

HARBOR DIVISION

425 S. PALOS VERDES ST.

P.O. BOX 151

SAN PEDRO, CA 90733-0151

FACSIMILE

(310) 831-9778

(310) 732-3750



OFFICE OF THE CITY ATTORNEY
CARMEN A. TRUTANICH
CITY ATTORNEY

THOMAS A. RUSSELL
GENERAL COUNSEL

JOY M. CROSE
ASSISTANT GENERAL COUNSEL

CHRISTOPHER B. BOBO
ESTELLE M. BRAAF
JOHN T. DRISCOLL
TIMOTHY A. HOGAN
JUSTIN HOUTERMAN
SIMON M. KANN
JANET KARKANEN
KENNETH F. MATTFELD
HEATHER M. MCCLOSKEY
ESTHER S. OLSEN
STEVEN Y. OTERA
MINAH PARK

DATE: FEBRUARY 26, 2013

FROM: OFFICE OF THE CITY ATTORNEY

**SUBJECT: ORDER NO. _____ APPROVE FIRST AMENDMENT TO PERMIT
708 WITH KINDER MORGAN TANK STORAGE TERMINALS LLC**

SUMMARY:

Kinder Morgan Tank Storage Terminals' permit to operate the marine oil terminal at Berths 118-119 expires on April 13th. The proposed amendment extends the permit for 5 years to allow for limited continued operations, demolition and cleanup in consideration of a settlement in litigation involving cleanup of the former marine oil terminal at Berths 171-173. The two terminals are identified on the attached aerial photo.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Subject to your concurrent approval of a proposed settlement in City v. Kinder Morgan Liquids Terminals *et al.*, Los Angeles Superior Court Case No. NC 041463, approve and authorize the Executive Director to execute the First Amendment to Permit 708 extending its term from twenty-five to thirty years.
2. Direct the Board Secretary to transmit the Settlement Agreement and the First Amendment to City Council for its approval pursuant to Section 273(c) and Section 606 of the Charter respectively.
3. Authorize the Executive Director to execute and the Board Secretary to attest to the permit amendment upon approval of the City Council; and
4. Adopt Order No. _____.

DATE: FEBRUARY 26, 2013

PAGE 2 OF 6

SUBJECT: FIRST AMENDMENT TO PERMIT 708

DISCUSSION:

Amendment and Extension of Permit 708 - Effective in 1988, Permit 708 granted GATX Tank Storage Terminals Corp. (GATX) the use of approximately 10 acres of land at Berths 118-119 including nearly 100,000 square feet of subsurface pipeline right-of-way that facilitates connections to inland refineries and tank farms. GATX was the third tenant to operate this liquid bulk terminal originally constructed in 1922. The facility contains eighteen above-ground storage tanks with a combined capacity of over 500,000 barrels. The terminal has handled crude oil, fuel oil, naphtha, gas oil, gasoline, toluene, and methyl tertiary butyl ether (MTBE). In 2000, Kinder Morgan Energy Partners acquired GATX Tank Storage Terminals Corp. and continues to operate the terminal as Kinder Morgan Tank Storage Terminals LLC (Kinder Morgan).

Permit 708 has a twenty-five year term, expiring in April this year. In 2009, the City of Los Angeles (City) gave notice that Permit 708 would not be renewed. Kinder Morgan has made plans to move its operations to the Port of Long Beach, but due to construction delays would like to continue limited operations at Berths 118-119, in particular, to make use of the vapor recovery system that captures fumes from vessels as they are loaded.

Under the proposed amendment, Kinder Morgan could continue to import and export product at Berths 118-119 until April 2017. Demolition of most of the storage tanks and dike walls would begin in 2013 upon issuance of an engineering permit by the City. Remediation of the demolished portions of the site will follow, and remediated portions of the site will be surrendered back to the City and the rent reduced accordingly. One storage tank, with sufficient capacity to fill the pipeline connection to Kinder Morgan's Carson tank farm, will be needed for continued operations. Demolition and remediation of the site were previously analyzed as required by the California Environmental Quality Act in the *GAXT Lease Renewal Berths 118-119 Facility Final Environmental Impact Report* (ADP No. 880413-056, SCH # 90010710) certified by the Board in 1995.

The Berths 118-119 site is under a Cleanup and Abatement Order issued by the Regional Water Quality Control Board in 1997. Under the proposed amendment, Kinder Morgan will undertake a dig-and-haul remediation of the site that meets the City's and Water Board's standards.

Other key provisions of the amendment include:

- The rent is reset to \$32 per square foot per year for the term of the extension, up from the current rate of \$29 per square foot per year. The 75% discount for subsurface right-of-ways is continued.

