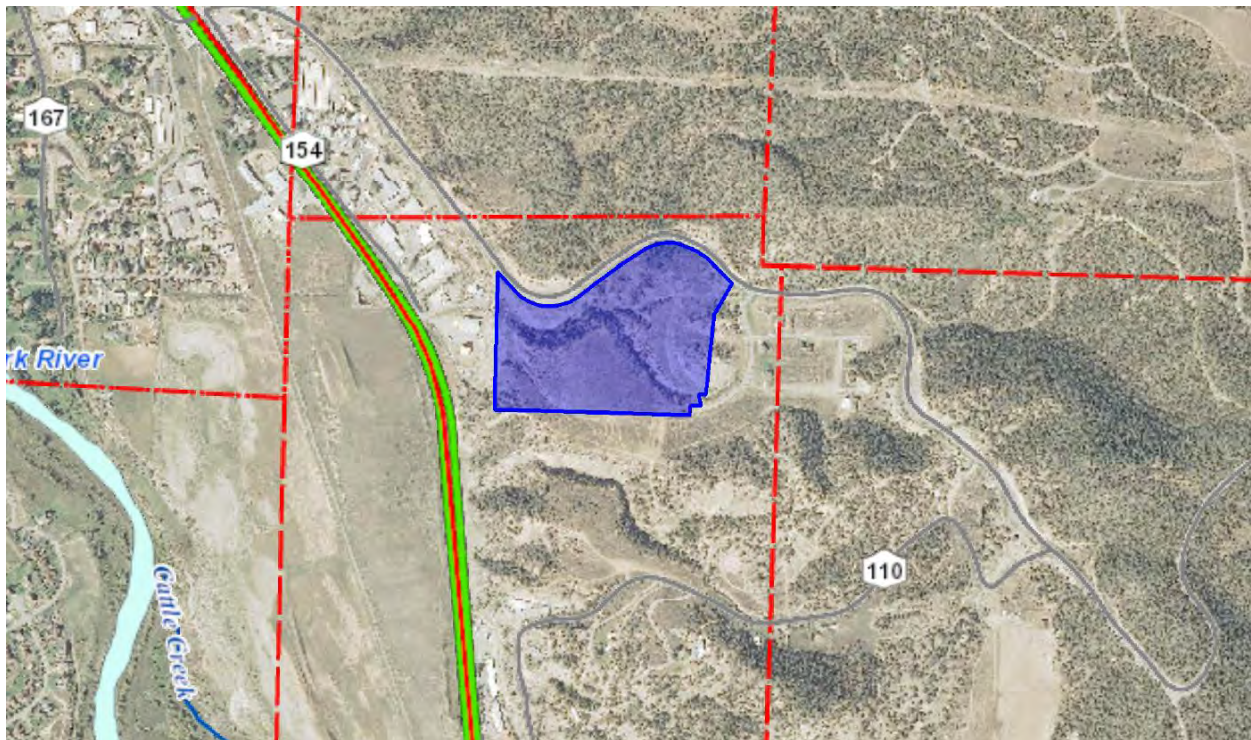


Pinyon Mesa, Filing 2

Garfield County Application for Final Plat



Submitted by: BALCOMB & GREEN, P.C.
818 Colorado Avenue
Glenwood Springs, Colorado 81601
Ph: (970) 945-6546
www.balcombgreen.com

SGM, Inc.
118 W. 6th Street, Suite 200
Glenwood Springs, Colorado 81601
Ph: (970) 945-1004
www.sgm-inc.com

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- H. Engineering Reports provided by David Kotz of SGM, Inc.



Community Development Department
 108 8th Street, Suite 401
 Glenwood Springs, CO 81601
 (970) 945-8212
www.garfield-county.com

DIVISIONS OF LAND APPLICATION FORM

TYPE OF SUBDIVISION/EXEMPTION	
<input type="checkbox"/> Minor Subdivision	<input type="checkbox"/> Preliminary Plan Amendment
Major Subdivision	<input type="checkbox"/> Final Plat Amendment
<input type="checkbox"/> Sketch <input type="checkbox"/> Preliminary <input checked="" type="checkbox"/> Final	<input type="checkbox"/> Common Interest Community Subdivision
Conservation Subdivision	<input type="checkbox"/> Public/County Road Split Exemption
<input type="checkbox"/> Yield <input type="checkbox"/> Sketch <input type="checkbox"/> Preliminary <input type="checkbox"/> Final	<input type="checkbox"/> Rural Land Development Exemption
<input type="checkbox"/> Time Extension	

INVOLVED PARTIES

Owner/Applicant
 Name: PMGC 2, LLC Phone: ()
 Mailing Address: 6300 Ridglea Place, Suite 900
 City: Fort Worth State: TX Zip Code: 76116
 E-mail: rrnorman@sbcglobal.net

Representative (Authorization Required)
 Name: Chad Lee, Esq. Phone: (970) 945-6546
 Mailing Address: Balcomb & Green, P.C., 818 Colorado Avenue
 City: Glenwood Springs State: CO Zip Code: 81601
 E-mail: clee@balcombgreen.com

PROJECT NAME AND LOCATION

Project Name:
Los Amigos PUD/Pinyon Mesa Subdivision Filing 2

Assessor's Parcel Number: 2393 - 071 - 06 - 001

Physical/Street Address: TBD Pinyon Mesa, Glenwood Springs, CO 81601

Legal Description: See attached Warranty Deed recorded as Reception No. 877562

Zone District: Planned Unit Development **Property Size (acres):** 33.798

Project Description

Existing Use: Vacant Land in which a preliminary plan has been approved in accordance with Resolution No. 2007-04 and extended pursuant to Resolution No. 2016-39.

Proposed Use (From Use Table 3-403): Final Plat of Pinyon Mesa Subdivision Filing 2

Description of Project: Final Plat approval consistent with Preliminary Plan to divide a 33.798 acre parcel into 32 residential lots.

Proposed Development Area

Land Use Type	# of Lots	# of Units	Acreage	Parking
Single Family	32		33.798	
Duplex				
Multi-Family				
Commercial				
Industrial				
Open Space				
Other				
Total	32		33.798	

REQUEST FOR WAIVERS

Submission Requirements

- The Applicant requesting a Waiver of Submission Requirements per Section 4-202. List:
 Section: _____ Section: _____
 Section: _____ Section: _____

Waiver of Standards

- The Applicant is requesting a Waiver of Standards per Section 4-118. List:
 Section: _____ Section: _____
 Section: _____ Section: _____

I have read the statements above and have provided the required attached information which is correct and accurate to the best of my knowledge.

Ronald P. Herman
Signature of Property Owner

6/27/16
Date

OFFICIAL USE ONLY

File Number: _____ - _____

Fee Paid: \$ _____



PAYMENT AGREEMENT FORM

GARFIELD COUNTY ("COUNTY") and Property Owner ("APPLICANT") PMGC 2, LLC
_____ agree as follows:

1. The Applicant has submitted to the County an application for the following Project: Los Amigos PUD/Pinyon Mesa Subdivision Filing 2.
2. The Applicant understands and agrees that Garfield County Resolution No. 2014-60, as amended, establishes a fee schedule for each type application, and the guidelines for the administration of the fee structure.
3. The Applicant and the County agree that because of the size, nature or scope of the proposed project, it is not possible at this time to ascertain the full extent of the costs involved in processing the application. The Applicant agrees to make payment of the Base Fee, established for the Project, and to thereafter permit additional costs to be billed to the Applicant. The Applicant agrees to make additional payments upon notification by the County, when they are necessary, as costs are incurred.
4. The Base Fee shall be in addition to and exclusive of any cost for publication or cost of consulting service determined necessary by the Board of County Commissioners for the consideration of an application or additional County staff time or expense not covered by the Base Fee. If actual recorded costs exceed the initial Base Fee, the Applicant shall pay additional billings to the County to reimburse the County for the processing of the Project. The Applicant acknowledges that all billing shall be paid prior to the final consideration by the County of any Land Use Change or Division of Land.

I hereby agree to pay all fees related to this application:

Billing Contact Person: Ronald Norman Phone: (____) _____
Billing Contact Address: 6300 Ridglea Place, Suite 900
City: Fort Worth State: TX Zip Code: 76116
Billing Contact Email: rrnorman@sbcglobal.net

Printed Name of Person Authorized to Sign: Ronald Norman



(Signature)

6/27/16

(Date)

PMGC 2, LLC
6300 RIDGLEA PLACE, SUITE 900
FORT WORTH, TEXAS 76116
RRNORMAN@SBCGLOBAL.NET

June 27, 2016

Garfield County Community Development Department
108 8th Street, Suite 401
Glenwood Springs, CO 81601

Re: ***Final Plat Application – Pinyon Mesa Subdivision Filing 2***

Dear Madam or Sir:

PMGC 2, LLC (“PMGC”) is the owner of the real property which is the subject of the Application for a Final Plat for Pinyon Mesa Subdivision Filing 2. PMGC hereby authorizes Chad J. Lee, and the firm of Balcomb & Green, P.C. and David M. Kotz of SGM, Inc. to act in all respects as the authorized representatives of PMGC to submit and prosecute the above-referenced application.

Very truly yours,

PMGC 2, LLC,
a Texas limited liability company

By: _____


Ronald R. Norman, Manager



STATEMENT OF AUTHORITY
(§38-30-172, C.R.S.)

1. This Statement of Authority relates to an entity¹ named
PMGC 2, LLC, A TEXAS LIMITED LIABILITY COMPANY

2. The type of entity is a:

- | | | | |
|-------------------------------------|---------------------------|--------------------------|--|
| <input type="checkbox"/> | Corporation | <input type="checkbox"/> | Registered Limited Liability Partnership |
| <input type="checkbox"/> | Nonprofit Corporation | <input type="checkbox"/> | Registered Limited Liability Limited Partnership |
| <input checked="" type="checkbox"/> | Limited Liability Company | <input type="checkbox"/> | Limited Partnership Association |
| <input type="checkbox"/> | General Partnership | <input type="checkbox"/> | Government or Governmental Subdivision or Agency |
| <input type="checkbox"/> | Limited Partnership | <input type="checkbox"/> | Trust |

3. The entity is formed under the laws of **TEXAS**

4. The mailing address for the entity is **6300 RIDGLEA PLACE, STE 900 FORT WORTH, TEXAS 76116**

5. The **X** name **X** position of each person authorized to execute instruments conveying, encumbering or otherwise affecting title to real property on behalf of the entity is **RONALD R. NORMAN, MANAGER**

6. The authority of the foregoing person(s) to bind the entity: is² not limited is limited as follows:
PMGC 2, LLC, A TEXAS LIMITED LIABILITY COMPANY

7. Other matters concerning the manner in which the entity deals with interests in real property:

8. This Statement of Authority is executed on behalf of the entity pursuant to the provisions of §38-30-172, C.R.S.³

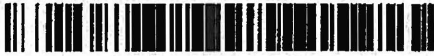
9. This Statement of Authority amends and supersedes in all respects any and all prior dated Statements of Authority executed on behalf of the entity.

(Signature and Notary Acknowledgment on Second Page)

¹ This form should not be used unless the entity is capable of holding title to real property.

² The absence of any limitation shall be prima facie evidence that no such limitation exists.

³ The statement of authority must be recorded to obtain the benefits of the statute.



State Documentary Fee
Date: May 20, 2016
\$ 84.75

Warranty Deed
(Pursuant to 38-30-113 C.R.S.)

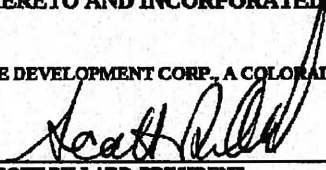
THIS DEED, made on **May 18, 2016** by **RE DEVELOPMENT CORP., A COLORADO CORPORATION** Grantor(s), of the County of **GARFIELD** and State of **COLORADO** for the consideration of **(\$847,500.00) *** Eight Hundred Forty Seven Thousand Five Hundred and 00/100 ***** dollars in hand paid, hereby sells and conveys to **PMGC 2, LLC, A TEXAS LIMITED LIABILITY COMPANY** Grantee(s), whose street address is **6300 RIDGLEA PLACE, STE 900 FORT WORTH, TX 76116**, County of **TARRANT**, and State of **TEXAS**, the following real property in the County of **Garfield**, and State of **Colorado**, to wit:

SEE ATTACHED "EXHIBIT A"

also known by street and number as: **TBD PINYON MESA GLENWOOD SPRINGS CO 81601**

with all its appurtenances and warrants the title to the same, subject to **GENERAL TAXES AND ASSESSMENTS FOR THE YEAR 2016 AND SUBSEQUENT YEARS AND SUBJECT TO THOSE ITEMS AS SET FORTH ON EXHIBIT "B" ATTACHED HERETO AND INCORPORATED HEREIN.**

RE DEVELOPMENT CORP., A COLORADO CORPORATION




SCOTT DILLARD, PRESIDENT

LAURIE J. CRUZ-POTTER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20054038483
My Commission Expires November 4, 2017

State of **COLORADO**)
County of **Garfield**) ss.

The foregoing instrument was acknowledged before me on this day of **May 20, 2016**
by **SCOTT DILLARD AS PRESIDENT OF RE DEVELOPMENT CORP., A COLORADO CORPORATION**



Notary Public
My commission expires 11/04/2017

When Recorded Return to: **PMGC 2, LLC, A TEXAS LIMITED LIABILITY COMPANY**
6300 RIDGLEA PLACE, STE 900 FORT WORTH, TX 76116



EXHIBIT A

A TRACT OF LAND SITUATE IN SECTION 7, TOWNSHIP 7 SOUTH, RANGE 88 WEST OF THE 6TH PRINCIPAL MERIDIAN, GARFIELD COUNTY, COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SW CORNER OF LOT 11 OF SAID SECTION 7

THENCE N 00°32'01"E, 676.97 FEET ALONG THE WEST LINE OF SAID LOT 11 TO THE SE CORNER OF VAN RAND PARK, COUNTY OF GARFIELD, STATE OF COLORADO ACCORDING TO THE PLAT THEREOF RECORDED AS RECEPTION NO. 265177 OF THE RECORDS OF THE CLERK AND RECORDER OF GARFIELD COUNTY, COLORADO;

THENCE N 00°36'37"E, 302.75 FEET ALONG THE EAST LINE OF SAID VAN RAND PARK, AND A NORTHERLY PROJECTION THEREOF, TO A POINT BEING 30 FEET SOUTHERLY OF THE CENTERLINE OF THE PAVED SURFACE OF COUNTY ROAD 114;

THENCE ALONG A LINE 30 FEET SOUTHERLY OF THE CENTERLINE OF THE PAVED SURFACE OF COUNTY ROAD 114 THE FOLLOWING COURSES:

THENCE S 40°18'31"E, 166.87 FEET;

THENCE 515.89 FEET ALONG THE ARC OF A 334.71 FEET RADIUS CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 88°18'40" AND SUBTENDING A CHORD BEARING 84°27'51"E 466.32 FEET;

THENCE N 51°22'49"E, 137.77 FEET;

THENCE 297.88 FEET ALONG THE ARC OF A 2805.91 FEET RADIUS CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 6°04'58" AND SUBTENDING A CHORD BEARING N 54°25'18"E 297.74 FEET;

THENCE N 57°27'47"E, 128.76 FEET;

THENCE 287.77 FEET ALONG THE ARC OF A 299.84 FEET RADIUS CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 54°59'28" AND SUBTENDING A CHORD BEARING N 84°57'31"E 276.86 FEET;

THENCE S 67°32'45"E, 61.03 FEET;

THENCE 162.40 FEET ALONG THE ARC OF A 445.95 FEET RADIUS CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 20°51'53" AND SUBTENDING A CHORD BEARING 57°06'49"E 161.50 FEET;

THENCE S 46°40'52"E, 196.40 FEET;

THENCE LEAVING SAID COUNTY ROAD CENTERLINE ON A COURSE BEARING S 28°42'57"W 254.16 FEET;

THENCE S 05°01'24"W, 563.51 FEET;

THENCE S 80°35'36"W, 50.00 FEET;

THENCE S 09°24'24"E, 75.99 FEET;

THENCE 69.27 FEET ALONG THE ARC OF A NON TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 375.00 FEET, A CENTRAL ANGLE OF 10°35'03", AND SUBTENDING A CHORD BEARING 89°42'29"W 69.17 FEET;

THENCE S 05°00'00"W, 67.77 FEET TO A POINT ON THE SOUTH LINE OF GOVERNMENT LOT 10 OF SAID SECTION 7,

THENCE N 89°07'48"W, 1367.39 FEET ALONG THE SOUTH LINE OF GOVERNMENT LOTS 10 AND 11 TO THE SW CORNER OF SAID LOT 11, THE POINT OF BEGINNING.

EXHIBIT B

Property Address: **TBD PINYON MESA GLENWOOD SPRINGS CO 81601**

RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES AS RESERVED IN UNITED STATES PATENT RECORDED DECEMBER 20, 1911 IN BOOK 71 AT PAGE 523, RECORDED NOVEMBER 11, 1916 IN BOOK 92 AT PAGE 297, AND RECORDED JULY 03, 1923 IN BOOK 112 AT PAGE 568.

TERMS, CONDITIONS AND PROVISIONS OF GARFIELD COUNTY RESOLUTION NO. 79-15 RECORDED JULY 10, 1979 IN BOOK 531 AT PAGE 250.

TERMS, CONDITIONS AND PROVISIONS OF RESOLUTION NO. 83-274 RECORDED AUGUST 23, 1983 IN BOOK 633 AT PAGE 851.

TERMS, CONDITIONS AND PROVISIONS OF CONSENT TO VACATE PLAT RECORDED JUNE 06, 1984 IN BOOK 651 AT PAGE 70.

TERMS, CONDITIONS AND PROVISIONS OF RESOLUTION NO. 96-34 RECORDED JUNE 18, 1996 IN BOOK 982 AT PAGE 103.

TERMS, CONDITIONS AND PROVISIONS OF DEVELOPMENT AGREEMENT RECORDED JULY 16, 1996 IN BOOK 985 AT PAGE 479.

TERMS, CONDITIONS AND PROVISIONS OF AGREEMENT RECORDED SEPTEMBER 14, 1992 IN BOOK 841 AT PAGE 512.

TERMS, CONDITIONS AND PROVISIONS OF RIGHT OF WAY EASEMENT RECORDED APRIL 25, 2002 IN BOOK 1349 AT PAGE 542.

TERMS, CONDITIONS AND PROVISIONS OF UTILITY EASEMENT AGREEMENT RECORDED MAY 14, 2002 AT RECEPTION NO. 603313.

TERMS, CONDITIONS AND PROVISIONS OF RIGHT OF WAY EASEMENT RECORDED DECEMBER 19, 2002 IN BOOK 1418 AT PAGE 359.

RESTRICTIVE COVENANTS, WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY, BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN, ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT OR RESTRICTION IS PERMITTED BY APPLICABLE LAW, AS CONTAINED IN INSTRUMENT RECORDED JULY 27, 2006, IN BOOK 1825 AT PAGE 104.

TERMS, CONDITIONS AND PROVISIONS OF RESOLUTION NO. 2007-04 RECORDED FEBRUARY 08, 2007 IN BOOK 1893 AT PAGE 363.

(ITEM INTENTIONALLY DELETED)

(ITEM INTENTIONALLY DELETED)

TERMS, CONDITIONS, AND PROVISIONS OF SUBDIVIDER'S AGREEMENT RECORDED OCTOBER 01, 2007, UNDER RECEPTION NO. 734760.

RESTRICTIVE COVENANTS, WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY, BASED UPON RACE, COLOR, RELIGION, SEX,

SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN, ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT OR RESTRICTION IS PERMITTED BY APPLICABLE LAW, AS CONTAINED IN INSTRUMENT RECORDED OCTOBER 03, 2007, UNDER RECEPTION NO. 734762.

EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF PINYON MESA SUBDIVISION RECORDED OCTOBER 8, 2007 UNDER RECEPTION NO. 734761.

TERMS, CONDITIONS AND PROVISIONS OF TRENCH, CONDUIT AND VAULT AGREEMENT RECORDED JANUARY 09, 2008 AT RECEPTION NO. 740886.

TERMS, CONDITIONS AND PROVISIONS OF UTILITY EASEMENT AGREEMENT RECORDED JANUARY 09, 2008 AT RECEPTION NO. 740887.

EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF AMENDED PLAT OF LOT 1 RECORDED JULY 24, 2008 UNDER RECEPTION NO. 752954.

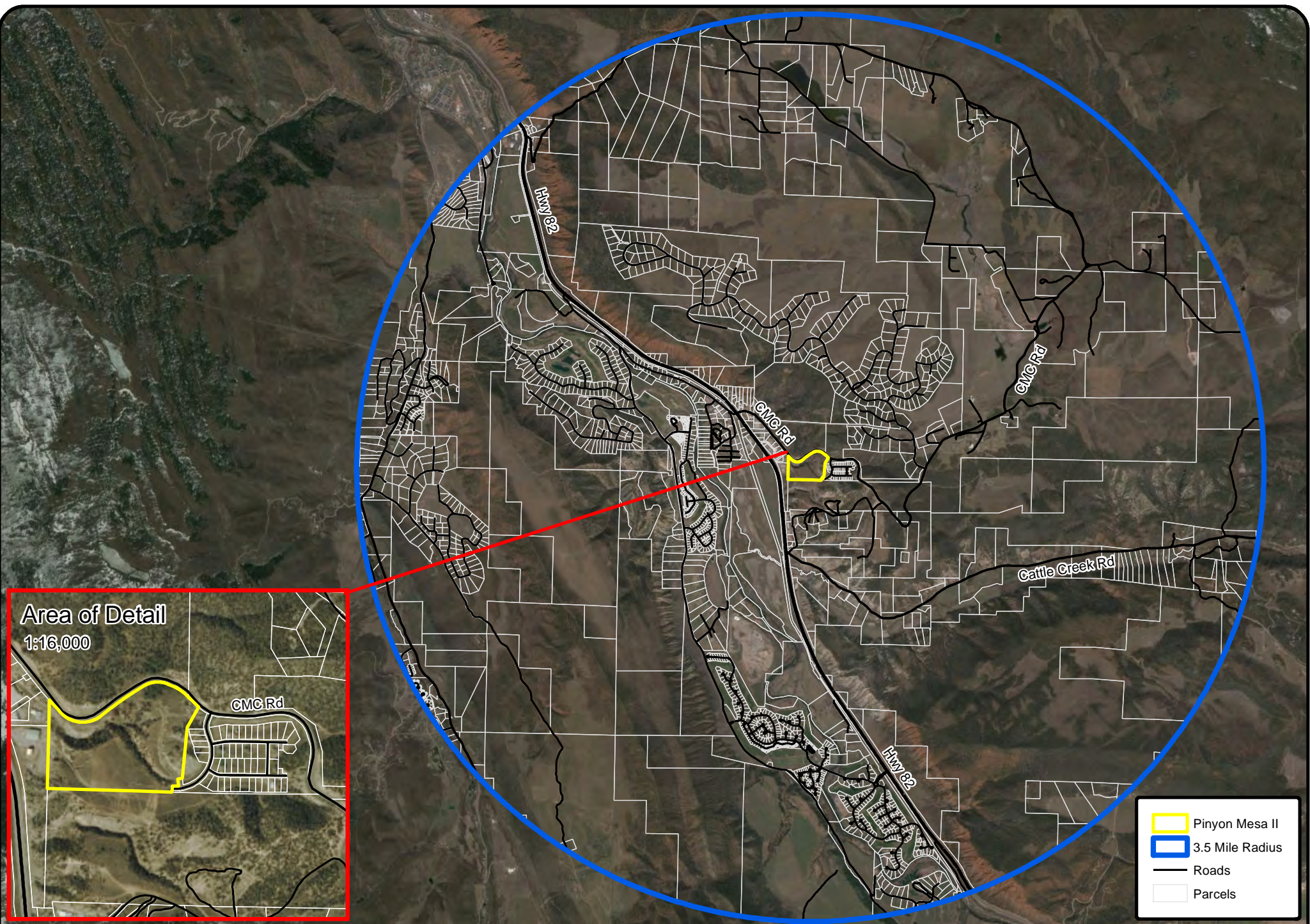
TERMS, CONDITIONS AND PROVISIONS OF AGREEMENT RECORDED JULY 27, 2010 AT RECEPTION NO. 789048.

TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN AGREEMENT TERMINATION RECORDED DECEMBER 20, 2013 UNDER RECEPTION NO. 844528.

TERMS, CONDITIONS AND PROVISIONS OF ASSIGNMENT RECORDED DECEMBER 23, 2013 AT RECEPTION NO. 844557.

TERMS, CONDITIONS AND PROVISIONS OF PINYON MESA WATER DELIVERY AGREEMENT RECORDED DECEMBER 23, 2013 AT RECEPTION NO. 844558 AND 844559.

TERMS, CONDITIONS AND PROVISIONS OF DECLARANT RIGHTS TRANSFER RECORDED DECEMBER 23, 2013 AT RECEPTION NO. 844556.



Area of Detail
1:16,000

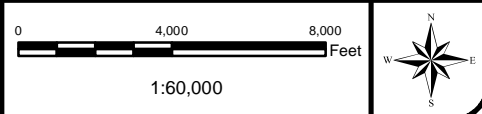


- Pinyon Mesa II
- 3.5 Mile Radius
- Roads
- Parcels

SGM
118 W. Sixth St., Suite 200
Glenwood Springs, CO 81601
970.945.1004
www.sgm-inc.com

Pinyon Mesa II PUD Amendment
Garfield County, CO

Date:	01/26/2016	Job No.	1502G	Map by:	RKK
Coordinate System:	NAD 1983 StatePlane Colorado Central FIPS 0502 Ft US		Projection:	Lambert Conformal Conic	
Data Sources:	ESRI, SGM, Garfield County		Page:	1	
File:	I:\1981\01502\C\43\GISMXDs\Pinyon Mesa II PUD Amendment				
The information displayed above is intended for general planning purposes. Refer to legal documentation/data sources for descriptions/locations.					



Project Description

Pinyon Mesa Filing 2 is a portion of the Los Amigos Ranch PUD which was originally approved by Garfield County under Resolution No. 81-358. The PUD was subsequently amended under Resolution No. 96-34, *A Resolution concerning approval of the Los Amigos Ranch Partnership application for amendment to the Los Amigo Ranch Planned Unit Development Zone Text, PUD Plan and Development Plan.*

The Amended PUD Plan contemplated three phases of development, including approximately 170 single family home-sites, some large-lot residential lots and a limited amount of neighborhood commercial within the first two phases. This parcel, which has been referred to variously as the lower valley or the lower bench, was designated as Phase Three.

Recently, in Resolutions 2016-39 and 2016-40, the BOCC voted to extend the Preliminary Plan approval to May 9, 2017 and to amend the PUD text extending the timeframe for completion to December 31, 2019.

The subject parcel lies adjacent to County Road 114 on an upland bench approximately 7 miles southeast of Glenwood Springs. The terrain slopes from east to west at grades up to ten percent. The bench is defined by a steep river terrace escarpment on the west side and transitions to hilly terrain on the north and south. Two drainages cross the property from the north and the east, and merge into a narrow, steep sided gully on the western part of the property.

Vegetation on the site consists primarily of sagebrush, with scattered juniper and pinyon trees in the flatter areas and more dense tree cover in the drainages. The bench area has been cleared of sagebrush and used for grazing or hay at some point in the past, as evidenced by the presence of crested wheat grass in the flatter areas.

During development of earlier phases of Los Amigos Ranch PUD, water storage and sewer treatment facilities with capacities designed to serve this development were constructed. A sewer lift station and force main built on this property will convey wastewater from this site to the Spring Valley Wastewater Treatment Plant. A water main was extended to this property during construction for previous phases of Los Amigos Ranch (Elk Springs) and Pinyon Mesa Filing 1.

The overall Pinyon Mesa property was zoned High Density Single Family with 80 single family lots on a 60.49 acre tract. Twenty-five percent of the property is required to be reserved as open space.

The Filing 2 proposal includes development of the remaining 32 of the 80 single family lots with a minimum lot size of 10,000 square feet. Over 63 percent of the Filing 2 property is retained as open space. The attached application is consistent with the High Density Zoning designation and the over all Los Amigos Ranch PUD.



**PRE-APPLICATION
CONFERENCE SUMMARY**

TAX PARCEL NUMBER: 239307106001

DATE: April 20, 2016

PROJECT: Los Amigos PUD / Pinyon Mesa Subdivision Filing 2

OWNER: RE Development

REPRESENTATIVE: Scott Dillard

PRACTICAL LOCATION: South of Glenwood Springs off of CR 114

TYPE OF APPLICATION: Final Plat – Pinyon Mesa Subdivision Filing 2

I. GENERAL PROJECT DESCRIPTION

Preliminary Plan approval was granted for the third phase of the Los Amigos Ranch PUD in December 2006 under Resolution 2007-04. This PUD approval has undergone several extensions and is currently in the process of another extension, to be heard by the Board of County Commissioners on May 9, 2016. In addition, at the time of this Summary, the Preliminary Plan is expired and is expected to be heard by the Board of County Commissioners for resurrection on May 9, 2016. Both the PUD extension and the resurrection of the Preliminary Plan must occur prior to submittal of a final plat for Filing 2 of Pinyon Mesa Subdivision.

The Applicant seeks to submit a final plat application consistent with the preliminary plan approval to divide a 33.798-acre property into 32 residential lots. Filing 1 of Pinyon Mesa Subdivision has been Final Platted and is currently being developed. Filing 2 if the last and final filing for Pinyon Misa Subdivision.

II. REGULATORY PROVISIONS APPLICANT IS REQUIRED TO ADDRESS

Garfield County 2013 Land Use and Development Code, as amended, Sections:

- 5-103 Common Review Procedures
- 5-302 (D) – Final Plan/Plat review
- 5-402 (E) and (F) Submittal Requirements regarding the Final Plan/Plat
- Table 5-401 – Submittal Requirements, including engineering reports and plans

III. REVIEW PROCESS

The Applicant must demonstrate compliance with the conditions of approval for the preliminary plan and submit necessary documents for review of the final plat. The Board of County Commissioners shall review the plat at a public meeting which requires no public notice.

- A. Pre-application Conference.
- B. Application Submittal (three paper copies and one CD).
- C. Determination of Completeness.
- D. Additional Copies requested and sent to referral agencies.
- E. Evaluation by Director/Staff resulting in a Staff Report to the Board of County Commissioners.
- F. Plat mylar, Improvements Agreement, other required documentation per the Preliminary Plan Resolution of Approval.

Referral may be sent to the following agencies:

Reviewing Engineer, County Surveyor, Road & Bridge and any of other agency deemed applicable upon review of documentation.

IV. PUBLIC HEARINGS AND NOTICE

Final plats do not require a public hearing therefore no notice is required.

V. SUBMITTAL REQUIREMENTS

- A. General Application Materials – application form and fee, agreement to pay form, proof of ownership and/or Statements of Authority, deed or title commitment, vicinity map, project description;
- B. Improvements Agreement;
- C. Final Plan Map;
- D. Final Plat;
- E. CCR's;
- F. Affordable Housing Plan (if applicable);
- G. Other information as required by the Preliminary Plan Resolution of Approval;
- H. Engineering reports including:
 - a. Roads, Trails, Walkways and Bikeways;
 - b. Mitigation of Geological hazard;
 - c. Sewage Collection and Water Supply and Distribution System;
 - d. Soil Suitability information;
 - e. Groundwater Drainage;
 - f. Engineering design and construction features for any bridge, culverts, or other drainage features to be constructed;
 - g. Final cost estimates for public improvements.

VI. APPLICATION REVIEW FEES

This application will be subject to the following fees and deposit requirements:

Planning Review Fees: \$ 200.00
Plus any additional Staff time charged at staff hourly rate of \$40.50

Referral Agency Fees: \$ TBD (engineering review and county surveyor review to be billed)

Total Deposit: \$ 200.00

General Application Processing

Planner reviews case for completeness and sends to referral agencies for comments. Case planner contacts applicant and sets up a site visit. Staff reviews application to determine if it meets standards of review. Case planner makes a recommendation of approval, approval with conditions, or denial to the appropriate hearing body.

Disclaimer

The foregoing summary is advisory in nature only and is not binding on the County. The summary is based on current zoning, which is subject to change in the future, and upon factual representations that may or may not be accurate. This summary does not create a legal or vested right.

Pre-application Summary Prepared by:



April 20, 2016

David Pesnichak, AICP

Date

WHEREAS, the Board of County Commissioners closed the public hearing on the December 11, 2006 to make a final decision; and

WHEREAS, the Board of County Commissioners on the basis of substantial competent evidence produced at the aforementioned hearing, has made the following determination of facts:

1. That proper publication, public notice, and posting was provided as required by law for the hearings before the Planning and Zoning Commission and before the Board of County Commissioners.
2. That the public hearings before the Planning and Zoning Commission and the Board of County Commissioners were extensive and complete; all pertinent facts, matters and issues were submitted; and that all interested parties were heard at those hearings.
3. The application is in compliance with the standards set forth in Section 4:00 of the Garfield County Subdivision Regulations of 1984, as amended.
4. That the proposed subdivision of land is in compliance with the recommendations set forth in the Comprehensive Plan for the unincorporated areas of the County.
5. The proposed subdivision of land conforms to the Garfield County Zoning Resolution of 1978, as amended and the provisions of the High Density Single Family zone district in the Los Amigos Ranch PUD.
6. The proposed use is in the best interest of the health, safety, morals, convenience, order, prosperity and welfare of the citizens of Garfield County.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Garfield County, Colorado, that based on determination of facts set forth above, the Preliminary Plan request is approved with the following conditions:

1. That all representations made by the Applicant in the application and as testimony in the public hearings before the Planning & Zoning Commission and Board of County Commissioners shall be conditions of approval, unless specifically altered by the Board of County Commissioners.
2. All internal roads shall be designed to have a road surface of at least two 12-foot driving lanes with curb and gutter throughout the subdivision with a minimum right of way of 50 feet. Such design of the internal road system shall be consistent with the design proposed to the BOCC in the Preliminary Plan.
3. The length of the cul-de-sac represented as Pinyon Mesa Drive shall be allowed to be designed, as shown, to 900 linear feet and the bulb at the end of the cul-de-sac may remain as designed with a landscaped island in the middle.

4. The Applicant shall furnish a design and specifications for the secondary emergency point at the end of Paintbrush Way that indicates the ability to handle large / heavy emergency vehicles and methods of break-away gates or other appropriate mechanism to deter use unless for emergency. This shall be prepared and provided prior to final plat.
5. Applicant shall obtain a driveway access permit for both the main entrance into the projects and for the secondary emergency access point onto CR 114 these shall be obtained prior to final plat.
6. The Applicant shall install a stop sign at each entrance to CR 114. The signs, posts and location shall be as required by the MUTCD (Manual on Uniform Traffic Control Devices). An intersection sign shall be placed on both sides of the main entrance to the subdivision alerting uphill and downhill traffic to the entrance. The signs, posts and installation shall be as required in the MUTCD (Manual on Uniform Traffic Control Devices).
7. Pursuant to the suggestions by the Road and Bridge Department in Exhibit M, the Applicant may either 1) construct a right-hand turn lane should be installed on the uphill lane to the main entrance to the subdivision and be reimbursed by the total amount of Traffic Impact Fees required by the Development (approximately \$150,000.00) or 2) choose not to construct the improvement a only pay the Traffic Impact Fee.
8. The Applicant shall pay the appropriately calculated Traffic Impact Fee for Study Area 10 which results in a fee of approximately \$149,292.00. Only half of this fee (approximately \$74,646.00) is required to be paid at Final Plat with the remaining half to be amortized by way of individual building permits as the project develops over time.
9. The Applicant shall cause the conveyance of the School Parcel by deed to the RE-1 School District prior to Final Plat or pay the appropriately calculated School / Land Dedication Fee pursuant to the Subdivision Regulations.
10. All development of this property shall follow the recommendations of the Colorado State Forest Service as stated in their letter dated August 28,2006, (attached as Exhibit N to the Staff report) which shall be incorporated into the CCRs as a requirement of the BOCC particularly as they relate to lots 17-20, 36-48, 66-72 and lots 59-65.
11. The Applicant shall pay-in-full the fire impact fee of \$437 per dwelling unit to Carbondale Fire Protection District at the time of Final Plat. (This fee shall be \$34,960.00)
12. The Applicant shall incorporate the recommendations contained in the "Wildlife

Analysis / Impact and Mitigation Report" prepared by Rocky Mountain Ecological Services, Inc. contained in the Application and shall be included as a component in the CCRs.

13. Prior to Final Plat submittal, the Applicant shall meet with the DOW in order to prepare an Elk Management Plan due to the amount of critical wintering habitat being eliminated with development. (This was not completed.)
14. The Applicant shall cause the open space tracts to be deeded to the Homeowners Association as part of the Final Plat.
15. The Applicant shall provide a security for revegetation in the amount to be determined by the County Vegetation Manager (based on disturbed acreage) for all areas to be disturbed in connection with the final plat and the obligations of said security which security shall be incorporated into the Subdivision Improvements Agreement. The security shall be held by Garfield County until vegetation has been successfully reestablished according to the Reclamation Standards in the Garfield County Vegetation Management Plan.
16. The Applicant shall provide a Soil Management Plan that includes 1) provisions for salvaging on-site topsoil, 2) a timetable for eliminating topsoil and/or aggregate piles, and 3) a plan that provides for soil cover if any disturbances or stockpiles will sit exposed for a period of 90 days or more. The Applicant shall prepare this plan to be submitted with the final plat documents so that the County can review prior to final plat approval.
17. The Applicant shall follow all of the recommendations provided in the geotechnical analysis prepared by HP Geotech (reports in the Application and Exhibit S to the Staff Report) as well as the follow the recommendations provided by the Colorado Geologic Survey in their letter dated August 30, 2006 also attached as Exhibit J to the staff report).
18. All easements of record shall be shown on the Final Plat.
19. The Applicant shall include the six points provided in the letter from the Bureau of land Management dated August 22, 2006 (and attached to the Staff report as Exhibit P) in the CCRs to place residents in the PUD on notice of these issues. The CCRs shall be provided as part of the Final Plat submittal.
20. The following plat notes shall be placed on the final plat.
 - a. *"Control of noxious weeds is the responsibility of the property owner."*
 - b. *"One (1) dog will be allowed for each residential unit and the dog shall be required to be confined within the owners property boundaries."*
 - c. *"No open hearth solid-fuel fireplaces will be allowed anywhere within the*

subdivision. One (1) new solid-fuel burning stove as defined by C.R.S. 25-7-401, et. seq., and the regulations promulgated thereunder, will be allowed in any dwelling unit. All dwelling units will be allowed an unrestricted number of natural gas burning stoves and appliances".

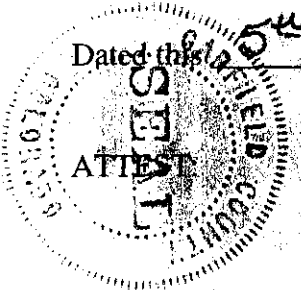
- d. *No further subdivision shall be allowed of a subdivided lot."*
- e. *"All exterior lighting shall be the minimum amount necessary and that all exterior lighting be directed inward and downward, towards the interior of the subdivision, except that provisions may be made to allow for safety lighting that goes beyond the property boundaries".*
- f. *"Colorado is a "Right-to-Farm" State pursuant to C.R.S. 35-3-101, et seq. Landowners, residents and visitors must be prepared to accept the activities, sights, sounds and smells of Garfield County's agricultural operations as a normal and necessary aspect of living in a County with a strong rural character and a healthy ranching sector. Those with an urban sensitivity may perceive such activities, sights, sounds and smells only as inconvenience, eyesore, noise and odor. However, State law and County policy provide that ranching, farming or other agricultural activities and operations within Garfield County shall not be considered to be nuisances so long as operated in conformance with the law and in a non-negligent manner. Therefore, all must be prepared to encounter noises, odor, lights, mud, dust, smoke chemicals, machinery on public roads, livestock on public roads, storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides, and pesticides, any one or more of which may naturally occur as a part of a legal and non-negligent agricultural operations.*
- g. *"All owners of land, whether ranch or residence, have obligations under State law and County regulations with regard to the maintenance of fences and irrigation ditches, controlling weeds, keeping livestock and pets under control, using property in accordance with zoning, and other aspects of using and maintaining property. Residents and landowners are encouraged to learn about these rights and responsibilities and act as good neighbors and citizens of the County. A good introductory source for such information is "A Guide to Rural Living & Small Scale Agriculture" put out by the Colorado State University Extension Office in Garfield County."*
- h. *"All lots shall require site specific geotechnical studies before a building permit will be issued by the County Building Department and all foundations shall be designed by a professional engineer licensed to practice in Colorado.*

i. *Zone District Parameters:*

Zone District	Conditional Uses	Minimum Lot Area	Maximum Lot	Minimum Setbacks	Maximum Height	Maximum Floor Area
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			Coverage			
High Density Single Family (HDSF)	Home Occupation	10,000 sq. ft.	25%	Front / Rear: 25' Sides: 10'	28 feet	3,294 sq. ft.

Dated this 12th day of February, A.D. 2007.



GARFIELD COUNTY
 BOARD OF
 COMMISSIONERS,
 GARFIELD COUNTY,
 COLORADO

Jean Alberico
 Clerk of the Board

[Signature]
 Chairman

Upon motion duly made and seconded the foregoing Resolution was adopted by the following vote:

John Martin . Aye
Larry McCown . Aye
Trési Houpt . Aye

STATE OF COLORADO)
)ss
 County of Garfield)

I, _____, County Clerk and ex-officio Clerk of the Board of County Commissioners in and for the County and State aforesaid do hereby certify that the annexed and foregoing Resolution is truly copied from the Records of the Proceeding of the Board of County Commissioners for said Garfield County, now in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said County, at Glenwood Springs, this ____ day of _____, A.D. 2007

County Clerk and ex-officio Clerk of the Board of County Commissioners

**PINYON MESA FILING 2 SUBDIVISION
LOCATED IN THE LOS AMIGOS PUD
SUBDIVISION IMPROVEMENTS AGREEMENT**

THIS PINYON MESA FILING 2 SUBDIVISION (“Pinyon Mesa” or “Subdivision”), located in the Los Amigos PUD, SUBDIVISION IMPROVEMENTS AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2016, by and between PMGC 2, LLC, a Texas limited liability company (“Owner”) and the BOARD OF COUNTY COMMISSIONERS OF GARFIELD COUNTY, COLORADO, acting for the County of Garfield, State of Colorado, as a body politic and corporate, directly or through its authorized representatives and agents (“BOCC”).

RECITALS

WHEREAS, Owner is the owner and developer of the Pinyon Mesa Filing 2 Subdivision, which property is depicted on the Final Plat of Pinyon Mesa Subdivision (“Final Plat” or “Final Plat of the Subdivision”); and

WHEREAS, on February 5, 2007 the BOCC, by Resolution No. 2007-04, approved a preliminary plan for the Subdivision which, among other things, would create eighty (80) single-family residential lots (“Preliminary Plan Approval”); and

WHEREAS, Owner has submitted to the County for its approval a final subdivision plat (“Final Plat”) for the second filing of the subdivision, comprising thirty-two (32) single-family residential lots; and

WHEREAS, as a condition of approval of the Final Plat of the Subdivision, submitted to the BOCC for approval as required by the laws of the State of Colorado, Owner wishes to enter into this Agreement with the BOCC; and

WHEREAS, Owner has agreed to execute and deliver a specific form of collateral to the BOCC to secure and guarantee Owner’s performance under this Agreement and has agreed to certain restrictions and conditions regarding the sale of properties and issuance of building permits and certificates of occupancy, all as more fully set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. **FINAL PLAT APPROVAL.** The BOCC hereby accepts and approves the Final Plat of the Subdivision, on the date set forth above, subject to the terms and conditions of this Agreement, the Preliminary Plan Approval, and the requirements of the Garfield County zoning and subdivision regulations and any other governmental or quasi-governmental regulations applicable to the Subdivision (“Final Plat Approval”). This approval authorizes construction and development within Filing 2 of the Subdivision, as approved by the Preliminary Plan Approval. Recording of the Final Plat shall be in accordance with this Agreement and at the time prescribed herein.

2. **OWNER’S PERFORMANCE.**

a. Completion Date/Substantial Compliance. Owner shall cause to be constructed and installed the subdivision improvements (collectively the “Improvements”), identified in subparagraphs i. and ii. below, at its own expense, including payment of fees required by the County and/or other governmental and quasi-governmental entities with jurisdiction. The Improvements shall be completed on or before the end of the first full year following execution of this Agreement (“Completion Date”), in substantial compliance with the following:

i. Plans marked “Approved for Construction” for all on-site Improvements for the Subdivision, prepared by Schmeuser, Gordon, Meyer, Inc., under project number 01502H, and submitted to the BOCC on or about June 28, 2016; the estimate of cost of completion, certified by and bearing the stamp of Owner’s professional engineer licensed in the State of Colorado (“Owner’s Engineer”), attached to and made a part of this Agreement by reference as Exhibit “A”; and all other documentation required to be submitted along with the Final Plat under pertinent sections of the Garfield County subdivision and zoning regulations (“Final Plat Documents”);

ii. All requirements of the Preliminary Plan Approval;

iii. All laws, regulations, orders, resolutions and requirements of the State of Colorado, Garfield County, and all special districts and any other governmental or quasi- governmental authority(ies) with jurisdiction; and

iv. The provisions of this Agreement.

b. Satisfaction of Subdivision Improvements Provisions. The BOCC agrees that if all Improvements are installed in accordance with subparagraphs 2.a.i. through 2.d.iv., above; the record drawings to be submitted upon completion of the Improvements as detailed in paragraph 3.e., below; and all other requirements of this Agreement, then the Owner shall be deemed to have satisfied all terms and conditions of the Garfield County zoning and subdivision regulations, with respect to the installation of improvements.

3. **SECURITY FOR IMPROVEMENTS.**

a. Letter of Credit. As security for Owner’s obligation to complete the Improvements, Owner shall deliver to the BOCC, on or before the date of recording of the Final Plat of the Subdivision with the Garfield County Clerk and Recorder, one or more Letters of Credit in the form agreed to be acceptable to the BOCC, attached to and incorporated in this Agreement by reference as Exhibit “B” (“LOCs”), or such other form consistent with the Uniform Commercial Code and acceptable to the BOCC. The LOC(s) shall be in the amount of \$1,042,640.50, representing the full estimated cost of completing the Improvements, including a sufficient contingency to cover cost changes, unforeseen costs and other variables (not less than 10% of the estimated costs and as approved by the BOCC), minus the cost of Improvements already completed as of the date of execution of this Agreement, for a total of \$1,042,640.50, as set forth and certified by Owner’s Engineer on Exhibit “A”, to guarantee completion of the remaining Improvements.

b. Revegetation Security. Revegetation of disturbed areas in the Subdivision shall be secured by delivery of a Letter of Credit in a form acceptable to the BOCC, attached to and incorporated in this Agreement by reference as Exhibit "C", in the amount of \$12,500 from the Owner to the BOCC ("Revegetation LOC"). The Revegetation LOC shall be valid for a minimum of two (2) years following recording of the Final Plat.

i. Upon establishment of vegetation, the Owner shall request review of the revegetation work by the Garfield County Vegetation Management Department, by telephone or in writing. Such review shall be for the purpose of verification of success of revegetation and reclamation in accordance with the Garfield County Weed Management Plan 2000, adopted by Resolution No. 2002-94 and recorded in the Office of the Garfield County Clerk and Recorder as Reception No. 580572, at Book 1251, Page 566, as amended, and the Revegetation/Reclamation Plan for the Subdivision submitted as part of the Final Plat Documents.

ii. Following receipt of written approval of the Vegetation Management Department, the Owner may submit to the BOCC, through the Building and Planning Department, a written request for release of the Revegetation LOC, along with certification of completion by the Owner, or Owner's agent with knowledge, and a copy of the written approval of the Vegetation Management Department.

iii. If the Vegetation Management Department refuses approval and provides written notice of deficiency(ies), the Owner shall cure such deficiencies by further revegetation efforts, approved by the Vegetation Management Department, as such may be instituted within the two years following recording of the Final Plat.

iv. If revegetation efforts are deemed unsuccessful within the two year period of time, in the sole discretion of the BOCC upon the recommendation of the Vegetation Management Department, or if the BOCC determines that the Owner will not or cannot complete revegetation, the BOCC may withdraw and employ from the Revegetation LOC such funds as may be necessary to carry out the revegetation work, up to the amount of Revegetation LOC.

v. In lieu of or in addition to drawing on the Revegetation LOC, the BOCC may bring an action for injunctive relief or damages for the Owner's failure to adhere to the provisions of this Agreement related to revegetation. The BOCC shall provide the Owner a reasonable time to cure any identified deficiency prior to requesting payment from the Revegetation LOC or filing a civil action.

vi. It is specifically understood that the Revegetation LOC is not subject to successive partial releases, as authorized in subparagraph 3(d) below. Further, the Revegetation LOC, and the BOCC's associated right to withdraw funds and bring a court action, may survive final release of the LOC(s) and/or termination of this Agreement.

c. LOC Requirements. The LOC(s) required by this Agreement shall be issued by a state or national banking institution acceptable to the BOCC. If the institution issuing

the LOC(s) is not licensed in the State of Colorado and transacting business within the State of Colorado, the LOC(s) shall be “confirmed” within the meaning of the Uniform Commercial Code, Letters of Credit, §4-5-101 *et seq.*, C.R.S., as amended, by a bank that is licensed to do business in the State of Colorado, doing business in Colorado, and acceptable to the BOCC. The LOC(s) shall state that presentation of drafts drawn under the LOC(s) shall be at an office of the issuer or confirmer located in the State of Colorado. The LOC(s) shall be valid for a minimum of six (6) months beyond the completion date for the Improvements set forth herein and, as to the Revegetation LOC, a minimum of two (2) years following recording of the Final Plat. If the time for completion of Improvements, including revegetation, is extended by a written amendment to this Agreement, the time period for the validity of the LOC(s) shall be similarly extended by the Owner. For each six (6) month extension, the face amount of the LOC(s), including the Revegetation LOC, at the sole option of the BOCC, shall be subject to recertification of cost of completion by Owner’s Engineer and review by the BOCC for a possible increase in the face amount of the LOC, in order to assure sufficiency of the amount of security to allow possible completion of the Improvements by the BOCC under terms of this Agreement. Additionally, should the LOC(s) become void or unenforceable for any reason, including bankruptcy of the Owner or the financial institution issuing or confirming the LOC, prior to the BOCC’s approval of Owner’s Engineer’s certification of completion of the Improvements, this Agreement shall become void and of no force and effect and the Final Plat shall be vacated pursuant to the terms of this Agreement.

d. Partial Releases of Security. Owner shall request partial release(s) of the LOC(s) by means of submission to the Building and Planning Department of a “Written Request for Partial Release of LOC,” in the form attached to and incorporated herein as Exhibit “D,” accompanied by the Owner’s Engineer’s Certificate of Partial Completion of Improvements, stamped by Owner’s Engineer. The Owner’s Engineer’s seal shall certify that the Improvements have been constructed in accordance with the requirements of this Agreement, including all Final Plat Documents and the Preliminary Plan Approval.

Owner may also request release for a portion of the security upon proof that 1) Owner has a valid contract with a public utility company regulated by the Colorado Public Utilities Commission obligating such company to install certain utility lines; and 2) Owner has paid to the utility company the cost of installation as required by the contract. The BOCC shall authorize successive releases of portions of the face amount of the LOC(s) as portions of the Improvements, other than revegetation, required hereunder are certified as complete to the BOCC by the Owner’s Engineer and said certification is approved by the BOCC.

e. BOCC’s Investigation. Notwithstanding the foregoing, upon submission of the Owner’s Written Request for Partial Release of LOC, along with Owner’s Engineer’s Certificate of Partial Completion of Improvements, the BOCC may review the certification and may inspect and review the Improvements certified as complete to determine whether or not said Improvements have been constructed in compliance with relevant specifications, as follows:

i. If no letter of potential deficiency is furnished to Owner by the BOCC within fifteen (15) days of submission of Owner’s Written Request for Partial Release of LOC accompanied by Owner’s Engineer’s Certificate of Partial Completion of Improvements, all Improvements certified as complete shall be

deemed complete by the BOCC, and the BOCC shall authorize release of the appropriate amount of security.

ii. If the BOCC chooses to inspect and determines that all or a portion of the Improvements certified as complete are not in compliance with the relevant specifications, the BOCC shall furnish a letter of potential deficiency to the Owner, within fifteen (15) days of submission of Owner's Written Request for Partial Release of LOC accompanied by Owner's Engineer's Certificate of Completion of Improvements.

iii. If a letter of potential deficiency is issued identifying a portion of the certified Improvements as potentially deficient, then all Improvements not identified as potentially deficient shall be deemed complete, and the BOCC shall authorize release of the amount of security related to the certified Improvements that are not identified as potentially deficient.

iv. With respect to Improvements identified as potentially deficient in a letter of potential deficiency, the BOCC shall have thirty (30) days from the date of the letter to complete the initial investigation, begun under subparagraph 3.b.iii., above, and provide written confirmation of the deficiency(ies) to the Owner.

v. If the BOCC finds that the Improvements are complete, in compliance with the relevant specifications, then the appropriate amount of security shall be authorized for release within ten (10) days after completion of such investigation.

f. BOCC Completion of Improvements. If the BOCC finds, within the thirty (30) day period of time, defined in subparagraph 3 (e)(iv) above, that the Improvements are not complete, or if the BOCC determines that the Owner will not or cannot construct any or all of the Improvements, whether or not Owner has submitted a written request for release of LOC, the BOCC may withdraw and employ from the LOC(s) such funds as may be necessary to construct the Improvements in accordance with the specifications, up to the face amount, or remaining face amount, of the LOC(s). In such event, the BOCC shall make a written finding regarding Owner's failure to comply with this Agreement prior to requesting payment from the LOC(s). In lieu of or in addition to drawing on the LOC(s), the BOCC may bring an action for injunctive relief or damages for the Owner's failure to adhere to the provisions of this Agreement. The BOCC shall provide the Owner a reasonable time to cure any identified deficiency(ies) prior to requesting payment from the LOC(s) or filing a civil action.

g. Final Release of Security. Upon completion of all Improvements, Owner shall submit to the BOCC, through the Building and Planning Department: 1) record drawings bearing the stamp of Owner's Engineer certifying that all on-site Improvements have been constructed in accordance with the requirements of this Agreement, including all Final Plat Documents and the Preliminary Plan Approval, in hard copy and a digital format acceptable to the BOCC; 2) copies of instruments conveying real property and other interests which Owner is obligated to convey to the Homeowners' Association of the Subdivision by the terms of this Agreement; and 3) a Written Request for Final

Release of LOC, in the form attached to and incorporated herein as Exhibit "E," along with Owner's Engineer's Certificate of Final Completion of Improvements.

i. The BOCC shall authorize a final release of the LOC(s) after the Improvements are certified as final to the BOCC by the Owner's Engineer and said final certification is approved by the BOCC. If the BOCC finds that the Improvements are complete, in accordance with the relevant specifications, the BOCC shall authorize release of the final amount of security within ten (10) days following submission of the Owner's Written Request for Final Release of LOC accompanied by the other documents required by this paragraph 3(g).

ii. Notwithstanding the foregoing, upon Owner's Written Request for Final Release of LOC accompanied by Owner's Engineer's Certificate of Final Completion of Improvements, the BOCC may inspect and review the Improvements certified as complete. If the BOCC does so review and inspect, the process contained in paragraph 3(e) above shall be followed.

iii. If the BOCC finds that the Improvements are complete, in accordance with the relevant specifications, the BOCC shall authorize release of the final amount of security within ten (10) days after completion of such investigation. If necessary, the BOCC may complete remaining Improvements in accordance with process outlined in Paragraph 3(f) above.

h. Substitution of Letter of Credit. The BOCC, at its sole opinion, may permit the Owner to substitute collateral other than a LOC, in a form acceptable to the BOCC, for the purpose of securing the completion of the Improvements.

i. Recording of Final Plat. The Final Plat of the Subdivision shall not be recorded until the security described in this paragraph 3 has been received and approved by the BOCC.

4. **WATER SUPPLY AND WASTEWATER COLLECTION.** Prior to issuance of any certificates of occupancy by the BOCC for any residences or other habitable structures located and constructed within the Subdivision, Owner shall install and connect a water distribution system for potable water, fire protection and a wastewater/sewer collection system in accordance with approved plans and specifications. All easements and rights-of-way necessary for installation, operation, service and maintenance of such water supply and distribution system and wastewater collection system shall be as shown on the Final Plat. Conveyance of the system(s), including real and personal property interests, from the Owner to the Pinyon Mesa HOA and the Spring Valley Sanitation District shall be in accordance with Paragraph 7, below. If a third party water or sewer entity requires warranty of the system(s), Owner shall provide proof to the BOCC that such warranty is in effect.

5. **PUBLIC ROADS.** All roads within the Subdivision shall be dedicated to the public as public rights-of-way. Road rights-of-way shall be dedicated by the Owner and accepted by the BOCC, on behalf of the public, on the face of the Final Plat. The Homeowners' Association of the Subdivision shall be solely responsible for the maintenance, repair and upkeep of said rights-of-way, including the traveled surface of the

roadways and portions of the rights-of-way outside of the traveled surface. The BOCC shall not be obligated to maintain any road rights-of-way within the Subdivision.

6. **PUBLIC UTILITY RIGHTS-OF-WAY.** Whether or not utility easements exist elsewhere in the Subdivision, all road rights-of-way within the Subdivision, whether public or private, shall contain rights-of-way for installation and maintenance of utilities. Public utility easements shall be dedicated by the Owner and accepted by the BOCC, on behalf of the public, on the face of the Final Plat. The Homeowners' Association of the Subdivision shall be solely responsible for the maintenance, repair and upkeep of said public utility easements, unless otherwise agreed to with the public utility company(ies). The BOCC shall not be obligated for the maintenance, repair and upkeep of any utility easements within the Subdivision. In the event a utility company, whether publicly or privately owned, requires separate conveyance by deed or otherwise, Owner shall also convey utility easements by separate document.

7. **CONVEYANCE OF OPEN SPACE AND ROAD RIGHTS-OF-WAY/WATER SUPPLY SYSTEM/WASTEWATER COLLECTION SYSTEM.** The Water Supply System and Wastewater Collection System(s) shall be conveyed by deed at the time of Final Plat Approval and shall be recorded following recordation of the Final Plat of the Subdivision.

8. **INDEMNITY.** The Owner shall indemnify and hold the BOCC harmless and defend the BOCC from all claims which may arise as a result of the Owner's installation of the Improvements and any other agreement or obligation of Owner related to development of the Subdivision required pursuant to this Agreement. The Owner, however, does not indemnify the BOCC for claims made asserting that the standards imposed by the BOCC are improper or the cause of the injury asserted, or from claims which may arise from the negligent acts or omissions of the BOCC or its employees. The BOCC shall be required to notify the Owner of the BOCC's receipt of a notice of claim or a notice of intent to sue, and the BOCC shall afford the Owner the option of defending any such claim or action. Failure to notify and provide such written option to the Owner shall extinguish the BOCC's rights under this paragraph. Nothing in this paragraph shall be construed to constitute a waiver of the Sovereign Immunity granted to the BOCC by Colorado statutes and case law.

9. **ROAD IMPACT FEE.** Pursuant to the Garfield County subdivision regulations, a Road Impact Fee of \$59,716.80 has been established for the residential units within the Subdivision. Owner is responsible for fifty percent (50%) of the Road Impact Fee, which is \$29,858.40. Owner shall remit payment to the Garfield County Treasurer in the amount of \$29,858.40 at or prior to the time of recording of the Final Plat. The remaining 50% (\$29,858.40) will be collected *pro rata* from lot owners each time a building permit issues for a residence within the Subdivision.

10. **SCHOOL LANDS/FEES IN LIEU.** Previously a deed conveying land to the Roaring Fork School District RE-1 has been recorded at Reception No. 723310 in Book 1926, at Page 0592, in accordance with Section 30-28-133(4), C.R.S., as amended. Therefore, Owner is not responsible for payment of fees in lieu of dedication of school; and.

11. **COMPLIANCE WITH FIRE DISTRICT REQUIREMENTS.** The

Carbondale & Rural Fire District (“District”) has reviewed and commented on this application. Per this review, the Owner shall:

a. Install a water supply system pursuant to plans approved by the District’s Fire Chief, including fire hydrants at the locations agreed upon between Owner and the District, shown on the Final Plat of the Subdivision; and

b. Pay an impact fee to the District of \$437 per dwelling unit at the time of Final Plat. For this Filing 2, the fee shall be \$13,984.00.

12. **SALE OF LOTS.** No lots, tracts, or parcels within the Subdivision may be separately conveyed prior to recording of the Final Plat in the records of the Garfield County Clerk and Recorder.

13. **BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY.** As one remedy for breach of this Agreement, the BOCC may withhold issuance of building permits for any residence or other habitable structure requiring a permit, and any structures requiring building permits on the Open Space/Common Area parcels to be constructed within the Subdivision. Further, no building permit shall be issued unless the Owner demonstrates to the satisfaction of the Carbondale Rural Fire Protection District (“District”) that there is adequate water available to the construction site for the District’s purposes and all applicable District fees have been paid to the District. Further, the parties agree that no certificates of occupancy shall issue for any buildings or structures, including residences, within the Subdivision until all on-site Improvements have been completed and are operational as required by this Agreement. Owner shall provide the purchaser of a lot, prior to conveyance of the lot, a signed copy of a form in substantially the same form as that attached to and incorporated herein by reference as Exhibit “F,” concerning the restrictions upon issuance of building permits and certificates of occupancy detailed in this Agreement, Final Plat Approval and Preliminary Plan Approval.

14. **ENFORCEMENT.** In addition to any rights which may be provided by Colorado statute, the withholding of building permits and certificates of occupancy provided for in paragraph 12 above, and the provisions for release of security, detailed in paragraph 3 above, it is mutually agreed by the BOCC and the Owner that the BOCC, without making an election of remedies, or any purchaser of any lot within the Subdivision shall have the authority to bring an action in the Garfield County District Court to compel enforcement of this Agreement. Nothing in this Agreement, however, shall be interpreted to require the BOCC to bring an action for enforcement or to withhold permits or certificates or to withdraw and use security. Nor shall this paragraph or any other provision of this Agreement be interpreted to permit the purchaser of a lot to file an action against the BOCC.

15. **CONSENT TO VACATE PLAT.** In the event the Owner fails to comply with the terms of this Agreement, the BOCC shall have the ability to vacate the Final Plat as it pertains to any lots for which building permits have not been issued. As to lots for which building permits have been issued, the plat shall not be vacated and shall remain valid. In such event, the Owner shall provide the BOCC a survey, legal description and a plat showing the location of any portion of the Final Plat so vacated and shall record the plat in the Office of the Garfield County Clerk and Recorder. If such plat is not recorded by the Owner, the BOCC may vacate the plat, or portions thereof, by Resolution.

16. **NOTICE BY RECORDATION.** This Agreement shall be recorded in the Office of the Garfield County Clerk and Recorder and shall be a covenant running with title to all lots, tracts, and parcels within the Subdivision. Such recording shall constitute notice to prospective purchasers or other interested parties as to the terms and provisions thereof.

17. **SUCCESSORS AND ASSIGNS.** The obligations and rights contained herein shall be binding upon and inure to the benefit of the successors and assigns of the Owner and the BOCC.

18. **IDENTIFICATION OF CONTRACT ADMINISTRATORS AND NOTICE PROVISIONS.** All notices required or permitted by this Agreement shall be in writing and shall be deemed effective when received by the recipient party via personal or messenger service delivery, facsimile transmission or United States certified mail (postage prepaid, return receipt requested), in all cases addressed to the person for whom it is intended at the address or facsimile number set forth below:

Owner: Ronald Norman, Manager
PMGC 2, LLC
265 Ponderosa Pass
Carbondale, CO 81623

With Copy to: Chad J. Lee, Esq.
Balcomb & Green, P.C.
818 Colorado Avenue
Glenwood Springs, CO 81601

BOCC: Board of County Commissioners of Garfield County,
Colorado
c/o Planning Director
108 Eighth Street, Room 201
Glenwood Springs, CO 81601
Phone: (970) 945-8212
Fax: (970) 384-3470

The Representatives of the Owner and the BOCC, identified above, are the authorized representatives of the parties for purposes of contact administration and notice under this Agreement.

19. **AMENDMENT.** This Agreement may be modified from time to time, but only in writing signed by the parties hereto, as their interests then appear. The parties, however, may change the identification of notice recipients and contract administrators and the contact information, provided in paragraph 18 above, in accordance with the notice provisions and without formal amendment of this Agreement.

20. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed one and the same instrument.

Exhibit A



Pinyon Mesa Phase II

Public Improvements Cost Estimate

Unit	Description	Unit Amount	Unit Price	Total	
1	Lump sum	Mobilization	1	\$45,000.00	\$45,000.00
2	Cubic Yard	Road over ex – recompact	12100	\$7.00	\$84,700.00
3	Cubic Yard	Cut Fill	2200	\$6.00	\$13,200.00
4	Cubic Yard	Pit run fill	4400	\$8.00	\$35,200.00
5	Ton	Class 6 road base	1900	\$30.00	\$57,000.00
6	Ton	Asphalt pavint	1000	\$105.00	\$105,000.00
7	Linear foot (LF)	Type 2 curb and gutter	4400	\$28.00	\$123,200.00
8	Square feet	Valley Pans and Fillets	1620	\$9.00	\$14,580.00
9	Each	48" FES	2	\$600.00	\$1,200.00
10	LF	ADS N-12 18"	380	\$40.00	\$15,200.00
11	LF	ADS N-12 48"	80	\$115.00	\$9,200.00
12	Each	18" FES	3	\$300.00	\$900.00
13	Cubic Yard	Outlet rip rap	60	\$60.00	\$3,600.00
14	Each	Drain Inlet w/ 2' overex	6	\$3,800.00	\$22,800.00
15	LF	8" PVC Sewer Pipe	665	\$35.00	\$23,275.00
16	LF	8" Certa_Flo sewer pipe restrain	250	\$90.00	\$22,500.00
17	Each	Sewer Service	15	\$2,600.00	\$39,000.00
18	Each	Sewer Manholes with 2' overex	6	\$4,600.00	\$27,600.00
19	Each	Sewer Manholes with Dissipator	1	\$4,900.00	\$4,900.00
20	LF	8"DIP Water Main	1900	\$70.00	\$133,000.00
21	Each	Water Main Fittings	8	\$350.00	\$2,800.00
22	Each	8" Gate Valve with Valve Box	3	\$2,100.00	\$6,300.00
23	Each	Fire Hydrant Assembly4	4	\$6,200.00	\$24,800.00
24	Each	Water Service	32	\$2,200.00	\$70,400.00
25	Lump sum	Erosion Control	1	\$12,000.00	\$12,000.00
26	LF	Shallow Utility Trenching	4400	\$8.75	\$38,500.00
27	Each	Electric Vault Installation	15	\$800.00	\$12,000.00
ITEM TOTAL					\$947,855.00
10 % Contingency					\$94,785.50
TOTAL W/ CONTINGENCY					\$1,042,640.50

Note:

This cost estimate is an engineer's opinion of probable cost and is not a quotation or bid. As with any estimate, actual costs may vary due to unforeseen circumstances and market conditions.



EXHIBIT B
IRREVOCABLE STANDBY LETTER OF CREDIT

Reference #:
Amount: \$1,042,640.50
Date of Issue:
Expiration Date:

BENEFICIARY: Board of County Commissioners of Garfield County ("Beneficiary" or "BOCC")
108 8th Street, Suite 213
Glenwood Springs, CO 81601

ACCOUNT PARTY/Applicant: PMGC 2, LLC, a Texas limited liability company

Establishment/Face Amount/Purpose/Expiration Date/Transferability

We hereby establish/issue/open, at the request of the Applicant/Account Party, Irrevocable Standby Letter of Credit No. _____ in an amount not to exceed One Million, Forty-Two Thousand, Six Hundred and Forty Dollars and Fifty Cents (\$1,042,640.50). The purpose of this letter is to secure the Applicant/Account Party's performance of and compliance with the agreement between Applicant/Account Party and Beneficiary, dated _____ and titled _____ ("Subdivision Improvements Agreement"). This Letter of Credit expires at _____ Bank, at _____ p.m. Mountain Standard Time on _____, 20___. This letter is not transferable.

