



Harbor Fees: Mooring, Commercial Piers, Residential Piers

Overview and Alternatives

Council Study Session
January 27, 2015

Quick Background: What Are Tidelands?

- Tidelands (aka “Tide and Submerged Lands”) are *Public Trust Lands* (including land under water) that are:
 - Owned by the people of California
 - Have oversight & management assigned (granted) to the City via specific legislation (“Beacon Bay Bill”)
 - Chapter 74 of the Statutes of 1978, as amended
 - Trust may be revoked if not managed appropriately and fairly in the public interest
 - We have added lands to the Trust in the past (1998-99)
 - Also managed with respect to:
 - CA Constitution
 - Public Trust Doctrine
 - City Charter and Municipal Code

Some Distinctions

- Not all waterways are Public Trust Lands, like:
 - Some areas around Newport Island
 - Linda Isle lagoon
 - Dover Shores waterways
 - Promontory Point waterways
 - Upper Newport Bay (CA Fish and Wildlife owns)
 - Corona del Mar State Beach, Little Corona (CA State Parks owns)
 - More...
- Some are County-administered Public Trust Lands
 - Harbor Patrol dock
 - East end of Bayside Drive...
 - Bayshores area, Harbor Island
 - Sea Scout Base
- Almost all of the ocean beaches are Public Trust Lands
- **Dry land** can be Public Trust Land (Marina Park, parts of Beacon Bay, Balboa Bay Resort, Big Canyon Nature Park, more)

How Tidelands Are Managed

1st

- People of California
- The owners of Public Trust Lands

2nd

- California State Legislature
- Assigns management and operation of Public Trust Lands to City via Beacon Bay Bill

3rd

- State Lands Commission (SLC)
- Oversees our compliance with Beacon Bay Bill
- SLC also manages some Public Trust Lands directly

4th

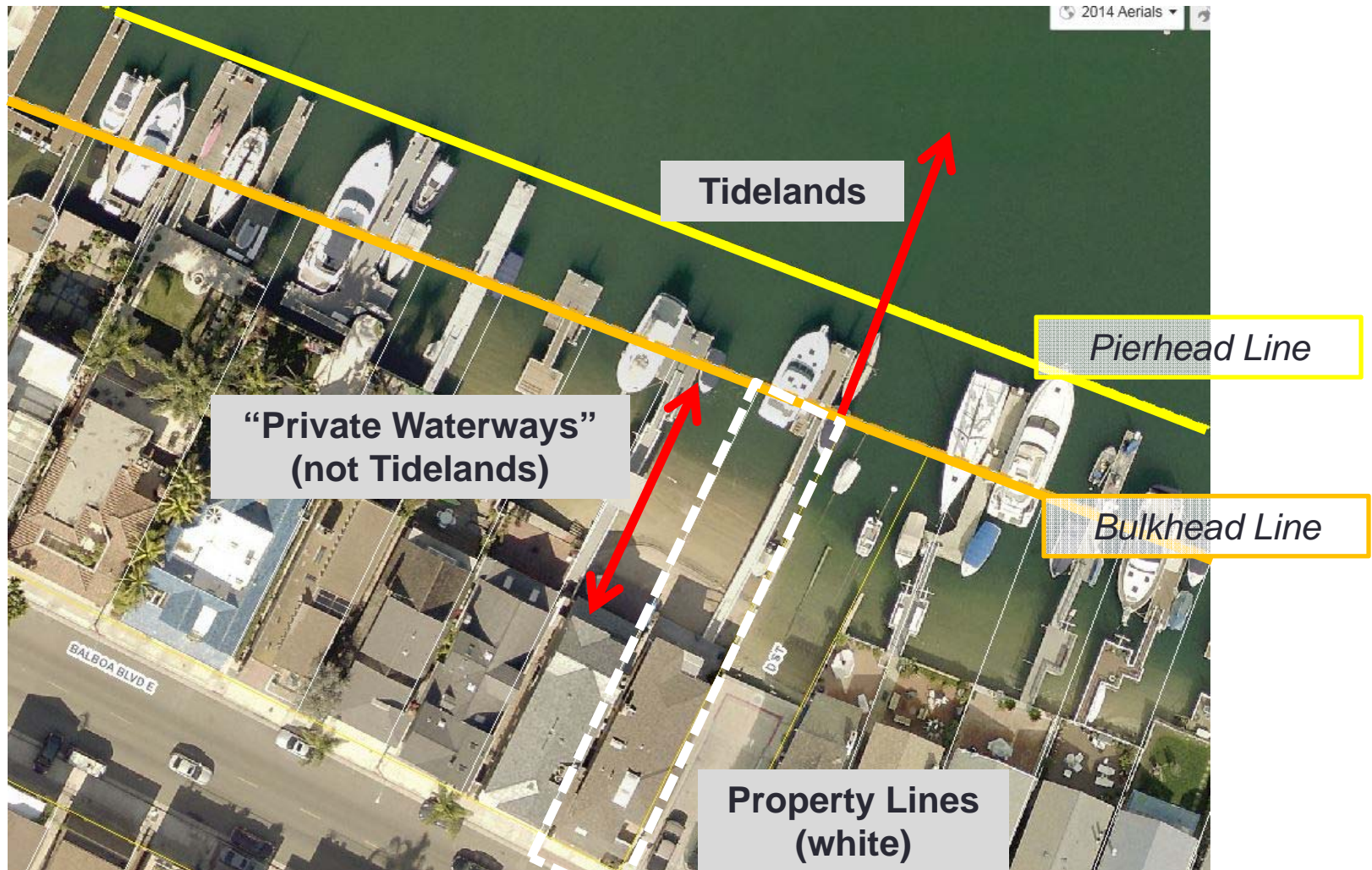
- City of Newport Beach
- Manages Public Trust Lands per Beacon Bay Bill, Public Trust Doctrine, CA Constitution and Newport Beach Municipal Code

City's obligation is to...

