

## FIRST AMENDMENT TO PERMIT NO. 708

### Recitals

WHEREAS, effective April 14, 1988, the City of Los Angeles granted Permit No. 708 to GATX Tank Storage Terminals Corporation for the operation of a marine oil terminal at Berths 118-119 and various subsurface pipelines throughout the Harbor District;

WHEREAS, on September 16, 1997, the Los Angeles Regional Water Quality Control Board issued Cleanup and Abatement Order No. 97-119 requiring, among other things, that GATX Tank Storage Terminals Corporation "cleanup and abate the on-site and off-site soil and ground water contamination originating from the terminal at berths 118-119 in the Port of Los Angeles, California;"

WHEREAS, Kinder Morgan Tank Storage Terminals LLC is the successor of GATX Tank Storage Terminals Corporation;

WHEREAS, Permit 708 has a twenty-five (25) year term expiring on April 13, 2013, however Kinder Morgan Tank Storage Terminals desires to extend the term in order to:

- a) continue product export operations using wharf and the portion of the marine oil terminal occupied by the vapor recovery system,
- b) continue product import operations using wharf and the portion of the marine oil terminal occupied by the vapor recovery system, and
- c) fulfill its demolition, remediation and restoration obligations under the Permit;

WHEREAS, the City desires to clarify Kinder Morgan Tank Storage Terminals' obligations with respect to the scheduling and the nature of the soil and groundwater remediation effort;

WHEREAS, this Amendment is made pursuant to, and in consideration of, a litigation settlement in *City of Los Angeles v. Kinder Morgan Liquids Terminals LLC et al.*, Los Angeles County Superior Court case number NC041463.

NOW, THEREFORE, in consideration of the foregoing Recitals, and in exchange for the promises contained herein and other good and valuable consideration the adequacy of which is hereby acknowledged, the Parties agree as follows:

Amendment

1. Section 2, Premises, is revised as follows:

(a) A new sketch is attached reflecting an anticipated subdivision of Parcel 1 on Harbor Engineer drawing 2-2151-2 into Parcels 1a and 1b. The sketch is provided for the purpose of illustrating the stepwise process of demolition and remediation contemplated herein. Following the first phase of demolition and remediation and upon Kinder Morgan's surrender of Parcel 1b, a new Harbor Engineer drawing 2-2151-3 will be prepared to reflect the actual subdivision lines and square footage for the purpose of adjusting rent.

(b) Parcel 9 (a subsurface pipeline right-of-way) on drawing 1-1214-1 is deleted from the Premises contingent upon execution of an amendment adding the same subsurface right-of-way to existing Revocable Permit 07-18 with Paramount Petroleum. *(The GX-130 line that occupies Parcel 9 was sold by Kinder Morgan to Paramount and R/P 07-18 was issued to Paramount in 2007 in connection with that sale).*

(c) Harbor Engineers drawing 2-2267-1, formerly associated with Revocable Permit 88-05, is appended to the Permit and Parcels 1a, 1c, 3, 7 and 7a on drawing 2-2267-1 are added to the Premises. *(Kinder Morgan took RP 88-05 by assignment from BP. Remaining parcels 1b, 4, 5 and 6 on drawing 2-2267-1 are within, and subsumed by, the Permit 708 premises.)*

2. Section 3, Term, subsections (a), Length, and (b) Holdover, are replaced by the following:

(a) Length. The term of this Agreement shall be for a period of thirty (30) years, commencing on April 14, 1988, but subject to the following milestones for cessation of operations, demolition, and the completion of soil and groundwater remediation and surrender of the premises. Tenant's failure to meet any of these milestones shall subject Tenant to the default and termination provisions in Section 6 of the Permit.

