

RESIDENTIAL PIER RENTAL RATES

Workshop – November 19, 2012

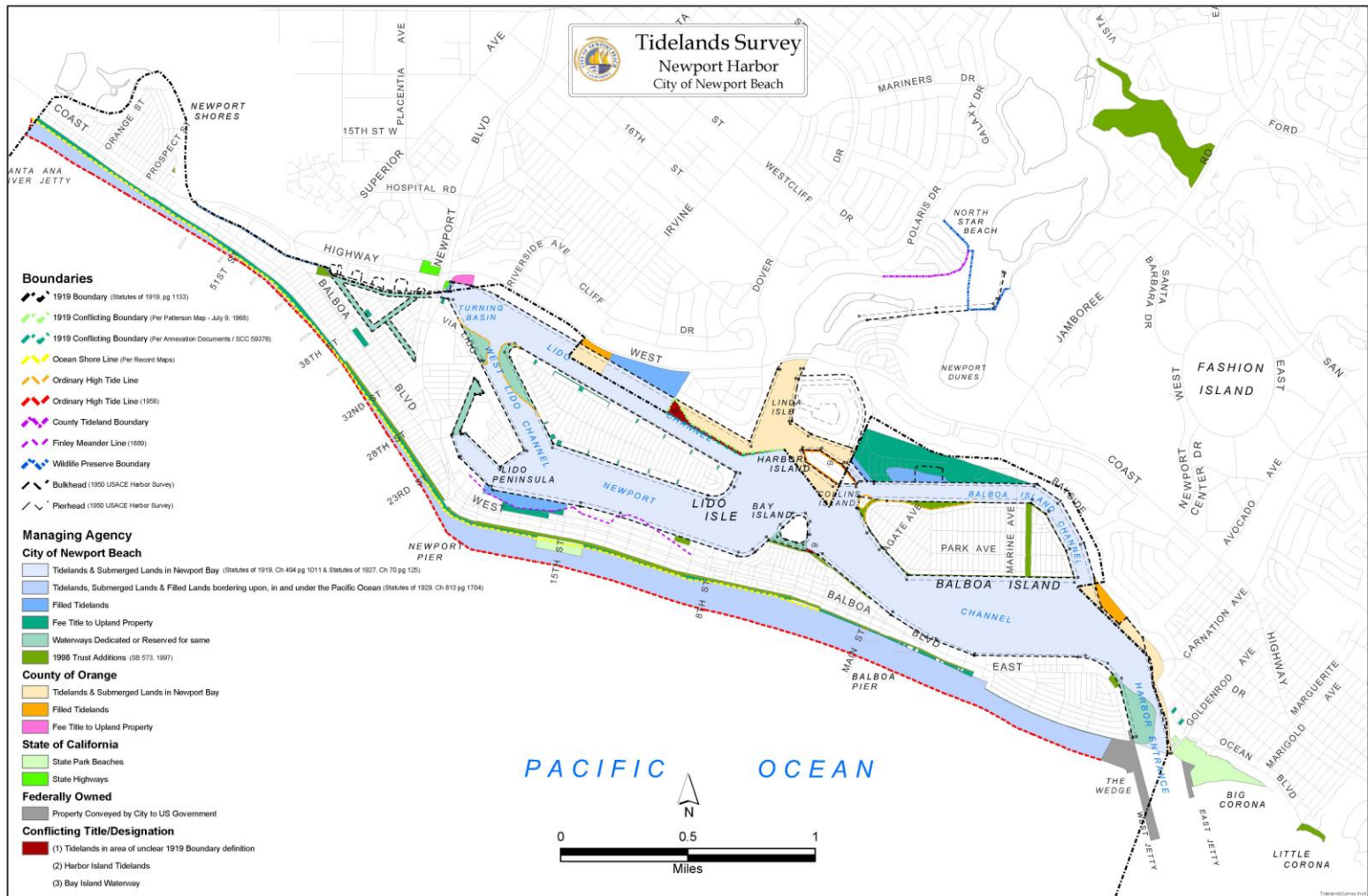
What We'll Cover

- City's Obligation
 - ▣ Tidelands Trust
 - ▣ Public Trust Doctrine
- Background on Harbor Rents
- Recommendation
- Examples
- Comments/questions
- For more information

What are Tidelands?