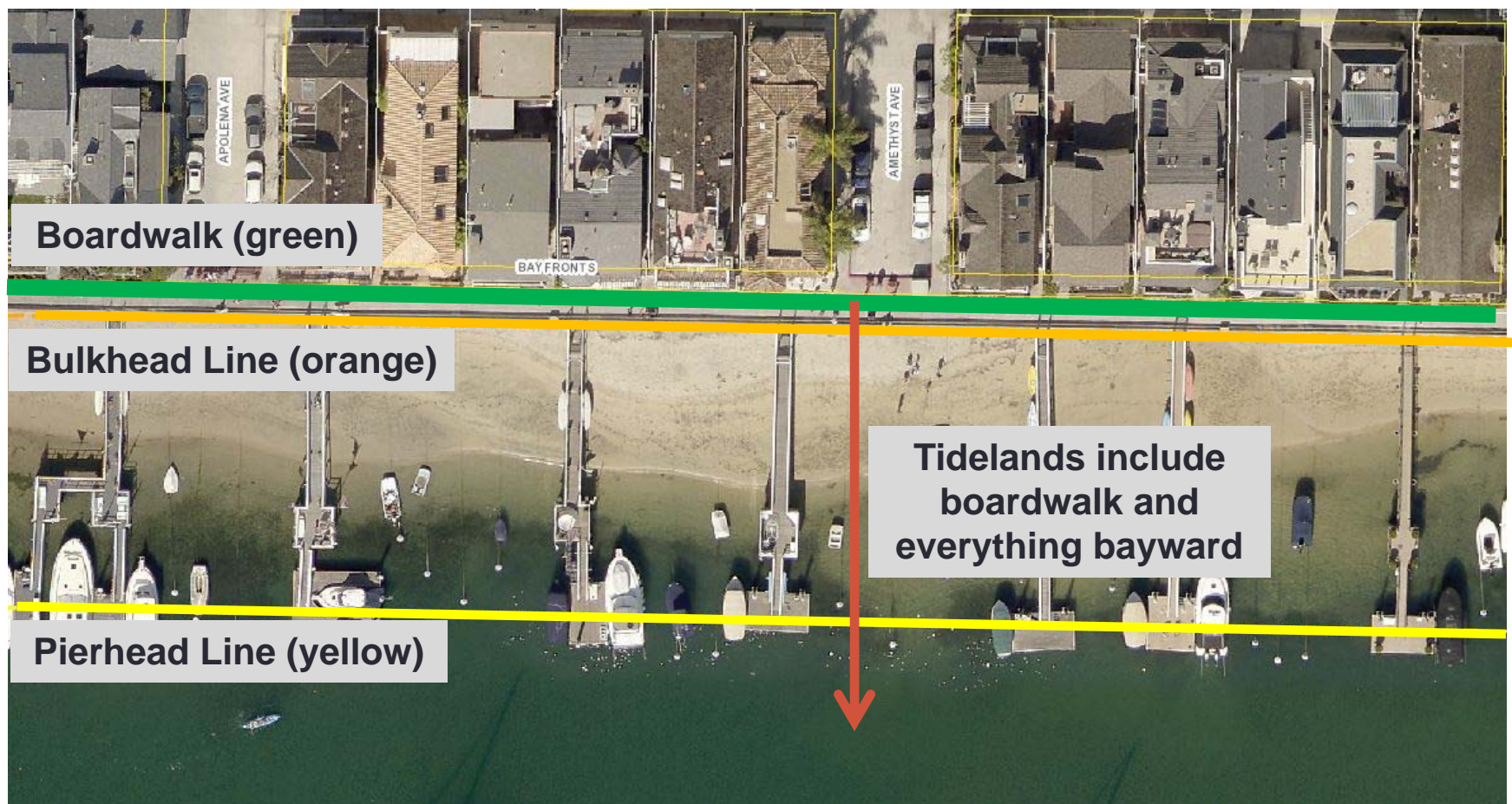
- Comply with Beacon Bay Bill, Public Trust Doctrine, and CA Constitution and NBMC, including:
 - Where private and semi-private uses are permitted, charge Fair Market Value (FMV) for use of Public Trust Lands
 - Not charging FMV could be considered a gift of public funds, prohibited by the California Constitution (Article XVI, Section 6):

The Legislature shall have no power 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.
 - Reinvest funds generated by the use of Tidelands back into the improvement, management, and upkeep of Tidelands.

Tidelands Example – Peninsula



Tidelands Example – Balboa Island



Overview of Recent Fee Changes

- Moorings (February to December 2010)
 - Increased rental rate towards FMV, based on 14% of a market basket of marinas (2015 final year)
 - Ended ability to sell/transfer by 2021 (can transfer 2x before that)
- Commercial Piers (February to November 2012)
 - Increased rental rate towards FMV (5 years to go)
 - Adopted a Lease Template
- Residential Piers (Fall 2012 to December 2013)
 - Increased rental rate towards FMV (3 years to go – would be \$0.525/SF)
 - Defined a footprint in 2012, then reduced it in 2013
 - Set forth a paper permit
 - Amended it in 2013 to allow long-term permit
 - Made renting legal, but small marina rate charged (to 13 properties)

