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November 21, 2016

By E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Docket No. FD 36065 – *San Pedro Peninsula Homeowner's United Inc.,
Tommy John Rosas, Tribal Administrator, Tongva Ancestral Territorial Tribal
Nation – Petition for Declaratory Order*

Dear Ms. Brown:

Accompanying this letter for e-filing in the referenced docket on behalf of Plains All-America Pipeline and Rancho LPG Holdings, LLC ("Rancho") is their Reply to the Request for Guidance by the City of Los Angeles Acting by and Through the Harbor Department's Board of Harbor Commissioners. We will also today be hand delivering to you a USB disk containing electronic versions of Attachments 1 and 2 to the Reply.

Do not hesitate to contact me with any questions or if you need additional information.

Sincerely,

Thomas W. Wilcox
Attorney for Plains All-America Pipeline and
Rancho LPG Holdings, LLC

GKG Law, P.C.

Ms. Cynthia T. Brown

November 21, 2016

Page Two

Cc: All parties on the Official Service List

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket FD 36065

**SAN PEDRO PENINSULA HOMEOWNER'S UNITED INC.
AND JOHN TOMMY ROSAS, TRIBAL ADMINISTRATOR, TONGVA ANCESTRAL
TERRITORIAL TRIBAL NATION- PETITION FOR DECLARATORY ORDER**

**REPLY TO REQUEST FOR GUIDANCE
BY THE CITY OF LOS ANGELES ACTING BY AND THROUGH
THE HARBOR DEPARTMENT'S BOARD OF HARBOR COMMISSIONERS**

Pursuant to 49 C.F.R. §1104.13, Plains All-America Pipeline ("Plains") and its wholly owned subsidiary, Rancho LPG Holdings, LLC ("Rancho") hereby submit this Reply to the Request for Guidance by the City of Los Angeles Acting by and Through the Harbor Department's Board of Harbor Commissioners ("Request for Guidance") filed in this proceeding on October 31, 2016. While in part a reply to the Petition for Declaratory Order filed in this proceeding on September 12, 2016, the Request for Guidance poses its own, independent questions for the Board to resolve under its authority to issue declaratory orders.¹ Specifically, the City of Los Angeles, acting by and through the Board of Harbor Commissioners ("City") asks the Board to provide guidance "as to the propriety of its understanding that it is preempted from (1) prohibiting product from making ingress and egress by rail to and from RANCHO and

¹ The Request for Guidance cites this authority to be 5 U.S.C. 554(e) and 49 U.S.C. §1321, but the latter appears to be a typographical error, and Plains and Rancho believe that the City of Los Angeles intended to cite 49 U.S.C. §721.

(2) creating regulations of its own for the rail tank cars that transit the Harbor District by rail, in particular to and from RANCHO.” Request for Guidance at 2-3. The City accompanied its Request for Guidance with several exhibits submitted for the purpose of providing the Board with factual background relevant to its request.

In this brief reply, Plains and Rancho provide additional factual information related to their Facility described in their Reply to Petition for Declaratory Order (“Reply to Petition”) and bearing on the questions posed by the City. In addition, they confirm their previous assertion that (1) the Board has exclusive jurisdiction over the track used by Pacific Harbor Line, Inc. (“PHL”) to provide service to the Rancho facility that appear to be the subject of the Petition for Declaratory Order; and (2) accordingly, any state laws that would interfere with those operations are expressly preempted.² More specifically, in their Reply to Petition, Plains and Rancho asserted that such exclusive jurisdiction exists because the track in question has the characteristics of “excepted track” pursuant to 49 U.S.C. §10906. However, based on the additional factual information provided by the City, Plains and Rancho concur with the City’s assertion that the track at issue is more accurately characterized as a “line of railroad” for which PHL has operating authority under 49 U.S.C. §10901 granted to it by the Board.

A. Comments on Factual Information Provided by the City

The City’s filing provides the Board with additional historical facts concerning the tracks at issue and their jurisdictional status. Plains and Rancho supplement and reply to some of the factual information as follows.