- Tide- and Submerged Lands are:
 - Publicly-held waterways (including land below the waters) that are:
 - Owned by the people of California
 - Assigned to the City via specific legislation (“**Beacon Bay Bill**”)
 - *Chapter 74 of the Statutes of 1978, as amended*
 - Operated by the City in accordance with:
 - CA Constitution
 - Beacon Bay Bill and Public Trust Doctrine
 - City Charter & Municipal Code
 - Not all waterways in Newport Harbor are tidelands
 - Many of the ocean beaches are tidelands

Tidelands in Lower Newport Bay



County (and State) Tidelands



How Tidelands Are Managed

1st

- People of California (all of us)
- Owners of all tidelands

2nd

- California State Legislature
- Assign Tidelands to City via Beacon Bay Bill, California Constitution, Public Trust Doctrine, etc.

3rd

- State Lands Commission (SLC)
- Oversees City's compliance with Beacon Bay Bill
- SLC also manages some Tidelands (Huntington Harbor, Tahoe, more)

4th

- City of Newport Beach
- Manages State's tidelands as Trustee per Beacon Bay Bill, Public Trust Doctrine

Public Trust Doctrine

- *...the Legislature has the power to delegate the management responsibility of tidelands and submerged lands to local governments. When it does so, these lands are known as granted lands, and the **grantees that manage them must ensure that they are used in ways that are consistent with the public trust and with any other conditions the Legislature imposes....** (emphasis added)*

City's Obligation is to...

- Comply with the Beacon Bay Bill, Public Trust Doctrine, and CA Constitution, including:
- Charge Fair Market Value (FMV) for use of the tidelands.
 - ▣ **These are the State's lands**
 - ▣ Not charging FMV can be a Gift of Public Funds, specifically prohibited by the California Constitution (Article XVI, Section 6):

The Legislature shall have no power to ...to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever.

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New in 2011 & 2012

SB 152 (Pavley) Becomes Law (2012)

LEGISLATIVE COUNSEL'S DIGEST

SB 152, Pavley. Public lands: general leasing law: littoral landowners.

Existing law authorizes the leasing of lands owned by the state and under the jurisdiction of the State Lands Commission for purposes the commission deems advisable. Existing law requires the commission to appraise lands and fix the annual rent or other consideration upon receipt of an application to lease the land.

This bill would require the commission to charge rent for a private recreational pier, as defined, constructed on state lands and would require the rent to be based on local conditions and local fair annual rental values.

The bill would except a lease in effect on July 1, 2011, for the term of that lease, and a lease for which the application and application fees were submitted to the commission prior to March 31, 2011.

CA State Auditor Report #2010-125

- *State Lands Commission: Because It Has Not Managed Public Lands Effectively, the State Has Lost Millions in Revenue for the General Fund*
- **Audit Findings:**
 - “The Commission Is Undervaluing Certain Types of Leases”
 - “The Commission’s Failure to Appraise Its Properties Regularly May Cause Them to Be Undervalued”
 - “The Commission Does Not Always Promptly Conduct Rent Reviews”

City Council Effort to Date

- Update Rents, Fees and Charges in Newport Harbor:
 - ▣ Fees based on cost-of-service – **completed November 2010**
 - ▣ Mooring rents – **completed November 2010**
 - ▣ Balboa Yacht Basin rents (slips, apartments, garages) – **completed December 2011**
 - ▣ Commercial Marinas – **completed Nov 13, 2012**
 - ▣ Other Commercial uses (gas docks, shipyards, etc) – **completed November 13, 2012**
 - ▣ Residential Piers – **currently**
 - ▣ At conclusion, review all past work to ensure that it was fair and equitable.



How to Set Rent

How to Set Rent

- **NBMC §17.60.020(E)** ...rental or lease
...reflective of fair market value ...as established
by appraisal.
- **NBMC §17.60.060(D)** Rent ...based upon fair
market value, as determined by the City Council.
Such determination ...based upon the findings of a
City-selected appraiser.

How to Set Rent (cont'd)

□ Council Policy F-7(A)

- Whenever a lease is considered by the City, an analysis shall be conducted to determine ...market value of the property. This analysis ...conducted using appraisals or other techniques to determine the highest and best use of the property and the highest value of the property.

Two Appraisals

- **Mr. Netzer - 2012:**

- \$0.55/SF of all tidelands useable for a residential pier, bounded by property line, bulkhead line, and pierhead line.

- **Mr. Rasmuson - 2012**

- \$0.50/SF of all tidelands useable for a residential pier, bounded by property line, bulkhead line, and pierhead line.

Both appraisals on City website.



Workshop Recommendation

November 19, 2012

Rent Recommendation

- Rent should be **\$0.525/SF/year**.
- But should **NOT** apply to all the tidelands off of a private property.
- Should apply only to:
 - ▣ Dock & Float area +
 - ▣ Waters of the internal slip (if any) +
 - ▣ Dockable/useable waters around the float (<10 feet generally – but adjacency of neighboring docks will reduce this)
- Phase-in increases over three (3) periods (at 2015).