Public Moorings



Public Moorings

- More affordable than marinas, but less convenient.
- Today, every mooring has a permittee assigned. Not all permittees have boats – a good thing (decreases derelicts).
- **Off-Shore Public Moorings**
 - Quantity: 539
 - “Single” & “Double-Point” moorings
 - “G” & “HP” fields are County moorings (approx. 22)
- **On-Shore Public Moorings**
 - Quantity: 439
 - Vessels 18’ and under
 - Balboa Island, Lido Isle, Peninsula street ends

Transfers

Pre-2011

- Permits bought/sold via private market
 - Unlimited transfers
 - Wait List never moved
 - No transfer fee
 - OC Grand Jury in 2007 criticized City's management of the moorings

2011 – Present

- Until 2021: (2) transfers per public mooring
- After 2021: No transfers allowed (except to immediate family)
- If permittee surrenders public mooring permit:
 - Returns to City
 - City reimburses mooring tackle value
 - City offers to next person on wait list
 - Transfer fee required

(Note: Wait list hasn't moved yet, but could after 2021)

Current Fees

- 14% of average, moderate, Newport slip rates (“Basket”)
 - Ardell, Bayside Village, Harbor Marina, Lido Yacht Anchorage, Newport Dunes, Newport Marina, Port Calypso (published rates)
 - **Consistent with 2007 Grand Jury Report recommendation** that: (mooring permits need to be) fair market value ...e.g., based on a % of slip

	<u>Off-Shore</u>	<u>On-Shore</u>	<u>% of Basket</u>
1996-2010	\$20/ft/yr	\$10/ft/yr	N/A
2011	\$26.52	\$13.26	7.1%
2012	\$30.71	\$15.36	8.8%
2013	\$38.73	\$19.37	10.5%
2014	\$47.64	\$23.82	12.3%
2015	\$55.43 (proposed)	\$27.71 (proposed)	14.0% (Final Step)

Example for 40' vessel:

2015 yearly offshore mooring rate (proposed) = **\$2,217 per year** (plus maintenance costs ~\$350)
 2015 yearly marina slip rate (average basket, proposed) = **\$15,835 per year** (\$32.99 per foot per month)

Short-Term Mooring Rentals

- The OC Harbor Patrol makes vacant moorings available to others/transient boats.
 - Five guest slips available at HP Dock - \$40/night
 - Guest moorings:
 - Rates are:
 - \$16/night November - April
 - \$26/night May – October
 - Generates about \$60K - \$80K per year
 - Funds raised go to Harbor Capital Fund (special fund created within the Tidelands fund to segregate 2010-2012 increased rates – for harbor improvements)

The “Avalon Approach”

- Quantity: 362 moorings (14' to 100')
- Ownership: By individuals who annually maintain mooring.
- Fee:
 - \$8.76/LF/year (NB's is \$55.43/LF/year [proposed 2015])
- Nightly Rentals:
 - \$41/night
- Demand: Very high.
 - 70' moorings have sold for \$1 million in the past.
- Transfers:
 - Unlimited.
 - City receives 5% of transfer price.

The “Avalon Approach” (pt 2)

- May trigger a possessory interest (P.I. tax) – unlike NB
- Moorings are destination moorings – unlike NB
- Generally not a boat storage location – unlike NB
- Lower \$ rate in Avalon has some logic:
 - Boats not stored on the moorings.
 - Rental revenue is a supplemental City income stream. Rentals of vacant moorings in Avalon may make up or exceed rental revenue difference (\$8/LF v \$55/LF) from NB.
 - In NB, mooring rate priced between the cost of dry storage and slip storage, as moorings more convenient than dry but less convenient than slip.

If council would like us to look more at an Avalon-style transfer system, we should research the issue further....

FYI...

- Mooring Master Plan Subcommittee & Harbor Commission recommended:
 1. Allow 1 mooring transfer per year, per individual (no other limit)
 - Should Tidelands Fund get a share of the transfer value?
 2. Maximum 2 moorings allowed per person (except marine contractors and current permittees with >2)
 3. Surrendered moorings go to sealed-bid auction
 4. Sunset Wait List after ____ years

Straw Votes - Moorings

- (1) Keep the current system or (2) consider a change?
- If consider a change...
 - Change rate (up to __% of market basket of marinas) or
 - Change rate method (besides tying to this market basket)?
 - Change transfer procedures to allow regular transfers?
 - Consider an Avalon-like system?
 - Include a fee for transfers?
 - Any change to the allocation of overnight rental revenue?

All Piers in Newport Harbor



Commercial Piers



Commercial Piers

- Charge for the “box of water” (not “footprint”) via lease or permit
 - Side property line to side property line
 - Bulkhead Line to end of fingers



Commercial Piers – Current Fee Structure

Divide marinas into sub-categories & charge accordingly:

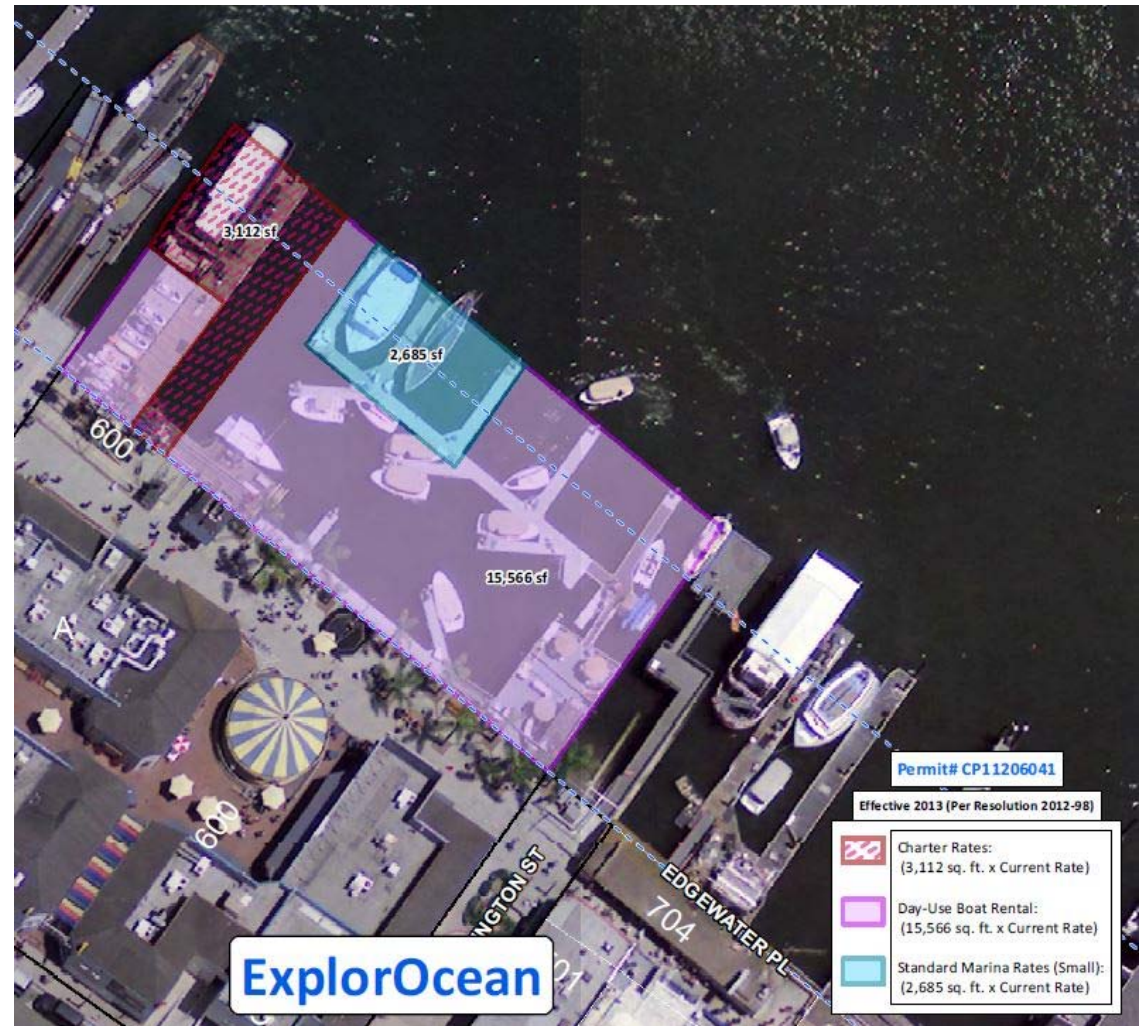
Fully Phased per sq.ft per year

- | | |
|---------------------------------|-----------|
| • Large Marina >15,000 sq.ft. | \$1.74 |
| • Small Marina <15,000 sq.ft. | \$1.31 |
| • Boat Rentals | \$1.02 |
| • Charter Boats | \$1.02 |
| • Sport Fishing | \$1.02 |
| • Yacht Club Guest Slips | \$0.50 |
| • Fuel Dock <100,000 gallons | \$0.015 |
| • Fuel Dock >100,000 gallons | \$0.02 |
| • Shipyard | \$0.50 |
| • Restaurant | \$1.02 |
| • Complimentary (public access) | No Charge |
| • Other | \$1.02 |

Commercial Pier Example

ExplorOcean

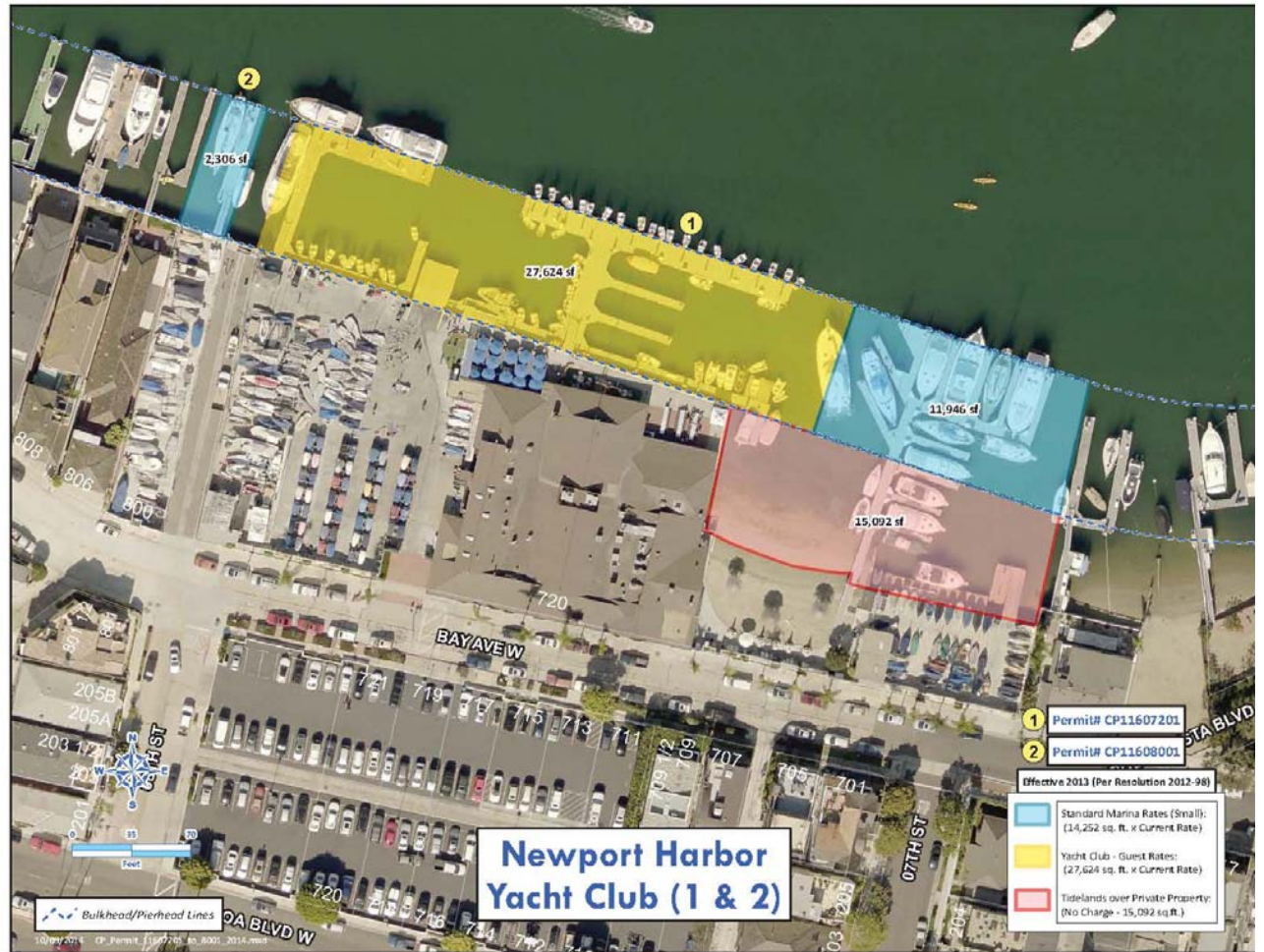
- Charter use
- Boat rental use
- Small marina use