As the City correctly points out, the Facility and the parcel of land upon which it sits is located outside of the Harbor District boundary. Request for Guidance at 2, Exhibit 6 (showing

² Reply to Petition for Declaratory Order at 4-5.

boundary to be the north side of Westmont Drive). See also Attachment 1 to this Reply. When the Facility was originally constructed by Petrolane Incorporated in 1974, the approved design included a short “two track railroad loading spur with an associated loading rack.” Request for Guidance at Exhibit 1, page 5 and Figure 2. These tracks are located on Rancho’s property and are therefore outside the Harbor District. As such, they are not the subject of any revocable permit issued by the Harbor Department.

The loading tracks are connected to the lines owned by the Port and operated by PHL by a single track that runs south from the Facility plant gate across adjacent private land to the north side of Westmont Drive. Request for Guidance Exhibit 6. From that point, the track continues approximately 135 feet over the parcel of Port-owned land originally covered by Revocable Permit No. 1212, and which is now governed by Revocable Permit No. 10-05. Attachment 1 (insert). This approximately 135 feet of track, which is on Port property located within the boundaries of the Harbor District, crosses Westmont Drive and connects to track that was previously owned and operated by Southern Pacific Transport Company and is now owned by the Port. Since Rancho acquired the facility in 2008, all operations over and maintenance of this track, and the remainder of the track up to the Rancho Facility plant gate, have been performed by PHL.

In 1994 the Port acquired lines of rail within the Harbor District and surrounding area owned by Southern Pacific, Burlington Northern Railroad, and Union Pacific Railroad Company. Request for Guidance, Exhibit 7. Prior to 1997, rail service in the Port and to the Facility was provided by these carriers and/or Harbor Belt Line Railroad (“HBL”), which conducted switching and other operations on Port-owned tracks. *Id.*, Exhibit 11 at 1. In 1997, because it anticipated substantially increased volumes in and out of the Port, the Port decided to replace

HBL with a single third party operator to conduct all railroad operations in the Port. *Id.* It selected PHL to perform this function, and to accomplish the desired result, entered into an extensive operating agreement with PHL effective December 1, 1997. Pursuant to this agreement, styled the San Pedro Area Harbor Rail Operating Permit (referred to by the City in the Request for Guidance as “Permit 1989” and attached thereto as Exhibit 11), the City granted extensive operating rights to PHL to nearly all of the tracks and facilities within the Harbor District.

Significantly as to the jurisdictional questions posed by the Request for Guidance, the rights granted to PHL under Permit 1989 extended to tracks and facilities in addition to the common carrier tracks the Port had purchased in 1994. *See, e.g.*, Permit 1989, Sections 1.2, 29.42, 29.44, 29.55, and 29.56. The broadened range of tracks covered by 1989 Permit was depicted on Exhibit A to the agreement. This exhibit was not included with the Request for Guidance, but Plains and Rancho subsequently obtained a copy of Exhibit A from the City, and it is included as Attachment 2 to this Reply for the Board’s convenience. The City explains that contemporaneous with entering into the Permit 1989 agreement, PHL filed a notice of exemption with the Board for the purpose of obtaining common carrier operating rights over the track covered by Permit 1989. Request for Guidance at 8-10, and Exhibit 8. This is evident by the fact that Exhibit A to the Notice of Exemption appears to be nearly identical to Exhibit A that was attached to the Operating Agreement.

The City further states that the tracks covered by Permit 1989 and Exhibit A include the track located on the Port property covered by Revocable Permit No. 10-05 extending south from the Harbor District boundary on the north side of Westmont Drive. Request for Guidance at 9. *See* top left corner of sheet 1-2173-RR-2. Consequently, because PHL received authority to

operate as a common carrier over this track, it is more accurately characterized as a line of rail subject to 49 U.S.C. §10901, as opposed to excepted track under 49 U.S.C. §10906.

B. Conclusion

The information provided by the City in its Request for Guidance provides clarification and further confirmation that (1) the railroad track on the Port property covered by Revocable Permit 10-05 is subject to the Board's exclusive jurisdiction under 49 U.S.C. §10501(b); and (2) any state actions that would interfere with rail operations over the track are therefore expressly preempted. Accordingly, Plains and Rancho submit that the City is correct as to its understanding that it is preempted from taking the actions described in its Request for Guidance.

