

# Understanding The Tidelands: A Rich History Of Public Trust

## City Continues Legacy Of Oil Properties And Port Development

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**N**ext year marks a 100-year-long relationship between the City of Long Beach and the State of California that has facilitated the development of the nation's second busiest trade complex, a sprawling harbor of marinas, commercial infrastructure and a cash crop of oil fields, in an area known as the tidelands.

In light of that anniversary, and because of the recent vote on Measure D that is expected to result in the transfer of tens of millions of more Port of Long Beach dollars to the city's Tidelands Operating Fund (TOF), the Business Journal is presenting a two-part story on the tidelands. Part one focuses on the history and the relationships among the city, port and the state. Part two zeroes in on the money – where it's been spent and what the needs are – and why the TOF is reportedly going to be in the red in a few years.

It all started in 1911, when the state granted the city control over the tidelands area in trust for the state during a time when Long Beach was largely undeveloped. The tidelands are defined as land and waterways from the mean high tide line to three miles offshore (refer to drawing on jump page). The purpose was to develop, “commerce, navigation, fisheries and recreation,” under a public trust doctrine, meaning any development and revenues from such development would have to benefit the state as a whole rather than merely neighboring communities, according to city staff reports.

Throughout the century, the trust doctrine, overseen by the three-member California State Lands Commission, has changed drastically and what exactly is considered state public land use has been a debate for some time, leading to lawsuits and jurisdictional amendments over the years. After legal battles and the state changing the city's use of tidelands property, those same discussions exist today.

“There's been litigation and settlements that additionally defined uses of the tidelands revenues and expenditures . . . and where you could

spend it,” said Charles Parkin, a Long Beach city attorney. “Various expenditures have been used and questioned and gone back and forth . . . But what's very clear is that you cannot use tidelands money for General Fund or general city purposes. That's prohibited and nobody is talking about doing anything like that.”

Since the water rises through deep inlets, many fingers of land fall under the tidelands area, which today covers vicinities such as Shoreline Village, Rainbow Harbor, marina docks, beaches, parks, bridges and other coastal areas. Before the turn of the century, the state had acquired nearly 4 million acres of tidal waterways, known as “sovereign lands,” which the state then granted upon cities to control and manage under trust of the state.

The agreement with the state pushed Long Beach to become a premier gateway for foreign trade with the construction of the Port of Long Beach, transforming the city from a popular seaside resort to the “International City.”

Up until the late 1930s, Long Beach had much more discretion of tidelands properties within its city limits, as long as used for public land uses for mostly commerce and the development of the harbor. But that all changed after oil came into the picture.

### Oil Property Revenues

The discovery of vast oil wells, mainly in the West Wilmington Oil Field, in the 1930s, set in motion a majority of infrastructure in the harbor as the largest revenue source in the tidelands area. The California Supreme Court, determining that drilling for oil was compatible with the state's public trust, ruled that the trust agreement included handing over mineral interests to the city.

But the fact that large swaths of oil were located in public state trust land shortly created confusion over who would be able to reap the large benefits and what those revenues would be able to be spent on.

According to port staff reports, the city spent nearly \$140 million of tidelands oil revenue to build the harbor and other related activities by 1951 and still had about \$100



million left over. About \$50 million of those funds were spent on general city uses, authorized by the governor and State Legislature, which later was determined to be in violation of the state trust. The landmark ruling has since been at the forefront of many California court cases.

In the early 1990s the port purchased the 725-acre Union Pacific Railroad site, within the Wilmington Field, for \$405 million for the land and mineral rights. Since then, the port has been operating and managing oil production from that site and receiving the generated income. More recently, the city entered into a contract with Occidental Petroleum to drill for new oil wells, some of which are located in the harbor district.

However, the City Charter states that the Long Beach Gas and Oil Department has sole control over all of the city's oil operations and revenues, even in the harbor district. Just recently this year, an amendment through Measure D that clarifies that terminology, according to the city, was passed by a majority of voters.

