

Memorandum



Date: April 20, 2010

Agenda Item No. 8(Q)(1)(A)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Resolution Authorizing the Mayor to Convey Real Estate Interest to the Florida Department of Transportation to Accommodate Construction of the Port of Miami Tunnel Project

Recommendation

It is recommended that the Board of County Commissioners adopt the accompanying resolution authorizing the Mayor to convey real estate interest to the Florida Department of Transportation (FDOT) to accommodate construction and operation of the Port of Miami Tunnel (POMT) Project.

Scope-

The POMT Project is located in Commission District 5; however, the economic impact of its construction and operation is Countywide.

Fiscal Impact/Funding Source

The accompanying resolution will not serve to amend or alter the financial terms or conditions of the existing Master Agreement for the POMT Project.

Track Record/Monitor

The POMT Project continues to be managed by the FDOT, though working in close coordination with the County's project representative, Dorian K. Valdes, P.E., Assistant Director, Seaport Capital Development Division.

Background

In July 2007, the Board of County Commissioners approved the Master Agreement for the POMT Project. Under the Master Agreement, the County conveyed temporary easements and certain perpetual easements for the construction and operation of the Project. The County also committed to provide any additional temporary and perpetual easements needed to accommodate the final design of the Project.

The POMT Project has now entered an intensive phase in which the concessionaire and FDOT, with County concurrence, will agree upon a final design. These design decisions must be made without delay and must include any needed adjustments to the previously conveyed easements. To best accommodate this extremely time-sensitive period, the attached resolution authorizes the Mayor to make these modifications within defined physical boundaries and subject to several conditions precedent. Without the ability to modify the easements expeditiously, the Project may not be able to maximize value engineering, and will be limited in its ability to accommodate operational changes that have occurred at the Port during the four years that have intervened between the original design proposal and today. The proposed easement modifications result in a net benefit to the County as the project plans call for a reduction in required easement acreage. Provisions exist in the executed Master Agreement (Resolution No. R-889-07) for the conveyance of easements as needed to accommodate construction of the Project in accordance with the approved final design. Any modifications executed by the Mayor will be reported back to this Board.

Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: April 20, 2010

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(Q)(1)(A)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(Q)(1)(A)
4-20-10

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE GRANT OF TEMPORARY
AND PERPETUAL EASEMENTS TO THE FLORIDA DEPARTMENT
OF TRANSPORTATION TO ACCOMMODATE CONSTRUCTION
OF THE PORT OF MIAMI TUNNEL AND ACCESS
IMPROVEMENT PROJECT

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that :

Section 1. The foregoing recital is incorporated in this resolution and is approved.

Section 2. This Board, subject to the fulfillment of each and every one of the conditions precedent set forth in Section 3 of this resolution, approves the grant of temporary and perpetual easements to the Florida Department of Transportation (FDOT) necessary or appropriate to accomplish the tunnel realignment contemplated by the FDOT, in the approximate locations described in the plans attached to this resolution as Exhibit A, which easements shall be in substantially the forms attached as Exhibit B to this resolution. The conveyance authorized by this resolution includes any temporary and perpetual easements, but includes only real estate currently owned or controlled by Miami-Dade County. Upon fulfillment of each and every one of the conditions precedent set forth in Section 3 of this resolution, the Mayor is authorized to take appropriate actions to accomplish same, to execute the temporary and perpetual easements, same for and on behalf of Miami-Dade County, upon approval of the County Attorney's Office.

Section 3. The Board's approval of the grant the temporary and perpetual easements described in this resolution and the Mayor's authority to execute same, is subject to the fulfillment of each and every one of the following conditions precedent: (a) the determination by the Mayor or his designee that the conveyance is reasonably necessary or appropriate to accommodate the construction of the project and in the best of the County or otherwise required under the terms of the Master Agreement by and between the County and FDOT for construction of the Port of Miami and Access Improvement Project (the "Master Agreement"); (b) the determination by the Mayor or his designee that the conveyance will not increase the County's contribution or liability under the Master Agreement; (c) the necessary surveys and legal descriptions required to give effect and record the temporary and perpetual easements have been completed and delivered and approved by the County; and (d) the determination by the Mayor or his designee, after consultation with the County Attorney's Office, that any and all documents necessary or appropriate to extinguish or modify the real estate interests originally conveyed in the Master Agreement which are no longer necessary for construction of the project following the realignment have been executed.