Respectfully submitted,



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1055 Thomas Jefferson Street NW
Suite 500
Washington, DC 20007
(202) 342-5248

*Attorney for Plains All America Pipeline
and Rancho LPG Holdings, LLC*

Dated: November 21, 2016

CERTIFICATE OF SERVICE

I do hereby certify that on this 21st day of November, 2016, I have served copies of the foregoing Reply to Request for Guidance by the City of Los Angeles Acting by and Through the Harbor Department's Board of Harbor Commissioners by email and/or by first class mail on all parties of record on the official service list for this proceeding.

Thomas W. Wilcox

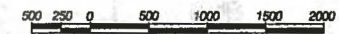
Thomas W. Wilcox

ATTACHMENT 1



ATTACHMENT 2

 PORT RAIL FACILITIES
 ADDITIONAL PORT RAIL FACILITIES
 PRIVATE TRACKS
 SANTA FE TRACKS
 TRACKS OUT OF SERVICE
 UNION PACIFIC / SOUTHERN PACIFIC TRACKS
 PORT OF LONG BEACH OWNED TRACKS
 PORT BOUNDARY LIMITS



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PORT BOUNDARY LIMITS



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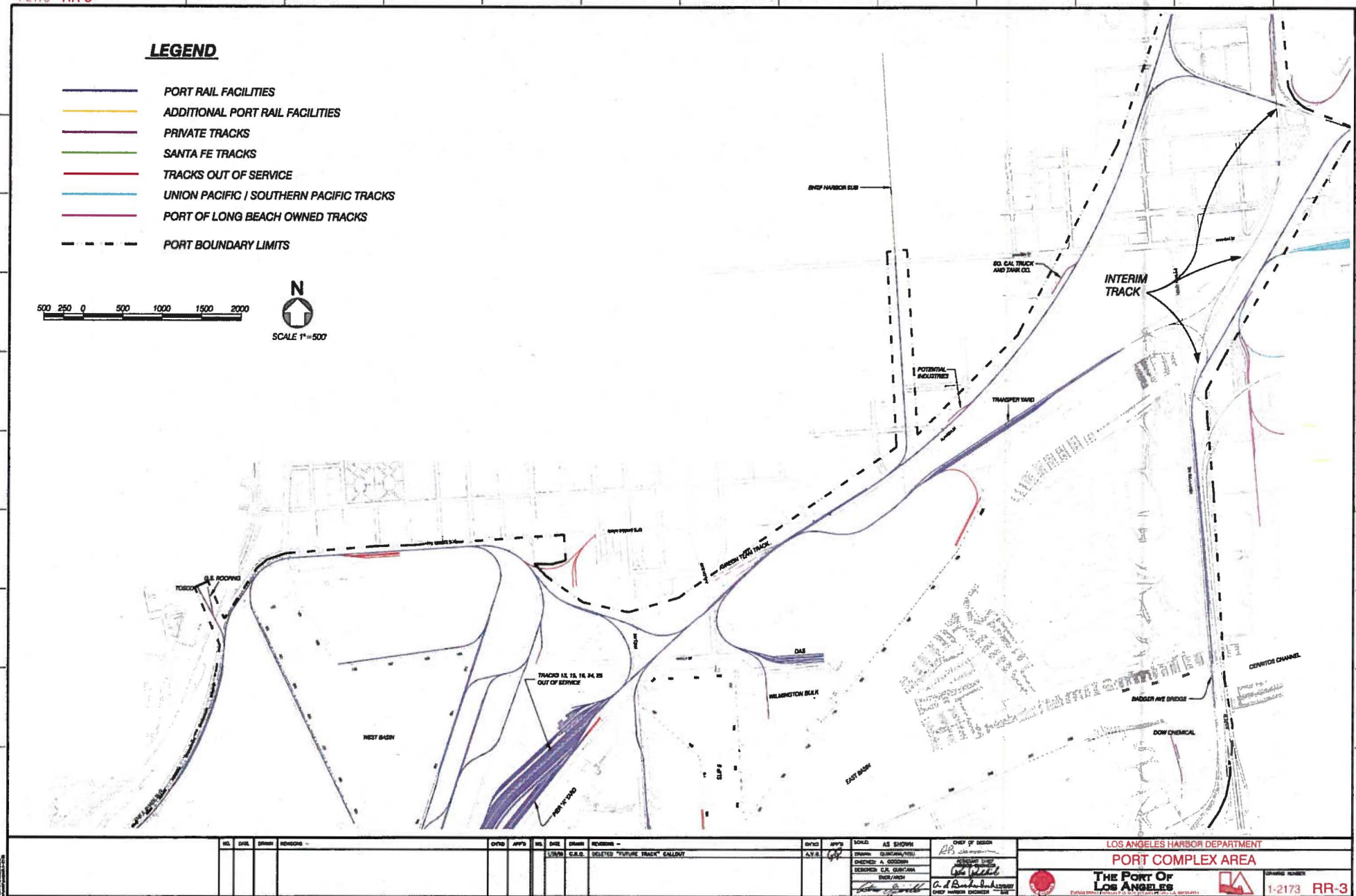
