

**PORTLAND DEVELOPMENT COMMISSION**  
Portland, Oregon

**RESOLUTION NO. 6577**

**AUTHORIZE DISPOSITION OF A SUBSURFACE PERMANENT  
TUNNEL EASEMENT TO THE BUREAU OF ENVIRONMENTAL  
SERVICES FOR THE EASTSIDE COMBINED SEWER  
OVERFLOW PROJECT AT 123 NE 3RD AVENUE, BLOCK 67  
IN THE CENTRAL EASTSIDE URBAN RENEWAL AREA**

**WHEREAS**, on February 17, 1999 (Resolution 5228), the Portland Development Commission ("PDC") adopted the Eastbank at Burnside: Lower East Burnside Redevelopment Plan ("Eastbank at Burnside Plan"), which emphasizes a mixed-use gateway project at the foot of the Burnside Bridge in the Central Eastside Urban Renewal Area;

**WHEREAS**, PDC acquired Blocks 67, 68 and 76, and portions of Blocks 69, and 75 in the Central Eastside urban Renewal Area (all collectively known as the "Burnside Bridgehead Property") to implement the Eastbank at Burnside Plan;

**WHEREAS**, the City of Portland Bureau of Environmental Services ("BES") is implementing the Eastside Combined Sewer Overflow ("CSO") project;

**WHEREAS**, the CSO project's final design and engineering indicates that the CSO tunnel will run through the southwest corner of the Burnside Bridgehead Property located at 123 NE 3<sup>rd</sup> Avenue, Block 67 (the "Property");

**WHEREAS**, on or around March 5, 2008, PDC granted BES a Permit of Entry allowing BES access to the Property to continue the construction of the CSO tunnel;

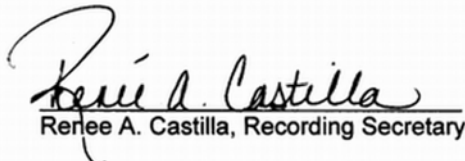
**WHEREAS**, BES requires a subsurface tunnel easement in order to allow BES to complete the CSO project and permanently place the CSO tunnel under the Property, which will serve Portland's eastside communities; and

**WHEREAS**, BES has agreed to accept the CSO easement for the construction, operation, and maintenance of the Eastside Combined Sewer Overflow pipeline and to compensate PDC for the easement in the amount of \$36,600.

**NOW, THEREFORE, BE IT RESOLVED** that the Executive Director is hereby authorized to execute a Permanent Tunnel Easement, in a form substantially similar to that attached hereto as Exhibit A, granting a permanent subsurface easement under a portion of the PDC property located at 123 NE 3rd Avenue, Block 67 in the Central Eastside Urban Renewal Area, to the Bureau of Environmental Services for \$36,600; and

**BE IT FURTHER RESOLVED** that this resolution shall become effective immediately upon its adoption.

**Adopted by the Portland Development Commission on May 14, 2008.**

  
Renee A. Castilla, Recording Secretary

**PERMANENT TUNNEL EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS, that the City of Portland, acting by and through the Portland Development Commission (Grantor), in consideration of the sum of Thirty Six Thousand Six Hundred and no/100 Dollars (\$36,600), and other good and valuable consideration, to it paid by the City of Portland, acting by and through its Bureau of Environmental Services, a municipal corporation of the State of Oregon (Grantee), does hereby grant unto said City of Portland, Bureau of Environmental Services, a non-exclusive perpetual easement for the purpose of constructing, reconstructing, operating, inspecting, monitoring and maintaining a subsurface sewer tunnel facility and appurtenances (the Tunnel), through, under and along the following described parcel:

A subsurface portion of that tract of land recorded in Book 2538, page 779, recorded May 1, 1992, Multnomah County Deed Records, together with a subsurface portion of that tract of land recorded in Document #99133656, recorded July 9, 1999, Multnomah County Deed Records, situated in the southeast one-quarter of Section 34, T1N, R1E, W.M., Block 67, EAST PORTLAND, and vacated NE Couch Street, City of Portland, County of Multnomah, State of Oregon. The subsurface horizontal outline of said subsurface easement is described as follows:

Beginning at the intersection of the west line of Block 67, EAST PORTLAND with the centerline of vacated NE Couch Street; thence S 88° 12' 17" E, along the centerline of vacated NE Couch Street, a distance of 5.80 feet; thence S 30° 49' 36" E, a distance of 166.07 feet; thence along the arc of a 1,026.00 foot radius curve to the right, through a central angle of 03° 43' 13", an arc distance of 66.62 feet (the chord bears S 28° 58' 00" E, 66.61 feet), to the north line of East Burnside Street; thence N 86° 49' 48" W, along the north line of East Burnside Street, a distance of 29.40 feet; thence N 88° 12' 17" W, along the north line of East Burnside, as established in Document # 2006-232264, recorded December 15, 2006, Multnomah County Deed Records, a distance of 30.91 feet; thence along the arc of a non-tangent 974.00 foot radius curve to the left, through a central angle of 01° 58' 08", an arc distance of 33.47 feet (the chord bears N 29° 50' 32" W, 33.47 feet); thence N 30° 49' 36" W, a distance of 95.58 feet, to the east line of NE 2nd Avenue; thence N 01° 47' 43" E, along the east line of NE 2nd Avenue, a distance 87.40 feet to the Point of Beginning (the Easement Area).