Section 4. The Mayor is hereby authorized to execute any and all documents and to take any and all acts necessary or appropriate to give effect to the intent of this resolution. The Mayor shall report to this Board any conveyance made pursuant to this resolution.

Section 5. In accordance with Resolution No. R-974-09, the County Mayor or his designee is hereby directed to ensure that all documents necessary or appropriate to extinguish or modify the real estate interests originally conveyed in the Master Agreement which are no longer necessary for construction of the project following the realignment have been recorded in the public records of the County and to provide a recorded copy of such instrument(s) to the Clerk of

the Board within thirty days of execution and final acceptance. The Clerk of the Board shall attach and permanently store a recorded copy of such instrument(s) together with the certified copy of this resolution and Resolution No. R-889-07.

The foregoing resolution was offered by Commissioner who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

- | | |
|---------------------------------|--------------------|
| Dennis C. Moss, Chairman | |
| Jose "Pepe" Diaz, Vice-Chairman | |
| Bruno A. Barreiro | Audrey M. Edmonson |
| Carlos A. Gimenez | Sally A. Heyman |
| Barbara J. Jordan | Joe A. Martinez |
| Dorrin D. Rolle | Natacha Seijas |
| Katy Sorenson | Rebeca Sosa |
| Sen. Javier D. Souto | |

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of April, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. GBL

Hugo Benitez/Geri Bonzon-Keenan



Change in temporary construction easements

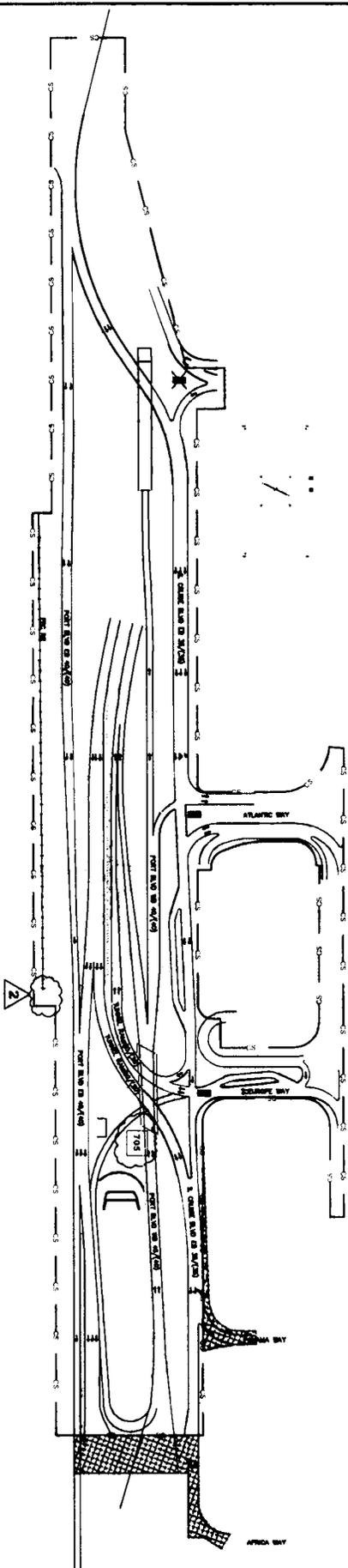
PARCEL	Concession Agreement (acres)	MAT alt proposal (acres)	Type of Easement	Surface/Underground
701	4.39	NO CHANGE	TEMPORARY EASEMENT	S
705	31.39	30.19 / 2	TEMPORARY NON EXCLUSIVE EASEMENT	S/U
703	2.05	NO CHANGE	TEMPORARY NON EXCLUSIVE EASEMENT	S
704	2.62	NO CHANGE	TEMPORARY NON EXCLUSIVE EASEMENT	S