Partial Releases

Partial draws are [are not] permitted. The BOCC may [may not] authorize periodic reductions in the face amount of this Letter of Credit [If Bank requires Reduction Certificates: and, if so authorized, the revised face amount of the Letter of Credit shall be evidenced by a separate Reduction Certificate, approved and executed by the BOCC or the BOCC's authorized representative].

Conditions for Payment to Beneficiary

Drafts submitted by Beneficiary must be accompanied by the following documents:

1. Beneficiary's signed statement executed by the Chairman of the BOCC or the BOCC's authorized _____ designee stating: _____, developer of Subdivision [PUD] is in default of its obligations set forth in that certain Subdivision Improvements Agreement between _____ and the BOCC, dated _____, and recorded as Reception Number _____ in Book _____ at Page _____ of the Real Estate Records of the Office of the Garfield County Clerk and Recorder.
2. The original Letter of Credit, endorsed on the reverse side with the words: "Drawn by the Board of County Commissioners of Garfield County, Colorado in the amount of \$ _____," manually signed by the Chairman or the BOCC's authorized representative.
3. Fax of the Draw Documents is acceptable to our Fax No. _____. If presentation is made by fax, prompt phone notification must be given to _____, _____ (telephone no.), or _____, _____ (telephone no.). The fax presentation shall be deemed the original presentation. In the event of a full or final

drawing the original standby Letter of Credit must be returned to bank by overnight courier at the time of fax presentation.

Cancellation

This Letter of Credit and amendments, if any, must be returned to us for cancellation by Applicant/Account party with a statement signed by the Beneficiary stating: "This Letter of Credit is no longer required by the BOCC and is hereby returned to the issuing bank for cancellation."

Issuer's Undertaking

We hereby agree to honor each draft drawn under and in compliance with the terms of this Letter of Credit if presented, together with the documents above specified, to (name) _____ Bank, (street address) _____ (city/town) _____, Colorado, on or before the date of expiration identified above. This letter is issued subject to the Uniform Customs and Practices for Documentary Credit (_____ Revision), International Chamber of Commerce Publication Number 600 and the Uniform Commercial Code at C.R.S. § 4-1-101 et seq., as amended.

The laws of the State of Colorado shall govern the validity, interpretation, performance and enforcement of this Letter of Credit, and mandatory exclusive venue for any judicial proceeding pertaining to this Letter of Credit shall be in a court of competent jurisdiction in Garfield County, Colorado.

_____ Bank

By _____
Name _____
Title _____

THIS IS A FORM DOCUMENT. BANKS USE DIFFERENT FORMATS AND DIFFERENT TERMS TO IDENTIFY ISSUER, APPLICANT AND BENEFICIARY.
ASK YOUR BANK TO ADDRESS THE MATTERS IDENTIFIED ABOVE: Establishment, Face Amount, Purpose, Expiration Date, Transferability, Partial/Single Releases, Conditions for Payment to Beneficiary, Cancellation, Issuer's Undertaking AND TO SPECIFY WHETHER OR NOT PARTIAL RELEASES OF THE LETTER OF CREDIT, IF ALLOWED, REQUIRE THE USE OF REDUCTION CERTIFICATES.
LETTERS OF CREDIT ARE HELD IN THE CUSTODY OF THE GARFIELD COUNTY TREASURER. ADDRESS QUESTIONS RELATED TO PARTIAL OR FULL RELEASE, HOWEVER, TO THE BUILDING AND PLANNING DEPARTMENT.

EXHIBIT C
IRREVOCABLE STANDBY LETTER OF CREDIT

Reference #:
Amount: \$12,500
Date of Issue:
Expiration Date:

BENEFICIARY: Board of County Commissioners of Garfield County ("Beneficiary" or "BOCC")
108 8th Street, Suite 213
Glenwood Springs, CO 81601

ACCOUNT PARTY/Applicant: PMGC 2, LLC, a Texas limited liability company

Establishment/Face Amount/Purpose/Expiration Date/Transferability

We hereby establish/issue/open, at the request of the Applicant/Account Party, Irrevocable Standby Letter of Credit No. _____ in an amount not to exceed Twelve Thousand, Five Hundred Dollars and no Cents (\$12,500.00). The purpose of this letter is to secure the Applicant/Account Party's performance of and compliance with the agreement between Applicant/Account Party and Beneficiary, dated _____ and titled _____ ("Subdivision Improvements Agreement"). This Letter of Credit expires at _____ Bank, at _____ p.m. Mountain Standard Time on _____, 20___. This letter is not transferable.

Partial Releases

Partial draws are [are not] permitted. The BOCC may [may not] authorize periodic reductions in the face amount of this Letter of Credit [If Bank requires Reduction Certificates: and, if so authorized, the revised face amount of the Letter of Credit shall be evidenced by a separate Reduction Certificate, approved and executed by the BOCC or the BOCC's authorized representative].

Conditions for Payment to Beneficiary

Drafts submitted by Beneficiary must be accompanied by the following documents:

1. Beneficiary's signed statement executed by the Chairman of the BOCC or the BOCC's authorized _____ designee stating: _____, developer of Subdivision [PUD] is in default of its obligations set forth in that certain Subdivision Improvements Agreement between _____ and the BOCC, dated _____, and recorded as Reception Number _____ in Book _____ at Page _____ of the Real Estate Records of the Office of the Garfield County Clerk and Recorder.
2. The original Letter of Credit, endorsed on the reverse side with the words: "Drawn by the Board of County Commissioners of Garfield County, Colorado in the amount of \$ _____," manually signed by the Chairman or the BOCC's authorized representative.
3. Fax of the Draw Documents is acceptable to our Fax No. _____. If presentation is made by fax, prompt phone notification must be given to _____, _____ (telephone no.), or _____, _____ (telephone no.). The fax presentation shall be deemed the original presentation. In the event of a full or final

drawing the original standby Letter of Credit must be returned to bank by overnight courier at the time of fax presentation.

Cancellation

This Letter of Credit and amendments, if any, must be returned to us for cancellation by Applicant/Account party with a statement signed by the Beneficiary stating: "This Letter of Credit is no longer required by the BOCC and is hereby returned to the issuing bank for cancellation."

Issuer's Undertaking

We hereby agree to honor each draft drawn under and in compliance with the terms of this Letter of Credit if presented, together with the documents above specified, to (name) _____ Bank, (street address) _____ (city/town) _____, Colorado, on or before the date of expiration identified above. This letter is issued subject to the Uniform Customs and Practices for Documentary Credit (_____ Revision), International Chamber of Commerce Publication Number 600 and the Uniform Commercial Code at C.R.S. § 4-1-101 et seq., as amended.

The laws of the State of Colorado shall govern the validity, interpretation, performance and enforcement of this Letter of Credit, and mandatory exclusive venue for any judicial proceeding pertaining to this Letter of Credit shall be in a court of competent jurisdiction in Garfield County, Colorado.

_____ Bank

By _____
Name _____
Title _____

THIS IS A FORM DOCUMENT. BANKS USE DIFFERENT FORMATS AND DIFFERENT TERMS TO IDENTIFY ISSUER, APPLICANT AND BENEFICIARY.

ASK YOUR BANK TO ADDRESS THE MATTERS IDENTIFIED ABOVE: Establishment, Face Amount, Purpose, Expiration Date, Transferability, Partial/Single Releases, Conditions for Payment to Beneficiary, Cancellation, Issuer's Undertaking AND TO SPECIFY WHETHER OR NOT PARTIAL RELEASES OF THE LETTER OF CREDIT, IF ALLOWED, REQUIRE THE USE OF REDUCTION CERTIFICATES.

LETTERS OF CREDIT ARE HELD IN THE CUSTODY OF THE GARFIELD COUNTY TREASURER. ADDRESS QUESTIONS RELATED TO PARTIAL OR FULL RELEASE, HOWEVER, TO THE BUILDING AND PLANNING DEPARTMENT.

EXHIBIT D
REQUEST FOR PARTIAL RELEASE OF LETTER OF CREDIT

Board of County Commissioners
Garfield County, Colorado
c/o Director of Community Development
108 8th Street, Suite 401
Glenwood Springs, CO 81601

RE: Pinyon Mesa Subdivision, Phase 2

This request is written to formally notify the BOCC of work completed for Pinyon Mesa Subdivision, Phase 2. As Owner [On behalf of the Owner], we request that the BOCC review the attached Engineer's Certificate of Partial Completion and approve a reduction in the face amount of the Letter of Credit in the amount of \$ _____, to a reduced face amount of \$ _____.

Attached is the certified original cost estimate and work completed schedule, showing:

Engineer's Cost Estimate _____
Work Completed, less 10% _____
Reduced Face Amount of LOC _____

Based on periodic observation and testing, the construction has been completed, to date, in accordance with the intent of the plans and specifications that were reviewed and approved by the BOCC's representatives and referenced in Paragraph 2 of the Subdivision Improvements Agreement between the BOCC and the Owner.

If further information is needed, please contact _____, at _____.

Owner

or

Owner's Representative/Engineer

EXHIBIT E
REQUEST FOR FINAL RELEASE OF LETTER OF CREDIT

Board of County Commissioners
Garfield County, Colorado
c/o Director of Building and Planning
108 8th Street, Suite 401
Glenwood Springs, CO 81601

RE: Pinyon Mesa Subdivision Phase 2

This request is written to formally notify the BOCC of work completed for _____
[Subdivision] [PUD] [LAND USE CHANGE PERMIT]. As Owner [On behalf of the Owner], we request
that the BOCC review the attached Engineer's Certificate of Completion and approve a full release
of the Letter of Credit in the amount of \$_____.

Attached is the certified original cost estimate and work completed schedule, showing that all
improvements required by the Improvements Agreement and secured by the Letter of Credit have
been completed.

Also enclosed are the following, required by the Improvements Agreement [LAND USE CHANGE
PERMIT] dated _____ between Owner and the BOCC, recorded at Reception No. _____
at the Real Estate Records of the Garfield County Clerk and Recorder (the "SIA"):

1. record drawings bearing the stamp of Owner's Engineer certifying that all improvements
have been constructed in accordance with the requirements of the IA, both in hand copy
and digital format acceptable to the BOCC; and
2. copies of instruments conveying real property and other interests which Owner was
obligated to convey to the homeowner's association or other entity at the time of final
Plat Approval. If further information is needed, please contact
_____, at _____.

Owner

or

Owner's Representative/Engineer

**EXHIBIT F
PINYON MESA FILING 2
SUBDIVISION IMPROVEMENTS AGREEMENT
NOTICE REGARDING BUILDING PERMITS
AND CERTIFICATES OF OCCUPANCY**

TO: ALL PURCHASERS OF HOME SITES WITHIN PINYON MESA FILING 2

YOU ARE HEREBY NOTIFIED under applicable Garfield County regulations, you may not commence construction of a residence within unincorporated Garfield County, including within the Pinyon Mesa Filing 2 Subdivision, prior to issuance of a building permit by Garfield County. Under the terms of the Subdivision Improvements Agreement between Garfield County and Pinyon Mesa Development, Inc., Garfield County will not issue building permits for property in Pinyon Mesa Filing 2, until:

1. The Owner/Developer has demonstrated to the satisfaction of the Carbondale Rural Fire Protection District that adequate water is available to the construction site for the Fire District's purposes.
2. A site-specific geo-technical study, completed by a registered Geo-Technical Engineer, has been presented to the Building and Planning Department for review, along with a registered design professional's certification that the structure design is based on the site-specific study.
3. The remaining 50% of the Garfield County Road Impact Fee is paid by the party seeking the building permit. Note: the owner/developer paid 50% of such fee as part of the subdivision approval process.

Additionally, Garfield County will not issue Certificates of Occupancy for any structures within Pinyon Mesa Filing 2 until all of the subdivision improvements have been completed and are operational in accordance with the Subdivision Improvements Agreement between Garfield County and Pinyon Mesa Development, Inc. and until radon gas testing has been completed.

Owner/Subdivider:

PMGC 2, LLC

By _____
Ronald Norman, Manager

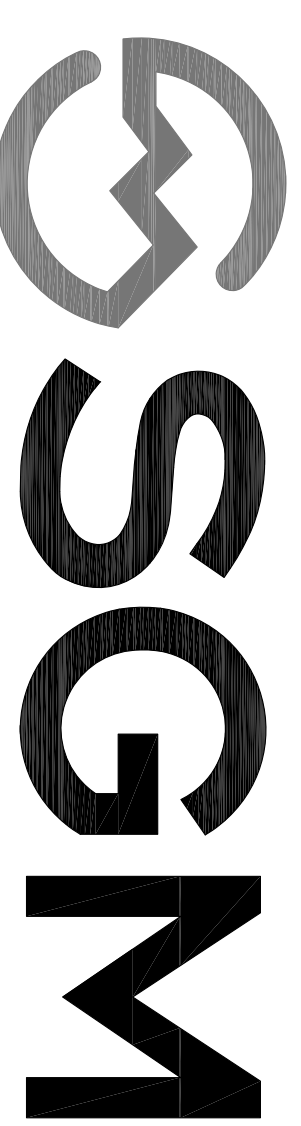
PMGCC2, LLC

Pinyon Mesa II Final Plat/Construction



Vicinity Map

Scope of Work
Earthworks, water, sewer, drainage infrastructure, curb & gutter and asphalt paving for 32 lot residential subdivision.



118 West Sixth Street, Suite 200
 Glenwood Springs, CO 81601
 970.945.1004 www.sgm-inc.com

Project Engineer

David M. Kotz, P.E. 29961

Owner / Applicant

PMGCC2, LLC

6300 Ridglea Place, # 900
 Fort Worth, TX 76116
 817-738-1801

Ron Norman, President

Preliminary Set

June 22, 2016

Sheet Index

1	Cover Sheet
2	Legend, Notes, and Abbreviations
3	Road Geometry Plan
4	Utility Composite
5	Pinyon Mesa Dr. Water Plan, Sanitary Sewer Line A Plan and Profile, Sta. 1+00 to 6+40
6	Sanitary Sewer Line A Plan and Profile, Sta. 6+40 to 10+11.51
7-8	Storm Drain Plan and Profiles
9-10	Pinyon Mesa Plan and Profile
11-12	Paintbrush Way Plan and Profile
13	Emergency Road Plan and Profile
14	Fire Truck Turnaround Plan and Profiles
15	Erosion Control Plan
16-18	Detail Sheets
19-22	Cross Sections



Know what's below.
 Call before you dig.

CNCC 1-800-922-1987

Sub # 015021

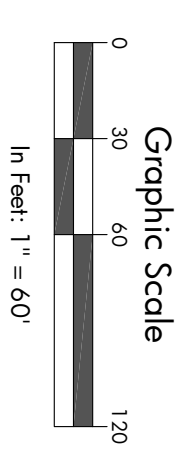
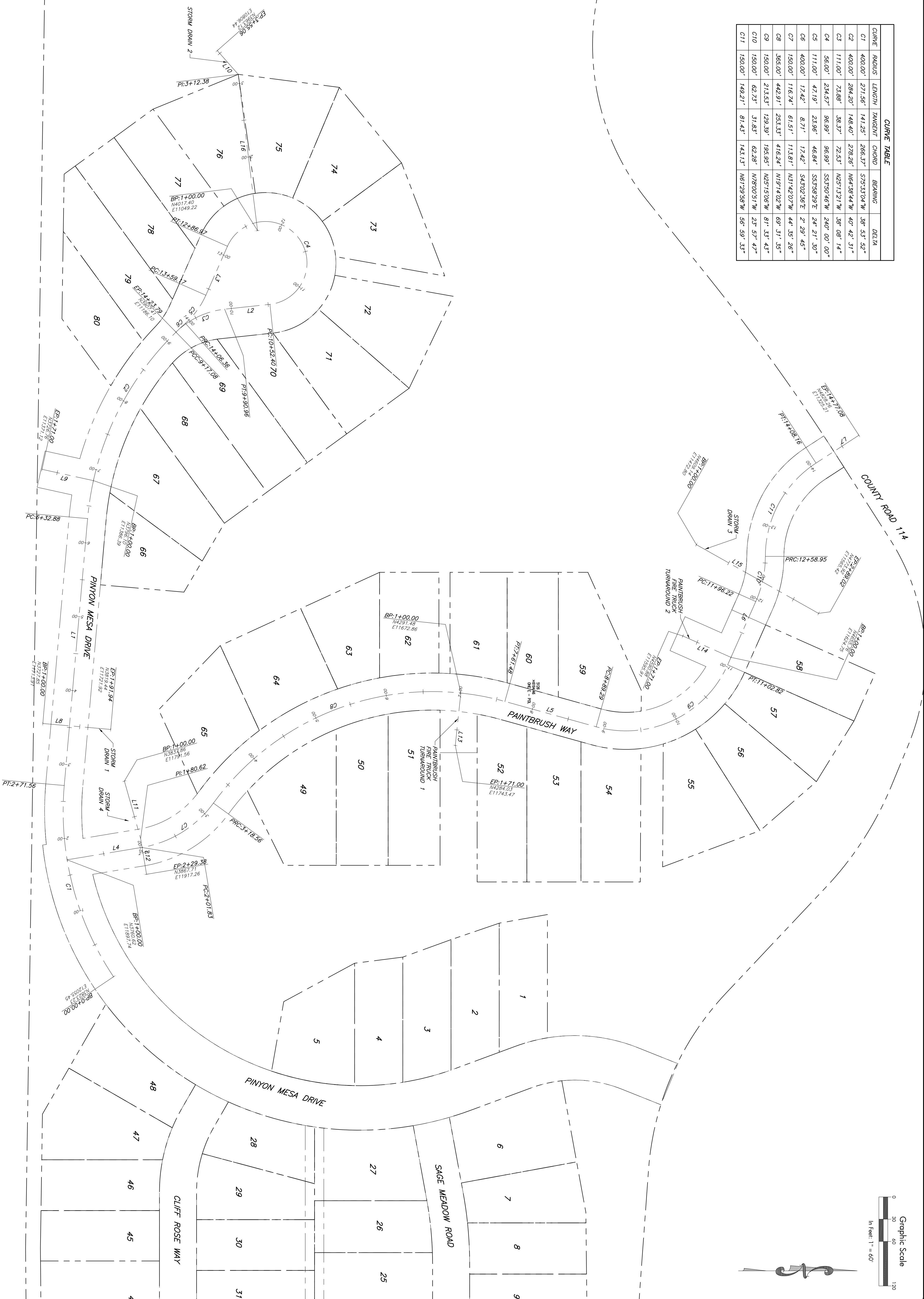
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Cover

#	Revision	Date	By
1			

LINE	BEARING	LENGTH
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L2	N6°09'14"W	61.43'
L3	S86°09'14"E	72.20'
L4	N8°24'24"W	101.83'
L5	N15°31'45"E	123.81'
L6	N68°01'58"W	93.39'
L7	N33°00'12"W	68.92'
L8	N5°00'00"E	91.94'
L9	S12°25'11"W	71.00'
L10	S48°35'42"W	42.68'
L11	N2°14'56"E	80.62'
L12	N8°35'36"E	48.76'
L13	S83°58'43"E	71.00'
L14	S23°58'02"W	71.00'
L15	N28°20'23"E	188.02'
L16	S82°57'12"W	212.38'

CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
C1	400.00'	271.56'	141.25'	266.37'	S75°33'04"W	38° 53' 52"
C2	400.00'	284.20'	148.40'	278.26'	N64°38'44"W	40° 42' 31"
C3	111.00'	73.88'	38.37'	72.53'	N29°13'21"W	38° 08' 14"
C4	56.00'	234.57'	96.99'	533.50'	N29°13'21"W	240° 00' 00"
C5	111.00'	47.19'	23.96'	46.84'	S33°58'29"E	24° 21' 30"
C6	400.00'	17.42'	8.71'	17.42'	S43°02'58"E	2° 29' 45"
C7	150.00'	116.74'	81.51'	113.81'	N31°42'03"W	44° 38' 28"
C8	365.00'	442.91'	253.33'	416.24'	N19°14'02"W	69° 31' 35"
C9	150.00'	215.53'	129.39'	195.95'	N25°15'08"W	81° 33' 43"
C10	150.00'	62.73'	31.83'	62.28'	N78°00'51"W	23° 57' 47"
C11	150.00'	148.21'	81.43'	143.13'	N61°29'58"W	56° 59' 33"



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Construction



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PMGC2, LLC
Pinyon Mesa II Final Plat/Construction

#	Revision	Date	By
1			

Alignment Geometry Plan

Job No.	01502H	3
Drawn by	RB	
Date:	6/22/16	22
QC:	XXI PE: DK	
File:	Geometry	

Preliminary
Not For
Construction

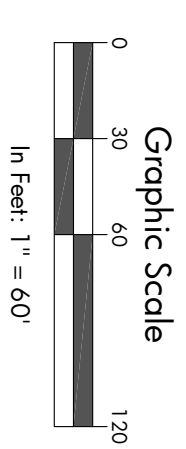
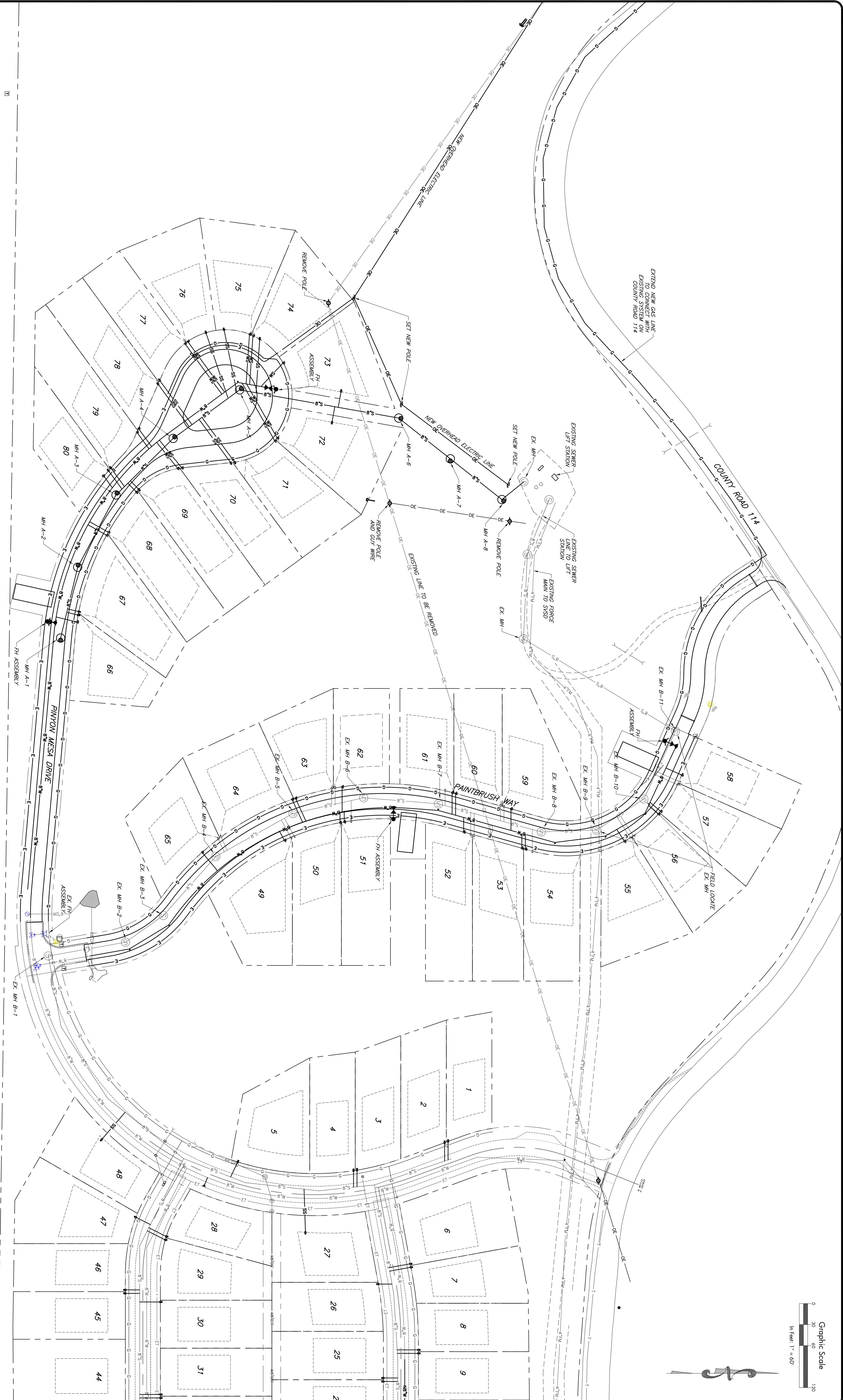
SGM
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Glenwood Springs, CO 81601
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Pinyon Mesa II Final Plat/Construction

#	Revision	Date	By
1			

Utility Composite

Job No.	01502H	4
Drawn by	FB	
Date	6/22/16	
QC	XX PE: DK OF	
File:	UtilityComposite	22



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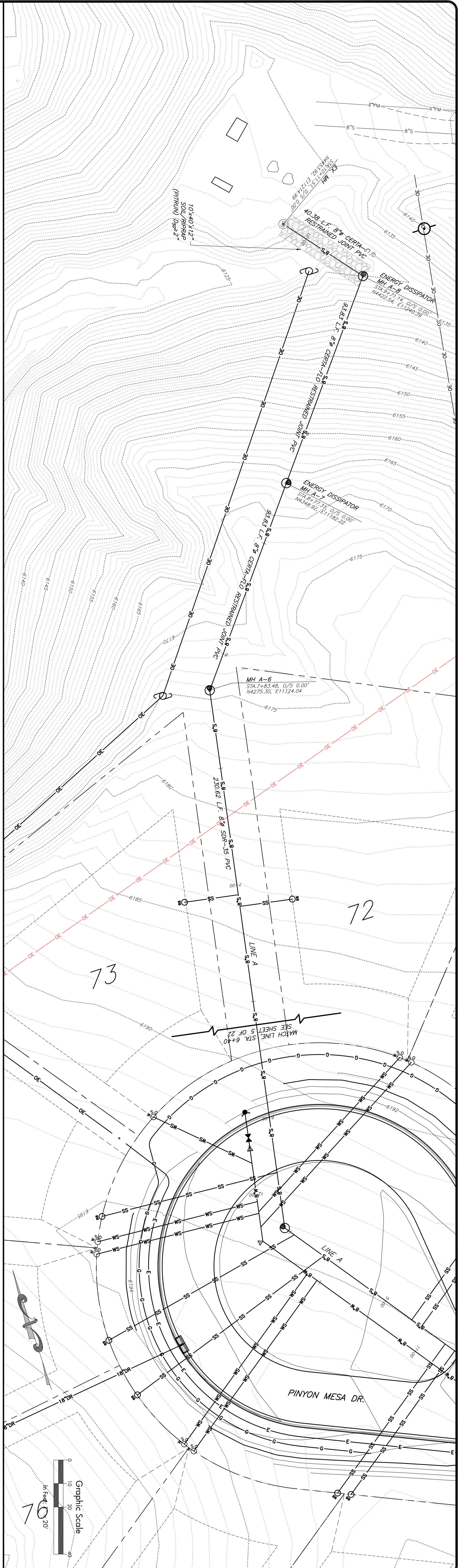
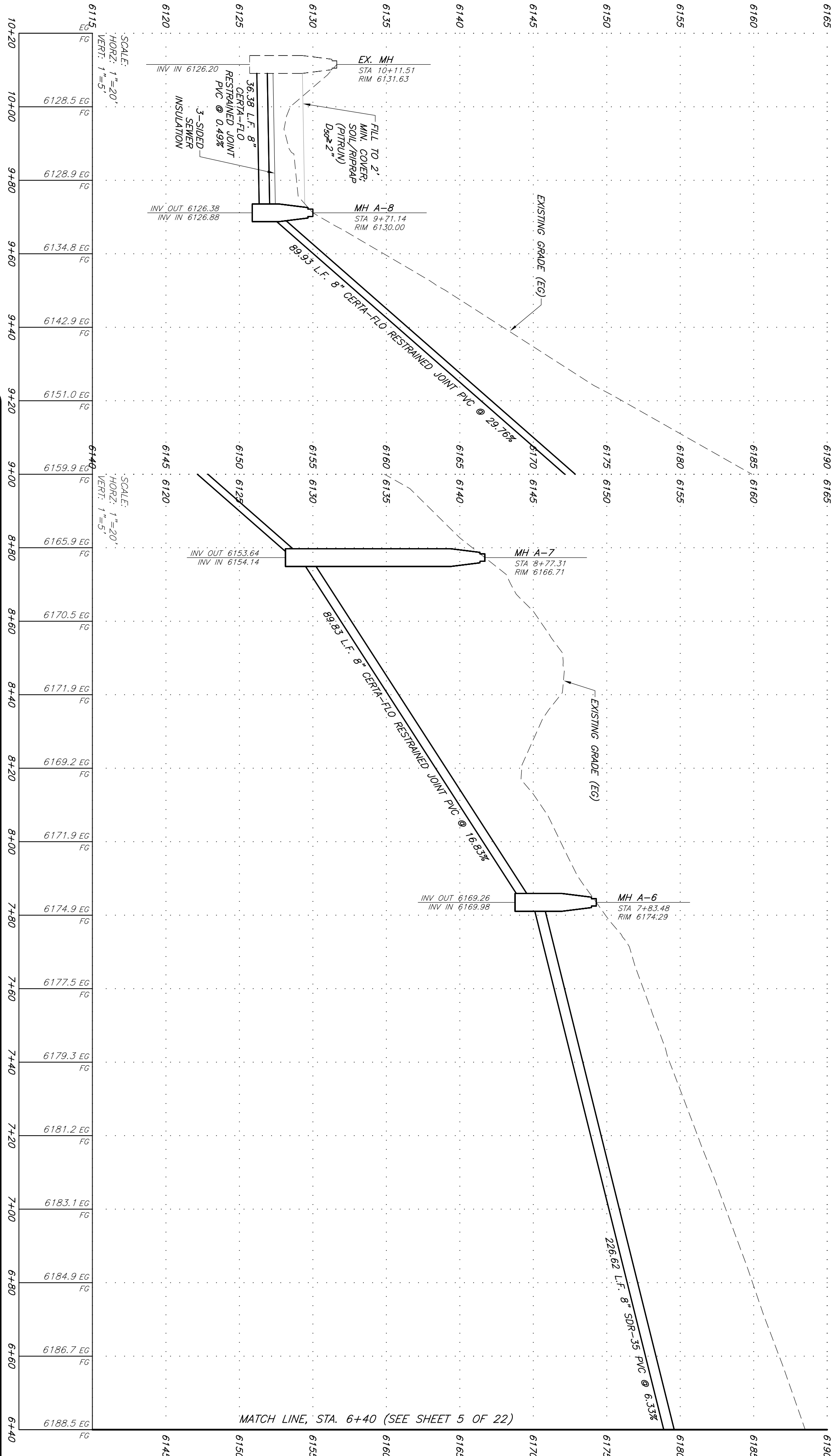
PMGC2, LLC
Pinyon Mesa II Final Plat/Construction

#	Revision	Date	By
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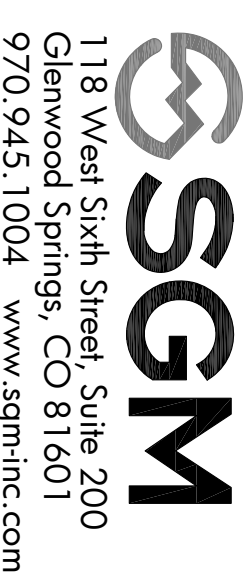
Sewer Line A
Plan and Profile
Sta. 6+40 to 10+11.51

Job No.	01502H
Drawn by	FB
Date:	6/22/16
QC:	XX PE: DK
File:	LineA.dwg

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22



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Not For
Construction



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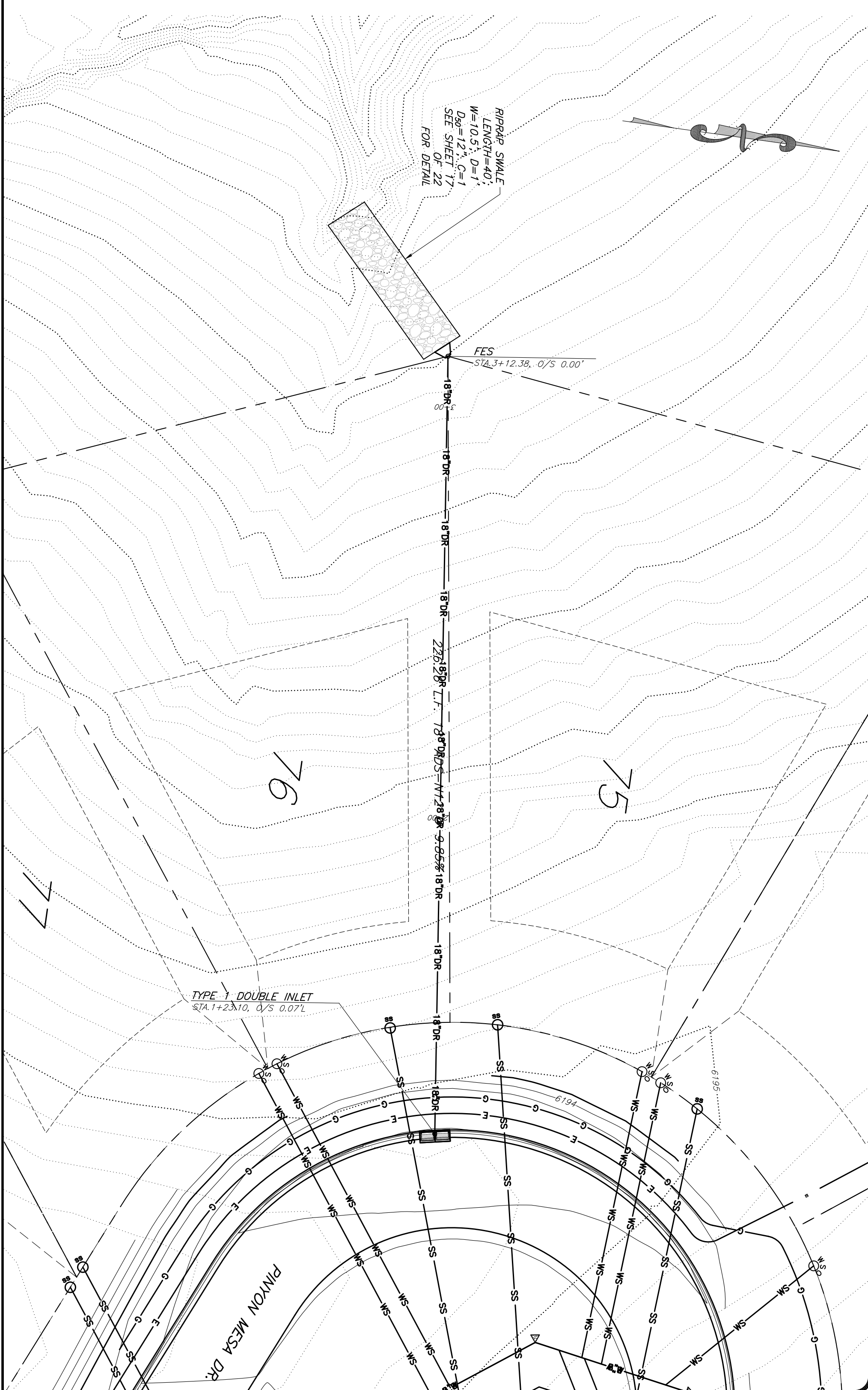
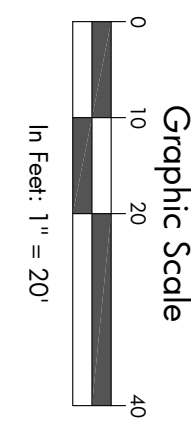
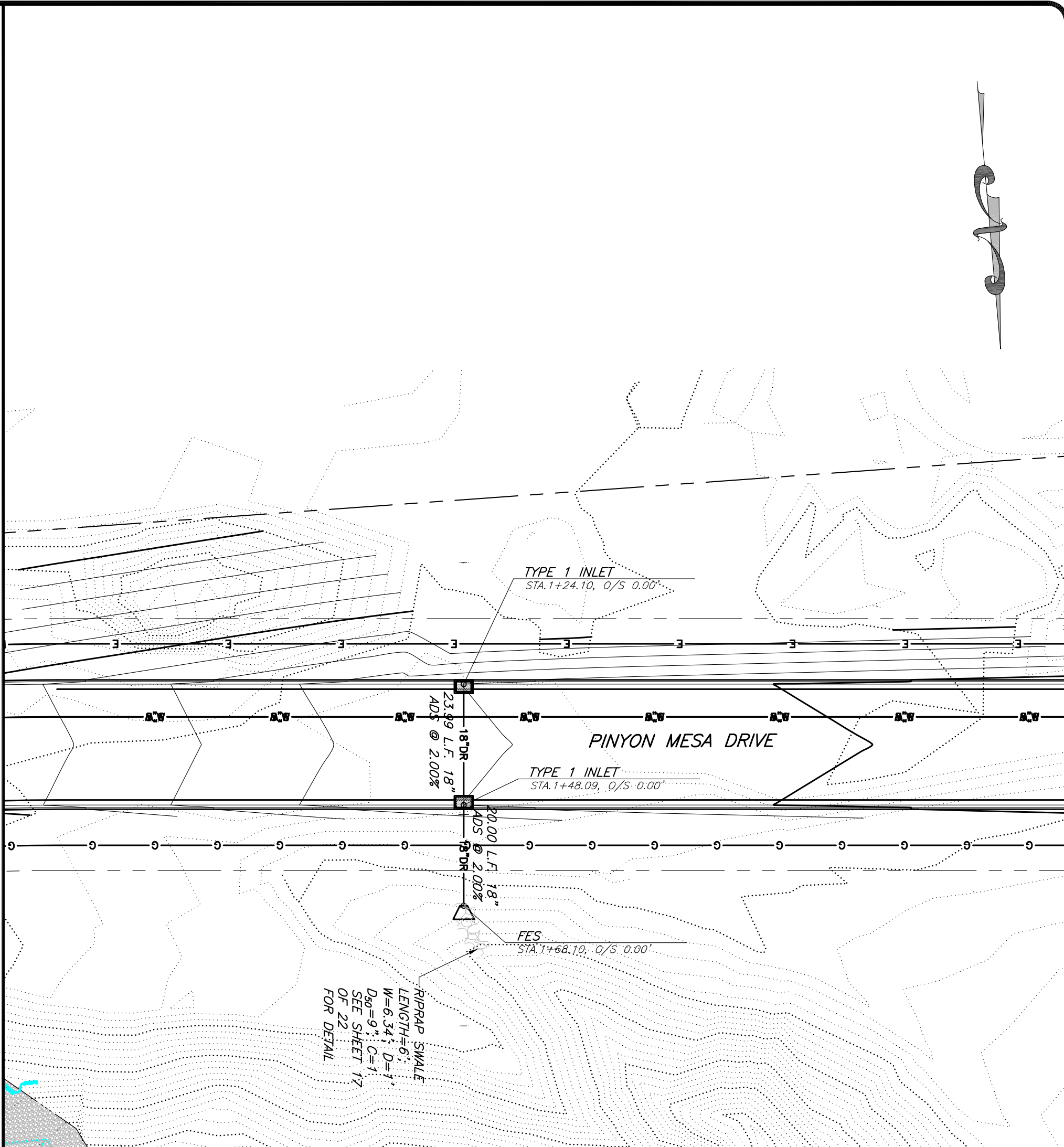
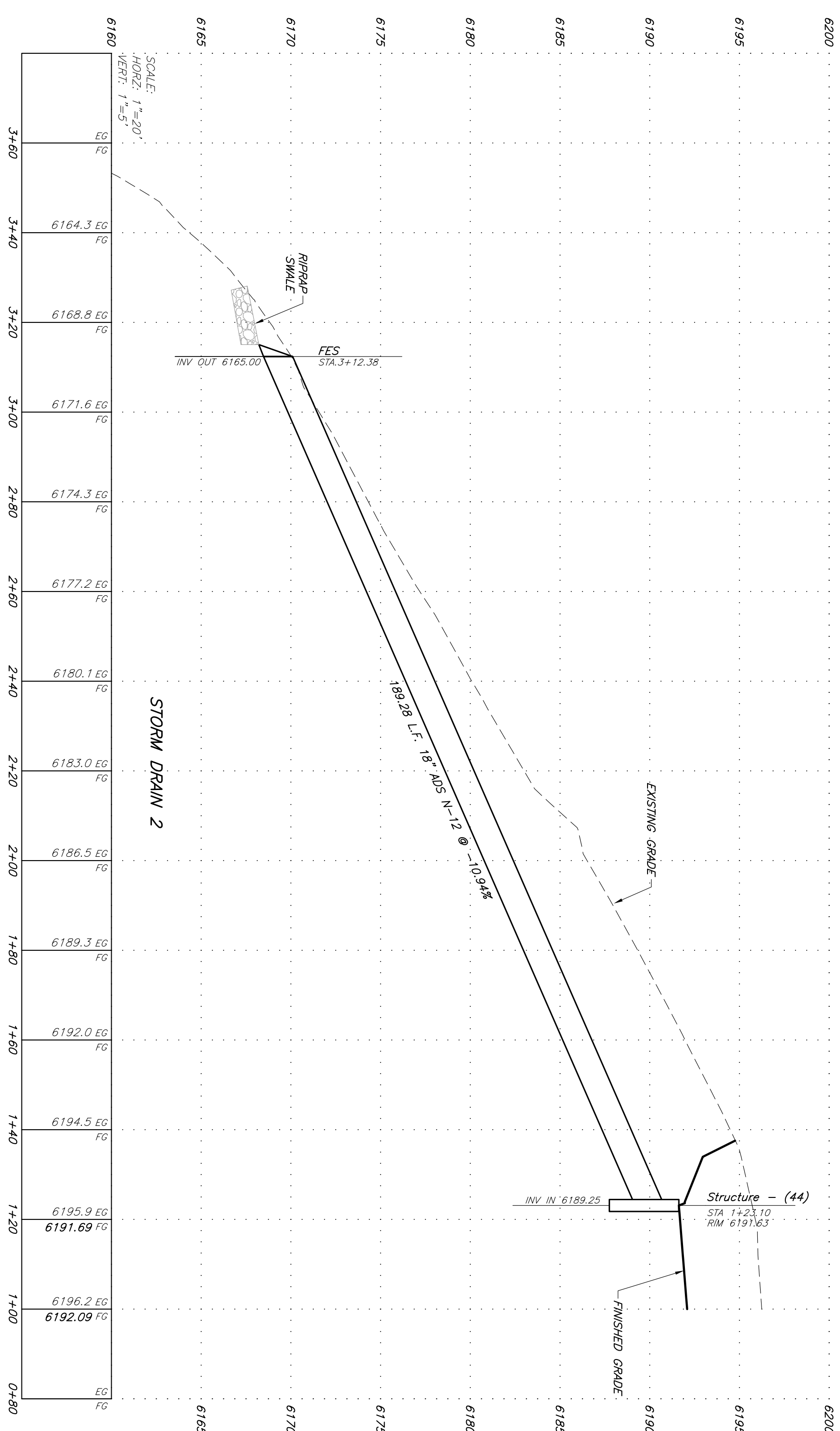
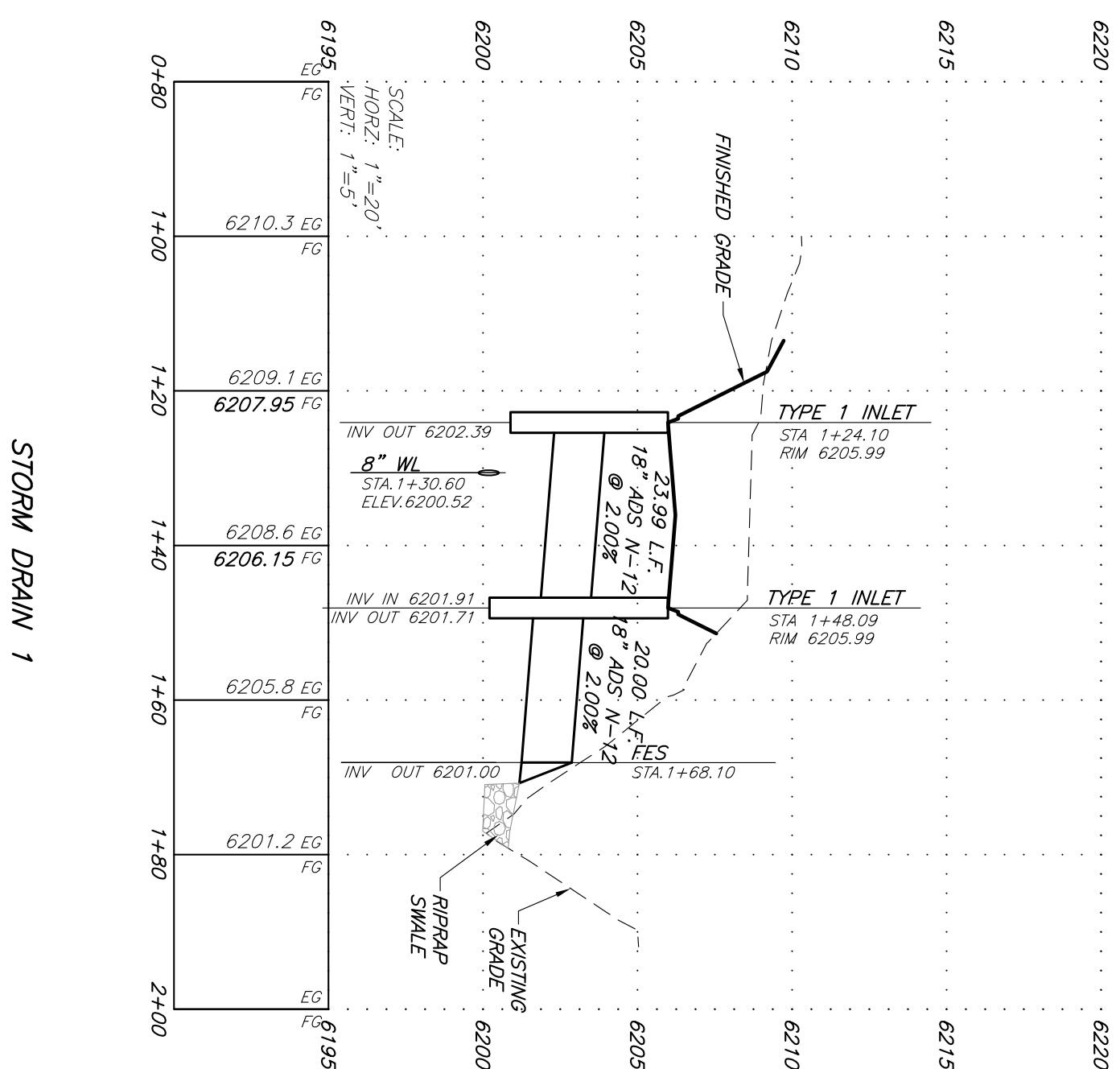
PMGC2, LLC
Pinyon Mesa II Final Plat/Construction

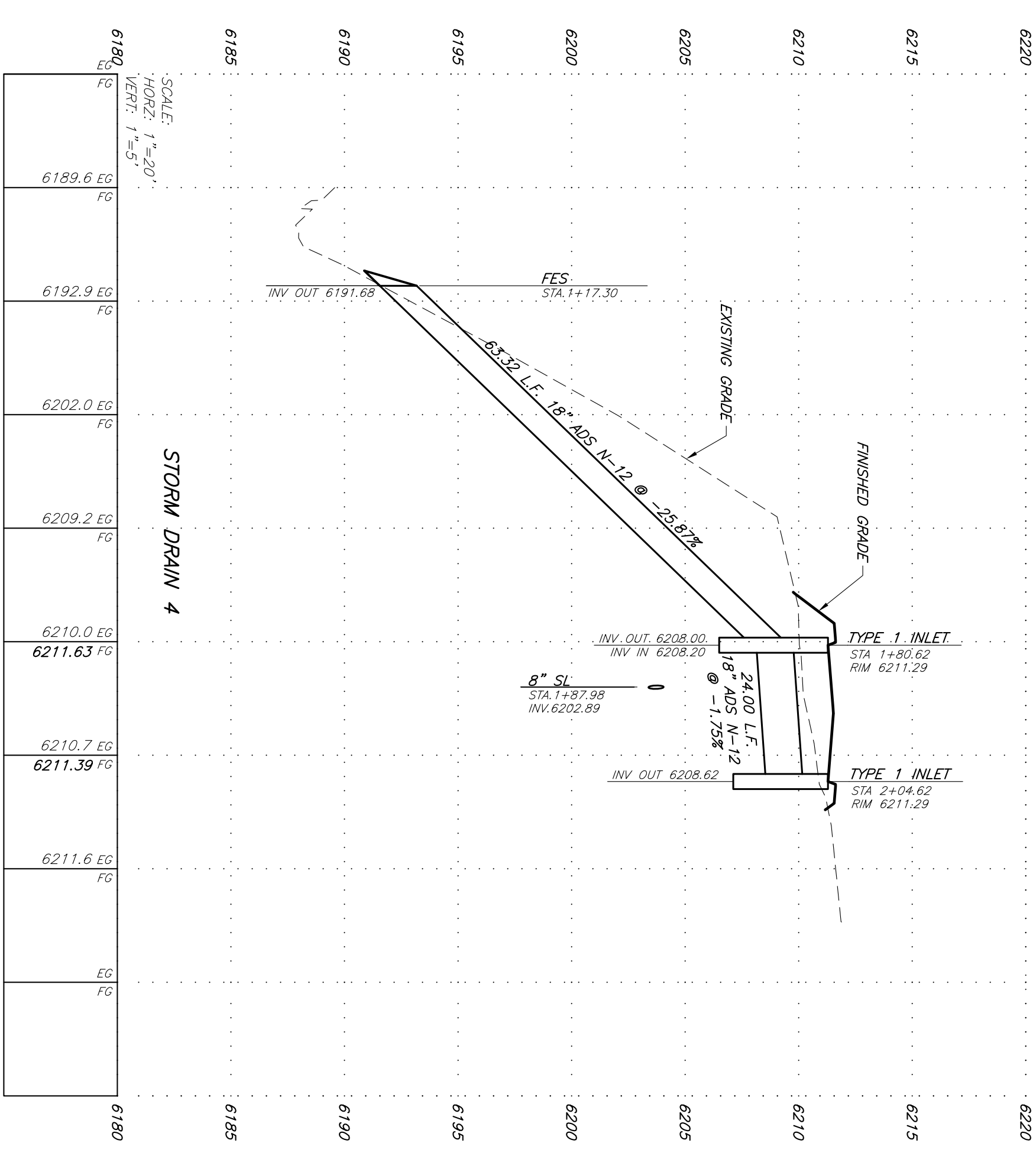
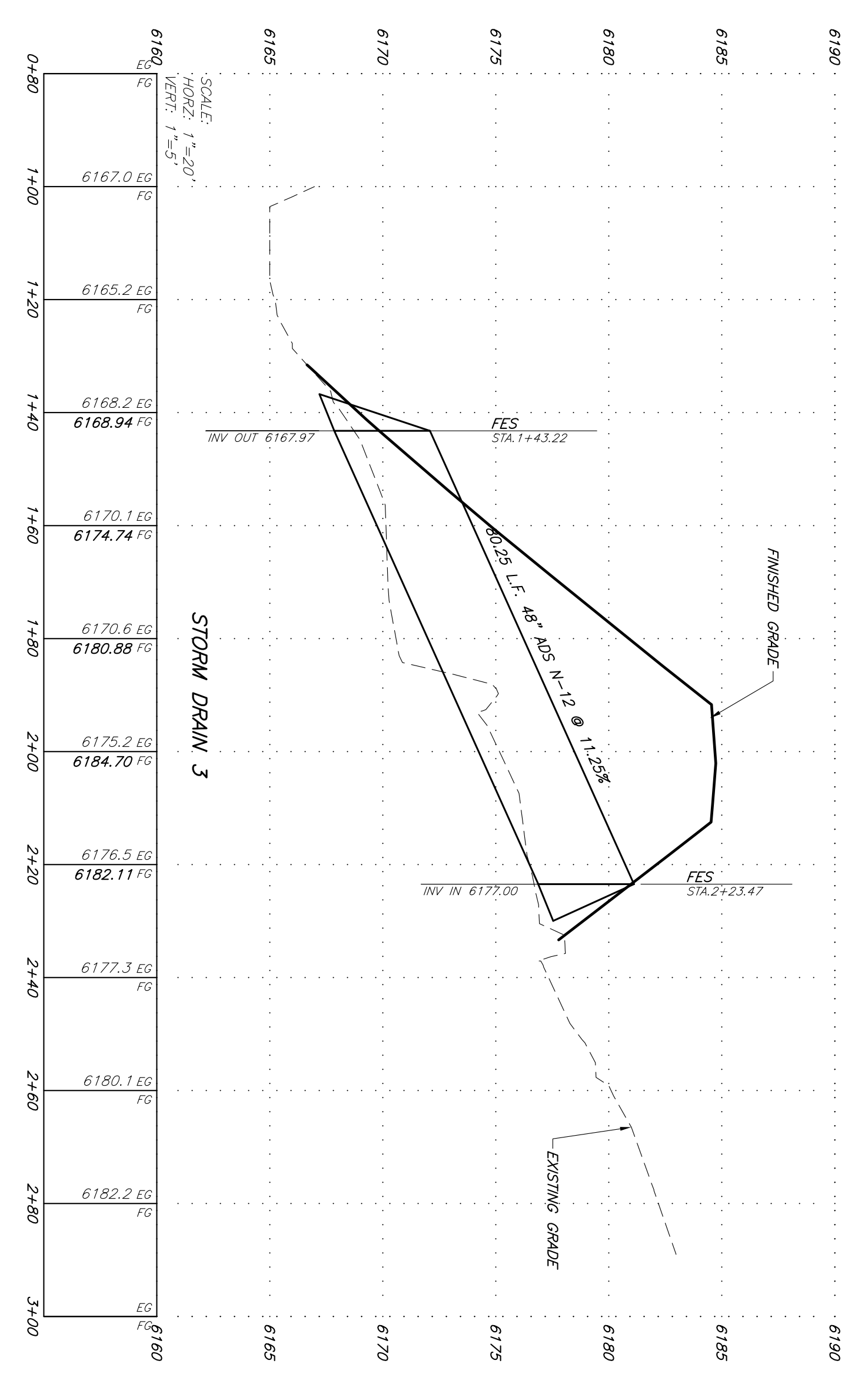
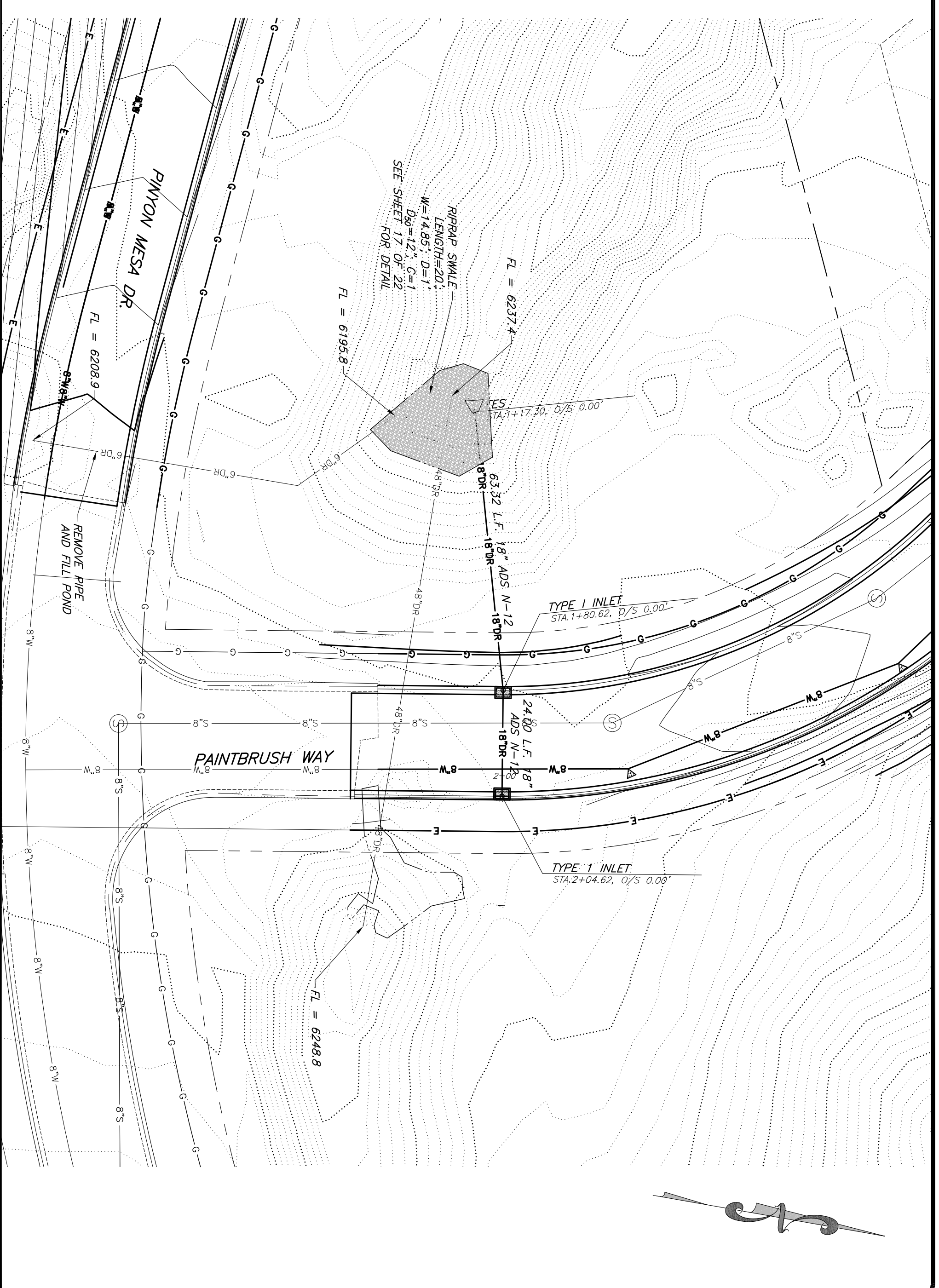
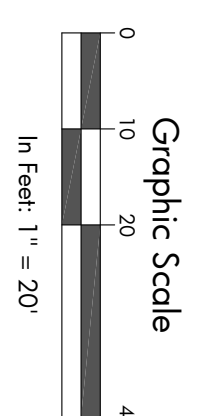
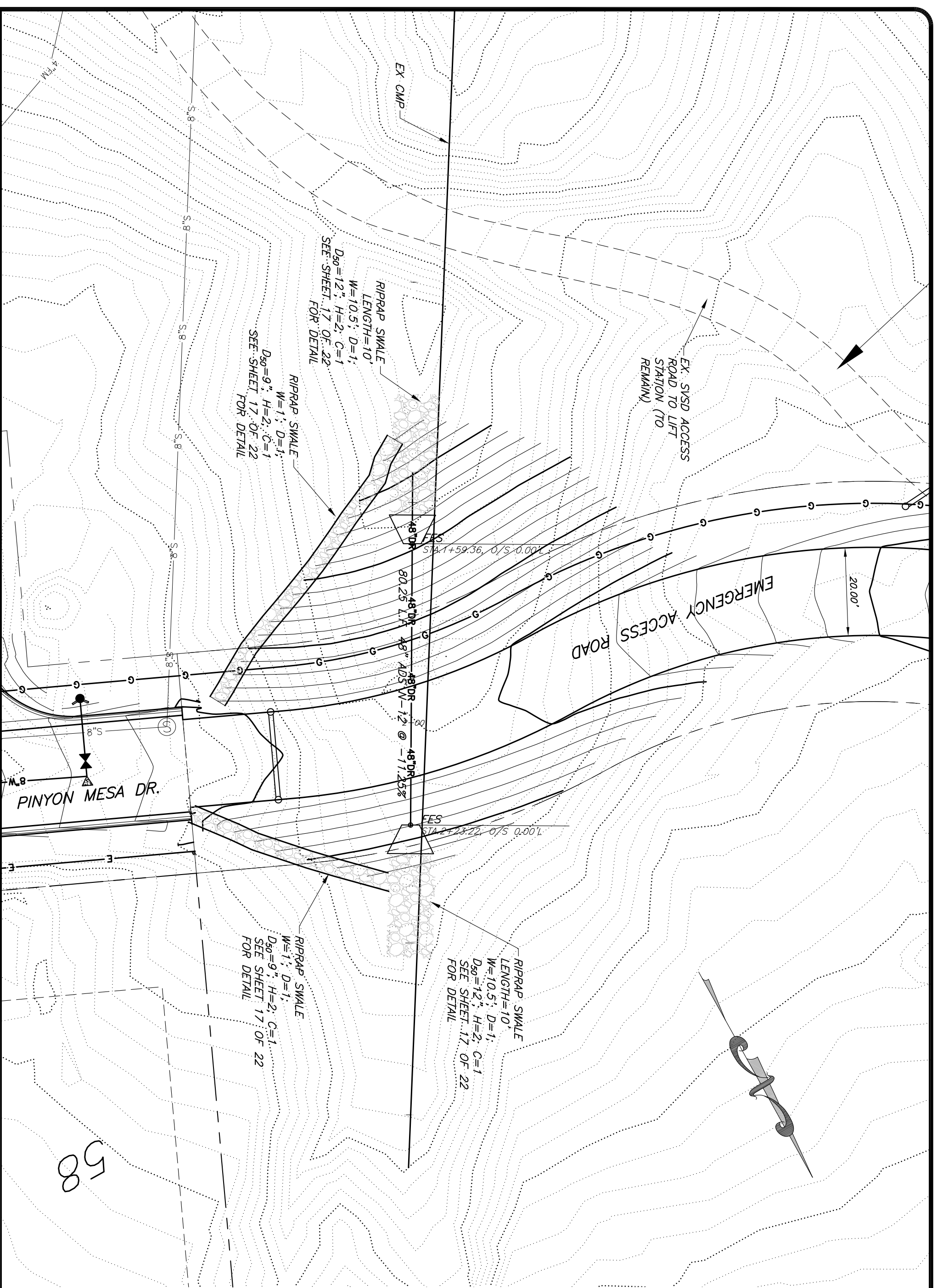
#	Revision	Date	By
1			

Storm Drains 1 and 2
Plan and Profile

Job No.	01502H
Drawn by	FB
Date:	6/22/16
QC:	XXI PE: DK
File:	StormDrainProfile.dwg
	7
	22

STORM DRAIN 1





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Not For
Construction



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PMGC2, LLC
Pinyon Mesa II Final Plat/Construction

#	Revision	Date	By
1			

Storm Drains 3 and 4
Plan and Profile

Job No.	01502H
Drawn by	FB
Date	6/22/16
QC	XX PE: DK
File:	StormDrainProfile.dwg

Preliminary
Not For
Construction



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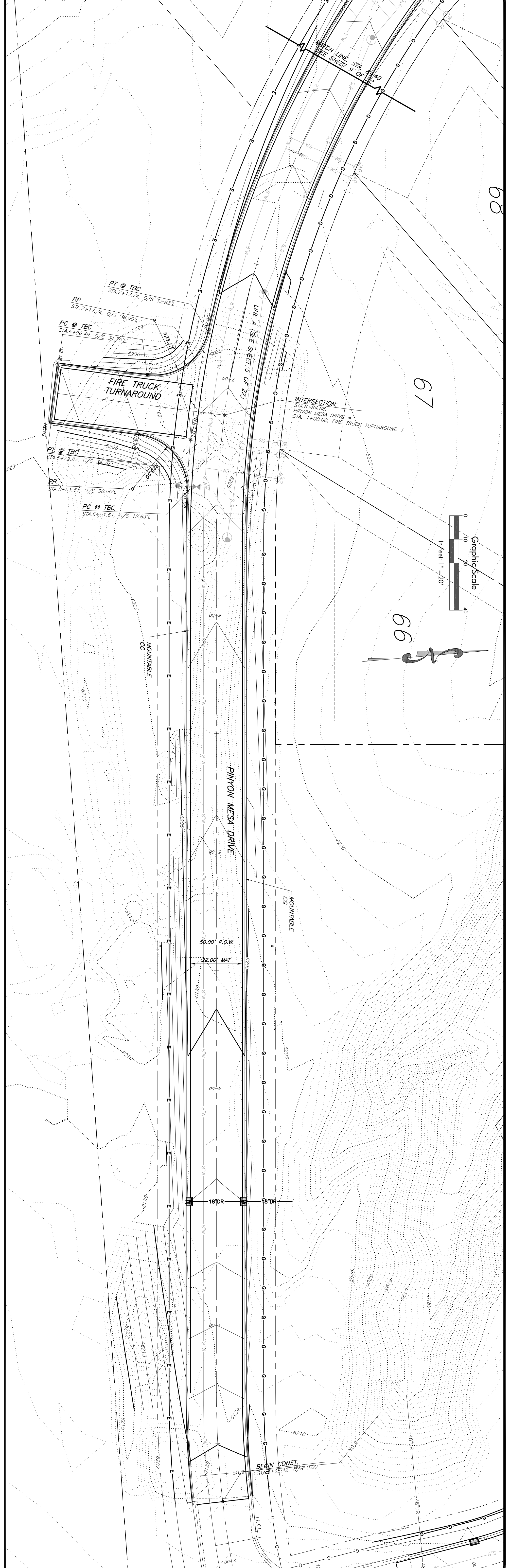
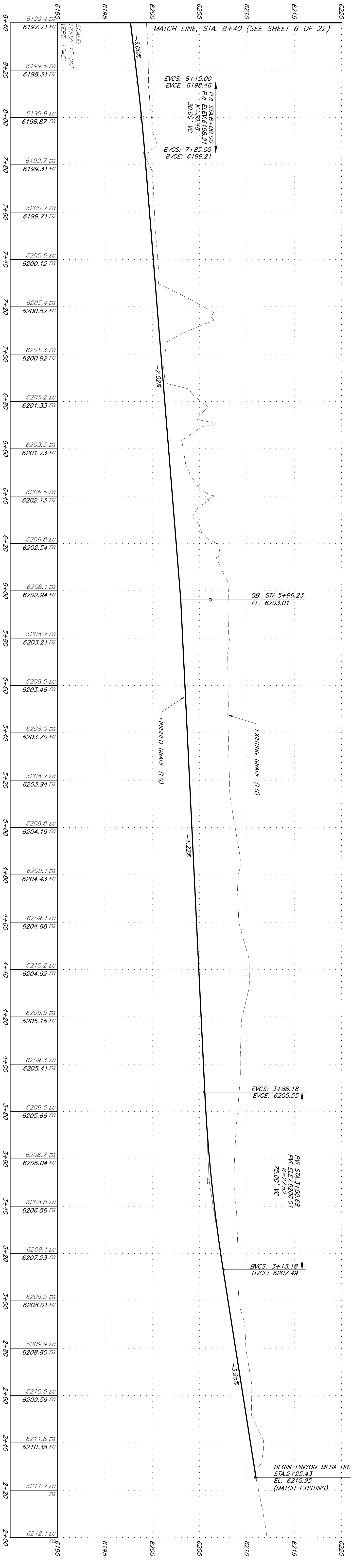
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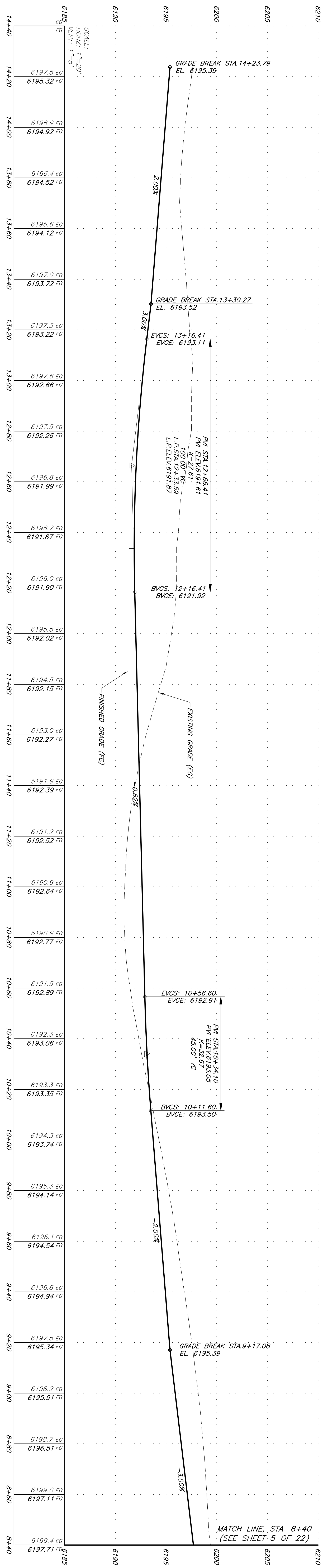
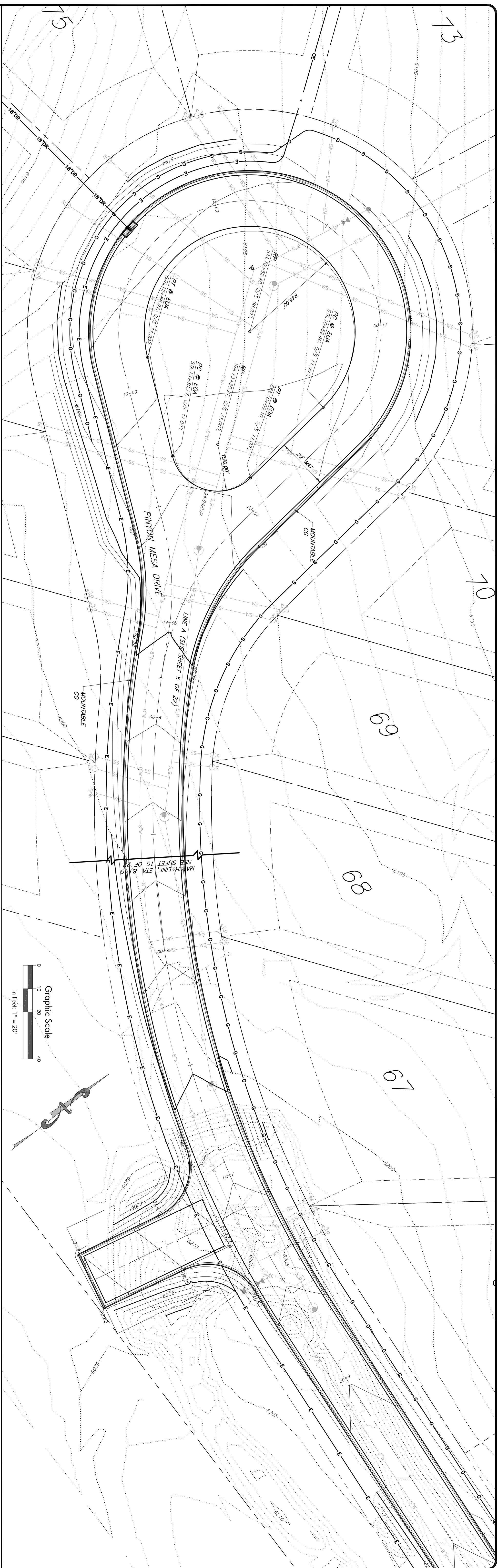
#	Revision	Date	By
1			