Commercial Pier Example

NHYC

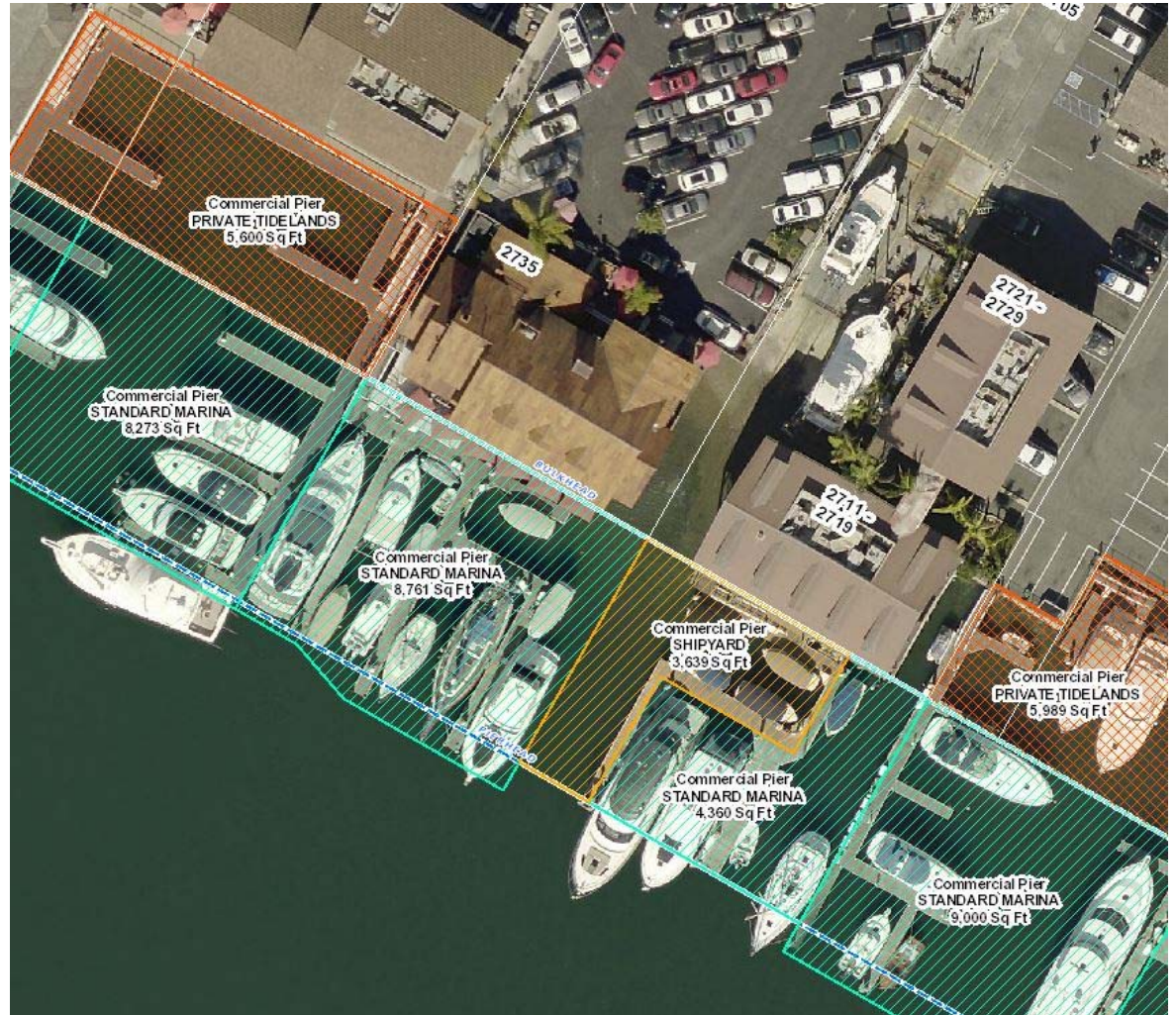
- Small marina use
- Guest slip use
- Private waterway (no charge)