LEGEND Scale 1:250

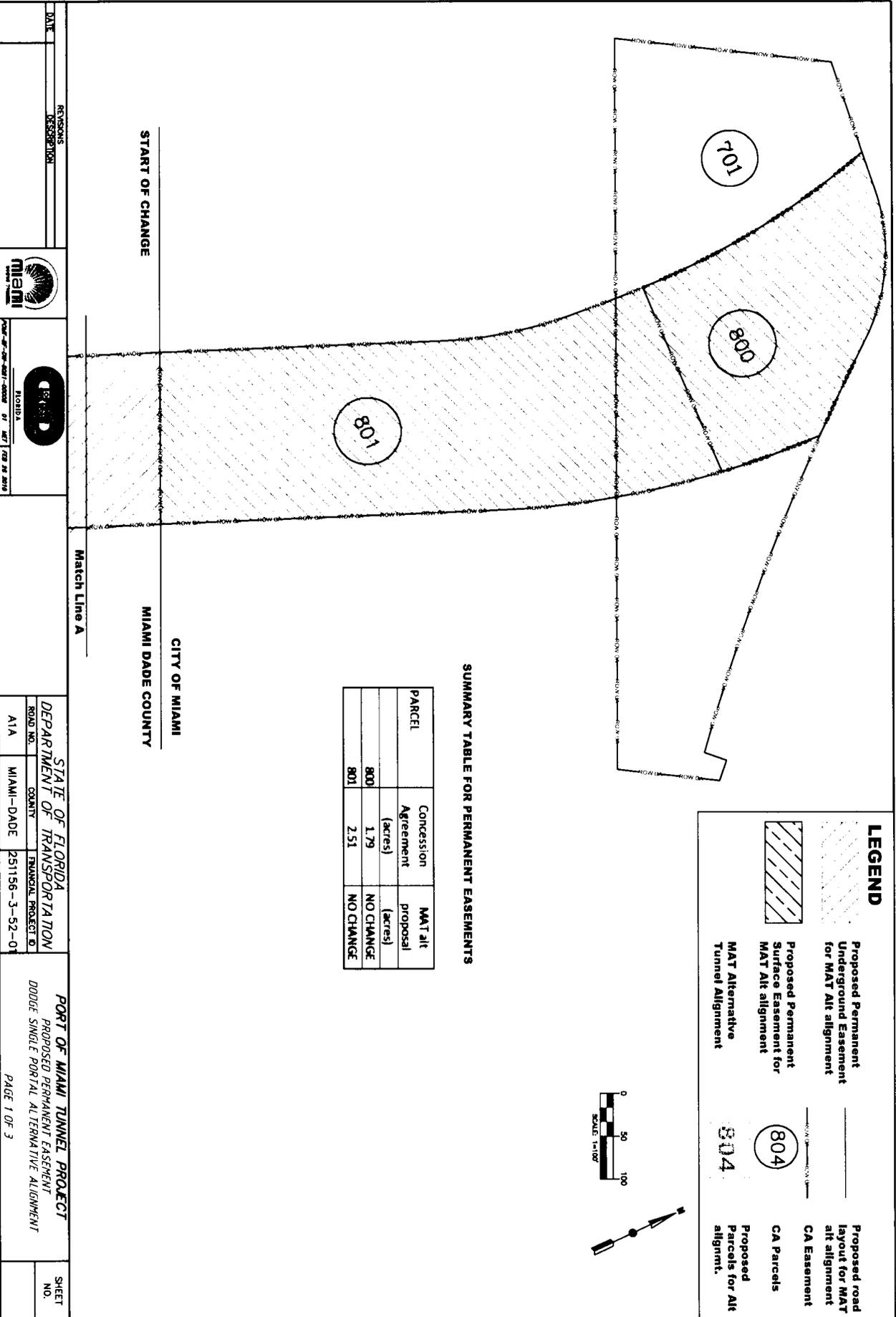
 Modified Concession Agreement Temporary Construction Easement

