



CITY OF NEWPORT BEACH TIDELANDS MANAGEMENT COMMITTEE AGENDA

OASIS Senior Center, 801 Narcissus, Corona Del Mar, 92625
Classroom No. 2A (different room than usual)

Monday, March 18, 2013, 4:00 PM to 6:00 PM (different date than usual)

Tidelands Management Committee – Council Members:

Mike Henn – Chair Nancy Gardner Ed Selich

Citizens Advisory Panel:

Linda Beimfohr John Corrough Win Fuller
Terry Hartman Jeff Herdman Jerry King
Don Lawrenz Doug West

Staff Members:

Dave Kiff Michael Torres
Chris Miller Shannon Levin

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- 1) CALL MEETING TO ORDER – Welcome and Introductions
 - 2) ROLL CALL
 - 3) PUBLIC COMMENTS

Public comments are invited on agenda and non-agenda items generally considered to be within the subject matter jurisdiction of the Committee. Speakers must limit comments to three (3) minutes. Before speaking, we invite, but do not require, you to state your name for the record. The Committee has the discretion to extend or shorten the speakers' time limit on agenda or non-agenda items, provided the time limit adjustment is applied equally to all speakers. As a courtesy, please turn cell phones off or set them in the silent mode.

- 4) APPROVAL OF MINUTES – January 16, 2013
- 5) CURRENT BUSINESS

A. Tidelands Management Committee Purpose and Responsibilities – Revisions

The Committee will review its Purpose and Responsibilities, as well as other sections of its charge, in the context of guiding the Committee into the future. The Committee will then propose these revisions to the City Council for consideration.

B. Harbor Commission Purpose and Responsibilities – A Review of the Commission's Recommended Revisions

The Committee will review the Harbor Commission's proposed revisions to their Purpose and Responsibilities, as well as other sections of their charge, as discussed at the March 13, 2013 Commission meeting. These revisions focus on the membership term as well as defining the

Meetings of the Tidelands Management Committee which include the Citizens' Advisory Panel are open to the public. The public may comment on agenda items before the Committee and items not on the agenda but are within the subject matter jurisdiction of the Committee. The Committee may limit public comments to a reasonable amount of time, generally three (3) minutes per person. It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act ("ADA") in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. If requested, this agenda will be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Please contact the City Clerk's Office at least forty-eight (48) hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible at (949) 644-3005 or cityclerk@newportbeachca.gov.

Commission's role with respect to the Tidelands Capital Plan. The Commission will be recommending these revisions to Council soon.

C. Newport Harbor Revenue and Expenses – Review

City Manager Kiff will discuss the revenues and expenditures of the Harbor, as well as other harbor related financial information.

- 6) **ROUNDTABLE OR ADDITIONAL PUBLIC COMMENTS**
- 7) **COMMITTEE ANNOUNCEMENTS OR MATTERS WHICH MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION OR REPORT (NON-DISCUSSION ITEM)**
- 8) **DATE AND TIME FOR NEXT MEETING:**
To Be Determined
- 9) **ADJOURNMENT**

DECLARATION OF POSTING

On March 14, at 4:41 p.m., under penalty of perjury, I posted the Meeting Agenda for the

- Regular Tidelands Management Committee meeting of March 18, 2013.
- Study Session (Adjourned Regular Meeting) of _____
- Special Meeting of _____
- Adjourned Regular Meeting of _____
- _____ Meeting of _____

pursuant to the Brown Act Amendments (effective January 1, 1987), on the City Hall bulletin board located outside of Building B, 3300 Newport Boulevard, Newport Beach.