Commercial Pier Example

Coast Highway Marinas

- Small marina use
- Shipyard use
- Private waterway (no charge)



Commercial Piers

- Option of Permit or Lease
- Fee based on appraised value of tidelands (2 reports):
 - *“Newport Harbor Commercial Tidelands Fair Market Rent Study, Newport Beach, CA”* by Gary Rasmuson, August 8, 2012
 - *“Appraisal Report: Commercial Tidelands Newport Harbor, Newport Beach, CA”* by Netzer and Associates, August 10, 2012

Straw Votes - Commercial Piers

Staff Recommends:

- Continue to offer a paper permit or a lease alternative

Does the Council want to (1) keep it as is or (2) change it?

- If change:
 - Do a new appraisal?
 - Change any of the use categories and rents?

Residential Piers



Residential Piers

- 882 Residential Piers over Public Trust Tidelands - City
- 330 Residential Piers over other waterways (not charged)
- 144 Residential Piers over Public Trust Lands – County (not charged)

Note: Pre-2013, the City used to charge for all piers regardless of where they were located.

- Since 2013, residential piers are charged for the “footprint” they occupy over Public Trust Tidelands. No buffer area.
 - First Council action in 2012 added a 10’ buffer to footprint.
 - Deleted the buffer in 2013 in the “look back.”

Residential Pier "Footprint"



→
Charged for inside
of U-shape float

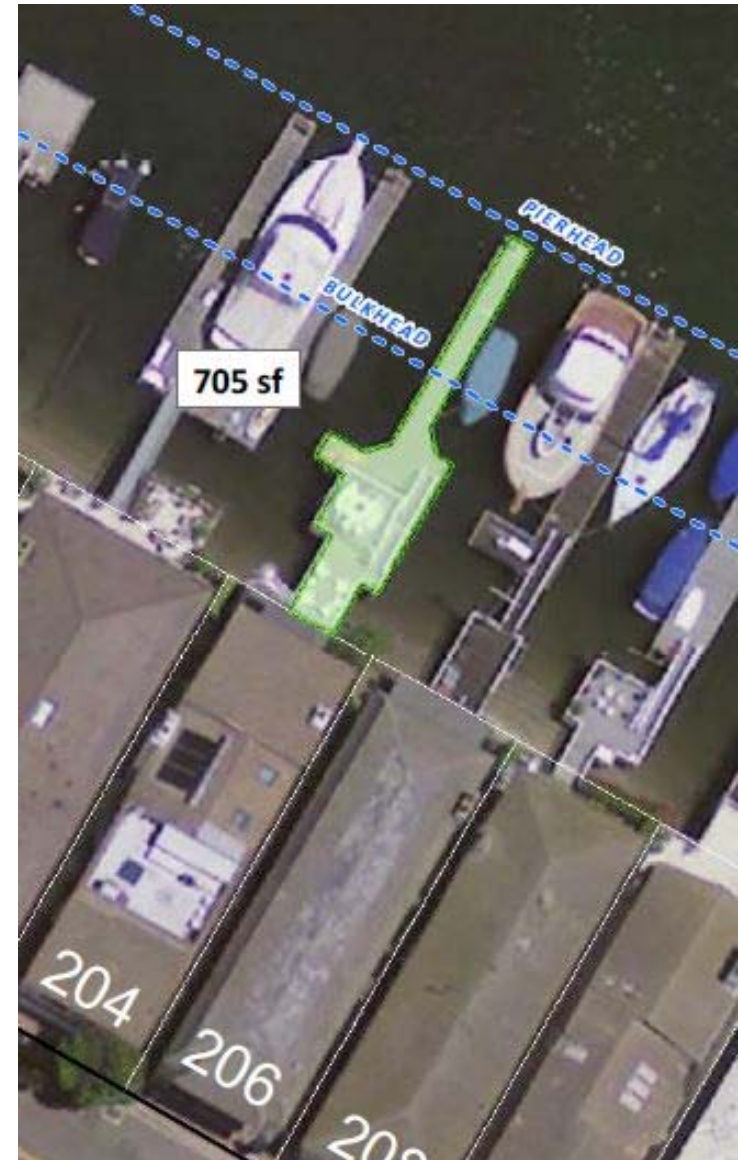
Float

Gangway

Pier



Residential Pier “Footprint”



Residential Pier "Footprint"



Residential Pier Fees

- Pre-2013
 - Residential Piers were charged a flat rate (\$100) regardless of size.
 - Rentals prohibited
- 2013 Forward
 - Residential Pier Permittees charged proportionate to dock size.
 - Rentals allowed. If a person rents out his/her dock, they pay the Small Marina Rental Rate (13 do so now)
 - Average permit fee applied to piers over Public Trust Lands (City) only.

2013	\$0.129 per sq/ft
2014	\$0.228 per sq/ft
2015	\$0.327 per sq/ft
2016	\$0.426 per sq/ft
2017	\$0.525 per sq/ft

Note: These are average ramp-up rates...