(i) Tank Farm, Parcel 1b on the attached sketch (*East tank farm area except Tanks 55734 or 10735 and 5742*) and *Parcels 3 (surface manifold) and 5 (pipeline right-of-way on Drawing 2-2151-2)*; *Parcels 1c, 3, 7 and 7a on Drawing 2-2267-1*:

- Operations Cease by April 14, 2013.
- Demolition commences within thirty (30) days of receipt by Kinder Morgan of all necessary and required permits and approvals.
- Soil and groundwater remediation commences by following the completion of demolition and within 10 (ten) days of the issuance of an approved Remedial Action Plan by the Regional Water Quality Board and the receipt by Kinder Morgan of any other permits and/or approvals necessary to implement soil and groundwater remediation.
- Surrendered to City within 12 months of commencement of remediation but in no case later than December 31, 2015, provided timely receipt of demolition permit from City.

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(ii) Office and Vapor Recovery Unit, Parcel 1a on attached sketch (incl. Tanks 55734 and 10735) and Parcels 2 (wharf) and 4 (pipeline right-of-way) on Drawing 2-2151-2); Parcel 1a on Drawing 2-2267-1; Parcels 1 – 5 on Drawing 2-2085-1; Parcel 1 on Drawing 5-7085-1; Parcels 1-8, 10, 11A, 11B on Drawing 1-1214-1:

- Operations cease by April 13, 2017.
- Demolition commences within thirty (30) days of receipt by Kinder Morgan of all necessary and required permits and approvals.
- Soil and groundwater remediation commences within 10 (ten) days following completion of demolition and the receipt by Kinder Morgan of any other permits and/or approvals necessary to implement soil and groundwater remediation.
- Surrendered to City on or before April 14, 2018.

(b) Holdover. Tenant shall not hold over any part of the Premises after the Surrender Date for that part as set forth above unless it submits a written request to hold over to the Executive Director of City's Harbor Department ("Executive Director"), and Executive Director thereafter approves such request in writing. The City recognizes Tenant's right and ability to request such an approved holdover shall include, but not be limited to, that situation in which Tenant is making substantial progress toward the completion of its obligations under this Permit, as amended, but needs additional time beyond the expiration of the extended Lease term to complete said obligations. Under such circumstances, Tenant's request for an approved holdover tenancy shall not be unreasonably delayed or denied. Any holdover shall be deemed an extension of this Agreement on a month-to-month basis and on the same terms and conditions as set forth in this Agreement, except that, if Executive Director, prior to the Expiration Date, has not provided written approval of a written request from Tenant to hold over, the Rent (as defined in Section 4) applicable to each part of the Premises at the commencement of such holdover, at the sole and absolute discretion of Executive Director, may be increased up to two hundred and fifty percent (250%) of the Rent last in effect for that part before such holdover commenced. If Executive Director has provided written approval of a written request from Tenant to hold over prior to the

Expiration Date, the Rent applicable at the commencement of such holdover shall be the Rent last in effect before such holdover commenced. City and Tenant acknowledge and agree that: (a) this section shall neither be deemed nor treated as a limitation or waiver of any rights or remedies of City provided in this Agreement or at law (all of which are reserved, including, without limitation, an action for unlawful detainer), an option to extend the Agreement, express or implied commitment to pursue or issue any approvals or entitlements, or express or implied permission for Tenant to remain on any part the Premises after the surrender date applicable to that part; and (b) City expressly reserves the right to require Tenant to surrender possession of each part of the Premises to City as provided in this Agreement on the applicable surrender date or sooner termination of this Agreement. Notwithstanding the foregoing, Tenant shall be entitled to request that the City approve holdover tenancy as stated hereon.

(c) Post Surrender Ground Water Treatment & Monitoring. Tenant shall be granted access to the Premises after any and all Surrender Dates free of rent or any other charges for the purpose of monitoring or treating ground water as required by the RWQCB. Such monitoring and treatment shall occur through wells installed and maintained at Tenants sole cost and expense.