Pinyon Mesa Drive
Plan and Profile
Sta. 2+25.43 to 8+40

Job No.	01502H
Drawn by	FB
Date:	6/22/16
QC:	XXI PE: DK
File:	PinyonMesa.dwg

9
22





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Glenwood Springs, CO 81601
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PMGC2, LLC
Pinyon Mesa II Final Plat/Construction

#	Revision	Date	By
1			

Pinyon Mesa Drive
Plan and Profile
Sta. 8+40 to 14+23.79

Job No.	01502H
Drawn by	FB
Date:	6/22/16
QC:	XXI PE: DK
File:	PinyonMesaII

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Construction



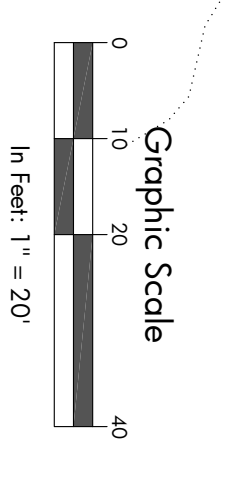
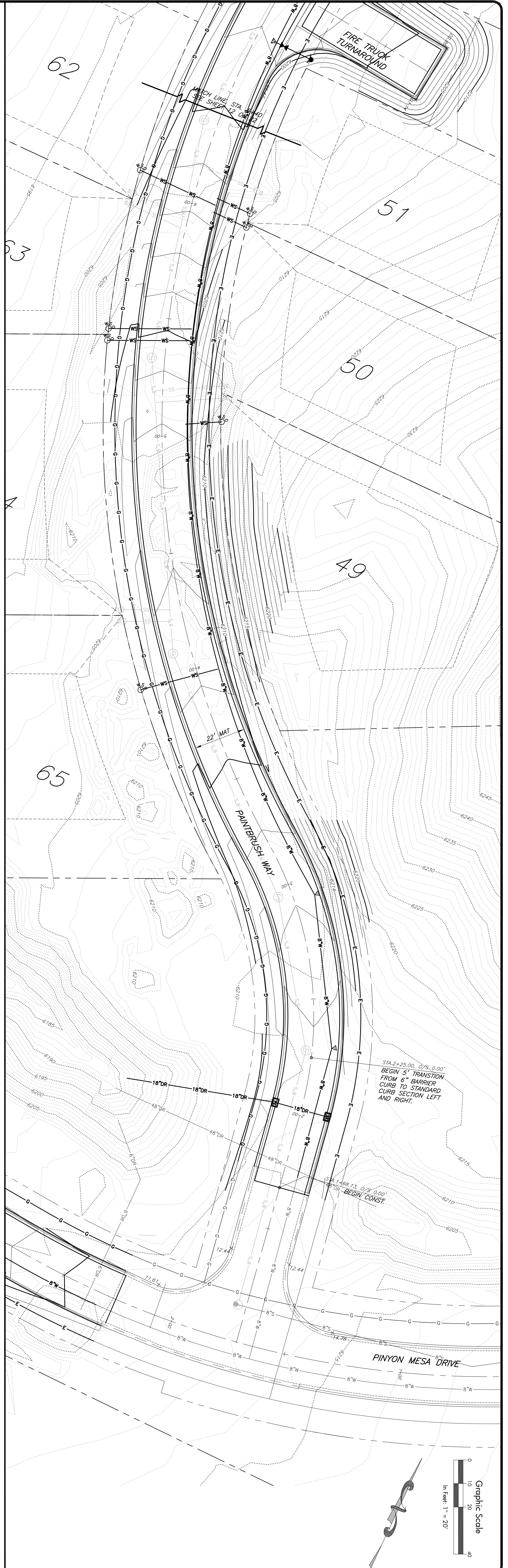
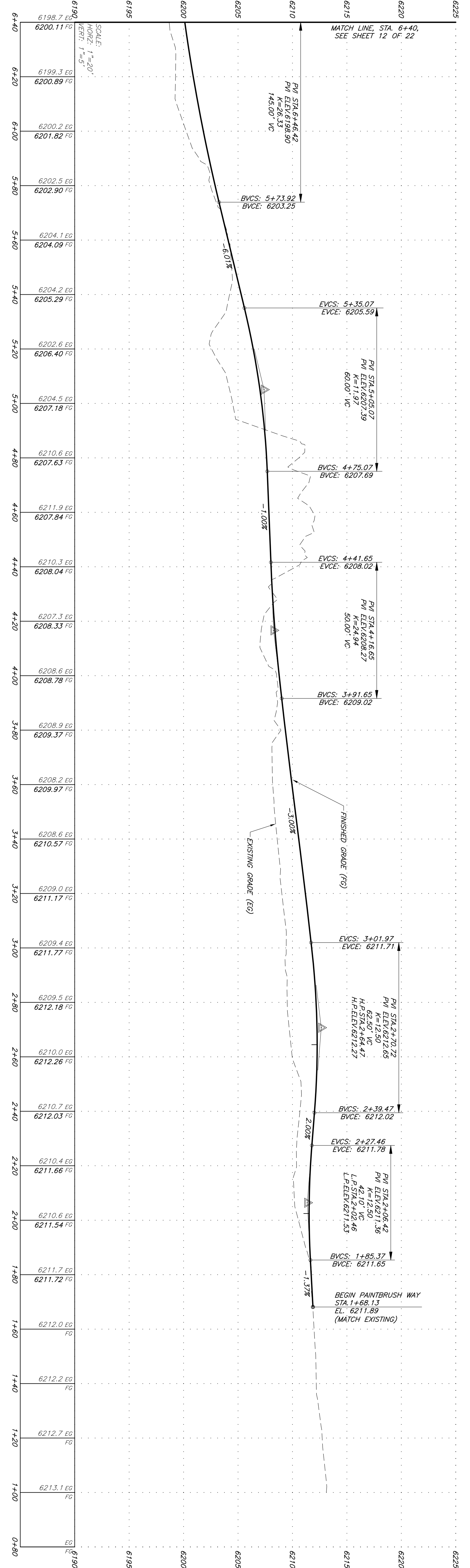
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Pinyon Mesa II Final Plat/Construction

#	Revision	Date	By
1			

Paintbrush Way
Plan and Profile
Sta. 1+68.13 to 6+40

Job No.	01502H
Drawn by	FB
Date	6/22/16
QC	XXI
PE	DK
File:	PaintbrushPlanProfile
	11
	22



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Construction



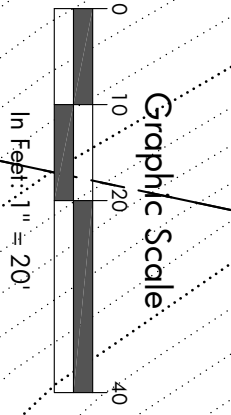
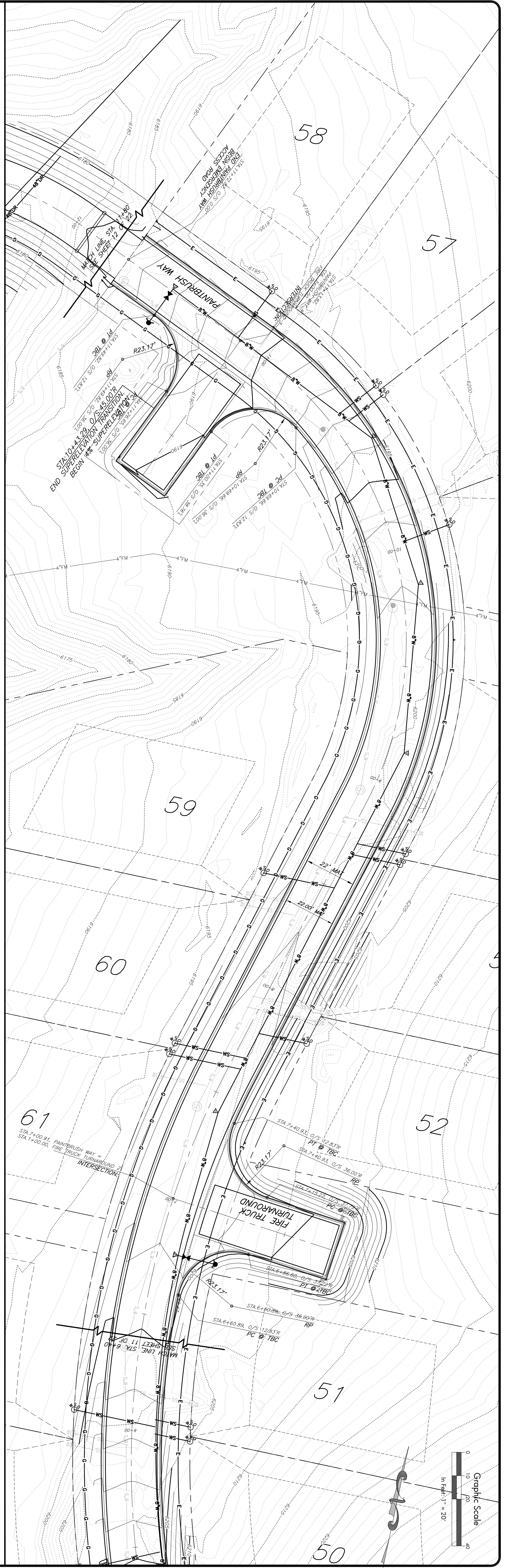
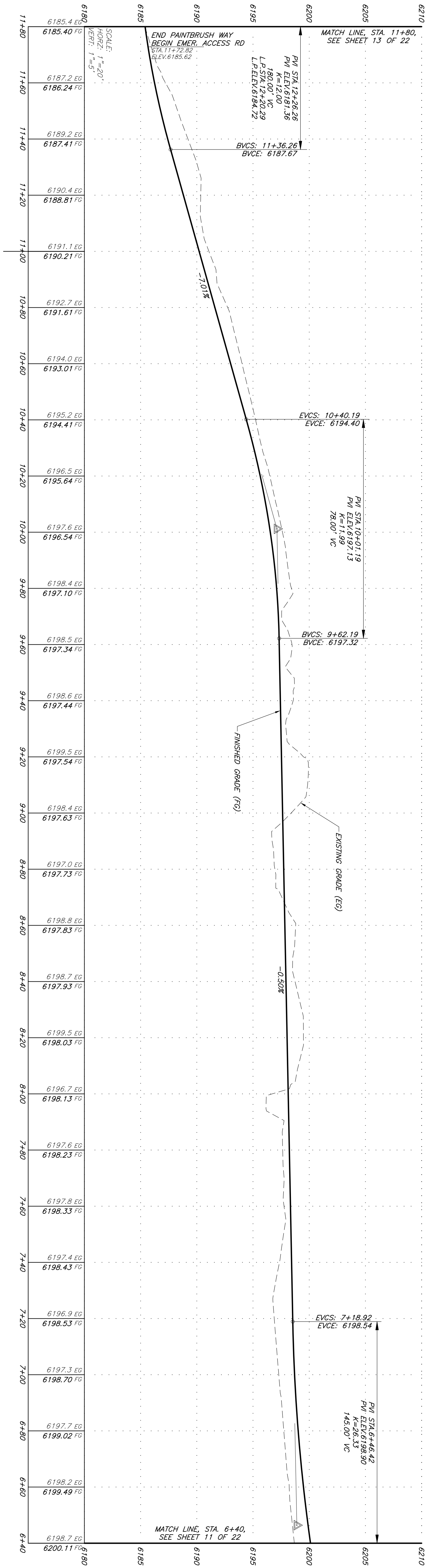
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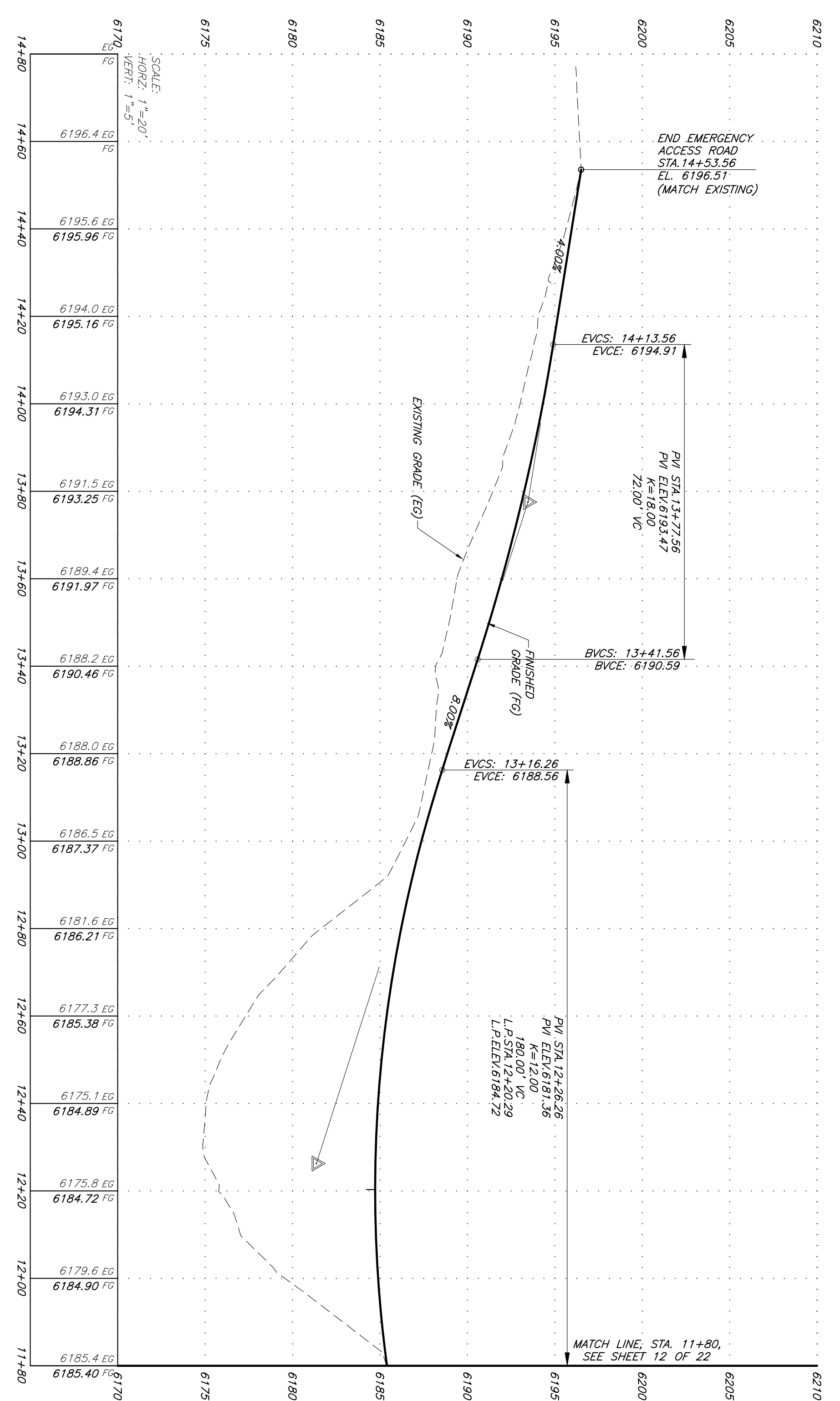
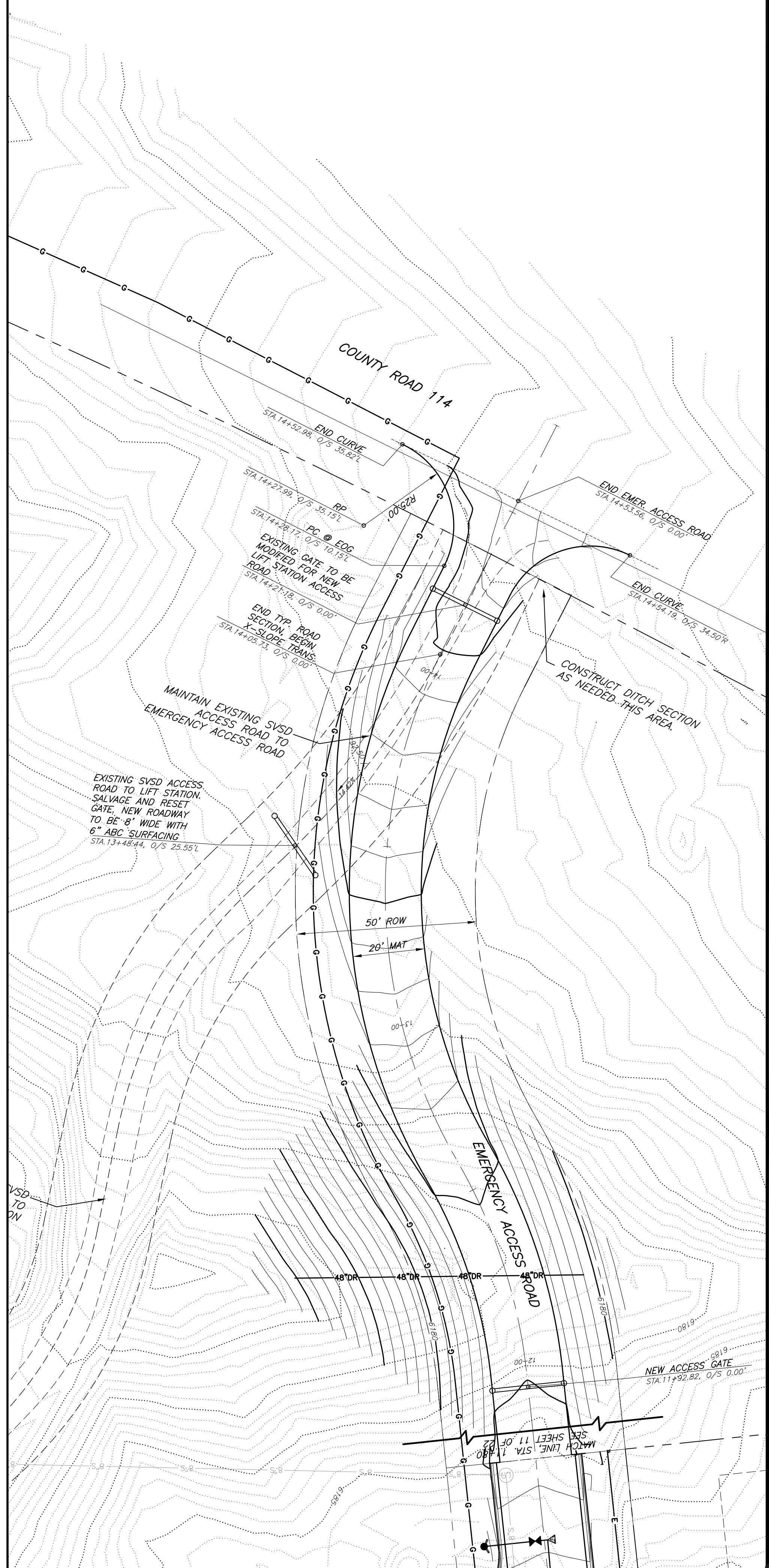
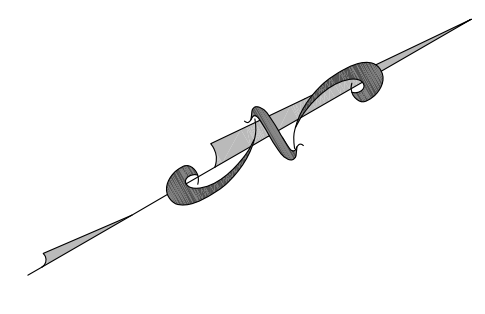
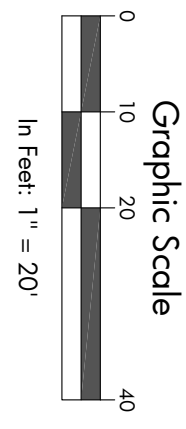
PMGC2, LLC
Pinyon Mesa II Final Plat/Construction

#	Revision	Date	By
1			

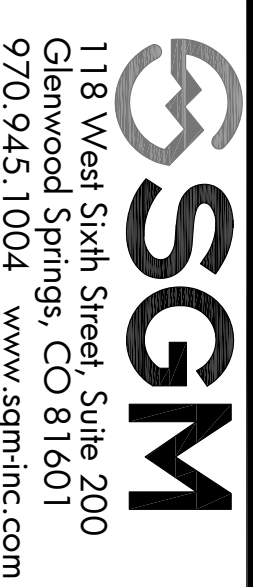
Paintbrush Way
Plan and Profile
Sta. 6+40 to 11+80

Job No.	01502H	12
Drawn by	FB	
Date	6/22/16	22
QC	XXI	
PE	DK	OF
File:	PaintbrushPlan.dwg	





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PMGC2, LLC
Pinyon Mesa II Final Plat/Construction

#	Revision	Date	By
1			

Emergency Access Road
Plan and Profile

Job No.	01502H
Drawn by	FB
Date:	6/22/16
QC:	XXI
PE:	DK
File:	Final\Profile.dwg
	13
	22

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Not For
Construction

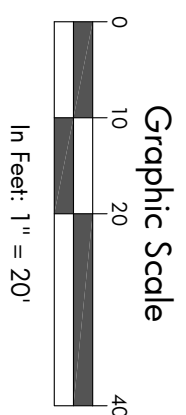
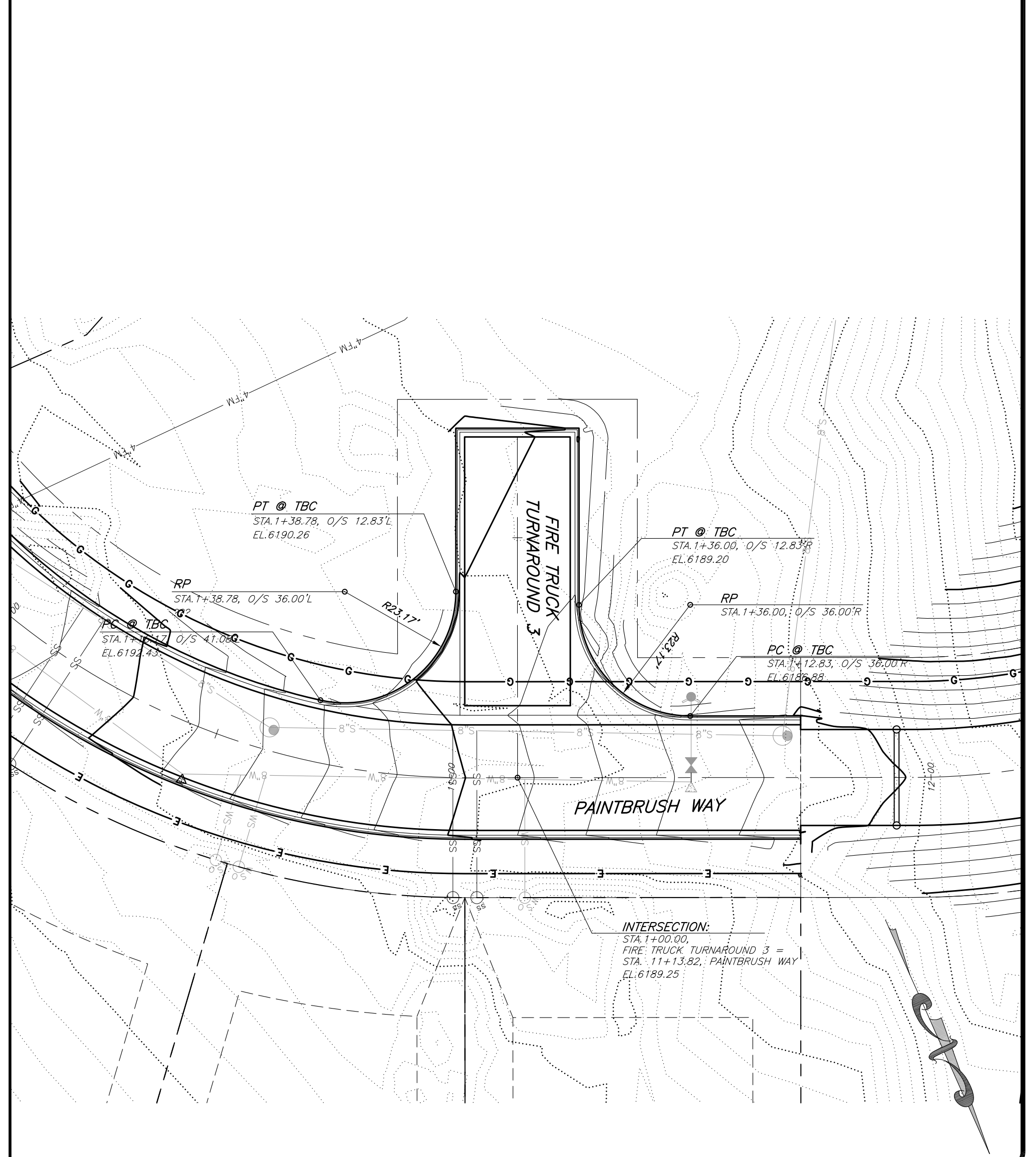
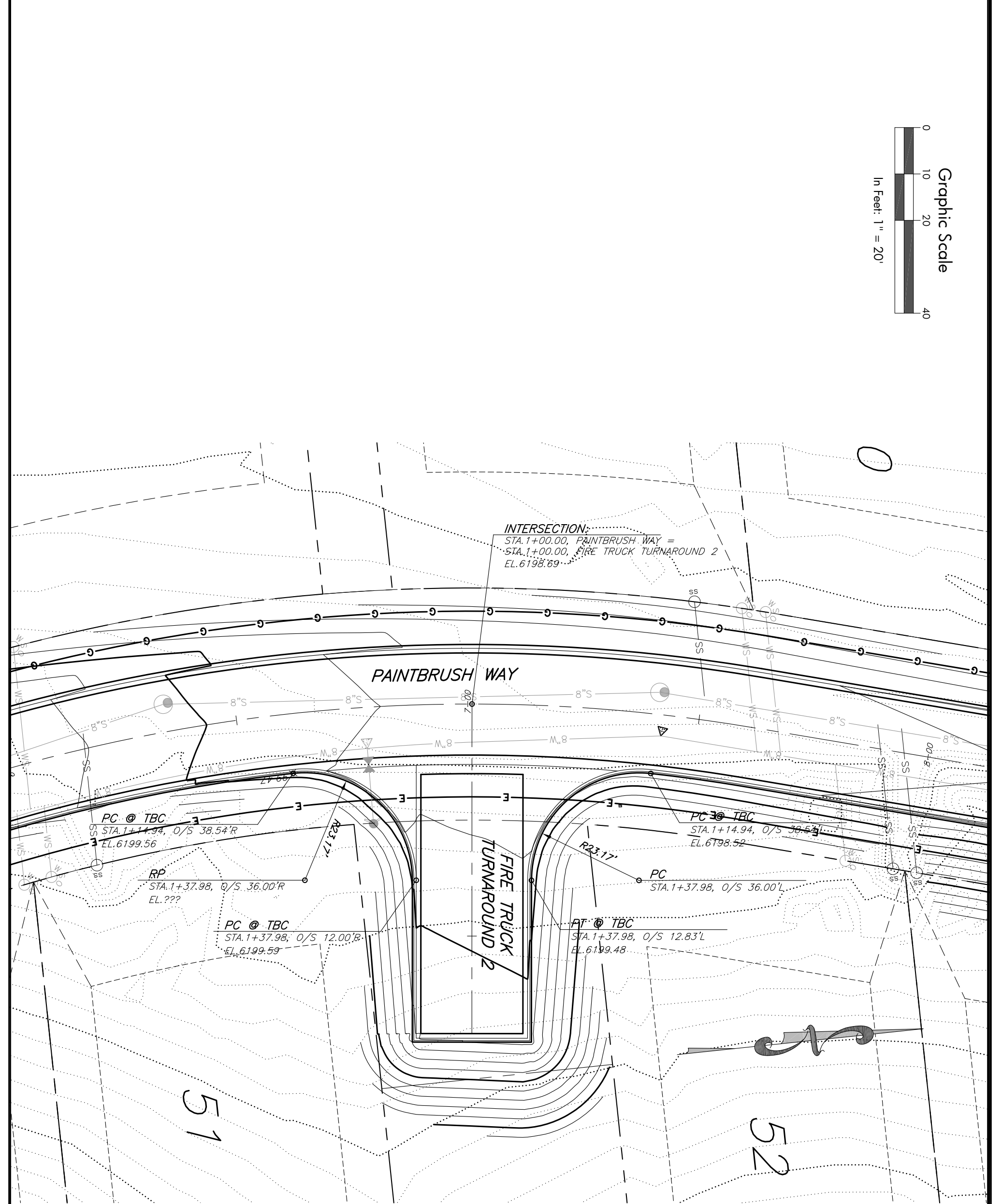
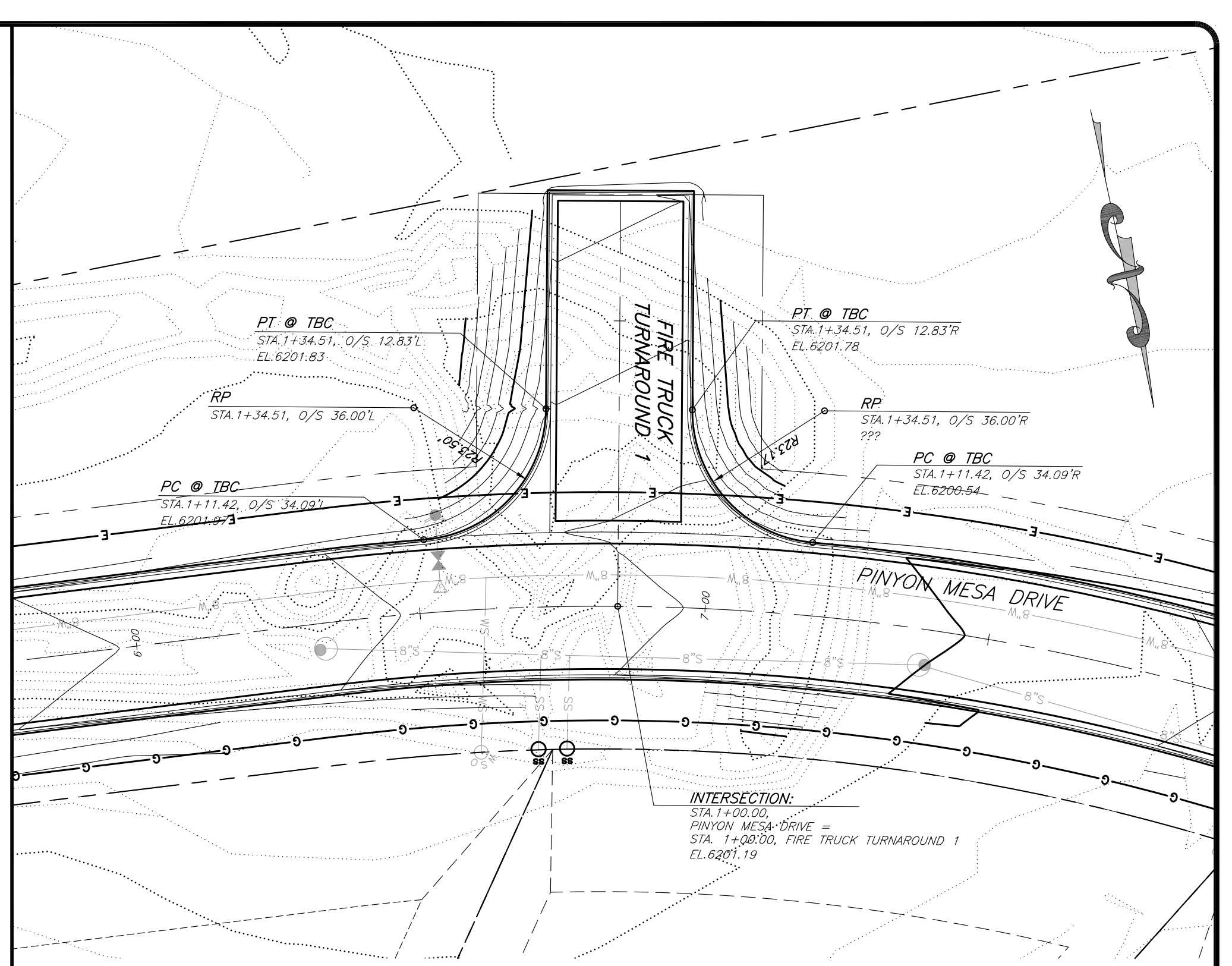
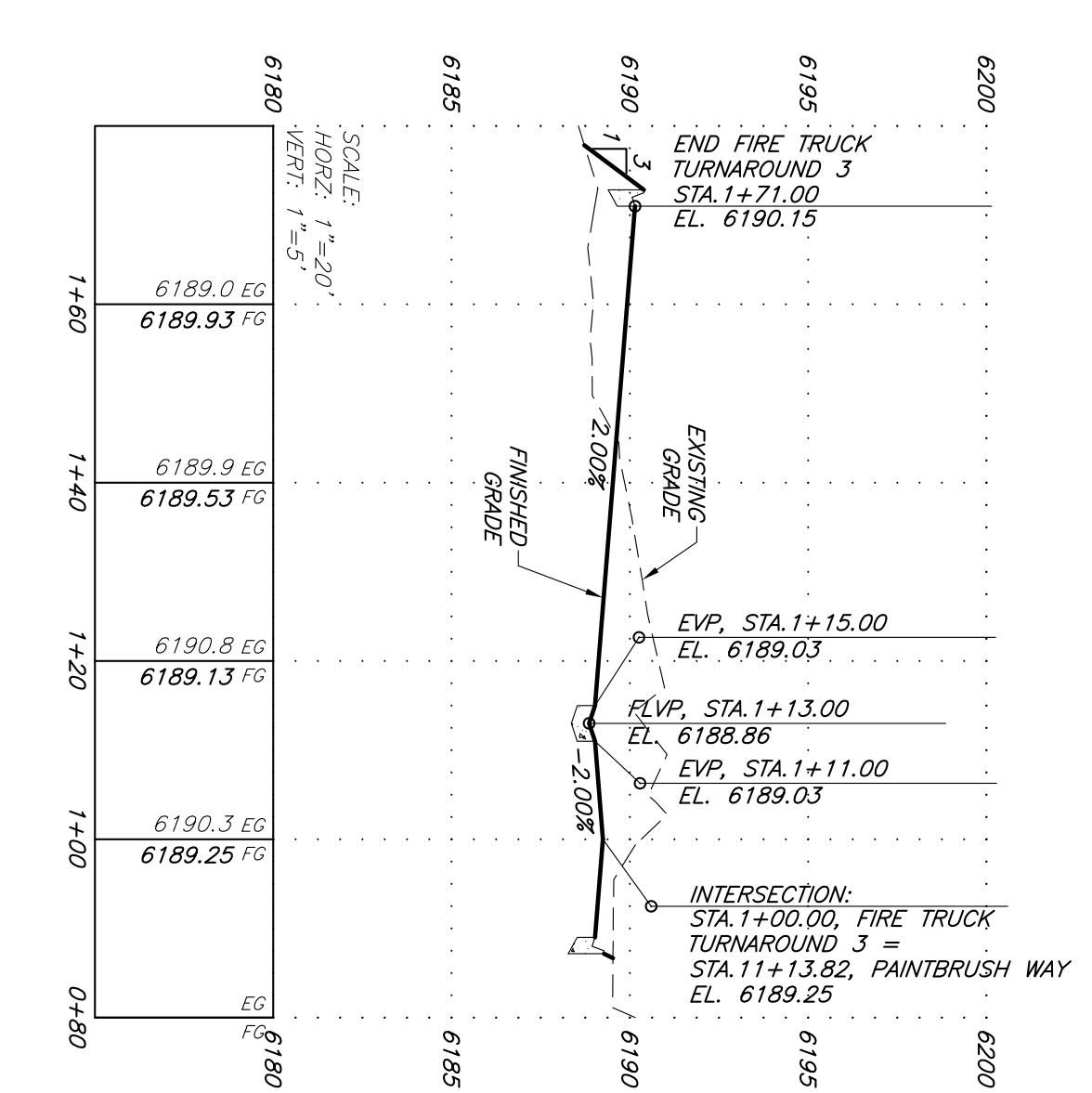
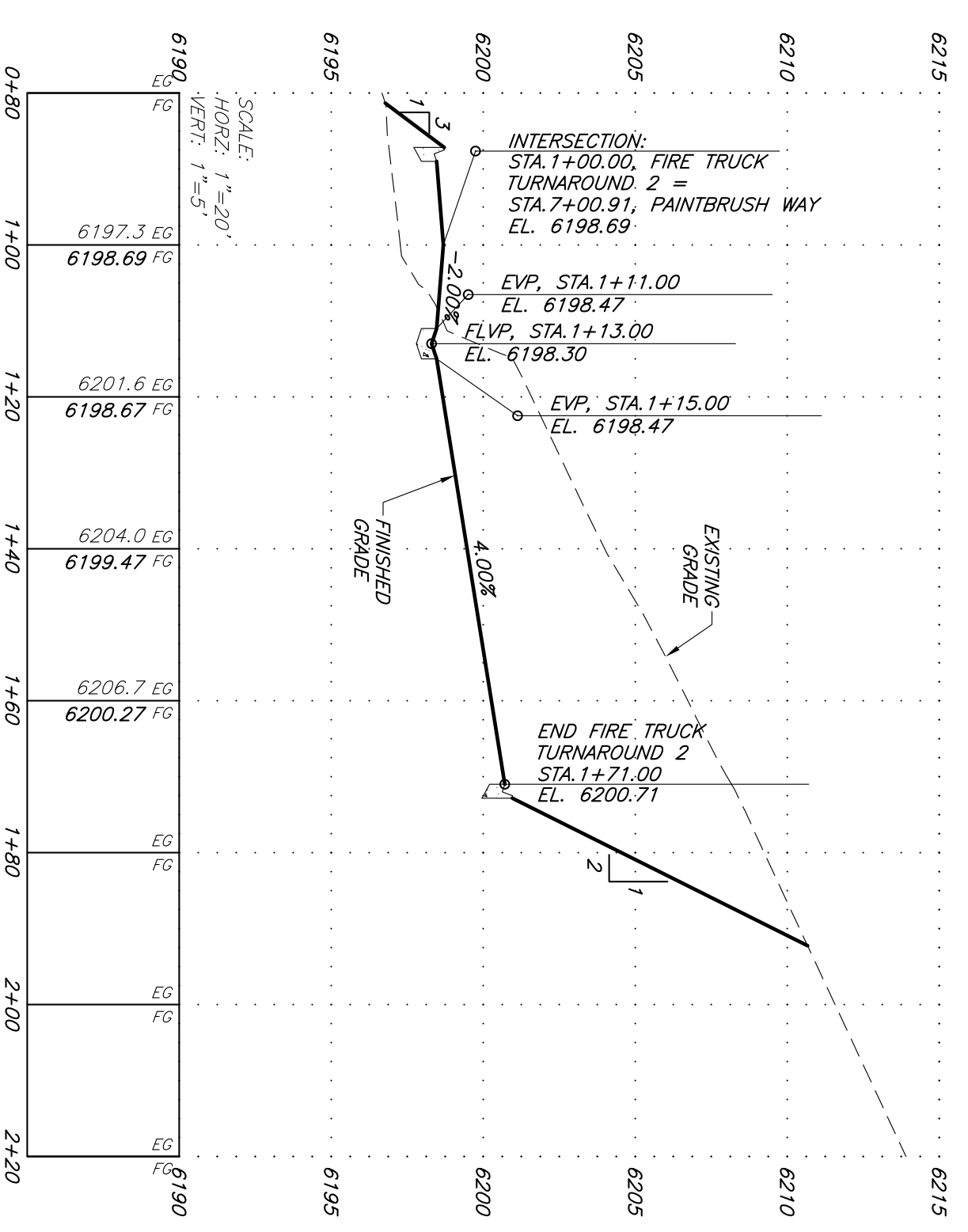
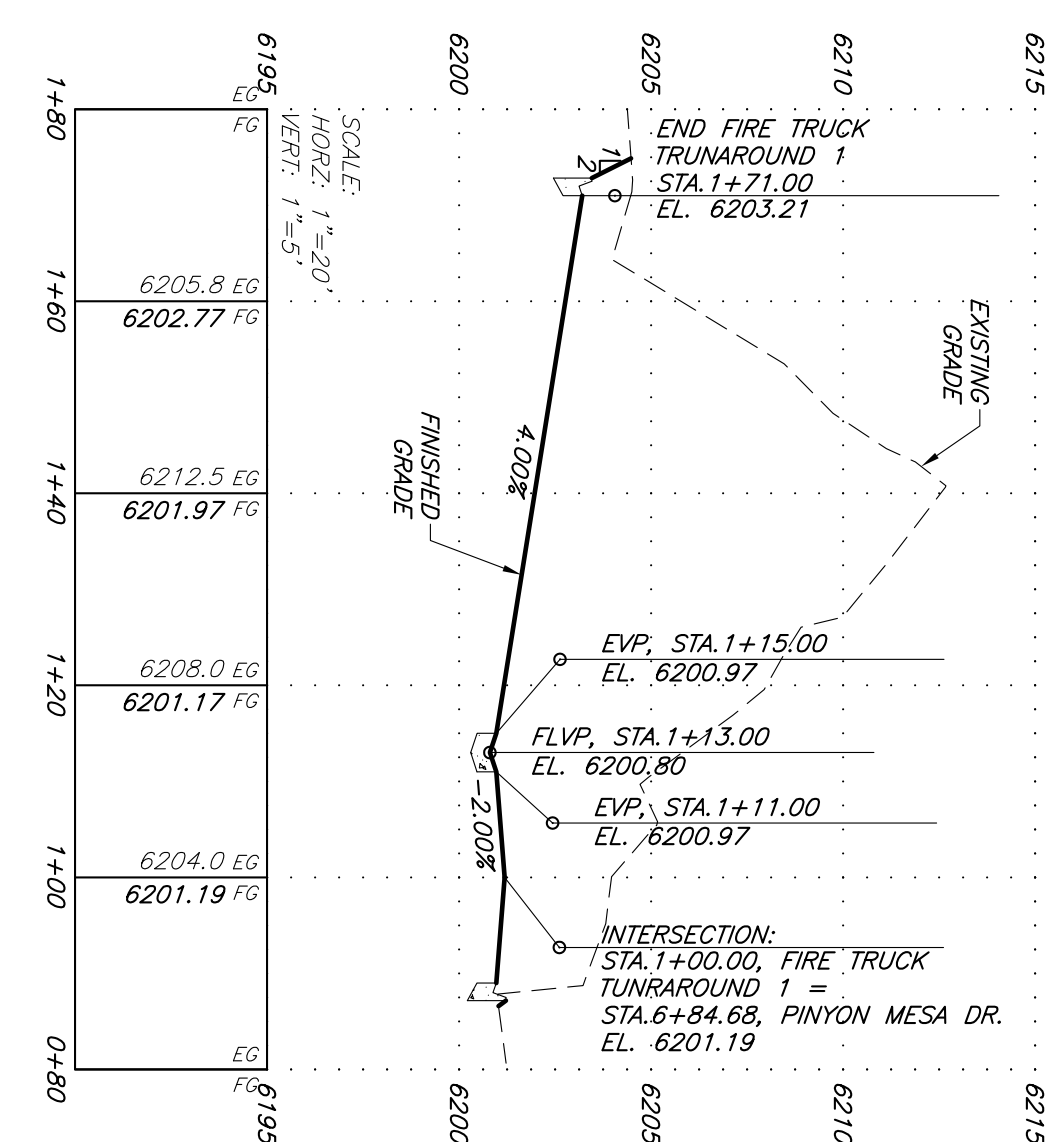
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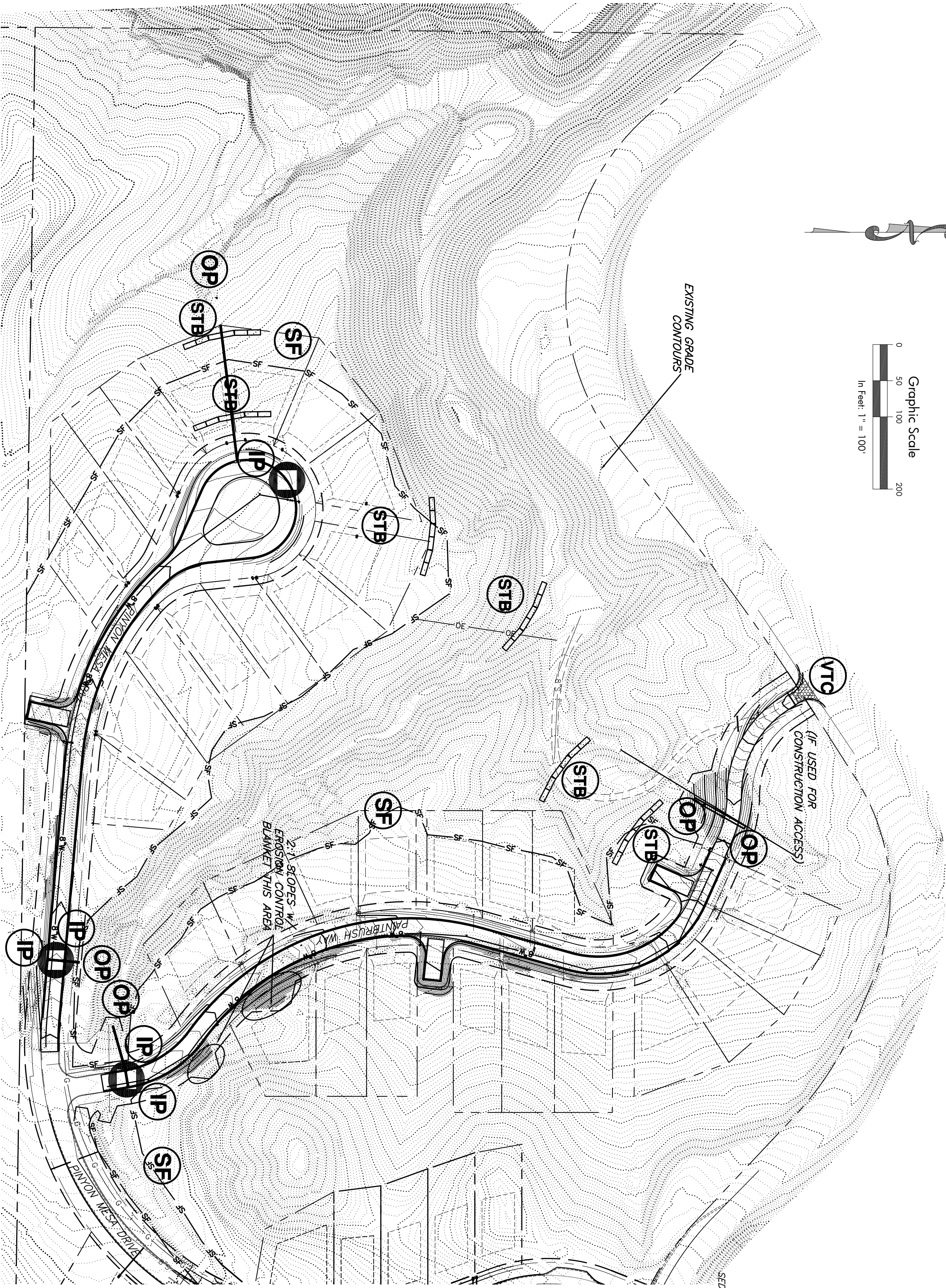
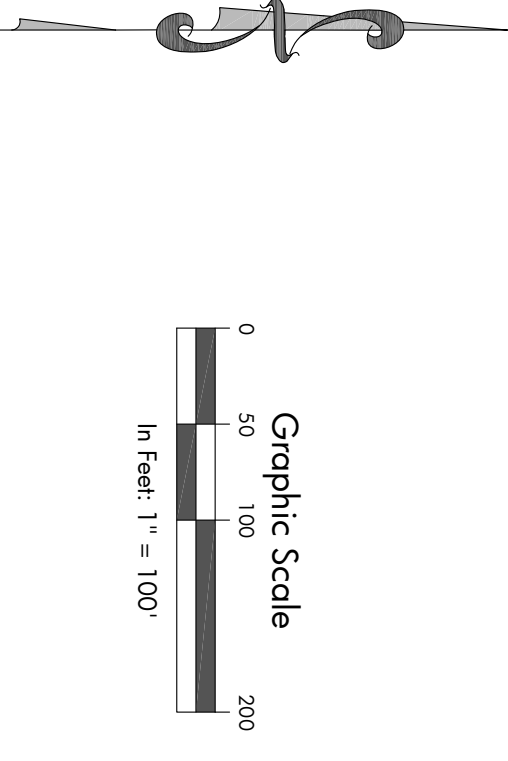
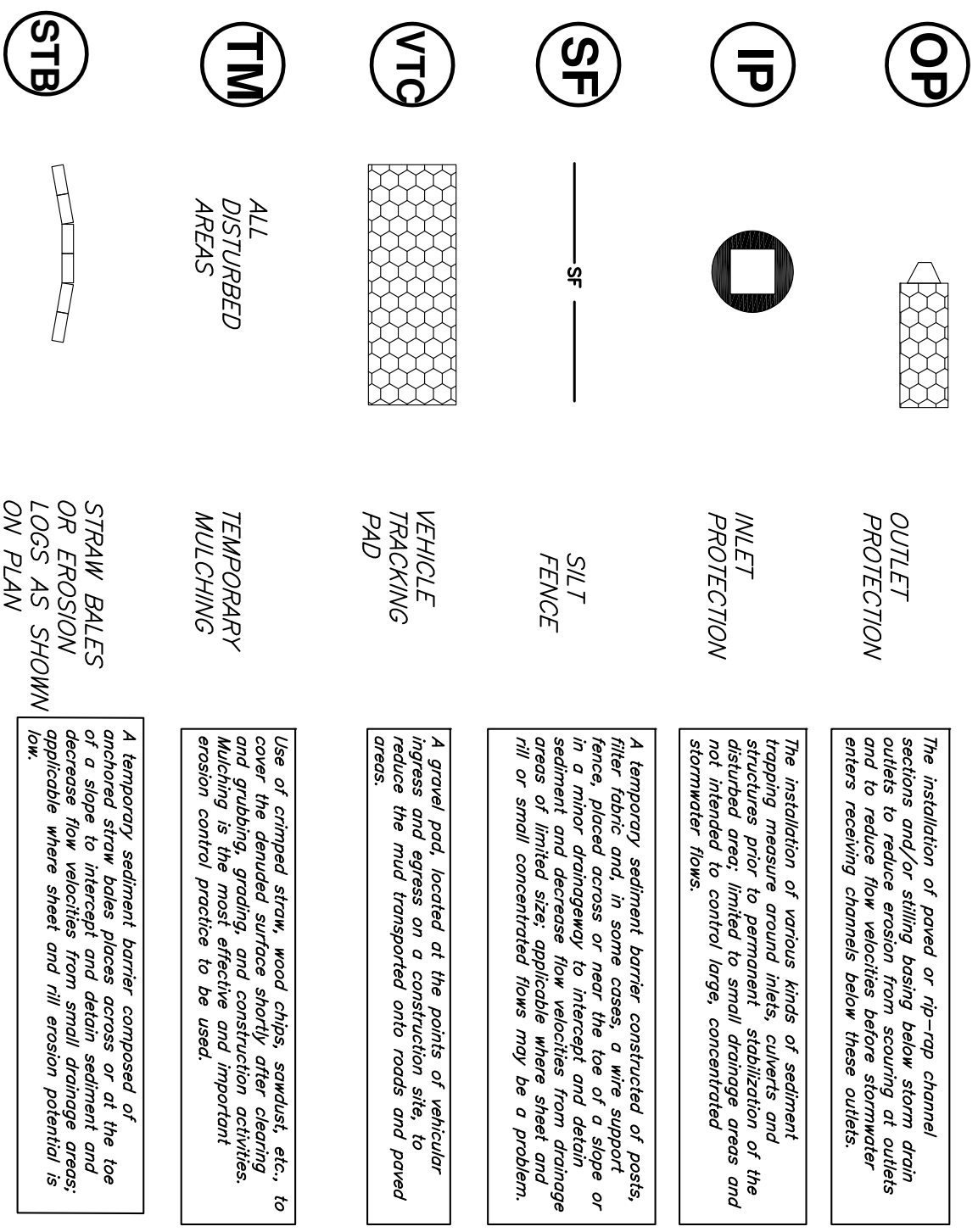
PMGC2, LLC
Pinyon Mesa II Final Plat/Construction

#	Revision	Date	By
1			

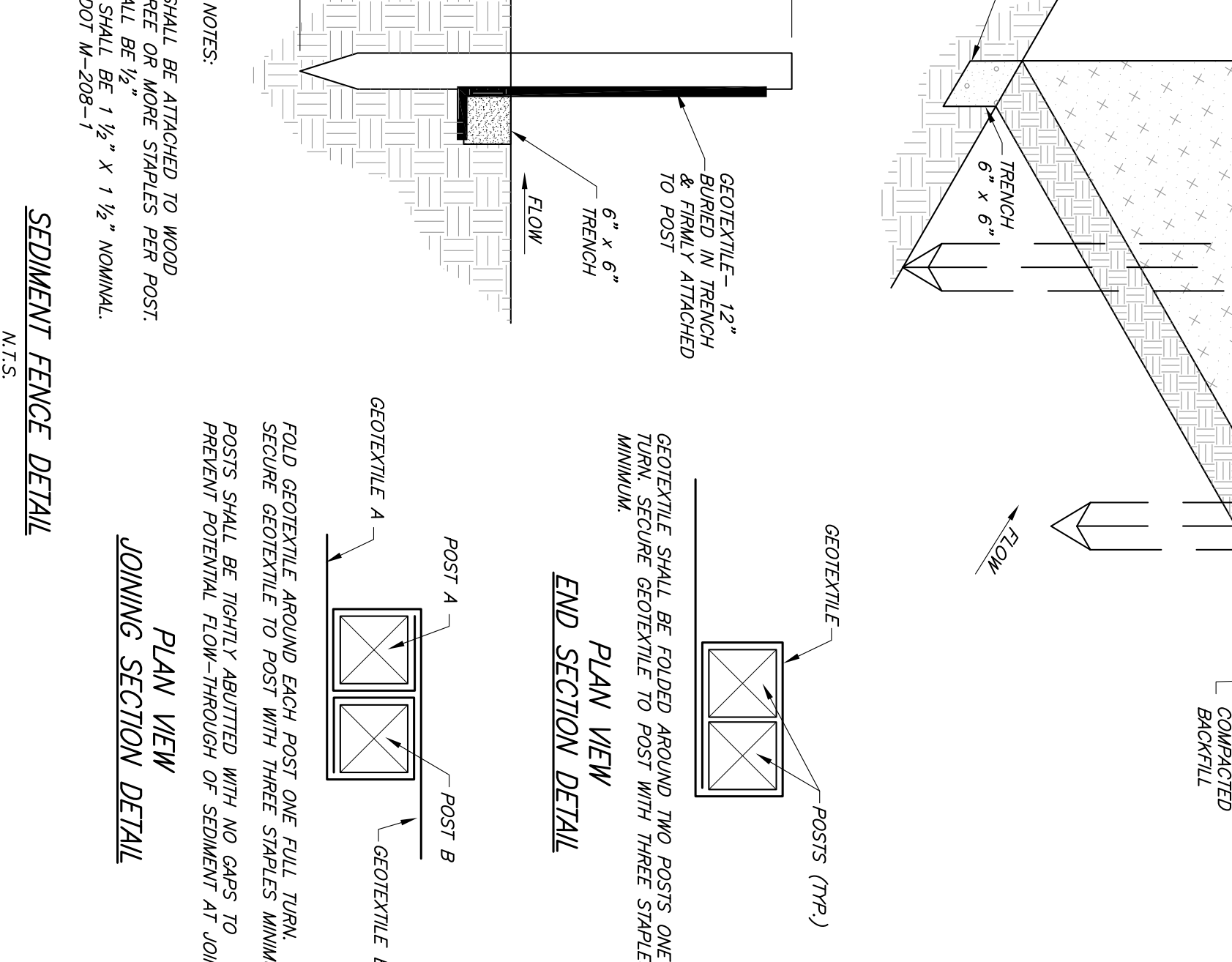
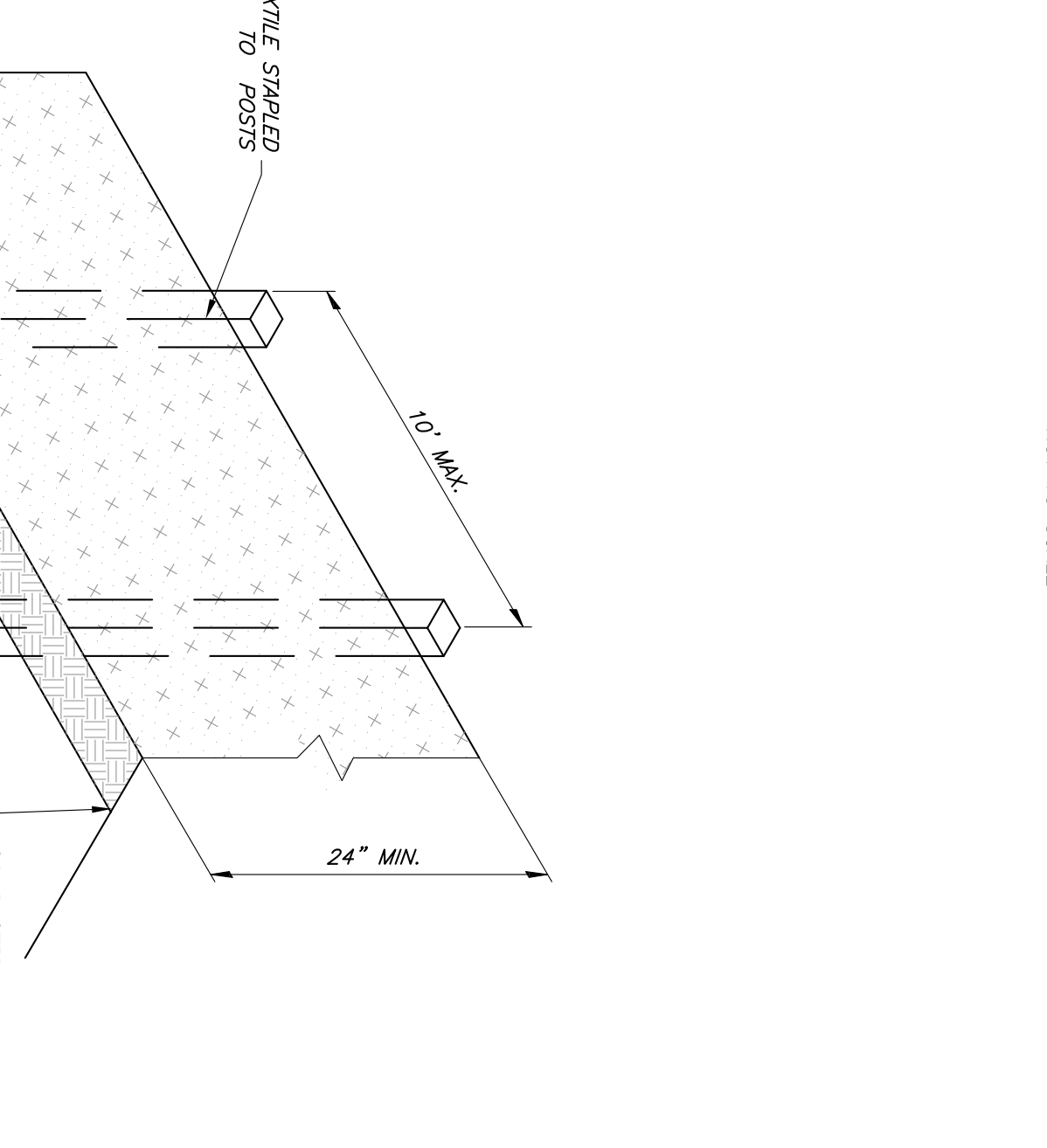
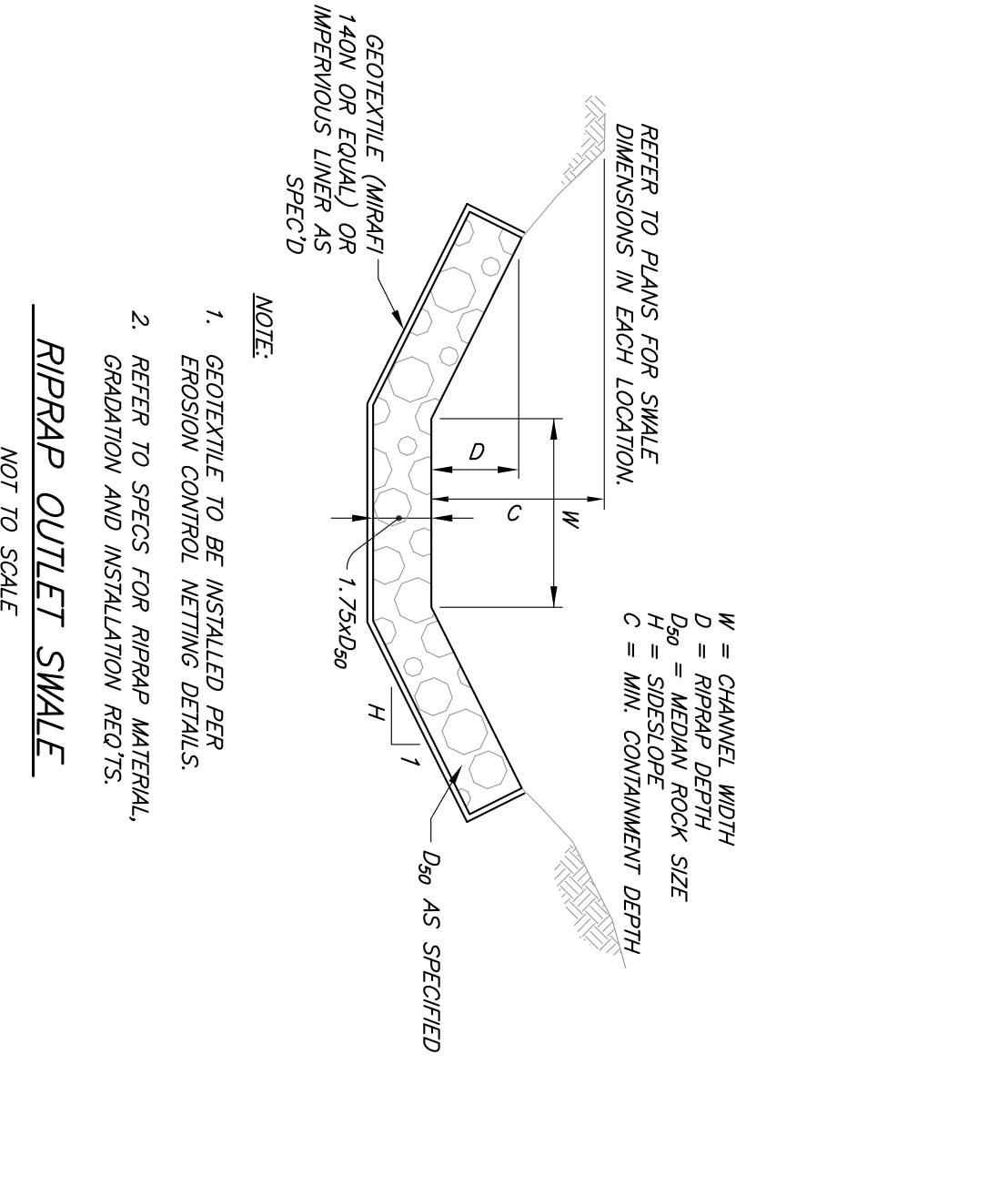
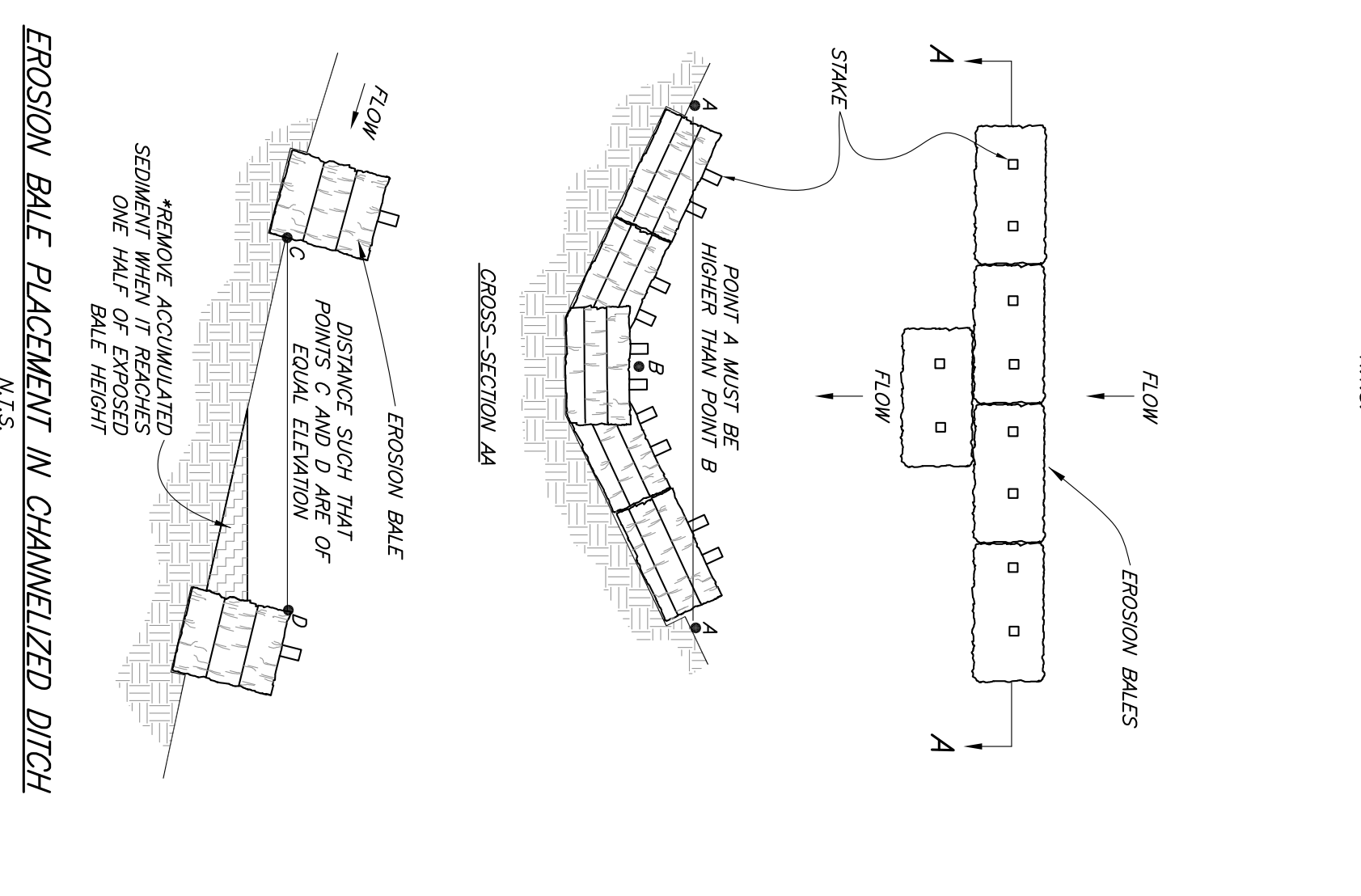
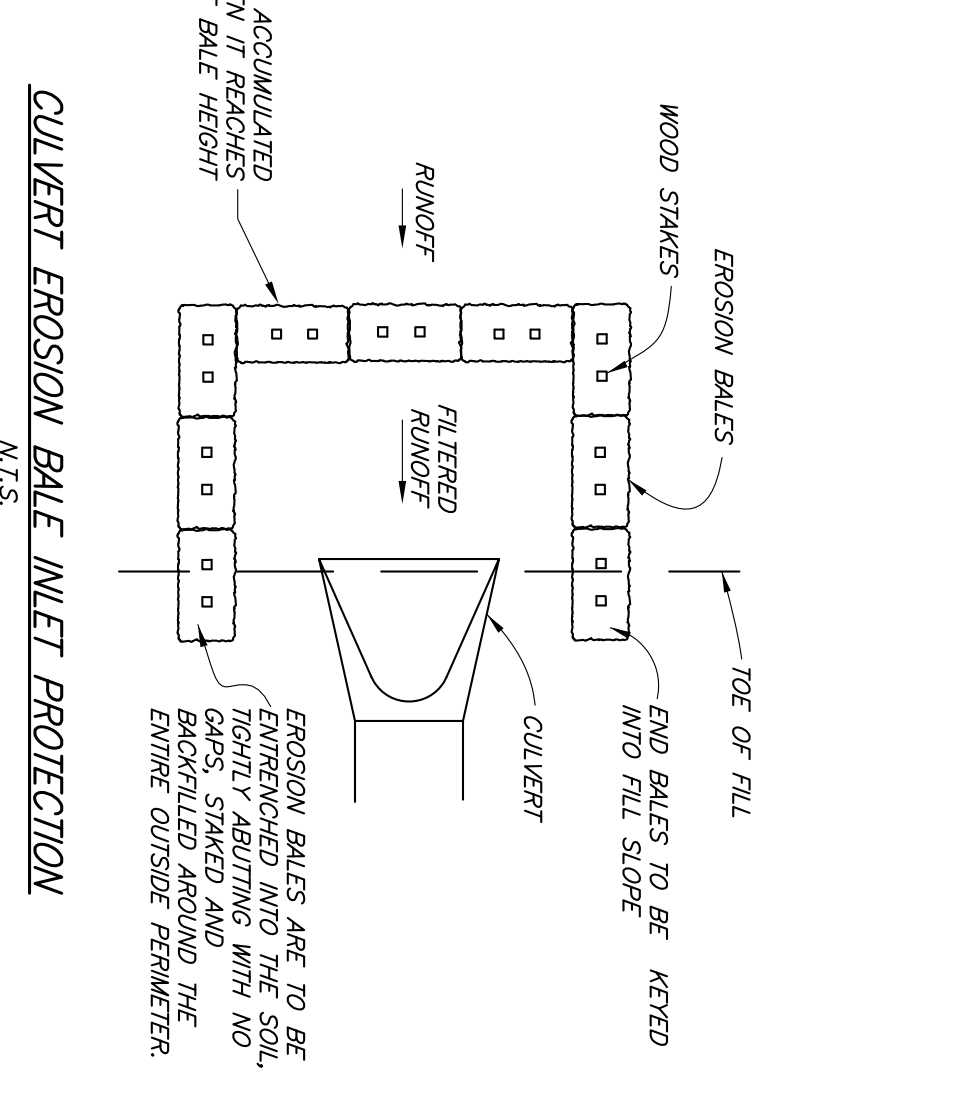
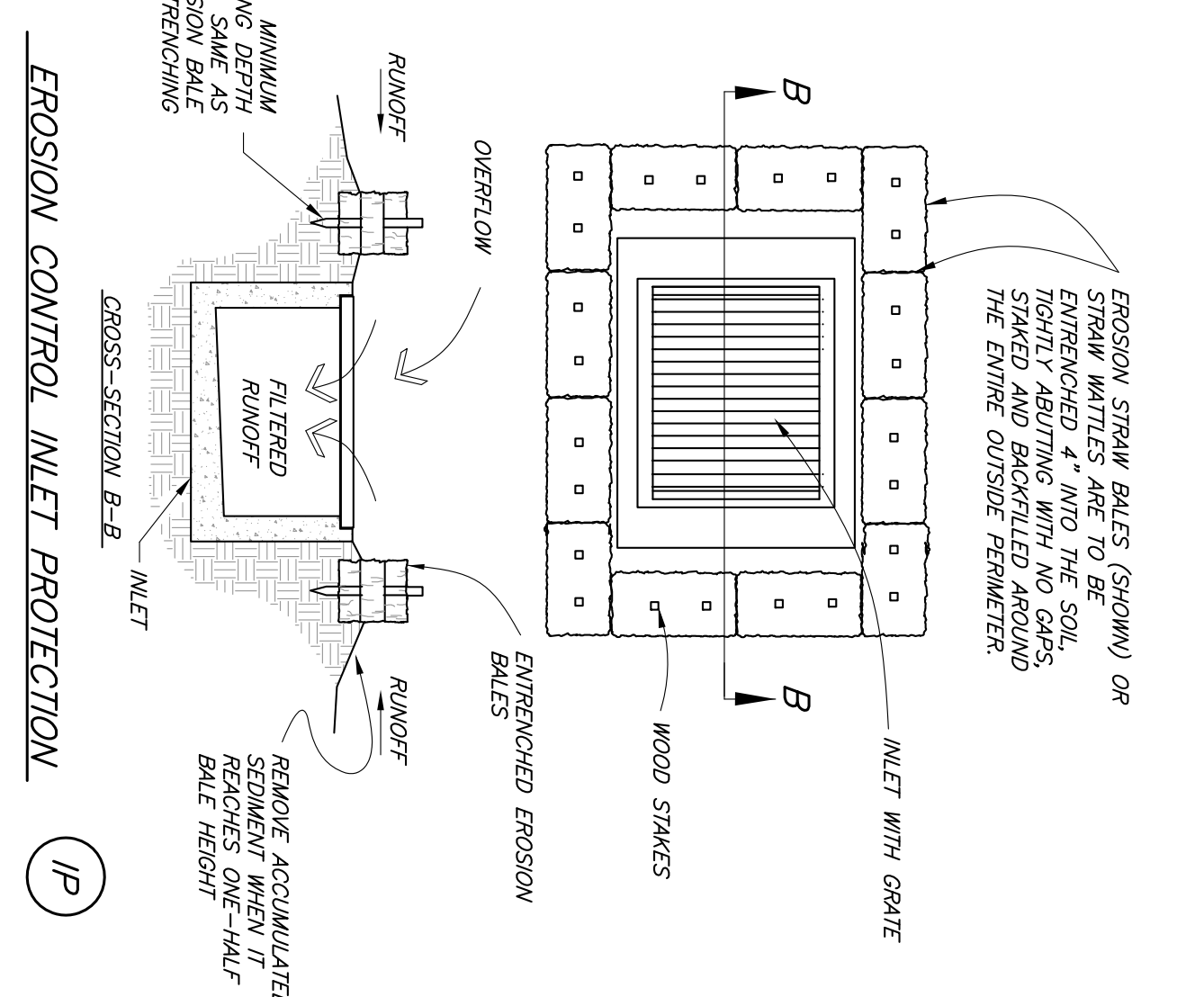
Fire Truck Turnarounds
1, 2, and 3
Plan and Profiles