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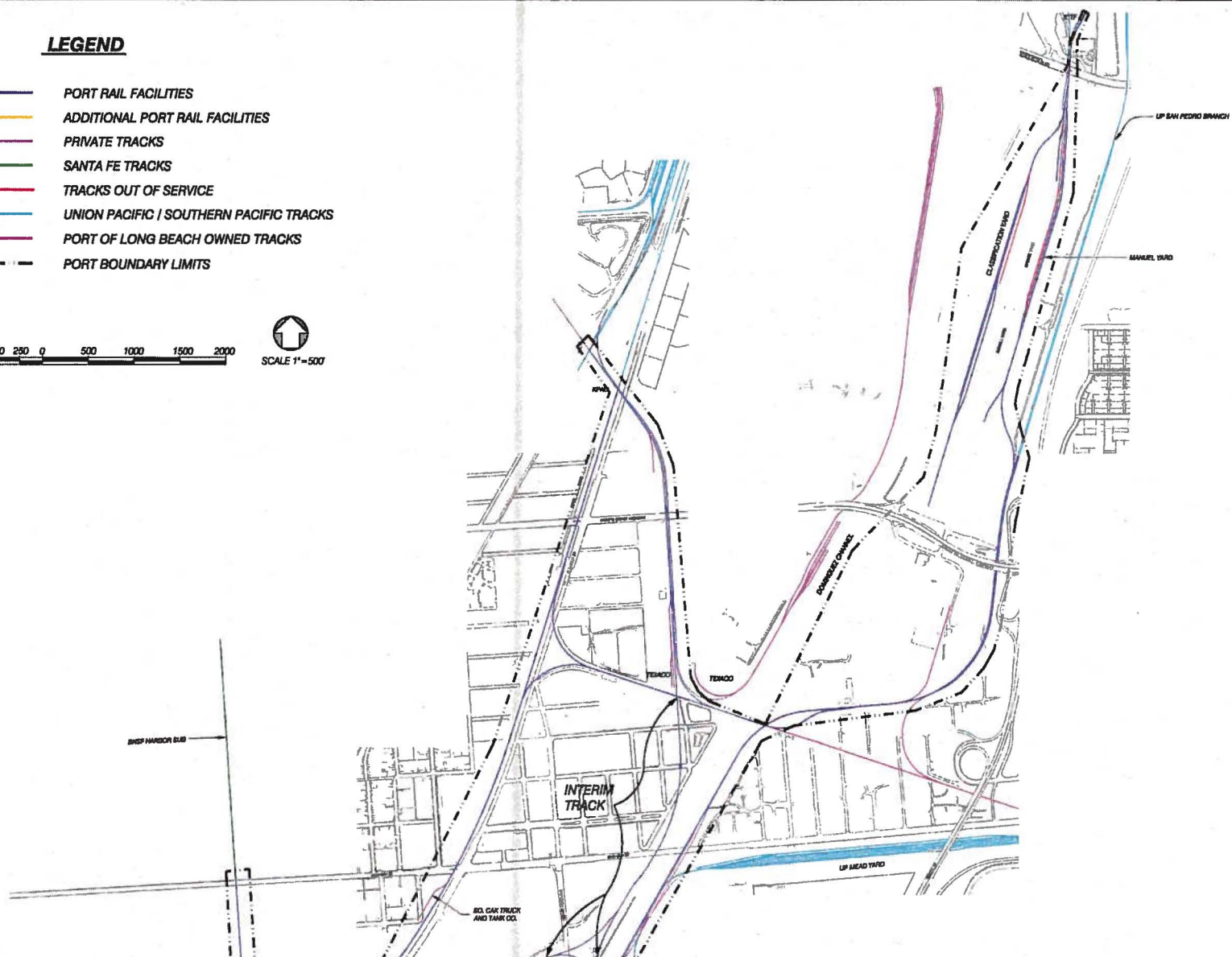
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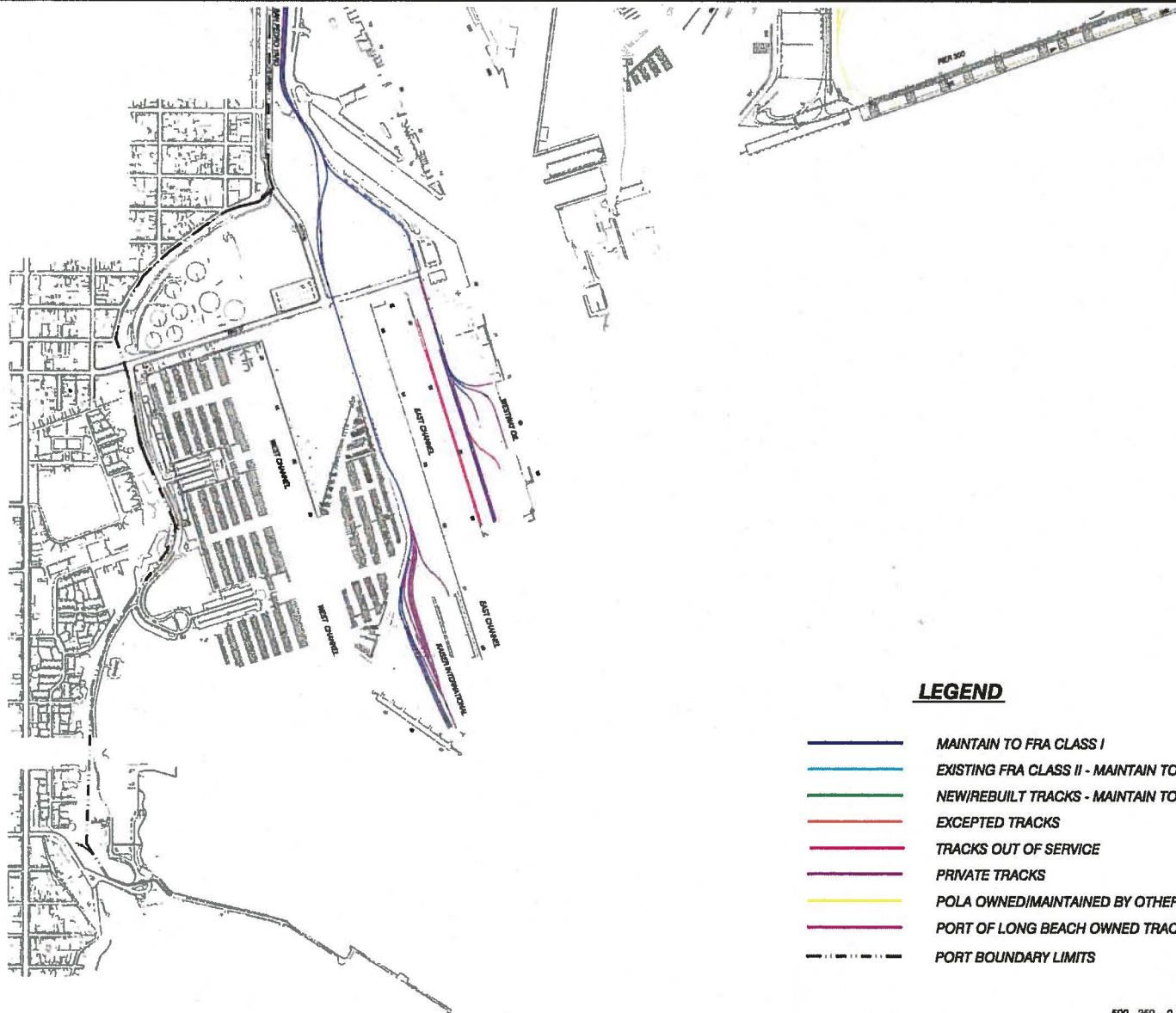
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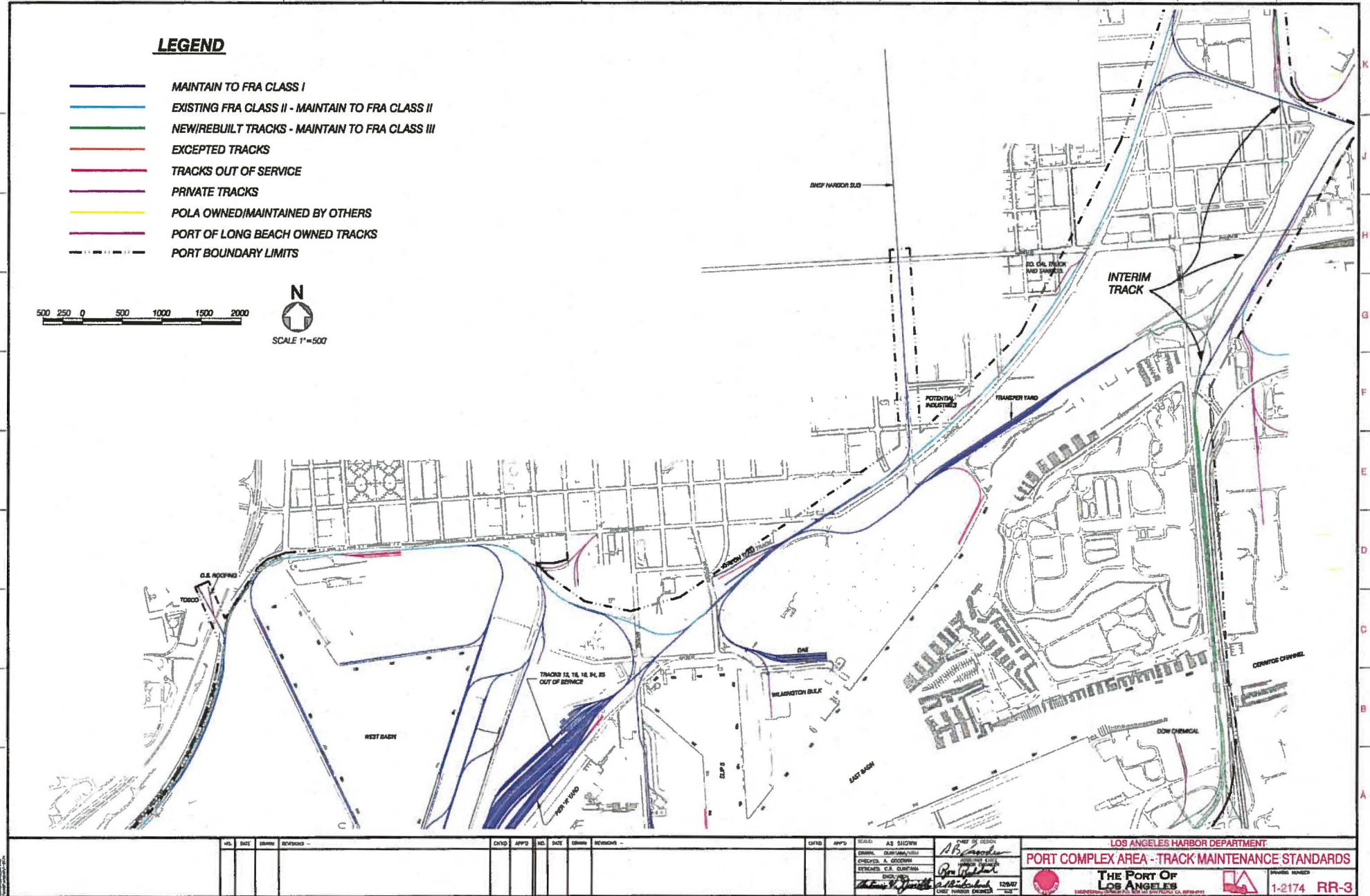
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CHIEF DESIGN ENGINEER