3. Section 4, Rent, subsection (a), Amount Payable, is replaced by the following:

During the last five-year period of the term of this Agreement, from April 14, 2013 through April 14, 2018, Tenant shall pay, in advance to City as rental for the use of each part of the Premises not yet surrendered to City, one fourth of the following sums each and every calendar quarter, plus all tolls and charges pursuant to Port of Los Angeles Tariff No. 4 for use of the wharf. Annual rent is computed at \$3.20 per square foot, with the rent for subsurface rights-of-way discounted by 75%.

Said rental shall be due and payable on or before the first day of each quarter. Tolls and other charges assessed pursuant to Tariff No. 4 are due and payable as set forth therein. Tenant shall render its payments at City's Harbor Department Administration Building or any other place that City from time to time may designate in



<u>Drawing</u>	<u>Parcel</u>		<u>Area</u>	<u>Annual Rent</u>
1-1214-1	1	Subsurface	27,739	22,191.20
	2A	Subsurface	5,604	4,483.20
	2B	Subsurface	14,089	11,271.20
	3A	Subsurface	5,467	4,373.60
	3B	Subsurface	12,942	10,353.60
	4A	Subsurface	681	544.80
	4B	Subsurface	1,000	800.00
	5A	Subsurface	906	724.80
	5B	Subsurface	696	556.80
	6	Surface	260	832.00
	7	Surface	173	553.60
	8	Subsurface	458	366.40
10	Surface	1,539	4,924.80	
11A	Subsurface	34	27.20	
11B	Subsurface	173	138.40	
2-2151-2	1	Surface	538,040	1,721,728.00
	2	Wharf		Charges per Tariff
	3	Surface	525	1,680.00
	4	Subsurface	725	580.00
	5	Subsurface	405	324.00
5-7085-1	1	Subsurface	500	400.00
2-2085-1	1	Subsurface	5,200	4,160.00
	2	Subsurface	12,891	10,312.80
	3	Subsurface	528	1,689.60
	4	Subsurface	200	160.00
	5	Subsurface	23	18.40
2-2267-1	1a	Subsurface	25,209	20,167.20
	1c	Subsurface	2,042	1,633.60
	3	Subsurface	365	292.00
	7	Subsurface	369	295.20
	7a	Subsurface	164	131.20
Total, before surrender and excluding Tariff . . . . .				1,825,713.60

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4. Section 8, Maintenance and Restoration, subsections (b), Restoration and Surrender of Premises, and (c), Hazardous Material, are replaced by the following:

(b) Restoration and Surrender of Premises.

(i) Tenant's Obligation To Prepare Required Documents and Reports to the Los Angeles Regional Water Quality Control Board

Tenant shall submit all future required environmental documents to City, the sufficiency of which is subject to City's reasonable approval. Tenant, at its sole cost and expense, shall conduct any additional assessment of existing Contamination in ground water, soil and soil gas at the Premises as required by the RWQCB to address same. Tenant shall provide a draft of the required project environmental documents and reports ("Reports") to the City prior to submittal to the RWQCB. City shall have thirty (30) calendar days from receipt of a Report to review and approve or disapprove of same. City's approval of any Report shall not be unreasonably withheld. If City does not disapprove of a Report in writing to Tenant within thirty (30) calendar days of receipt of such Report, the Report shall be deemed approved by City. The Parties shall make a good faith effort to reach agreement on the content of the Reports.

In order to gain City's approval, the Remedial Action Plan must, at a minimum, provide for:

- The removal of any soil with within and above the intertidal zone that has total petroleum hydrocarbon concentration equal to or greater than 1,000 mg/kg.
- The extension of remedial actions beyond the Premises boundaries where contamination of adjacent property is determined to be the result of Tenant's marine terminal or pipeline operations, and where the City determines that remedial actions will not disrupt other operations in the harbor area.

- The installation of permanent groundwater monitoring / treatment wells following soil remediation.
- The monitoring and/or treatment at Tenant's sole cost as needed following the Surrender Date and Expiration Date of this Agreement.