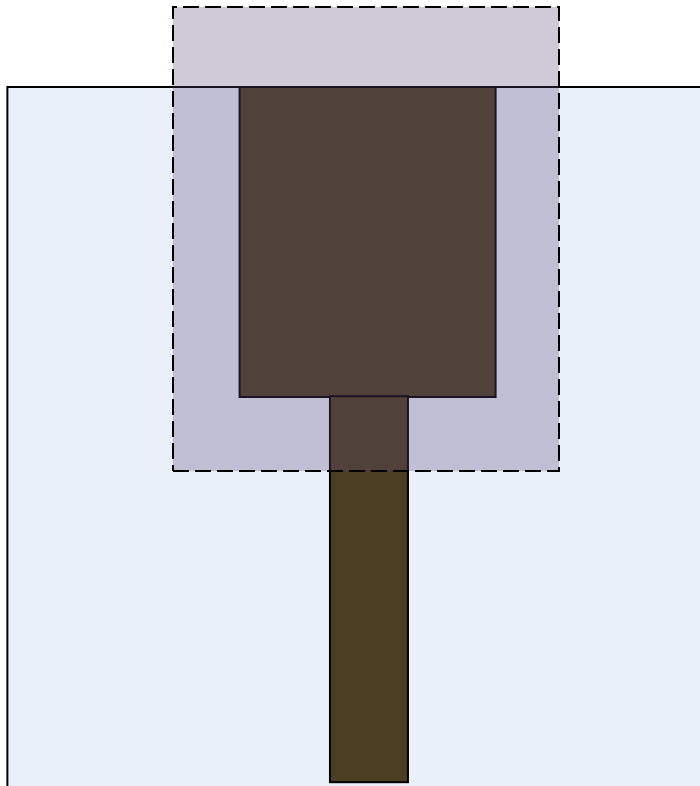
Other Recommendations

- We will measure SF off of existing plans or existing structure (not our GIS aerials)
 - ▣ Notices after 1-1-13, specific arrangements made with pier owners to measure. Done by 3-1-13.
 - ▣ Appeals process TBD
- With your permit, you must:
 - ▣ Maintain dock in good order
 - ▣ Maintain appropriate insurance levels (\$1M General Liability)
 - ▣ Hold harmless/indemnify City
- Amend NBMC to make it legal to rent residential piers.

Examples

NOTE: Examples estimate SF using City's GIS systems – more definitive measurements will be done for each permittee.

General Example (not to scale)



- Waters = 3,000 SF (50' x 60')
- Float = 400 SF (20' by 20')
- Gangway = 100 SF (4' by 25')
- Berthing Area = 1,200 SF (10' strip around float)
- Rental Calculation:
 - ▣ Float & Gangway = 500 SF
 - ▣ Berthing area = 1,200 SF
 - ▣ Subtract berth area & gangway overlap SF = (40 SF)
 - ▣ Total SF = 1,660 SF
 - Rent per SF = \$0.525/SF/year
 - ▣ **Rent = \$872 /year**

Appraisals suggested 3,000 SF x \$0.50-\$0.55/SF = \$1,500 - \$1,650/year

Example – Rialto/West Newport

- Dock Area = 204 SF
- Water Area = 700 SF
- Total = 904 SF

- Rent = \$475/year



Examples estimate SF – more definitive measurements needed

Example – E Bay Front/Little Balboa Island

- Dock area = 515 SF
- Water area = 910 SF
- Total area = 1,425 SF

- Rent = \$748/year



Examples estimate SF – more definitive measurements needed

Example – 125 E Bay Front (Little BI)

- Float & Gangway = 1,190 SF
- Exterior Waters = 1,200 SF
- Total SF = 2,390

- Rent = \$1,255/year
- Split w/2 = \$627/year



In this shared pier example, there is at least 20' between piers.

Examples estimate SF – more definitive measurements needed

Examples – S Bay Front, BI



Example – 13th Street/ Balboa Peninsula

- Dock area = 1,257 SF
- Water area = 860 SF
- Total SF = 2,117 SF

- Rent = \$1,111/year



Examples estimate SF – more definitive measurements needed

In this example, there is less than 20' between piers. As a result, side water SF is less.