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R/W #6246-2128, 2129, 2130, 2131, 2132  
1N1E34DA 2400, 2000, 2200, 2300, 2100

After Recording Return to:

106/800/Linda Birth

Tax Statement shall be sent to:

No Change

Said Easement Area contains 9,650 square feet or 0.222 acres and is generally depicted on Exhibits A and B attached hereto.

IT IS UNDERSTOOD and agreed that:

- A. This easement includes only the right of underground access for construction, inspection and maintenance of the Tunnel and other sewerage system activities related to the Tunnel.
- B. Grantor reserves the right to use the Easement Area for any lawful purpose not inconsistent with Grantee's permitted use, including the installation, maintenance, repair, removal, replacement or relocation of underground utilities and services, paths, roadways or driveways, parking lots, landscaping and continued operation and development of Grantor's property which do not materially interfere with the operation and maintenance of the Tunnel or jeopardize the integrity of the Tunnel. It is specifically agreed that the Grantor may construct buildings and other improvements within the Easement Area, if said improvements do not interfere with the Grantee's ability to operate and maintain the Tunnel or jeopardize the integrity of the Tunnel. Underground improvements within the Easement Area must be consistent with Exhibit B, which specifically prohibits any underground improvements within thirteen (13) feet of either side of the Tunnel, prohibits the installation of load bearing underground improvements within thirty-nine (39) feet above the crown of the Tunnel and prohibits non-load bearing underground improvements within twenty-six (26) feet of the crown of the Tunnel, as shown on Exhibit B, attached hereto. Grantor further agrees to provide prior notification of its intent to use the Easement Area for above or below surface installations, which must be approved by the Director of the Bureau of Environmental Services to ensure compliance with this easement, which approval shall not be unreasonably withheld.
- C. This easement does not grant or convey to Grantee any right, title or interest to the surface of the soil within the surface outline of the Easement Area.
- D. This easement includes the right to make visual and photographic inspection of the surface and associated improvements during construction upon reasonable notice to Grantor. Grantee shall provide prior notification of its intent to access the surface of the property, which must be approved in writing by Grantor, which approval will not be unreasonably withheld, conditioned, or delayed. Grantor may require that Grantee obtain a Permit of Entry for the purpose of accessing the property.
- E. This easement shall bind the heirs and assigns of Grantor and shall inure to the benefit of the successors in title of Grantee.
- F. Grantor represents and warrants that it has the authority to grant this easement and that the subject property is free from all liens and encumbrances that would materially affect the easement grant.

- G. Grantor represents that to the best of its knowledge after appropriate inquiry under the circumstances, the subject property is in compliance with all local, State and Federal environmental laws and regulations.
- H. Grantor represents that it has disclosed all knowledge of any release of hazardous substances onto or from the property, and disclosed any known report, investigation, survey or environmental assessment regarding the subject property. "Release" and "hazardous substance" shall have the meaning as defined under Oregon Law.
- I. To the extent allowed under the Oregon Constitution and the Oregon Tort Claims Act, Grantee shall indemnify and hold harmless Grantor, its heirs, successors and assigns from any loss, claim, or liability to Grantor, its heirs, successors, and assigns arising out of Grantee's negligence in its use of the Easement Area.
- J. Grantee, by accepting this easement, is not accepting liability for any preexisting release of hazardous substances onto or from the subject property, and Grantor is not attempting to convey any such liability.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

City of Portland, acting by and through the  
Portland Development Commission

Approved as to Form:

By: \_\_\_\_\_  
Chairman

\_\_\_\_\_  
Legal Counsel  
Portland Development Commission

By: \_\_\_\_\_  
Secretary

STATE OF OREGON

County of Multnomah

This document was acknowledged before me on \_\_\_\_\_, 2008,  
by \_\_\_\_\_ as Chairman of the Portland Development  
Commission.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires \_\_\_\_\_

STATE OF OREGON

County of Multnomah

This document was acknowledged before me on \_\_\_\_\_, 2008, by  
as Secretary of the Portland Development Commission.