Tenant is free to negotiate soil, soil gas and ground water cleanup levels with the RWQCB, however: a) City is not obligated to support Tenant in such negotiations and may take a position adverse to Tenant in negotiations and proceedings before the RWQCB; and b) Neither Tenant's failure to reach agreement on cleanup goals nor any administrative or legal proceedings initiated by Tenant with respect to cleanup goals shall relieve Tenant of its obligations to meet the milestones set forth in Section 3.

(ii) Tenant's Restoration Obligation. On or before the surrender date associated with each part of the Premises, or any sooner termination of this Agreement, including termination pursuant to Section 6, Default and Termination, unless otherwise excused in writing by Executive Director, Tenant shall quit and surrender possession of each part of the Premises to Board.

Tenant agrees to remove all debris and sunken hulks from channels, slips and water areas within or fronting upon Premises not solely caused by City. Tenant expressly waives the benefits of the "Wreck Act" (Act of March 3, 1899) 33 U.S.C. Section 401 et seq. and the Limitation of Liability Acts (March 3, 1851, c. 43, 9 Stat. 635) (June 26, 1884, c. 121, Sec. 18, 23 Stat. 57) 46 U.S.C. 189 (Feb. 13, 1893, c. 105, 27 Stat. 445) 46 U.S.C. Sec. 190-196 and any amendments to these Acts if it is entitled to claim the benefits of such Acts.

Tenant shall obtain any permits necessary and shall perform the Remedial Action Plan and prepare any manifests or waste profiles necessary for the disposal of soil or water generated as a result of the Remedial Action Plan.

All permits, manifests and waste profiles necessary for the Remedial Action Plan shall list Tenant as the permittee or generator and shall be signed by or on behalf of Tenant.

Tenant shall Restore the Premises at its sole cost and expense, which restoration shall include demolition and the investigation, removal, remediation, mitigation or other response to contamination of ground water, soil and soil gas on the Premises to the satisfaction of the RWQCB and the City, including payment of all applicable RWQCB oversight costs related thereto. Restoration means that Tenant, on the Surrender Date associated with each part of the Premises, will return that that part to the City:

- Unless excused by the City, free of all above- and below-ground works, structures, improvements, trade fixtures and pipelines of any kind (collectively referred to as "Structures"); and
- Free of any encumbrances including but not limited to deed or land use restrictions as a result of any Contamination and/or any liens (UCC, federal or state tax or otherwise) on the Premises or on fixtures or equipment, or personal property left on the Premises; and
- With all soil removal or treatment required by the Remediation Action Plan completed as confirmed by a written report certified by the contractor or consultant(s) performing the remediation.
- In a clean, level, graded and compacted condition with no excavations or holes resulting from Structures removed.
- With necessary ground water monitoring and treatment wells installed.

In order not to disrupt other operations in the harbor area, or for any other reason, City may request that certain sections of Tenant's subsurface pipelines be abandoned in place, thus waiving the removal requirement stated herein. Abandonment in place will require that the pipelines be flushed and slurry filled in accordance with the requirements of an engineering permit issued by the City, and require the delivery of as-built drawings reflecting the precise size, locations and end points of abandoned lines. City, in its sole

discretion and as a pre-condition to approval of abandonment in place, may require, that Tenant perform soil investigations to assure that pipeline leaks have not contaminated the right-of-way.

(iii) City's Option To Perform Restoration. If Tenant fails to fulfill the obligations of this Section 8(b), Restoration and Surrender of Premises, in the manner and on the schedule required, City shall have the right to perform such obligations at Tenant's cost. In that event, Tenant agrees to reimburse City for its reasonable costs, upon demand. Notwithstanding the foregoing, City reserves the right to accept any works, buildings or other improvements upon the Premises, including a change in the grade thereof in lieu of Restoration.

