

RECOMMENDATION APPROVED;
RESOLUTION 21-9894 (PERMIT 708) ADOPTED
BY THE BOARD OF HARBOR COMMISSIONERS



THE PORT
OF LOS ANGELES
Executive Director's
Report to the

Board of Harbor Commissioners

SEPTEMBER 23, 2021

Amber M. Klesges
AMBER M. KLESGES
Board Secretary

1
9.23.21

DATE: AUGUST 31, 2021

FROM: WATERFRONT & COMMERCIAL REAL ESTATE

SUBJECT: RESOLUTION NO. 21-9894 - APPROVE THIRD AMENDMENT
TO PERMIT NO. 708 WITH KINDER MORGAN TANK STORAGE
TERMINALS, LLC

SUMMARY:

Staff requests approval of the proposed Third Amendment to Permit No. 708 (Permit 708) with Kinder Morgan Tank Storage Terminals LLC (Kinder Morgan) to allow continued operation of the marine oil terminal at Berths 118-119 until April 13, 2024, and to restore and surrender the site to the City of Los Angeles Harbor Department (Harbor Department) on or before April 13, 2025. Kinder Morgan has requested authorization to build a Marine Oil Terminal Engineering & Maintenance Standards (MOTEMS) compliant wharf at Berth 120 and cease use of the current non-MOTEMS compliant wharf at Berth 118 thereafter. Staff informed Kinder Morgan that the Harbor Department is currently unable to determine if Berth 120 will be available due to ongoing negotiations with adjacent tenants. However, the Harbor Department will be in a better position to make such determination in two years.

The California State Lands Commission (CSLC) has authorized Kinder Morgan to continue operating at Berths 118 for two years, until the Harbor Department is able to make a determination of availability of Berth 120. Should the Harbor Department determine that Berth 120 is not available for construction of a new wharf, Kinder Morgan will be required to cease operations and begin remediation of Berths 118 and 119 pursuant to the Settlement Agreement and the First Amendment to Permit No. 708.

All maintenance and repair costs associated with the terminal and wharf, including all costs for MOTEMS compliance, are borne by Kinder Morgan during the term of Permit No. 708.

RECOMMENDATION:

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

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;
2. Approve the Third Amendment to Permit No. 708 with Kinder Morgan Tank Storage Terminals, LLC;

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3. Direct the Board Secretary to transmit the Third Amendment to the City Council for approval pursuant to the Charter Section 606 of the City Charter;
4. Authorize the Executive Director to execute and the Board Secretary to attest to the Third Amendment to Permit No. 708 with Kinder Morgan Tank Storage Terminals, LLC upon approval by City Council; and
5. Adopt Resolution No. 21-9894.

DISCUSSION:

Background - Kinder Morgan acquired GATX Tank Storage Terminals Corp in 2000 under Permit 708, which granted the use of approximately 10 acres of land at Berths 118-120, including nearly 100,000 square feet of subsurface pipeline right-of-way (Transmittal 1). Permit 708 was initially a 25-year term permit, with an expiration date of April 13, 2013. The First Amendment extended the term of Permit 708 for five years to allow for limited continued operations, demolition, and cleanup in consideration of a settlement in litigation involving cleanup of the former GATX marine oil terminal at Berths 171-173. The First Amendment also required Kinder Morgan to cease operations by April 13, 2017. The Second Amendment granted Kinder Morgan a five-year extension, requiring operations to cease April 13, 2022, and to relocate to another location within the Port of Los Angeles or Long Beach. As part of the Second Amendment, Kinder Morgan spent approximately \$5,000,000 to upgrade the wharf at Berth 118 to comply with State Land Commission's requirement for continued operation.

In 2013, Kinder Morgan made plans to move its operations to the Port of Long Beach. However, upon completion of the construction at the terminal in Long Beach, Kinder Morgan found itself in a vessel-scheduling conflict with the primary tenant, which made the move impractical. Kinder Morgan then proposed to lease a vacant Harbor Department parcel and utilize the berth and marine oil terminal as a customer of an existing marine oil terminal tenant in the Port of Los Angeles. To allow time for Kinder Morgan to move to the new facility, a five-year permit extension was granted for completion of the environmental assessment, a new permit, and construction at a new location. The negotiation with the marine oil terminal was unsuccessful.