Edgewater Place, Peninsula



Examples – Via Lido Soud



Examples – Channel Road



Rental Phase-In Examples *

2012	2013	2014	2015
\$ 100	\$ 225	\$ 350	\$ 475
\$ 100	\$ 316	\$ 532	\$ 748
\$ 100	\$ 698	\$ 1,279	\$ 1,895

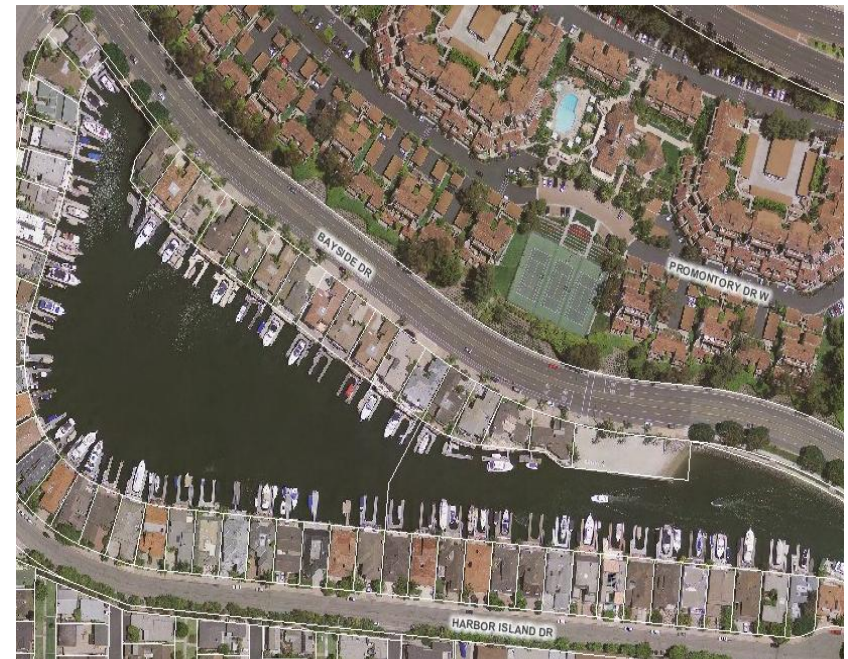
** The above is in current dollars (therefore assumes no change to CPI over the period). Assuming about a 2.5-3% CPI each year, the rental rate would be somewhat higher (by CPI) as 2017 approaches.*

Specific Areas Excluded

Areas reflect our best understanding of specific circumstances and may need follow-up verification. The City cannot and will not charge rent where no public asset is being rented.

Promontory Bay

- Generally, residential properties around Promontory Bay have recorded easements allowing a dock. These may preclude rent.
 - Bayside Drive (16)
 - Harbor Island Drive (45)



Linda Isle

- Interior of Lagoon is private waterway
- Much of exterior of Lagoon is County Tidelands



Dover Shores

- All docks are either on private waterways or County tidelands



For More Information

- City Website:
 - www.newportbeachca.gov
 - “Projects and Issues”
 - “Harbor Charges” (both appraisals)
- City Staff:
 - Dave Kiff, City Manager
 - dkiff@newportbeachca.gov or 949-644-3001
 - Michael Torres, Assistant City Attorney
 - mtorres@newportbeachca.gov or 949-644-3131
 - Chris Miller, Harbor Resources Manager
 - cmiller@newportbeachca.gov or 949-644-3043



Questions/Comments

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About our Tidelands Fund

From the CAFR, page 61 – on City's Website
(Fiscal Year ending June 30, 2011)

Tidelands Fund - Revenues

	Budgeted Amounts		Actual	Variance with Final Budget Positive (Negative)
	Original	Final		
Revenues				
Licenses and permits	1,370,000	1,370,000	1,485,375	115,375
Charges for services	62,000	62,000	151,284	89,284
Fines and forfeitures	500	500	2,935	2,435
Investment income	75,000	80,967	38,321	(42,646)
Net increase in fair value of investments	-	-	42,646	42,646
Property income	8,506,752	9,595,318	8,740,351	(854,967)
Total revenues	10,014,252	11,108,785	10,460,912	(647,873)

Tidelands Fund - Expenditures

	Budgeted Amounts		Actual	Variance with Final Budget Positive (Negative)
	Original	Final		
Expenditures				
General government	-	489,926	489,926	-
Public safety	-	17,452,950	17,452,950	-
Public works	838,620	3,707,463	3,544,245	163,218
Community services	2,235,438	1,900,842	1,446,925	453,917
Community development	-	-	-	-
Capital outlay	6,162,270	6,868,084	1,269,870	5,598,214
Debt service:				
Principal	195,080	195,080	195,080	-
Interest and fiscal charges	41,982	41,982	41,982	-
Total expenditures	9,473,390	30,656,327	24,440,978	6,215,349
 Excess (deficiency) of revenues over expenditures	 540,862	 (19,547,542)	 (13,980,066)	 5,567,476