Residential Pier Annual Fees (fully phased)

Pier Square Footage	# of Piers	2017 Fee per year (approx.)
Under 200 sq.ft.	151	\$105
200 – 400 sq.ft.	124	\$210
400 – 600 sq.ft.	112	\$315
600 – 800 sq.ft.	138	\$420
800 – 1,000 sq.ft.	59	\$525
1,000 – 1,200 sq.ft.	42	\$630
1,200 – 1,400 sq.ft.	45	\$735
1,400 – 1,600 sq.ft.	36	\$840
1,600 – 1,800 sq.ft.	32	\$945
1,800 – 2,000 sq.ft.	32	\$1,050
2,000 – 2,200 sq.ft.	18	\$1,155
2,200 – 2,400 sq.ft.	21	\$1,260
2,400 – 2,600 sq.ft.	15	\$1,365
2,600 – 2,800 sq.ft.	13	\$1,470
2,800 – 3,000 sq.ft.	6	\$1,575

Paper Permits

- Residential Pier Permits have existed for a long time, but:
 - Permit consisted of a stamped drawing located in Harbor Resources files (based on latest approved dock renovation whether recently or decades ago)
 - Was/is an antiquated system
 - Generated complaints and confusion from permittees and real estate agents / mortgage brokers
 - In 2012, Council approved new “official-looking” permits (next slide)

Current Terms

1. Simplified Permit (1 page)
2. HOAs classified as residential unless they rent to non-members
3. Rental to 3rd parties allowed
4. 10 Year permit available
5. Annual Fee: Ramps up to \$0.525 per square foot over tidelands



CITY OF NEWPORT BEACH

PUBLIC WORKS DEPARTMENT
HARBOR RESOURCES

- (1) **Permittee:** This Permit is issued on March 1, 2014 to the above listed permittee ("Permittee") to construct/maintain a residential pier located upon City of Newport Beach ("City") tidelands, as more particularly described and depicted in Attachment 1 ("Premises"), which is attached hereto and incorporated by reference. By acceptance of this Permit, the Permittee agrees to be bound by the terms contained in this Permit.
- (2) **Term:** This Permit shall be valid for a period of 10 years beginning on July 3, 2014 and expiring on March 1, 2023, unless terminated earlier as provided herein. A new permit may be automatically issued upon expiration, provided rent is paid and the pier is maintained. The City's longstanding policy is to re-issue residential permits to the upland property owner, who also owns the physical dock associated with the Premises.
- (3) **Rent:** Rent shall be calculated pursuant to Resolution No. 2013-88, or any successor/amended resolution. Resolution No. 2013-88 and any successor/amended resolution are automatically incorporated by reference into this Permit, without any further action by the parties, when adopted by the Newport Beach City Council.
 - (A) **Periodic Payment of Rent:** One-sixth (1/6) of annual rent for a particular year shall be received by the City within nineteen (19) days after the mailing of the Municipal Services Statement to Permittee. Bi-monthly rent will be billed with the Permittee's Municipal Services Statement.
 - (B) **Place for Payment of Rent:** All payments of rent shall be made in lawful money of the United States of America and shall be paid to City online at www.newportbeachca.gov, in person or by United States' mail, or overnight mail service, at the Cashier's Office located at 100 Civic Center Drive, Newport Beach, CA 92660, or at such other address as City may from time to time designate in writing to the Permittee. The Permittee assumes all risk of loss and responsibility for late charges and delinquency rates if payments are not timely received by the City, regardless of the method of transmittal.
 - (C) **Late Charges:** A ten percent (10%) late charge, or the maximum rate allowable under State law, shall be added to all payments due but not received by City by the due date.
 - (D) **Third-Party Use:** This Permit allows / does not allow (check one) the Permittee to rent/lease the Premises to a third-party.
- (4) **Utilities and Taxes:** The Permittee is solely responsible for obtaining all utilities and paying all taxes (including possessory interest tax, if applicable), fees and assessments for the Premises or improvements located thereon.
- (5) **Maintenance:** The Permittee assumes full responsibility for operation and maintenance and repair of the Premises and associated improvements throughout the term of this Permit at its sole cost, and without expense to the City.
- (6) **Transfer/Assignment:** This Permit may be transferred or assigned by the Permittee as provided in the Newport Beach Municipal Code.

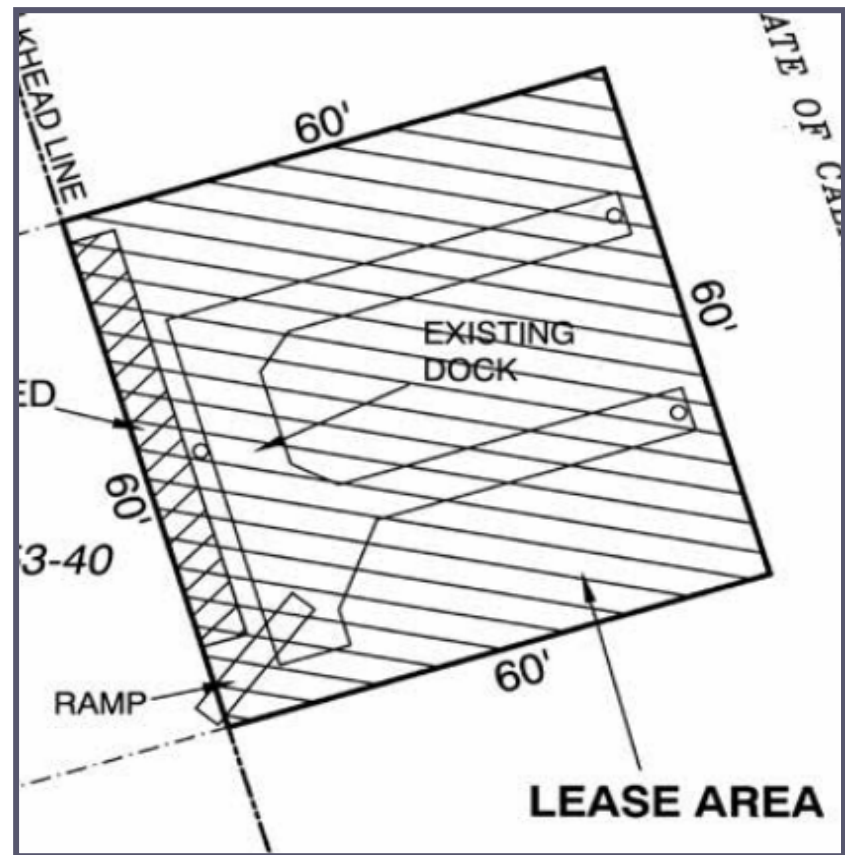
Attachment 1: Description & Depiction of Premises

What does the SLC do?