(iv) Restoration Indemnity. In addition to and not as a substitute for any remedies provided by this Agreement or at law or equity, Tenant shall defend, indemnify and hold harmless City from any and all claims and/or causes of action brought against City and from all damages and costs which arise out of or are related to:

- Claims brought by holders of liens on the Premises, Structures, and/or on fixtures and/or equipment or property left on the Premises following the Expiration Date; and
- Claims, causes of action, orders or enforcement actions pending against or in connection with the Premises, the Permitted Uses and/or this Agreement.
- Such indemnity is intended to and shall survive the expiration or earlier termination of this Agreement.

(v) Post Restoration Obligations. Tenant's obligations with regard to remediation of the premises shall survive expiration or earlier termination of this Permit. Tenant shall remain responsible for contamination of any and all soil, soil vapor, or ground water until a site closure or no further action letter is obtained from the RWQCB. Tenant shall take and analyze soil and ground

water samples as necessary to fulfill its obligations. Tenant shall be responsible for installing and maintaining ground water monitoring and treatment wells as necessary. Tenant shall replace wells at its own cost should existing wells be damaged or destroyed during construction or redevelopment of the Premises by the City.

(vi) No Relocation Assistance. Nothing contained in this Agreement shall create any right in Tenant or any sublessees of Tenant for relocation assistance or payment from City upon expiration or termination of this Agreement (whether by lapse of time or otherwise). Tenant acknowledges and agrees that it shall not be entitled to any relocation assistance or payment pursuant to the provisions of any state or federal law, including Title 1, Division 7, Chapter 16 of the California Government Code (Sections 7260 et seq.) with respect to any relocation of its business or activities upon the expiration of the term of this Agreement or upon its earlier termination or upon the termination of any holdover.

5. A new subsection is added to Section 11, Miscellaneous, as follows:

(t) Guarantee of Permit Obligations Prior to the execution of any amendment, Tenant shall furnish a corporate guarantee issued by Kinder Morgan Energy Partners LLP in a form satisfactory to the City Attorney of all of Tenant's obligations under this Permit.

6. A new subsection is added to Section 11, Miscellaneous, as follows:

(u) MOTEMS Compliance Notwithstanding the City's obligation to maintain the wharf as set forth in Section 8(a), the City makes no representations nor warranties regarding the ability of the wharf to meet the Marine Oil Terminal Engineering and Maintenance Standards ("MOTEMS") issued by the California State Lands Commission. Tenant shall be responsible for the cost of any

engineering studies, audits, wharf modifications, reinforcements or upgrades required to meet MOTEMS.

7. The effective date of this First Amendment shall be upon execution by the Executive Director following approval by the Los Angeles City Council.

Except as amended herein, all remaining terms and conditions of Permit No. 708, shall remain the same.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Permit No. 708 on the date to the left of their signatures.

THE CITY OF LOS ANGELES  
HARBOR DEPARTMENT

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Executive Director

KINDER MORGAN TANK STORAGE  
TERMINALS LLC

Dated: \_\_\_\_\_

By Thomas A. Barnigon  
Vice President  
\_\_\_\_\_  
(Print/Type Name and Title)