\_\_\_\_\_  
Notary Public for Oregon

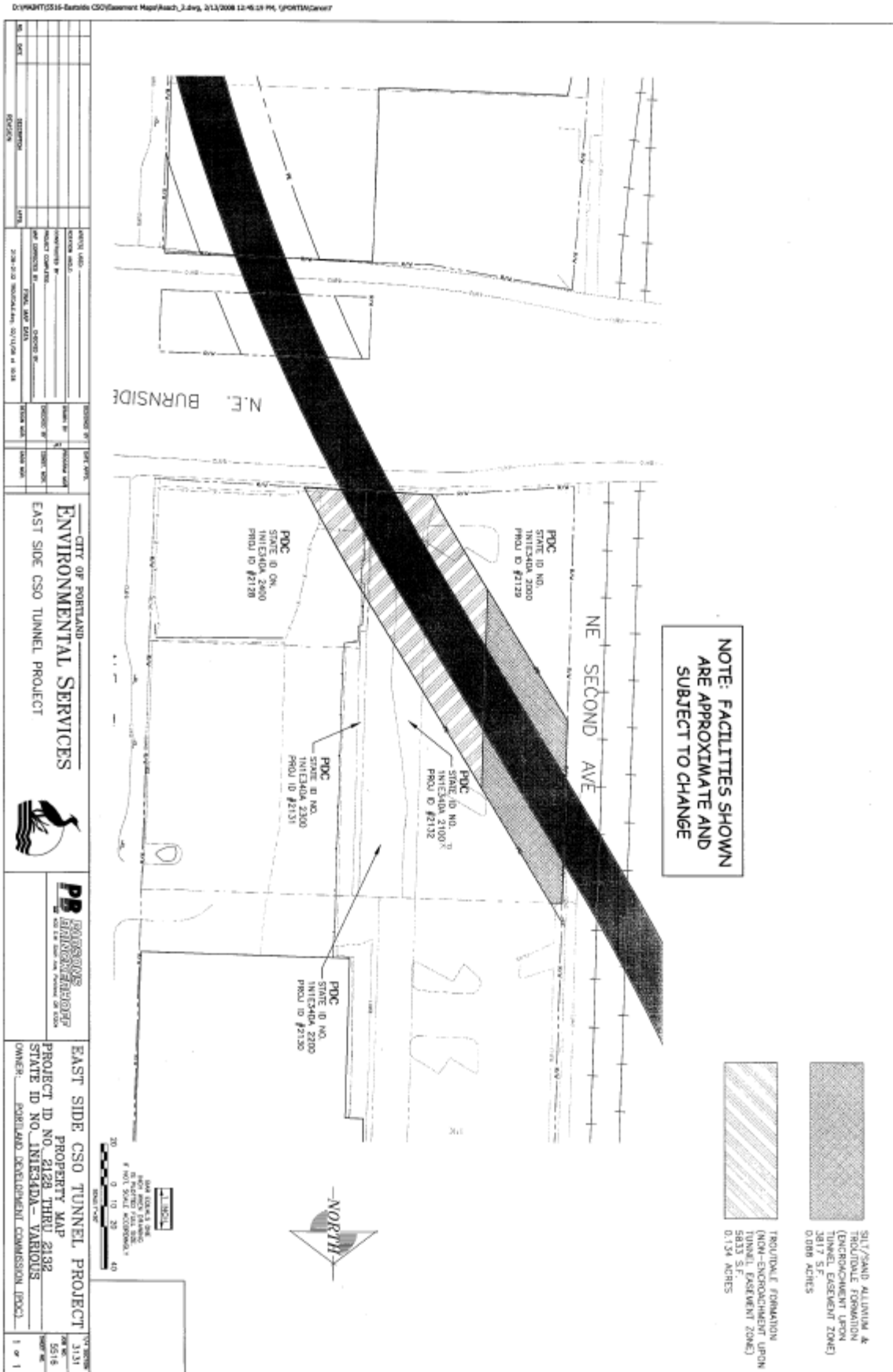
My Commission Expires \_\_\_\_\_

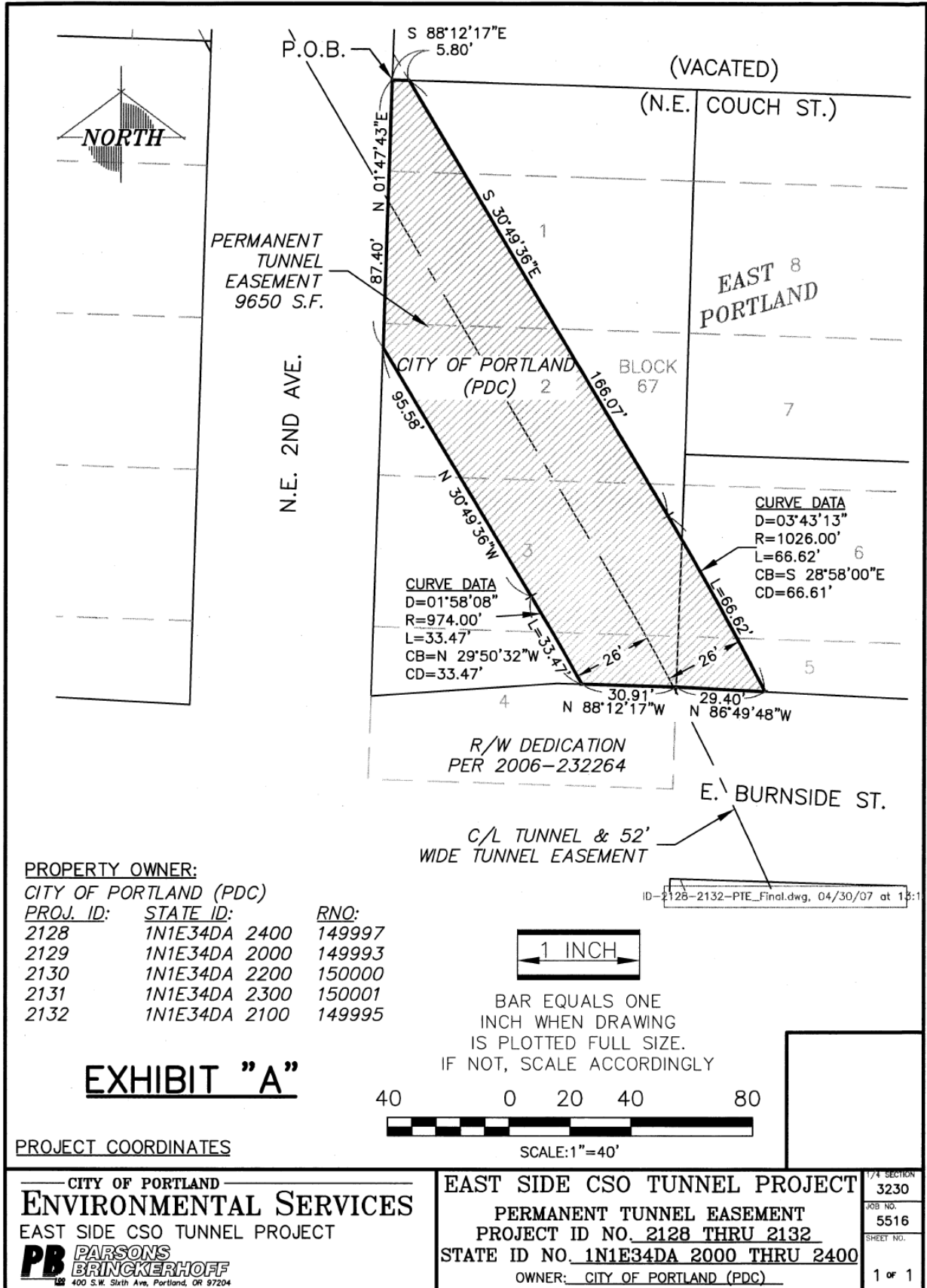
APPROVED AS TO FORM:

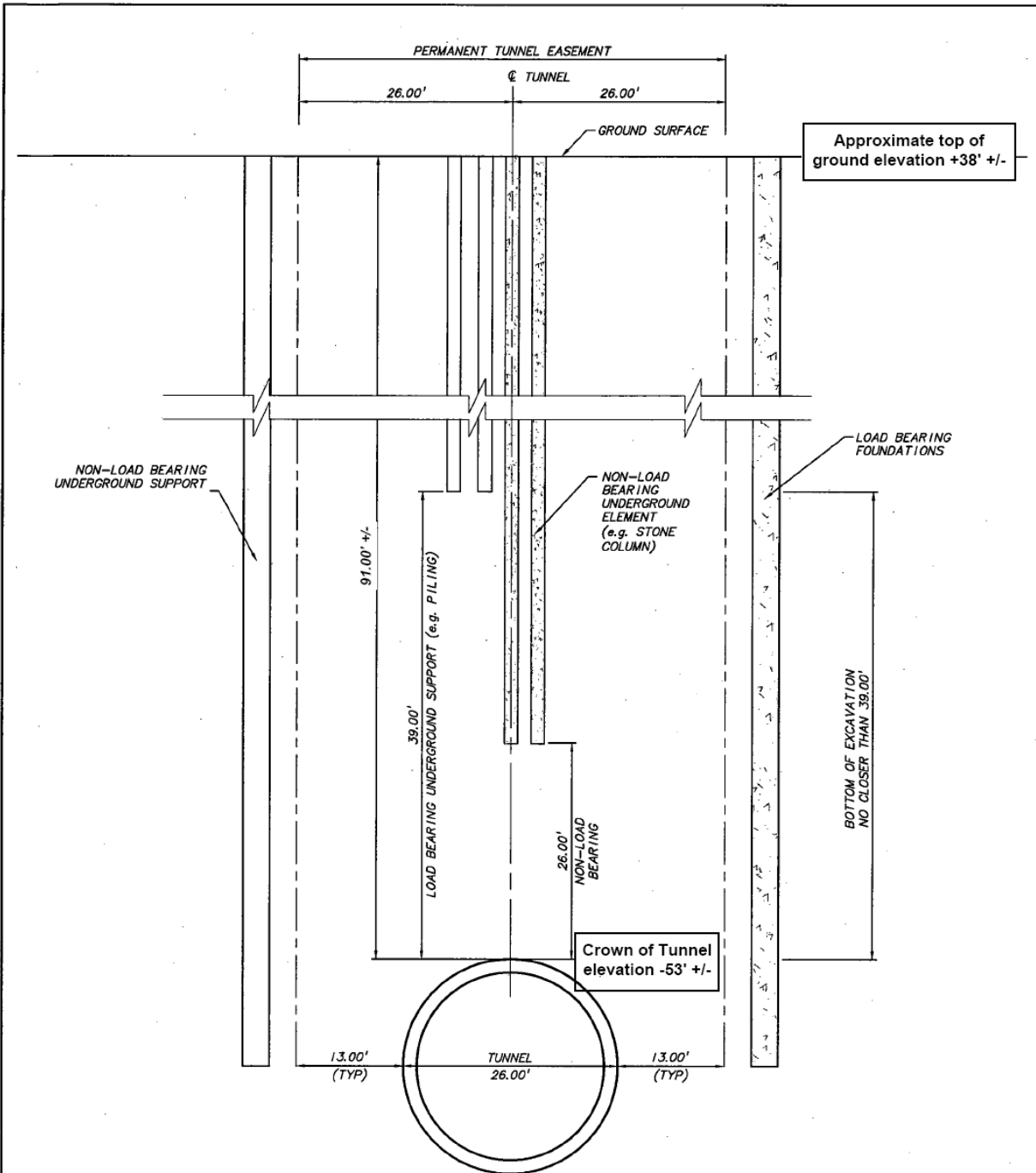
\_\_\_\_\_  
City Attorney

APPROVED:

\_\_\_\_\_  
Bureau of Environmental Services Director  
or designee





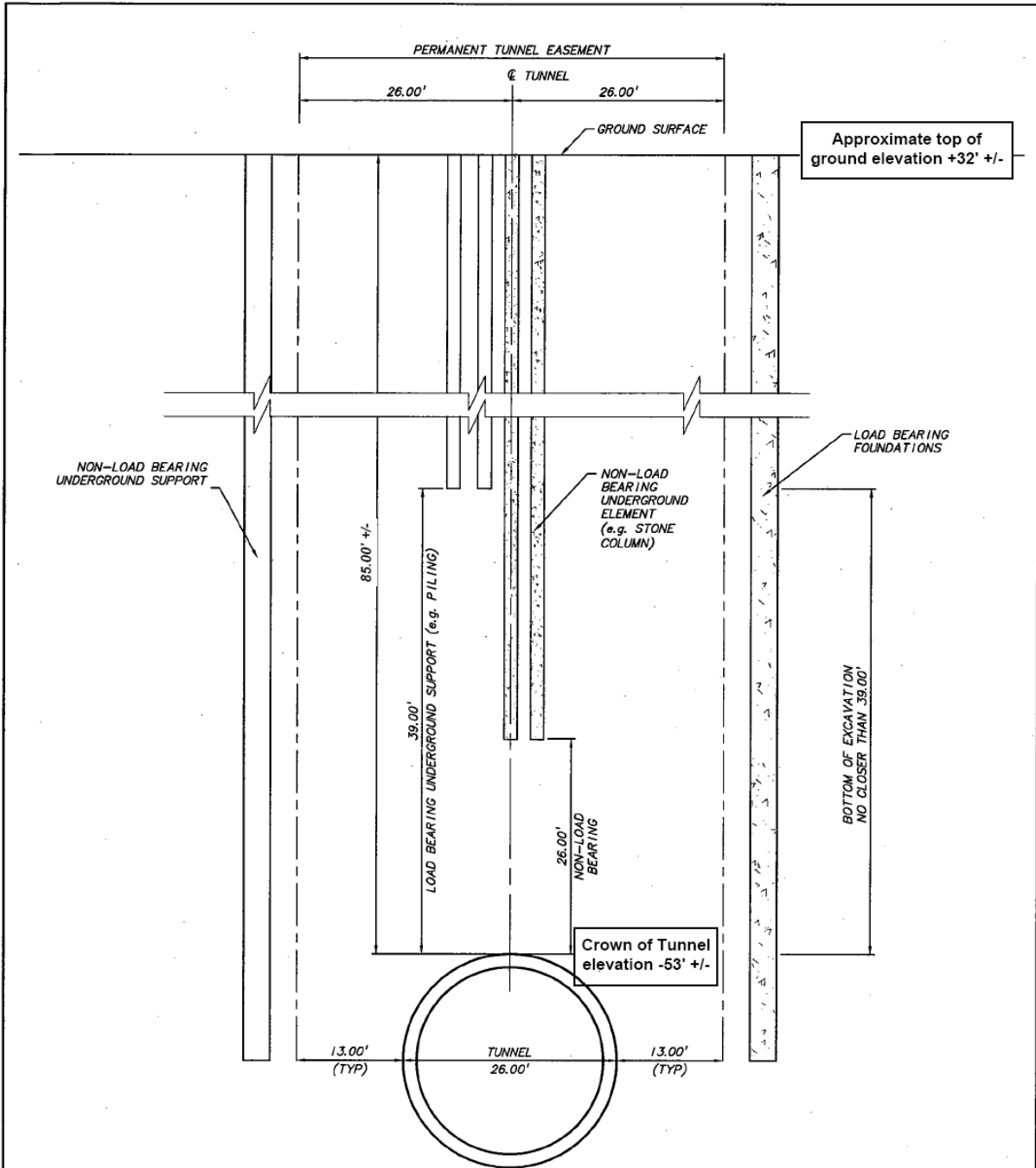


**RESTRICTIONS ON SUBSURFACE DEVELOPMENT  
 FOR PROTECTION OF TUNNEL**

Date: 2/22/08

	<p>CITY OF PORTLAND  <b>ENVIRONMENTAL SERVICES</b></p>	<p><b>EXHIBIT B</b>  <b>EAST SIDE CSO TUNNEL</b>  <b>TUNNEL EASEMENT</b>          Property ID# 2128</p>	<p>JOB NO.          5516</p>
<p>10 0 5 10 20          SCALE FEET</p>		<p>FIGURE NO.          2</p>	