Posted by: Shirley Oborny

DECLARATION OF POSTING

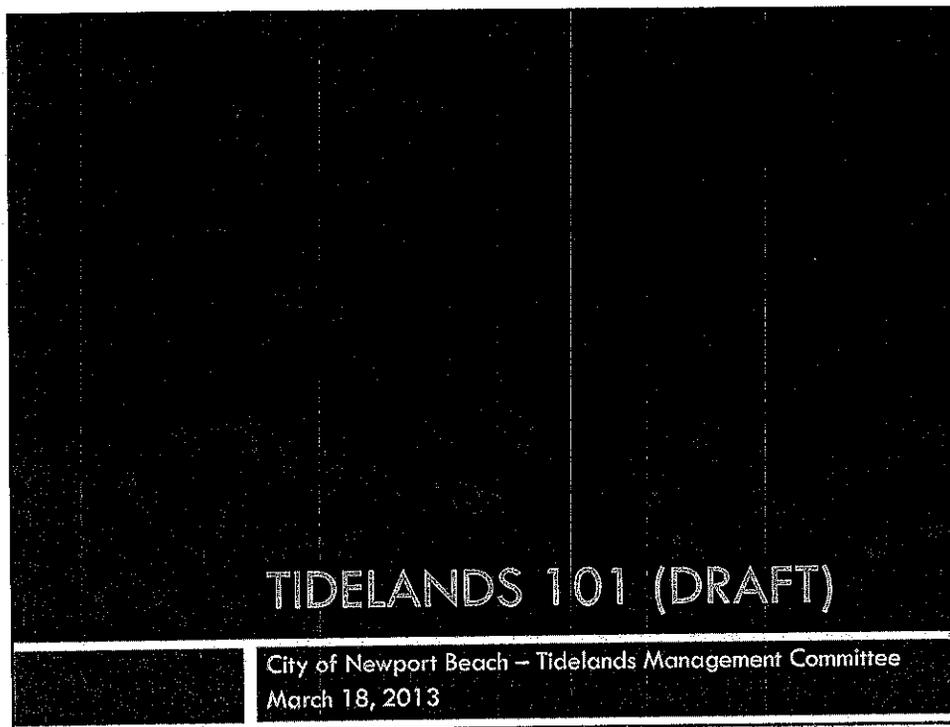
City Website

On March 14, at 4:35 p.m., under penalty of perjury, I posted the Meeting Agenda for the

- Regular Tidelands Management Committee meeting of March 18, 2013.
- Study Session (Adjourned Regular Meeting) of _____
- Special Meeting of _____
- Adjourned Regular Meeting of _____
- _____ Meeting of _____

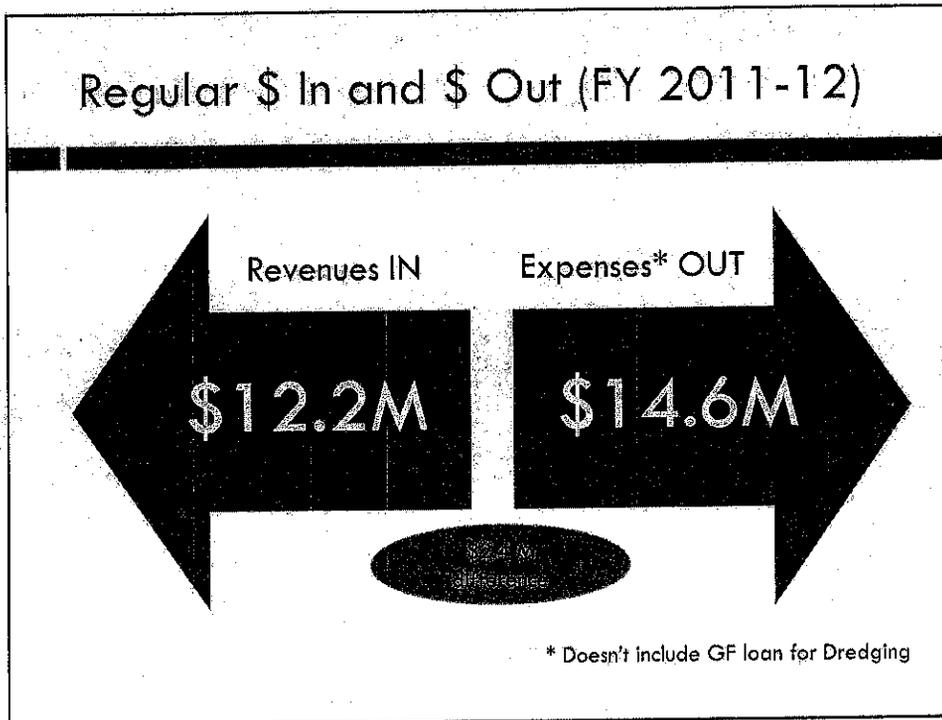
pursuant to the Brown Act Amendments (effective January 1, 1987), on the Internet under the appropriate BCC name (Agendas and Minutes page):
(<http://www.newportbeachca.gov/index.aspx?page=703>)

Posted by: Shirley Oborny



Concerns we have heard

- The City:
 - ▣ Counts ocean lifeguards, some Fire/EMS, some police expenses as tidelands expenses. Including salaries, pension costs, health care costs, etc.
 - ▣ Doesn't break out Harbor v. Non-Harbor Tidelands expenses or revenues.
- Is all of this legal? Is it audited?
 - ▣ Yes, and yes.



General Fund Subsidy

What do we mean when we say this?