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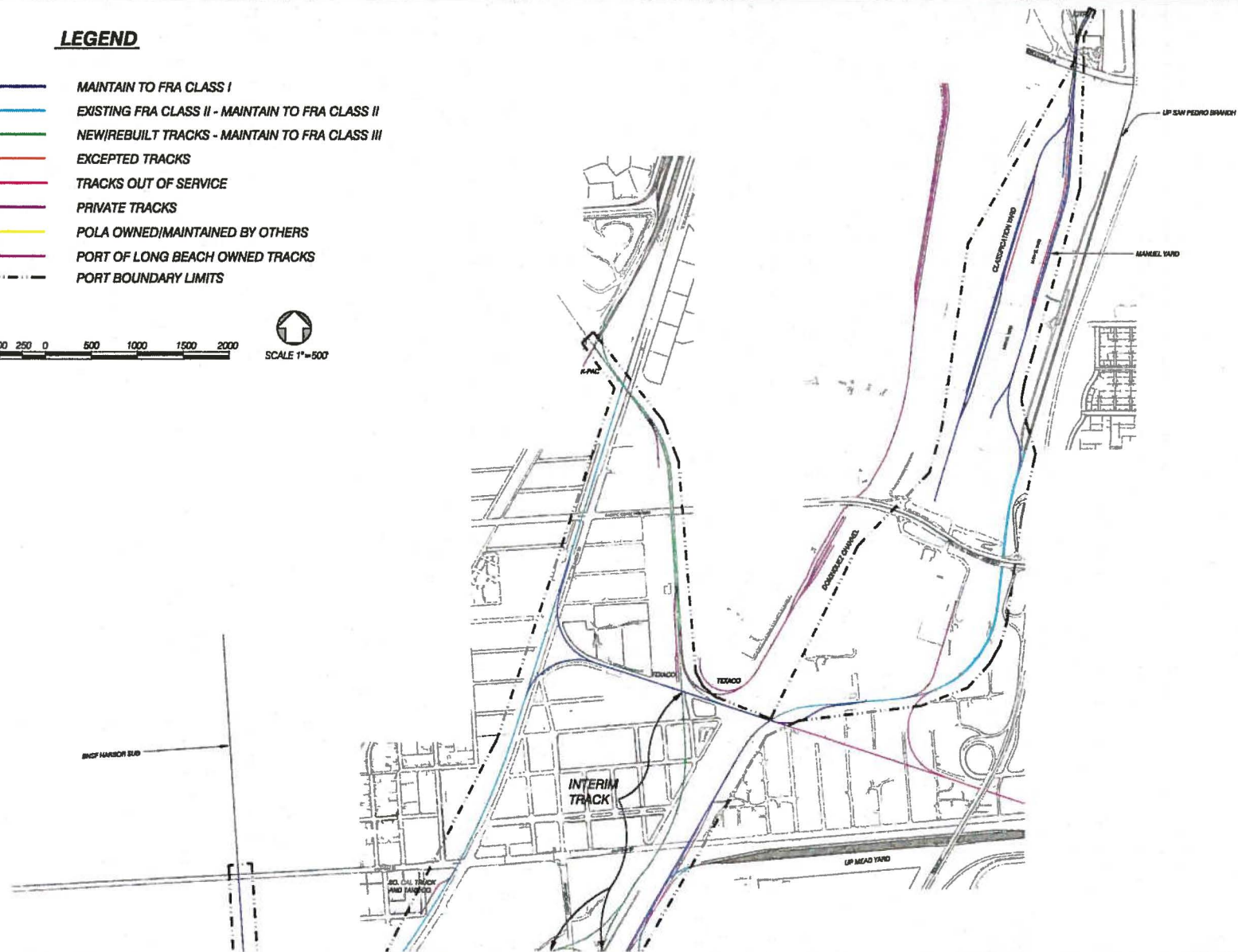
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CERTIFICATE OF SERVICE

I do hereby certify that on this 21st day of November, 2016, I have served copies of the foregoing Reply to Request for Guidance by the City of Los Angeles Acting by and Through the Harbor Department's Board of Harbor Commissioners by email and/or by first class mail on all parties of record on the official service list for this proceeding.

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