Kinder Morgan studied feasibility of relocating to Berth 194. While Berth 194 was suitable for oil terminal operations, the cost to build a new oil terminal with new wharf and subsurface pipelines became uneconomical. Kinder Morgan analyzed various other locations and found all to be unsuitable.

Under the proposed Third Amendment (Transmittal 2), Kinder Morgan would continue to import and export product at Berth 118. CSLC has authorized Kinder Morgan to continue operating at Berths 118 for two years, until the Harbor Department is able to make a determination of availability of Berth 120 (Transmittal 3). All costs associated with maintenance of the entire premises, including wharf structure and dredging, is Kinder Morgan's responsibility. Kinder Morgan will also be required to meet all of CSLC's MOTEMS wharf requirements at their cost. The Harbor Department will not be responsible for any costs associated with the terminal at Berths 118-119.

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The proposed Third Amendment would require cessation of the operations within 30 days following the Harbor Department's decision regarding availability of Berth 120 for construction of a new wharf. Kinder Morgan will be required to complete site restoration within 12 months from the cessation date. The restoration work included in the Third Amendment to Permit 708 would require submittal of an Application for Port Permit (APP) to ensure a separate assessment under CEQA, and work would not be conducted until that assessment has been completed.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of the proposed Third Amendment to Permit 708 with Kinder Morgan to allow continued operation of the marine oil terminal at Berths 118-119 until April 13, 2024, and to require Kinder Morgan to restore and surrender the site to the Harbor Department on or before April 13, 2025, which is an administrative activity. Execution of restoration activities are separate from the approval of this requirement, and will require a separate assessment under CEQA. Therefore, the Director of Environmental Management has determined that the proposed action of approval of the Third Amendment to Permit 708 is administratively exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

Extension of Kinder Morgan's financial terms, as outlined in Permit 708 and the proposed Third Amendment, will allow for an additional two years of continued revenue from operations at Berths 118-119 (from April 14, 2022 to April 13, 2024) to the Harbor Department until the Harbor Department makes a determination of availability of Berth 120 for construction of a MOTEMS-compliant wharf. The additional land rental revenue will be \$1,838,100 per year, plus Consumer Price Index adjustments, for an aggregate of \$3,676,200 for the two-year proposed extension. Additional wharfage and dockage revenues will be approximately \$1,250,000 to \$1,500,000 per year, for an aggregate of \$2,500,000 to \$3,000,000 for the two-year proposed extension. Total approximate aggregate revenue for the two-year proposed extension would be \$6,176,200 to \$6,676,200

| | Actual | Actual | Estimate | Estimate | Estimate |
|--------------|------------------|------------------|------------------|-----------------------|-----------------------|
| | CY 2019 | CY 2020 | CY 2021 | CY 2022 | CY 2023 |
| Land Rent | 1,781,988 | 1,838,100 | 1,838,100 | 1,838,100 + CPI | 1,838,100 + CPI |
| Wharfage | 869,474 | 795,274 | 1,000,000* | 1,000,000* | 1,000,000* |
| Dockage | 517,760 | 288,933 | 500,000* | 500,000* | 500,000* |
| Total | 3,169,222 | 2,922,307 | 3,338,100 | 3,338,10 + CPI | 3,338,10 + CPI |

*Wharfage and Dockage figures for CY 2021 to CY 2023 are forecasts that as a combined amount would most likely range annually from \$1,250,000 to \$1,500,000.

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CITY ATTORNEY:

The Third Amendment has been reviewed and approved as to form and legality by the Office of the City Attorney.

TRANSMITTALS:

1. Site Map
2. Third Amendment
3. CSLC Extension Letter

FIS Approval: MB
CA Approval: JS

Michael J. Galvin
MICHAEL J. GALVIN
Director of Waterfront & Commercial Real Estate

Michael DiBernardo
MICHAEL DiBERNARDO
Deputy Executive Director

APPROVED:

Marla Bleavins For

EUGENE D. SEROKA
Executive Director

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