Job No.	01502H
Drawn by	RB
Date:	6/22/16
QC:	XXI
PE:	DK
File:	FireTruckTurnarounds
Of	22





- SITE DESCRIPTION:**
- CONSTRUCTION ACTIVITY TO CONSIST OF INSTALLATION OF UTILITIES, ROADWAYS, AND DRAINAGE APPURTENANCES.
 - CONSTRUCTION SEQUENCING CLEAR/GRUBBING, GRADING/ROADWAYS/DRAINAGE, UTILITY INSTALLATION, REVEGETATION AND STABILIZATION.
 - ALL ROAD EMBANKMENT TO BE 3(H):1(V) STEEPER GRADES TO BE COVERED WITH EROSION CONTROL BANKETS.
 - GRADING SHOWN REPRESENTS CONSTRUCTION OF THE ROADWAY CORRIDORS ONLY. A MATERIAL SHORTAGE IS EXPECTED FOR THE CONSTRUCTION OF THE ROADWAY CORRIDORS. THE CONTRACTOR SHALL MAINTAIN EROSION CONTROL ELEMENTS THROUGHOUT THE DURATION OF CONSTRUCTION AND UNTIL FINAL STABILIZATION HAS OCCURRED IN THE OPINION OF THE ENGINEER.
- EROSION CONTROL NOTES:**
- THE INFRASTRUCTURE CONTRACTOR IS RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF ALL EROSION CONTROL ELEMENTS SHOWN. THE INFRASTRUCTURE CONTRACTOR SHALL MAINTAIN EROSION CONTROL ELEMENTS THROUGHOUT THE DURATION OF CONSTRUCTION AND UNTIL FINAL STABILIZATION HAS OCCURRED IN THE OPINION OF THE ENGINEER.
 - TEMPORARY MULCHING IS REQUIRED FOR ALL DISTURBED AREAS.
 - REVEGETATION SHALL OCCUR PER THE VEGETATION/LANDSCAPE PLAN.
 - FOLLOWING CONSTRUCTION OF THE INFRASTRUCTURE AND DURING THE DEVELOPMENT OF INDIVIDUAL HOMESITES THE HOMEOWNER IS RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF ALL EROSION CONTROL ELEMENTS SHOWN. THE HOMEOWNER SHALL MAINTAIN EROSION CONTROL ELEMENTS THROUGHOUT THE DURATION OF CONSTRUCTION AND UNTIL FINAL STABILIZATION HAS OCCURRED IN THE OPINION OF THE ENGINEER.
 - SEDIMENT CONTROL LOGS MAY BE SUBSTITUTED FOR SILT FENCE AND EROSION BALES AS APPROVED BY ENGINEER.



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#	Revision	Date	By
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Job No. 01502H
Drawn by RB
Date: 6/22/16
QC: XX PE: DK
File: Erosion

Erosion Control Plan

15
22

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Construction

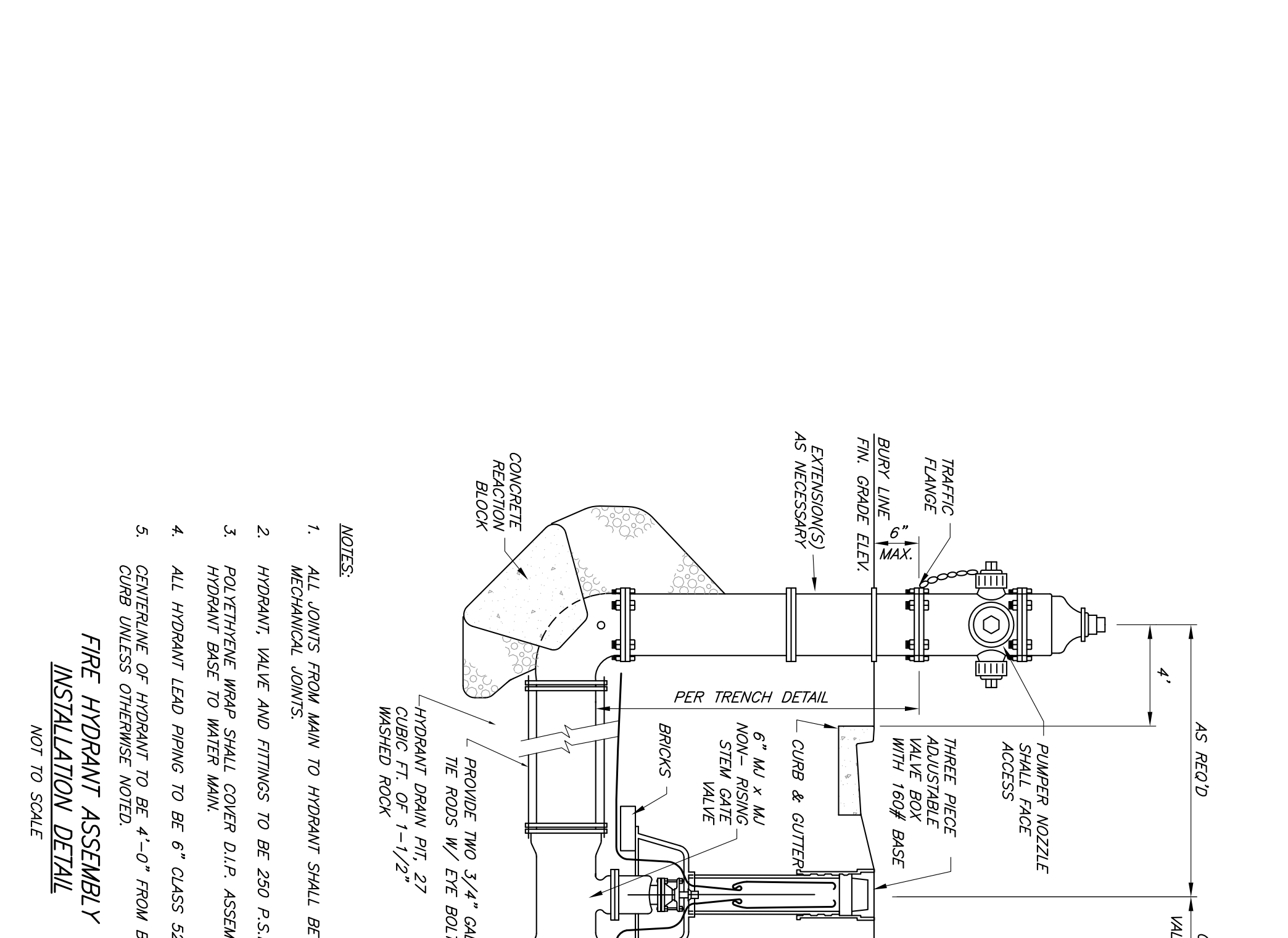
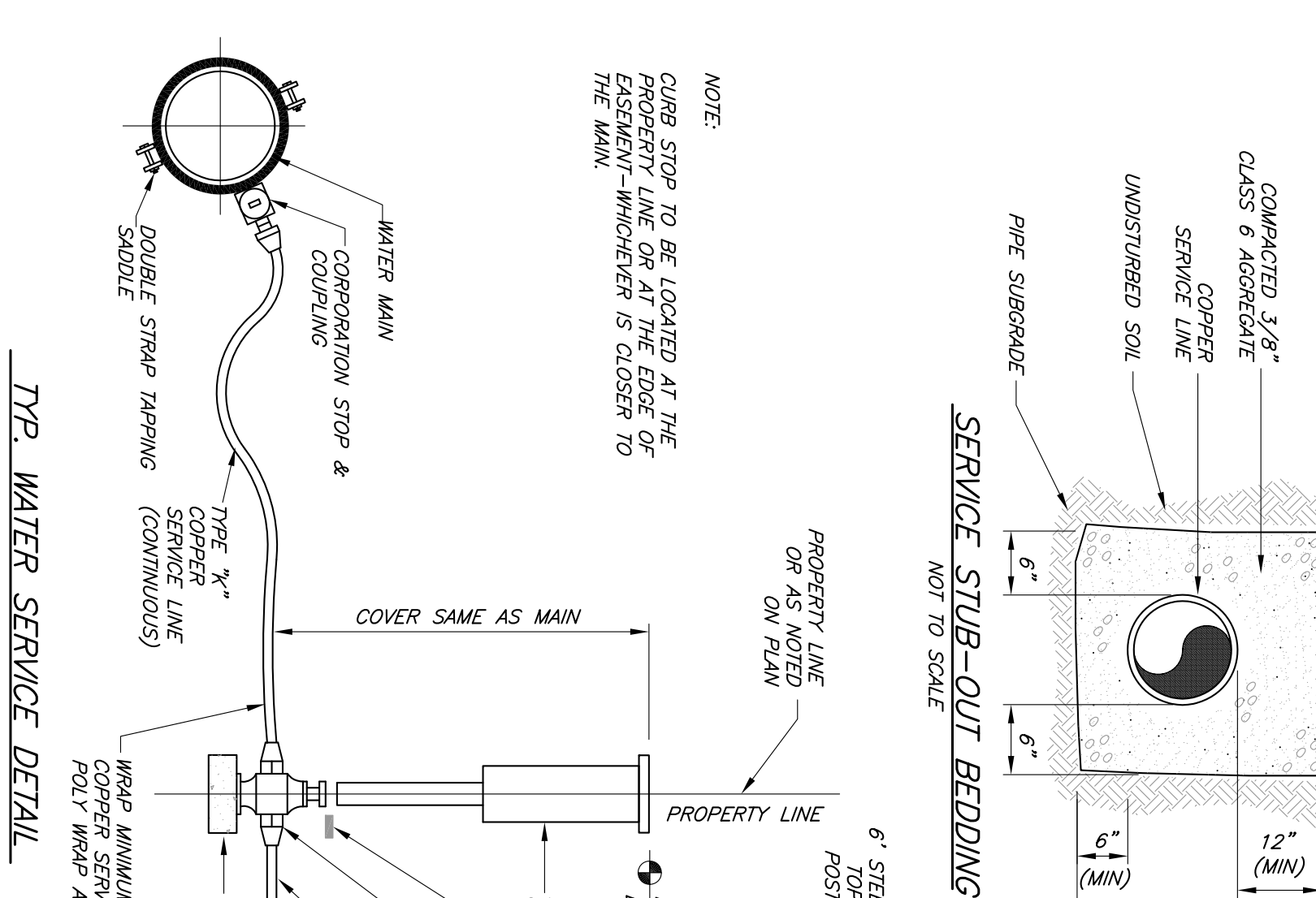
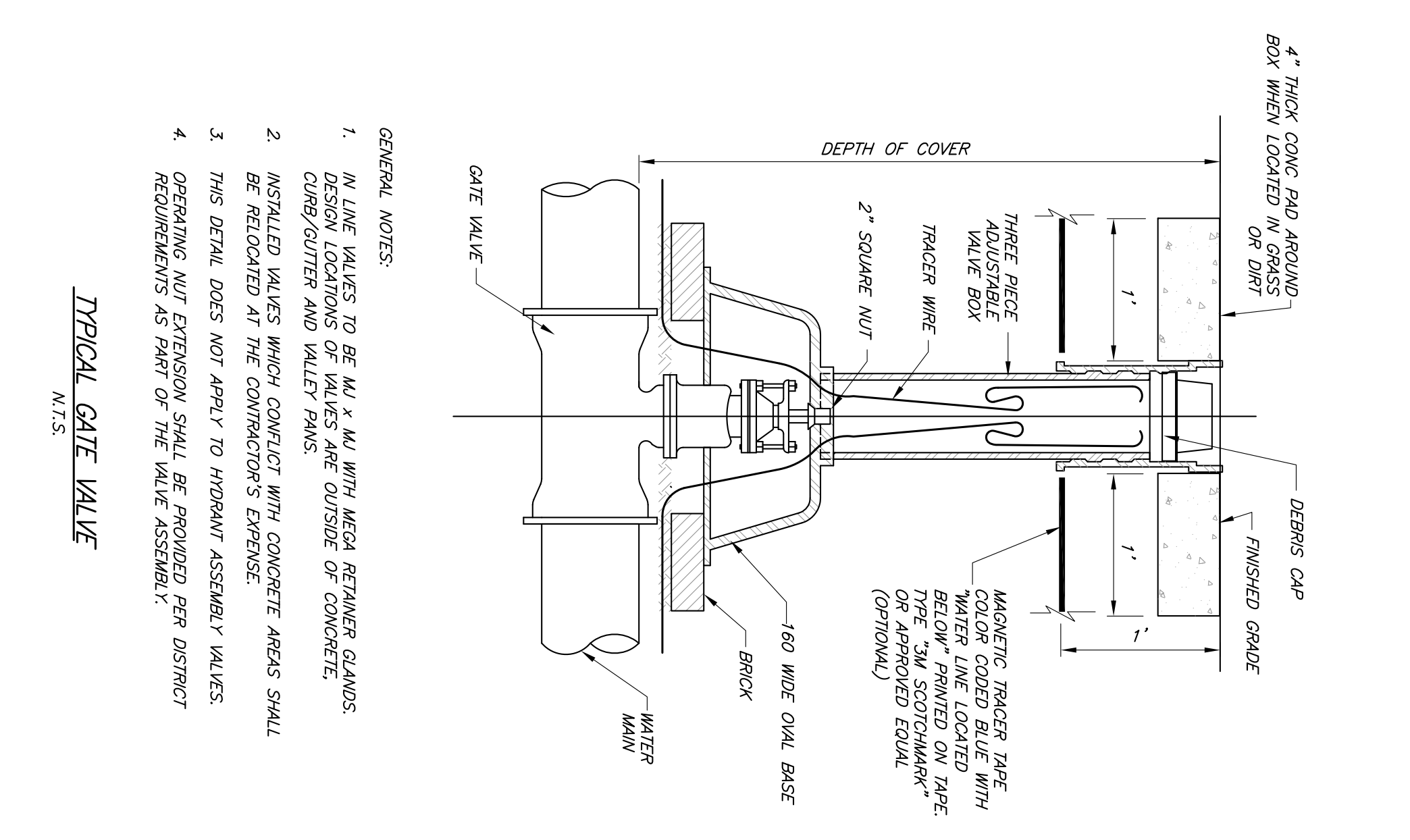
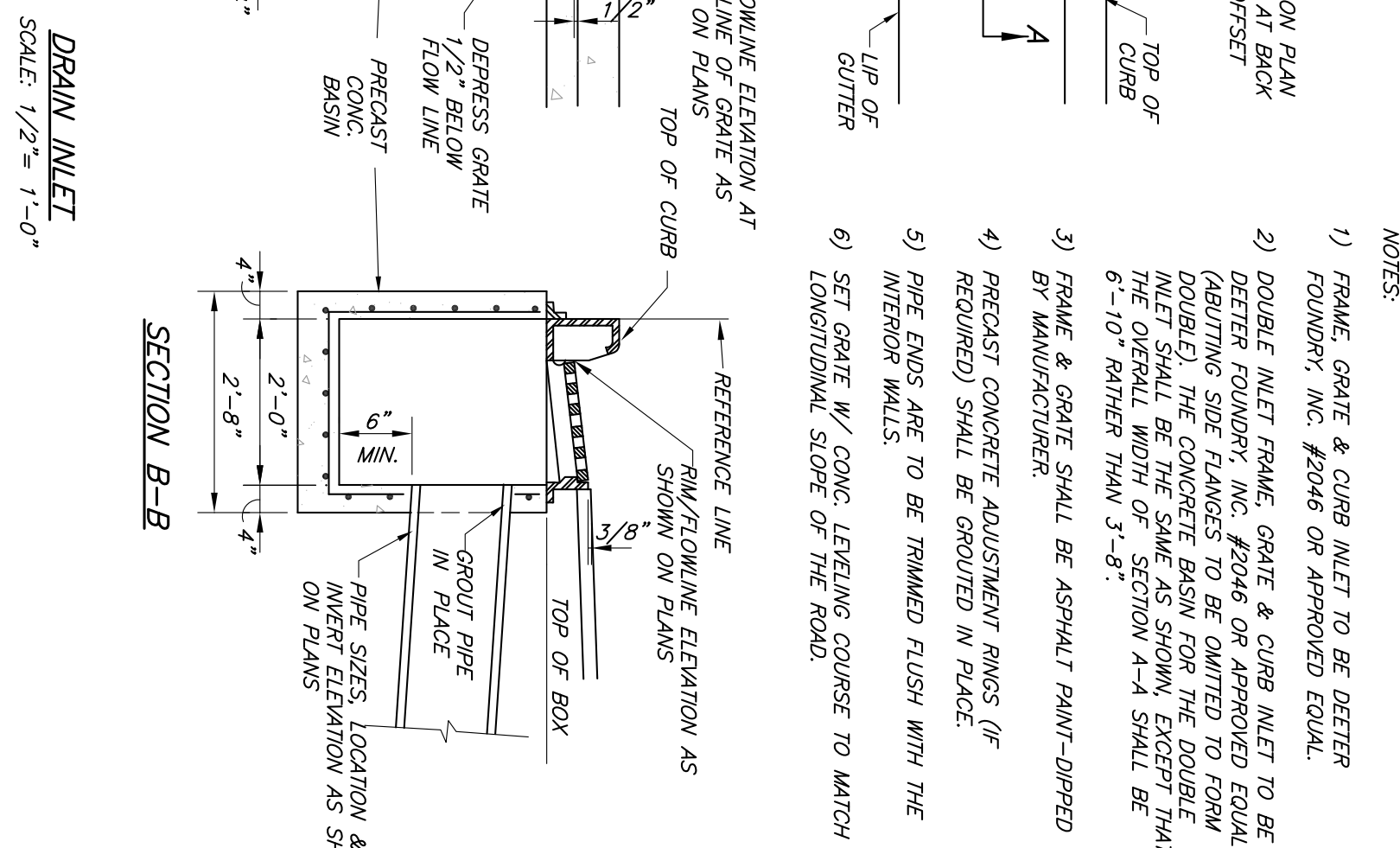
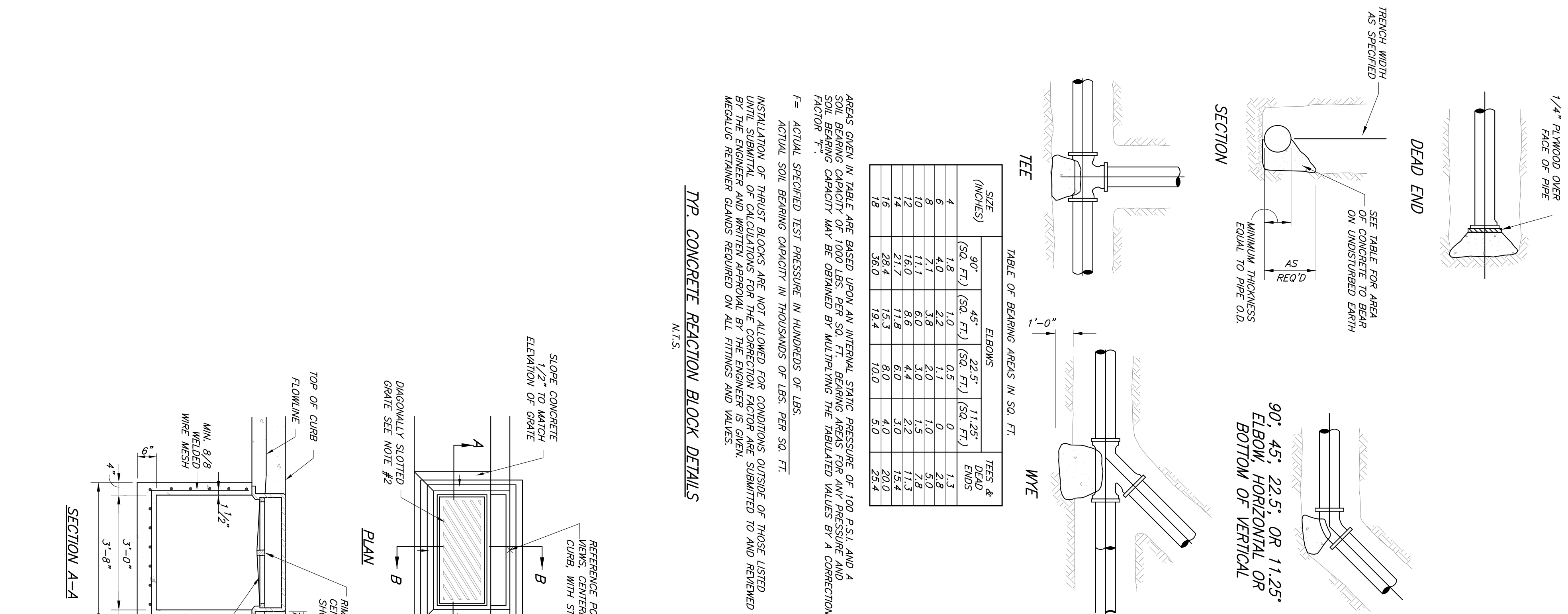
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PMGC2, LLC
Pinyon Mesa II Final Plat/Construction

#	Revision	Date	By
1			

Water and Drainage Details

Job No.	01502H
Drawn by	RB
Date:	6/22/16
QC:	XXI PE: DK
File:	Cover



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Not For
Construction



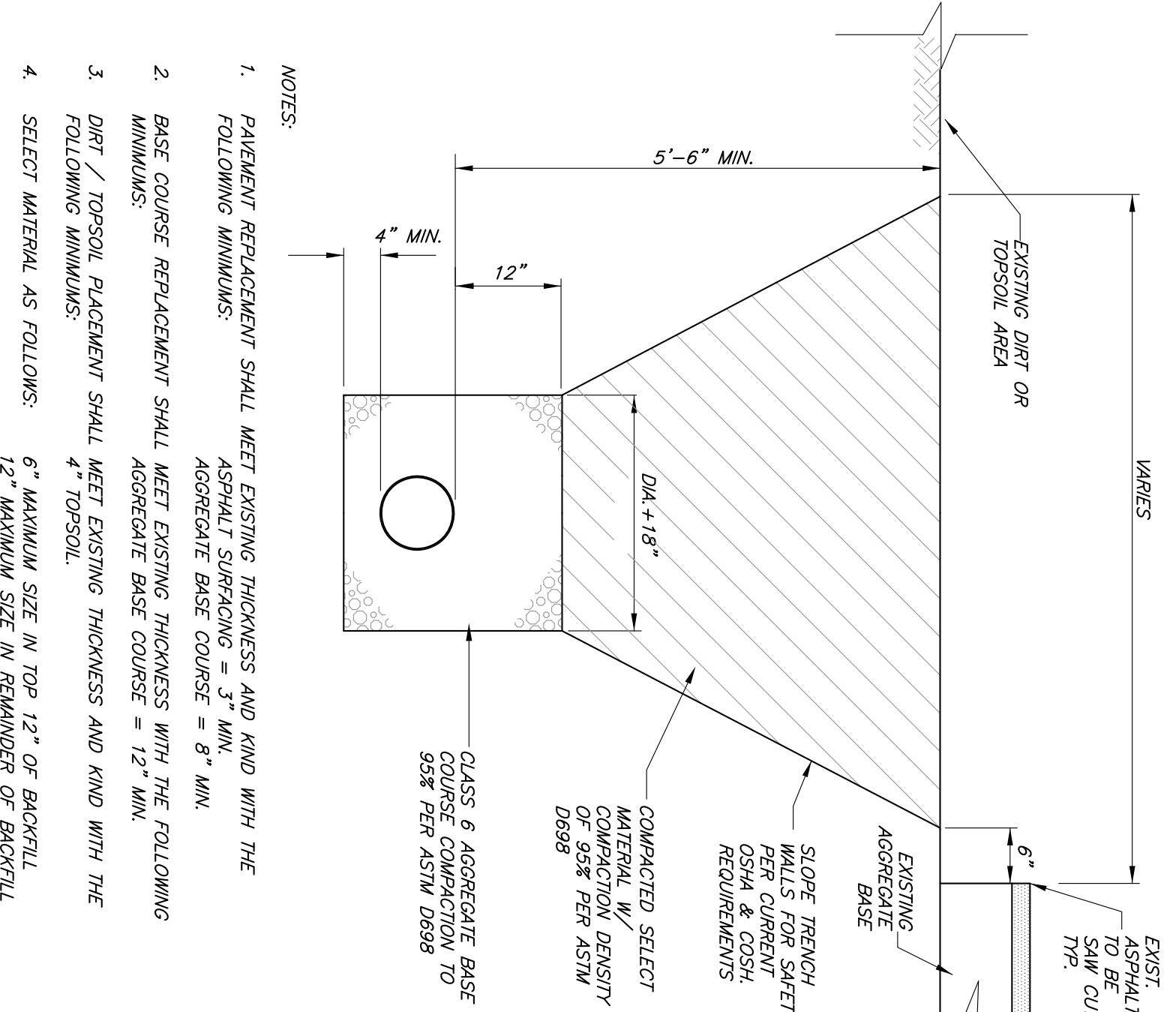
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Pinyon Mesa II Final Plat/Construction

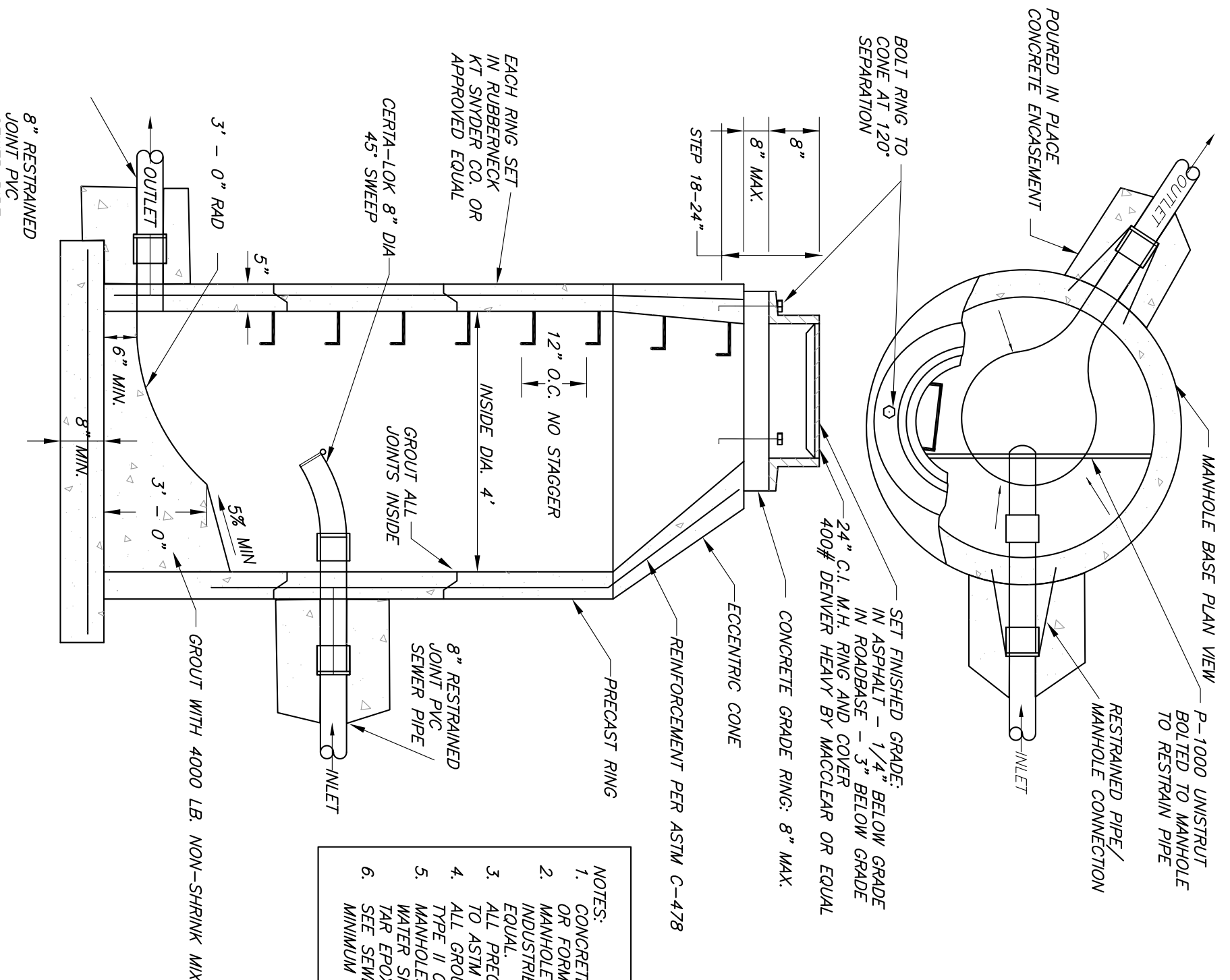
#	Revision	Date	By
1			

Sewer Details

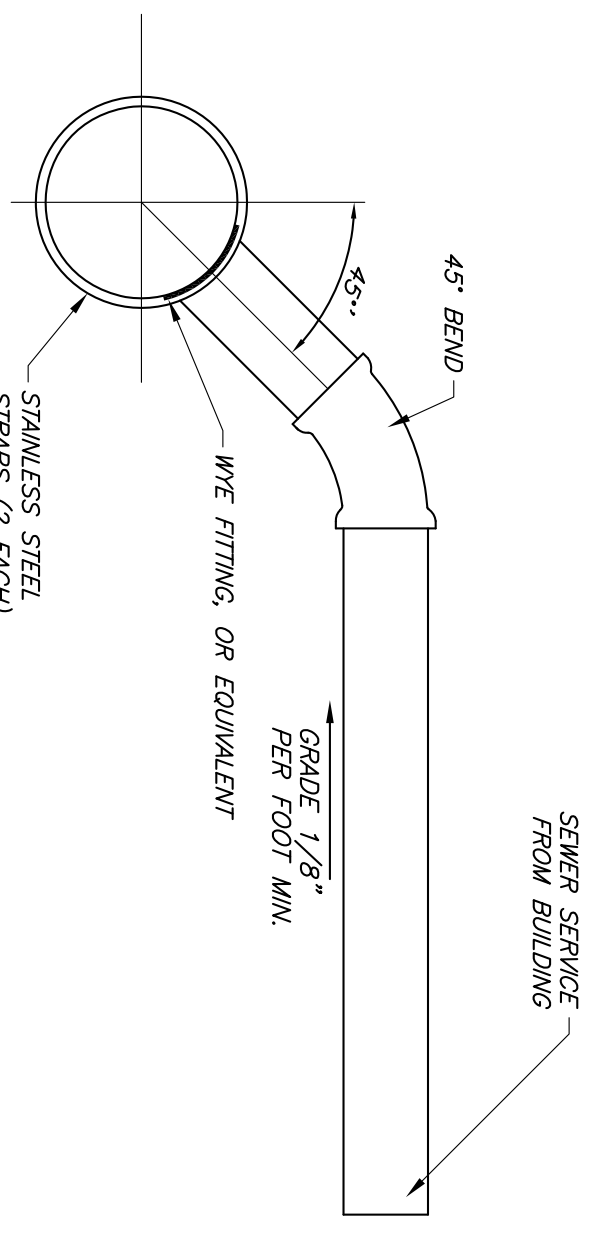
Job No.	01502H
Drawn by	RB
Date	6/22/16
QC	XXI PE: DK
File	Cover



WATER SEWER TRENCH CROSS-SECTION
N.T.S.



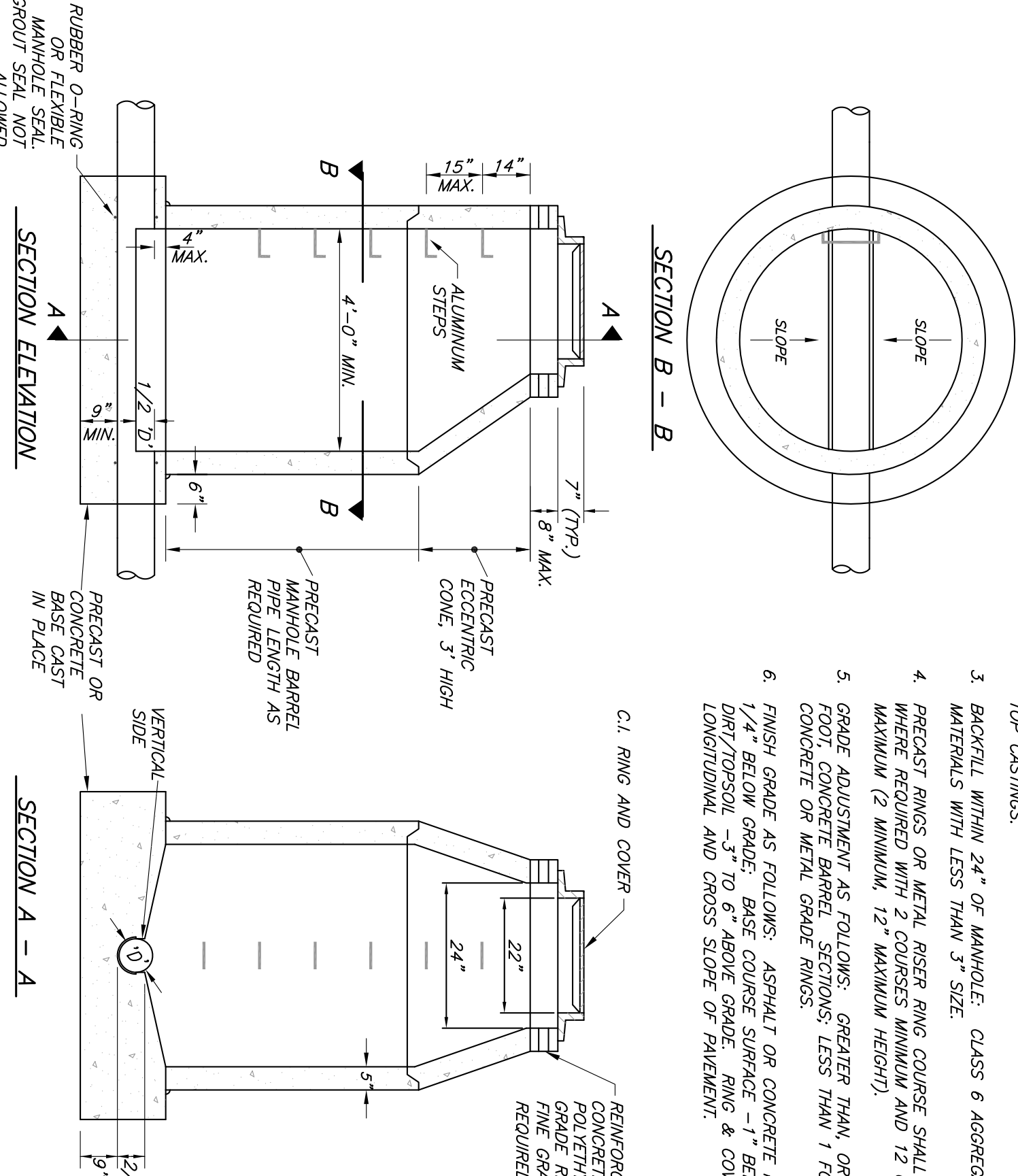
PRECAST CONCRETE ENERGY DISSIPATOR MANHOLE
N.T.S.



SEWER SERVICE CONNECTION DETAIL
NOT TO SCALE

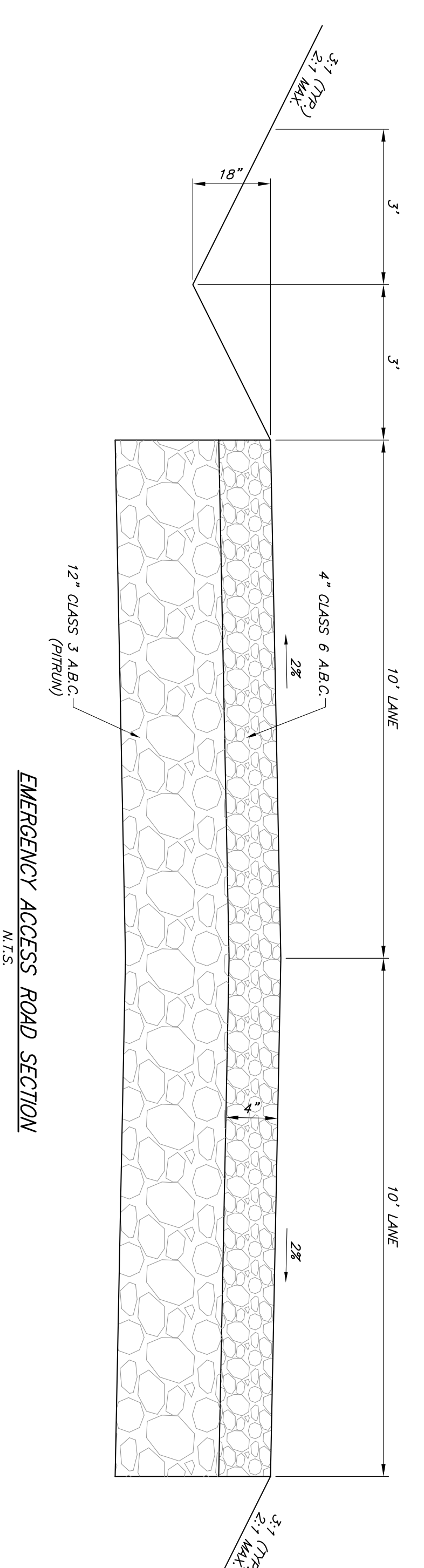
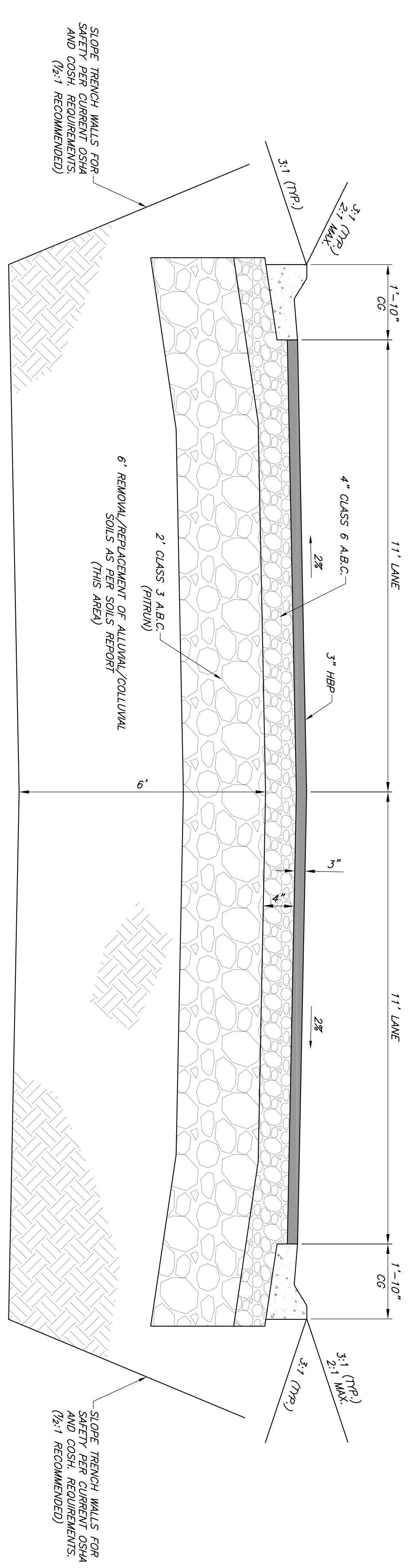
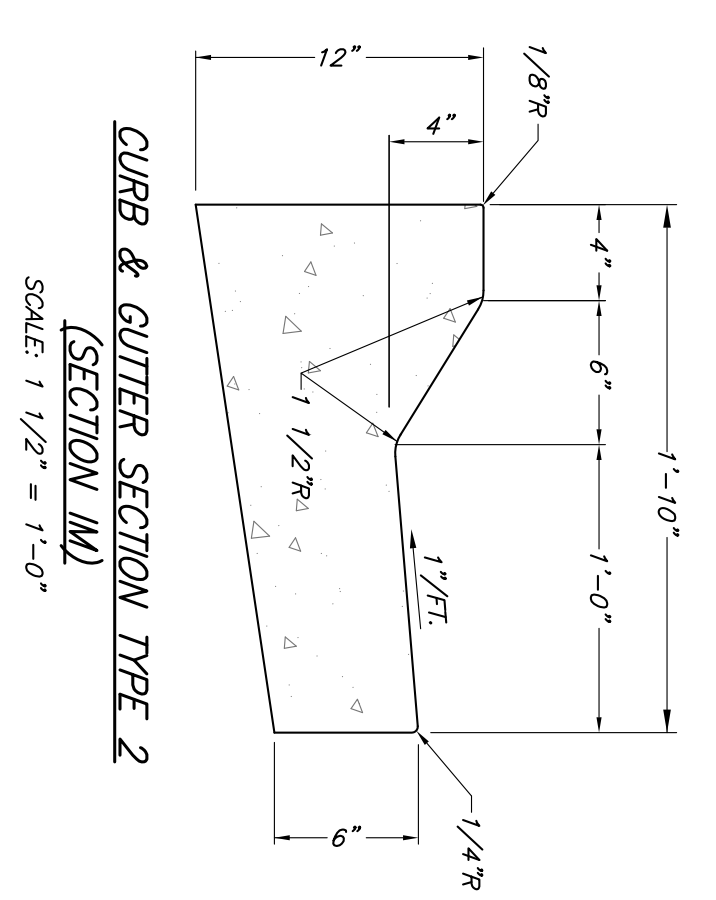
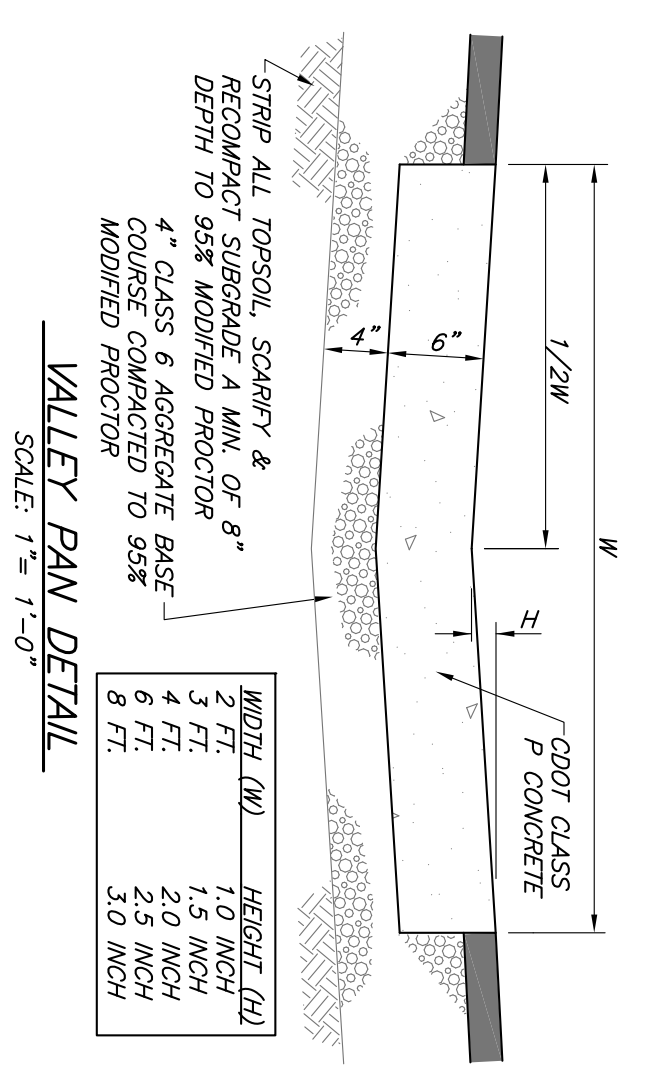
- NOTES:
1. BACKFILL UNDER WYE TO BE CLASS 6 AGGREGATE, 95% COMPACTION DENSITY PER ASTM D-698
 2. MINIMUM COVER - 5 FEET.

- NOTES:
1. CONCRETE WINGS MUST BE SHAVED TO MATCH THE MANHOLE SECTION.
 2. MANHOLE STEPS SHALL BE WASHINGTON INDUSTRIES P.S.-2-P.F. OR APPROVED EQUAL.
 3. PRECAST SECTIONS TO CONFORM TO ASTM C-478.
 4. ALL GROUT SHALL BE MIXED WITH PORTLAND CEMENT AND SAND.
 5. MANHOLE SHALL BE COATED WITH COAL TAR EPOXY PAINTS FOR WINGS MINIMUM OUT FROM M.H. BASE.
 6. MINIMUM COVER - 5 FEET.



STANDARD MANHOLE DETAIL
NOT TO SCALE

- NOTES:
1. ALL BASES SHALL BE CAST IN PLACE OR PRECAST CONCRETE. USE #4 REBAR ON 12" O.C. BOTH WAYS IN FOUNDED BASES.
 2. USE RUB-R-NEK PREFORMED CASSET (2 LAYERS) BETWEEN ALL BOTTOM SECTION, BARREL SECTIONS, CONCRETE GRADE RINGS, AND TOP CASTINGS.
 3. BACKFILL WITHIN 24" OF MANHOLE. CLASS 6 AGGREGATE OR MATHE MATERIALS WITH LESS THAN 3" SIZE.
 4. PRECAST RINGS OR METAL RINGS SHALL BE UTILIZED WHERE REQUIRED WITH 2 COURSES MINIMUM AND 12 COURSES MAXIMUM (2 MINIMUM, 12" MAXIMUM HEIGHT).
 5. GRADE EQUIVALENT AS FOLLOWS: GREATER THAN OR EQUAL TO 1 FOOT CONCRETE/AGGREGATE SECTIONS, LESS THAN 1' (90%) CONCRETE OR METAL RINGS.
 6. FINISH GRADE AS FOLLOWS: ASPHALT OR CONCRETE PARALLEL TO DIRT/TOPSOIL - 3" TO 6" ABOVE GRADE. RING & COVER TO MATCH LONGITUDINAL AND CROSS SLOPE OF PAVEMENT.