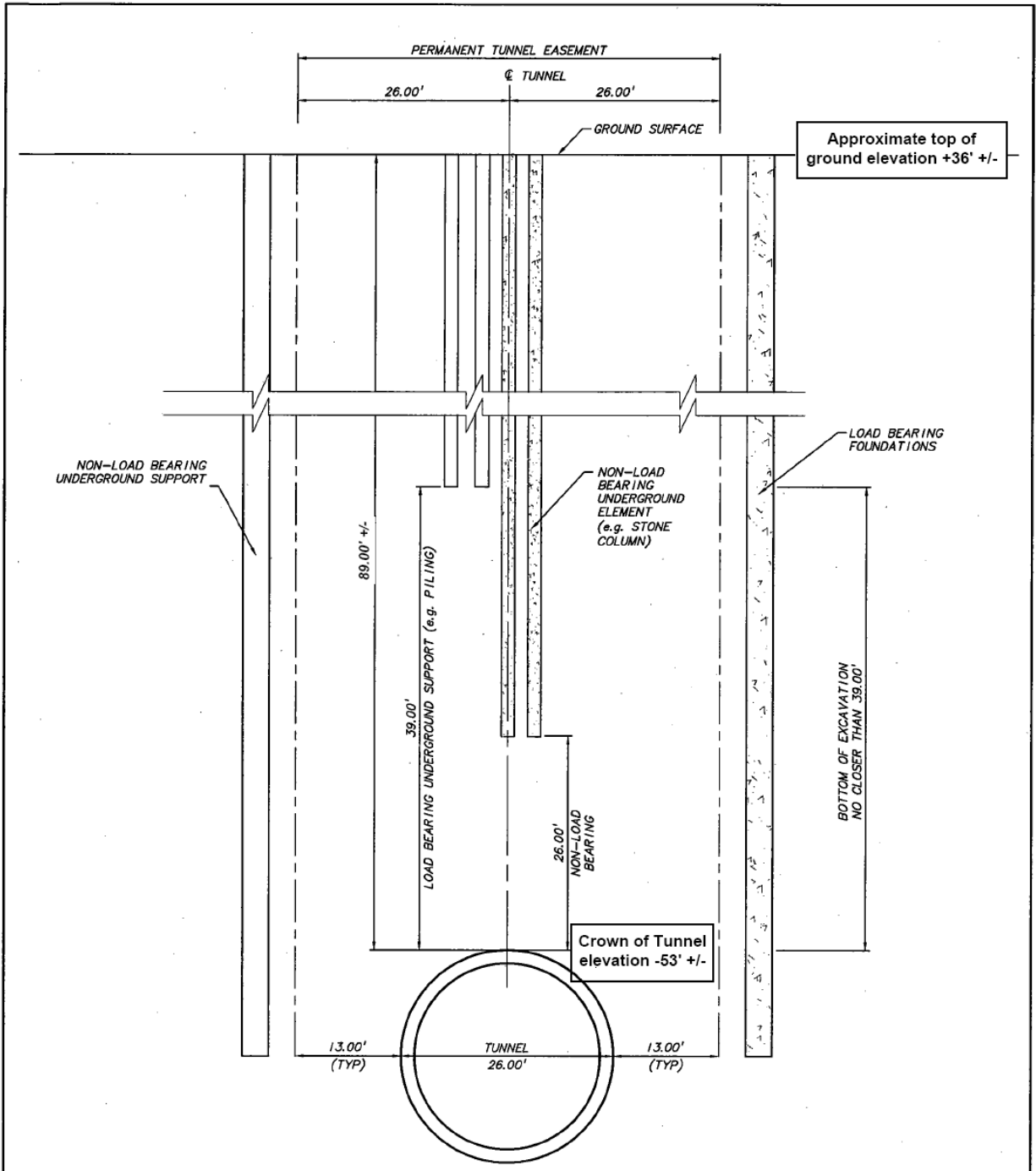




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Date: 2/22/08

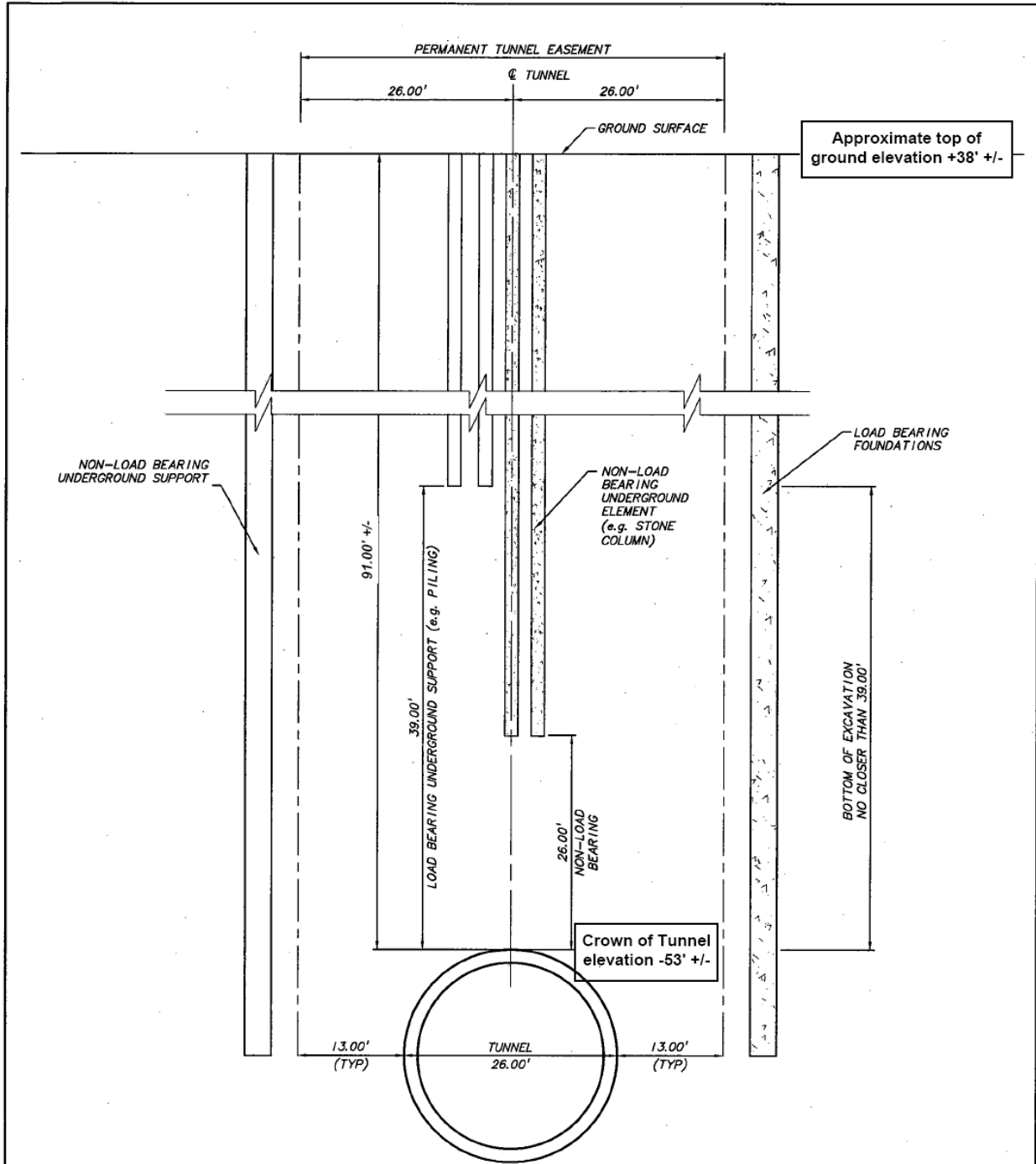
	<p>CITY OF PORTLAND  <b>ENVIRONMENTAL SERVICES</b></p>	<p><b>EXHIBIT B</b>  <b>EAST SIDE CSO TUNNEL</b>  <b>TUNNEL EASEMENT</b>          Property ID# 2129</p>	<p>JOB NO.          5516</p> <p>FIGURE NO.          2</p>
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 FOR PROTECTION OF TUNNEL**