“General Fund Subsidy” (FY 11-12)

I have this much
tidelands revenue



I need this much
for tidelands
expenditures *

* Doesn't include GF loan for Dredging

“General Fund Subsidy” (FY 11-12)

I have this much
tidelands revenue



My GF Subsidy

I need this much
for tidelands
expenditures *

* Doesn't include GF loan for Dredging

Estimating Tidelands Revenue

Budget Detail – FY 12-13
www.newportbeachca.gov/budget

Budget Detail (FY 12-13, Page 11)

230	TIDE AND SUBMERGED LAND FUND LICENSES, PERMITS AND FEES	
4601	Live Aboard Permits	3,500
4650	Pier Permit Registration Fees	560,000
4652	Mooring Fees	1,112,680
4654	Pier Permits	<u>30,000</u>
	Total Licenses & Permits	<u>1,706,180</u>

Budget Detail (FY 12-13, Page 12)

USE OF MONEY AND PROPERTY

5400	Interest Income	22,000
5410	American Legion	120,000
5412	Beacon Bay	850,000
5414	W. J. Carden - Telescopes	1,100
5421	Regular Balboa Yacht Basin	689,185
5423	Basin Marine Shipyard	64,735
5424	Garages	45,000
5426	Electricity	16,500
5427	Heritage Yacht Brokerage	8,125
5428	Galley Cafe	20,511
5429	Apartments	30,456
5442	Lido Isle Community Association	40,000
5452	Orange County Dock Lease	53,000
5475	Balboa Bay Club	2,500,000
5476	J. A. Beek - Balboa Island Ferry	82,000
5477	Balboa Pier Concession	115,000
5478	Newport Pier Concession	25,000
5481	Harbor Ball Barge	3,500
5500	Parking Meter Income	-
5511	Oceanfront Parking Meters	706,042
5514	Balboa Metered Parking Lot	200,045
5520	A Street Metered Parking Lot	117,674
5521	B Street Metered Parking Lot	41,186
5560	Balboa Parking Lot	1,200,000
5620	Royalty - Petroleum	1,800,000
5625	Oil Royalty Refunds	-
	Total Use of Money and Property	<u>8,751,058</u>

Estimating Expenditures

Comprehensive Annual Financial Report (CAFR)

www.newportbeachca.gov/CAFR

CITY OF NEWPORT BEACH
Tide and Submerged Land - Operations
Budgetary Comparison Statement
For the Year Ended June 30, 2012

	Budgeted Amounts		Actual
	Original	Final	
Revenues			
Licenses, permits and fees	\$ 1,370,000	\$ 1,370,000	\$ 1,790,750
Charges for services	55,000	55,000	120,525
Fines and forfeitures	500	500	22,946
Investment income	22,000	22,000	30,941
Net increase in fair value of investments	-	-	42,116
Property Income	9,197,461	9,222,761	10,062,648
Other	-	56,676	162,166
Total revenues	10,644,961	10,726,937	12,232,092
Expenditures			
General government	-	1,078,631	1,078,831
Public safety	-	7,559,523	7,559,523
Public works	995,320	4,228,948	3,233,617
Community services	1,766,080	1,825,522	1,564,584
Capital outlay	6,253,520	1,379,919	478,997
Debt service:			
Principal	737,854	737,854	737,854
Interest and fiscal charges	33,203	33,203	33,203
Total expenditures	9,785,986	18,843,598	14,686,409
Excess (deficiency) of revenues over expenditures	858,975	(6,116,661)	(2,454,317)

What is this?

Fire/Lifeguards Allocation

- "Service Area Methodology." Add together:
 - An overall "readiness to serve" from all Fire/EMS costs – 2% of total Fire/EMS costs; plus
 - A likely 1st Responder Allocation from Fire Stations 1, 2, 4 – 14% of these three stations' costs; plus
 - Balboa Peninsula Station = Station #1
 - City Hall station = Station #2
 - Balboa Island station = Station #4
 - Total ocean lifeguard costs less Big Corona (CdM State Beach is State Park property) – 81% of LG costs.
- For FY 12-13, amount = ~ \$5.5M

PD Allocation to Tidelands

- An overall “readiness to serve” component
 - 2% of Police Patrol costs; plus
- Share of Admin Cites on the tidelands
 - $649/12,867 = 5\%$; plus
- Relative ratio of 4th of July patrol costs
 - 0.68%.
- Total = 7.68% (\$2.07M)

Simple Solution?