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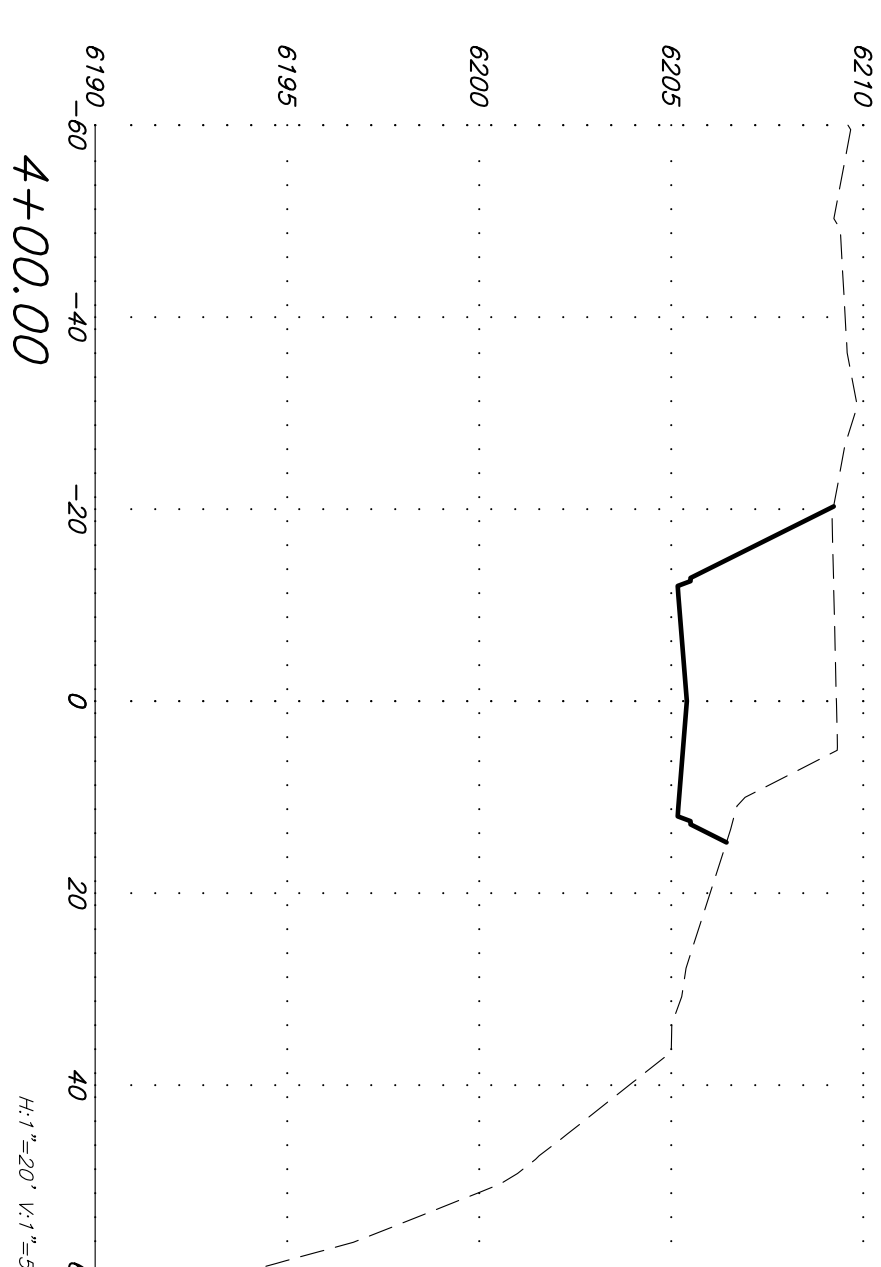
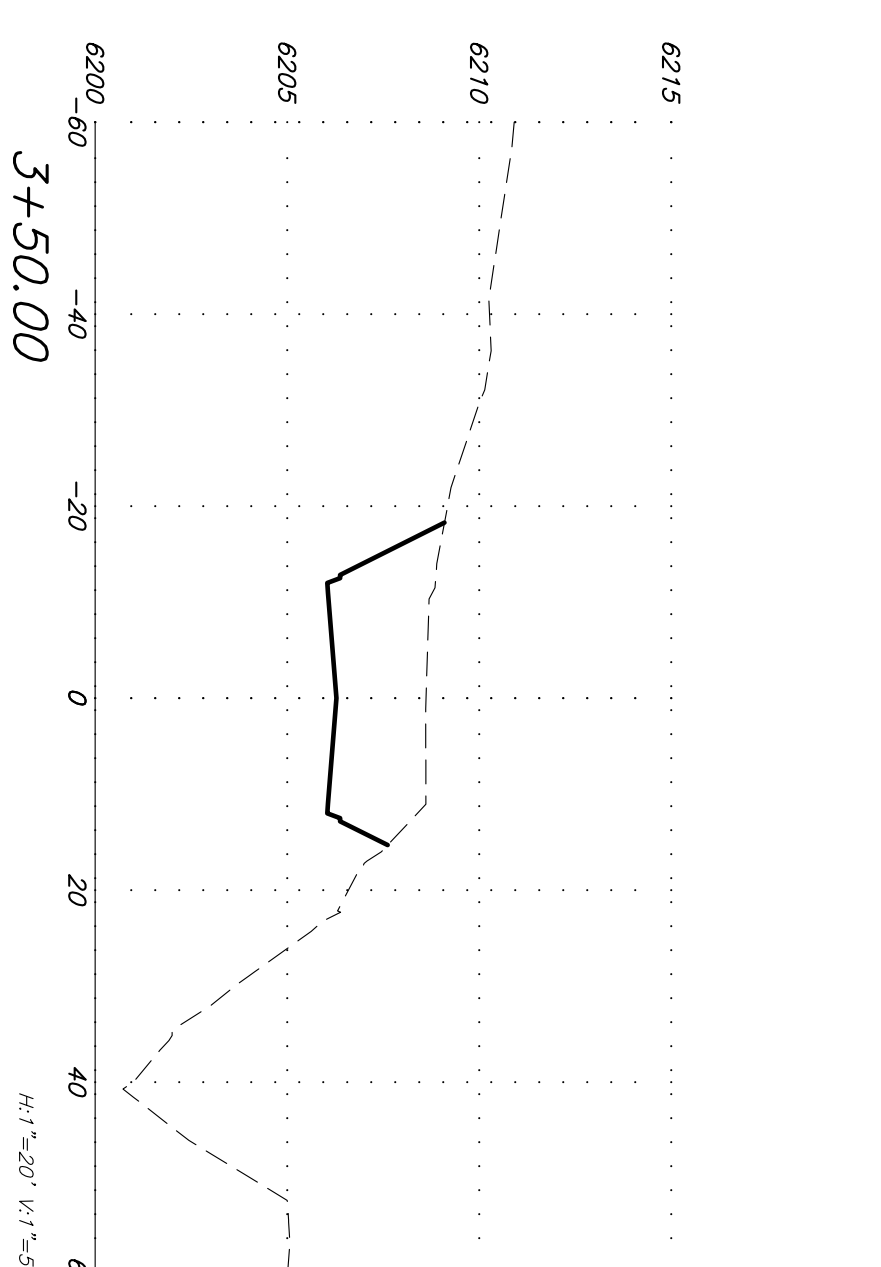
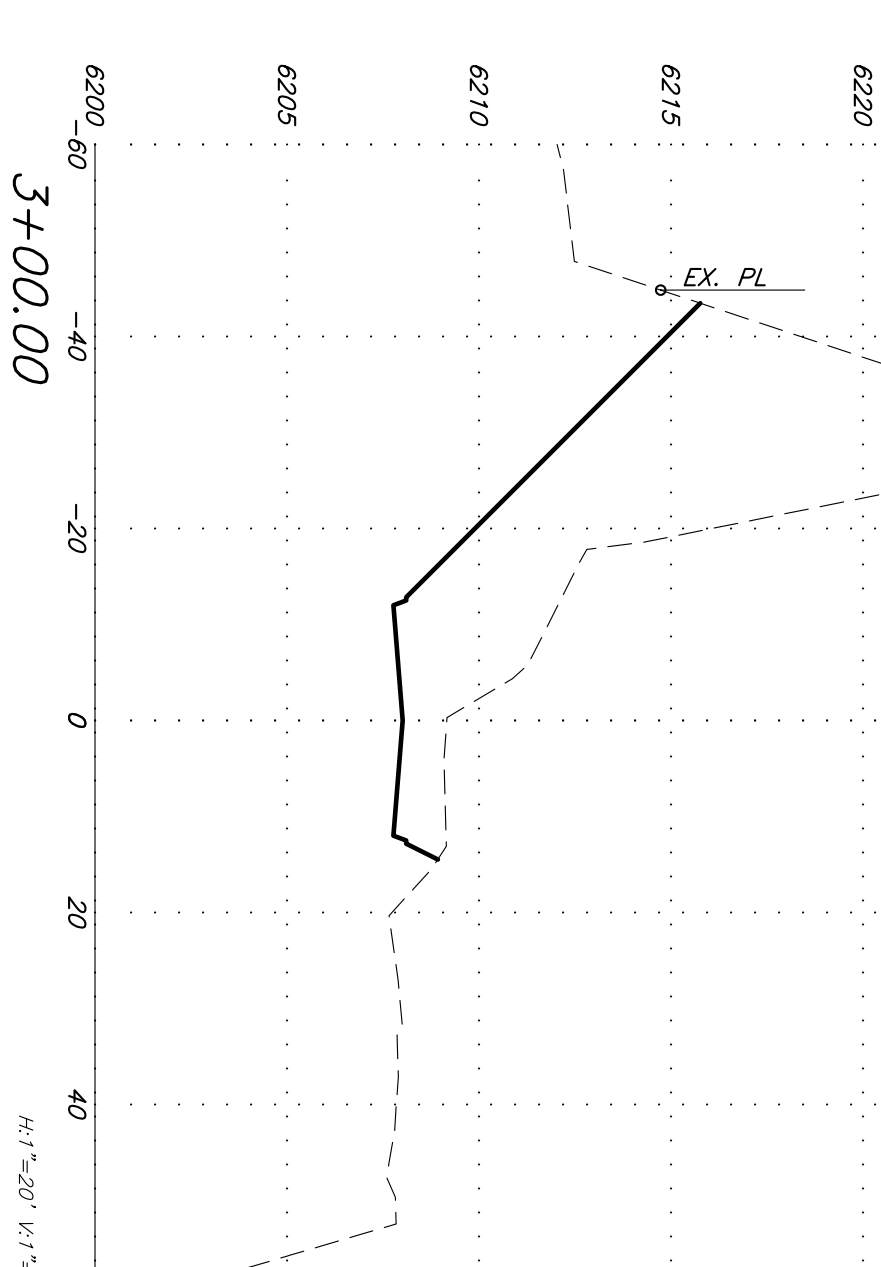
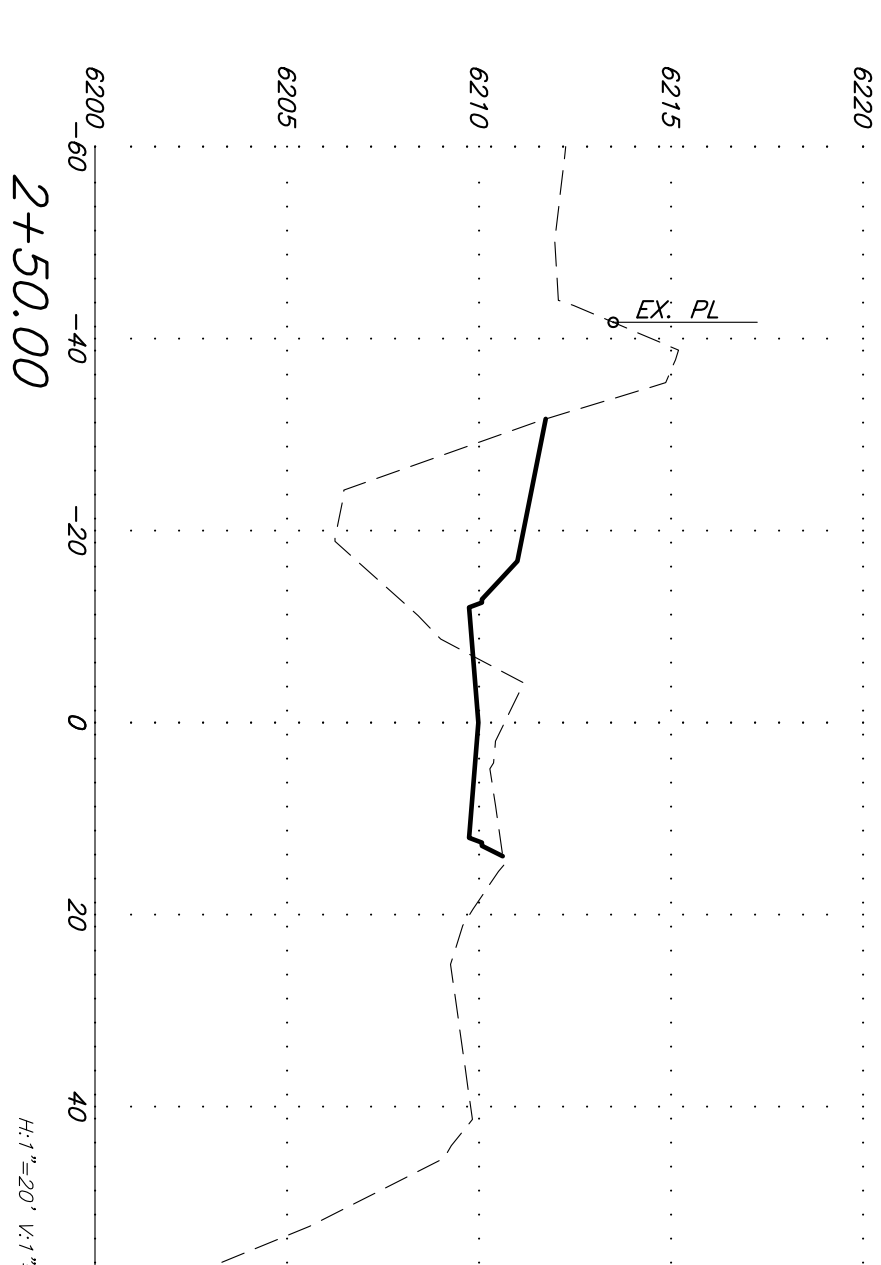
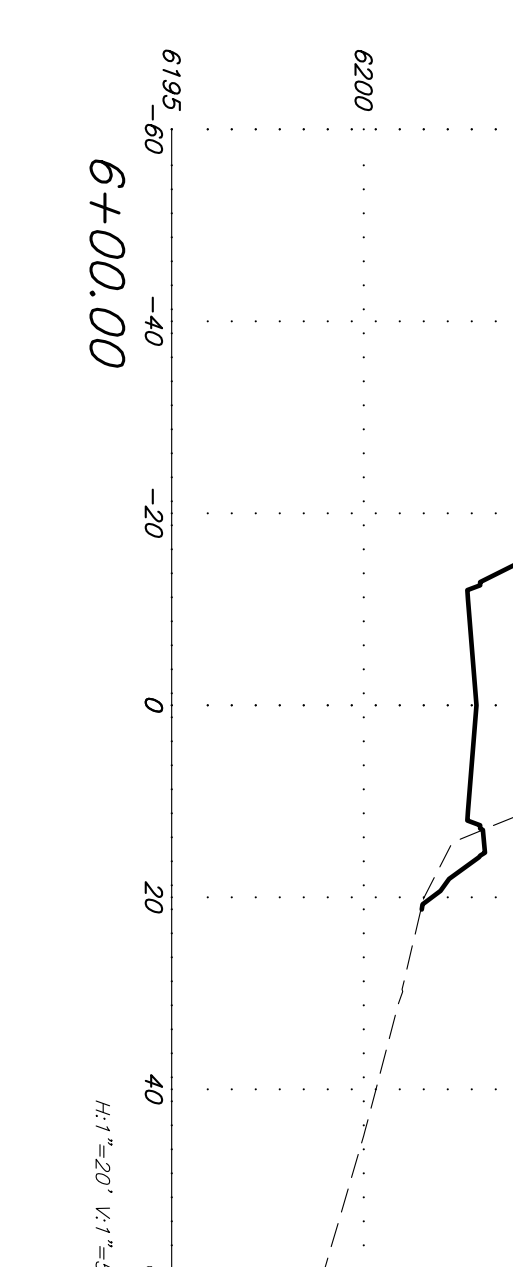
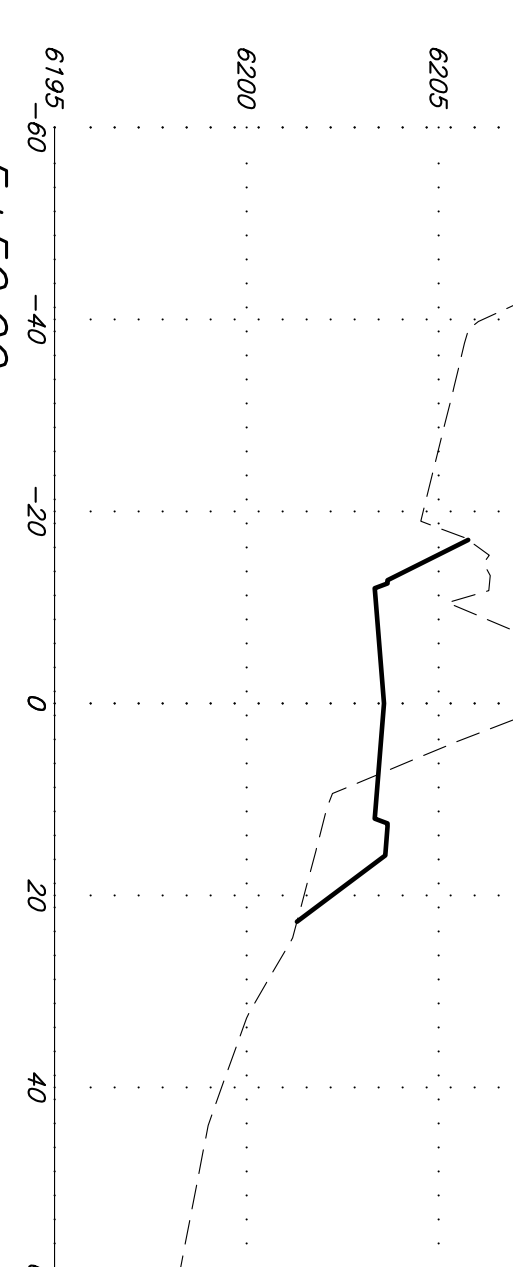
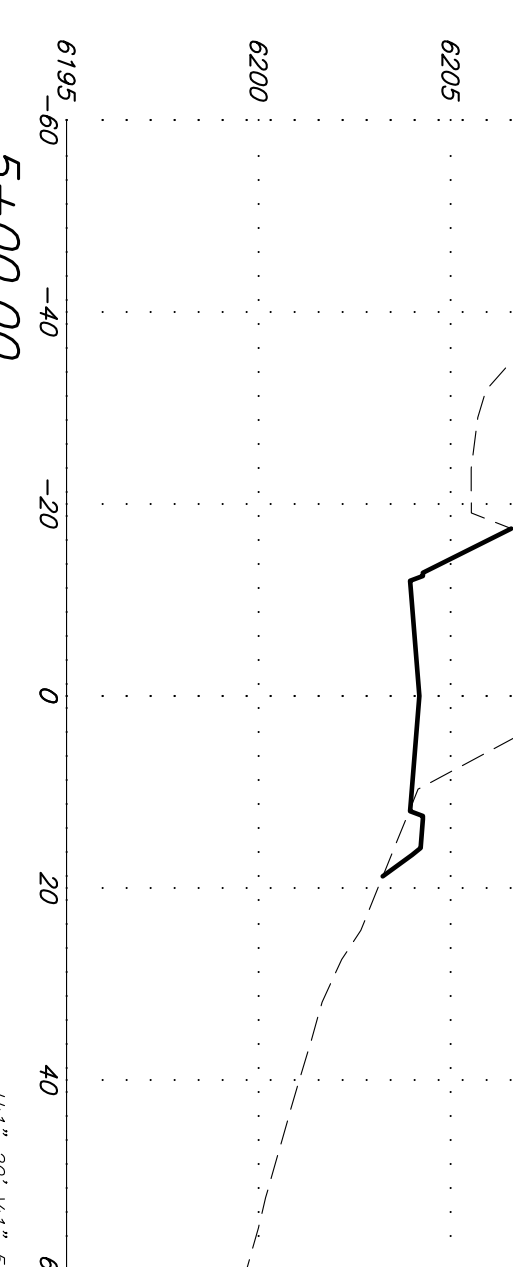
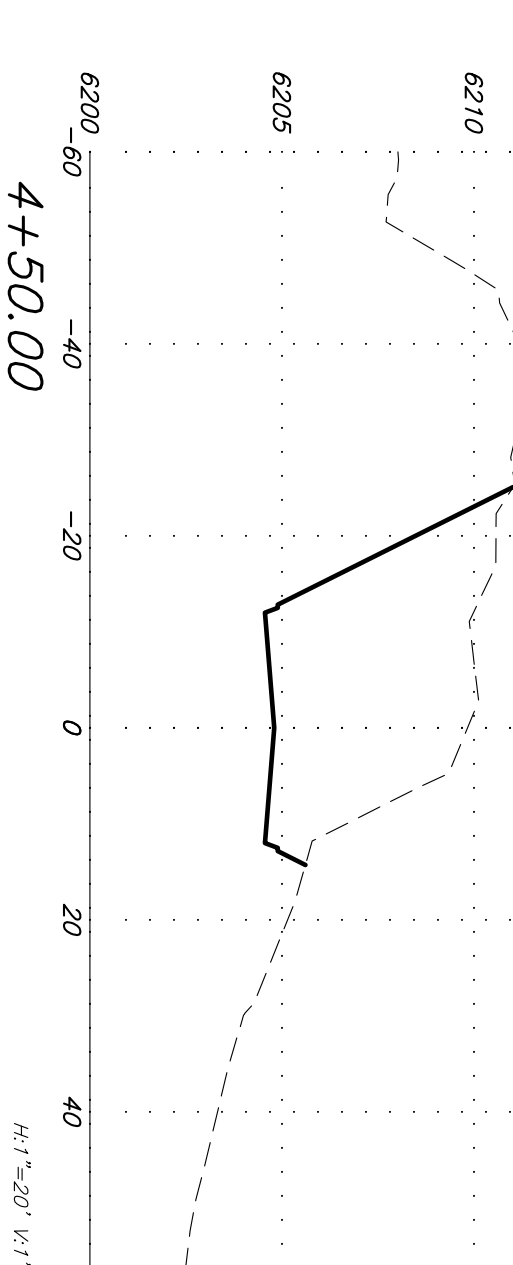
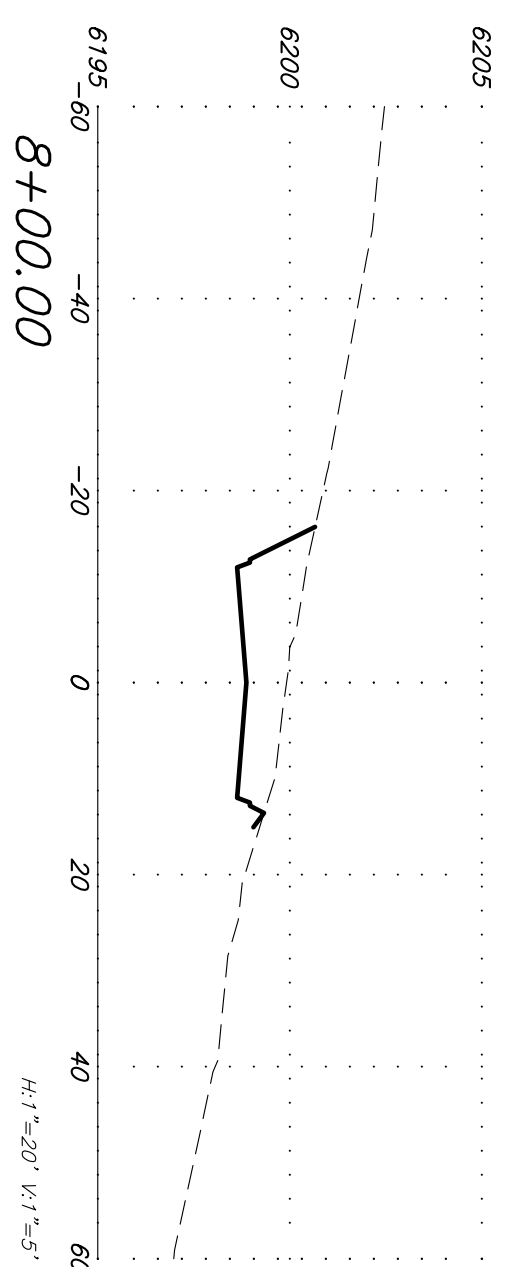
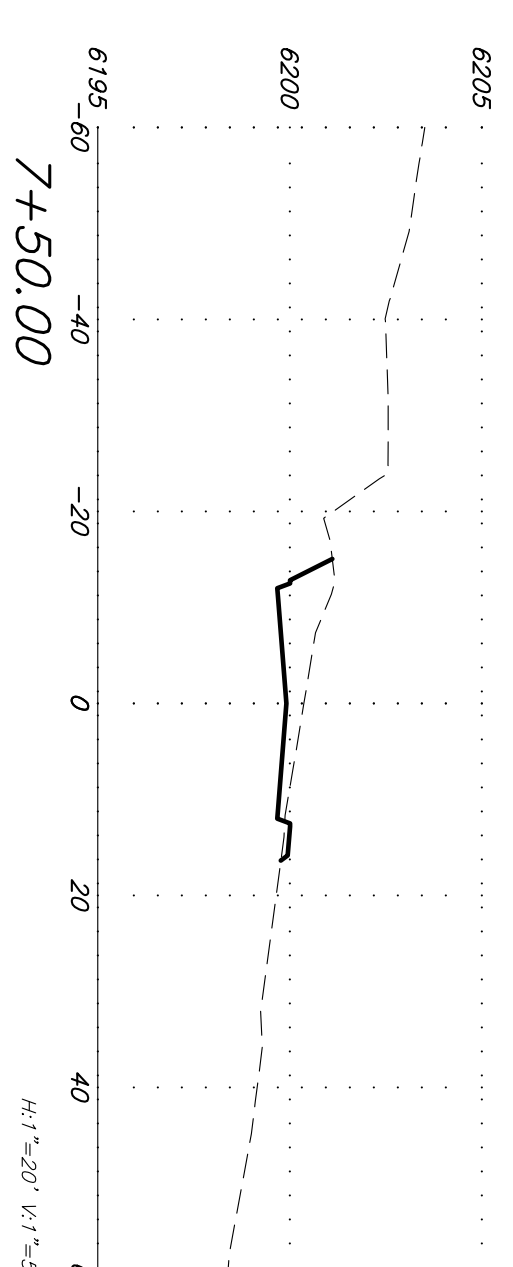
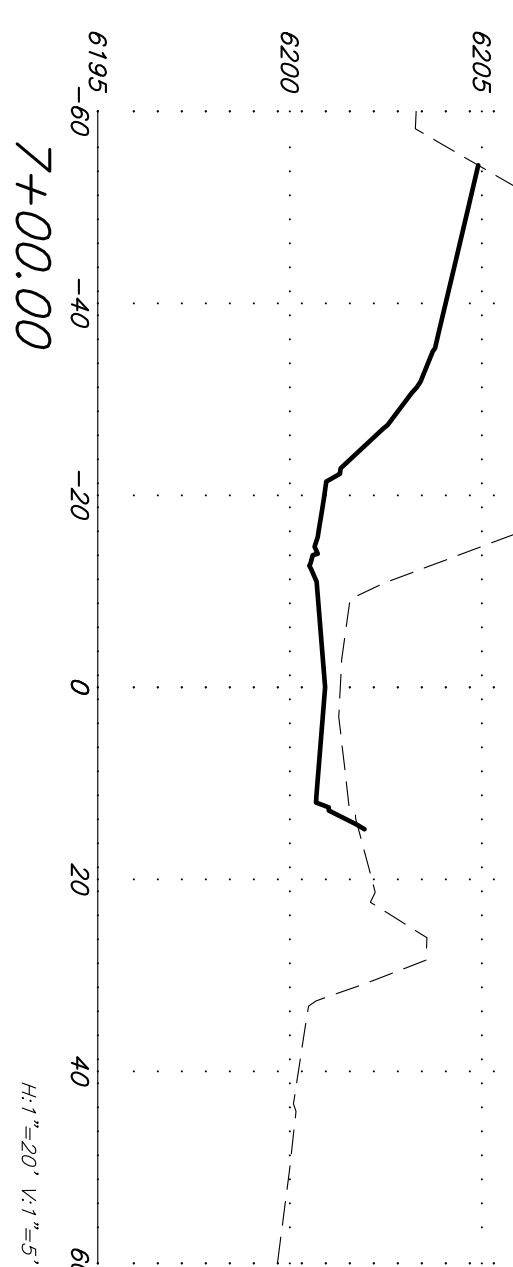
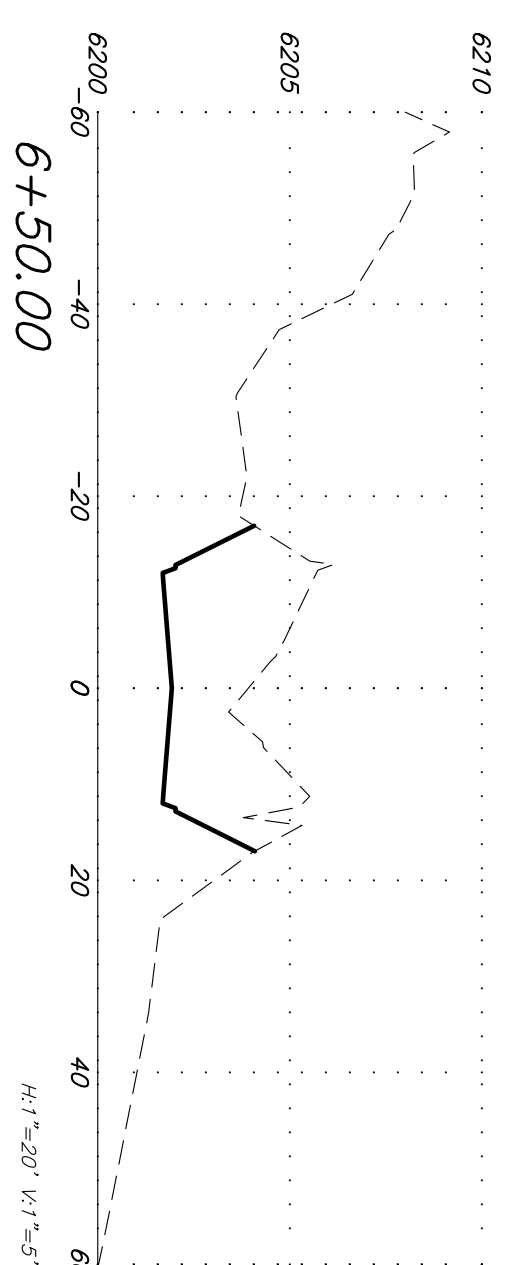
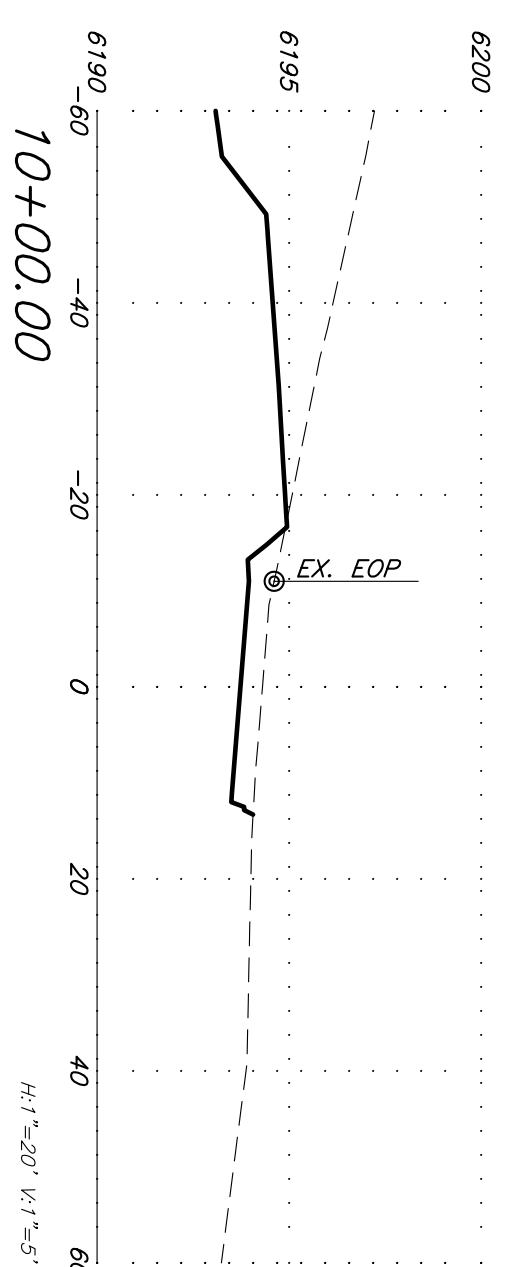
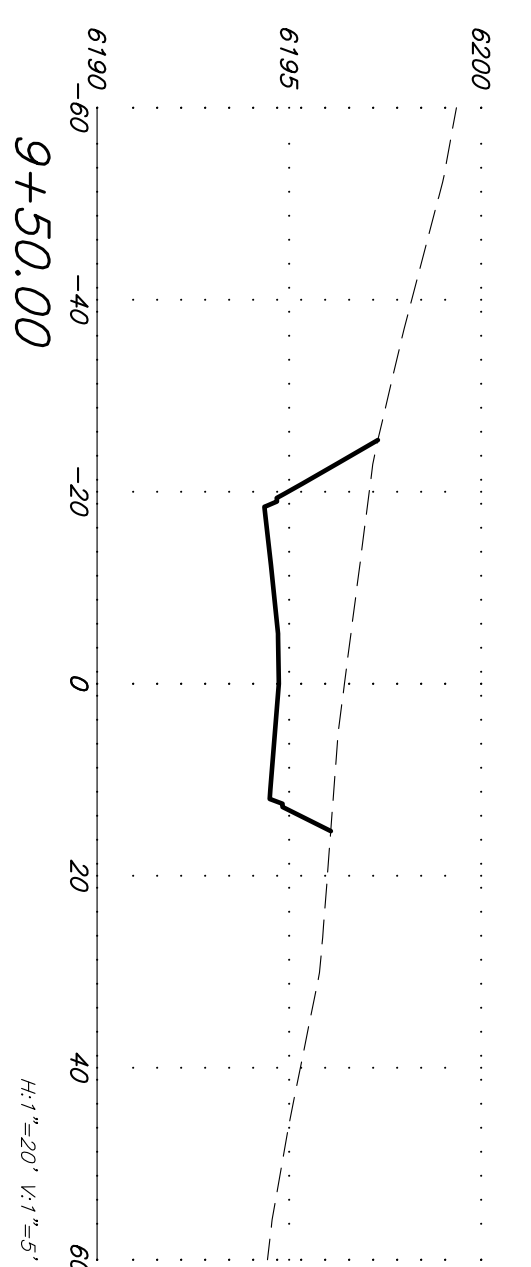
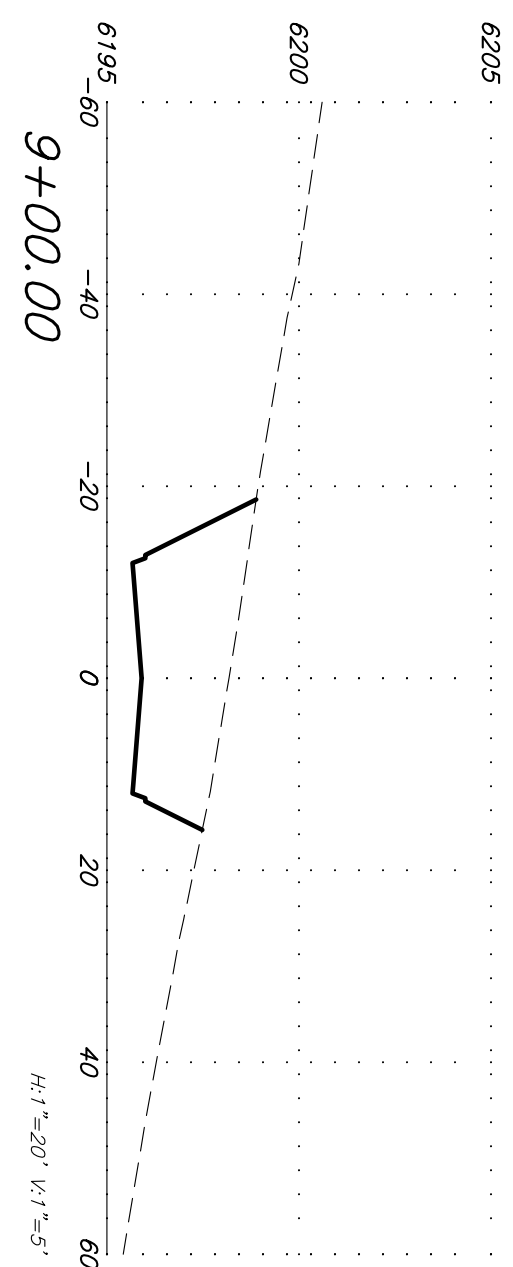
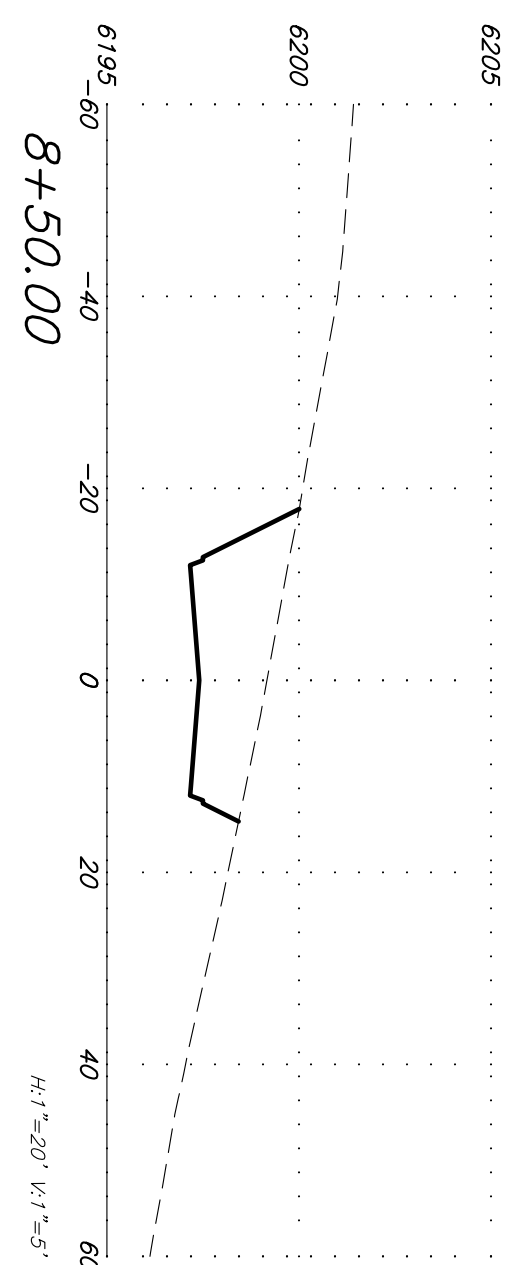
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970.945.1004 www.sgm-inc.com

PMGC2, LLC
Pinyon Mesa II Final Plat/Construction

#	Revision	Date	By
1			

Roadway Details

Job No.	01502H
Drawn By	RB
Date	6/22/16
QC	XX
PE	DK
Drawn	DK
Checked	OF



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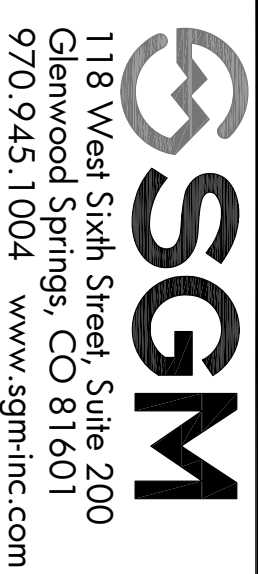
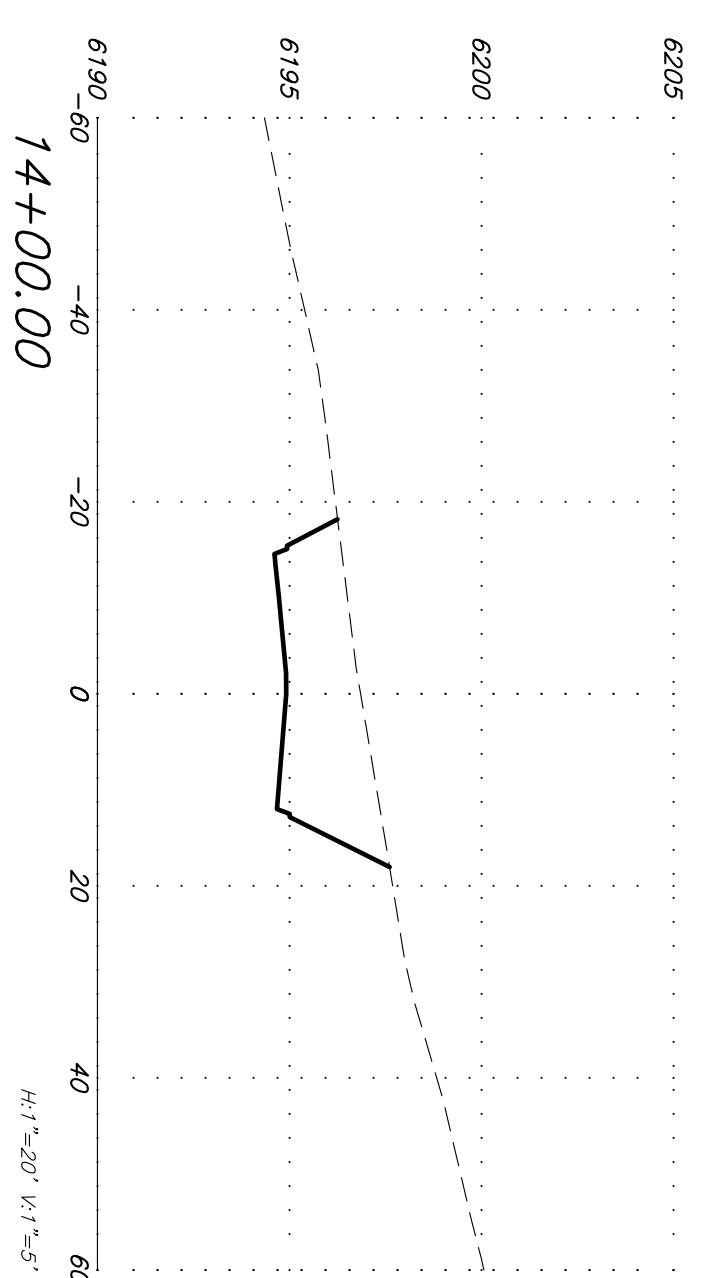
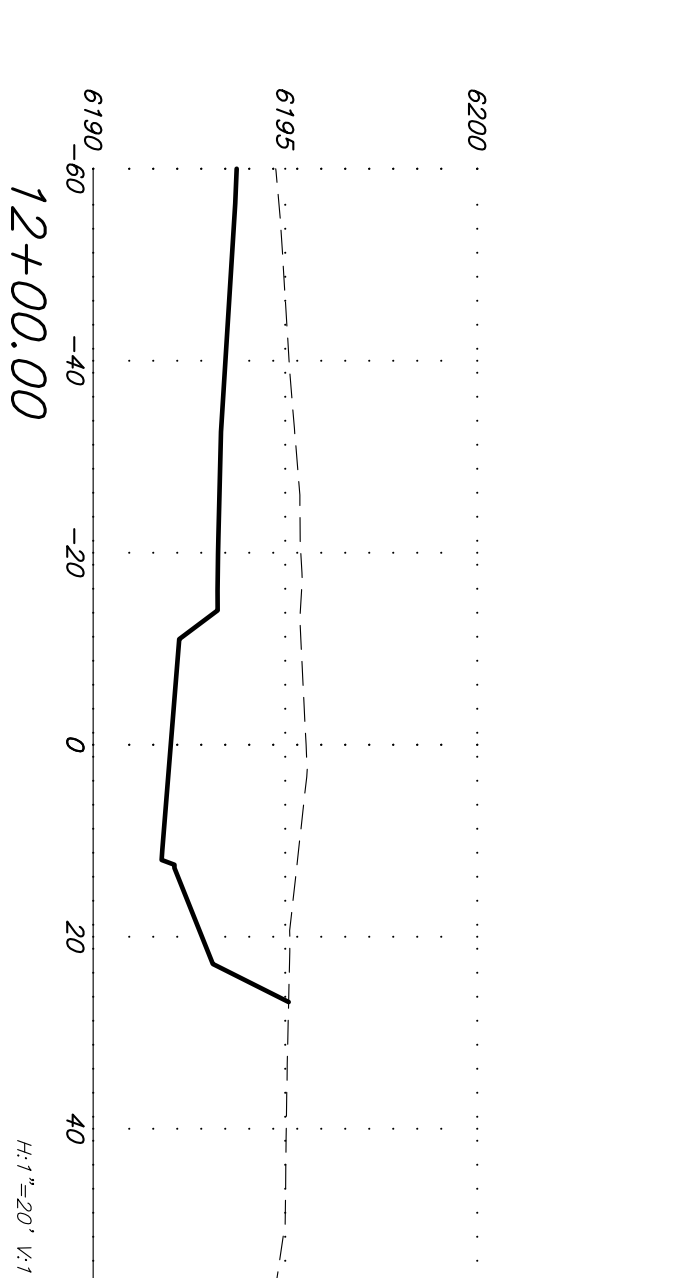
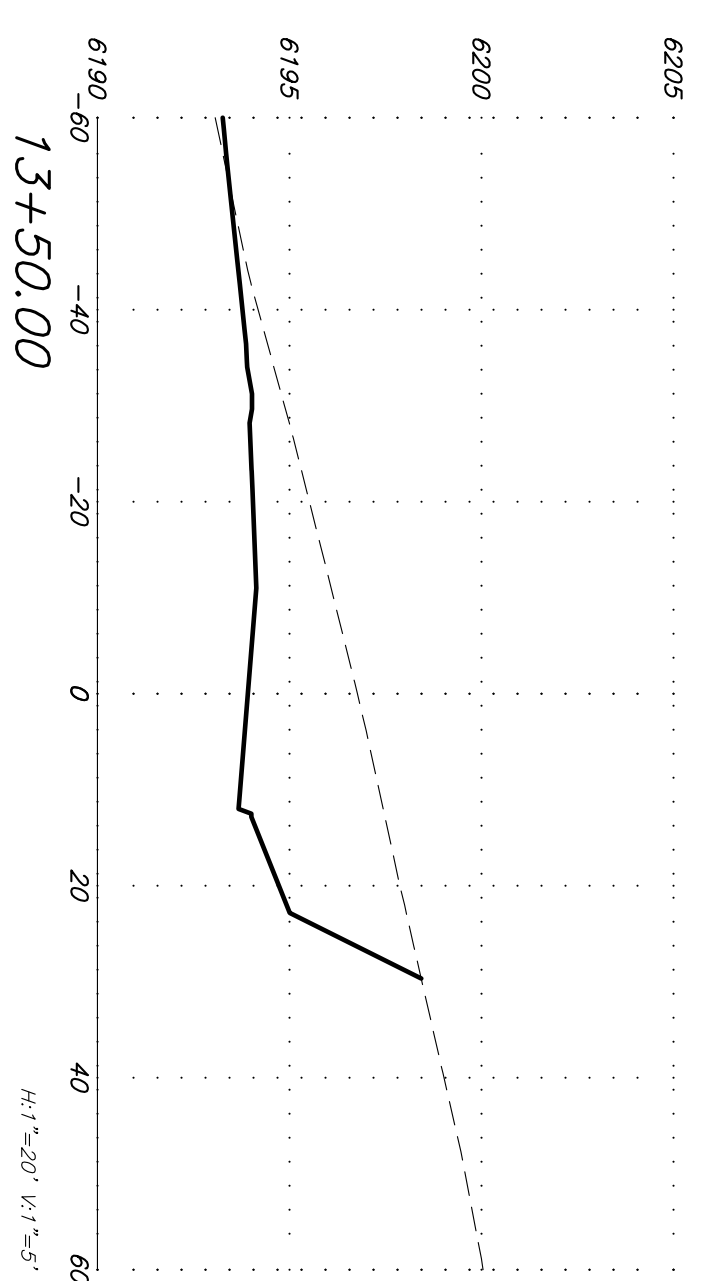
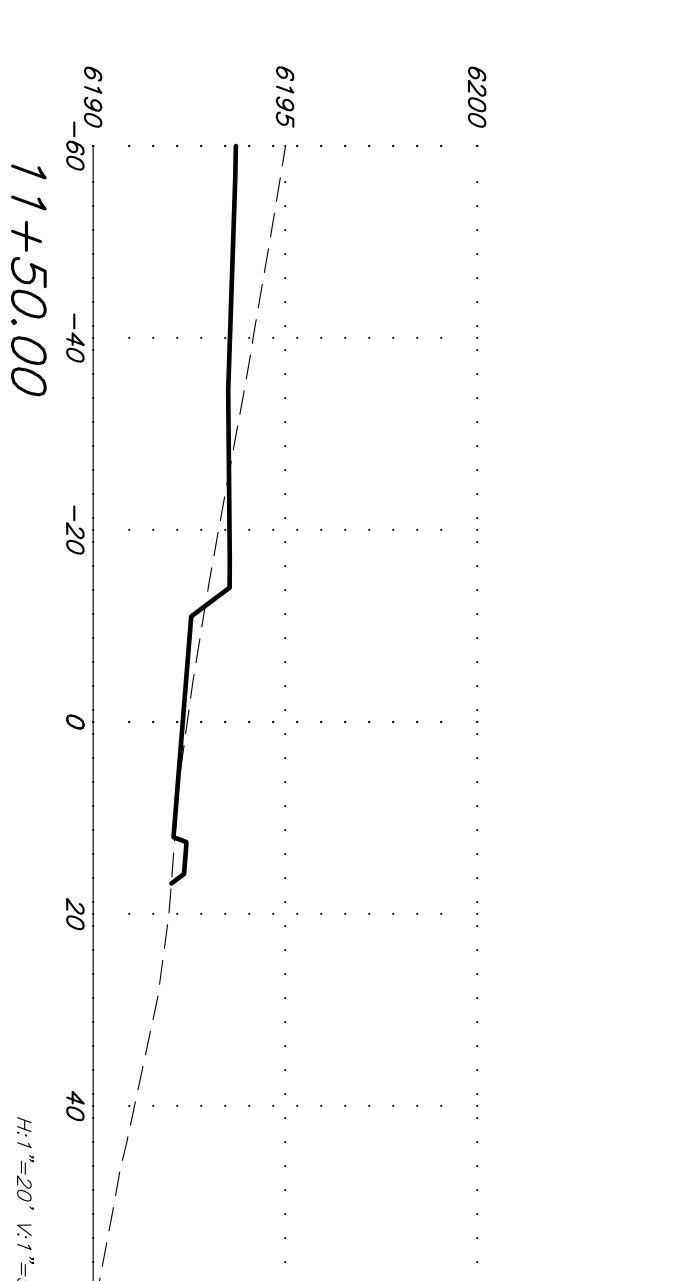
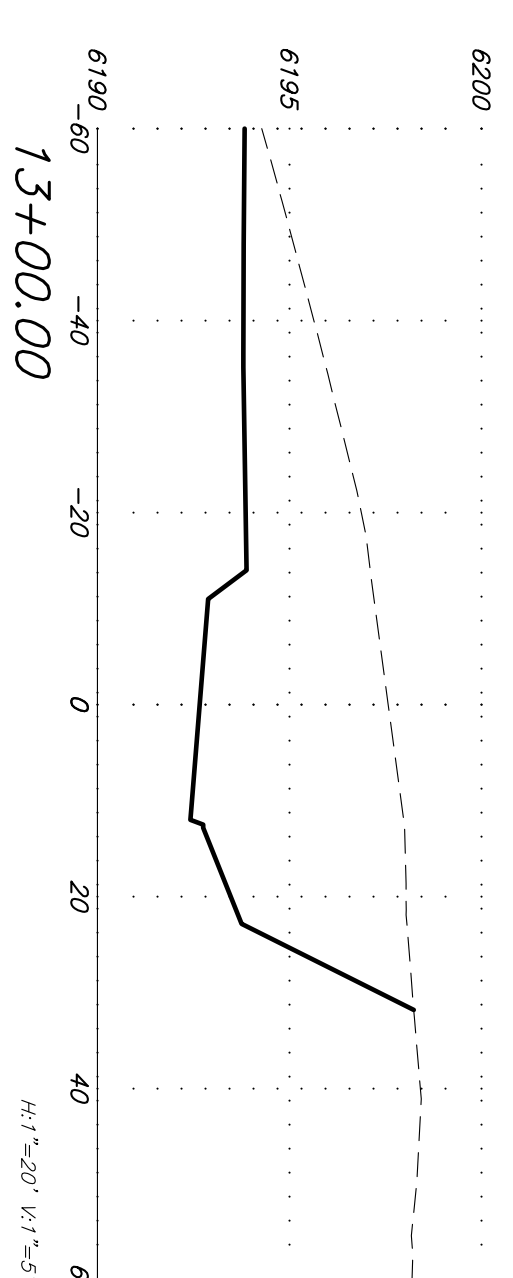
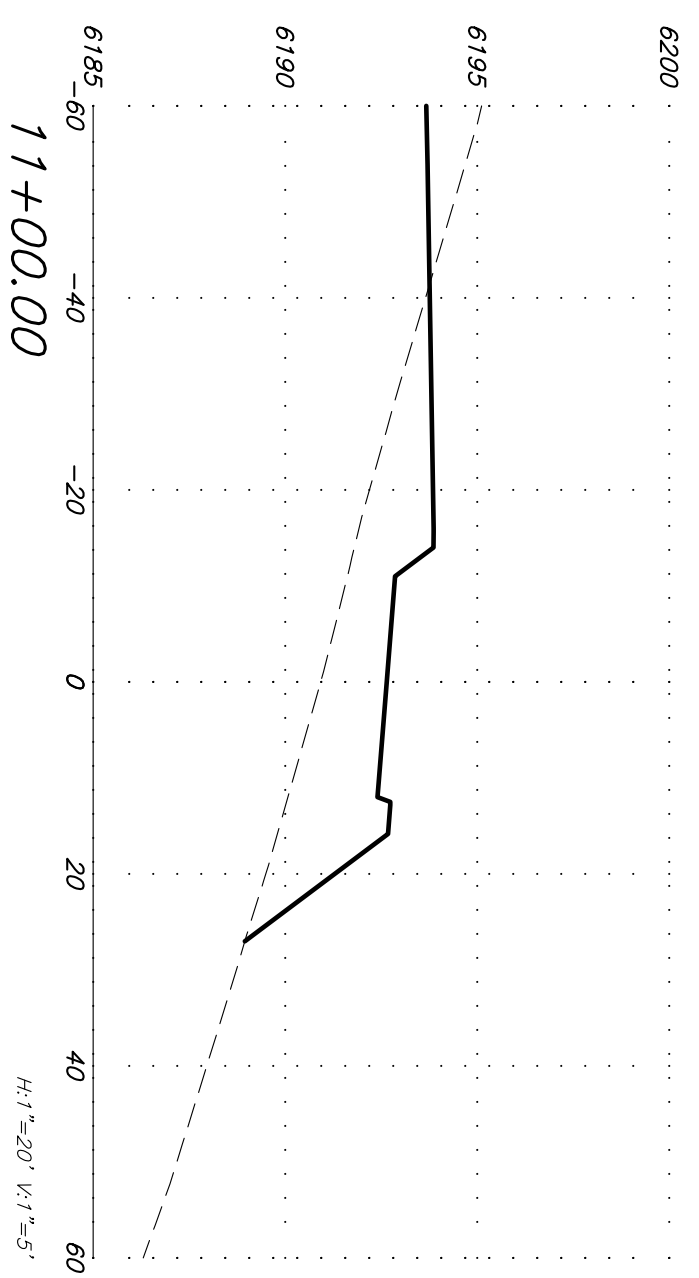
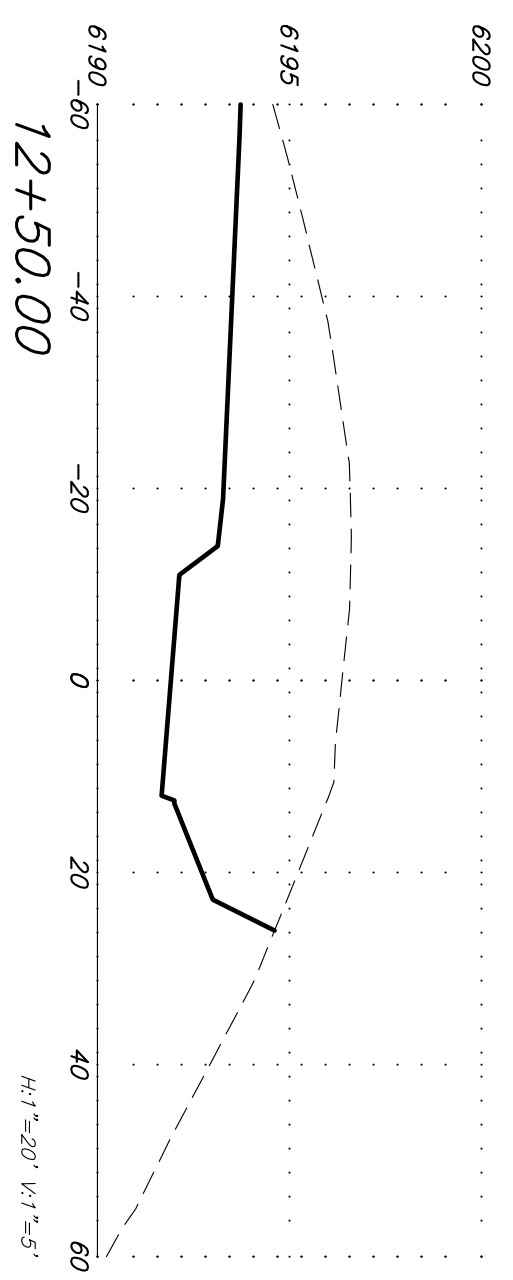
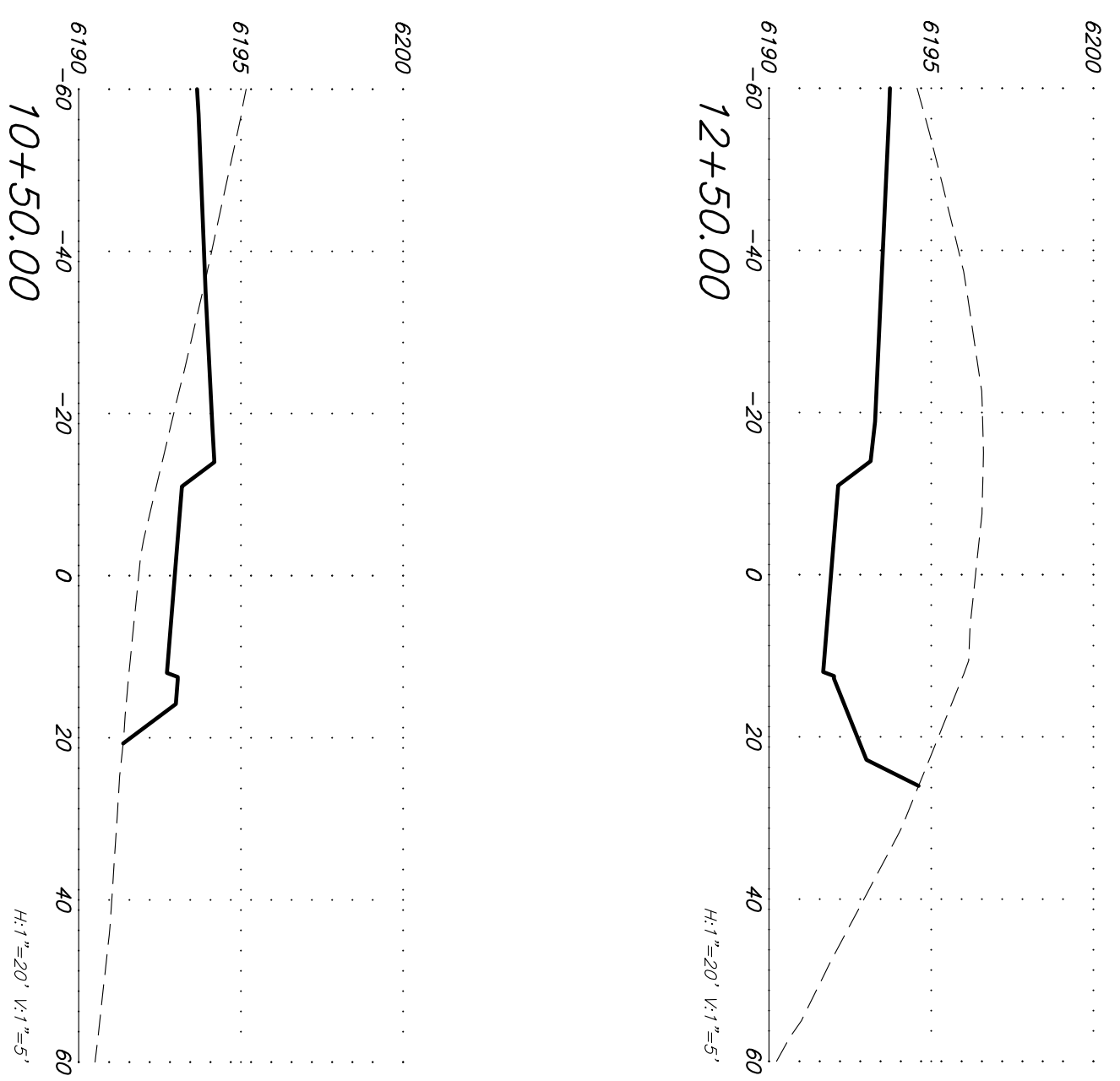
PMGC2, LLC
Pinyon Mesa II Final Plat/Construction

