Be alert that many a waterfront development project has floundered on supposedly movable obstacles; for example, zoning constraints that were possibly *foreseeable* as *immovable* within a reasonable timeframe-- long before the venture started. One may have to face the harsh reality that “timing” and entities available to work with are just not right, to proceed forward yet, or unfortunately, one may find the opportunity to proceed forward has been missed for now, and, perhaps for a while, perhaps longer.

(B) **Private developers and financial interests** (banks, insurance companies, REITS, public development agencies, etc.) **make decisions based upon the real estate market, cost of money (interest rates), and current tax arrangements**, all of which are affected by both macro and micro factors that vary over time and from location to location. These factors will significantly influence the level of interest of private developers and related financial entities toward participating in a waterfront development, and what level of various public “incentives” will be necessary, and available, to entice their participation.

(C) **Local community groups and their leaderships are sometimes less sensitive to the need for timely decisions that involve financially necessary and supportable changes to waterfronts, even after years of study.** Be alert to the reality that such leaders often do not have the “requirement” of being responsible for consequences that elected/appointed officials, other governmental representatives, private developers and investors do face. Also, leaders of community groups change too and understandings/agreements with them can dissolve under new leadership, even after years of discussion and compromise.

#### **4) MAINTAINING EFFECTIVE AND SUSTAINABLE PUBLIC/PRIVATE PARTNERSHIPS FOR WATERFRONT DEVELOPMENT AND PROPERTY MANAGEMENT IS A CONTINUING ENTERPRISE:**

The challenge is both:

(A) To understand how the above factors impact each potential partner to varying degrees over time; and,

(B) To remain flexible enough to make adjustments so that each potential “partner” continues to feel its vital objectives and interests are being reasonably achieved by participating to advance your waterfront development project and its property management objectives now and in the future.

#### **5) BE OPTIMISTIC, LIVE LONG AND HOPE FOR GOOD LUCK!**

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**SUMMARY BIOGRAPHY**

**L. Michael Krieger, Of Counsel, Dunn Lambert, LLC**  
**DEAL COUNSELOR/FACILITATOR/MEDIATOR**

**L. Michael Krieger is a law, business, and economics trained executive: Fordham Law School J.D.; Baruch M.B.A.; and, Columbia College B.A. Michael is known for leading sustainable projects from concept to implementation. He has creatively organized, structured, negotiated and mediated complex private/public business arrangements involving multiple governmental jurisdictions, including environmental agencies, sensitive to timing issues. Michael is internationally known as an expert in the waterfront development field. Further, Michael has significant experience in trust and estate planning, administration, and as a fiduciary.**

**Michael's accomplishments include effectuating multi-disciplinary and multi-institutional public/private ("PPP" or "P3") arrangements; creating, managing and disposing of revenue producing and public purpose ventures; involving negotiations, business development, marketing, planning, design, construction, operations, employment, financial, and legal activities. Michael has also developed and taught management and marketing courses as an Adjunct Assistant Professor.**

**L. Michael Krieger, Esq. is admitted in the NJ, NY, DC and USSC Bars; Board Member, Dispute Resolution Section, NJ State Bar Association, 2006 to Present; Member, Garibaldi Inn of Court for Alternative Dispute Resolution, 2005 to Present; Member, NJ Association of Professional Mediators; Member, Bergen Civil Mediators Group, 2005 to Present; Member, ABA's Business Law, Intellectual Property Law, Dispute Resolution Sections; Member, Bergen County Bar Association; Advisor and past Board Member and Vice President, Port Authority Retirees Association, Inc.; and, Board Member, The Waterfront Center. Michael serves as a Speaker/Lecturer and Author related to the above and elsewhere.**

**Michael provides timely, creative and practical advice, and helps find solutions in often difficult and complex situations. He has written and spoken on the use of mediation techniques in various business and legal contexts as a preferred method of negotiations, "deal making," and dispute resolution. Michael's techniques foster "relationship" sensitive agreements and dispute resolution, aimed at minimizing time and expenses. He believes use of Deal Counselors before, during and after disputes arise, in business and government, both domestically and internationally, will foster more sustainable agreements, faster dispute resolution, and minimize litigation.**

**Michael welcomes comments and reactions to his views and presentations:**

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