- Stop including Lifeguards, Fire/EMS, and Police in the expense side – right?
 - Maybe. Let’s try it.
 - Have a:
 - Harbor Tidelands Fund and
 - Not Harbor Tidelands Fund.

The Harbor Tidelands Fund (future)

Revenues	
Item	Amount in K
Pier Permits	\$ 2,000
Mooring Fees	\$ 1,300
Harbor Leases - includes:	
- American Legion	\$ 129
- Balboa Yacht Basin	\$ 940
- Lido Isle Community Assn	\$ 42
- Balboa Bay Club	\$ 840
- BI Ferry, More	\$ 147
Other	\$ 182
<i>Total</i>	\$ 5,580

Expenses	
Item	Amount in K
Harbor Resources Div	\$ 1,600
BYB Marina Loan	\$ -
Public Works (design, eng, NPDES)	\$ 385
City Admin (Finance, Legal, City)	\$ 340
Annual Maintenance CIP	\$ 1,500
Annual Harbor Capital	\$ 2,000
<i>Total</i>	\$ 5,825

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= Small Deficit
of \$245K

"Not Harbor" Tidelands Fund (future)

Revenues	
Item	Amount in K
Beacon Bay Residences (Tide half)	\$ 850
Ocean Parking Lots, Meters	\$ 2,400
Sales of Oil and Gas	\$ 2,680
Leases - includes:	
- Balboa Bay Club	\$ 1,800
- Pier Concessions	\$ 180
Other	\$ 171
Total	\$ 8,081

Expenses	
Item	Amount in K
SLC's Land Bank Fund	\$ 85
UNB Restoration Fund	\$ 85
Oil and Gas Utility Costs	\$ 700
Fire/EMS to Ocean Beaches	\$ 1,800
Lifeguards (87% of costs)	\$ 3,700
Beach Maintenance (MODept)	\$ 2,160
Police	\$ 2,070
Gen Gov't (PW, CA, CM, Finance)	\$ 1,300
Annual Maintenance	\$ 300
Annual Capital	\$ 500
Total	\$ 12,700

"Not Harbor" Tidelands Fund (future)

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Beacon Bay Residences (Tide half)	\$ 850
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Sales of Oil and Gas	\$ 2,680
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Lifeguards (87% of costs)	\$ 3,700
Beach Maintenance (MODept)	\$ 2,160
Police	\$ 2,070
Gen Gov't (PW, CA, CM, Finance)	\$ 1,300
Annual Maintenance	\$ 300
Annual Capital	\$ 500
Total	\$ 12,700

= Larger Deficit of \$4.62M

In years past...

- Possibly a surplus in the Harbor side – but:
 - City did not allocate much for capital in the harbor.
 - Thought that the Feds would dredge:
 - LNB, Newport Slough, Rhine Channel
- Overall, still a deficit in Tidelands, and
 - Perfectly legal to not separate harbor from not harbor.
 - Reports filed regularly to SLC
 - Tidelands fund audited along with all other City funds via the audit of the City's Annual Financial Statements

What could you change? (Part 1)

- Other half of Beacon Bay Residences? (+\$850K to H revenues)
- No Gen Gov't allocation (-\$340K in H expense)
- Add in Passenger Tax (+\$270K to H revenues)
 - Net Change = +\$1.46M
 - Deficit turns to surplus of \$1.215M/year

BUT...

What could you change? (Part 1)

- Beacon Bay Residences? (+\$850K to H revenues)
 - These are homes with no direct link to Harbor.*
- No Gen Gov't allocation (-\$340K in H expense)
 - These expenses occur, and relate to the Harbor.*
- Add in Passenger Tax (+\$270K to H revenues)
 - Marine Charter operations use City infrastructure and the operators do not always provide adequate on-site parking or other amenities to the same degree as land-side commercial operations. The tax is intended to compensate for uplands impacts of harbor uses – parking, street infrastructure, etc (Ordinance 94-42).*
- Harbor Capital could be increased by \$2-3M/year

What could you change? (Part 2)

- Stop taking cost of ocean lifeguards (\$3.7M)
- Stop taking cost of law enforcement (\$2M)
- Stop taking cost of Fire/EMS (\$1.8M)

BUT...

What could you change? (Part 2)

- Stop taking cost of ocean lifeguards (\$3.7M)
 - ▣ Clearly, LGs are a tidelands expense – on the “not harbor” side.
- Stop taking cost of law enforcement (\$2M)
 - ▣ Still a direct tidelands expense.
- Stop taking cost of Fire/EMS (\$1.8M)
 - ▣ FY 10-11 Changes = lesser amount.
 - ▣ Still a direct tidelands expense.