#	Revision	Date	By
1			

Pinyon Mesa Drive
Cross Sections
Sta. 2+50 to 10+00

Job No.	01502H
Drawn By	XX
Date	6/22/16
QC	XX
PE	XX
File	PinyonX

Preliminary
Not For
Construction



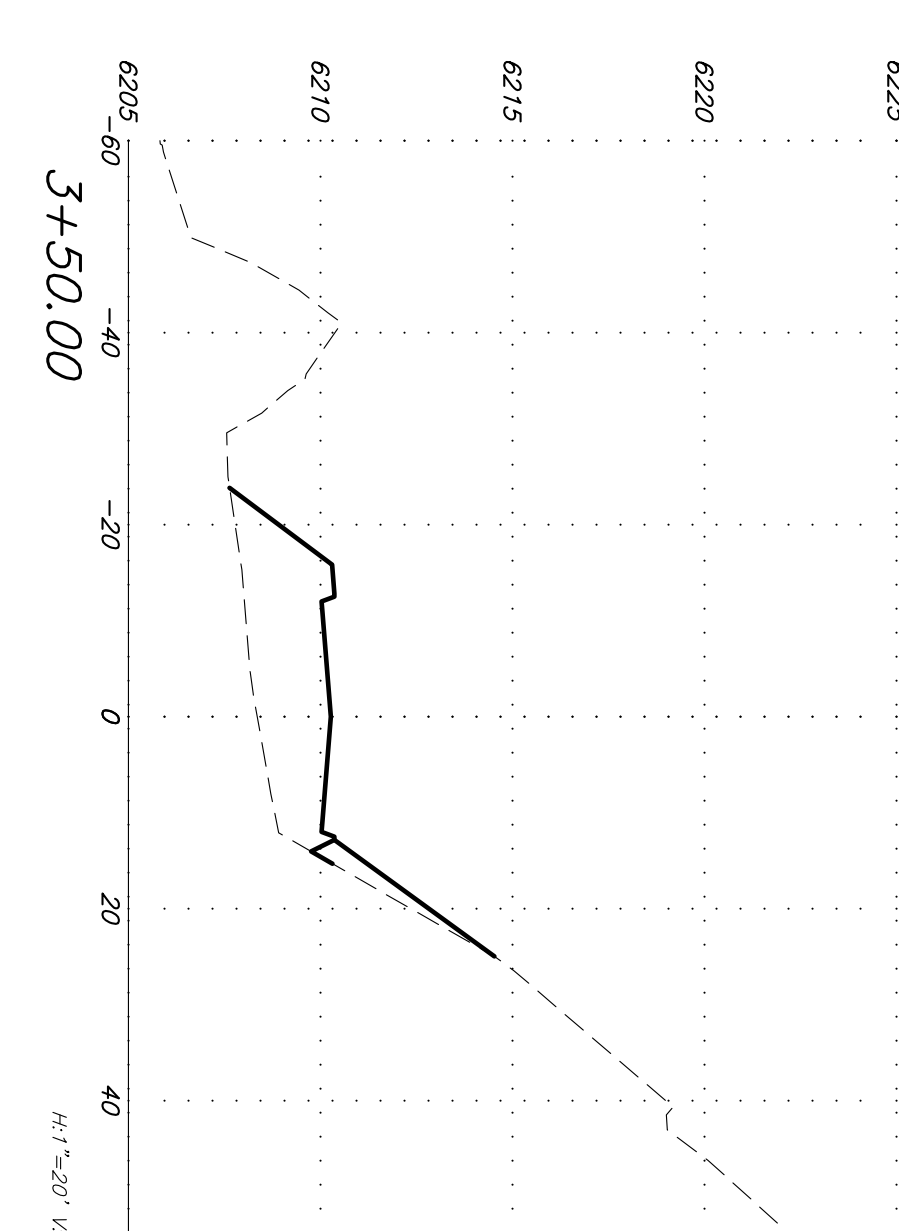
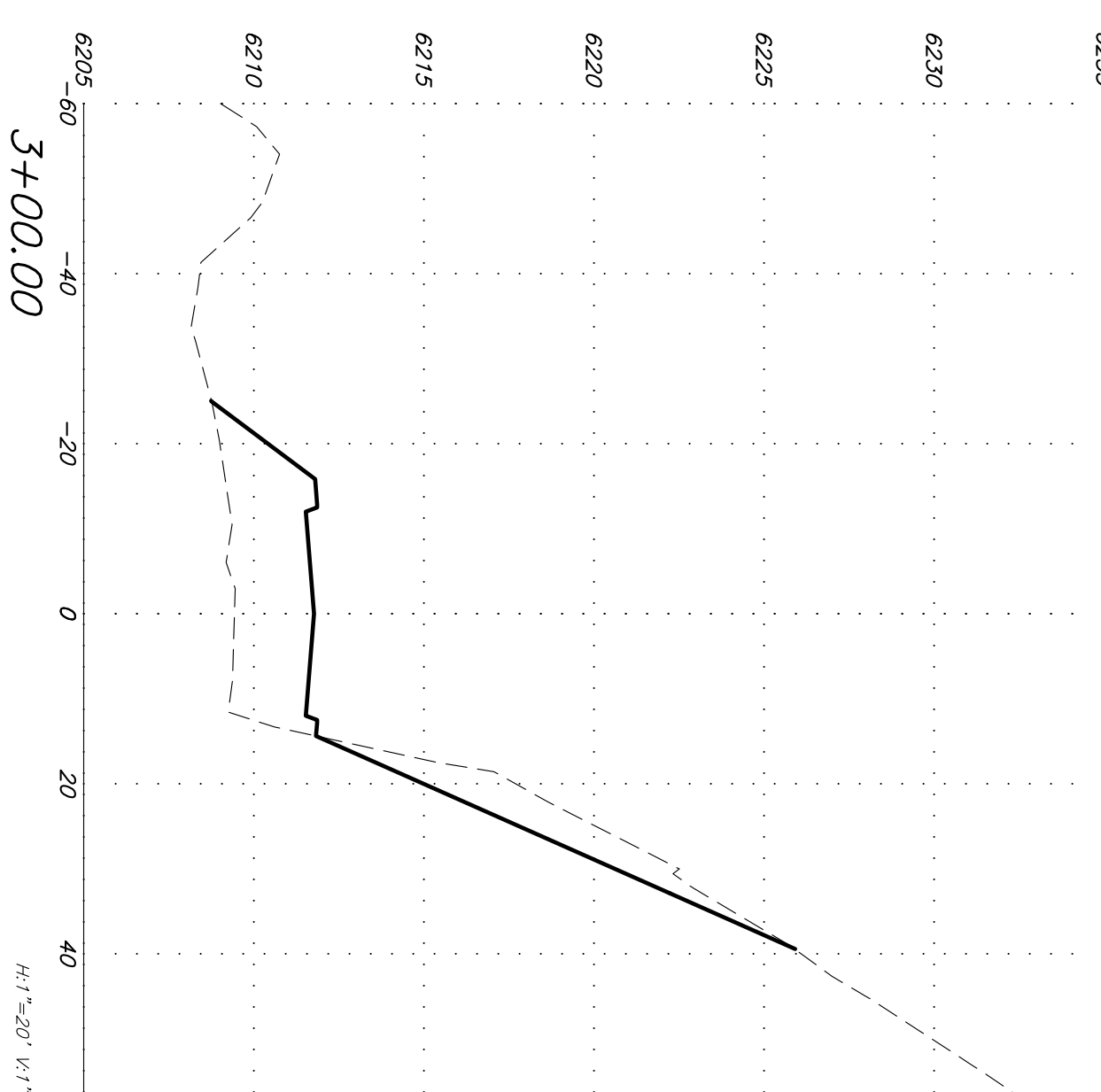
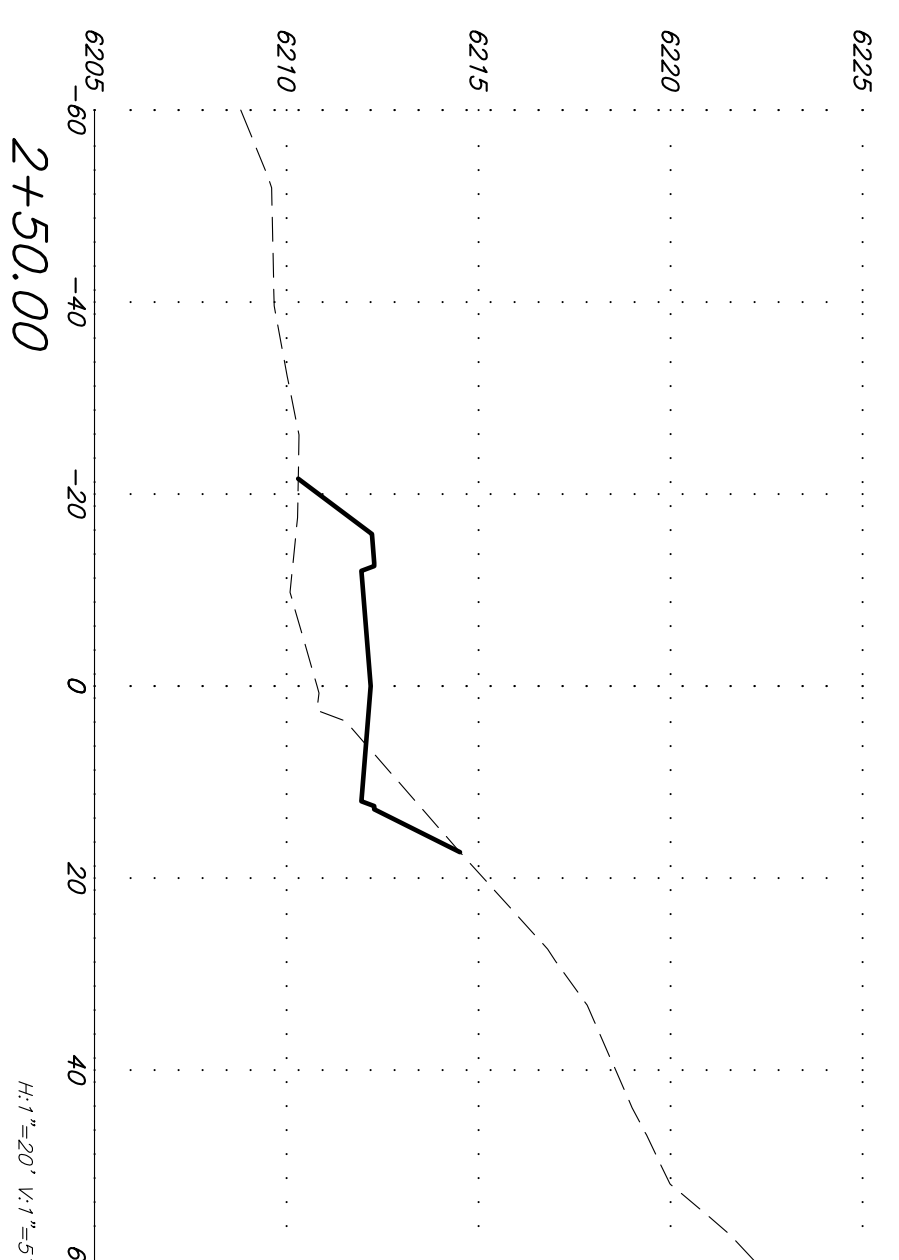
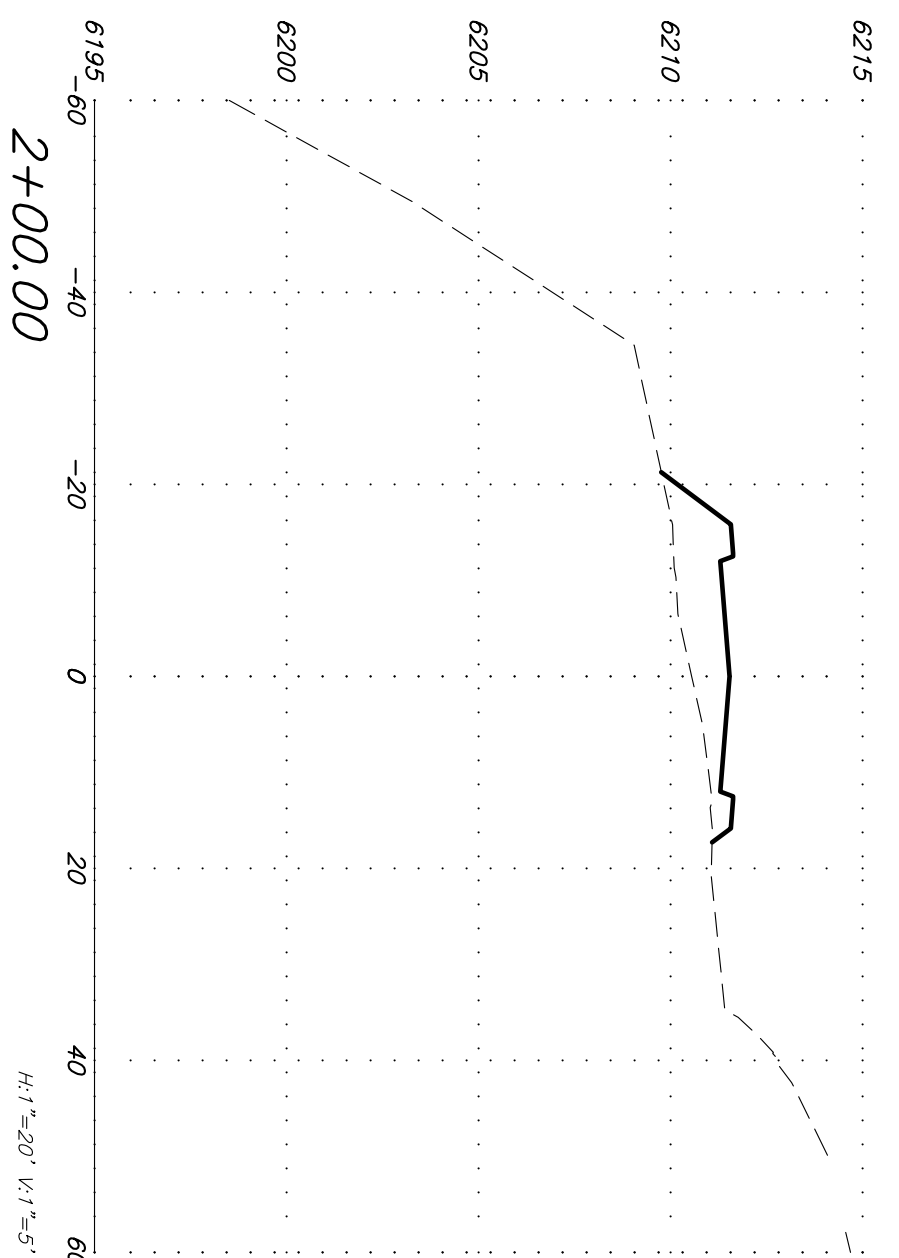
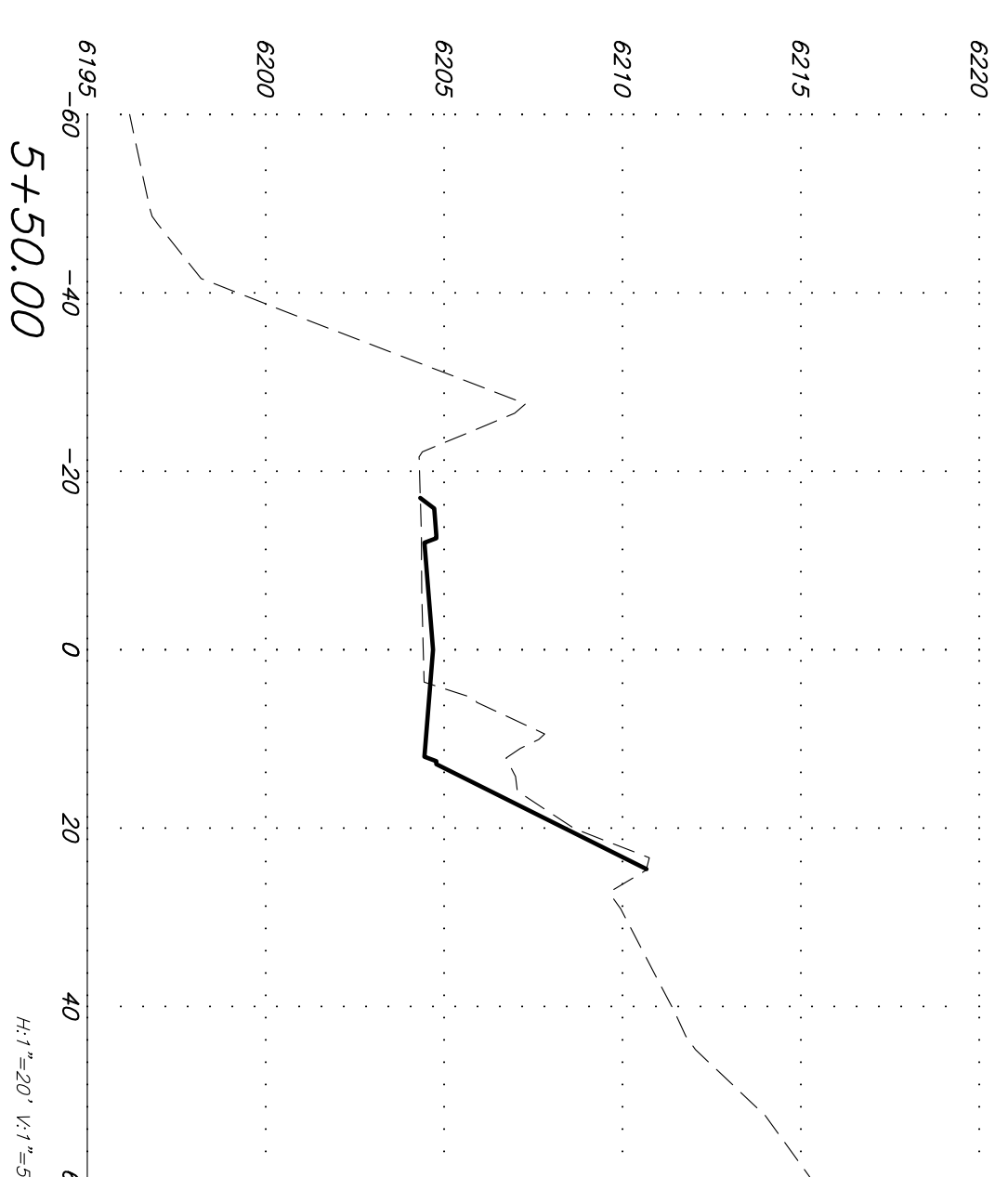
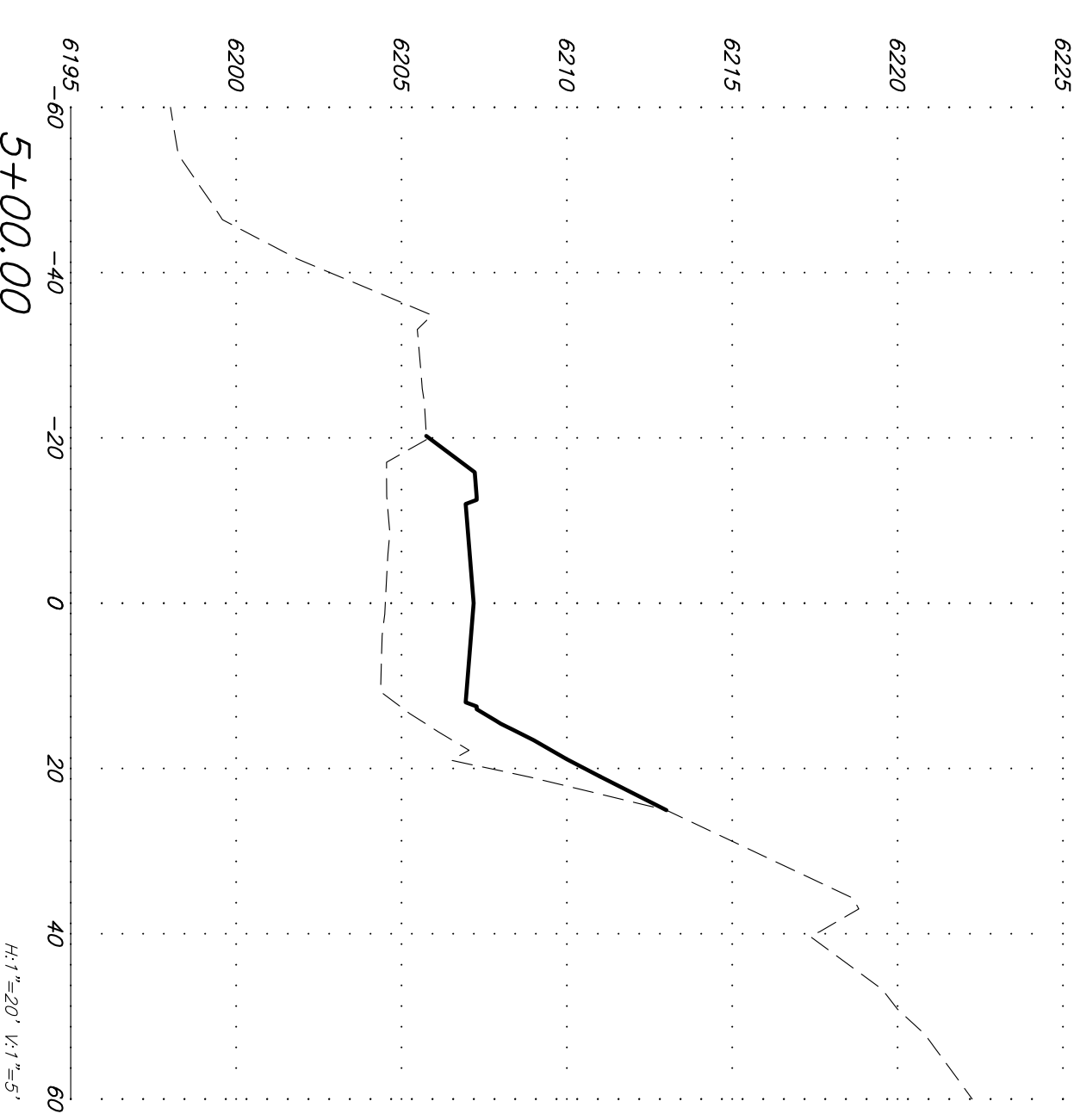
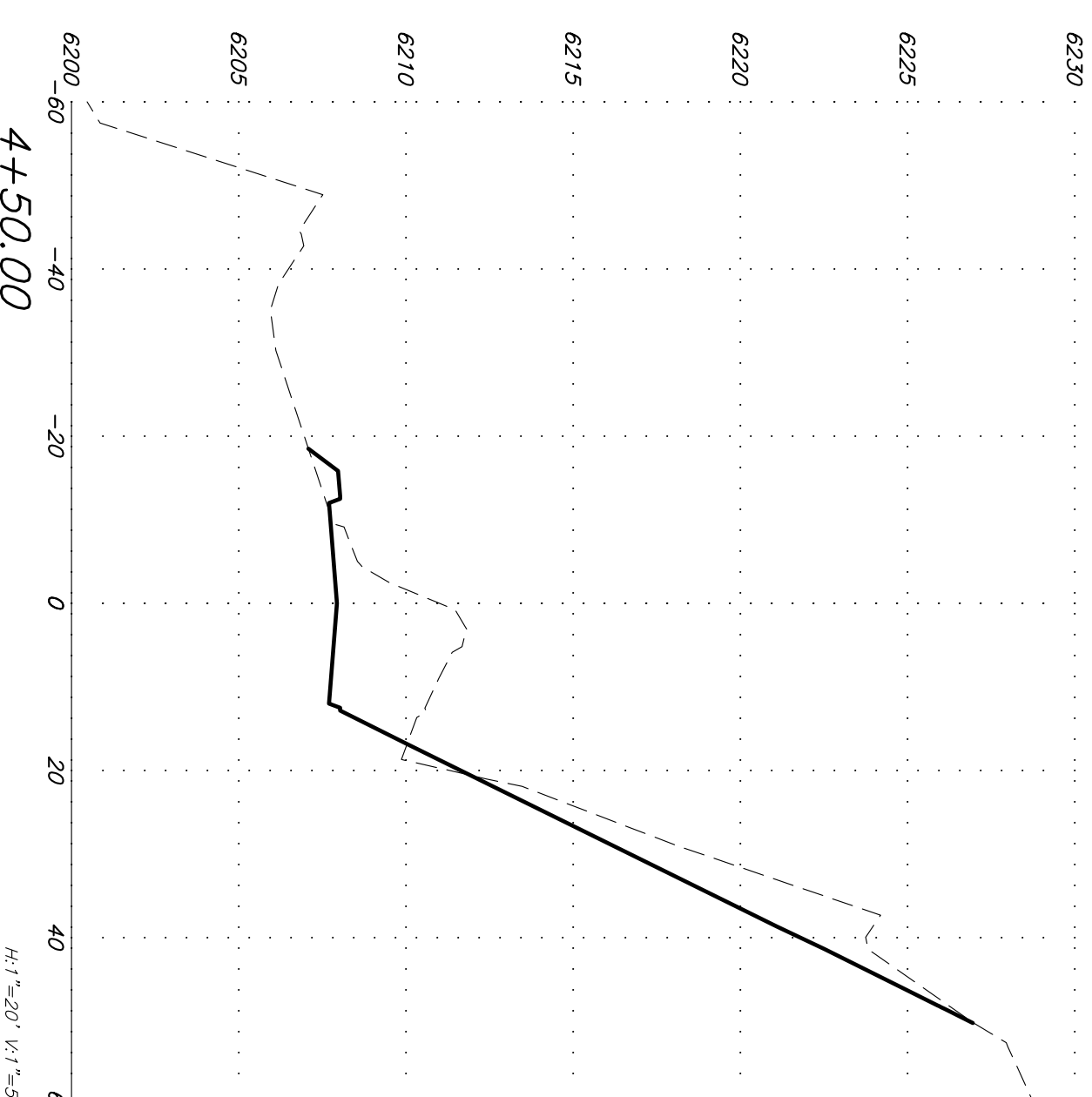
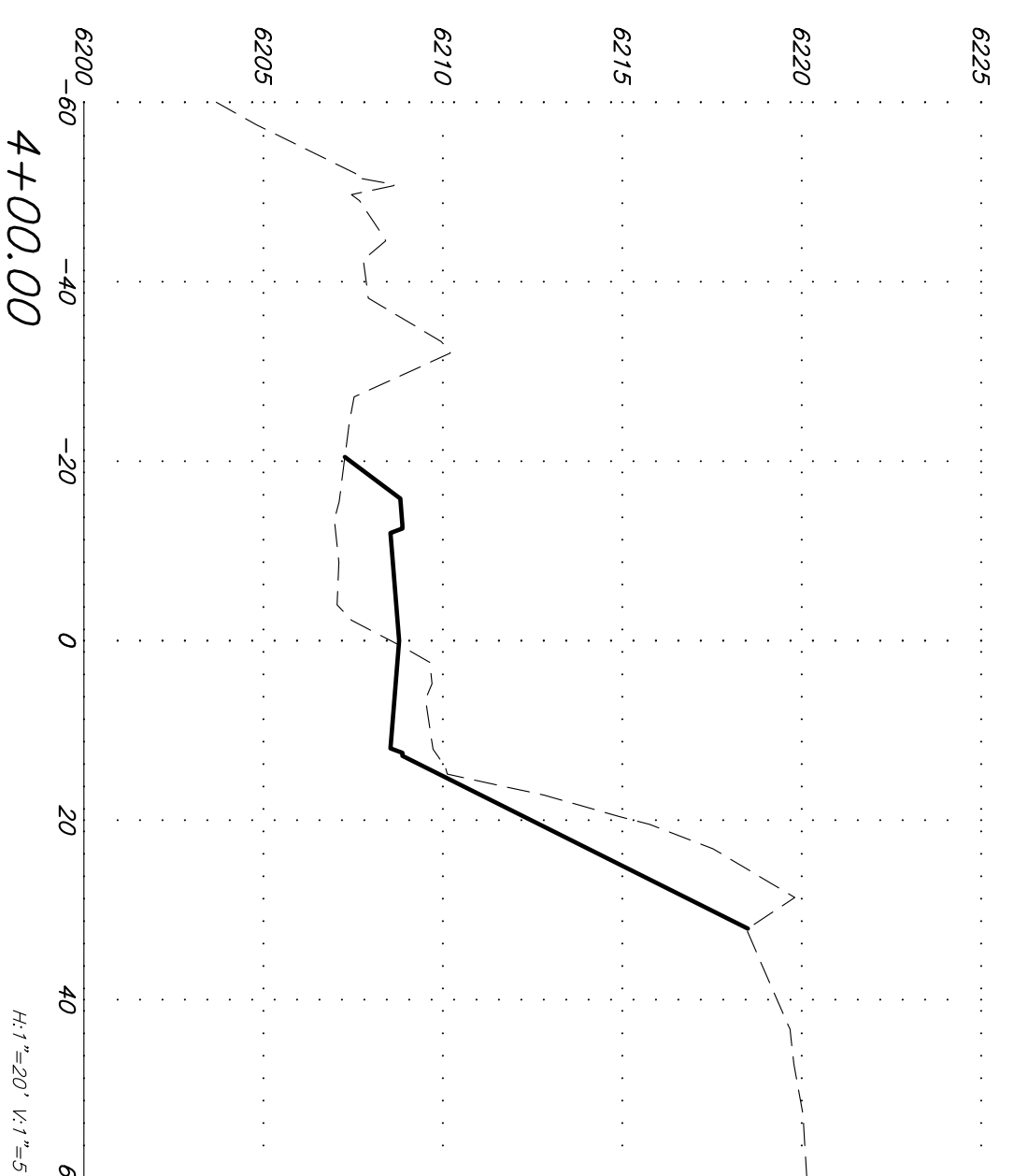
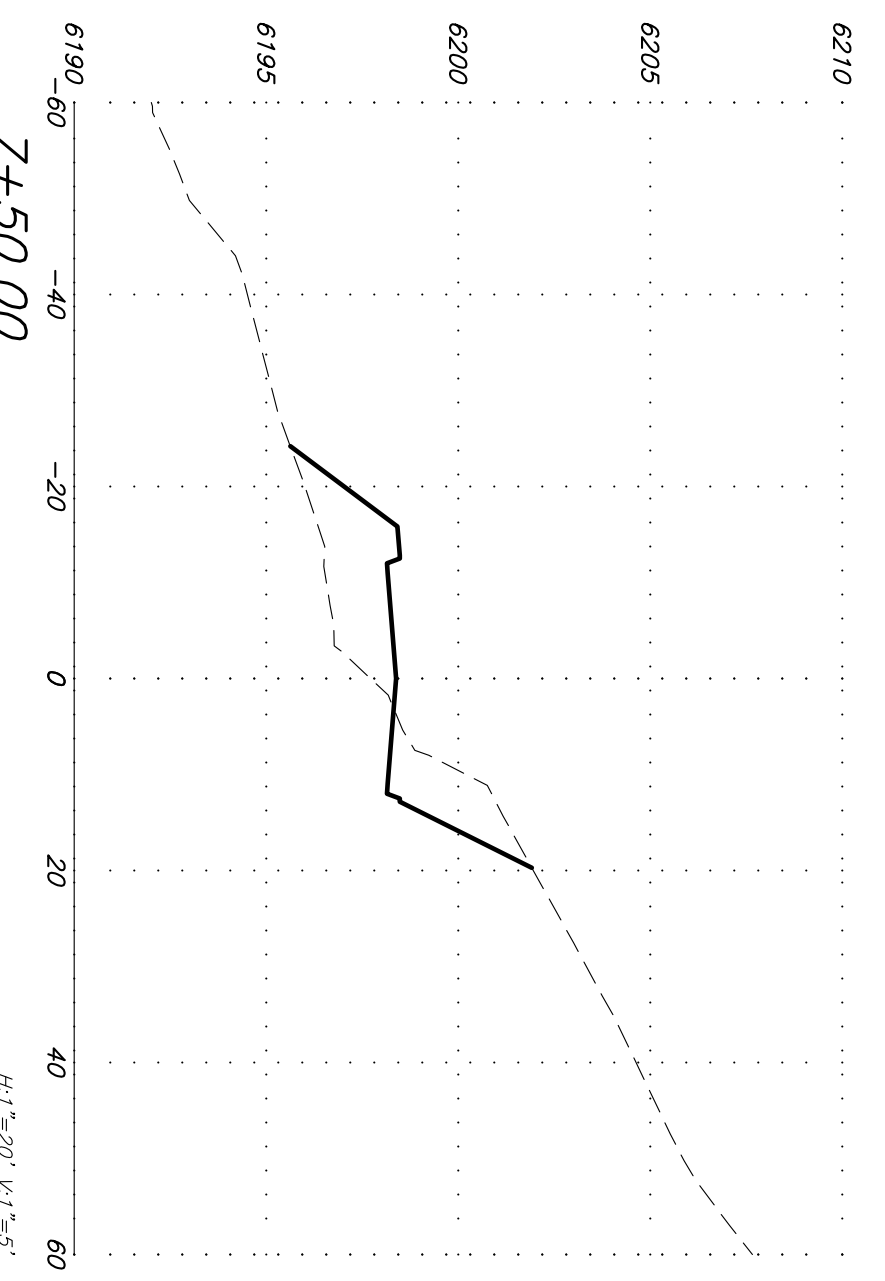
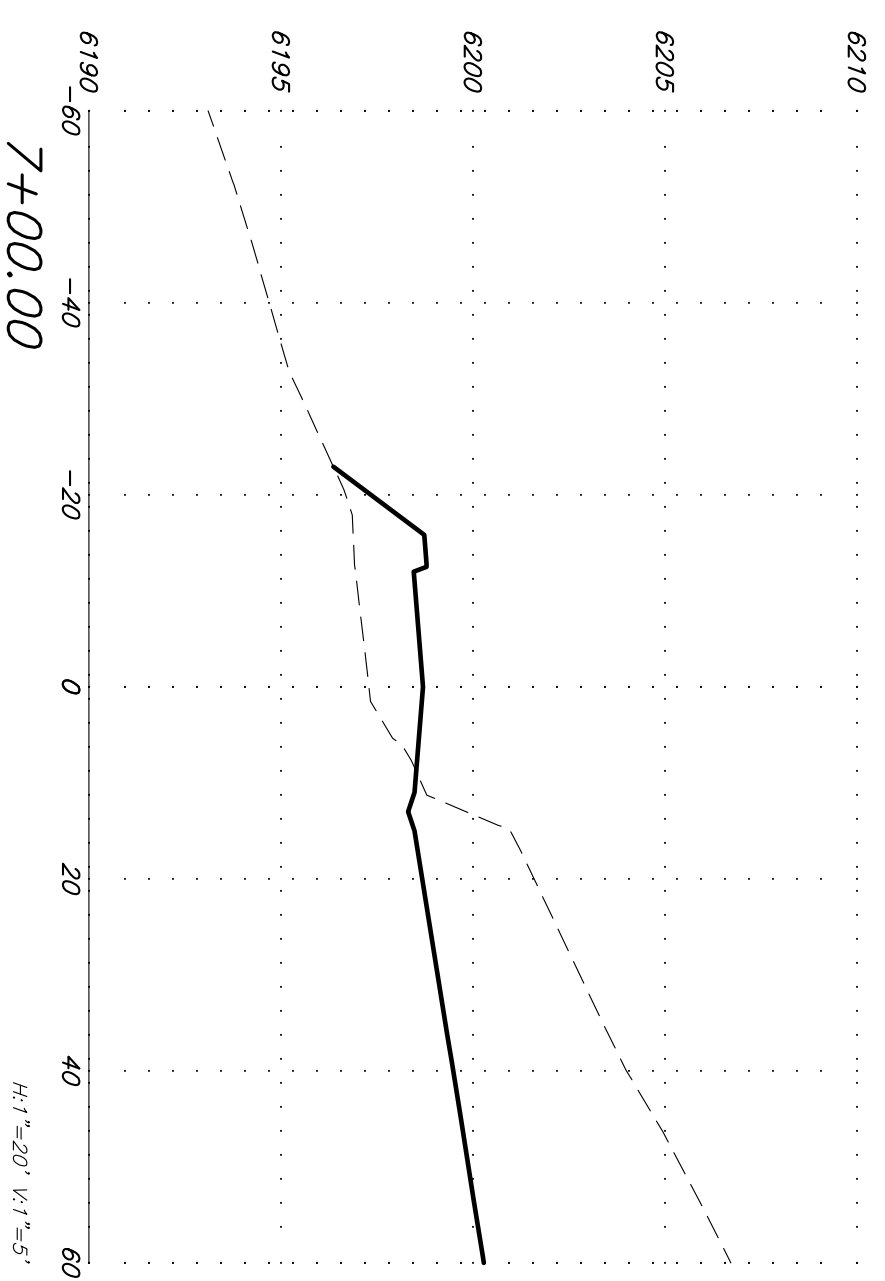
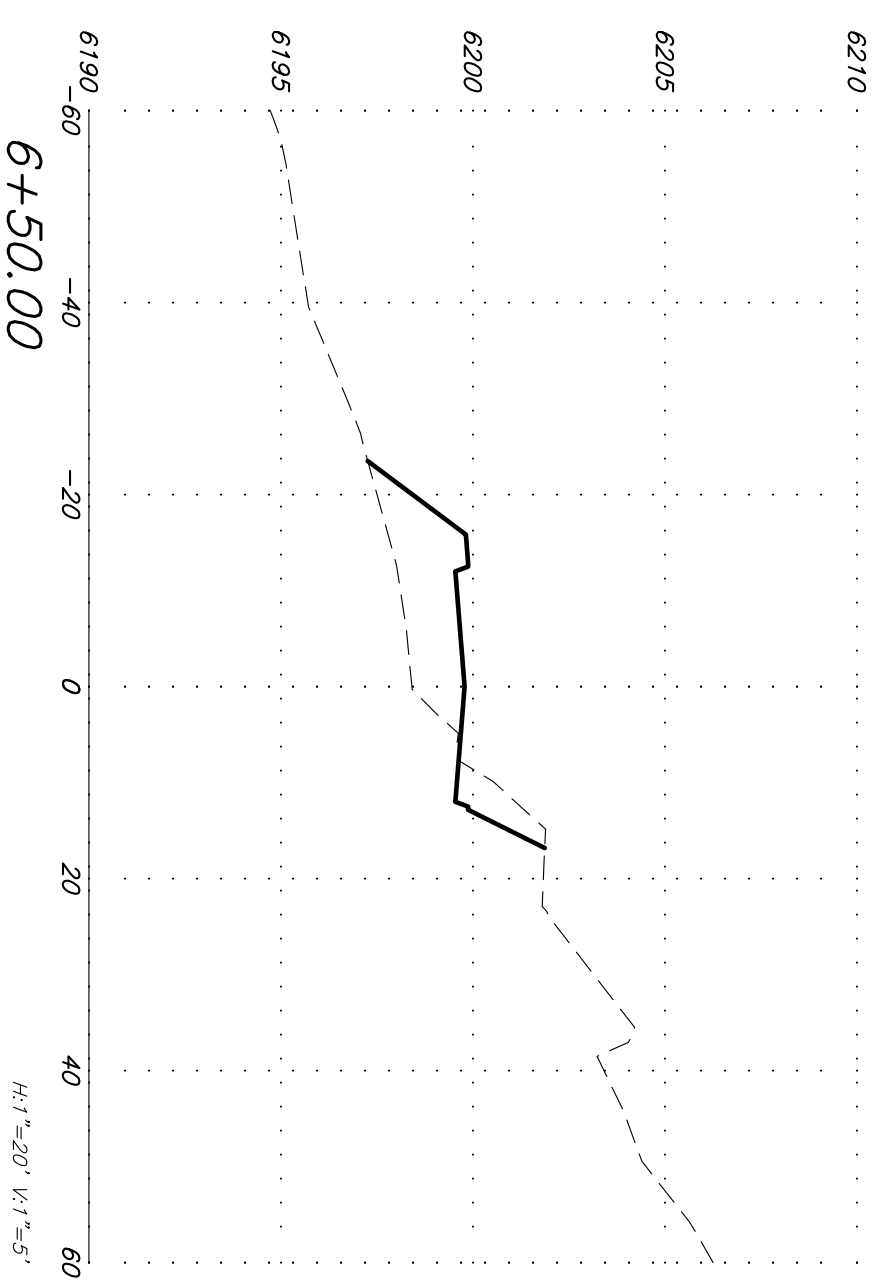
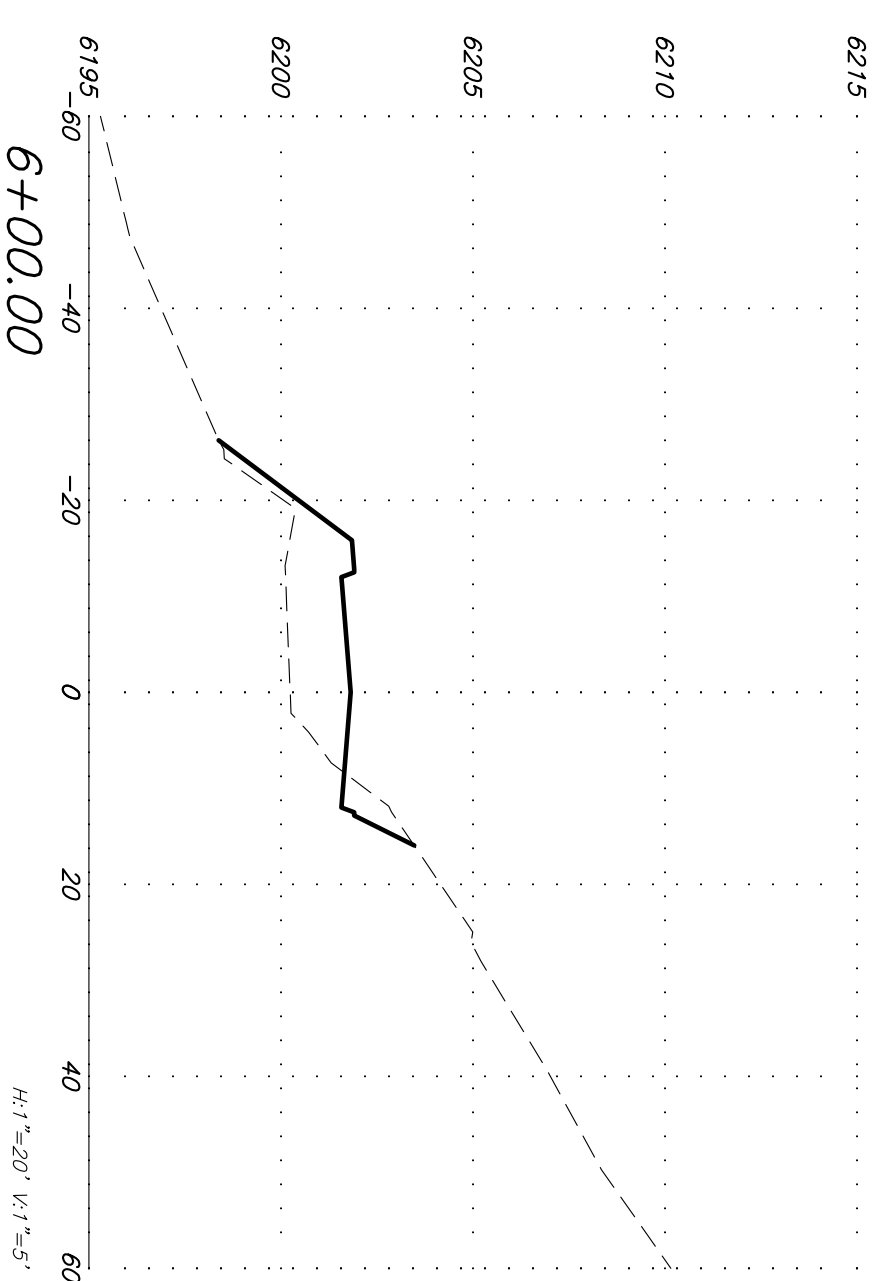
118 West Sixth Street, Suite 200
Glenwood Springs, CO 81601
970.945.1004 www.sgm-inc.com

PMGC2, LLC
Pinyon Mesa II Final Plat/Construction

#	Revision	Date	By
1			

Pinyon Mesa Drive
Cross Sections
Sta. 10+50 to 14+00

Job No.	01502H
Drawn by	XX
Date	6/22/16
QC	XX
PE	XX
File:	PinyonX3



Preliminary
Not For
Construction



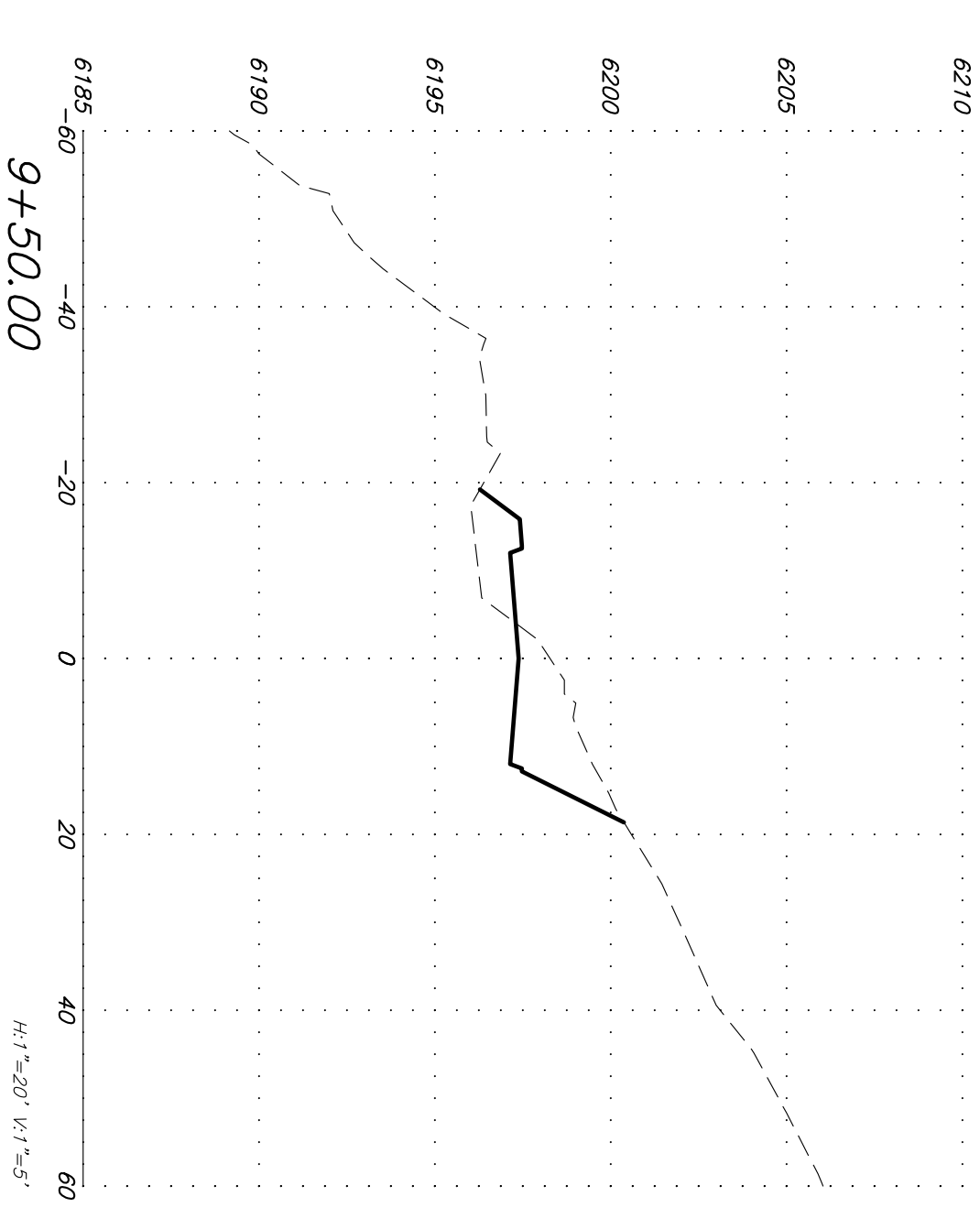
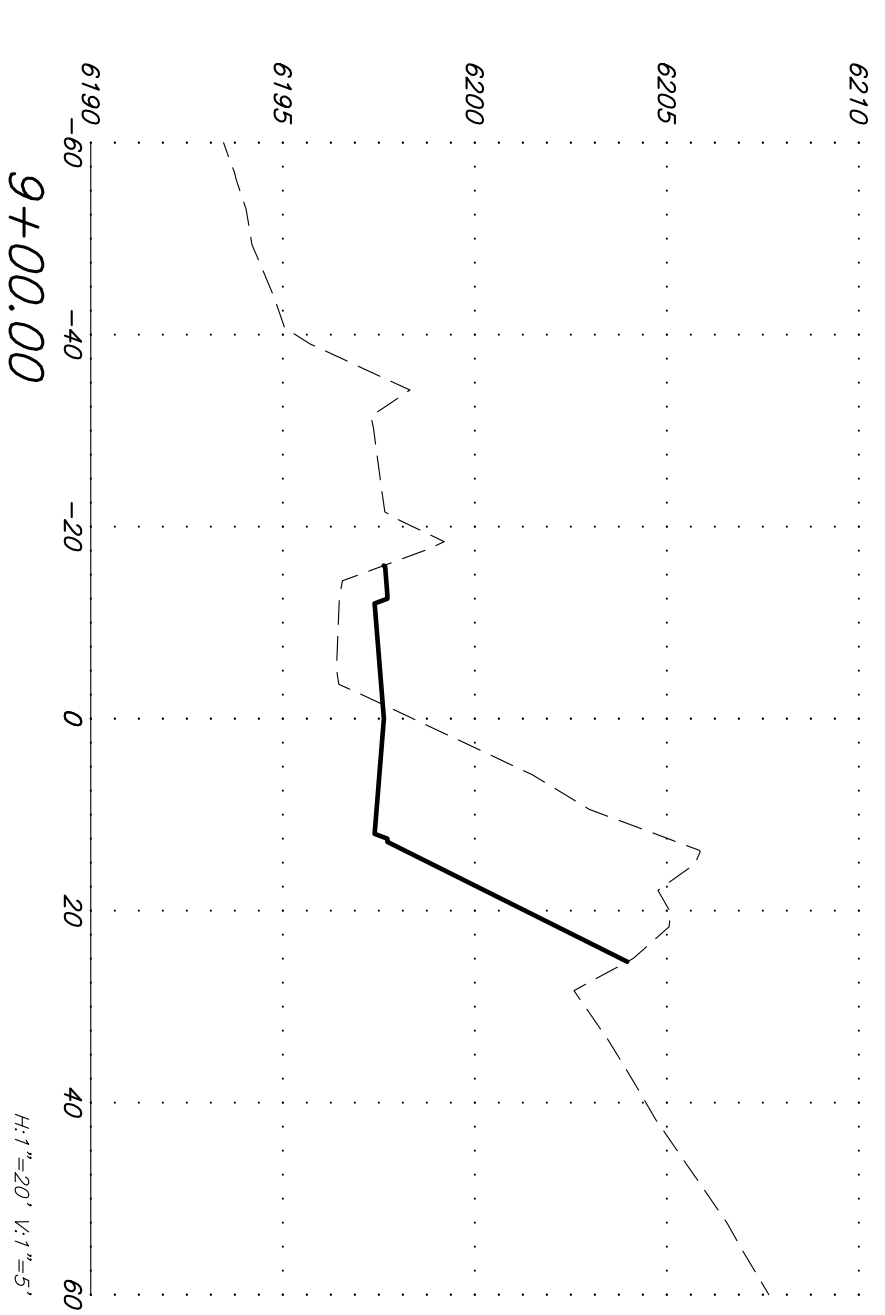
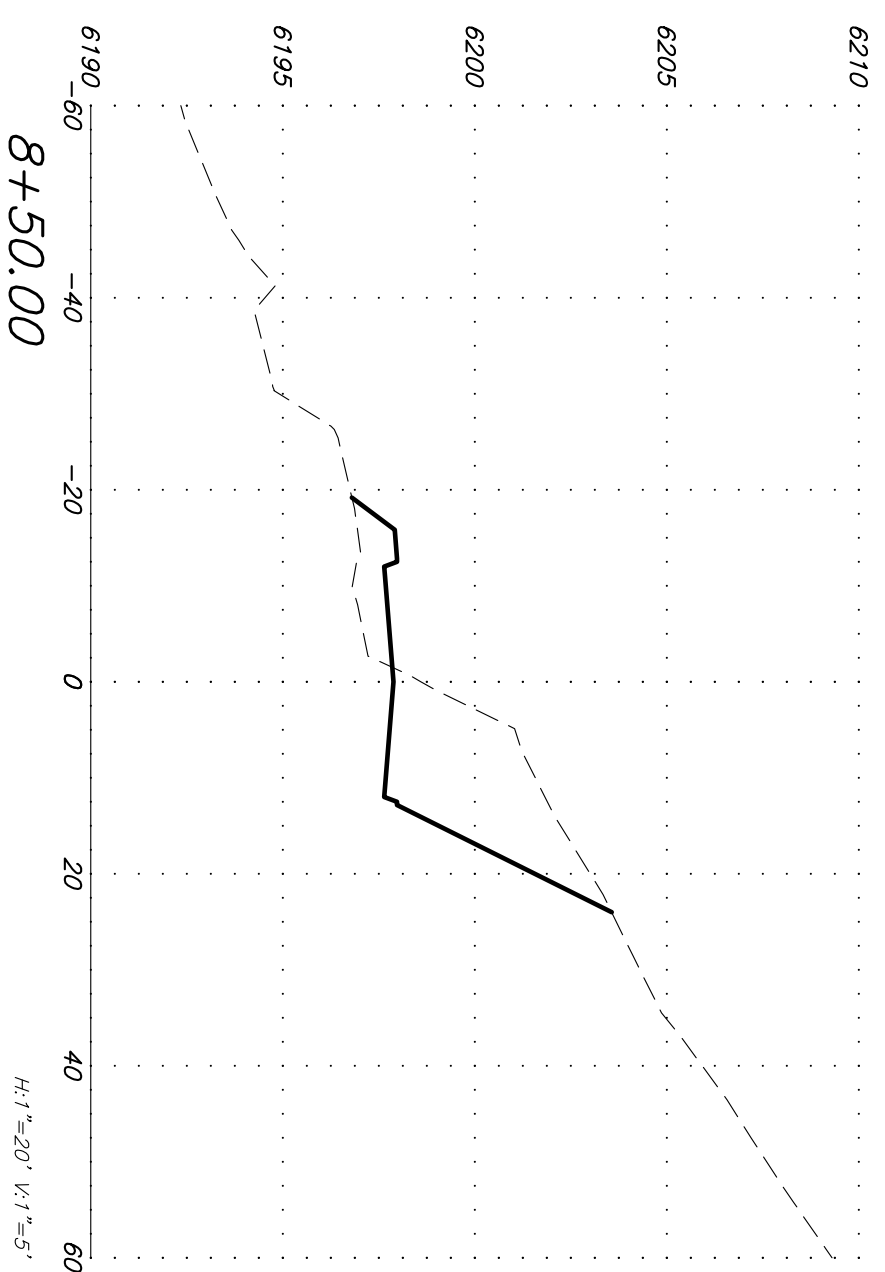
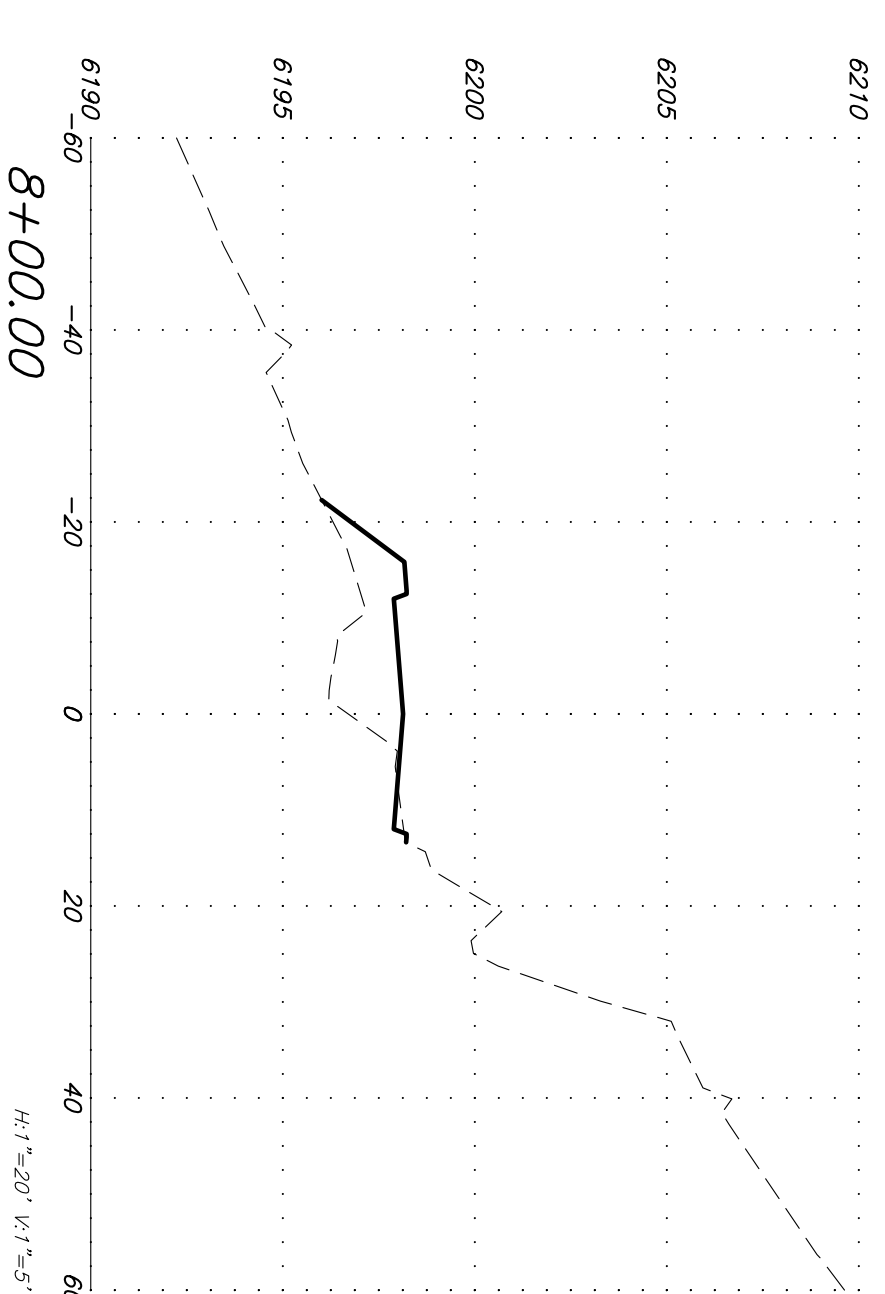
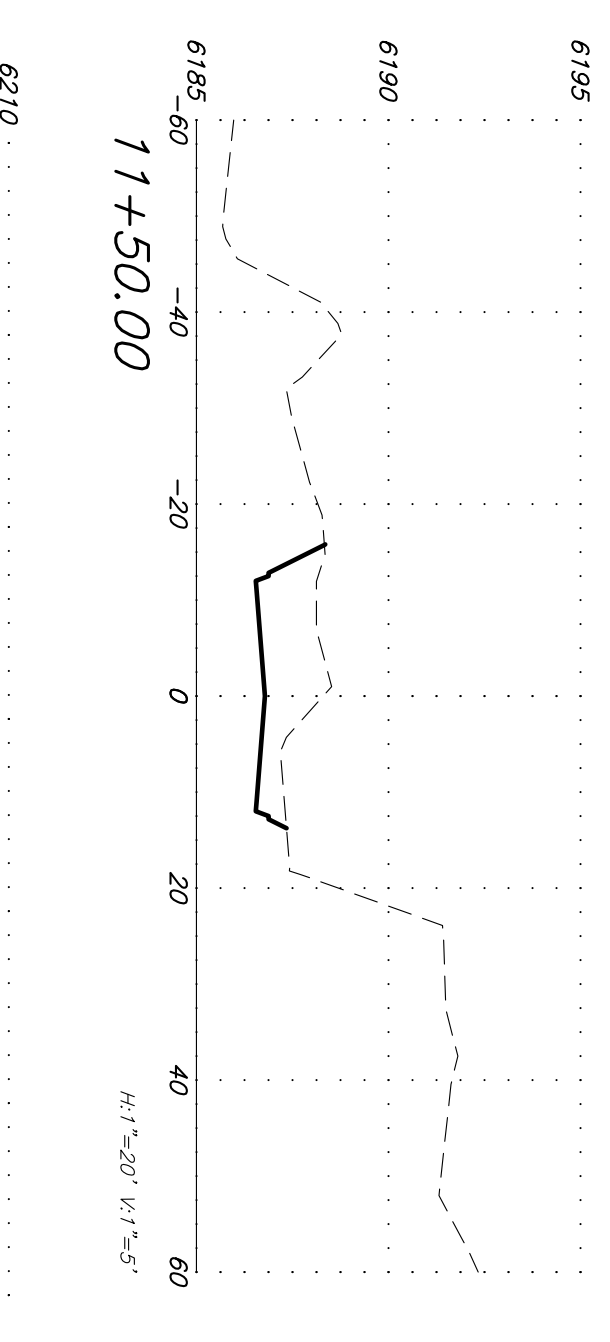
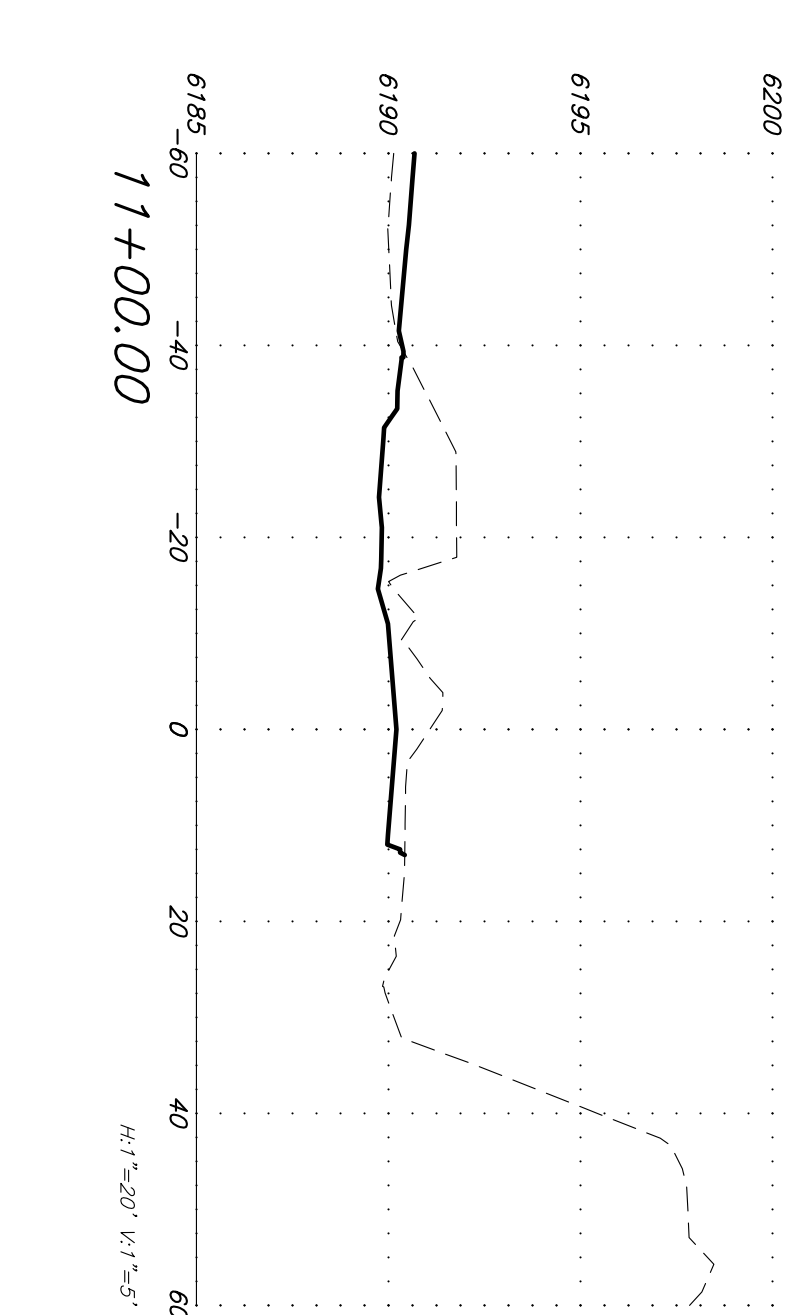
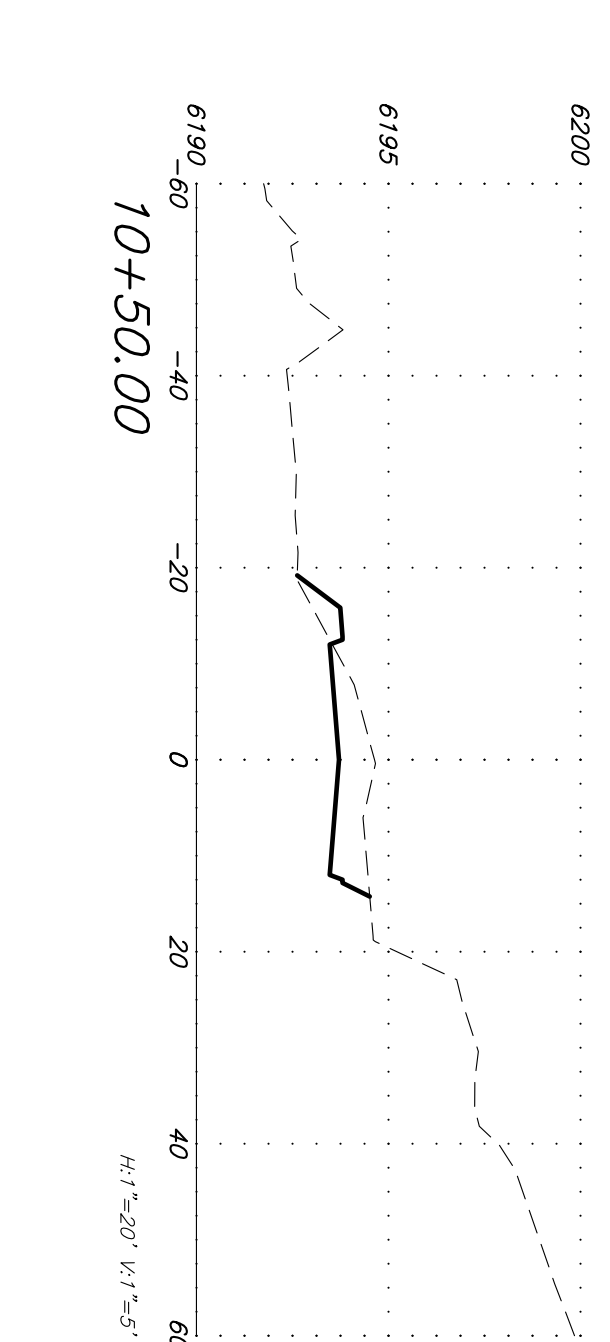
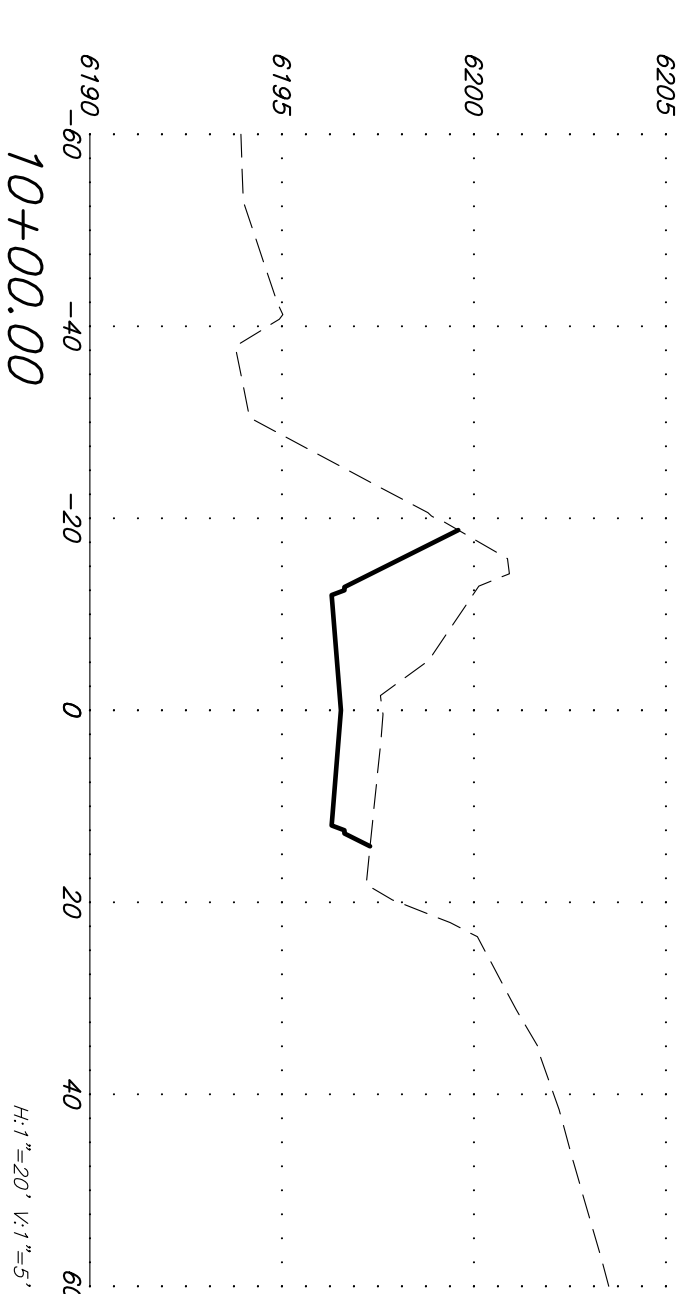
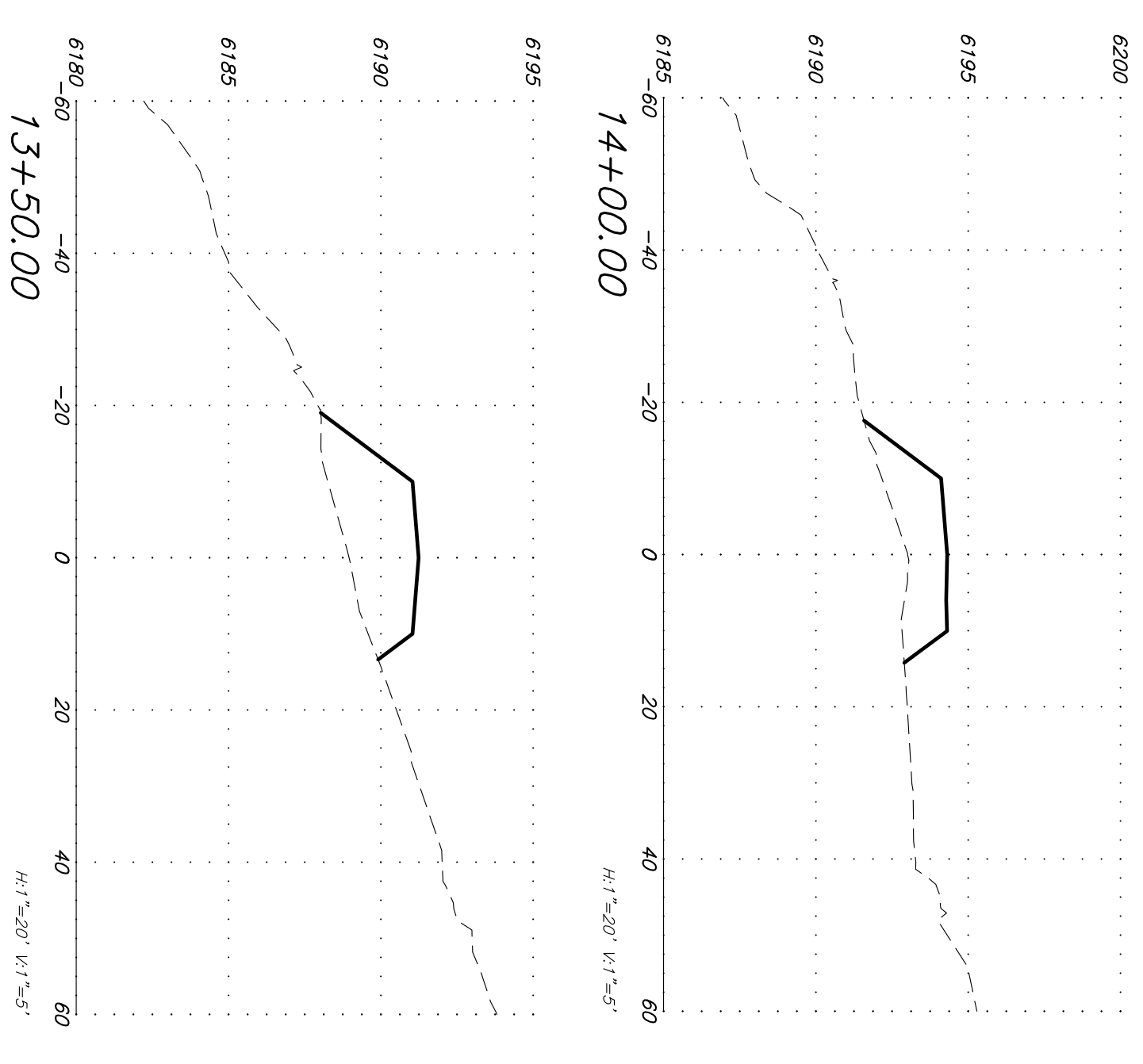
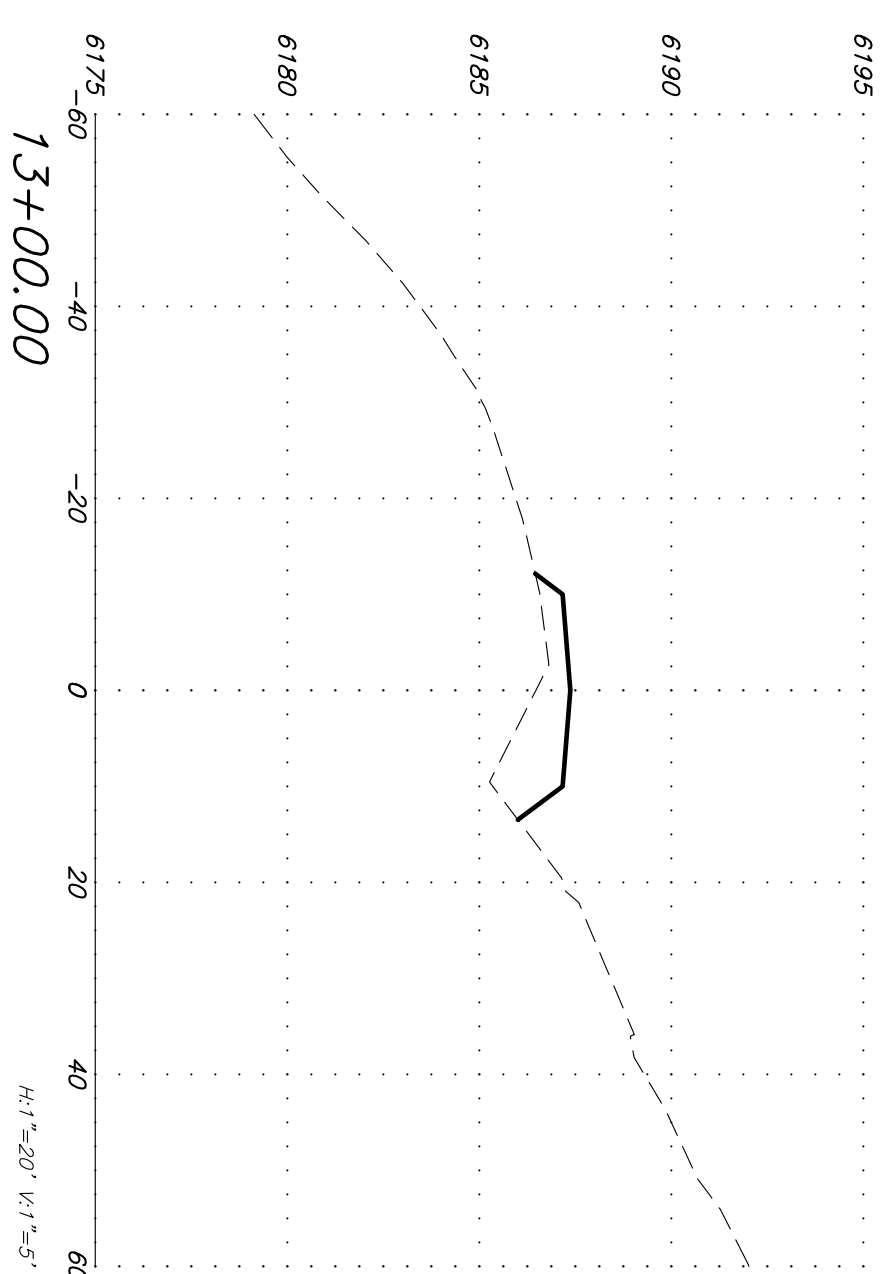
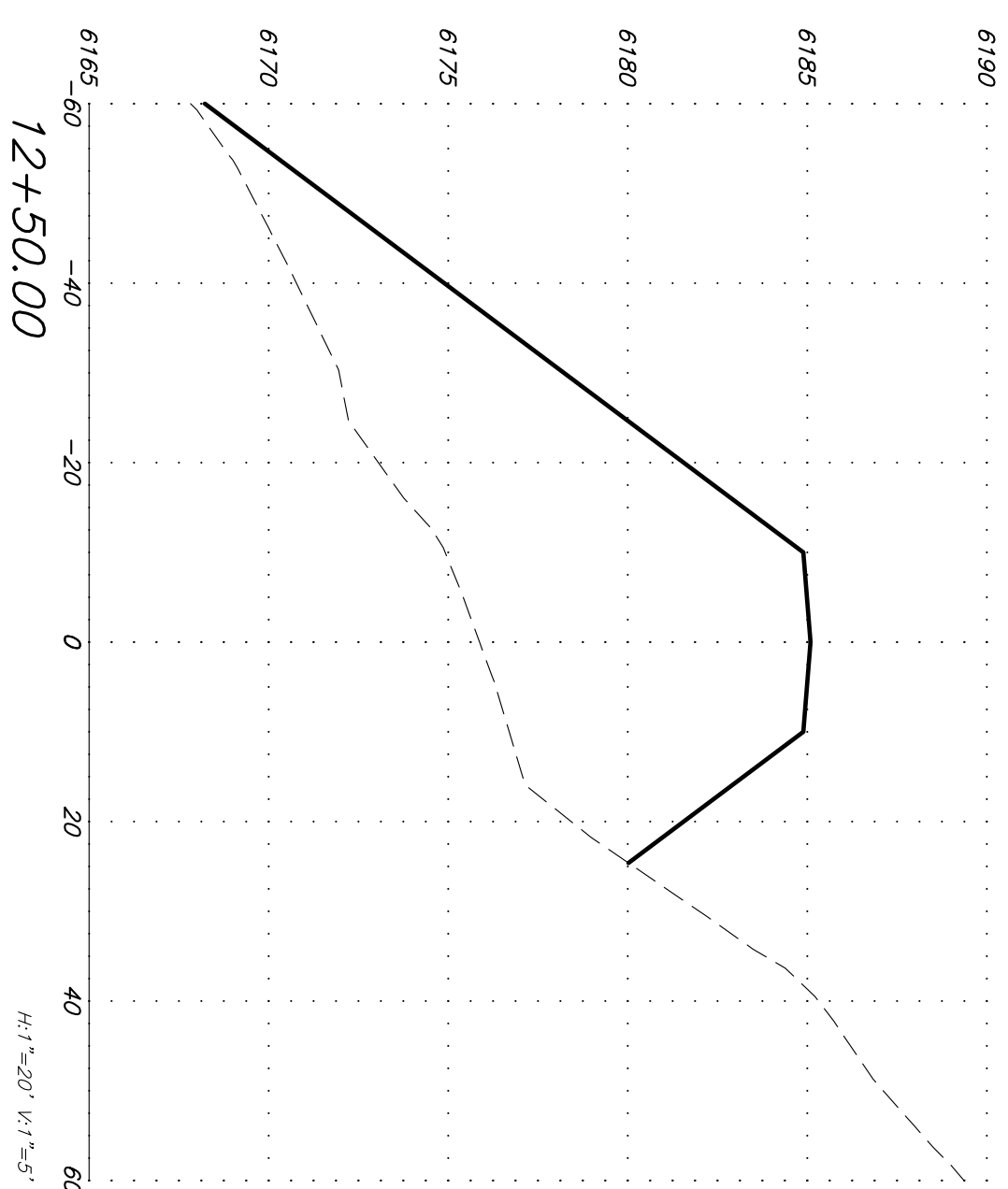
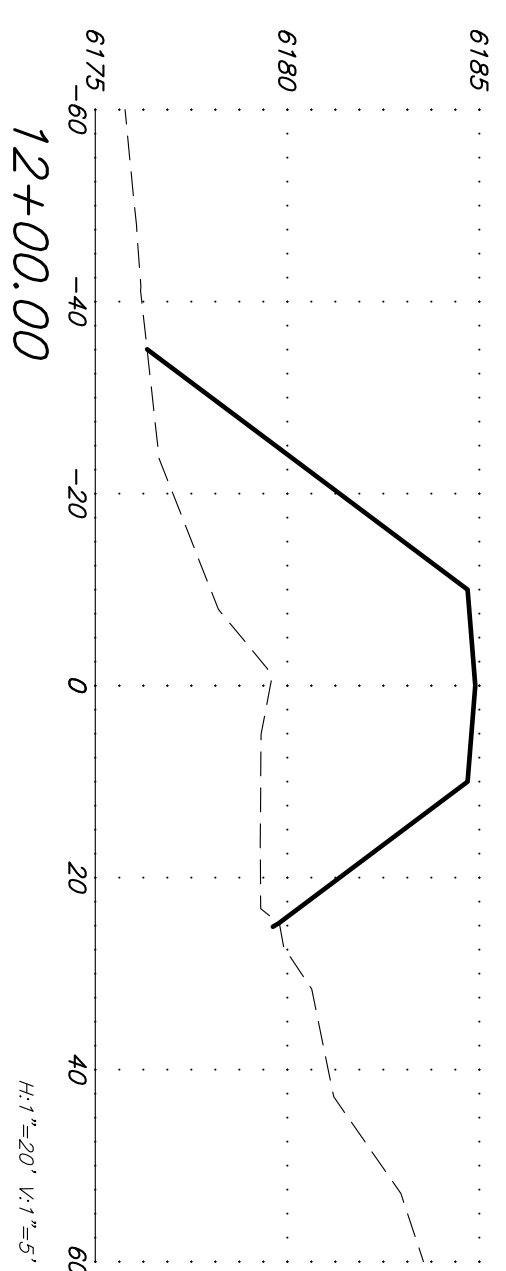
118 West Sixth Street, Suite 200
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PMGC2, LLC
Pinyon Mesa II Final Plat/Construction

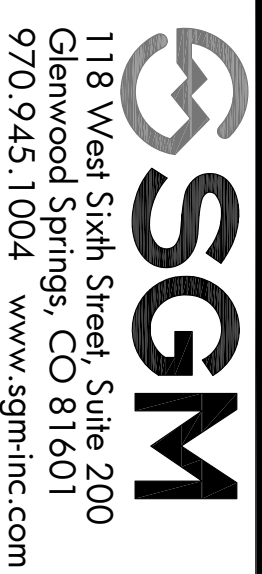
#	Revision	Date	By
1			

Paintbrush Way
Cross Sections
Sta. 2+00 to 7+50

Job No.	01502H
Drawn by	XX
Date:	6/22/16
QC:	XX PE: XX
File:	PaintbrushK



Preliminary
Not For
Construction



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Glenwood Springs, CO 81601
970.945.1004 www.sgm-inc.com

PMGC2, LLC
Pinyon Mesa II Final Plat/Construction

#	Revision	Date	By
1			

Paintbrush Way
Cross Sections
Sta. 8+00 to 14+00

Job No.	01502H
Drawn By	XX
Date	6/22/16
QC	XX PE
File	PaintbrushK

FINAL PLAT
Pinyon Mesa, Filing 2
 As Re-Subdivision of Tract A, Pinyon Mesa, Filing 1
 Situated in Section 7, T.7 S., R.88 W. of the 6th P.M.
 Garfield County, Colorado

Certificate of Dedication and Ownership:
 The undersigned, PMGC 2 LLC being sole Owner(s) in fee simple of all that real property situated in Garfield County, described as follows:
 PARCEL A, PINYON MESA, FILING 1, AS SHOWN ON THE PLAT THEREOF, RECORDED AS RECEPTION NO. 734761 OF THE GARFIELD COUNTY RECORDS, CONTAINING 33.798 ACRES, MORE OR LESS, more particularly described as follows:

A TRACT OF LAND SITUATE IN SECTION 7, TOWNSHIP 7 SOUTH, RANGE 88 WEST OF THE 6TH PRINCIPAL MERIDIAN, GARFIELD COUNTY, COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
 BEGINNING AT THE SW CORNER OF LOT 11 OF SAID SECTION 7
 THENCE N 00°32'01"E, 677.46 FEET ALONG THE WEST LINE OF SAID LOT 11 TO THE SE CORNER OF VAN RAND PARK, COUNTY OF GARFIELD, STATE OF COLORADO ACCORDING TO THE PLAT THEREOF RECORDED AS RECEPTION NO. 265177 OF THE RECORDS OF THE CLERK AND RECORDER OF GARFIELD COUNTY, COLORADO;
 THENCE N 00°36'37"E, 302.75 FEET ALONG THE EAST LINE OF SAID VAN RAND PARK, AND A NORTHERLY PROJECTION THEREOF, TO A POINT BEING 30 FEET SOUTHERLY OF THE CENTERLINE OF THE PAVED SURFACE OF COUNTY ROAD 114;
 THENCE ALONG A LINE 30 FEET SOUTHERLY OF THE CENTERLINE OF THE PAVED SURFACE OF COUNTY ROAD 114 THE FOLLOWING COURSES:
 THENCE S 40°18'31"E, 166.87 FEET;
 THENCE 515.89 FEET ALONG THE ARC OF A 334.71 FEET RADIUS CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 88°18'40" AND SUBTENDING A CHORD BEARING 84°27'51"E 466.32 FEET;
 THENCE N 51°22'49"E, 137.77 FEET;
 THENCE 297.88 FEET ALONG THE ARC OF A 2805.91 FEET RADIUS CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 6°04'58" AND SUBTENDING A CHORD BEARING N 54°25'16"E 297.74 FEET;
 THENCE N 57°27'47"E, 126.76 FEET;
 THENCE 287.77 FEET ALONG THE ARC OF A 299.84 FEET RADIUS CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 54°59'28" AND SUBTENDING A CHORD BEARING N 84°57'31"E 276.86 FEET;
 THENCE S 67°32'45"E, 61.03 FEET;
 THENCE 162.40 FEET ALONG THE ARC OF A 445.95 FEET RADIUS CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 20°51'53" AND SUBTENDING A CHORD BEARING 57°06'49"E 161.50 FEET;
 THENCE S 46°40'52"E, 196.40 FEET;
 THENCE LEAVING SAID COUNTY ROAD CENTERLINE ON A COURSE BEARING S 28°42'57"W 254.16 FEET;
 THENCE S 05°01'24"W, 563.51 FEET;
 THENCE S 80°35'36"W, 50.00 FEET;
 THENCE S 09°24'24"E, 75.99 FEET;
 THENCE 69.27 FEET ALONG THE ARC OF A NON TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 375.00 FEET, A CENTRAL ANGLE OF 10°35'03", AND SUBTENDING A CHORD BEARING 89°42'29"W 69.17 FEET;
 THENCE S 05°00'00"W, 67.93 FEET TO A POINT ON THE SOUTH LINE OF GOVERNMENT LOT 10 OF SAID SECTION 7;
 THENCE N 89°08'39"W, 1367.38 FEET ALONG THE SOUTH LINE OF GOVERNMENT LOTS 10 AND 11 TO THE SW CORNER OF SAID LOT 11, THE POINT OF BEGINNING.

has caused the described real property to be surveyed, laid out, platted and subdivided into lots and blocks as shown on this Plat under the name and style of, PINYON MESA, FILING 2, a subdivision in the County of Garfield. The Owner does hereby dedicate and set apart all of the streets and roads as shown on the accompanying Plat to the use of the public forever, and hereby dedicates to the Public Utilities those portions of said real property which are labeled as utility easements on the accompanying Plat as perpetual easements for the installation and maintenance of utilities, irrigation and drainage facilities including, but not limited to, electric lines, gas lines and telephone lines, together with the right to trim interfering trees and brush, with perpetual right of ingress and egress for installation and maintenance of such lines. Such easement and rights shall be utilized in a reasonable and prudent manner. All expense for street paving or improvements shall be furnished by the seller or purchaser, not by the County of Garfield.