 MAT Alternative Tunnel Alignment

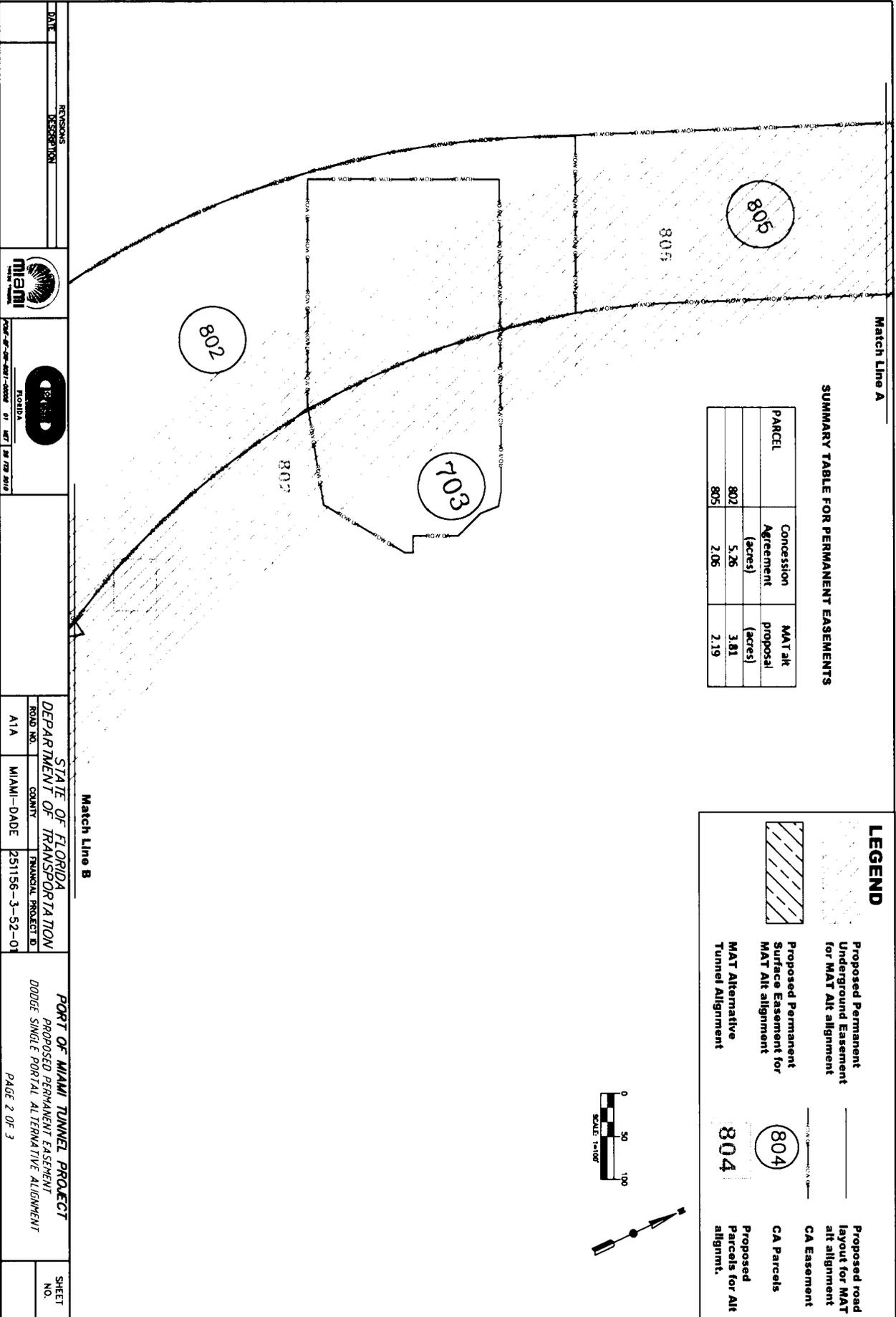
 Proposed change in construction easement