What if we did run a surplus?

- We are still obligated to charge Fair Market Rental Value.

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.

Beacon Bay Bill

- Granted to the City all filled and unfilled State tidelands and submerged lands that existed in the city limits as of July 25, 1919 (§1)

□ Section 1(b) ... City or its successors shall not, at any time, grant, convey, give, or alienate the lands, or any part thereof, to any individual, firm, public or private entity, or corporation for any purposes whatever.

Beacon Bay Bill

- Establishes a separate tidelands trust fund ... deposit in the fund or funds all money received .. from ... granted tidelands (§1(i)).
- Must use revenues accruing from tidelands on public trust lands within Newport Beach (§1(i)).
- Capital Improvements of \$250K or above must be approved by the State Lands Commission (§1(k)).

Beacon Bay Bill

- Every 3rd Fiscal Year excess revenue over \$250K shall be distributed this way (§1(l)):
 - 85% to the State of California
 - 15% retained by City for tidelands reserve purposes.
- Every year City must submit detailed statement of receipts and expenditures (§1(r)).

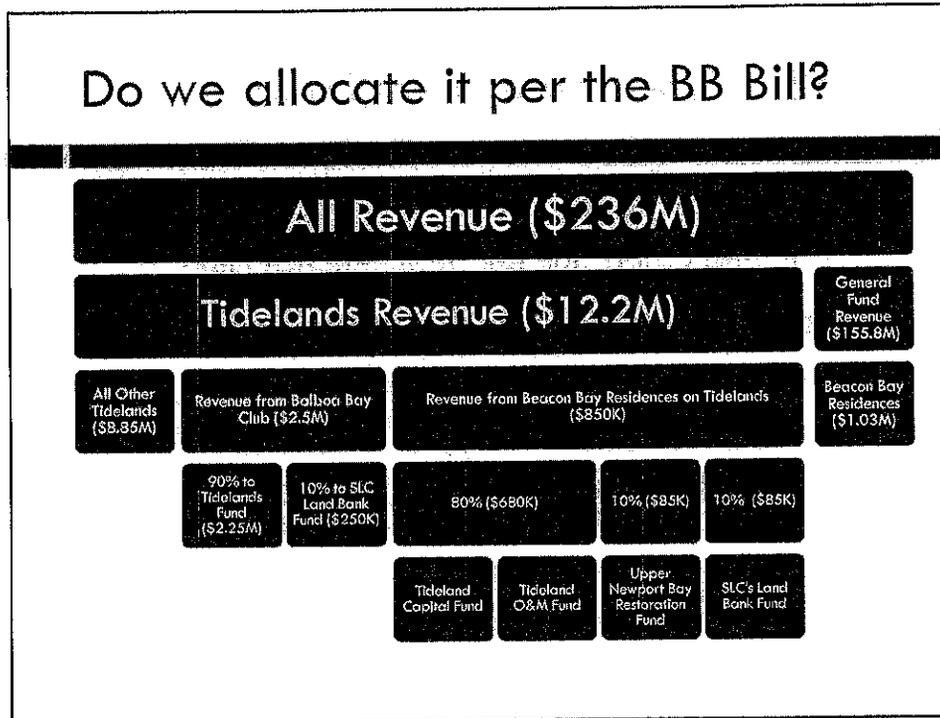
BBB: Three Tidelands Funds

- Tidelands Capital Fund
- Tidelands Operation and Maintenance Fund
- Upper Newport Bay (UNB) Restoration Fund

Four Tidelands Funds

- Tidelands Capital Fund
- Tidelands Operation and Maintenance Fund
- Upper Newport Bay (UNB) Restoration Fund
- Newport Harbor Capital Fund (created 2-12-13)
 - ▣ Revenues: Incremental increase in harbor rents
 - ▣ Expenditures: Tidelands Capital Plan

Do we allocate it per the BB Bill?



In Summary

- Today, Tidelands Fund combines Harbor & Not Harbor
- Revenues and Expenses calculated annually
 - In Budget Detail and CAFR - www.newportbeachca.gov
- Beacon Bay Bill + CA Constitution + Public Trust Doctrine =
 - No gifting of tidelands assets
 - BBB Sets up three funds
 - City reports rev/expense annually
- Audited annually w/Annual Financial Statements

The Allocations

- Could we change?
 - Yes. We're open to suggestions.
- Has it changed?
 - Yes.
- Has it been per code?
 - We believe so, yes.

Tidelands Maps

- Tidelands
- Fire Service Areas
- Police Service Areas