EXECUTED this _____ day of _____, A.D., 2016.

Owner: PMGC 2 LLC
 Address: 6300 Ridgela Place, Suite 900
 Fort Worth, TX 76116

STATE OF COLORADO)
) ss
 COUNTY OF GARFIELD)

The foregoing Certificate of Dedication and Ownership was acknowledged before me this _____ day of _____, A.D., 20____, by _____ Owner.

My commission expires: _____

Witness my hand and official seal.

 Notary Public

County Commissioners' Certificate:
 This Plat is approved by the Board of County Commissioners of Garfield County, Colorado, this _____ day of _____, A.D., 20____, for filing with the Clerk and Recorder of Garfield County and for conveyance to the County of the public dedications shown hereon, subject to the provision that approval in no way obligates Garfield County for the financing or construction of improvements on lands, public roads, highways or easements dedicated to the public, except as specifically agreed to by the Board of County Commissioners by subsequent resolution. This approval shall in no way obligate Garfield County for the construction, repair or maintenance of public roads, highways or any other public dedications shown hereon.
 Chairman, Board of County Commissioners

 Chairman, Board of County Commissioners
 Garfield County, Colorado

Witness my hand and seal of the County of Garfield.

ATTEST: _____
 County Clerk

County Surveyor's Certificate:
 Approved for content and form only and not the accuracy of surveys, calculations or drafting, pursuant to C.R.S. § 38-51-101 and 102, et seq.
 DATED this _____ day of _____, A.D., 20____

 Garfield County Surveyor

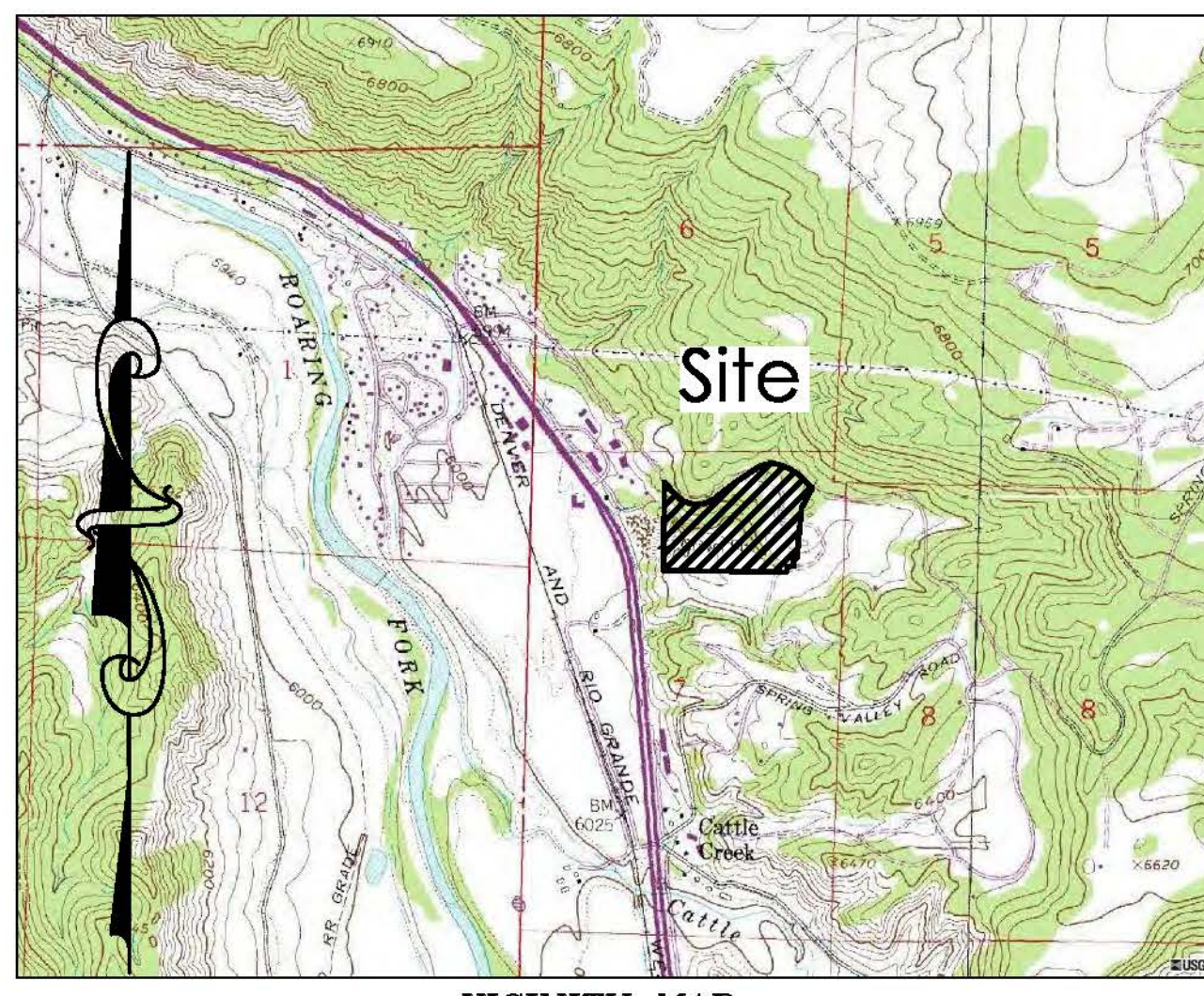
Clerk and Recorder's Certificate:
 This Plat was filed for record in the Office of the Clerk and Recorder of Garfield County, Colorado, at _____ o'clock _____ on this _____ day of _____, 20____, and is duly recorded as Reception No. _____

 Clerk and Recorder
 By: _____
 Deputy

LAND USE TABLE - FILING 2

EXISTING ZONING-PUD HIGH DENSITY SINGLE FAMILY	
LOTS (32 SINGLE FAMILY)	9.667 ac.±
ROADS	2.751 ac.±
OPEN SPACE	21.381 ac.±
SUBTOTAL	33.809 ac.±
TOTAL GROSS DENSITY: 32 UNITS : 9.667 ac.± = 1 UNIT : 0.302 ac.±	

Owner: PMGC 2 LLC
 6300 Ridgela Place, Suite 900
 Fort Worth, TX 76116
 Mineral Owners: No Severed Mineral Rights on Subject Property
 Lienholder: None



VICINITY MAP
 SCALE 1"=2000'

Certificate of Taxes Paid:
 I, the undersigned, do hereby certify that the entire amount of taxes and assessments due and payable as of _____, upon all parcels of real estate described on this Plat are paid in full.
 DATED this _____ day of _____, A.D., 20____.

 Garfield County Treasurer

Title Certificate:
 I, _____, an attorney licensed to practice law in the State of Colorado, or agent authorized by a title insurance company, do hereby certify that I have examined the Title to all lands shown upon this Plat and that Title to such lands is vested in _____, free and clear of all liens and encumbrances (including mortgages, deeds of trust, judgments, easements, contracts and agreements of record affecting the real property in this Plat), except as follows:

DATED this _____ day of _____, A.D., 20____

Title Company: _____
 Agent: _____
 OR
 Attorney: _____
 Colorado Attorney Registration No. _____

- Plat Notes:**
- The individual lot owners shall be responsible for the control of noxious weeds.
 - One (1) dog will be allowed for each residential unit and the dog shall be required to be confined within the owners property boundaries.
 - No open hearth solid-fuel fireplaces will be allowed anywhere within the subdivision. One (1) new solid-fuel burning stove as defined by C.R.S. 25-7-401, and the regulations promulgated thereunder, will be allowed in any dwelling unit. All dwelling units will be allowed an unrestricted number of natural gas burning stoves and appliances.
 - No further subdivision shall be allowed of a subdivided lot.
 - All exterior lighting shall be the minimum amount necessary, which shall be directed inward and downward, towards the interior of the subdivision. Provisions may be made to allow for safety lighting that may be seen beyond the property boundaries.
 - Colorado is a "Right-to-Farm" State pursuant to C.R.S. 35-3-101, et seq. Landowners, residents and visitors must be prepared to accept the activities, sights, sounds and smells of Garfield County's agricultural operations as a normal and necessary aspect of living in a County with a strong rural character and a healthy ranching sector. Those with an urban sensibility may perceive such activities, sights, sounds and smells only as an inconvenience, eyesore, noise and odor. However, State Law and County policy provide that ranching, farming or other agricultural activities and operations within Garfield County shall not be considered to be nuisances so long as operated in conformance with the law and in a non-negligent manner. Therefore, all must be prepared to encounter noises, odor, lights, mud, dust, smoke, chemicals, machinery on public roads, livestock on public roads, storage and disposal of manure, and the application by spraying of otherwise of chemical fertilizers, soil amendments, herbicides, and pesticides, any one or more of which may naturally occur as a part of legal and non-negligent agricultural operations.
 - All owners of land, whether ranch or residence, have obligations under State law and County regulations with regard to the maintenance of fences and irrigation ditches, controlling weeds, keeping livestock and pets under control, using property in accordance with zoning, and other aspects of using and maintaining property. Residents and landowners are encouraged to learn about these rights and responsibilities and act as good neighbors and citizens of the County. A good introductory source for such information is "A Guide to Rural Living & Small Scale Agriculture" put out by the Colorado State University Extension Office in Garfield County.
 - All lots shall require site specific geotechnical studies before a building permit will be issued by the County Building Department and all foundations shall be designed by a professional engineer licensed to practice in Colorado. Site design shall be in compliance with the recommendations contained in the site specific geotechnical report as well as the Supplemental Geotechnical Study, Proposed Residential Development, Elk Springs Ranch Lower Bench Area, County Road 114, Garfield County, Colorado prepared by H.P. Geotech, Job No. 105652, April 10, 2006. A copy of the Geotech report may be obtained from the Pinyon Mesa HOA.
 - Complying with the following recommendations concerning water management and surface drainage are important for the long term performance of home foundations: Irrigation water lines should not be laid near foundation walls or concrete slabs, or sprinklers allowed to splash against them. Landscapers should also be notified of the susceptibility to water sensitive soils at this site and adjust their designs accordingly. Surface water should be directed away from building foundations as recommended by the soils engineer. Surface water should not be concentrated and diverted onto steep down slopes unless they are adequately protected against erosion.
 - The recommendations of the Colorado State Forest Service and the Fire Chief as set forth in the Supplemental Declarations dated September 26, 1992 et seq., shall be followed in the construction of all structures. There are specific recommendations regarding defensible space that apply to structures on Lots 17-20 and 36-48. A copy of the recommendations may be obtained from the Pinyon Mesa HOA.
 - All lots shall obtain central potable water service from the Elk Springs water facilities, which facilities shall be managed by the Red Canyon Water Company, a Colorado corporation, pursuant to that Water Tap Assignment and Water Delivery Agreement dated June 19, 2006 recorded at Book 1825, Page 116, Garfield County, Colorado.
 - All lots depicted hereon lie within the Spring Valley Sanitation District and shall obtain central sewer service pursuant to the Rules and Regulations of the District and pursuant to that Sewer Tap Assignment Agreement dated June 18, 2006 and recorded in Book 1825 at Page 112, Garfield County, Colorado.
 - This subdivision is subject to the terms and conditions of the Declaration of Restrictive Covenants recorded as Reception No. 703005 and the Declaration of Covenants, Conditions and Restrictions for Pinyon Mesa, recorded as Reception No. 734762 in the office of the Garfield County Clerk and Recorder.
 - Zone District Parameters:

ZONE DISTRICT	CONDITIONAL USES	MINIMUM LOT AREA	MAXIMUM LOT COVERAGE	MINIMUM SETBACKS	MAXIMUM HEIGHT	MAXIMUM FLOOR AREA
HIGH DENSITY SINGLE FAMILY (HDSF)	HOME OCCUPATION	10,000 sq.±	25%	FRONT: REAR: 25' SIDES: 10'	28 FEET	3,294 sq.ft.

- Survey Notes:**
- Basis of Bearings: Bearings shown hereon are based on a bearing of S.89°07'48"E. between BLM Aluminum Caps found at the Southwest Corner of Government Lot 11, Section 7, and the North Sixteenth Corner common to Sections 7 and 8, as shown on sheet 2.
 - Date of field survey: June, 2016.
 - Units of linear measurements are deployed in US Survey Feet.
 - SGM will not be responsible for any changes made to this document after it leaves our possession. Any copy, facsimile, etc., of this document must be compared to the original signed, sealed and dated document to insure the accuracy of the information shown on any such copy, and to insure that no such changes have been made.
 - Property descriptions shown hereon are based on the Final Plat of Pinyon Mesa, Filing 1, recorded as Reception No. 734761 of the Garfield County records.
 - Fences shown hereon have been shown for general reference and do not necessarily depict limits of ownership.

The property shown hereon is subject to all easements, rights-of-way, building setbacks or other restrictions of record, as such items may affect this property. This survey does not represent a title search by this surveyor to determine ownership or to discover easements or other encumbrances of record. All information pertaining to ownership, easement and other encumbrances of record has been taken from the title insurance commitment issued by Land Title Guarantee Company, Order No. ABS63010202-12, having a date of May 20, 2016.

Notice:
 According to Colorado Law, you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any legal action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

SGM
 118 West Sixth Street, Suite 200
 Greenwood Springs, CO 81601
 970.945.1004 www.sgm-inc.com

Pinyon Mesa, Filing 2
 Garfield County, CO

#	Revision	Date	By
1			
2			
3			
4			
5			

Final Plat

Job No.	01502	1
Drawn by:	bb/dac	
Date:	7/14/16	
Approved:	bb	3
File:	PinyonMesaFiling2-FinalPlat	

FINAL PLAT
Pinyon Mesa, Filing 2
 As Re-Subdivision of Tract A, Pinyon Mesa, Filing 1
 Situated in Section 7, T.7 S., R.88 W. of the 6th P.M.
 Garfield County, Colorado

- LINE TABLE -		
LINE #	BEARING	DISTANCE
L1	N15°31'45"E	127.81'
L2	N66°01'58"W	70.00'
L3	S23°58'02"W	50.00'
L4	S66°01'58"E	34.00'
L5	S23°58'02"W	53.83'
L6	S66°01'58"E	50.00'
L7	N23°58'02"E	53.05'
L8	S15°31'45"W	14.41'
L9	S85°00'00"E	361.32'
L10	S06°09'14"E	72.44'
L11	N66°09'14"W	103.88'
L12	N12°25'11"E	47.94'
L13	N77°34'49"W	50.00'
L14	S12°25'11"W	47.94'
L15	N85°00'00"W	361.32'
L16	S15°31'45"W	37.64'
L17	N66°09'14"W	20.21'
L18	S05°00'00"W	50.00'
L19	N66°09'14"W	75.06'
L20	N66°09'14"W	8.62'
L21	S15°31'45"W	127.81'
L22	S85°00'00"E	87.48'
L23	N15°31'45"E	67.84'
L24	S89°41'35"E	165.84'
L25	N85°00'00"W	273.84'
L26	S72°37'36"E	33.49'
L27	N90°00'00"W	102.59'
L28	N04°07'36"W	54.61'
L29	N63°40'20"E	56.31'
L30	S70°02'03"E	29.29'
L31	N90°00'00"E	75.00'
L32	S17°25'45"E	51.02'
L33	N89°07'17"W	75.48'
L34	S67°05'28"W	25.69'
L35	N90°00'00"E	75.00'
L36	S05°56'27"E	50.27'
L37	N90°00'00"W	76.26'
L38	S66°39'14"E	25.23'
L39	N90°00'00"E	77.84'
L40	S15°31'45"W	48.78'

- LINE TABLE -		
LINE #	BEARING	DISTANCE
L41	N90°00'00"W	77.50'
L42	N15°31'45"E	34.21'
L43	S70°48'22"W	30.42'
L44	N15°31'45"E	55.01'
L45	N90°00'00"E	77.82'
L46	S15°30'44"W	55.00'
L47	N90°00'00"W	77.84'
L48	S68°38'07"E	27.83'
L49	S89°41'35"E	75.09'
L50	S04°18'21"W	60.59'
L51	N90°00'00"W	76.82'
L52	N79°36'22"E	26.70'
L53	N57°36'25"E	75.06'
L54	S21°25'58"E	84.97'
L55	N89°41'35"W	77.69'
L56	N40°24'19"E	75.07'
L57	S41°00'01"E	62.38'
L58	S57°36'25"W	75.07'
L59	N45°58'05"E	26.69'
L60	N23°58'02"E	74.68'
L61	S58°11'21"E	58.73'
L62	S40°24'19"W	75.07'
L63	S02°09'57"W	26.93'
L64	N66°01'58"E	50.00'
L65	N23°58'02"E	75.00'
L66	S66°01'58"E	50.00'
L67	S23°58'02"W	75.00'
L68	N66°39'14"W	25.23'
L69	N90°00'00"E	77.84'
L70	S15°31'45"W	50.00'
L71	N90°00'00"W	77.84'
L72	N15°31'45"E	50.00'
L73	N15°31'45"E	59.97'
L74	N70°48'22"E	30.42'
L75	N15°31'45"E	50.52'
L76	N90°00'00"E	77.37'
L77	S15°01'05"W	50.73'
L78	N90°00'00"W	77.84'
L79	N70°28'20"E	29.92'
L80	N90°00'00"W	75.21'

- LINE TABLE -		
LINE #	BEARING	DISTANCE
L81	N07°18'54"E	57.47'
L82	N90°00'00"E	76.57'
L83	N69°41'21"W	28.81'
L84	N90°00'00"E	75.70'
L85	S03°39'35"E	60.12'
L86	N90°00'00"W	75.00'
L87	N66°58'39"E	25.57'
L88	S65°18'21"W	70.27'
L89	N24°41'39"W	37.53'
L90	N12°05'50"W	43.71'
L91	N90°00'00"E	76.25'
L92	N73°30'33"W	39.20'
L93	N73°30'33"W	39.20'
L94	S65°18'21"W	65.00'
L95	N25°49'04"W	72.01'
L96	N65°18'21"E	65.00'
L97	N13°33'58"E	31.84'
L98	N65°18'21"E	56.15'
L99	S44°04'29"E	65.39'
L100	S65°18'21"W	56.15'
L101	S53°05'02"W	34.91'
L102	S36°26'26"W	97.30'
L103	N59°35'07"W	42.11'
L104	N05°00'00"E	65.12'
L105	S85°00'00"E	77.48'
L106	N12°52'54"E	25.02'
L107	S53°50'46"W	136.06'
L108	N59°26'49"W	46.18'
L109	N36°26'26"E	105.75'
L110	N30°16'19"E	25.00'
L111	S53°50'46"W	134.21'
L112	N59°26'49"W	55.53'
L113	N53°50'46"E	137.41'
L114	N30°53'36"E	25.64'
L115	N53°50'46"E	121.34'
L116	S36°09'14"E	47.50'
L117	S53°50'46"W	130.34'
L118	S77°17'42"W	25.13'
L119	N53°50'46"E	83.41'
L120	S36°09'14"E	45.77'
L121	S53°50'46"W	109.79'

- LINE TABLE -		
LINE #	BEARING	DISTANCE
L122	N06°11'28"W	52.83'
L123	N36°20'49"E	33.26'
L124	N41°05'04"E	75.16'
L125	S33°23'53"E	70.85'
L126	S53°50'46"W	74.75'
L127	N18°56'54"E	26.54'
L128	N10°02'57"E	75.16'
L129	S64°28'00"E	84.93'
L130	S41°05'04"W	75.16'
L131	N13°20'22"W	25.19'
L132	N36°26'06"W	64.96'
L133	N74°41'21"E	66.81'
L134	N56°23'55"E	43.21'
L135	S45°07'05"E	26.67'
L136	N67°08'13"W	75.16'
L137	N38°22'50"E	39.50'
L138	S36°26'06"E	64.48'
L139	N89°16'23"W	26.54'
L140	N81°49'40"E	75.16'
L141	S07°20'44"W	84.93'
L142	N67°08'13"W	75.16'
L143	N75°58'56"E	26.54'
L144	S53°50'46"W	73.68'
L145	N22°14'30"W	73.86'
L146	N81°49'40"E	73.75'
L147	S31°42'36"W	26.54'
L148	N53°50'46"E	80.43'
L149	S45°48'54"E	45.65'
L150	S53°50'46"W	75.16'
L151	S30°25'58"W	25.17'
L152	N66°09'14"W	51.96'
L153	N53°50'46"E	66.60'
L154	S64°20'27"E	51.05'
L155	S53°50'46"W	84.74'
L156	N73°37'25"E	29.55'
L157	N53°50'46"E	77.29'
L158	S66°09'14"E	51.96'
L159	S53°50'46"W	86.60'
L160	N66°09'14"W	11.50'
L161	S30°36'28"W	25.34'

- LINE TABLE -		
LINE #	BEARING	DISTANCE
L162	S53°50'46"W	79.77'
L163	N50°41'50"W	52.70'
L164	N53°50'46"E	76.97'
L165	N05°00'00"E	17.93'
L166	N59°10'08"E	29.85'
L167	N36°38'13"E	14.17'
L168	S10°02'57"W	78.07'
L169	N66°01'58"W	23.39'
L170	N33°00'12"W	28.60'
L171	S33°00'12"E	28.75'
L172	S66°01'58"E	23.39'
L173	N89°40'16"W	27.92'
L174	S35°36'16"E	26.69'
L175	N34°30'52"W	15.14'
L176	N13°49'27"W	13.98'
L177	N48°31'53"W	29.07'
L178	N00°26'59"W	15.92'
L179	N88°26'13"E	59.77'
L180	S70°03'31"E	49.39'
L181	S39°30'02"W	20.47'
L182	S60°04'07"E	60.21'
L183	N66°45'00"E	28.52'
L184	N42°47'46"E	52.16'
L185	N50°15'34"W	51.84'
L186	S65°18'31"W	54.18'
L187	S39°30'02"W	18.41'
L188	N54°09'44"E	104.86'
L189	S15°31'45"W	75.77'

- CURVE TABLE -					
CURVE #	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	136.19'	175.00'	44°35'26"	N31°42'07"W	132.78'
C2	412.58'	340.00'	69°31'35"	N19°14'02"W	387.73'
C3	249.12'	175.00'	81°33'43"	N25°15'06"W	228.61'
C4	163.91'	125.00'	75°07'53"	S22°02'11"E	152.42'
C5	473.25'	390.00'	69°31'35"	S19°14'02"E	444.75'
C6	97.28'	125.00'	44°35'26"	S31°42'07"E	94.85'
C7	231.00'	375.00'	35°17'41"	S67°21'10"E	227.37'
C8	76.01'	100.00'	43°33'05"	S27°55'47"E	74.19'
C9	397.94'	95.00'	240°00'00"	N53°50'46"E	164.54'
C10	34.81'	100.00'	19°56'40"	N56°10'54"W	34.63'
C11	207.68'	425.00'	27°59'55"	N60°12'32"W	205.62'
C12	30.02'	425.00'	4°02'50"	N82°58'35"W	30.02'
C13	146.94'	340.00'	24°45'42"	S34°48'23"E	145.80'
C14	73.06'	340.00'	12°18'43"	N16°16'10"W	72.92'
C15	70.31'	340.00'	11°50'56"	S04°11'21"E	70.19'
C16	50.32'	340.00'	8°28'47"	S05°58'30"W	50.27'
C17	31.54'	340.00'	5°18'51"	S12°52'19"W	31.52'
C18	87.41'	242.00'	20°41'25"	N24°10'10"W	86.94'
C19	67.71'	175.00'	22°10'04"	S04°26'43"W	67.29'
C20	52.50'	175.00'	17°11'19"	S41°00'01"E	52.30'
C21	50.21'	175.00'	16°26'17"	S57°48'49"E	50.04'
C22	54.47'	125.00'	24°58'09"	N03°02'41"E	54.04'
C23	3.77'	390.00'	0°33'11"	N15°15'09"E	3.77'
C24	78.14'	390.00'	11°28'48"	N09°14'10"E	78.01'
C25	15.01'	390.00'	2°12'21"	S02°23'35"W	15.01'
C26	80.40'	390.00'	11°48'44"	N04°36'57"W	80.26'
C27	58.51'	390.00'	8°35'48"	N14°49'12"W	58.46'
C28	120.00'	390.00'	17°37'46"	N27°55'59"W	119.53'
C29	2.59'	390.00'	0°22'48"	S54°11'14"E	2.59'
C30	37.34'	375.00'	5°42'20"	S82°08'50"E	37.33'
C31	121.49'	375.00'	18°33'47"	S70°00'46"E	120.96'
C32	72.17'	375.00'	11°01'34"	S55°13'06"E	72.05'
C33	69.57'	100.00'	39°51'42"	S28°04'20"E	68.18'
C34	3.47'	100.00'	1°59'15"	N07°08'52"W	3.47'
C35	70.90'	95.00'	42°45'42"	N27°32'05"W	69.27'
C36	51.46'	95.00'	31°02'07"	S64°26'00"E	50.83'
C37	25.30'	95.00'	15°15'27"	N87°34'46"W	25.22'
C38	51.50'	95.00'	31°03'46"	N69°15'37"E	50.88'
C39	51.42'	95.00'	31°00'40"	N36°13'24"E	50.79'
C40	51.42'	95.00'	31°00'52"	N07°12'38"E	50.80'
C41	46.19'	95.00'	27°51'26"	S22°13'31"E	45.74'
C42	49.74'	95.00'	30°00'00"	N51°09'14"W	49.18'
C43	25.54'	425.00'	3°26'35"	N47°55'52"W	25.54'
C44	75.00'	425.00'	10°06'40"	N54°42'29"W	74.90'
C45	107.14'	425.00'	14°26'40"	S66°59'09"E	106.86'

- CURVE TABLE -					
CURVE #	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C46	49.12'	415.00'	6°46'52"	S14°40'36"E	49.09'
C47	97.62'	315.00'	17°45'24"	S35°12'22"E	97.23'
C48	49.83'	315.00'	9°03'46"	N17°18'57"W	49.77'
C49	50.21'	315.00'	9°07'57"	N04°30'45"W	50.16'
C50	14.48'	315.00'	2°38'04"	N14°12'43"E	14.48'
C51	61.39'	200.00'	17°35'12"	N05°54'04"E	61.15'
C52	42.02'	200.00'	12°02'18"	N23°31'09"W	41.94'
C53	40.00'	200.00'	11°27'30"	N40°59'58"W	39.93'
C54	37.37'	200.00'	10°42'22"	N57°46'49"W	37.32'
C55	57.70'	415.00'	7°58'00"	S08°39'09"W	57.66'
C56	60.22'	415.00'	8°18'53"	N04°19'32"W	60.17'
C57	72.10'	415.00'	9°57'18"	S25°49'04"E	72.01'
C58	65.46'	415.00'	9°02'15"	N44°04'29"W	65.39'
C59	11.30'	350.00'	1°51'01"	S84°04'30"E	11.30'
C60	91.56'	350.00'	14°59'19"	S71°57'20"E	91.30'
C61	54.40'	350.00'	8°54'17"	S56°21'02"E	54.34'
C62	49.22'	75.00'	37°36'15"	N25°25'32"W	48.35'
C63	54.86'	120.00'	26°11'29"	N31°02'23"W	54.38'
C64	44.98'	120.00'	21°28'29"	N64°26'00"W	44.71'
C65	51.51'	120.00'	24°35'36"	S70°38'30"W	51.11'
C66	44.83'	120.00'	21°2		



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**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
PINYON MESA**

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PINYON MESA.
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PINYON MESA (the "Declaration"), effective this 8th day of October, 2007, is made and entered into by Pinyon Mesa Holdings, LLC, a Colorado limited liability company, and Pinyon Mesa Development, Inc., a Colorado corporation (collectively referred to herein as the "Declarant").

RECITALS

1. Declarant is the owner of that certain real property described on **Exhibit A**, attached hereto and incorporated herein (hereinafter "Pinyon Mesa" or "Property" or "Common Interest Community").
2. Pinyon Mesa has planned unit development zoning approval by the County of Garfield for the development of eighty (80) single family Lots.
3. Declarant intends to develop Pinyon Mesa as a planned community under the Colorado Common Interest Ownership Act.
4. Pinyon Mesa Homeowners Association, Inc., a Colorado non-profit corporation, has been formed to exercise the functions set forth herein and to own, lease, hold, operate, care for and manage certain property for the common benefit of Owners and Occupants of Lots within Pinyon Mesa, and of any other persons acquiring an interest in Pinyon Mesa.
5. Declarant desires to establish covenants, conditions and restrictions upon the Common Interest Community and certain mutually beneficial restrictions and limitations with respect to the proper use, occupancy, improvements and enjoyment thereof, all for the purposes of enhancing and protecting the value, desirability and attractiveness of Pinyon Mesa and enhancing the quality of life within the Common Interest Community.
6. Declarant desires and intends that the Owners, Mortgagees, Occupants and all other Persons hereafter acquiring interest in Pinyon Mesa shall at all times enjoy the benefits of, and shall hold their interest subject to, the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements contained in this Declaration, as it may be amended from time to time.
7. The Common Interest Community shall also be subject to covenants, conditions and restrictions of that certain Declaration ("Governing Declaration") recorded July 27, 2006 in Book 1825 at Page 363, in the real property records of Garfield County, Colorado, and



the terms and conditions of Resolution No. 96-34 recorded June 18, 1996 at Reception No. 494584 and of Resolution No. 2007-4 (the "Resolutions") recorded February 8, 2007 in Book 1893 at Page 363, in the real property records of Garfield County, Colorado. In the event of any conflict between the covenants, conditions, restrictions and terms of this Declaration and the Governing Declaration and/or Resolutions, the Governing Declaration and/or Resolutions shall control. In the event of any conflict between the covenants, conditions, restrictions and terms of the Governing Declaration and the Resolutions, the Resolutions shall control.

ARTICLE I
DECLARATION

NOW, THEREFORE, for the purposes set forth above and herein, Declarant, for itself and its successors and assigns, hereby declares that Pinyon Mesa, and each part thereof, shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, improved, altered, maintained and enjoyed subject to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations, exceptions, easements, privileges, rights and other provisions hereinafter set forth, for the duration hereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement, use, occupancy and enjoyment of the Common Interest Community, and all of which shall run with the land and be binding upon and inure to the benefit of (i) the Common Interest Community and every part thereof, (ii) Declarant and its successors and assigns, (iii) the Association and its successors and assigns, (iv) every Member of the Association, and (v) all Owners, Occupants and other Persons having or acquiring any right, title or interest in or to the Common Interest Community or any part thereof, or any Improvement thereon, and their respective heirs, personal representatives, successors and assigns. Provided always, that to the extent this Declaration provides that Declarant shall not be bound by or is exempt from the application of certain covenants, conditions and restrictions contained herein, Declarant shall not be considered subject to such covenants, conditions or restrictions. This Declaration shall be recorded in Garfield County, Colorado, and shall be indexed in the Grantee's Index in the name of Pinyon Mesa and the Association and in the Grantor's Index in the name of Pinyon Mesa Holdings, LLC and Pinyon Mesa Development, Inc.

ARTICLE II
DEFINITIONS

The following terms have the following meaning when used herein unless the context otherwise requires:

Section 2.1 **Accessory Dwelling Unit.** "Accessory Dwelling Unit" means any separately occupiable apartment (containing a separate kitchen and outside entrance).



Section 2.2 **Allocated Interest.** “Allocated Interest” means the Common Expense liability and the votes in the Association allocated to each Lot, which interests are allocated as follows:

- (1) The Common Expense liability for each Lot is calculated on the basis of a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots in the Common Interest Community as of the date of the calculation.
- (2) One (1) vote in the Association is allocated to each Lot in the Common Interest Community.

Section 2.3 **Articles of Incorporation.** “Articles of Incorporation” or “Articles” means the Articles of Incorporation of Pinyon Mesa Homeowners Association, Inc., which have been filed with the office of the Secretary of State of the State of Colorado, as the same may be amended from time to time.

Section 2.4 **Assessment.** “Assessment” means a Regular Assessment, Special Assessment or Reimbursement Assessment.

Section 2.5 **Association.** “Association” shall mean and refer to the Pinyon Mesa Homeowners Association, Inc., a Colorado nonprofit corporation, its successors and/or assigns.

Section 2.6 **Association Property.** "Association Property" means, to the extent of the Association's interest therein: (a) all real and personal property, including Improvements, now or hereafter owned or leased by the Association; (b) all Common Areas now or hereafter owned, leased or maintained by the Association, together with all improvements thereon; (c) all easements or dedications created or reserved on any Plat, or Supplemental Plat, or in this Declaration or in any Supplemental Declaration, or in any separate agreement, for the use and benefit of the Association and/or the Owners, and (d) any water rights, ditch rights, and water systems, facilities and/or features (or interests therein) that may be owned, leased or maintained by the Association or which the Association is entitled to use. Association Property may be located within or outside the Common Interest Community. With the exception of easements which are Association Property, Association Property does not include the Lots or the Improvements constructed thereon.

Section 2.7 **Board.** “Board” shall mean and refer to the Board of the Pinyon Mesa Homeowners Association, Inc.

- Section 2.8 **Budget.** "Budget" means a written itemized estimate of the Common Expenses to be incurred by the Association in performing its functions under this Declaration and adopted by the Board pursuant to **Section 10.7** of this Declaration.
- Section 2.9 **Building Envelope.** "Building Envelope" means that portion of a Lot which may be depicted and designated as the "Building Envelope" or, if no such depiction or designation is made, the area within setback lines of a Lot on the Plat.
- Section 2.10 **Bureau of Land Management Letter.** A letter dated August 22, 2006, from the Bureau of Land Management containing comments relating to the Common Interest Community.
- Section 2.11 **Bylaws.** "Bylaws" shall mean and refer to the Bylaws of the Pinyon Mesa Homeowners Association, Inc., a Colorado nonprofit corporation.
- Section 2.12 **CCIOA.** CCIOA shall mean and refer to the Colorado Common Interest Ownership Act, located at Sections 38-33.3- 10I (et seq.), Colorado Revised Statutes.
- Section 2.13 **Common Area.** "Common Area" means any portion of the Common Interest Community designated in this Declaration or any Supplemental Declaration or on a Plat or any Supplemental Plat as Common Area or Open Space and which is owned or leased or maintained by the Association for the common use and enjoyment of the Owners and Occupants or some of them, including, but not limited to, open space, wildlife space, pathways, trails, and common access roads.
- Section 2.14 **Common Expenses.** Common Expenses shall mean and refer to expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves, including, but not limited to, the following:
- (1) The costs of maintenance, management, operation, repair and replacement of the Association Property, and of all other parts of the Common Interest Community which are managed or maintained by the Association;
 - (2) The costs of Improvements constructed from time to time by the Association on or in connection with Association Property, if such costs were included within a duly adopted Budget;
 - (3) Unpaid assessments;
 - (4) The costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(5) The costs of utilities and services (including, but not limited to, treated or untreated water, electricity, gas, sewer, trash pick-up and disposal and recycling), which are provided to the Association or the Common Interest Community or parts thereof and not individually metered or assessed to Lots, landscaping maintenance, and other services which generally benefit and enhance the value and desirability of the Common Interest Community or parts thereof and which are provided by or on behalf of the Association;

(6) The costs of insurance maintained by the Association as required or permitted herein;

(7) Reasonable reserves for contingencies, replacements and other proper purposes as deemed appropriate by the Board to meet anticipated costs and expenses including, but not limited to, maintenance, repair and replacement of Association Property that must be maintained, repaired or replaced on a periodic basis;

(8) The costs of bonding the members of the Board, the officers of the Association, any professional managing agent or any other Person handling the funds of the Association;

(9) Taxes paid by the Association;

(10) Amounts paid by the Association for the discharge of any lien or encumbrance levied against Association Property or any portion thereof;

(11) The costs incurred by the Design Review Committee, and by any other committees that may be established from time to time by the Board;

(12) The costs of any security or security systems or services that may be installed, operated, monitored or contracted for by the Association for the benefit of the Common Interest Community;

(13) All expenses expressly declared to be Common Expenses by this Declaration or by a Supplemental Declaration, and all expenses lawfully determined to be Common Expenses by the Board; and

(14) Other expenses incurred by the Association for any reason whatsoever in connection with Association Property, or the costs of any other item or service provided or performed by the Association pursuant to this Declaration, any Supplemental Declaration, the Articles, Bylaws, or Design Guidelines, or in furtherance of the purposes of the Association or in the discharge of any duties or

powers of the Association. In the event that any common services furnished to the Common Interest Community are part of services that are provided to or benefit property in addition to the Common Interest Community, Common Expenses shall only include the cost of such services reasonably allocated to the services provided to the Common Interest Community.

- Section 2.15 **Common Interest Community.** "Common Interest Community" means all of the land area as shown on the Plat together with all Improvements and other amenities now or hereafter located thereon, and together with all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto, plus any additional real property annexed thereto and/or minus any real property withdrawn therefrom.
- Section 2.16 **Colorado State Forest Service Wildfire Hazard Letter.** A letter dated August 28, 2006, from the Colorado State Forest Service relating to the Common Interest Community which sets forth the standards for mitigating wildfire hazards in the Common Interest Community.
- Section 2.17 **County.** County means Garfield County, Colorado.
- Section 2.18 **Declarant.** "Declarant" means Pinyon Mesa Holdings, LLC and Pinyon Mesa Development, Inc., their successors, assigns, and affiliates. A Person shall be deemed to be a "successor and assign" of Declarant if specifically designated in a duly recorded instrument as a successor or assign of Declarant under this Declaration and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under this Declaration which are specifically designated in that written instrument. The term "affiliate of Declarant" shall have the meaning set forth in Section 38-33.3-103(1) of the CCIOA.
- Section 2.19 **Deed of Trust.** "Deed of Trust" means a Mortgage.
- Section 2.20 **Declaration.** Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Pinyon Mesa, recorded in the real property records of Garfield County, Colorado in Book NA at Page NA as Reception No. 134762, as it may be amended or supplemented from time to time.
- Section 2.21 **Design Guidelines.** "Design Guidelines" means the rules, procedures, standards, guidelines and requirements promulgated from time to time by the Design Review Committee, and all amendments thereto, governing the review and approval or disapproval of proposed Improvements within the Common Interest Community, the registration of builders, and such other matters as the Design Review Committee considers necessary or appropriate, which are available from the

Association, as they may be amended or supplemented from time to time pursuant to this Declaration.

Section 2.22 **Design Review Committee.** "Design Review Committee" means the committee provided for in **Article IV** of this Declaration.

Section 2.23 **Lease.** "Lease" means and refers to any agreement for the leasing, rental, use or occupancy of a residential dwelling located on a Lot within the Common Interest Community. The required terms and procedures for Leases are more particularly set forth in **Section 3.29** below.

Section 2.24 **Household Pets.** "Household Pets" means generally recognized household pets such as dogs, cats, fish, birds, rodents and non-poisonous reptiles.

Section 2.25 **Improvements.** "Improvements" means any improvements, structural or otherwise, alterations, additions, repairs, excavation, grading or landscaping within the Common Interest Community, including, but not limited to, dwelling units, buildings, outbuildings, additions, swimming pools, patio covers, awnings, the painting, staining or other change of any exterior surfaces of any visible structure, walkways, outdoor sculptures or artwork, sprinkler or irrigation systems, garages, carports, roads, driveways, parking areas, ponds, ditches, fences, screening walls, retaining walls, stairs, decks, flag poles, fixtures, landscaping (including the addition, alteration or removal of any tree, shrub or other vegetation), hedges, windbreaks, plantings, planted trees and shrubs, gardens, poles, signs, tanks, solar equipment, wind harnessing or other energy generating equipment, exterior air conditioning, water softener fixtures, utilities, antennae and satellite dishes or receivers. Once an Improvement has been constructed or accomplished on a property within the Common Interest Community, any subsequent alteration of or addition to or removal of that Improvement shall also constitute an "Improvement" hereunder.

Section 2.26 **Lot.** Lot shall mean and refer to each lot as shown on the Plat and, for all legal purposes, it shall be sufficient to describe each lot as follows:

Lot ____, Pinyon Mesa P.U.D. according to the Final Plat thereof, recorded in Book NA at Page NA as Reception No. 734761 in the real property records of Garfield County, Colorado.

Section 2.27 **Member.** "Member" means each Lot Owner, including the Declarant. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot.

- Section 2.28 **Mortgage.** "Mortgage" means any mortgage, deed of trust or other security instrument, given voluntarily by the Owner of a Lot, creating a real property security interest in a Lot and recorded in the real property records of the Clerk and Recorder of Garfield County. "First Mortgage" means a mortgage which is the first and most senior of the Mortgages on the same Lot. The term "Mortgage" does not mean a statutory, tax or judicial lien. The term "Deed of Trust" when used herein shall be synonymous with the term "Mortgage."
- Section 2.29 **Mortgagee.** "Mortgagee" means a mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee.
- Section 2.30 **Mortgagor.** "Mortgagor" means the maker, obligor or grantor of a Mortgage. The term "Mortgage" includes a trustor or grantor under a Deed of Trust.
- Section 2.31 **Notice and Hearing.** "Notice and Hearing" means a written notice and hearing before the Board and/or Design Review Committee, or a panel appointed by the Board.
- Section 2.32 **Noxious Weeds.** "Noxious Weeds" mean those weeds listed by the Vegetation Management Department of Garfield County, Colorado, as such list may be amended by the County from time to time.
- Section 2.33 **Occupant.** "Occupant" means any Person who is a tenant pursuant to Lease with the Owner thereof. "Occupant" also means any Person who is present within the Common Interest Community as a family member, guest or invitee of an Owner, an Occupant, the Declarant, or the Association.
- Section 2.34 **Owner.** "Owner" means the Person, including Declarant, or, if more than one, all Persons collectively, who hold fee simple title of Record to a Lot, including sellers under executory contracts of sale and excluding buyers thereunder.
- Section 2.35 **Person.** "Person" means a natural person, a corporation, a partnership, a limited liability company, a trust, or any other entity capable of holding title to real property pursuant to the laws of the State of Colorado.
- Section 2.36 **Pinyon Mesa P.U.D. Plan.** "Pinyon Mesa P.U.D. Plan" means the P.U.D. Plan for Pinyon Mesa adopted and approved by the County of Garfield in Ordinance No. ___ on _____, 200_, a copy of which is recorded in the real property records of Garfield County as Reception No. _____.
- Section 2.37 **Plat.** "Plat" means the Final Plat of Pinyon Mesa, as recorded October 8, 2007, as Book NA, Page NA and as Reception No. 734761, in the

office of the Clerk and Recorder of Garfield County, Colorado, as said Plat may be amended from time to time.

- Section 2.38 **Regular Assessment.** "Regular Assessment" means a charge against an Owner and the Owner's Lot for purposes of covering the annual costs of operating and administering the Association and all other Common Expenses. Regular Assessments are based on a Budget adopted by the Board in accordance with **Section 10.7** below, and are allocated to the Lots in accordance with the Allocated Interests, except that Common Expenses that in the judgment of the Board benefit fewer than all of the Lots shall be allocated exclusively to the Lots benefitted.
- Section 2.39 **Reimbursement Assessment.** "Reimbursement Assessment" means a charge against a particular Owner and the Owner's Lot for purpose of reimbursing the Association for costs and expenses incurred by the Association in connection with the enforcement of any provision hereof or the remedying of any violation by the Owner or an Occupant of this Declaration or any amendment hereto or any Supplemental Declaration, the Articles, Bylaws, or Design Guidelines, or any approvals granted by the Design Review Committee, or for other purposes set forth in the Declaration, pursuant to **Section 10.9** hereof, together with late charges and interest as provided for herein. Reimbursement Assessment shall include without limitation any Common Expense caused by the misconduct of any Owner or of such Owner's Occupants.
- Section 2.40 **Rules and Regulations.** "Rules and Regulations" means rules and regulations adopted from time to time by the Board, as provided in **Section 9.8** of this Declaration.
- Section 2.41 **Special Assessment.** "Special Assessment" means a charge against an Owner and the Owner's Lot for purposes of reimbursing the Association for costs and expenses incurred or to be incurred by the Association for the purpose of paying for the construction, reconstruction, repair, maintenance or replacement of capital improvements to or upon or serving the Common Interest Community, the costs of which were not included in a Regular Assessment, or for excess reconstruction costs or other extraordinary expenses, or for funding any operating deficit of the Association, as authorized by the Board from time to time as provided herein. Special Assessments shall be based on a Budget adopted by the Board in accordance with **Section 10.8** below.
- Section 2.42 **Wildlife Analysis Impact and Mitigation Report.** A Wildlife Analysis Impact and Mitigation Report for the Common Interest Community is attached hereto as **Exhibit B.**



ARTICLE III
 GENERAL RESTRICTIONS APPLICABLE TO THE
 COMMON INTEREST COMMUNITY

It is the intention of Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Common Interest Community, all in order to enhance the value, desirability, and attractiveness of the Common Interest Community and to promote the marketing, development and enjoyment thereof. Accordingly, Declarant hereby declares that the entire Common Interest Community, including, but not limited to all Lots, shall be owned, held, used, occupied, improved, altered, maintained, conveyed, leased, encumbered and enjoyed subject to the following covenants, conditions, restrictions, reservations, easements, rights and other provisions, and to the further requirements and restrictions set forth in the Design Guidelines, subject to such Declarant exemptions as may be set forth herein.

Section 3.1 **Development Control.** Except for Improvements of any nature constructed, installed or placed within the Common Interest Community by Declarant pursuant to the Pinyon Mesa P.U.D. Plan, which Improvements shall not require approval of the Design Review Committee, and unless otherwise expressly provided in this Declaration, (i) no residence, building, structure, fence, wall, landscaping or other Improvement shall be commenced, erected, improved, altered, made, done, permitted, located or removed within the Common Interest Community without the prior written approval of the Design Review Committee, and (ii) all subsequent additions to or changes or alterations in any residence, building, structure, fence, wall, landscaping or other Improvement, including, without limitation, exterior color scheme, and all changes in the grade of Lots, shall also be subject to the prior written approval of the Design Review Committee. No modifications from the approvals granted by the Design Review Committee shall be made without the prior written approval of the Design Review Committee. Notwithstanding the foregoing, in the event of an emergency or the sudden occurrence of unanticipated conditions which threaten the health, safety or physical well-being of Persons or property within the Common Interest Community, the Board and/or the Design Review Committee shall have the authority (without the prior approvals described above) to take whatever remedial action may be necessary anywhere in the Common Interest Community to protect Persons and property until such time as applicable notice and/or approval procedures can reasonably be utilized. Further notwithstanding the foregoing, Design Review Committee approval shall not be required for Improvements made by Declarant in the exercise of any development rights or special Declarant rights reserved by Declarant in this Declaration.

Section 3.2 **Violation of Law, Insurance, Etc.** No Owner or Occupant or Person shall do any act or cause or permit anything to be done or kept in or upon a Lot, a residence constructed thereon which would result in the increase of, or

cancellation of, insurance maintained by the Association or would be in violation of any federal, state, town or other law, ordinance, regulation or code of any governmental body having jurisdiction or of any provision of this Declaration.

Section 3.3 **General Maintenance of Common Interest Community.** All property within the Common Interest Community, including, without limitation, all Lots (including unimproved Lots, and Lots on which Improvements are under construction), Improvements, and landscaping, shall be kept and maintained in a clean and attractive condition and in good order, condition and repair.

(1) Except as specifically set forth in this **Section 3.3**, maintenance, repair, and upkeep of each Lot and the Improvements thereon (including attractive painting and refinishing thereof at regular intervals) shall be the responsibility of the Owner of the Lot. Such maintenance and repair shall be performed by each Owner whenever necessary or appropriate and at regular intervals in order to keep the Lot and Improvements in substantially the same condition and appearance as existed at the time of completion of construction, subject to normal wear and tear that cannot be avoided. Said Owner obligations shall include all maintenance, repair or replacement required as a consequence of any fire, wind, vandalism, theft or other casualty. With respect to a Lot, this maintenance obligation extends to all lands and landscaping within the Lot lines. Unsightly conditions on a Lot shall constitute a nuisance under this Declaration.

(2) The individual Owners shall use a reasonable standard of care in providing for the repair, management and maintenance of the properties for which they are responsible so that the entire Common Interest Community will reflect a pride of ownership.

(3) If an Owner fails to perform any of such obligations within ten (10) days following receipt of a written notice from the Board requesting the same, the Board shall have the right to enter upon the Lot of the Owner to cure the violation, to perform any needed repairs or maintenance, or to otherwise cause compliance with this provision and to levy and collect a Reimbursement Assessment upon the Owner and its Lot for the costs and expenses incurred by the Association in connection therewith. The Board shall have no right to enter into the interior of a residence without the consent of the Owner except in the case of a clear emergency.

Section 3.4 **Residential Use and Occupancy.** Each Lot shall be improved, occupied and used only for private residential purposes. Only one single-family residence may be erected, altered, placed or permitted on each Lot. No structures whatsoever, other than those permitted by the Pinyon Mesa P.U.D. Plan or by other applicable County zoning regulations and approved in writing by the Design Review

Committee, shall be erected, placed or permitted to remain on any Lot. No office, business and/or commercial structures shall be permitted within the Common Interest Community. Except as so allowed, no business, professional or other non-residential or commercial use shall be made of any Lot, or conducted in any residence constructed on a Lot, excepting for home occupations which shall mean an occupation by the resident of the Lot conducted totally within the residence on the Lot and which do not involve: (i) the employment of third persons on the Lot, (ii) the solicitation or invitation of the general public, or (iii) the servicing of customers, does not entail the delivery of goods or services to customers on the Lot, nor cause any additional traffic or parking within the Common Interest Community or otherwise create a nuisance for neighboring Lots or the Common Interest Community. No equipment or materials incident to any business or occupation (whether conducted within the residence or elsewhere) shall be kept or stored on any Lot except within the residence, garage, or other outbuilding approved by the Design Review Committee. Notwithstanding the foregoing, activities normally associated with the sale by the Declarant or an Owner of an improved or unimproved Lot shall be allowed, subject to any limitations contained in this Declaration.

Section 3.5 **New Construction Required; No Temporary Buildings or Occupancy.** All Improvements constructed within or placed upon the Common Interest Community shall be new. No mobile homes (single or double wide) and no used or temporary house, structure, or non-permanent out-building (specifically including mobile homes, trailers, tents or shacks) shall ever be placed, erected or allowed to remain within the Common Interest Community except temporary structures or construction trailers approved in advance by the Design Review Committee which are used for construction purposes during the construction of a residence, which temporary facilities shall be removed immediately following completion of construction and in any event no later than 18 months following commencement of construction or remodeling unless a written extension is granted by the Design Review Committee. No trailer, mobile home, incomplete residence or other structure other than a residence completed in accordance with approved plans, shall ever be used or occupied at any time for residential purposes, either temporarily or permanently. No completed residence on a Lot shall be occupied in any manner until all provisions of this Declaration and of the Design Guidelines and all conditions of development approval have been complied with, and a Certificate of Compliance has been issued pursuant to **Section 4.13** below. The work of constructing, altering or remodeling any residence on a Lot or any other Improvement within the Common Interest Community shall be prosecuted diligently from the commencement thereof until the completion thereof.

Section 3.6 **Building Envelopes.** All Improvements on a Lot must be located entirely within the Building Envelope, including, but not limited to, dwellings, detached patios and decks, garages, but excluding roof overhangs, access driveways, underground utilities, and irrigation and drainage systems. The Design Review Committee may approve the location of certain Improvements outside the Building Envelope, such as landscaping, fences and attached patios and decks. Notwithstanding the foregoing, any and all modifications to the Building Envelope are prohibited.

Section 3.7 **Design Guidelines.** All Improvements, excavation and other land disturbance, construction, landscaping and irrigation activities within the Common Interest Community shall be strictly governed by the procedures, standards, guidelines, restrictions and requirements set forth in the Design Guidelines. A violation of the Design Guidelines shall constitute a violation of this Declaration and may be enforced in accordance with the terms hereof.

Section 3.8 **Annoying Light, Sound or Odor.** All exterior lighting installed or maintained on any Lot or on any Improvement located on a Lot in any Common Area, easement or right of way in the Common Interest Community shall be located and installed so that the light source illuminates only the ground plane and so that the light source is not visible from any location off of the Lot, and so that adjacent big game winter ranges are not lit by backyard lights within the Building Envelopes. No light shall be emitted from any part of the Common Interest Community (including any Lot) which is unreasonably bright or causes unreasonable glare. Without limiting the generality of the foregoing, no spotlights, floodlights or other high-intensity lights shall be permitted within the Common Interest Community without the prior written approval of the Design Review Committee. Skylights may be allowed only if darkly tinted glazing is used to reduce light spill from interior spaces. The Design Review Committee may establish more restrictive standards for exterior lighting including, without limitation, standards for hue and intensity. Night time lighting of Lots and/or the Common Areas is discouraged above and beyond what is required for safe driving conditions, so as to allow night time use by mule deer and elk, and plantings of vegetation within ten feet (10') of roadsides along winter range areas shall be prohibited so as to prevent spotlighting of foraging game at night by the headlights of vehicles.

No sound shall be emitted from any part of the Common Interest Community (including any Lot) which is unreasonably loud or annoying to others, and no odor shall be emitted from any part of the Common Interest Community (including any Lot) which is noxious or unreasonably offensive to others. Again without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, other than security devices used exclusively for security purposes, shall be located or used within the Common Interest Community except with the prior written approval of the Design Review Committee.

The Board, in its sole discretion, shall have the right and authority to determine the existence of any violation of this **Section 3.8**, including the reasonableness of any light, sound or odor.

Section 3.9 **Noxious or Offensive Activities; Nuisances; Construction Activities.** No noxious or offensive activity shall occur or be allowed at any time on any property within the Common Interest Community, nor shall anything be done or placed thereon which is or may become a nuisance or cause an unreasonable embarrassment, disturbance, or annoyance to Owners, Occupants, Declarant or the Association, or which interferes with the peaceful enjoyment or possession and proper use of the Common Interest Community, or any part thereof, by Owners or Occupants. As used herein, the term "nuisance" shall not apply to any activities of Declarant which are reasonably necessary or appropriate to the development, improvement, maintenance, marketing and/or sale of the Common Interest Community or any part thereof. The Board, in its sole discretion, shall have the right and authority to determine the existence of any nuisance or unreasonable annoyance under this **Section 3.9**.

Each Owner shall comply with requirements of all health authorities and other governmental authorities having jurisdiction over the Common Interest Community. Normal construction activities and parking, during daylight hours, in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration unless they are in violation of the Design Guidelines or other requirements of the Design Review Committee, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials shall be piled only in such areas as may be approved by the Design Review Committee. In addition, construction equipment and building materials may only be stored or kept within the Common Interest Community during and in connection with the construction of Improvements thereon, and then may be kept only in areas approved by the Design Review Committee, which also may require screening of the storage areas. All such equipment and materials shall be removed immediately following completion of construction.

Section 3.10 **No Hazardous or Unsafe Activities.** No activity shall be conducted on, and no Improvement shall be constructed on, any property within the Common Interest Community which is or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, and except as allowed below, no explosives, gasoline, or other volatile and/or incendiary materials or devices or any materials deemed hazardous or toxic substances under applicable environmental laws, rules, or regulations shall ever be used, kept, stored, permitted to remain or be released or disposed of on any Lot or elsewhere within

the Common Interest Community. Gasoline or fuel for an Owner's lawn mower, snowblower, and the like may be maintained on an incidental basis in an enclosed structure on a Lot in an amount not to exceed 10 gallons.

Section 3.11 **Outside Burning: Fire Hazards.** No burning or exterior fires of any kind, including, without limitation, any wood product, construction material, lawn material, vegetation or other flammable material, shall be lighted or permitted on any property within the Common Interest Community except in a contained barbecue unit while attended and in use for cooking purposes. No Owner shall cause or permit any condition on his Lot which creates a fire hazard or is in violation of fire prevention regulations, or which would increase insurance rates for other Owners. Without limiting the generality of the foregoing, no fireworks which expose or leave the ground shall be ignited or used anywhere within the Common Interest Community.

Section 3.12 **Fireplaces.** In order to protect against the degradation of air quality which occurs as a result of the use of interior and exterior fire places and other wood burning devises, and to minimize danger from wildfire which results from exterior burning, the following restrictions are imposed:

- i. No open hearth solid fuel fireplaces, or any wood burning stoves of any kind, either interior or exterior, shall be allowed within or about any dwelling unit constructed on any Lot, nor any location within the Common Interest Community.
- ii. Lots shall be allowed an unrestricted number of natural gas burning fireplaces or appliances.

Section 3.13 **No Unsightliness.** All unsightly structures, facilities, equipment, objects, and conditions, sporting equipment (e.g., skis, snowboards, bikes, mountain bikes, kayaks, etc.), and snow removal, garden or maintenance equipment except when in actual use, shall be kept in an enclosed structure or in a screened area approved by the Design Review Committee. No laundry or wash shall be dried or hung outside any residence.

Section 3.14 **Garbage and Trash and Compost Containers.** No refuse, garbage, trash, grass, shrub, or tree clippings, plant waste, compost, metal, bulk materials, scrap, rubbish, or debris of any kind shall be kept, stored, maintained or allowed to accumulate or remain on any Lot except temporarily within an enclosed bear proof structure approved by the Design Review Committee, and as set forth herein. An approved bearproof container containing such materials shall be placed next to the street on the designated morning of garbage collection and must be returned to its enclosed structure that same day. In no event shall any residential garbage be left

in trash cans outside overnight prior to trash collection. No garbage containers, trash cans or receptacles shall be maintained in an unsanitary or unsightly condition, and except when placed for pickup they shall not be visible from another Lot. All such refuse, garbage, trash, plant waste, compost, metal, scrap materials, rubbish and debris shall be promptly removed from the Common Interest Community and shall not be burned thereon. Bear proof compost structures and containers may be placed on a Lot in locations and in containers approved by the Design Review Committee, provided that no such structure or container shall be larger than fifty-five (55) gallons. Finally, there shall be no dump areas on any parts of the Common Interest Community or on any Lot which contain edible materials associated with the construction and post construction activities in the Common Interest Community. All construction workers and contractors shall be notified and educated about the importance of keeping trash, food and drink items properly disposed on to discourage bear activities in the Common Interest Community.

Section 3.15 Vehicle Parking, Storage, Operation and Repair.

(1) Each single-family residence constructed on any Lot shall include a garage within which adequate space will be maintained at all times for the parking of the number of vehicles for which the garage was designed. Parking by the guests of Owners or Occupants will be limited to 48 hours at any one time.

(2) No vehicles shall be parked on public roads accessing the P.U.D..

(3) No boats, trailers, buses, motor homes, mobile homes, campers (on or off supporting vehicles), motorcycles, snowmobiles, recreational vehicles, all terrain vehicles, golf carts, trucks, industrial or commercial vehicles (both cabs or trailers), abandoned, disabled or inoperable vehicles (as defined below), towed trailer unit, or any other similar vehicles whose primary purpose is recreational, sporting or commercial use (excepting passenger automobiles and three-quarter (3/4) ton or smaller pick-up trucks) shall be parked or stored in, on or about any Lot or street in the Common Interest Community, except within enclosed structures approved in advance by the Design Review Committee. No motor vehicle of any kind shall be maintained, repaired, repainted, serviced or rebuilt on any Lot except within a completely enclosed garage which fully screens the sight and sound of the activity from the streets and other Lots. This restriction shall not prevent the non-commercial washing and polishing of vehicles and boats, together with activities normally incident thereto. Any three-quarter (3/4) ton or smaller vehicle, commonly known as a pickup truck, shall not be deemed a commercial vehicle or truck.

(4) No more than two (2) permitted vehicles (passenger automobiles and/or 3/4 ton or smaller pick-up trucks) shall be parked at any time in the driveway of any Lot, except during special occasions and then only for the duration thereof, and permitted vehicles shall not be parked in any location on a Lot except the driveway or an enclosed garage.

(5) An "abandoned, disabled or inoperable vehicle" shall mean any motorized vehicle which does not display a current motor vehicle license or which has not been driven under its own propulsion for a period of one (1) week or longer (excepting otherwise permitted vehicles parked by Owners or Occupants on their Lot driveways while on vacation or during a period of illness), or which does not have an operable propulsion system within the vehicle.

(6) In the event that the Board or the Design Review Committee shall determine that a vehicle is abandoned or inoperable, or is otherwise in violation of the provisions of this **Section 3.15**, a written notice of violation describing said vehicle shall be personally delivered to the vehicle owner (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner cannot be reasonably ascertained), and if the offending vehicle is not removed within seventy-two (72) hours thereafter, the Board or Design Review Committee (as the case may be) shall have the right to remove and store the offending vehicle, or cause the vehicle to be removed and stored, at the sole expense of the owner of the vehicle if the vehicle is located on a street, or the Owner of the Lot on which the vehicle is located, and to enter upon an Owner's Lot for such purpose, all without liability on the part of the Board or the Design Review Committee.

(7) Snowmobiles, motorcycles, trail bikes, minibikes, dirt bikes, all-terrain vehicles, and similar motorized vehicles shall not be used or operated (but may be transported on trailers) within the Common Interest Community, except that motorcycles properly licensed for operation on public roads may be used on public streets within the Common Interest Community.

(8) All approved ADUs shall provide for one additional parking space for each such ADU.

Section 3.16 **Animals**. Each Lot shall be entitled to a maximum of one (1) dog and two (2) cats, and a reasonable number of other Household Pets, unless otherwise approved by the Board, so long as such Household Pets are not kept for any commercial purpose, are not kept in unreasonable numbers, do not cause an unreasonable amount of noise or odor, or do not otherwise become a nuisance or threat to other Lots, Owners, Occupants or wildlife. Permitted dogs, cats and other Household Pets must be fenced, restrained and confined at all times within the Owner's or

Occupant's Lot, and shall not be permitted outside such Lot except when leashed and accompanied by the pet's owner or the owner's representative. Permitted cats shall be kept indoors at all times. However, during the winter elk migration period of November 15 through March 15, dogs shall not be allowed outside of fenced yards at any time. During construction of structures on any Lot within the Common Interest Community, construction workers shall not be allowed to bring dogs to the Lot and it shall be the Owner's responsibility to enforce this restriction. All Household Pets shall be properly immunized and otherwise maintained and cared for as required by applicable laws. Pets shall not be fed outside of the dwelling unit on a Lot, so as to avoid attracting bears and other predators to the Common Interest Community. All such restrictions shall also apply to dogs brought to the Common Interest Community by Owner's guests, licensees or employees.

The Owner of a Lot where a Household Pet is kept, as well as the legal owner of the pet (if not such Owner), shall be jointly and severally liable for any and all damage and destruction caused by the pet, and for any clean-up of the Owner's Lot and of streets, sidewalks, or other Lots necessitated by such pet.

The Board shall be responsible for enforcing the restrictions set forth in this **Section 3.16**, and shall have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats and other Household Pets are being kept for commercial purposes, or are being kept in unreasonable numbers, or are causing an unreasonable amount of noise or odor, or are otherwise a nuisance or threat to other Owners or Occupants, or that an Owner or Occupant is otherwise in violation of this **Section 3.16**, and to take such action or actions as it deems reasonably necessary to remedy the violation, including, without limitation, the levying of fines and/or assessments as provided in **Section 10.9** hereof. Also, without limiting the generality of the foregoing, the Board may require the owner or custodian of a dog that barks or howls excessively, or of a dog, cat or other Household Pet with other offensive habits or threatening behavior, to confine such animal indoors, or to permanently remove such animal from the Common Interest Community. Furthermore, all Lot Owners shall be notified that stray or loose dogs are controlled by the Colorado Department of Wildlife or by Garfield County, and that such control may include destruction of the dog. All costs of such control activities shall be the responsibility of the dog's owner. CDOW and Garfield County are entitled to access the Common Interest Community to enforce all dog restrictions and wildlife restrictions imposed thereon.

Birdfeeders and hummingbird feeders shall be brought into the dwelling unit on a Lot or other structure on a Lot during evening hours, and shall be removed from all Lots during the fall months (September through November), so as to minimize

the attraction of bears and other predatory animals to the Common Interest Community.

Section 3.17 **Restrictions on Equipment, Tanks, Antennae, Satellite Dishes, Etc.** Heating, air conditioning (including swamp coolers), air movement, wind collection, or refrigeration equipment must be screened from the view of neighboring properties and must receive the prior written approval of the Design Review Committee. Solar power units meeting all governmental guidelines for residential uses may be incorporated into a residence if (a) the solar power unit meets the same design review criteria as are applied to other Improvements within the Common Interest Community, and (b) the solar power unit is approved in advance by the Design Review Committee. No tanks of any kind, whether elevated or buried, shall be erected, placed or permitted to remain upon any Lot except in compliance with applicable federal and state regulations, and then only with the prior written consent of the Design Review Committee. Any approved tank must be located underground or adequately concealed from view by fencing or screening approved by the Design Review Committee.

If an Owner wishes to install an antenna to receive television and/or video programming, the Owner shall notify the Design Review Committee in writing of the planned installation and the proposed location thereof at least ten (10) days before the installation. The antenna installation and location shall comply with all fire, electrical and other applicable safety codes, and the installing Owner shall, to the extent feasible, install the antenna in a location that minimizes its visibility from neighboring Lots. The installing Owner shall be obligated to paint the antenna so that it blends into the background against which it is mounted and to plant and maintain such reasonable landscaping as will screen the antenna, to the extent feasible, from neighboring Lots.

Satellite dishes that exceed one meter in diameter, and MDS antennas that exceed one meter in diameter or diagonal measurement, shall not be allowed within the Common Interest Community. Mast antennas that extend higher than 12 feet above the roof line and antennas that are not used to receive television and/or video programming shall only be permitted within the Common Interest Community if they receive the prior written approval of the Design Review Committee as to design, location and screening from neighboring Lots.

Section 3.18 **Drainage Restriction.** No Owner shall construct, install, maintain or permit any Improvement on a Lot that would result in storm water run-off draining onto another Lot, except by way of drainage easements as shown on any Plat or drainage structures as installed by Declarant.