DATE: FEBRUARY 26, 2013

PAGE 3 OF 6

SUBJECT: FIRST AMENDMENT TO PERMIT 708

- A fixed deadline of December 31, 2015 is established for surrender of the eastern portion of the tank farm.
- Should Kinder Morgan hold over on any parcels without prior authorization, including partial surrender of the east portion of the terminal, the rent changes to 250% of the original.
- Kinder Morgan becomes responsible for any engineering analysis and any wharf upgrades needed to satisfy the Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) imposed by the State Lands Commission.
- The remedial action plan must, at a minimum, provide for the excavation of all soil within and above the intertidal zone that has a total petroleum hydrocarbon concentration in excess of 1,000 mg/kg (the same remedial scheme being implemented by the City at Berth 171-173).
- Kinder Morgan Energy Partners LP will guarantee the obligations of Kinder Morgan Tank Storage Terminals LLC.

The Office of the City Attorney will provide the Board with periodic updates on the progress of Kinder Morgan's sequential retreat from Berth 118-119 site.

Litigation Settlement Regarding Harbor Terminal at Berths 171-173 - The aforementioned lease extension is proposed in consideration of sister company Kinder Morgan Liquids Terminals LLC's offer to settle ongoing litigation over another marine oil terminal at Berths 171-173 on Mormon Island. The proposed settlement agreement can be discussed in closed session if any board member has questions.

Prior to its demolition in 2003, the site contained 19 above-ground storage tanks, truck loading racks, pumping stations, a wharf with loading booms, utility sheds and an office building. Over the course of its 75-year history, the 14-acre terminal became heavily oiled as a result of tank leaks. The City filed a complaint in July 2005 asserting causes of action for nuisance, negligence, breach of contract, and contribution pursuant to the Water Code against Kinder Morgan Liquids Terminals (the successor of GATX), which operated the terminal from 1982 to 1999, ConocoPhillips, which operated the terminal from 1968 to 1982, and Texaco which operated the terminal from 1923 to 1968. Neighboring marine terminal operator Shell Oil Company and neighboring pipeline operator Equilon Enterprises LLC were subsequently added as defendants due to the presence of MTBE and diisopropyl ether (DIPE) in groundwater at the site. The site is

DATE: FEBRUARY 26, 2013

PAGE 4 OF 6

SUBJECT: FIRST AMENDMENT TO PERMIT 708

under a Cleanup and Abatement Order issued by the Regional Water Quality Control Board in March 2008.

Trial in this matter was repeatedly postponed by the Superior Court and eventually put under a stay order halting all litigation until the Regional Water Quality Control Board approved a final remedial action plan. Those final approvals were finally received last September but are still subject to an administrative petition filed by Kinder Morgan asking the State Water Resources Board to review the cleanup goals set by the Regional Water Quality Control Board.

In 2008, settlements were concluded with Texaco and ConocoPhillips wherein they agreed to reimburse 25% and 15%, respectively, of the City's costs to investigate, monitor, and remediate the terminal, subject only to a ten-year sunset clause. Shell Oil Company, Equilon Enterprises LLC and Kinder Morgan remain as defendants. The litigation stay was recently lifted but still no trial date is set. The City is currently preparing a bid specification package to implement the approved remedial action plan and expects to commence the remediation project this summer. The remediation plan calls for excavation and disposal of roughly 256,000 tons of soil at a cost of approximately \$18 million.

CONCLUSION:

Subject to approval of the concurrent litigation settlement, approval of the proposed amendment and Permit extension is recommended as it commits Kinder Morgan to a City-approved remedial plan, imposes a schedule for execution of the remedial plan, allows the City to continue to collect rent and wharfage on a property for which there are no current redevelopment plans, and facilitates settlement of the Berths 171-173 litigation.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of an Amendment to Permit No. 708 with Kinder Morgan to allow continued operation of a portion of the leasehold for five years. The operations will be limited to loading and offloading of ships and will not expand that operation beyond existing conditions. Overall, the operations of the leasehold will decrease, as a portion of the site will cease operation upon the expiration of the original Permit term in April of 2013. Therefore, as an activity involving the amendment of a permit to use an existing facility involving negligible or no expansion of use, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the Environmental Quality Act (CEQA) in accordance with Article III Class 1 (14) of the Los Angeles City CEQA Guidelines.

DATE: FEBRUARY 26, 2013

PAGE 5 OF 6

SUBJECT: FIRST AMENDMENT TO PERMIT 708

ECONOMIC IMPACT:

Approval of the proposed First Amendment will have no employment impact. Demolition and remediation associated with this Amendment is anticipated to support positive construction jobs. At this time, it is premature to evaluate economic benefit without any knowledge of the construction cost.

FINANCIAL IMPACT:

Approval of the proposed First Amendment with Kinder Morgan Tank Storage Terminals resets the rent based on a land value of \$32 per square foot and extends the term allowing for the collection of approximately \$1.8 million per year in rent plus undetermined wharfage fees for the first two and one-half years and approximately \$800,000 per year in rent plus undetermined wharfage for the last two and one-half years.