Oil operations and budgets for revenues of those operations is the only specific provision in which the state lands commission can re-

view the city's management of its public trust lands, according to state lands staff.

### Tidelands Operating Fund

All revenues and expenditures dealing with the tidelands area trust funds are held in the city's Tidelands Operating Fund, an umbrella fund with several branches that allocates the following expenditures: tidelands operations (police, fire, lifeguards, recreation, beach maintenance) and repairs, replacement and construction of capital assets, according to the 2010 fiscal year budget. There are over \$7 million in proposed capital assets that have yet to be paid.

Various subfunds are part of the overall Tidelands Fund, including Tidelands Operations Fund, the Marina Fund (Alamitos Bay and Shoreline marinas), Queen Mary Repair Reserve Fund and Rainbow Harbor Area Fund. Expenditures and revenues for each fund are overseen at the lowest level by various subcommittees and then eventually approved by the Long Beach City Council, through various budget hearings and meetings. The State Legislature has 23 legislative acts, which govern the use of the state's tidelands, with statutes that remain in effect and provide the boundaries of use.

Sources of revenue for tidelands operations include: permit fees and rents from various waterfront concessions, leases from the Long Beach Entertainment & Convention Center and Hyatt Hotel, revenues from the Aquarium of the Pacific, Queen Mary rent, parking revenue from beach lots, transfers from the Harbor Fund and from the Tidelands Oil Revenue Fund's Optimized Waterflood Program.

The largest revenue source for tidelands operations includes the harbor transfer from the port, which is 45 percent of the near \$52.9 million allocated revenue expected for fiscal year 2011, while the largest expense for operations in the tidelands is fire services at 37.4 percent of \$46.2 million in expenditures.

The city, over the years, has used a majority of tidelands funds on large infrastructure projects that today can be considered structures that benefit the entire state through tourism as key promotional assets.

For instance, the Queen Mary was purchased through tidelands money in 1967, which resulted in a settlement agreement between the state and the city. The ship now is owned by a separate entity but the city still owns the property as the landlord and receives subsequent revenues from a long-term ground lease, which those funds then go back into repairs for the ship.

The Long Beach Entertainment & Convention Center and Long Beach Arena were also constructed through the use of tidelands funds. Other key assets in the tidelands area that generate ground lease revenues include the wharf that harbors the Carnival Cruise Line and the site currently occupied by the Catalina Express operation.

The Rainbow Harbor Area Fund revenue comes largely from dock rentals, the Pierpoint Landing lease, and other operating transfers from the tidelands, according to the city budget. The Aquarium parking structure, however, essentially pays for itself with revenues restricted for use in operating and maintaining the building, in addition to debt service and net proceeds accruing to the benefit of the Aquarium.

The Pike at Rainbow Harbor, while owned and constructed by Developers Diversified Realty (DDR), is still under a ground lease with the city and subsequent rent from that lease is received as tidelands revenue. However, the state lands commission still has jurisdiction over whether those uses, and various other properties within the tidelands, are allocated for public trust purposes, according to Parkin.

“One of the challenges the developer faces is that the lease between the city and DDR contains the restrictions that they have to develop it consistent with the tidelands trust guidelines and so they have faced certain challenges on renting the parcels and making sure they are appropriate trust uses,” he said.

Subsequently, at one point the city had proposed switching a portion of The Pike property with another area outside of the tidelands to help alleviate those concerns, but currently all the land remains in tidelands control, Parkin added. “There's still a lot of stuff going on with the tidelands down there in that DDR parcel, but as we speak today it's in the trust,” he said.

In addition, one of the last times the city was thoroughly looked into by the state lands commission for spending funds on general city purposes was back in the 1960s and '70s, when the city spent General Fund money in the tidelands area and then wanted to be reimbursed for those expenditures to go toward citywide uses, Parkin said.

“There was a settlement agreement between the city and the state lands commission on those expenditures which allowed some reimbursement and disallowed some others so it went back and forth,” he said. “Tidelands money and tidelands restricted revenue has to stay and be used in the tidelands. That's the general rule that everyone has to abide by.” ■