Newport Beach Approach



SLC Approach in Huntington Harbor



What does the SLC do?

Newport Beach Approach

- Permit Area:
 - The footprint of the pier and gangway.
 - Doesn't include the water
 - Unless a "U" dock
- Permit Rate:
 - \$0.525/SF/year (by 2017)
- Choice of annual or longer-term permit

SLC Approach in Huntington Harbor

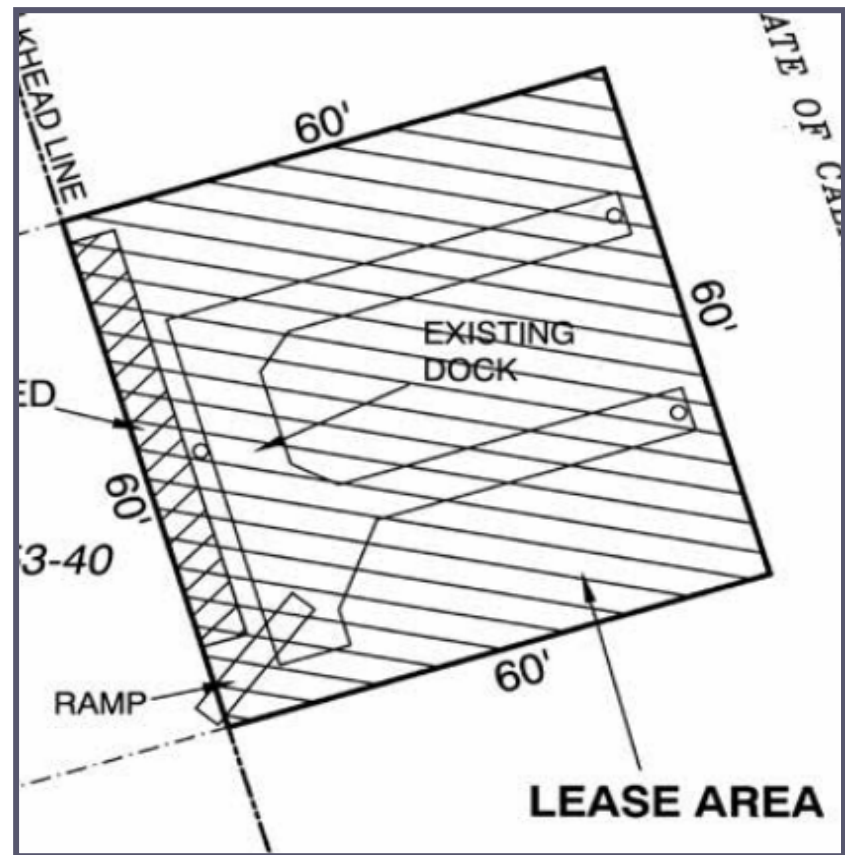
- Lease Area:
 - Promulgation of property lines, often 60' x 60'
 - Includes water, dock, gangways, ramp
 - Doesn't include deck SF (*see example*)
- Lease Rate:
 - \$0.331/SF/Year
- Usually 10-year leases with annual CPI adjustment

What does the SLC do?

Newport Beach Approach



SLC Approach in Huntington Harbor



What does the SLC do?

Newport Beach Approach (Via Lido Soud Example)

- Currently:
 $1,917 \text{ SF} \times 0.35/\text{SF} =$
\$ 670.95/yr
- End of Phase-In (2017)
 $1,917 \text{ SF} \times \$0.525/\text{SF} =$
\$1006/yr

SLC Approach in Huntington Harbor

- Currently:
 $3,600 \text{ SF water leased}$
- 240 SF of Cant Deck
 $= 3,360 \text{ SF water leased}$

H₂O Lease Rate = \$0.331/SF

Water = \$ 1,112/year
Ten year lease with annual CPI

If NB did what SLC does...

Same Via Lido Soud Example

- Lot line Promulgation:

50' lot

100' out into Bay

= 5,000/SF

@ 0.331/SF

= \$1,655/year today

vs \$1,006/yr by 2017



Straw Votes – Residential Piers

- Does Council want to (1) keep the current system or (2) change it?
- If change:
 - The Permit:
 - Add language protecting dock owner's rights to prevent seizure of dock?
 - Any other changes to permit text?
 - The Permit Footprint:
 - Should the gangway be part of it?
 - Should the water of the "U" in a U-shaped dock be part of it?
 - The Rates:
 - Revert to lower end of appraisal – 0.50/SF v. \$0.525SF v. \$0.55/SF?
 - Other adjustment or repeal of fees?

What opinion, if any, will State Lands Commission offer?



Steps from here...

- Return with proposed changes to Council at evening session in Feb 2015
- Adjust in time for March '15 billing cycle



For More Information

Chris Miller

Harbor Manager

cmiller@newportbeachca.gov

Michael Torres

Assistant City Attorney

mtorres@newportbeachca.gov