

AGREEMENT
between
WEBER COUNTY
and
COLE CANYON WATER COMPNAY
for access and installation of a water line

This agreement (“Agreement”) is between **WEBER COUNTY**, a body corporate and politic of the State of Utah on behalf of the Weber County Culture, Parks, and Recreation Department (“County”) and **COLE CANYON WATER COMPANY** (“Cole Canyon”). County and Cole Canyon may be referred to jointly as the “parties.”

RECITALS

WHEREAS, County owns and operates the North Fork Park (the “Park”) located in Weber County’s upper valley; and

WHEREAS, Cole Canyon has petitioned the County for access through a portion of County’s Park for the purpose of installing a water line; and

WHEREAS, County has agreed to allow Cole Canyon temporary and limited access to construct or cause to be constructed a water line at a location specified in this agreement and subject to the term and conditions contained in this Agreement; and

THEREFORE, in exchange for valuable consideration, including the mutual covenants contained in this Agreement, the Parties covenant and agree as follows:

1. SCOPE OF AGREEMENT

Cole Canyon shall be permitted to access the County’s Park for the purpose of installing a water line as described in the engineering plans attached to this Agreement as **Exhibit A** and at the location specified in the engineering plans attached to this Agreement as **Exhibit A**.

Cole Canyon shall be responsible for restoration of any and all of the land disturbed by the installation of said water line. Any disturbance must be returned to an original or better than original condition. County, in County’s sole discretion, shall determine whether any disturbances have been reasonably restored to their original or better than original condition. In the event that County determines Cole Canyon has failed to restore any disturbance to the original or better than original condition, County shall notify Cole Canyon and Cole Canyon shall be responsible for the restoration or the costs of County’s endeavors to restore the disturbance to the original or better than original condition.

Cole Canyon shall notify County in advance and as soon reasonably possible of any construction work or disturbances of any kind that could interrupt the regular or daily use of the Park by any users or County personnel. County shall work with Cole Canyon to temporarily divert traffic, personnel, or users of the Park away from Cole Canyon's construction activities as necessary.

2. EFFECTIVE DATE/TERM

This Agreement shall be effective as of the 01 day of August, 2023 and will continue for a period of 1 year following the effective date ("Term"). County reserves the right to review this Agreement on a regular basis regarding performance and cost analysis and may negotiate price and service elements during the term of this Agreement.

3. TERMINATION

- a. Termination for Default. County may terminate this Agreement for an "Event of Default as defined, upon written notice from County to Cole Canyon.
- b. Termination by Cole Canyon for Default. Cole Canyon may terminate this Agreement for an Event of Default upon written notice from Cole Canyon to County.
- c. Event of Default. As used in this Agreement, the term "Event of Default" means a party hereto fails to perform any of its material obligations and such failure continues for a period of 30 (thirty) days after written notice to such defaulting party or any material representation or warranty of a party contained in this Agreement proves to be untrue or incorrect in any material respect when made.
- d. Force Majeure. Neither party shall be liable for any excess costs if the failure to perform arises from causes beyond the control and without the fault or negligence of that party, e.g., acts of God, fires, floods, strikes, or unusually severe weather. If such condition continues for a period in excess of 60 days, Cole Canyon or County shall have the right to terminate this Agreement without liability or penalty effective upon written notice to the other party.
- e. No Limitation of Rights. The rights and remedies of the parties hereto are in addition to any other rights and remedies provided by law or under this Agreement. The parties agree that the waiver of any breach of this Agreement by either party shall in no event constitute a waiver as to any future breach.
- f. Termination for Convenience. County reserves the right to terminate this Agreement, in whole or in part, at any time during the Term or any Additional Terms whenever County determines, in its sole discretion that it is in the County's interest to do so. If County elects to exercise this right, County shall provide written notice to Cole Canyon at least 30 (thirty) days prior to the date of termination for convenience. Upon such termination, Cole Canyon shall be paid for all services up to the date of termination. Cole Canyon agrees that the County's termination for convenience will not be deemed a termination for default nor will it entitle Cole Canyon to any rights or remedies provided by law

or this Agreement for breach of contract by the County or any other claim or cause of action.

4. INDEPENDENT CONTRACTOR AND TAXES

The relationship of County and Cole Canyon under this Agreement shall be that of an independent contractor status. Each party shall have the entire responsibility to discharge all of the obligations of an independent contractor under federal, state and local law, including but not limited to, those obligations relating to employee supervision, benefits and wages; taxes; unemployment compensation and insurance; social security; worker's compensation; disability pensions and tax withholdings, including the filing of all returns and reports and the payment of all taxes, assessments and contributions and other sums required of an independent contractor. Nothing contained in this Agreement shall be construed to create the relationship between County and Cole Canyon of employer and employee, partners or joint venturers.