///

///

DATE: FEBRUARY 26, 2013

PAGE 6 OF 6

SUBJECT: FIRST AMENDMENT TO PERMIT 708

CITY ATTORNEY:

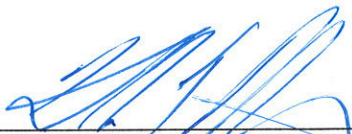
The Office of the City Attorney has reviewed and approved the proposed First Amendment as to form and legality.

TRANSMITTAL:

1. First Amendment to Permit 708 extending its term from twenty-five to thirty years
2. Order No. _____

FIS Approval: WP (initials)

CA Approval: CPB (initials)



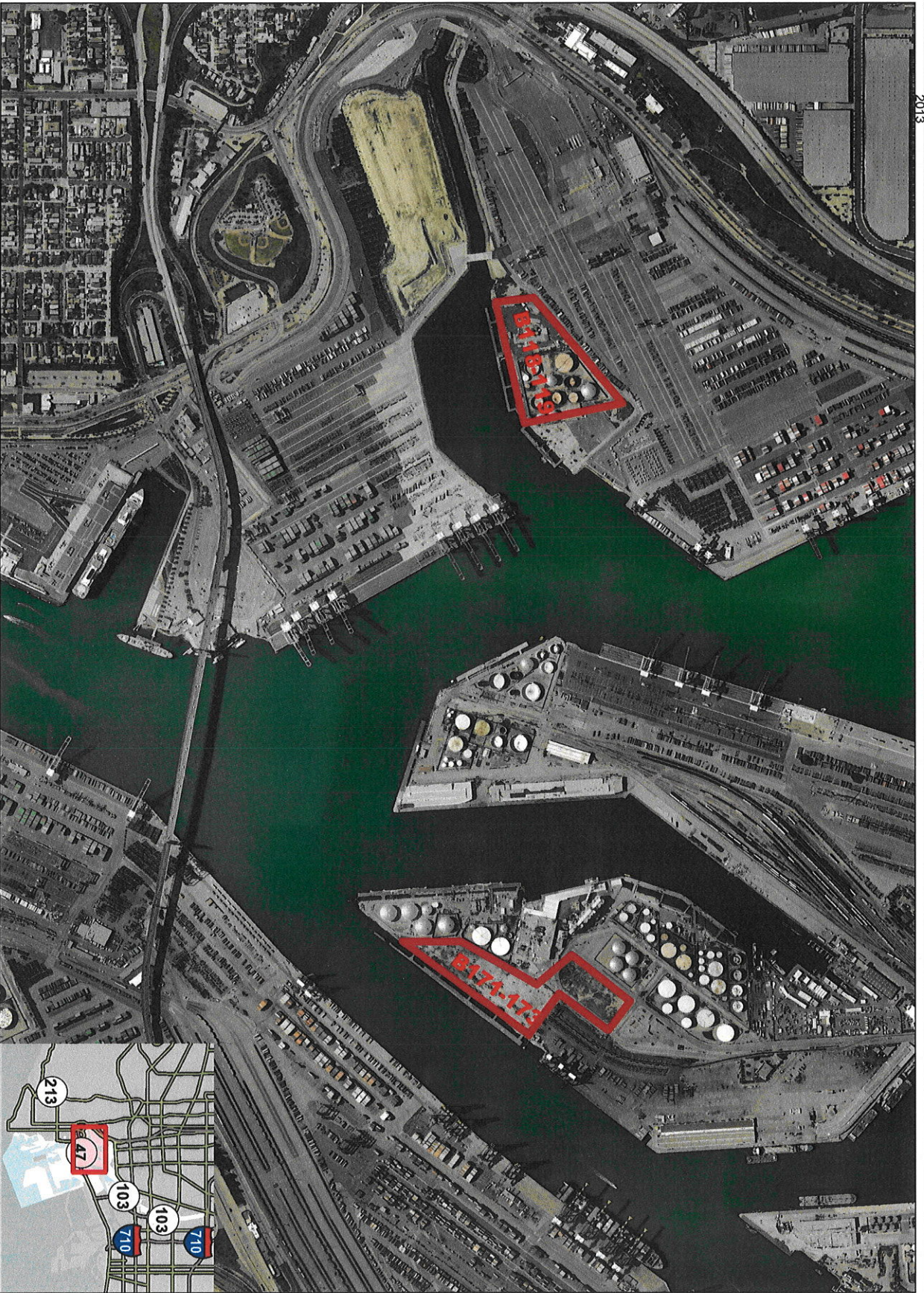
KENNETH F. MATTFELD
Deputy City Attorney



CHRISTOPHER B. BOBO
Assistant City Attorney

APPROVED:

By Geraldine Knatz
GERALDINE KNATZ, Ph.D.
Executive Director



Legend



SCALE 1 : 15,884

0

2,647.4 Feet



This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