DATE	03.26.10	REVISION DESCRIPTION	705 adjustment
			
DEPARTMENT OF TRANSPORTATION ROAD NO. A1A		COUNTY MIAMI-DADE FINANCIAL PROJECT ID 251156-3-52-01	
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION ROAD NO. A1A		COUNTY MIAMI-DADE FINANCIAL PROJECT ID 251156-3-52-01	
PART OF MIAMI TUNNEL PROJECT PROPOSED CONSTRUCTION EASEMENT DODGE SINGLE PORTAL ALIGNMENT		SHEET NO.	



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Match Line A

SUMMARY TABLE FOR PERMANENT EASEMENTS

PARCEL	Concession Agreement (acres)	MAT Ait proposal (acres)
802	5.26	3.81
805	2.06	2.19

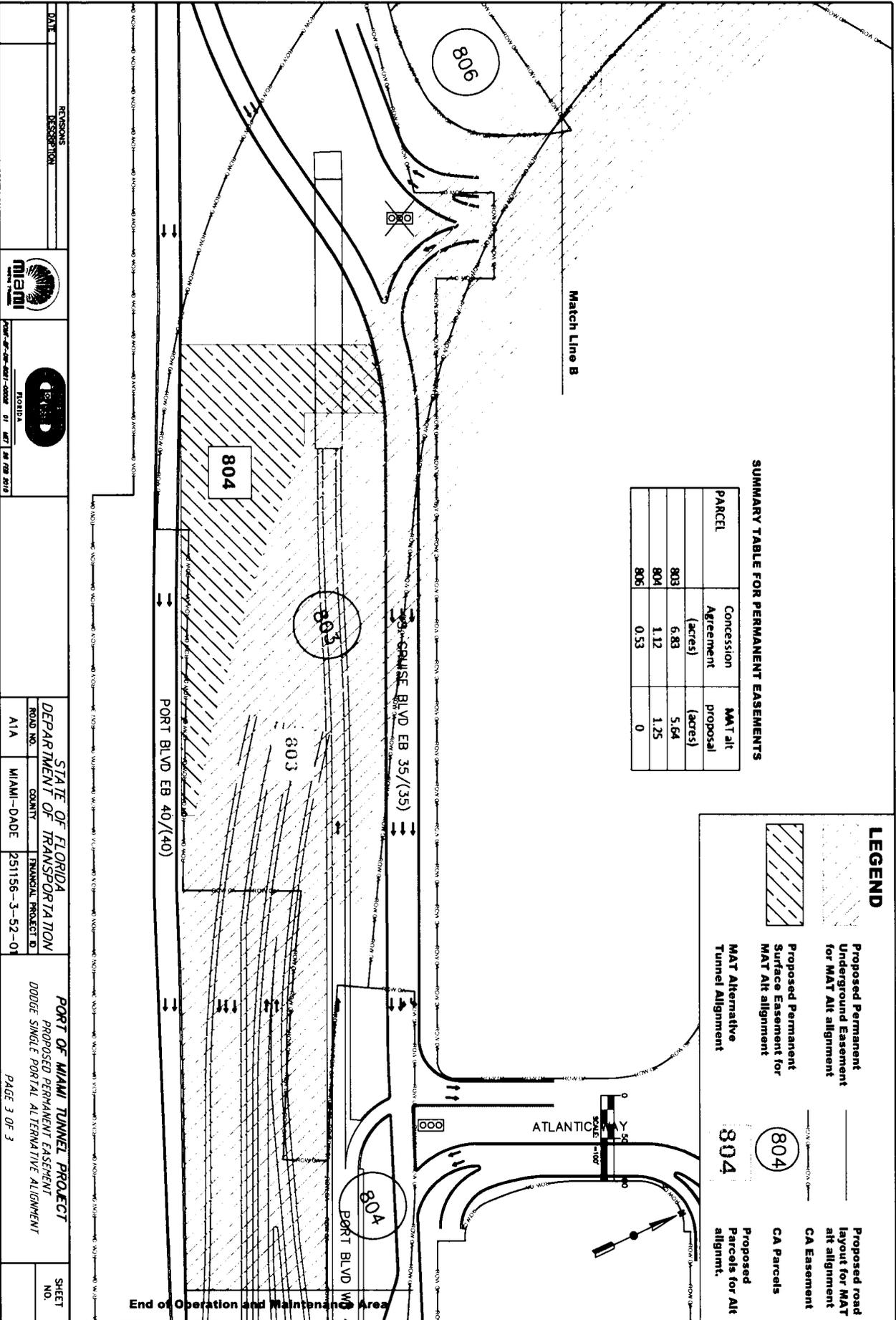
LEGEND

-  Proposed Permanent Underground Easement for MAT Ait alignment
-  Proposed Permanent Surface Easement for MAT Ait alignment
-  MAT Alternative Tunnel Alignment
-  Proposed road layout for MAT Ait alignment
-  CA Easement
-  CA Parcels
-  Proposed parcels for Ait alignment.



DATE	REVISIONS	DESCRIPTION			ROAD NO. A1A COUNTY MIAMI-DADE FINANCIAL PROJECT ID 251156-3-52-01	STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION PART OF MIAMI TUNNEL PROJECT PROPOSED PERMANENT EASEMENT DODGE SINGLE PORTAL ALTERNATIVE ALIGNMENT PAGE 2 OF 3	SHEET NO.
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SUMMARY TABLE FOR PERMANENT EASEMENTS

PARCEL	Concession Agreement (acres)	MAT Ait proposal (acres)
803	6.83	5.64
804	1.12	1.25
806	0.53	0

LEGEND

- Proposed Permanent Underground Easement for MAT Ait alignment
- Proposed Permanent Surface Easement for MAT Ait alignment
- MAT Alternative Tunnel Alignment
- Proposed road layout for MAT Ait alignment
- CA Easement
- CA Parcels
- Proposed Parcels for Ait alignment.

804

DATE	REVISIONS	DESCRIPTION	DATE
MIAMI-DADE COUNTY		FLORIDA DEPARTMENT OF TRANSPORTATION	
ROAD NO. A1A		PROJECT ID 251156-3-52-01	
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION		PORT OF MIAMI TUNNEL PROJECT	
MIAMI-DADE COUNTY		PROPOSED PERMANENT EASEMENT	
MIAMI-DADE COUNTY		DODGE SINGLE PORTAL ALTERNATIVE ALIGNMENT	
PAGE 3 OF 3		SHEET NO.	

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This instrument prepared by:

TEMPORARY NON-EXCLUSIVE EASEMENT

THIS EASEMENT made this ____ day of _____, 2010 by and between **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida, grantor, to the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, its successors and assigns, grantee.

WITNESSETH: that for and in consideration of the sum of One Dollar and other valuable considerations, receipt and sufficiency of which is hereby acknowledged, the grantor hereby gives, grants, bargains and releases to the grantee, a temporary non-exclusive easement for the purpose **of being used as a staging area to store equipment and materials**, in, upon, over and through the following described land in Miami-Dade County, Florida, described as follows, viz:

Parcel _____

[insert legal description]

THIS EASEMENT is granted upon the condition that any work performed upon the above described land shall conform to all existing structural improvements within the limits designated, and all work will be performed in such a manner that the existing structural improvements will not be damaged.

THIS EASEMENT shall be in effect for a period of Seventy-Eight Months commencing on the date this Easement is granted, except that grantee shall not occupy the easement area until after the construction contract for the Port of Miami Tunnel Project has been executed, and except that in the event that the grantee determines that it will not construct the Port of Miami Tunnel Project, or the use of the Port of Miami Tunnel is abandoned, or the Tri-Party Master Agreement terminates in accordance with Section 3 of that Agreement, then the Temporary Easement granted, conveyed, assigned and transferred by Miami-Dade County shall immediately revert to Miami-Dade County, and the County shall have the right to immediately re-possess said easement. Furthermore, the parties shall execute and deliver necessary and appropriate instruments and other documents required therefore as provided in Sections 7 and 18j of the Tri-Party Master Agreement.