5. INSURANCE

Cole Canyon shall, at its sole cost and expense, secure and maintain during the term of this Agreement, including all renewal or additional terms, the following minimum insurance coverage:

- A. Workers' compensation and employer's liability insurance as required by the State of Utah.
- B. Commercial general liability insurance in the minimum amount of \$1,000,000 per occurrence with a \$2,000,000 general policy aggregate.
- C. Professional liability insurance in the minimum amount of \$1,000,000 per occurrence with a \$2,000,000 annual policy aggregate limit.
- D. Commercial automobile liability insurance that provides coverage in the minimum amount of \$100,000 per occurrence per person/ \$300,000 per accident / \$50,000 property damage OR single combined limit of \$500,000.

6. AGENT

No agent, employee or servant of Cole Canyon or County is or shall be deemed to be an employee, agent or servant of the other party. None of the benefits provided by each party to its employees, including but not limited to workers' compensation insurance, health insurance and unemployment insurance, are available to the employees, agents, or servants of the other party. Cole Canyon and County shall each be solely and entirely responsible for its acts and for the acts of its agents, employees, and servants during the performance of this Agreement. Cole Canyon and County shall each make all commercially reasonable efforts to inform all persons with whom they are involved in connection with this Agreement that both are independent contractors.

7. SEVERABILITY

In the event that any condition, covenant or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant, or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

8. COMPLIANCE WITH LAWS

Each party agrees to comply with all federal, state and local laws, rules and regulations in the performance of its duties and obligations under this Agreement. Any violation by Cole Canyon of applicable law, rule or regulation, shall constitute an event of default under this Agreement. Cole Canyon is responsible, at its sole expense, to acquire, maintain and renew during the term of this Agreement, all necessary permits and licenses required for its lawful performance of its duties and obligations under this Agreement.

9. NON-ASSIGNMENT

Neither party shall assign, transfer, or contract for the furnishing of services to be performed under this Agreement without the prior written approval of the other.

10. GOVERNING LAW

It is understood and agreed by the Parties hereto that this Agreement shall be governed by the laws of the State of Utah and the ordinances of Weber County, both as to interpretation and performance. All actions, including but not limited to court proceedings, administrative proceedings, arbitration and mediation proceedings, shall be commenced, maintained, adjudicated and resolved within the jurisdiction of the State of Utah.

11. STANDARD OF PERFORMANCE/PROFESSIONALISM

Cole Canyon acknowledges the standard of performance and professionalism required in the performance of its services under this Agreement. Cole Canyon agrees to perform the services under this Agreement with the level of professionalism expected in its industry/profession in the community. Further, Cole Canyon, while performing its obligations under this Agreement, will conduct itself in such a manner that will promote the best interests of the County.

12. INDEMNIFICATION

Cole Canyon agrees to indemnify and hold harmless the County, its officers, agents, and employees from and against any and all actual or threatened claims, losses, damages, injuries,

and liabilities of, to, or by third Parties, including Cole Canyon, its subcontractors, or the employees of either, including claims for personal injury, death, or damage to personal property or profits and liens of workmen and material men (suppliers), however allegedly caused, resulting directly or indirectly from, or arising out of, Cole Canyon's breach of this Agreement or any acts or omissions of or by Cole Canyon, its agents, representatives, officers, employees, or subcontractors in connection with the performance of this Agreement. Cole Canyon agrees that its duty to indemnify the County under this Agreement includes all attorney's fees, litigation and court costs, expert witness fees, and any sums expended by or assessed against the County for the defense of any claim or to satisfy any settlement, arbitration award, or verdict paid or incurred on behalf of the County.

13. GOVERNMENTAL IMMUNITY

County is a body corporate and politic of the State of Utah, subject to the Governmental Immunity Act of Utah (the "Act"), Utah Code Ann. §§ 63G-7-101 to -904. The Parties agree that County shall only be liable within the parameters of the Governmental Immunity Act. Nothing contained in this Agreement shall be construed in any way, to modify the limits of liability set forth in that Act or the basis for liability as established in the Act.

14. COUNTERPARTS

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all the Parties, notwithstanding that each of the Parties are not signatory to the original or the same counterpart. Further, executed copies of this Agreement delivered by facsimile shall be deemed an original signed copy of this Agreement.

15. ENTIRE AGREEMENT

County and Cole Canyon acknowledge and agree that this Agreement constitutes the entire integrated understanding between County and Cole Canyon, and that there are no other terms, conditions, representations or understanding, whether written or oral, concerning the rights and obligations of the Parties to this Agreement except as set forth in this Agreement. This Agreement may not be enlarged, modified or altered, except in writing, signed by the Parties.

16. INTERPRETATION

County and Cole Canyon agree that where possible, each provision of this Agreement shall be interpreted in such a manner as to be consistent and valid under applicable law; but if any provision of this Agreement shall be invalid, prohibited or unenforceable under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

In witness whereof, the Parties execute this Agreement.

BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY

By _____
Gage Froerer, Chair

Commissioner Froerer voted _____

Commissioner Harvey voted _____

Commissioner Bolos voted _____

ATTEST

Ricky Hatch, CPA
Weber County Clerk/Auditor

COLE CANYON

By: Jared Weidman

Title: Former Member

Date: 8-23-2023

EXHIBIT A

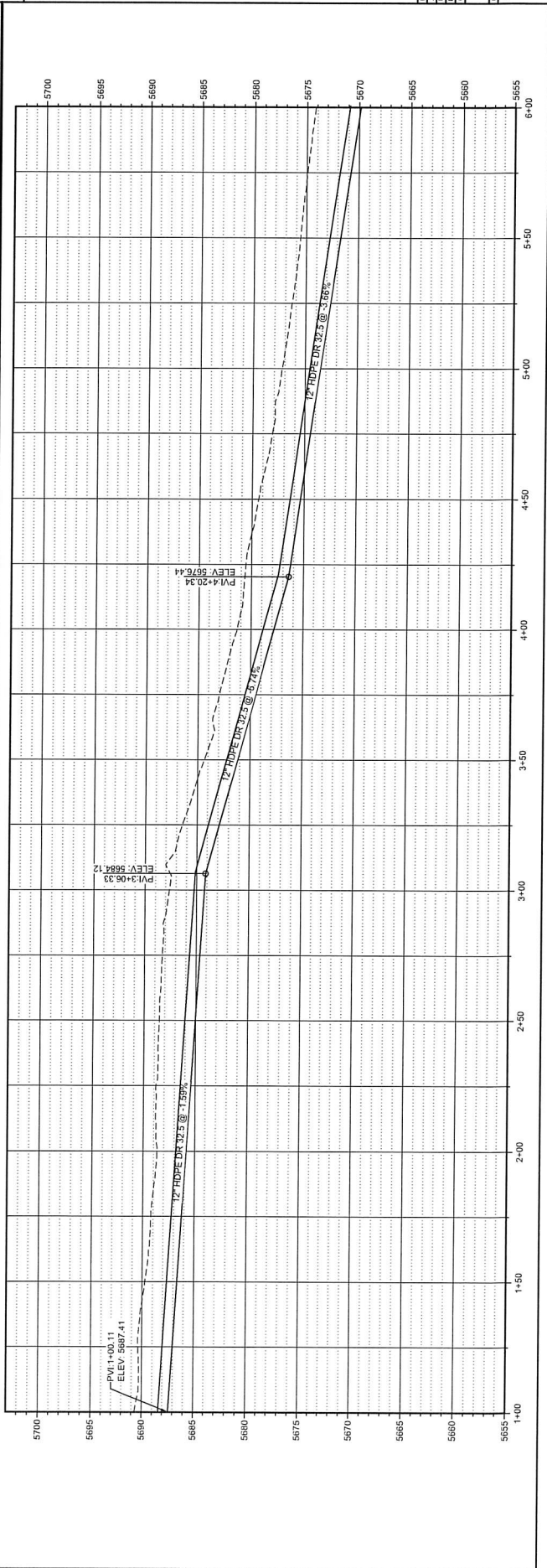
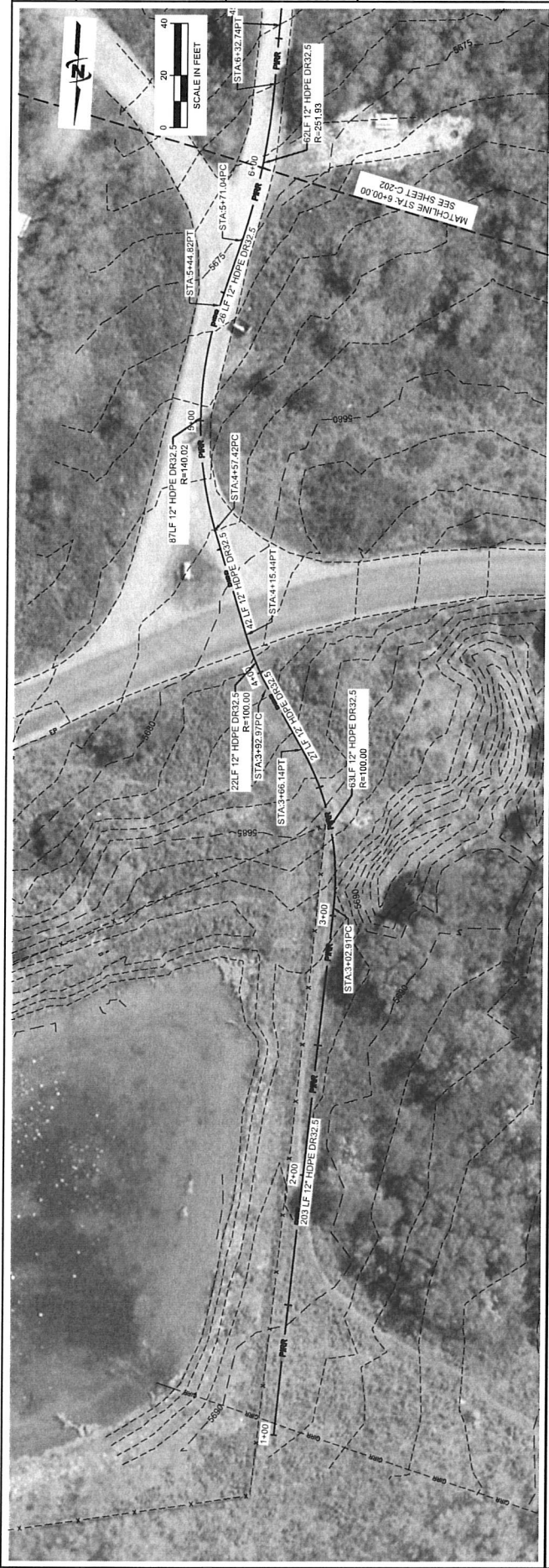
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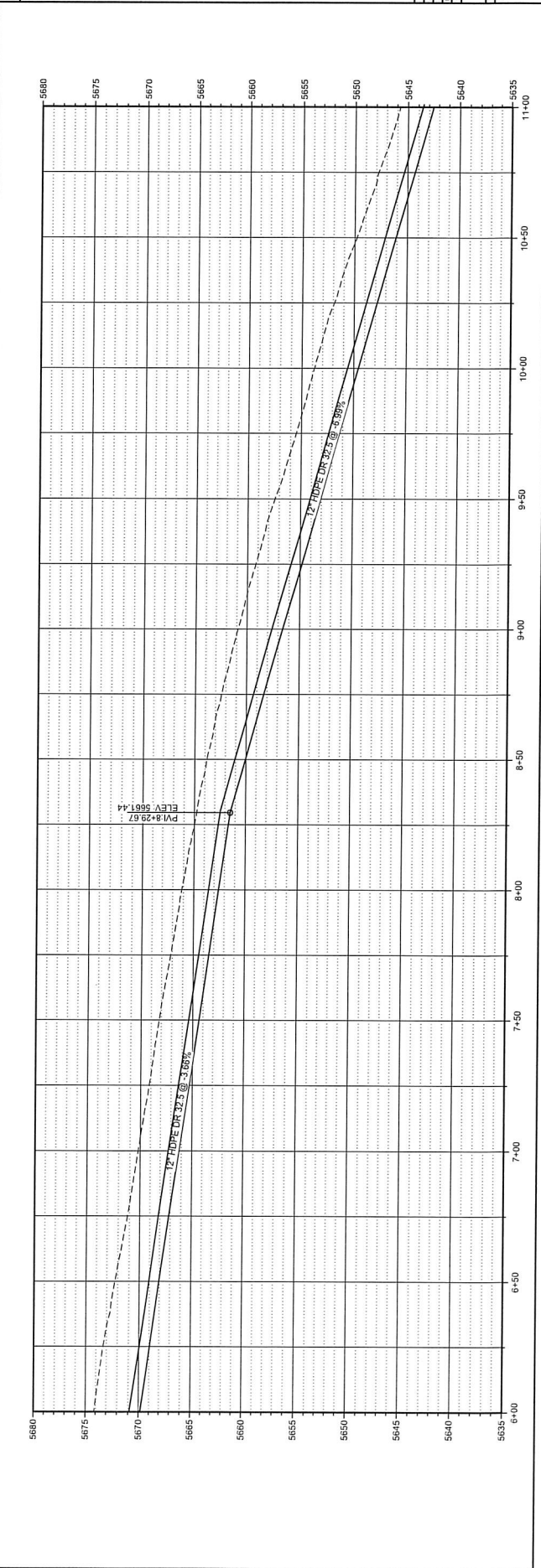
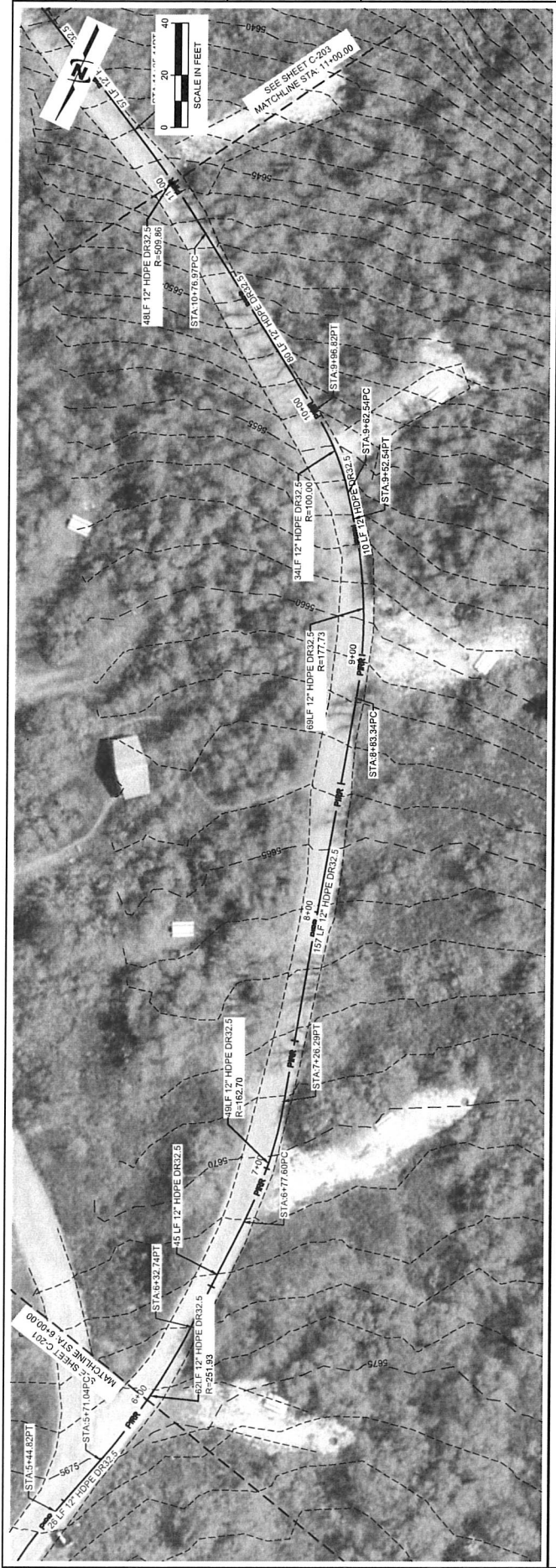
REVISIONS