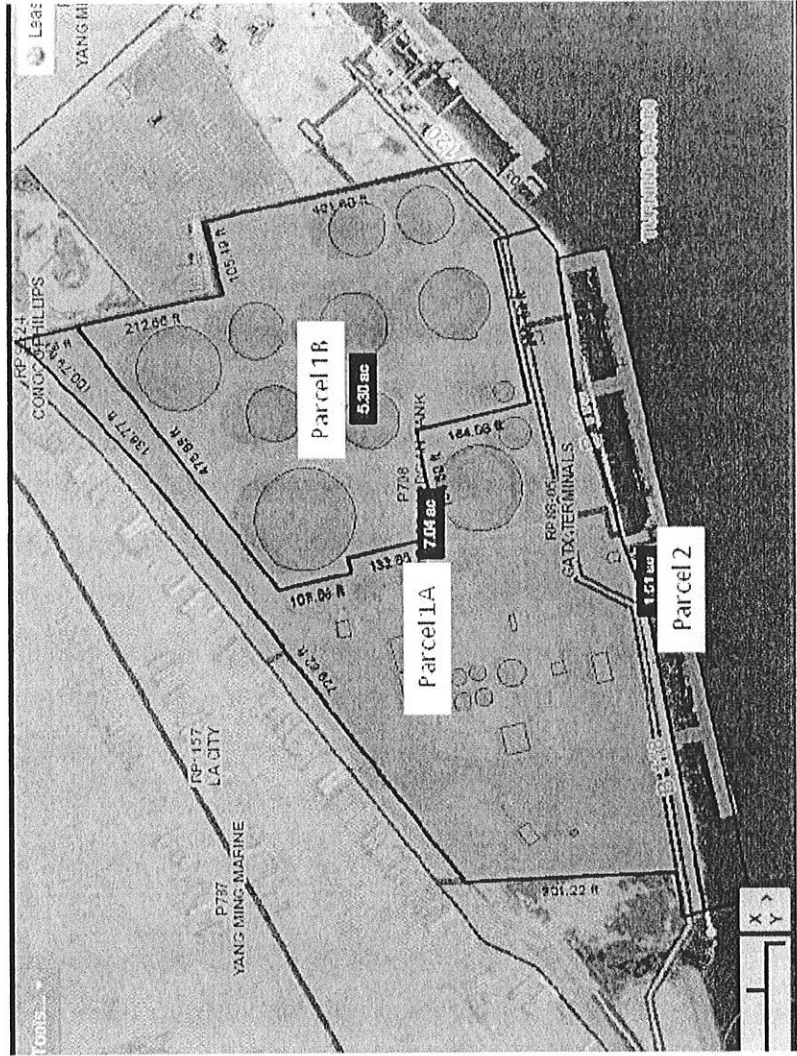
Attest \_\_\_\_\_  
\_\_\_\_\_  
(Print/Type Name and Title)

Approved as to form and legality

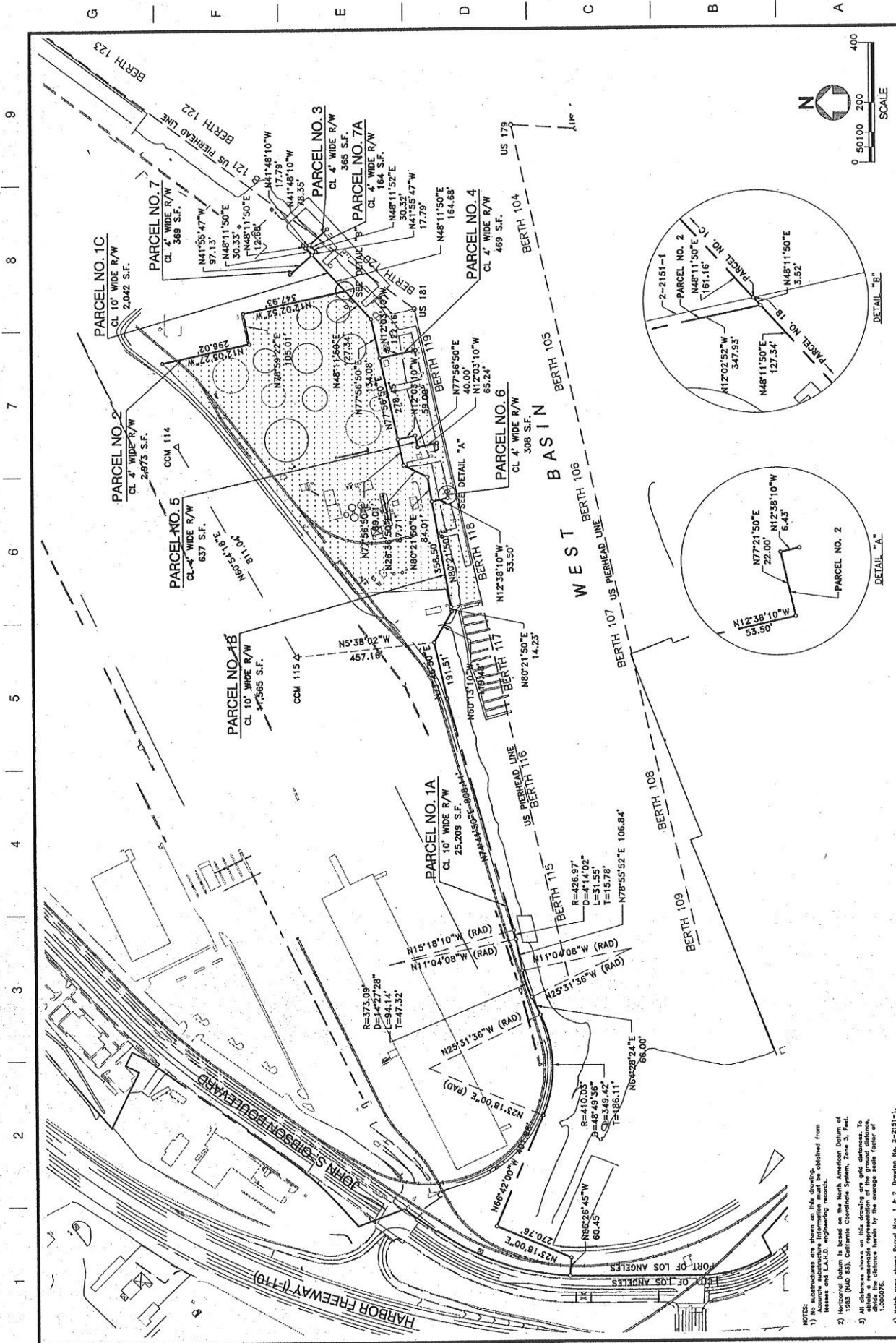
\_\_\_\_\_, 2013  
CARMEN A. TRUTANICH, City Attorney