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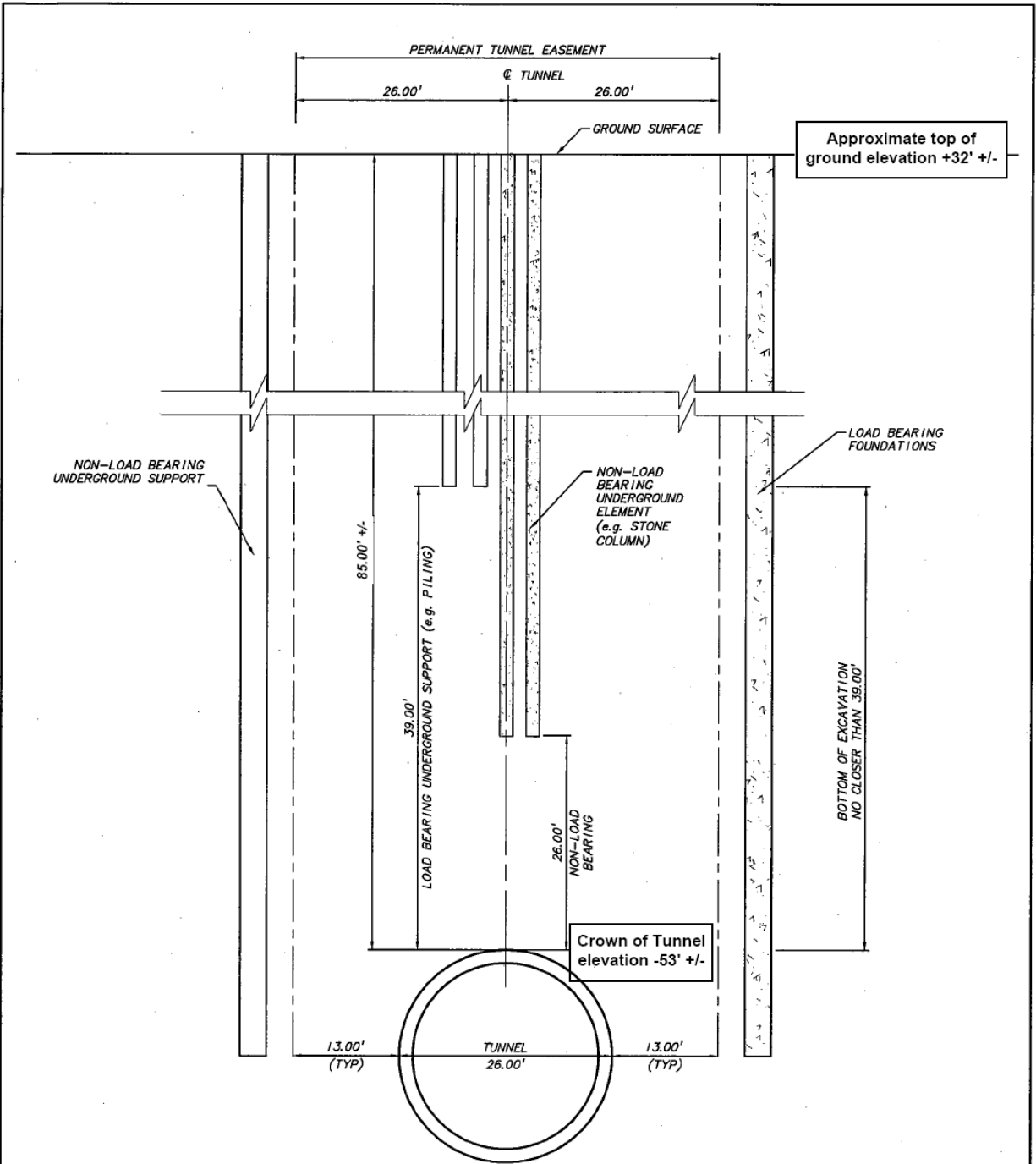
	<p>CITY OF PORTLAND  <b>ENVIRONMENTAL SERVICES</b></p>	<p><b>EXHIBIT B</b>  <b>EAST SIDE CSO TUNNEL</b>  <b>TUNNEL EASEMENT</b>          Property ID# 2130</p>	<p>JOB NO.          5516</p> <p>FIGURE NO.          2</p>
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Date: 2/22/08

	<p>CITY OF PORTLAND  <b>ENVIRONMENTAL SERVICES</b></p>	<p><b>EXHIBIT B</b>  <b>EAST SIDE CSO TUNNEL</b>  <b>TUNNEL EASEMENT</b>          Property ID# 2131</p>	<p>JOB NO.          5516          FIGURE NO.          2</p>
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 FOR PROTECTION OF TUNNEL**

Date: 2/22/08

	<p>CITY OF PORTLAND  <b>ENVIRONMENTAL SERVICES</b></p>	<p><b>EXHIBIT B</b>  <b>EAST SIDE CSO TUNNEL</b>  <b>TUNNEL EASEMENT</b>          Property ID# 2132</p>	<p>JOB NO.          5516          FIGURE NO.          2</p>
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# PDC

PORTLAND DEVELOPMENT COMMISSION

## Resolution Number 6577

TITLE: AUTHORIZE DISPOSITION OF A SUBSURFACE PERMANENT TUNNEL EASEMENT TO THE BUREAU OF ENVIRONMENTAL SERVICES FOR THE EASTSIDE COMBINED SEWER OVERFLOW PROJECT AT 123 NE 3RD AVENUE, BLOCK 67 IN THE CENTRAL EASTSIDE URBAN RENEWAL AREA

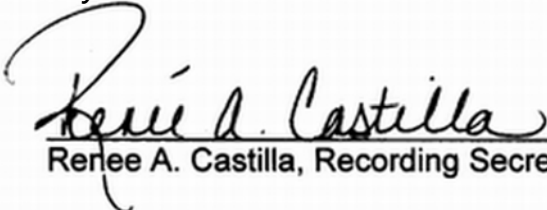
Adopted by the Portland Development Commission on May 14, 2008.

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Mark Rosenbaum, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Sal Kadri	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Bertha Ferrán	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Charles Wilhoite	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	John Mohlis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> Consent Agenda		<input type="checkbox"/> Regular Agenda		

### Certification

The undersigned hereby certifies that:

*The attached resolution is a true and correct copy of the resolution as finally adopted at a Board Meeting of the Portland Development Commission and duly recorded in the official minutes of the meeting.*

  
Renee A. Castilla, Recording Secretary

Date: June 5, 2008