NOT FOR CONSTRUCTION

PRELIMINARY PLANS

JUB ENGINEERS, INC.

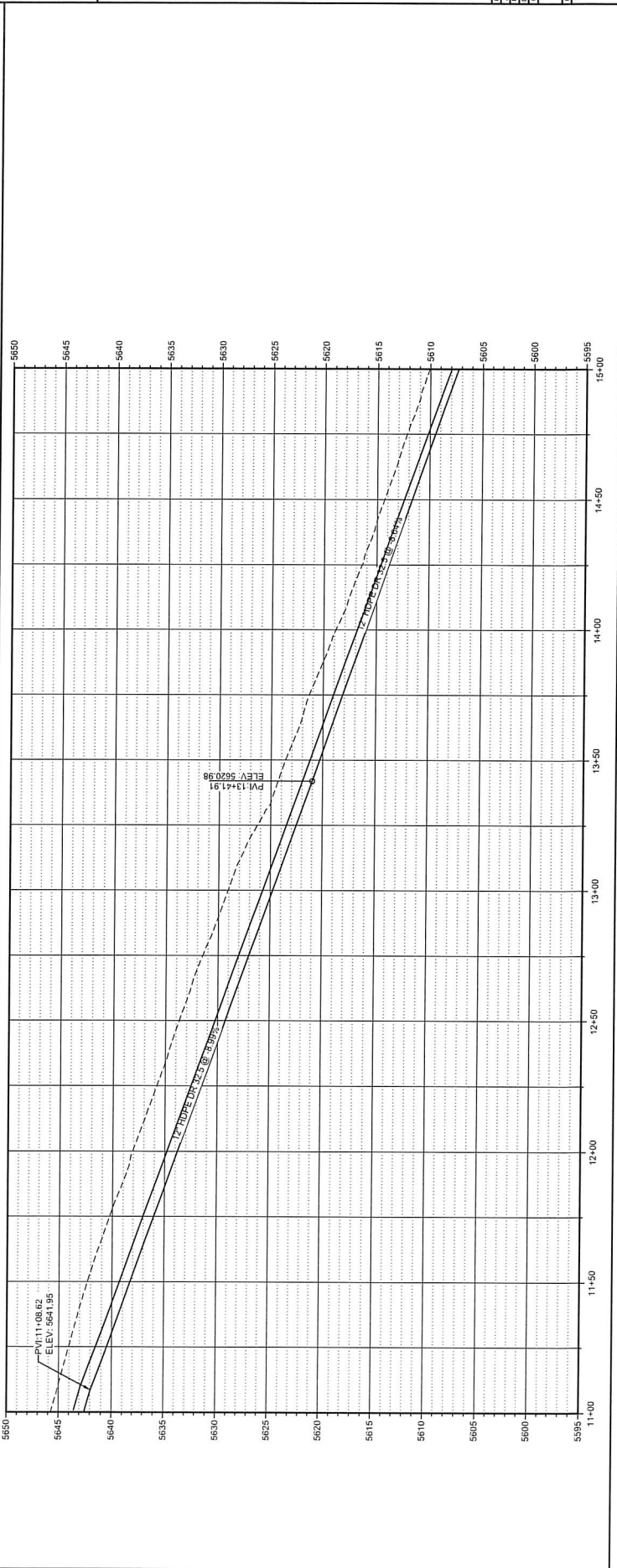
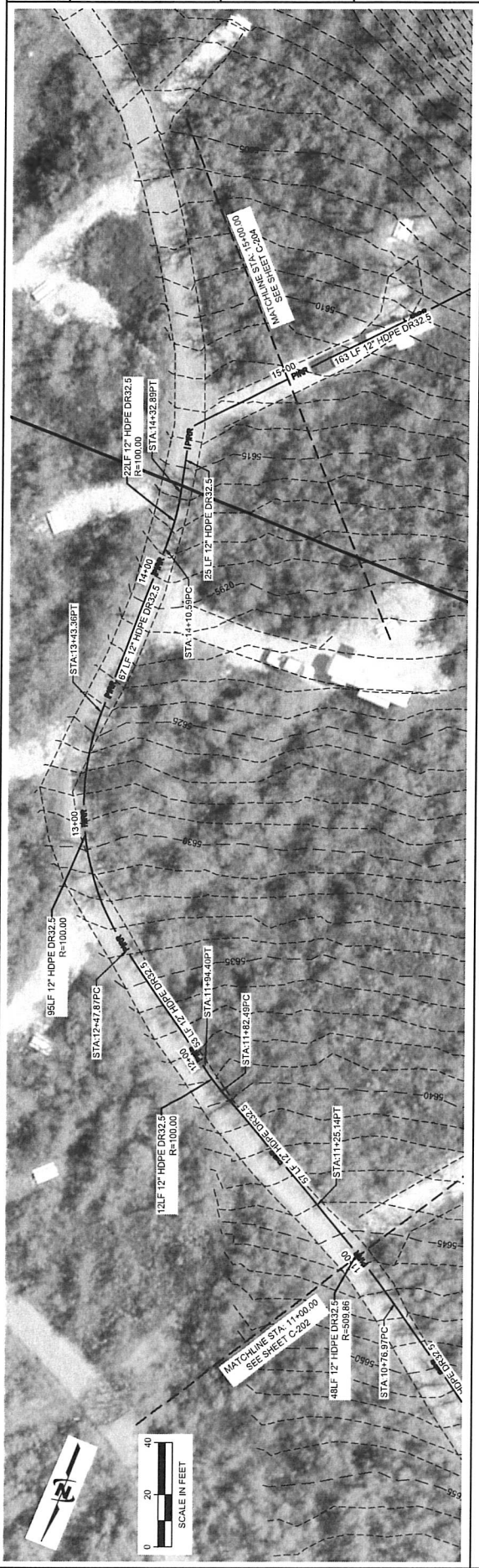