By \_\_\_\_\_  
KENNETH F. MATTFELD, Deputy

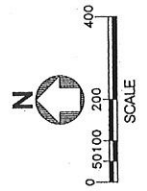
Kinder Morgan Permit 708 First Amendment Sketch



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NOTES:  
 1) No annotations are shown on this drawing, all dimensions are obtained from the original survey records.  
 2) Horizontal Datum is based on the North American Datum of 1983 (NAD 83), California Coordinate System, Zone 5, Feet.  
 3) All distances shown on this drawing are grid distances. To obtain the ground distance, multiply the grid distance by the average slope factor of 1.000076.  
 4) Hatch area shows Parcel Nos. 1 & 2, Drawing No. 2-2151-1.



NO.		DATE	DRAWN	REVISIONS
1	2-13	DIR		SELECTED PARCEL NO. 1 AND ADDED PARCEL NOS. 1A, 1B & 1C. CHANGED NAME AND CHANGED AUTHORITY NO. FROM PERHEAD TO P708.

CH'D	APP'D	SCALE	1"=200'
DRN	PSOMAS 4/03	DRAWN	PSOMAS 4/03
CHKD	PSOMAS 4/03	CHECKED	PSOMAS 4/03
DESIGNED	PSOMAS 4/03	DESIGNED	PSOMAS 4/03
ENGR/ARCH	ENGR/ARCH	ENGR/ARCH	ENGR/ARCH
 William S. McCall CHIEF MARINE ENGINEER	 Frank P. Brachmann CHIEF MARINE ENGINEER	 Robert J. Haddock ASSISTANT CHIEF MARINE ENGINEER	 William S. McCall CHIEF MARINE ENGINEER

PERMIT MAP - AUTHORITY NO. P708	
KINDER MORGAN TANK STORAGE TERMINALS	
DRAWING NUMBER 2-2267-1	
 THE PORT OF LOS ANGELES ENGINEERING DIVISION P.O. BOX 181 SAN PEDRO, CA 90730-0181	