IN WITNESS WHEREOF, the said grantor has caused these presents to be executed in its name by its Board of County Commissioners, acting by the Mayor, and Attested by the Clerk Deputy Clerk of said Board, the day and year aforesaid.

ATTEST:
Harvey Ruvin,
Clerk of said Board

Miami-Dade County, Florida, a Political
subdivision of the State of Florida

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By its Board of County Commissioners

Clerk (or Deputy Clerk) of the Circuit Court

ATTEST:

Witness

Witness

Printed name

Printed name

The foregoing was authorized and approved by the Resolution No. _____ of the Board of County Commissioners of Miami-Dade County, Florida, on the ____ day of _____, A.D. 2010.

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

I HEREBY CERTIFY, that on this __ day of _____, A.D. 20 __, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared _____, personally known to me, or proven, by producing the following identification: _____ to be the person(s) who executed the forgoing instrument freely and voluntarily for the purposes therein expressed.

WITNESS my hand and official seal in the County and State aforesaid, the day and year last aforesaid.

Notary Signature

Printed Notary Name

Notary Public, State of Florida

My commission expires: _____

Commission/Serial No. _____

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This instrument prepared by:

PERPETUAL NON-EXCLUSIVE EASEMENT

THIS EASEMENT made this ____ day of _____, 2010 by **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida, grantor, to the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, its successors and assigns, grantee.

WITNESSETH: That the grantor for and in consideration of the sum of One Dollar and other valuable considerations paid, the receipt and sufficiency of which is hereby acknowledged, hereby grants unto the grantee, its successors and assigns, a perpetual non-exclusive easement for the purpose **of constructing and maintaining a Tunnel from bulkhead to existing roadways** in, under, and through the following described land in Miami-Dade County, Florida, viz:

Parcel

[insert legal description]

TO HAVE AND TO HOLD the same unto said grantee, its successors and assigns forever, except that in the event that the grantee determines that it will not construct the Port of Miami Tunnel Project, or the use of the Port of Miami Tunnel is abandoned, or the Tri-Party Master Agreement terminates in accordance with Section 3 of that Agreement, then the Perpetual Easement granted, conveyed, assigned and transferred by Miami-Dade County shall immediately revert to Miami-Dade County, and the County shall have the right to immediately re-possess said easement. Furthermore, the parties shall execute and deliver necessary and appropriate instruments and other documents required therefore as provided in Sections 7 and 18j of the Tri-Party Master Agreement.

IN WITNESS WHEREOF, the said grantor has caused these presents to be executed in its name by its Board of County Commissioners, acting by the Mayor, and Attested by the Clerk Deputy Clerk of said Board, the day and year aforesaid.

ATTEST:
Harvey Ruvin,
Clerk of said Board

Miami-Dade County, Florida, a Political
subdivision of the State of Florida

Clerk (or Deputy Clerk) of the Circuit Court

By its Board of County Commissioners

By: _____
Carlos Alvarez, Mayor

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Approved for legal sufficiency _____

ATTEST:

The foregoing was authorized and approved by the Resolution No. _____ of the Board of County Commissioners of Miami-Dade County, Florida, on the ____ day of _____, A.D. 2010.

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

I HEREBY CERTIFY, that on this __ day of _____, A.D. 20__, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared _____, personally known to me, or proven, by producing the following identification: _____ to be the person(s) who executed the forgoing instrument freely and voluntarily for the purposes therein expressed.

WITNESS my hand and official seal in the County and State aforesaid, the day and year last aforesaid.

Notary Signature

Printed Notary Name

Notary Public, State of Florida

My commission expires: _____

Commission/Serial No. _____