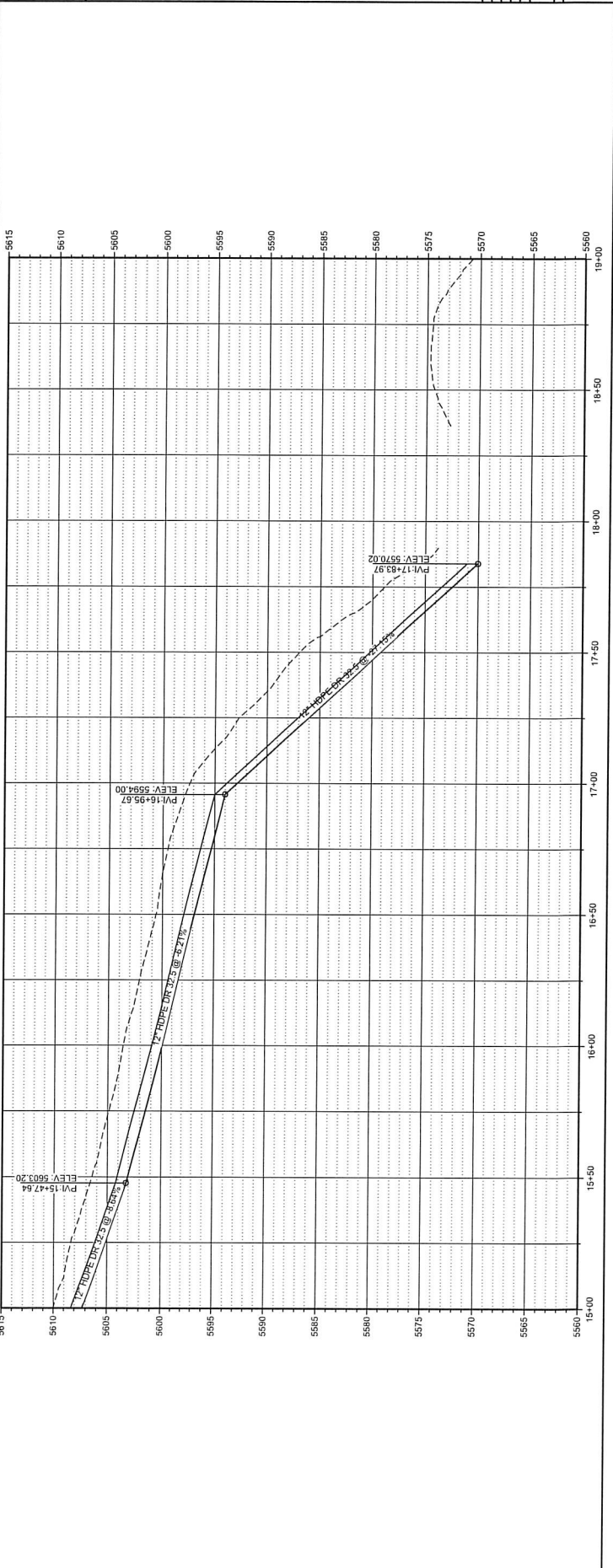
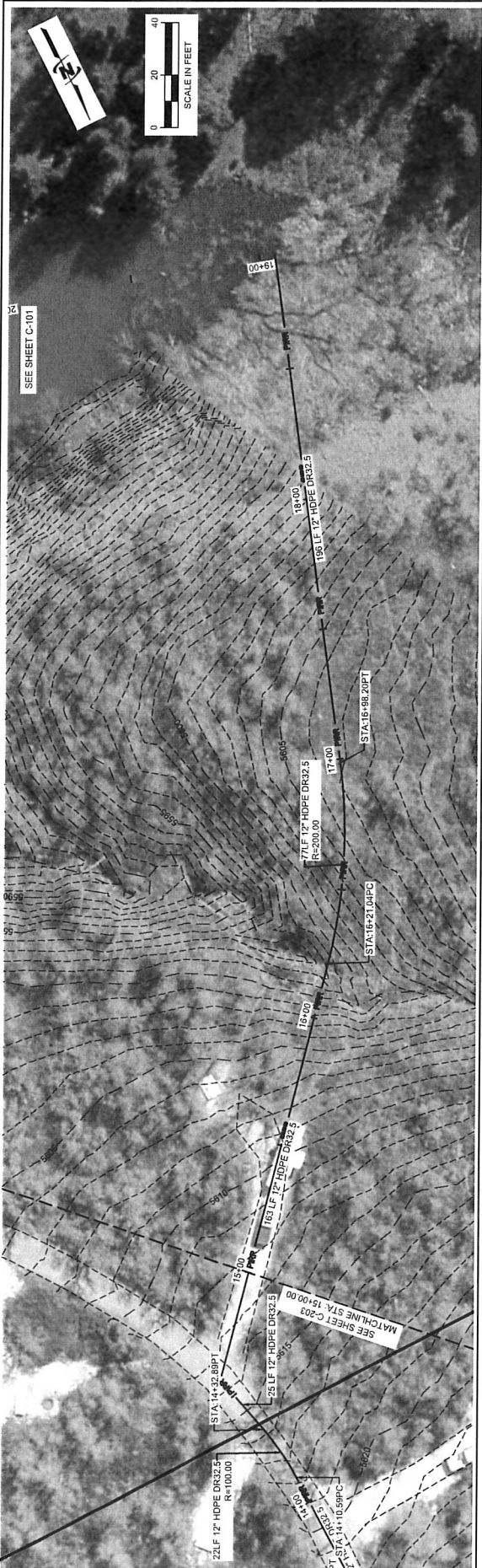
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SHEET NUMBER:
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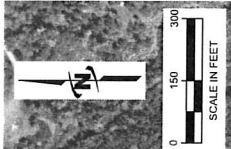
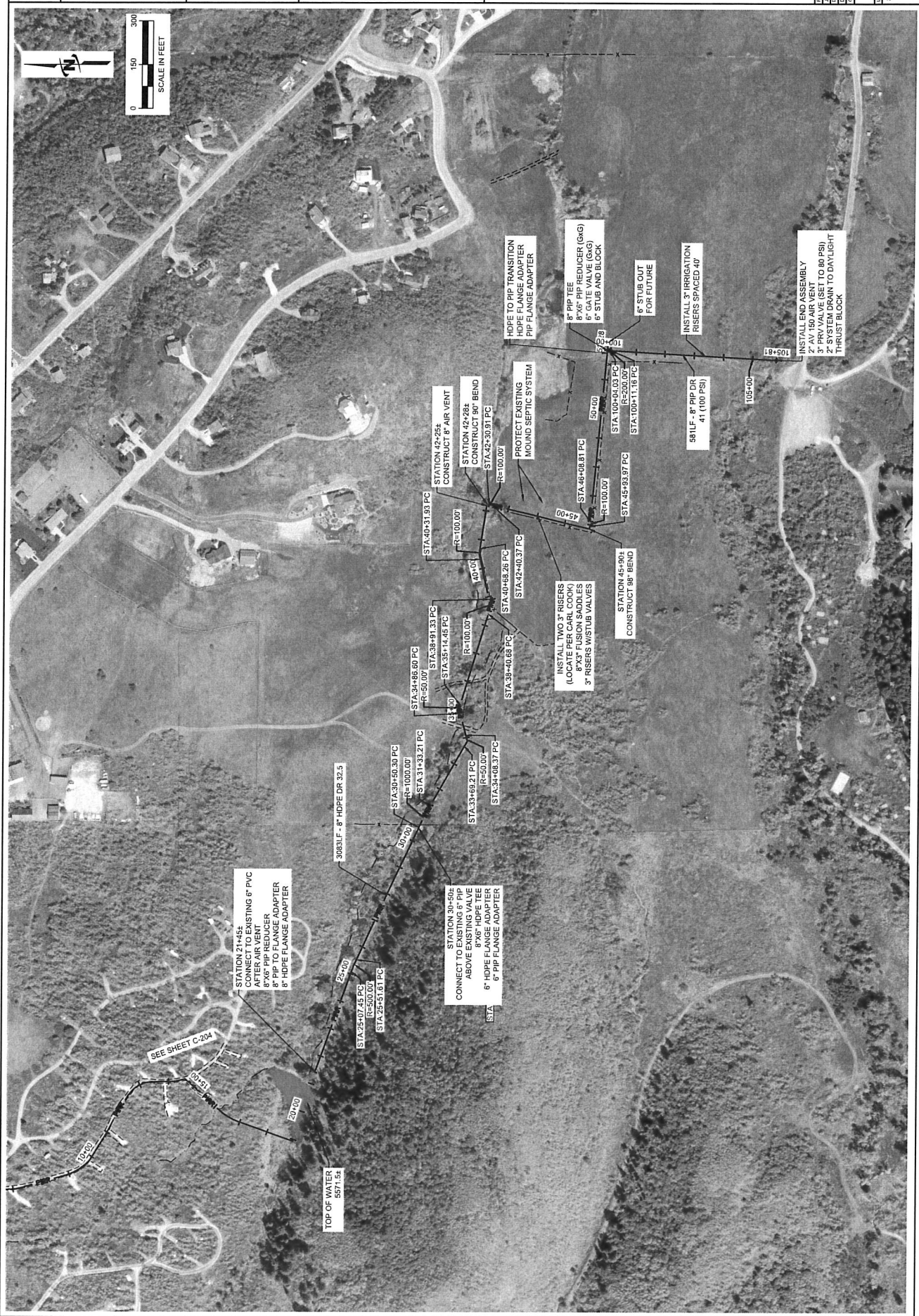


NO.	DESCRIPTION	BY	DATE



NO.	DESCRIPTION	BY	DATE

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PROJECT NO.	2013-01-01
DATE	1/1/2013
SCALE	AS SHOWN
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SCALE	AS SHOWN



SHEET NUMBER:
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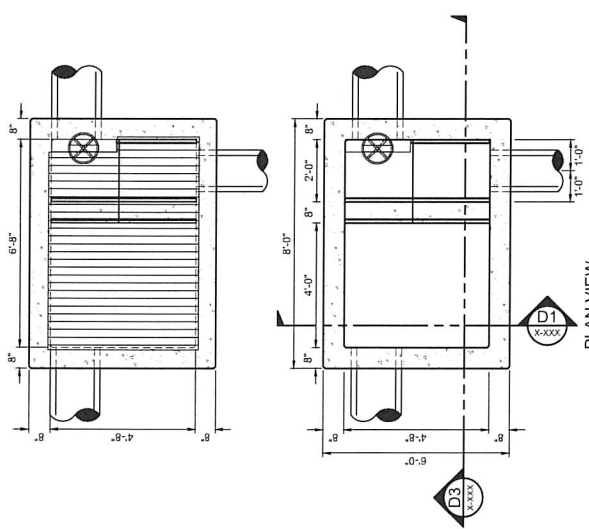
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PRELIMINARY PLANS
 NOT FOR CONSTRUCTION

NO.	DESCRIPTION	BY	DATE
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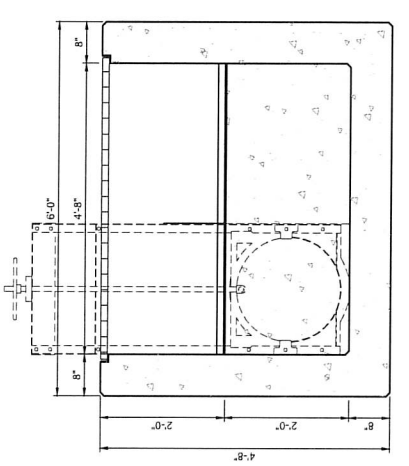
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DATE: 05/23/2023
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 CHECKED BY: ##
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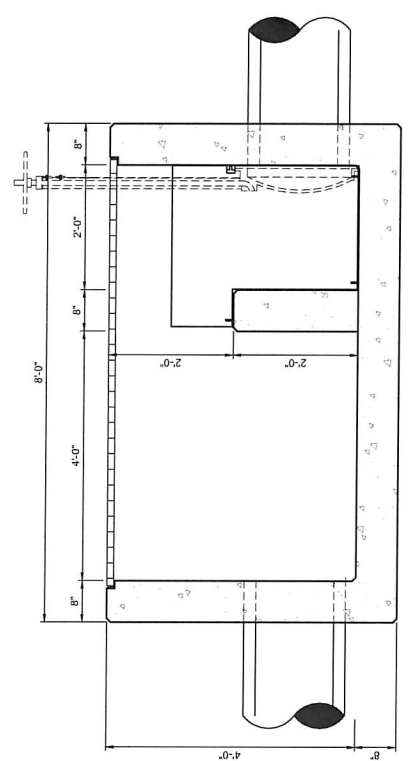


B1 SECTION/DETAIL
 SCALE: 1" = 2'

B3 SECTION/DETAIL
 SCALE: 1" = 1'



D1 SECTION/DETAIL
 SCALE: 1" = 1'



D3 SECTION/DETAIL
 SCALE: 1" = 1'