- Section 3.19 **No Interference with Waterways or Drainage or Irrigation Systems.** No Owner shall construct, install, maintain or permit any fence or other Improvement or obstruction or plant trees or take any other action which damages or interrupts or interferes in any way with (i) the normal flow of water through and along waterways, drainage or irrigation systems within the Common Interest Community or within the easements described in **Article VII**, (ii) any irrigation ditch, lateral, lake, pond or other water collection, storage or distribution system within or serving the Common Interest Community, or (iii) normal drainage patterns within the Common Interest Community, subject always to the rights of owners of ditches and other water rights and the requirements of the Design Review Committee. The Association shall have the authority to take such action as may be necessary to abate or enjoin any such damage or interference, and shall have the right to enter upon a Lot for purposes of correcting or removing the same, and any costs incurred by the Association in connection with such abatement, injunctive or corrective activities shall be assessed to the responsible Owner in the form of a Reimbursement Assessment.
- Section 3.20 **Fences Prohibited or Restricted.** Fences along or adjacent to the boundary or Lot line may be prohibited on some or all of the Lots pursuant to the Design Guidelines. On any Lots where fences are permitted, the fence may only be constructed upon the prior written approval of the Design Review Committee and in conformance with the Design Guidelines. Privacy fences, security fences, and fences for screening purposes shall be prohibited. To the extent they are permitted, they shall also be approved by the Design Review Committee and constructed in conformance with the Design Guidelines. Declarant and/or the Association, through the Design Review Committee, shall have the right to designate the specific fence to be installed, if a fence is allowed. All fences must be wildlife friendly, in that they must consist of two rails with the upper rail 44 inches above the ground, and the lower rail 24 inches above the ground, to allow wildlife crossings. There shall be no buck fences. Prior to construction on a Lot in the Common Interest Community, snow fencing or silt fencing shall be erected at the edge of building envelopes to contain disturbance of native vegetation by construction activities.
- Section 3.21 **Use of Easement Areas; Utility Installation.** All easements shown on a Plat covering any portion of the Common Interest Community have been created or reserved for the purposes indicated on such Plat and/or in **Article VII** below. No Owner may erect any structure of any type whatsoever in such easement areas, nor may an Owner or Occupant use the surface of such easement areas for any private use, other than landscaping which will not interfere with the use of said easement by the Persons or entities for whose benefit it has been created or reserved and which receives the prior written approval of the Design Review Committee.

With respect to easements created for access, utility or drainage purposes either by the terms of this Declaration or any other recorded agreement or on a Plat, any and all bona fide public and private utility service companies, and special districts shall have the right of access, ingress, egress, and use of such easement areas for the installation, operation and maintenance of utility facilities serving the Common Interest Community.

Except for street lighting, no aerial utility lines or facilities of any type (except meters, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities, which meters shall be attached to the primary residence) shall be erected or installed within the Common Interest Community, whether upon Lots, easements, streets, or rights-of-way of any type, either by a utility company, an Owner, the Association, or any other person or entity (including, but not limited to, any person owning or acquiring any part of the Common Interest Community) and all utility lines and facilities (including, but not limited to, water, sewer, gas, electricity, telephone, and cable tv) shall be buried underground. Provided that, during the construction of a residence on a Lot, a temporary overhead power line may be installed which shall be promptly removed upon completion of construction.

Section 3.22 **Landscaping and Irrigation Regulations.** No landscaping shall be performed on any Lot unless a landscaping and irrigation plan therefor has received the prior written approval of the Design Review Committee, and all landscaping and irrigation shall comply with the Design Guidelines and the Colorado State Forest Service Wildfire Hazard Letter. A landscaping and irrigation plan for each Lot must be approved by the Design Review Committee before construction is commenced on the residence on that Lot.

Each Owner shall diligently maintain, trim, weed, cultivate, husband, protect, preserve and otherwise keep in a healthy and attractive condition the shrubs, trees, hedges, grass, planters, gardens and other landscaping upon the Owner's Lot, including, without limitation, the removal of dead and diseased branches and brush and the performance of other tasks necessary to remove or eliminate material which constitutes or creates a fire hazard or nuisance. Each Owner shall keep the Owner's Lot free of Noxious Weeds. Each Owner shall cooperate with the Association in its brush clearing and fire protection husbandry program for reduction of fire hazard within the Common Interest Community. Any Owner failing to maintain their Lot in accordance with these provisions, including but not limited to the removal of Noxious Weeds, shall be required to remedy the violation, at the Owner's cost and expense, within 30 days following a written request therefor from the Association. If said Owner or Occupant fails to comply with the request in a timely manner, the Association shall have the right to enter upon the Owner's Lot to perform the necessary work and may assess the costs



thereof against the Owner and the Owner's Lot in the form of a Reimbursement Assessment.

No nut, fruit, or berry producing trees or shrubs shall be utilized on any Lot so as to minimize attracting bears to the Common Interest Community.

- Section 3.23 **Driveways and Road Surfaces.** All roads, driveways and parking surfaces must be paved, or maintained with concrete or other hard surface material. Driveways and parking surface must be paved, or maintained with concrete or other hard surface material within four (4) months after the Owner of the Lot is issued a certificate of occupancy. Each Owner shall maintain all roads, driveways and parking surfaces within the Owner's Lot in good condition and repair.
- Section 3.24 **Basketball Goals.** Basketball goals, backboards and nets shall not be allowed unless they comply with the Design Guidelines and the approval of the Design Review Committee is first obtained.
- Section 3.25 **Swimming Pools, Spas, and Related Equipment.** Pools, spas or hot tubs may be erected, constructed or installed on Lots within the Common Interest Community, provided they comply with the Design Guidelines and receive the prior written consent of the Design Review Committee. If a pool, spa or hot tub is approved, all service equipment shall be fenced, adequately screened from any neighboring Lot and the final location shall be approved by the Design Review Committee.
- Section 3.26 **Signs and Advertising.** No sign, poster, billboard or advertising device of any kind shall be allowed or displayed upon any Lot within the Common Interest Community except: (a) such signs as may be used by the Declarant or builders approved by Declarant in connection with the development, marketing and sale of Lots in the Common Interest Community; (b) such signs as may be required by legal proceedings, the prohibition of which is precluded by law; (c) neighborhood monuments (*e.g.*, entrance and directional signs) which are compatible with the architecture of the area; (d) one security company sign; and (e) one "For Sale" or "For Rent" sign on any Lot. All such signs must comply with the Design Guidelines and County sign regulations.
- Section 3.27 **No Individual Water Wells or Individual Sewage Disposal Systems.** No individual water wells, and no cesspools, septic tanks or other individual sewage disposal systems shall be drilled, constructed, maintained or permitted to remain within the Common Interest Community, except such water and/or septic systems as may be installed by Declarant or Declarant's successor, assign or agent or the Association to serve the Common Interest Community.

Section 3.28 Restoration of Improvements in the Event of Damage or Destruction. In the event of damage to or destruction of any Improvement on any Lot, the Owner thereof shall cause the damaged or destroyed Improvement to be promptly restored or replaced to its original condition or such other condition as may be approved in writing by the Design Review Committee, or the Owner shall cause the damaged or destroyed Improvement to be promptly demolished and the Lot to be suitably landscaped, subject to the approval of the Design Review Committee, so as to present a pleasing and attractive appearance. Such Improvements shall be repaired, restored or otherwise demolished and suitably landscaped within such reasonable time frame as may be established by the Design Review Committee.

Section 3.29 Leases. Any Owner shall have the right to Lease his residence on a Lot or his ADU, if applicable, under the following conditions:

(1) All leases shall be in writing, and must cover the entire residence or ADU (i.e., no leases of bedrooms alone or otherwise covering less than all of the Lot or ADU shall be permitted).

(2) All leases shall provide (i) that the terms of the lease and the tenant's (Occupant's) use of the residence or ADU shall be subject in all respects to the provisions of this Declaration, the Articles, the Bylaws, and the Design Guidelines, (ii) that the Occupant has received and reviewed copies of said documents, and (iii) that any failure by the Occupant to comply with any of the aforesaid documents, in any respect, shall be a default by Occupant under the Lease and a default by Occupant and Owner under said documents which may be enforced against Occupant and/or Owner by the Association and/or Board.

(3) Each Owner shall notify the Association immediately upon the leasing of his residence or ADU and shall provide the Association with a copy of the lease and with the name and mailing address of the Occupant and the mailing address (if changed) of the Owner.

(4) Each Owner who leases a residence or ADU shall be responsible for assuring compliance by the Occupant with all of the provisions of this Declaration, the Articles, the Bylaws, and the Design Guidelines, and shall be jointly and severally responsible with the Occupant for any violations thereof by the Occupant.

(5) Each lease shall expressly provide that the Association (via the Board) shall have the right to give the Occupant written notice that the Occupant is in violation of one or more of the documents listed in **subsection (2)** above, which notice shall specify a period of time (at least 5 days) in which the Occupant may cure the violation. If the violation continues uncured, or if it is repeated

within the 3-month period following the date of the first notice, the Lease shall provide that the Owner gives to the Association an irrevocable power of attorney to act on the Owner's behalf to give such statutory notices to the Occupant and to take such other actions as may be necessary or appropriate to terminate the Lease and to evict the Occupant from the premises. If a Lease does not contain such provisions, the Owner hereby irrevocably appoints the Association as its attorney-in-fact to act on its behalf as set forth herein.

(6) All legal fees and costs incurred by the Association in connection with a Lease shall be the joint and several liability of the Owner and the Occupant and may be collected by legal action in which the prevailing party shall be entitled to an award of its reasonable costs and attorney's fees.

Section 3.30 **Right of Entry.** During reasonable hours and upon reasonable notice to the Owner or Occupant of a Lot, any member of the Design Review Committee, any member of the Board, and any authorized representative of either of them, shall have the right to enter upon and inspect any Lot, and the Improvements thereon, except for the interior portions of any occupied dwelling (which shall require the permission of the Owner or Occupant, except in case of emergency, when no notice or permission shall be required), for the purpose of ascertaining whether or not the provisions of the Declaration and of the Design Guidelines have been or are being complied with, or for the purpose of exercising any rights or performing any responsibilities (maintenance, repair, etc.) provided for in this Declaration, and such individuals shall not be deemed guilty of trespass by reason of such entry. For purposes of this Section 3.30, "emergency" shall mean circumstances posing an imminent threat of injury or damage to persons or property.

Section 3.31 **Damage by Owners During Construction.** Each Owner is responsible for any damage caused to roads, streets, ditches, fences, trails, natural drainage courses, utilities, or to other Lots or Improvements thereon, during the construction or alteration of Improvements upon the Owner's Lot, including, without limitation, damage caused by any construction vehicles using the roads or streets within the Common Interest Community. Damage shall include any degradation in the appearance or condition of such roads, streets or other Lots or Improvements. The responsible Owner shall promptly repair and clean up any such damage, at its sole expense. Each Owner shall also be responsible for any damage caused by utility cuts in roads, washouts and runoff damage caused by failure to properly install culverts, and shall promptly repair any such damage. If the Owner fails to repair any such damage within ten (10) days following receipt of a written notice from the Board requesting the same, the Board shall have the right to perform such repairs on behalf of the Owner, and to levy a Reimbursement Assessment upon the Owner and its Lot to recover the costs thereof.

Section 3.32 **Restrictions on Resubdivision, Property Restrictions, and Rezoning.** Except as expressly permitted in this Declaration: (i) no Lot shall ever be further subdivided or replatted by an Owner into smaller lots or parcels, (ii) no portion less than all of any such Lot, nor any easement or divided interest therein, shall be conveyed, transferred or encumbered by the Owner, and (iii) no Lot may be combined with any other Lot nor the boundary lines adjusted between any two Lots.

(1) Declarant reserves the right to subdivide a Lot or to combine two Lots owned by Declarant, or to adjust or remove boundary lines between Lots owned by Declarant, provided any necessary County approvals are obtained, all Declaration and Plat amendments required by the CCIOA and/or local land use laws are prepared, executed and recorded. No change in Allocated Interests shall occur. In other words, if two Lots are combined, the resulting Lot shall continue to constitute two (2) Lots for assessment and voting purposes. All costs relating to the foregoing activities shall be the sole responsibility and obligation of Declarant. Declarant's rights under this subsection (1) shall terminate upon the first to occur of (i) the date which is thirty (30) years after the recording of this Declaration, or (ii) Declarant's relinquishing of these rights by a recorded instrument.

(2) The boundaries between adjoining Lots may also be adjusted or removed (*i.e.*, the Lots combined) by the Owner(s) thereof other than Declarant if (i) the written consent of the Board is first obtained, in the sole discretion of the Board, (ii) all applicable regulations and codes are complied with and all necessary County approvals are obtained, (iii) the proposed adjustment or removal does not violate the terms of any document evidencing a security interest in the subject Lots, and (iv) all Declaration and Plat amendments required by the CCIOA and/or local land use laws are prepared, executed and recorded. All costs relating to such activity (including the attorneys' fees and costs incurred by the Board in reviewing and acting upon the matter) shall be the sole responsibility and obligation of the Owner(s) applying for the same.

(3) No Owner of a Lot shall grant or convey any easement rights affecting any portion of the Lot without the prior written consent of the Board.

(4) No further covenants, conditions, restrictions or easements shall be recorded by any Owner (except Declarant in the exercise of its reserved rights) or other Persons against any Lot without the provisions thereof having been first approved in writing by the Board for consistency with the Declaration and the general plan of development for the Common Interest Community. Any covenants, conditions, restrictions or easements recorded without such approvals

being evidenced thereon shall be null and void. This provision does not apply to Mortgages.

(5) No application for rezoning of any Lot, and no application for any variance or special use permit for any Lot, shall be filed with any governmental authority by any Owner (except Declarant in the exercise of any reserved rights) unless the proposed use of the Lot has first been approved in writing by the Board and the proposed use otherwise complies with the Declaration.

Section 3.33 **House Size Regulations.** Single-family residences in the Common Interest Community shall be subject to the size limitations as set forth in the Pinyon Mesa P.U.D. Plan and Design Guidelines.

Section 3.34 **Health, Safety and Welfare.** In the event any uses, activities, and facilities within the Common Interest Community are deemed by the Board to be an unreasonable annoyance or nuisance, or to adversely affect the health, safety or welfare of Owners or Occupants, the Board may amend this Declaration in order to appropriately restrict and regulate such uses, activities or facilities within the Common Interest Community.

Section 3.35 **Implementation and Variances.** The Board may, in its sole discretion and in extenuating circumstances, grant variances from any of the restrictions set forth in this **Article III** (excepting any such restrictions with respect to which the Design Review Committee has the authority to grant variances under **Section 4.15** below), if the Board determines, in its discretion, (a) either (i) that a particular restriction creates a substantial hardship or burden on an Owner or Occupant, which hardship or burden was not caused by said Owner or Occupant, or (ii) that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete; and (b) that the activity permitted under the variance, in the judgment of the Board, will not have any material adverse effect on the Owners and Occupants of the Common Interest Community (including neighboring Lots) and is consistent with the high quality of living intended to be promoted hereby throughout the Common Interest Community. When an Owner applies for a variance, the Board must give at least ten (10) days advance written notice of the variance hearing, and of the nature of the variance requested, postage prepaid, by certified mail, return receipt requested, to all Owners of Lots, at the current addresses for such Owners reflected in the Association files. If the foregoing notice requirements are complied with, it is not necessary that the Owners actually receive the notice that is mailed to them, such notices being deemed received upon mailing.

No variance shall conflict with the Pinyon Mesa P.U.D. or with ordinances or regulations of the County. If a variance from the County laws or regulations is

also required in connection with a matter for which a variance is desired hereunder, it shall be the Owner's responsibility to obtain such County variance before submitting a variance application to the Board

Section 3.36 **Declarant Activities.** Nothing contained in this Declaration is intended or shall be construed to prevent, regulate or delay or to restrict in any way Declarant's right and ability to develop, improve, maintain, repair, regulate, operate, administer, manage, market, sell, lease, encumber or dispose of the Common Interest Community, the Lots, or any part thereof, including the right to construct Improvements, place construction or office trailers, and install signs thereon, all in the complete discretion of Declarant.

Section 3.37 **County Approvals.** In addition to the general restrictions set forth in this Article, and subject to legally established vested rights, the use and occupancy of each Lot shall be subject to the requirements set forth in the Ordinances, Resolutions, Plats or Agreements adopted and approved by the County relating to Pinyon Mesa, and in particular the Pinyon Mesa P.U.D. Plan, and all approved modifications thereto, as well as the general zoning and subdivision regulations of the County that are applicable to Pinyon Mesa.

Section 3.38 **Adjacent Lands.** Parts of the Common Interest Community are adjacent to lands owned and operated by the Bureau of Land Management ("BLM"). The BLM allows hunting activities on these adjacent lands, which hunting activities will take place on occasion and the Common Interest Community may not restrict hunting activities beyond the boundaries of the Common Interest Community.

Section 3.39 **Wildfire Hazard.** All Lots in the Common Interest Community are exposed to wildfire risks, as identified in the Colorado State Forest Service Wildfire Hazard Letter especially Lots 1-5, 17-20, 36-48, and 49-54. All structures built on these Lots must have defensible space around them where fuels and vegetation are treated, cleared or reduced to slow the spread of wildfire towards such structures. All owners of Lots are expected to be familiar with and comply with any and all wildfire hazard mitigation measures and other measures referred to in said Letter.

All homes in the Common Interest Community should be built using firewise materials that are fire resistive (Class C or better rating). Lots 66-72 and 59-65 surround a ravine within the Common Interest Community which is also exposed to increased wildfire risk due to the density of trees. The trees and understory shrubs in the ravine and on these Lots should be thinned, and the removal of ladder fuels and dead material should be completed before any homes are constructed on these Lots. The use of firewise building materials and the creation of defensible space around all permanent structures on these Lots is also recommended.

Finally, in order to reduce the risk of an Ips Bark Beetle colonization of the pinyon trees within the Common Interest Community, it is recommended that all conifer/evergreen tree cutting or pruning activities be limited to September and October of each year.

Section 3.40 **Wildlife.** A Wildlife Assessment Report was completed for the Common Interest Community. This Report identifies mule deer habitats and migration corridors for elk throughout the Common Interest Community. Such migration activities may result in damage to landscaping on Lots by foraging elk and deer. Lot Owners agree to indemnify the Colorado Department of Wildlife from any and all claims related to such wildlife damage, and may not seek reimbursement for such game damage. Other wildlife that may be found on or around the Common Interest Community include black bear, coyote, mountain lions and sensitive bird species. To protect themselves and all wildlife on or around the Common Interest Community, all Owners of Lots shall be familiar with the results of this Report, and shall undertake any and all requirements and restrictions of this Report during development and use of the Lot. The Association shall maintain and disseminate information to the Owners as supplied by the Colorado Division of Wildlife which concerns such wildlife species and their impact on the Common Interest Community.

Section 3.41 **BLM Lands.** Any use or occupancy of the public BLM lands adjacent to the Common Interest Community shall comply with the comments and recommendations of the Bureau of Land Management Letter, including the following specific recommendations:

(1) **Wildfire.** Protecting homes from wildfires is a concern in the wildland-urban interface areas. Modifying design plans or reducing fuels to create a defensible space on private property is recommended. Future fuel reduction actions on public lands should not be considered as the preferred remedy for mitigation of wildfire concerns.

(2) **Trespass.** The applicant should be mindful of the location of BLM property boundaries to ensure no encroachment occurs on public lands. Improved fencing is recommended to identify the boundary and control access and trespass.

(3) **Recreation/Travel.** The adjacent public lands offer a variety of dispersed recreational activities (motorized and non-motorized). Motorized and non-motorized travel is managed in accordance with the Glenwood Springs Field Office - Resource Management Plan. This broad range of activities will likely continue to occur contiguous to the private lands. Additional information on recreation, travel and access can be found at the Office of the BLM.

(4) **Hunting and Target Shooting.** The adjacent BLM lands are open to hunting and target shooting. The BLM does not establish safety zones or no-shooting zones to restrict hunting.

(5) **Right-of-ways.** Any roads, cart trails, paths, or utilities such as water, electric, phone or otherwise crossing BLM would require right-of-way (ROW) permits from this office. An environmental assessment of the impacts of those uses would be needed as a part of the ROW permitting process.

(6) **Mineral Rights.** The Bureau has not researched the mineral rights to determine if they are reserved to the federal government on the subject lands.

ARTICLE IV DESIGN REVIEW COMMITTEE

Section 4.1 **Establishment of Design Review Committee.** The Association shall have a Design Review Committee, which shall consist of a minimum of three (3) members, each of whom shall either be (i) a representative of the Declarant, or (ii) an Owner or Occupant of a Lot in the Common Interest Community. All members of the Design Review Committee shall be appointed and removed from time to time by the Board in its discretion, and shall serve for such term as may be established by the Board from time to time. A member may be removed by the Board at any time upon written notice, without cause. Subject to the three (3) member minimum, and to the membership criteria set forth above, the Board may increase or decrease the size of the Design Review Committee from time to time in its discretion. On behalf of the Association, the Board may hire a local architect to consult with and advise the Design Review Committee, which architect shall be paid by the Association as a Common Expense. The Board may also hire or appoint a secretary for the Design Review Committee, and shall provide appropriate compensation for any such secretarial services.

Section 4.2 **Meetings and Action of Committee.** The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. The Design Review Committee may from time to time, by resolution in writing adopted by a majority of the members, designate a Committee representative (who may but need not be one of its members) to take any action or perform any duties for or on behalf of the Design Review Committee, except the granting of approval for any Improvements and the granting of variances. The action of such Committee representative within the authority of such Committee representative shall constitute the action of the Design Review Committee. A majority of the members of the Design Review Committee shall constitute a quorum of the Committee. Actions of the Committee may be taken (without a meeting) by the written consent of a majority of the members thereof, or at a meeting at which a



quorum is present in person or by proxy, by the vote of a majority of such members constituting the quorum, but in no event less than two (2) members.

Section 4.3 **Records of Actions.** The Design Review Committee shall keep a permanent record of all actions of the Design Review Committee.

Section 4.4 **Design Guidelines.** The Declarant has established an initial set of rules, procedures, standards, guidelines and requirements, including, without limitation, architectural, design and development standards and guidelines which shall govern the review and approval or disapproval of any proposed reconstruction, remodeling, renovation or alteration of Improvements within the Common Interest Community, and other matters provided for therein (the "Design Guidelines"). The Design Review Committee may make such amendments and additions to the Design Guidelines as the Committee deems necessary or appropriate from time to time to accomplish the purposes of (and as are not in conflict with) this Declaration and to ensure the orderly and attractive development of the Common Interest Community, provided such amendments or additions are consistent with any and all conditions of development approval imposed by the County. Upon its adoption, each such amendment shall be provided to the Board. The Design Guidelines (as they may be amended from time to time) are hereby incorporated herein and shall be deemed to be a part of this Declaration and shall be binding on the Common Interest Community, and on all Owners, Occupants, Members or other Persons as if expressly set forth herein. A copy of the current Design Guidelines shall, at all times, be a part of the Association's records. The Design Review Committee, in its sole discretion, shall have the right and authority to determine the existence of any violation of the Design Guidelines or of any approvals granted or other decisions made by, or other requirements of, the Design Review Committee, which determinations shall be binding on the Owners.

Section 4.5 **Design Review Fee.** The Design Review Committee shall adopt, and may from time to time amend, a design review fee schedule which shall apply to requests for approval of construction, remodel, renovation or other alterations of or to Improvements (collectively referred to herein as "Work"), except that no fee shall be charged for any proposed alteration or addition to an approved landscaping plan. The design review fee schedule shall be set forth in the Design Guidelines. The applicable fee must accompany each request for approval of any proposed work. The Design Review Committee shall not take any action on a request for approval until all required fees are paid in connection therewith.

Section 4.6 **Design Review and Construction Process.** Every Owner proposing any work on its Lot must comply with the design review and construction procedures that are set forth in the Design Guidelines.

Section 4.7 **Submission of Plans, Specifications and Data; Time Frame for Approval.** Prior to commencement of work, the Owner proposing same shall submit to the Design Review Committee such descriptions, surveys, plot plans, excavation plans, drainage plans, grading plans, site plans, roof plan, elevation drawings, construction plans, landscaping plans, irrigation plans, fencing and wall plans, specifications, and samples of materials and colors as the Design Review Committee shall reasonably request showing among other things the nature, kind, shape, bulk, massing, articulation, height, width, dimensions, color, materials, and location of the Improvements to be constructed, remodeled, renovated or altered. All submissions shall conform to and be in accordance with the Design Guidelines. The Owner shall be entitled to receive a receipt for the same from the Design Review Committee or its authorized agent. The Design Review Committee may require submission of additional plans, specifications, or other information prior to approving or disapproving the proposed work. Until receipt by the Design Review Committee of all required information and materials in connection with the proposed work, the Design Review Committee may postpone review of the application.

From and after the date on which the Design Review Committee receives all required information and materials in connection with the proposed work, the Design Review Committee shall have thirty (30) calendar days in which to approve, approve with conditions, or deny the application. An approval shall be evidenced by a "Certificate of Approval" as provided in **Section 4.8** below. In the discretion of the Committee, one or more meetings may be held with the Owner during that period. If the Design Review Committee fails to approve or deny the application within said 30-day period, the final plans and specifications submitted to the Committee by the Owner shall be deemed approved.

Section 4.8 **Criteria for Approval or Disapproval; Certificate of Approval.** The Design Review Committee shall approve any proposed work, and shall issue a Certificate of Approval therefor (which grants approval to an identified set of plans, subject to any conditions to approval), only if it determines in its reasonable discretion that the Pinyon Mesa P.U.D. Plan and the Design Guidelines have been complied with; that the proposed work is in compliance with all applicable provisions of this Declaration; that the proposed work will not be detrimental to the value or enjoyment of the surrounding areas in the Common Interest Community; that the siting, design, bulk, height, appearance and overall aesthetic impact of the proposed work will be in harmony with the surrounding areas in the Common Interest Community; that the proposed work will enhance the quality, wholesomeness, and attractiveness of the Common Interest Community and the enjoyment thereof by Owners; that the upkeep and maintenance of the proposed work will not become a burden on the Association; and that in the case of

construction or renovation of a residential dwelling, the work will be performed by a competent builder. The Design Review Committee may condition its approval of any proposed Improvements upon the making of such changes therein as the Design Review Committee may deem reasonably appropriate, and may require that architectural embellishments (or details) and/or additional landscaping be performed on the subject Lot. In all cases, the Design Review Committee must issue a Certificate of Approval before an Owner applies to the County for a Building Permit for the proposed work.

The approval by the Committee of any work shall in no event imply or require that such approval will be granted again in the future for the same or a similar work, and the Committee shall have complete discretion, consistent with the standards and criteria contained herein and in the Design Guidelines, to grant or deny such approval in each instance on the merits of the particular application or proposal and considering the circumstances surrounding the same.

Section 4.9 **Decisions of Committee.** Decisions of the Design Review Committee shall be made in accordance with the procedures established in the Design Guidelines and shall be binding on all parties.

Section 4.10 **Completion of Work After Approval.** Following the approval of any proposed work by the Design Review Committee, the proposed work shall be completed by the Owner: (a) as promptly and diligently as possible but in no event in excess of the time periods set forth below; (b) in compliance with the Design Guidelines and with all applicable laws, regulations and codes; (c) in strict conformance with all plans and specifications and other materials furnished to and approved by the Design Review Committee and with the Certificate of Approval; and (d) in accordance with any and all conditions imposed by the Design Review Committee. All work approved by the Design Review Committee shall be completed, a "Certificate of Compliance" shall be obtained in accordance with **Section 4.13** below, and all construction equipment, materials and debris shall be removed: (i) within 18 months from the date of approval by the Design Review Committee, or (ii) within such other time period as the Design Review Committee may prescribe. Failure to comply with the terms and conditions of this **Section 4.10** shall constitute non-compliance with the terms and provisions of this Declaration and the Design Review Committee and/or the Board shall have the right to invoke all rights and remedies provided to them hereunder, including, but not limited to, the right to seek injunctive relief and/or to impose fines and penalties.

Section 4.11 **Right to Inspect.** Any member or authorized consultant of the Design Review Committee or of the Board, or any authorized officer, employee or agent of the Association, may (but shall not be obligated to) at any reasonable time enter upon any Lot, without being deemed guilty of trespass, in order to inspect the work, to

ascertain whether such work has been or is being built in compliance with the Design Guidelines, the approvals granted by the Design Review Committee, and this Declaration.

Section 4.12 Notice of Completion; Inspection of Work; Correction of Defects.

(1) Upon the completion of any work for which plans and specifications have been approved by the Design Review Committee, the Owner shall submit to the Committee a written "Notice of Completion," on a form to be provided by the Committee, which Notice shall certify that the work has been completed in accordance with all plans, specifications and other materials furnished to and approved by the Committee, the Certificate of Approval, any conditions imposed by the Committee, and with the Design Guidelines. Until receipt of such Notice, the Committee shall not be deemed to have any notice regarding completion of the work.

(2) Within twenty-one (21) days following receipt of the Notice of Completion, the Design Review Committee or its duly authorized representative shall inspect the work. If the Committee finds that the work has not been completed as set forth in the Notice of Completion, it shall notify the Owner in writing of such non-compliance within said twenty-one (21) day period, specifying the particulars of non-compliance, and shall require the Owner to remedy the same. If for any reason other than the Owner's act or neglect, the Committee fails to notify the Owner of any non-compliance or to issue to the Owner a Certificate of Compliance pursuant to **Section 4.13** below prior to the expiration of said twenty-one (21) day period, the work shall be deemed in compliance if the work was, in fact, completed as of the date of the Notice of Completion and the Owner may proceed to request a certificate of occupancy if required from the County.

(3) If upon the expiration of thirty (30) days from the date of such notification of non-compliance the Owner shall have failed to remedy such non-compliance, the Design Review Committee shall notify the Board in writing of such failure. Thereupon, the Board (and its duly authorized representatives), at the Board's option, may enter upon the Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, and remove the non-complying work or otherwise remedy the non-compliance, and the Owner shall reimburse the Association, upon demand, for all expenses, including interest on monies expended and attorneys' fees, incurred in connection therewith. If such expenses are not repaid by the Owner to the Association within thirty (30) days following delivery of a written demand therefor to the Owner, the Board may levy a Reimbursement Assessment against such Owner and the Owner's Lot for all such costs and expenses. The right of the Association to remedy or remove any non-compliance shall be in addition to all other rights and remedies which the Association may

have at law, in equity, or under this Declaration, and the Owner shall have no claim for damages or otherwise on account of the entry upon the property and remedying or removal of the non-complying work.

Section 4.13 **Certificate of Compliance.** When the Design Review Committee is satisfied that the work has been completed in accordance with all plans, specifications and other materials furnished to the Design Review Committee, the Certificate of Approval, any conditions imposed by the Committee, and with the Design Guidelines, it shall issue to the Owner a Certificate of Compliance with respect to said work. Upon receipt of such Certificate, but not before, the Owner may apply to the County for a certificate of occupancy if required. No constructed residence on a Lot shall be occupied until a Certificate of Compliance has been issued therefor by the Design Review Committee and a certificate of occupancy has been issued therefor by the County.

Section 4.14 **Improvements Must Conform to Approvals.** No building, fence, wall, structure, landscaping or other Improvement of whatever type shall be constructed or removed within the Common Interest Community, nor shall there be any additions or changes to the exterior of any residence or other structure or Improvement upon a Lot or the landscaping, grading or drainage thereof, including, without limitation, the painting or staining (other than painting or staining with the same color and type of paint or stain as previously existed) of exterior walls, patio covers and fences, except in accordance with plans and specifications therefor which have been submitted to and approved by the Design Review Committee and in compliance with the Design Guidelines.

Section 4.15 **Committee Power to Grant Variances.** The Design Review Committee may grant variances from any of the restrictions set forth in this Declaration or the Design Guidelines pertaining to proposed Improvements and the criteria therefor, including restrictions upon height, size, floor area, setbacks, location or placement of structures, or similar restrictions, when (i) unique circumstances not created by the Owner, such as topography, natural obstructions, or aesthetic or environmental considerations, would otherwise result in substantial hardship or burden which is not suffered by other similarly-situated Lots, or (ii) when a change of circumstances since the recording of this Declaration has rendered such restriction obsolete, and (iii) in either case, when the Design Review Committee determines that the activity allowed by the variance will not have any material adverse effect on the Owners and Occupants of the Common Interest Community (including neighboring Lots) and is consistent with the high quality of living intended to be promoted hereby throughout the Common Interest Community. When an Owner applies for a variance, the Committee must give at least ten (10) days written notice of the variance hearing, and of the nature of the variance requested, postage prepaid, by certified mail, return receipt requested, to all Owners of Lots, at the

current addresses for such Owners reflected in the Association files. If the foregoing notice requirements are complied with, it is not necessary that the Owners actually receive the notice that is mailed to them, such notices being deemed received upon mailing.

All variances that are granted by the Design Review Committee must be evidenced in writing, must specify the Lot for which the variance is granted and the unique circumstances or change in circumstances justifying the variance, and must be signed by at least a majority of the members of the Committee. If any such variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration or the Design Guidelines shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or the Design Guidelines for any purpose except as to the particular property and particular provision hereof covered by the variance. A copy of each variance request and approval, or denial, will be kept on file at the Association offices.

The granting of a variance in a particular instance shall in no event imply or require that such a variance will be granted again in the future in a similar situation, and the Committee shall have complete discretion, consistent with the standards and criteria contained herein and in the Design Guidelines, to grant or deny a variance in each instance on the merits of the particular application and considering the circumstances surrounding the same.

No variance shall conflict with the Pinyon Mesa P.U.D. Plan or with ordinances or regulations of the County. If a variance from the County laws or regulations is also required in connection with a matter for which a variance is desired hereunder, it shall be the Owner's responsibility to obtain such County variance before submitting a variance application to the Design Review Committee.

Section 4.16 **Nonliability for Approval or Disapproval of Plans and Specifications, for Issuance of Certificates of Approval or Compliance, or for Registration of Builders.** The criteria for Design Review Committee approval of plans and specifications are set forth in **Section 4.8** above. The Design Review Committee shall not be responsible for reviewing plans and specifications with respect to engineering design or for compliance with zoning, building ordinances, environmental laws, or any other applicable laws or regulations. By its approval of any such plans and specifications, and by its issuance of a Certificate of Approval, neither the Design Review Committee, the members thereof, the Association, any Member, the Board nor the Declarant assumes or shall have any liability or responsibility with respect to engineering design or for compliance with zoning, building ordinances, environmental laws, or any other applicable laws or

regulations, or for any defect in any Improvement constructed from such plans and specifications. Neither the Design Review Committee, any member thereof, the Association, any Member, the Board nor the Declarant shall be liable to any Owner, Occupant or other Person for any injury, damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective, and/or the issuance of a Certificate of Approval, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the issuance of a Certificate of Compliance, or (d) the development, or manner of development of any property within the Common Interest Community. The approval of plans and specifications by the Design Review Committee (including the issuance of a Certificate of Approval), and/or the issuance of a Certificate of Compliance by the Design Review Committee, shall not under any circumstances constitute or be deemed to be a representation or warranty that the plans, specifications or completed Improvements comply with applicable laws, resolutions, ordinances or regulations, including, but not limited to, zoning ordinances and building codes and environmental laws.

Section 4.17 **Enforcement.** The requirements and provisions of this **Article IV** and/or of the Design Guidelines shall be enforceable in accordance with the rights and procedures set forth in **Section 12.4** of this Declaration.

Section 4.18 **Coordination with Building Permit Process.** A copy of each Certificate of Approval, including conditions, shall be provided to the County building department by the Owner in conjunction with the Owner's application for a building permit from the County.

Prior to the issuance of a building permit, the Owner of each Lot shall prepare and submit a soils and foundation report, a grading and drainage plan, and a geologically acceptable building site prepared and certified by a professional engineer. All Improvements shall be constructed in accordance with such engineering recommendations, which shall be a condition of Design Review Committee approval and the building permit.

ARTICLE V ASSOCIATION PROPERTY

Section 5.1 **Use and Enjoyment of Association Property.** Except as otherwise provided in this Declaration, each Owner shall have the non-exclusive right to use and enjoy Association Property in common with all other Owners. This right to use and enjoy Association Property shall extend to each Owner, Occupant, and the family members, guests and invitees of each Owner, and to such other users as may be authorized by this Declaration or by the Board from time to time, and shall be

appurtenant to each Lot, subject at all times to the provisions of this Declaration (including Declarant's reserved rights hereunder), any applicable supplemental Declaration, the Articles and Bylaws. No Owner or Occupant shall place any structure or store or leave any materials or personal property upon Association Property, nor shall any Owner or Occupant engage in any activity which will temporarily or permanently impair free and unobstructed access to all parts of the Association Property by all Owners.

Section 5.2 **Association May Regulate Use of Association Property.** The Association, acting through the Board, shall have the right and authority to regulate the use of Association Property by the promulgation, enforcement and interpretation from time to time of such rules and regulations relating thereto as the Association considers necessary or appropriate for the protection and preservation of Association Property and the enhancement of the use and enjoyment thereof by Owners and Occupants and other authorized users.

The Association, acting through the Board, may for good cause suspend the right of any person to use and enjoy Association Property, including the right of a Member who or which is delinquent in the payment of any Assessments, and the right of any Member or other authorized user who is in violation of the terms and provisions of this Declaration or any Supplemental Declaration, the Articles, Bylaws, Design Guidelines or the terms and provisions of any approvals granted by the Design Review Committee.

Section 5.3 **Association to Maintain and Improve Association Property.** The Association, its agents and employees, shall maintain and repair, snowplow as necessary, and otherwise manage the Association Property, including, but not limited to, any Improvements, landscaping, paths, trails, parking areas, drives, and recreational and other facilities located thereon. The Association may construct, alter and remove such Improvements and landscaping upon Association Property as the Association in its discretion considers necessary, desirable or appropriate from time to time, and may do all such other and further acts which the Board deems necessary or appropriate to preserve, protect and enhance the Association Property and the beauty thereof in accordance with the general objectives for the Common Interest Community reflected in this Declaration.

Section 5.4 **No Partition of Association Property.** No Owner or other Person shall have any right to partition or to seek the partition of Association Property or any part thereof.

Section 5.5 **Owner Liability for Owner or Occupant Damage to Association Property.** Each Owner shall be liable to the Association for any damage to Association Property or for any expense, loss or liability suffered or incurred by the Association in connection with Association Property arising from (a) the negligence or willful

misconduct of such Owner or of any Occupant, agent, employee, family member, guest or invitee of such Owner, or (b) any violation by such Owner or any Occupant, agent, employee, family member, guest or invitee of such Owner of any law, regulation, or code, including without limitation any environmental law, or of any provisions of this Declaration relating to Association Property. Each Owner shall indemnify, defend and hold the Association harmless from any loss, damage, expense or liability arising from the circumstances described in subsections (a) or (b) immediately above. The Association shall have the power to levy and collect a Reimbursement Assessment against a Owner to recover the costs, expenses, damages, losses or liabilities incurred by the Association as a consequence of any such negligence, willful misconduct or violations.

Section 5.6 **Damage or Destruction to Association Property.** In the event of damage to or destruction of Association Property, including Improvements thereon, by fire or other casualty, the Association shall repair or replace the same in accordance with the provisions of **Section 9.17** below. Repair, reconstruction, or replacement of Association Property shall be accomplished under such contracting and bidding procedures as the Association shall determine are appropriate. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction, and replacement, the Association may use the same for future maintenance, repair, improvement, and operation of Association Property or for any other use deemed appropriate by the Board.

Section 5.7 **Condemnation of Association Property.** If any Association Property or part thereof or interest therein is taken under exercise of the power of eminent domain or by purchase in lieu thereof, the portion of any award in condemnation or the price payable for the deed in lieu that is attributable to the Association Property taken or purchased shall be paid to the Association. The Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interests of all Owners and Occupants and other Persons therein. Any award or funds received by the Association shall be held by the Association for the purposes stated in **Section 5.6** above or as a reserve for future maintenance, repair, reconstruction, or replacement of Association Property or may be used for Improvements or additions to or operation of Association Property or for such other uses as may be deemed appropriate by the Board. Except as may otherwise be provided by the CCIOA, no Owner or other Person shall be entitled to participate as a party or otherwise in any condemnation proceedings nor to receive any proceeds therefrom.

Section 5.8 **Title to Association Property Upon Dissolution of Association.** In the event of dissolution of the Association, the Association Property shall, to the extent permitted by law and reasonably possible, be conveyed or transferred to an appropriate public, governmental or quasi-governmental agency or organization or

to a nonprofit corporation, association, trust, or other organization, to be used, in any such event, for the common benefit of Owners for the purposes for which the Association Property was held by the Association. If the foregoing is not possible, the Association Property, shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Owners in proportion to each Owner's Allocated Interest in the Common Expenses of the Association.

Section 5.9 **Mechanic's Liens on Association Property.** Declarant shall be responsible for the release of mechanics' liens filed with respect to Association Property, or any part thereof, if such liens arise from labor performed or materials furnished at the instance of Declarant, its agents, contractors or subcontractors. Likewise, the Association shall be responsible for the release of mechanics' liens filed with respect to Association Property, or any part thereof, if such liens arise from labor performed or materials furnished at the instance of the Association, its directors, officers, agents, contractors or subcontractors. No labor performed or materials furnished with respect to a Lot at the instance of the Owner shall be the basis for filing a lien against Association Property. No labor performed or materials furnished with respect to Association Property at the instance of the Board shall be the basis for filing a lien against any Lot.

ARTICLE VI
DECLARANT'S RESERVED RIGHTS

Declarant hereby expressly reserves to itself and its successors and assigns the following described rights, which include development rights and special Declarant rights, any one or more of which rights may be exercised, in the sole and absolute discretion of Declarant, at any time and from time to time during the period commencing upon the recording of this Declaration in Garfield County and ending on the date of termination of such rights established under **Section 6.11** below. It is expressly understood that Declarant shall not be obligated to exercise any of these reserved rights, and that no consent shall be required from any Owner, Mortgagee, or the Association for the effective exercise of any of these reserved rights.

The reserved rights hereinafter set forth shall be prior and superior to any other provisions of this Declaration, and may not be amended, modified, terminated or otherwise altered in any way without the express prior written consent of Declarant. All conveyances of Lots and other portions of the Common Interest Community hereafter made, whether by Declarant or otherwise, shall be deemed and construed to reserve to Declarant and/or to grant to Declarant all of the rights reserved by and to Declarant in this **Article VI** and elsewhere in this Declaration, even though no specific reference to such rights appears in the conveyancing instruments. Nothing in this **Article VI** shall limit or impair any other rights granted or reserved to Declarant by other provisions of this Declaration.

The following rights are hereby reserved to Declarant and its successors and assigns:

Section 6.1 **Construction of Improvements.** The right throughout the Common Interest Community to complete Improvements indicated on the Plat filed with this Declaration, as such Maps and Declarations may be amended from time to time. Furthermore, the right to construct and complete Improvements required by the terms of the Subdivision Improvements Agreement Recorded October 8, 2007, at Reception No. 734762, in the office of the Clerk and Recorder of Garfield County, Colorado, and any supplements thereto. Furthermore, the right to create, grant and/or use and enjoy additional non-exclusive easements, and to relocate existing platted Lots or other easements, upon or across any portion of the Common Interest Community, as may be reasonably required for the construction by Declarant of the above-described Improvements or the effective exercise by Declarant of any of the other reserved rights described in this **Article VI.**

Section 6.2 **Sales, Marketing and Management.** The right to construct, locate or operate, and to maintain upon, and to remove from, any part of the Common Interest Community including Lots owned by Declarant, in the discretion of Declarant, and in such number, size and location as may be reasonably required by Declarant in connection with the completion of Improvements, the management of the development, and/or the promotion, marketing, sale or rental of Lots, the following:

- (1) Sales offices, management offices, and/or construction offices, and structures containing or relating to the same, including, without limitation, mobile homes, office trailers and construction trailers. Such offices, to the extent they are not situated on a Lot, are hereby declared to be personal property of the Declarant and shall in any case be removable by Declarant or its successors or assigns promptly upon the Declarant or its successors or assigns ceasing to be a Lot;
- (2) Signs identifying and advertising the Common Interest Community and the Lots therein, or relating to development or construction thereon;
- (3) Model residences constructed or to be constructed on Lots;
- (4) Parking areas and facilities, and lighting, necessary or desirable in the marketing of the Common Interest Community and the Lots;
- (5) Employees in offices; equipment; vehicles; and marketing and construction materials;

together with the right to attract, invite or bring prospective purchasers of Lots into the Common Interest Community at all times.

Section 6.3 **Declarant Control of Association.** The right to appoint or remove any Board member or officer of the Association, as more specifically set forth in **Section 8.5** below, but only for and during the "Period of Declarant Control of Association" as defined in said **Section 8.5**.

Section 6.4 **Annexation of Additional Unspecified Real Estate.** The right to annex unspecified real estate to the Common Interest Community to the fullest extent permitted by the CCIOA.

Section 6.5 **Withdrawal Rights and Procedure.** The right at any time and from time to time to withdraw from the Common Interest Community (and any annexations thereto) any Declarant-owned Lot or Lots and/or Association Property.

Withdrawal may only be accomplished by the recording by Declarant of an amendment to this Declaration and an amendment to the Plat affected by the withdrawal. Upon the recording of such amendments, the withdrawn Lots and/or Association Property shall no longer be part of the Common Interest Community or subject to this Declaration in any way.

Each Declarant-owned Lot and each Declarant-owned Association Property are hereby described and declared to be a separate portion of real estate that is subject to this right of withdrawal, and Declarant expressly reserves the right to withdraw one or more Declarant-owned Lots and/or all or a portion of any Declarant controlled Association Property from the Common Interest Community. Once a Lot has been conveyed to an Owner other than Declarant, that portion of the real estate is no longer subject to this right of withdrawal.

The withdrawn property shall be subject to whatever easements, if any, may be reasonably necessary for access or utility service to, or operation or management or use or enjoyment of, the Common Interest Community or any part thereof. At the time any withdrawal of real estate is accomplished, Declarant shall record whatever documents are necessary to establish such reciprocal easements in the Garfield County records.

Section 6.6 **Effect of Expansion or Contraction.** In the event any real property is annexed to the Common Interest Community as provided herein, or if any real property is withdrawn from the Common Interest Community as provided herein, the definitions used in this Declaration shall be automatically expanded or contracted to encompass and refer to the Common Interest Community as expanded or contracted, *e.g.*, "Common Interest Community" shall mean the real property described herein plus any additional real property annexed thereto (the "Annexed Property") and/or minus any real property withdrawn therefrom, similarly, "Association Property" and "Lots" shall mean and include those areas as described

herein as well as or less those so designated on any supplemental Declaration or supplemental Plat (or any amendment to a Declaration or Plat) relating to any real property which is annexed or withdrawn pursuant to this **Article VI**. References to this Declaration shall mean this Declaration as so supplemented or as amended. Every Owner of a Lot in the area annexed to the Common Interest Community shall, by virtue of ownership of such Lot, be a member of the Association and shall be entitled to the same rights and privileges and subject to the same duties and obligations as any other Association Member. Regular Assessments for Lots within the Annexed Property shall commence as of the date of the Recording of the supplement to the Declaration and shall be prorated as of such date.

The Recording of amendments to the Declaration and Plat, whether in the form of supplements and Plats or otherwise, which reallocate the allocated interests in the Common Interest Community, shall automatically:

- (1) Vest in each existing Owner the reallocated allocated interests appurtenant to the Owner's Lot; and
- (2) Vest in each existing Mortgagee a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Lot.

Section 6.7 **Subdivision of Blocks or Lots.** Declarant shall have and hereby reserves the right to subdivide any Declarant-owned Lot located within the Common Interest Community to create additional Lots, Association Property, and/or streets, provided, however, that such subdivision is consistent with the Pinyon Mesa PUD Plan and that the subdivision is accomplished in compliance with County subdivision requirements. Upon the subdivision of any block or Lot in accordance with the terms and conditions contained herein, the Allocated Interests of all Owners shall be reallocated in accordance with the definition of Allocated Interests contained in this Declaration.

Section 6.8 **Transfer of Additional Property to Association.** The right, but not the obligation, to transfer additional real and personal property, and Improvements thereon, to the Association from time to time in furtherance of this Declaration.

Section 6.9 **Other Reserved Development Rights.** Subject to compliance with any applicable County requirements, Declarant reserves the right with respect to all or any Declarant-owned portion of the Common Interest Community to (a) create Association property; (b) create additional Lots, subject to the maximum set forth in the Pinyon Mesa P.U.D. Plan; (c) combine Lots; (d) convert Lots into Association property; (e) convert Association property into Lots; (f) create common elements and/or limited common elements; (g) reconfigure Lots, streets, and/or Association property; and (h) amend the Pinyon Mesa P.U.D. Plan.

Additionally, in order to effectively exercise the rights reserved to Declarant under this **Article VI**, Declarant reserves the right to amend this Declaration (without the consent of Owners, Mortgagees or the Association being required) for purposes of (a) complying with or qualifying for any required federal or state registration of the project, (b) satisfying title insurance requirements, or (c) bringing any provision or provisions of the Declaration into compliance with the CCIOA.

Section 6.10 **Transfer of Declarant's Reserved Rights.** Any one or more rights created or reserved for the benefit of Declarant under this **Article VI** or elsewhere in this Declaration may be transferred to any Person by an instrument describing the right or rights transferred and recorded in Garfield County. Such instrument shall be executed by the transferor Declarant and the transferee. The provisions of Section 38-33.3-304 of the CCIOA shall apply to any transfer of special Declarant rights.

Section 6.11 **Termination of Declarant's Reserved Rights.** With the exception of Declarant's right to appoint or remove Board members and officers of the Association, which is addressed in **Section 8.5** below, the rights reserved to Declarant in this **Article VI** shall automatically terminate and expire upon the first to occur of (i) the date which is thirty (30) years after the recording of this Declaration, or (ii) Declarant's relinquishment and surrender of such rights by recorded instrument. Declarant may from time to time relinquish and surrender one or more but less than all of the reserved rights, in which event the unrelinquished reserved rights shall remain fully valid and effective for the remainder of the term thereof. The Association may extend the time period for exercise of a development right, or reinstate a lapsed development right, subject to whatever terms, conditions and limitations the Association may impose on the subsequent exercise of the development right. The extension or renewal of a development right and any terms, conditions and limitations shall be included in an amendment executed by Declarant or the owner of the real estate subject to the development right and the Association.

Section 6.12 **Owner Review, Acceptance and Waiver of Rights Regarding Development Plan and Declarant's Reserved Rights.** Each Owner, by its acceptance of a deed to a Lot, acknowledges that the Owner has carefully reviewed and understands the Declarant's reserved rights as set forth in this **Article VI** or elsewhere in this Declaration, that the Owner accepts and approves such matters and appreciates any potential impacts that the exercise of such reserved rights may have on the Owner's Lot, and expressly waives any rights the Owner may have to object to or to interfere in any way with the exercise of such rights.

Section 6.13 **Declarant as Attorney-in-Fact For Owners.** Each Owner, by its acceptance of a deed or other conveyance vesting in the Owner an interest in a Lot in the Common Interest Community, does hereby irrevocably constitute and appoint Declarant (with full power of substitution) as said Owner's attorney-in-fact, in said Owner's

name, place and stead, to take any and all actions and to execute and deliver any and all instruments as may be necessary or appropriate to Declarant's exercise of the various rights reserved to Declarant under this **Article VI** or elsewhere in this Declaration, specifically including, without limitation, Declarant's reserved right to use all existing easements within the Common Interest Community or to create, grant, use and/or replat and relocate additional or existing easements across any portion of the Common Interest Community excepting platted Building Envelopes.

ARTICLE VII EASEMENTS

- Section 7.1 **Easements for Incidental Encroachments.** If any portion of an Improvement approved by the Design Review Committee encroaches in its approved location upon Association Property, including any future encroachments arising or resulting from the repair or reconstruction of an Improvement subsequent to its damage, destruction or condemnation, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist for such incidental encroachment.
- Section 7.2 **Utility and Drainage Easements.** There are hereby created, granted and reserved for the use and benefit of the Declarant, the Association, and appropriate public utilities, perpetual, non-exclusive easements over, upon, across and under those portions of the Common Interest Community that are designated "Utility Easement" or "Drainage Easement" on the Plat or any Supplemental Plat. Utility Easements may be used for the installation, operation, maintenance, repair, removal or replacement of underground utilities and irrigation water lines and related surface facilities. Drainage Easements may be used for the installation, operation, maintenance, repair, removal or replacement of drainage systems and facilities. Except as may otherwise be provided in any Subdivision Improvements Agreement between Declarant and the County or in any other separate agreement between Declarant and a utility supplier, the party causing the disturbance shall be obligated to restore, repair, reseed and/or relandscape any area disturbed by the exercise of these easement rights to as close to its original condition as possible, as promptly as possible following the completion of any work within a Utility or Drainage Easement.
- Section 7.3 **Blanket Emergency Services Easement.** There is hereby created, granted and reserved for the use and benefit of all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons, now or hereafter serving the Common Interest Community and its Owners and Occupants, a perpetual, non-exclusive blanket Emergency Services Easement over, upon, along and across all streets, properties and areas within the Common Interest Community, for use in the lawful performance of their duties.

Section 7.4 **Easements Deemed Created.** All conveyances of Lots and Association Property hereafter made, whether by Declarant or otherwise, shall be deemed and construed to grant and reserve all of the easements referred to in this **Article VII** and elsewhere in this Declaration and in any Supplemental Declaration, even though no specific reference to such easements appears in the conveyancing instruments.

Section 7.5 **Restrictions on Owners in Easement Areas.** Owners of Lots that are subject to any easements created by this Declaration, a Supplemental Declaration, or a recorded Plat, or to any existing ditch easements, shall acquire no right, title or interest in any cables, conduits, mains, lines, or other equipment or facilities or improvements that may be installed upon, over or under the easement area by a beneficiary of said easement rights. Moreover, Owners and Occupants of Lots that are subject to any such easements are hereby prohibited from constructing any improvements upon the easement areas, altering or obstructing the flow of any water or drainage thereon, or landscaping the same, in any manner that might interfere with the full and proper exercise of said easement rights by any beneficiary thereof. Finally, said Owners and Occupants are hereby further prohibited from violating any of the restrictions relating to the use of the easement areas as may be set forth in this Declaration or in any Supplemental Declaration. Any Owner or Occupant violating any of these restrictions shall be obligated to remove the offending improvement or landscaping and to restore the surface of the area to its original condition, or otherwise to remedy the violation, at the Owner's cost and expense, within 30 days following a written request therefor from any easement beneficiary. If said Owner or Occupant fails to comply with the request in a timely manner, the Association shall have the right to enter upon the Owner's Lot to perform the necessary work and may assess the costs thereof against the Owner and the Owner's Lot in the form of a Reimbursement Assessment.

Section 7.6 **Recorded Easements and Licenses.** In addition to the easements described in this **Article VII** and elsewhere in this Declaration, the recorded easements and licenses appurtenant to or included in the Common Interest Community are set forth on the Plat.

ARTICLE VIII ASSOCIATION

Section 8.1 **Association.** The Association has been formed as a Colorado nonprofit corporation under the Colorado Nonprofit Corporation Act to manage the affairs of the Common Interest Community. The Association shall serve as the governing body for all of the Owners and Occupants for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of Pinyon Mesa, the levying and collection of Assessments and other expenses of the

Association, and such other matters as may be provided in this Declaration, the Articles and Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it on behalf of the Owners in accordance with the provisions of this Declaration, the Articles and the Bylaws.

Section 8.2 **Association Board.** The affairs of the Association shall be managed by a Board. The number, term, and qualifications of the members of the Board shall be fixed in the Articles of Incorporation or the Bylaws. A quorum shall be deemed present throughout any meeting of the Board if persons entitled to cast at least fifty percent (50%) of the votes on the Board are present at the beginning of the meeting or grant their proxy as provided in C.R.S. Section 7-128-205(4). With the exception of matters that may be discussed in executive session, as set forth in Section 38-33.3-308(3-7) of the CCIOA, all regular and special meetings of the Board or any committee thereof shall be open to attendance by all Members of the Association or their representatives. Agendas for meetings of the Board shall be made reasonably available for examination by all Members of the Association or their representatives.

The Board shall have all of the powers, authority and duties granted or delegated to it by the CCIOA, this Declaration, the Articles or Bylaws. Except as provided in the CCIOA, this Declaration, the Articles or Bylaws, the Board may act in all instances on behalf of the Association.

The Board may not, however, act on behalf of the Association to amend this Declaration, to terminate the Common Interest Community, or to elect members of the Board or determine the qualifications, powers and duties, or terms of office of Board members, but the Board may fill vacancies in its membership for the unexpired portion of any term.

The Board may, by resolution, delegate portions of its authority to officers of the Association, but such delegation of authority shall not relieve the Board of the ultimate responsibility for management of the affairs of the Association. If appointed by Declarant, in the performance of their duties, the members of the Board and the officers of the Association are required to exercise the care required of fiduciaries of the Owners. If not appointed by Declarant, no member of the Board and no officer shall be liable for actions taken or omissions made in the performance of such member's or officer's duties except for wanton and willful acts or omissions.

Section 8.3 **Membership in Association.** There shall be one Membership in the Association for each Lot within the Common Interest Community. The Person or Persons who constitute the Owner of a Lot shall automatically be the holder of the Membership appurtenant to that Lot, and shall collectively be the "Member" of the Association

with respect to that Lot, and the Membership appurtenant to that Lot shall automatically pass with fee simple title to the Lot. Declarant shall hold a Membership in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot, and may not otherwise be separated from ownership of a Lot.

Section 8.4 Voting Rights of Members. Each Lot in the Common Interest Community shall be entitled to one (1) vote in the Association, *i.e.*, one (1) vote per Owner/Member. Occupants of Lots shall not have voting rights. If title to a Lot is owned by more than one (1) Person, such Persons shall collectively vote their interest as a single vote. If only one of the multiple Owners of a Lot is present at a Association meeting, such Owner is entitled to cast the vote allocated to that Lot. If more than one of the multiple Owners is present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the Owners. There is majority agreement if any of the multiple Owners casts the vote allocated to that Lot without protest being made promptly to the Person presiding over the meeting by any of the other Owners of the Lot. In the event of a protest being made by one or more multiple Owners, and a majority of the multiple Owners of the Lot cannot agree on how to cast their vote, any vote cast for that Lot shall be null and void with regard to the issue being voted upon. Such multiple Owners and their Lot shall nevertheless be counted in determining the presence of a quorum with respect to the issue being voted upon.

In accordance with Section 38-33.3-309 of the CCIOA, and except as may otherwise be provided in the Bylaws, a quorum is deemed present throughout any meeting of the Members of the Association if Persons entitled to cast at least fifty percent (50%) of the votes in the Association are present, in person or by proxy, at the beginning of the meeting.

Provided a quorum of Members entitled to vote is present in person or by proxy, the affirmative vote of a majority of the Members so present shall constitute approval of any matter voted upon unless a different number is required on a particular matter by the CCIOA, this Declaration, the Articles or the Bylaws.

The vote allocated to a Lot may be cast pursuant to a proxy duly executed by a Lot. If a Lot is owned by more than one Person, each Owner of the Lot may vote or register protest to the casting of a vote by the other Owners of the Lot through a duly executed proxy. An Owner may not revoke a proxy given pursuant to this **Section 8.4** except by actual notice of revocation to the Person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy shall terminate eleven (11) months after its date, unless a different termination date is otherwise set forth on its face.

The Owners, by a vote of sixty-seven (67%) of all Members present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any member of the Board with or without cause, other than a member appointed by Declarant.

Section 8.5 **Period of Declarant Control of Association.** Declarant shall have and hereby reserves the power to appoint and remove, in its sole discretion, the members of the Board during the period commencing upon the recording of this Declaration and terminating no later than the earlier of (a) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that may be created to Owners other than Declarant; or (b) two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business; or (c) two (2) years after any right to add new Lots was last exercised by Declarant, subject to the following:

During said "Period of Declarant Control" of the Association:

(1) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that may be created to Owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board must be elected by Owners other than Declarant.

(2) Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created to Owners other than Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Board must be elected by Owners other than Declarant.

At any time prior to the termination of the Period of Declarant Control of the Association, the Declarant may voluntarily surrender and relinquish the right to appoint and remove officers and members of the Board, but in such event Declarant may require, for the duration of the Period of Declarant Control of the Association, that specified actions of the Association or the Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. As to such actions, Declarant may give its approval or disapproval in its sole discretion and option, and its disapproval shall invalidate any such action by the Board or the Association. Not later than the termination of the Period of Declarant Control of the Association, the Owners (including Declarant) shall elect a Board of at least three (3) members, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant, and the Board shall elect the officers, with such Board members and officers to take office upon election. Pursuant to Section 38-33.3-303(9) of the CCIOA, within sixty (60) days after Owners other than Declarant elect a majority of the members of the Board, Declarant shall deliver to the Association all property of the Owners and of the Association held or controlled by Declarant, including, without limitation, the following items:

(a) The original or a certified copy of the recorded Declaration as amended, the Association's Articles of Incorporation, Bylaws, minute books, other books and records, and any Rules and Regulations which may have been promulgated;

(b) An accounting for Association funds and financial statements from the date the Association received funds and ending on the date the Period of Declarant Control ends. The financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter, expressing either the opinion that the financial statements present fairly the financial position of the Association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with generally accepted accounting principles and the reasons therefor. The expense of the audit shall not be paid for or charged to the Association;

(c) The Association funds or control thereof;

(d) A copy, for the non-exclusive use by the Association, of any plans and specifications used in the construction of the Improvements in the Common Interest Community;

(e) All insurance policies then in force, in which the Owners, the Association, or its directors and officers are named as insured persons;

(f) Copies of any certificates of occupancy that may have been issued with respect to any Improvements comprising the Common Interest Community;

(g) Any other permits issued by governmental bodies applicable to the Common Interest Community and which are currently in force or which were issued within one year prior to the date on which Owners other than the Declarant took control of the Association;

(h) Written warranties of contractors, subcontractors, suppliers, and manufacturers that are still effective;

(i) A roster of Owners and Occupants and Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;

(j) Employment contracts in which the Association is a contracting party; and

(k) Any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the persons performing the services.

Section 8.6 **Contracts and Leases of Declarant.** The following contracts and leases, if entered into before the Board elected by the Owners pursuant to Section 38-33.3-303(7) takes office, may be terminated without penalty by the Association at any time after the Board elected by the Owners pursuant to said Section 38-33.3-303(7) takes office, upon not less than ninety (90) days notice to the other party: (i) Any management contract, employment contract or lease of recreational or parking areas or facilities; (ii) any other contract or lease between the Association and Declarant or an affiliate of Declarant; or (iii) any contract or lease that is not bona fide or was unconscionable to the Owners at the time entered into under the circumstances then prevailing. However, the Association shall be obligated under all provisions of the Plant Development Agreement and the rules and regulations of the Spring Valley Sanitation District. Further, the Association shall be the successor and assign to that Water Tap Assignment and Water Delivery Agreement dated the 19th day of June, 2006, by and between Elk Springs Homeowners Association, Red Canyon Water Company and Pinyon Mesa Development, Inc. All such contracts and agreements are not voidable. Upon such assignment, the Association shall become obligated to perform and shall be entitled to receive the benefit of all provisions of such contracts and agreements.

ARTICLE IX
POWERS AND DUTIES OF ASSOCIATION

Section 9.1 **General Powers and Duties of Association.** The Association shall have and may exercise all of the powers and rights and duties of a Colorado corporation formed under the Colorado Revised Nonprofit Corporation Act, and all of the powers and duties provided for in the CCIOA including those enumerated in Section 38-33.3-302 of the CCIOA, as such laws may be amended from time to time, subject only to the limitations upon such powers as are contained in this Declaration. More specifically, and without limiting the generality of the foregoing, the Association shall have all of the powers and duties necessary (i) for the administration, management, governance and operation of the Common Interest Community and the Association, (ii) to own, operate, improve, maintain, repair, manage, lease, encumber, and otherwise deal with Association Property, and (iii) to do any and all lawful things that may be authorized, required or permitted to be done by the Association under the CCIOA and/or under the provisions of this Declaration and of any Supplemental Declarations.

Section 9.2 **Power to Grant Easements.** The Association shall have the power to grant access, utility, drainage, irrigation, and such other easements upon, over, across or under Association Property as it deems necessary or desirable for the benefit of the Common Interest Community or parts thereof, or for the benefit of all or less than all of the Owners, or for the benefit of lands situated outside the Common Interest Community.

Section 9.3 **Power to Convey or Encumber Association Property.** The Association shall have the power to convey, or subject to a security interest, portions of the Association Property if Owners entitled to cast at least sixty-seven percent (67%) of the votes in the Association, including sixty-seven percent (67%) of the votes allocated to Lots not owned by Declarant, agree to that action. Proceeds of the sale are an asset of the Association.

An agreement to convey, or subject to a security interest, Association Property must be evidenced by the execution of an agreement, in the same manner as a deed, by the Association. The agreement must specify a date after which the agreement will be void unless approved by the required percentage of Owners. Any grant, conveyance or deed executed by the Association must be recorded in the County, and is effective only upon recordation. The Association, on behalf of the Owners, may contract to convey an interest in an Association Property, but the contract is not enforceable against the Association until approved, executed and ratified pursuant to this **Section 9.3**. Thereafter, the Association shall have all the powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments. A conveyance or encumbrance of Association Property pursuant to this **Section 9.3** shall not deprive any Lot of its rights of (i) access, ingress and egress to the Lot, and (ii) support of the Lot. A conveyance or encumbrance of Association Property pursuant to this **Section 9.3** shall not affect the priority or validity of pre-existing encumbrances.

Section 9.4 **General Power to Provide Services and Facilities to Owners.** The Association shall have the power, but not the obligation, to acquire, construct, operate, manage, maintain, repair and administer services and facilities for the benefit of the Owners, or some of them, including, without limitation, security, animal control, vegetation control, insect and pest control, television service, parking facilities, transportation facilities, snow removal, signage, (including entry monuments), lighting, (including seasonal lighting), interior and perimeter fencing, landscape walls, landscaping services and facilities, noxious weed control, drainage facilities, including retention and detention ponds, irrigation facilities, water features, trash and solid waste disposal services, including recycling programs, utility services, recreational facilities and services, maintenance, and such other services, functions and facilities as are deemed appropriate by the Board. The foregoing list shall not be deemed to be a representation by Declarant of services or facilities that will in fact be available for use by the Owners. The Association may enter into such agreements and arrangements as it may deem appropriate with any provider of utilities or services to the Common Interest Community or any portion thereof, including any special district that provides such services, and may form or join any districts created to provide such services.

Section 9.5 **Power to Provide Special Services to Owners.** The Association shall have the power to provide services to an Owner or group of Owners. Any service or services to an Owner or group of Owners shall be provided pursuant to an agreement in writing, or through one or more Supplemental Declarations, which shall provide for payment to the Association by such Owner or group of Owners of the costs and expenses of the Association in providing such services, including a fair share of the overhead expenses of the Association, and shall contain reasonable provisions assuring that the obligation to pay for such services shall be binding upon any heirs, personal representatives, successors and assigns of the Owner or group of Owners and that the payment for such services shall be secured by a lien on the Lot(s) of the Owner or group of Owners.

Section 9.6 **Power to Charge for Special Association Property Uses and Special Association Services.** The Association shall have the power to establish reasonable admission or other fees or charges for any special or extraordinary Association Property uses or Association services such as special parking privileges, special recreation facilities, conference rooms, instruction, or similar uses beyond the ordinary use of Association Property and ordinary Association services. Such charges or fees shall be set forth in schedules of charges and fees adopted from time to time by the Board.

Section 9.7 **Power to Acquire Property and Construct Improvements.** The Association may acquire, hold, encumber and/or convey any right, title or interest in or to real or personal property, including Improvements. The Association may construct Improvements on Association Property and may demolish existing Improvements thereon.

Section 9.8 **Power to Adopt Rules and Regulations.** The Association may adopt, amend, repeal, and enforce such reasonable Rules and Regulations as the Board may consider necessary, desirable or appropriate from time to time with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of Association Property, and the use of any other property within the Common Interest Community (“Rules and Regulations”). Any such Rules and Regulations shall be effective only upon adoption by resolution at an open meeting of the Board. Notice of the adoption, amendment, or repeal of any Rule or Regulation shall be given in writing to each Owner, and copies of the currently effective Rules and Regulations shall be made available to each Owner and Occupant upon request and payment of the reasonable expense of copying the same. Each Owner and Occupant (and all other Persons who are authorized users of Association Property) shall comply with such Rules and Regulations, and each Owner shall see that Occupants claiming through such Owner comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this

Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall govern. Such Rules and Regulations may establish reasonable and uniformly applied penalties (including the levying and collection of fines) for the violation of such Rules and Regulations or of any provision of this Declaration, the Articles, or the Bylaws.

Section 9.9 **Power to Contract with Employees, Agents, Contractors, Districts, Consultants and Managers.** The Association shall have the power to contract with, and/or to employ and discharge employees, agents, independent contractors and consultants, including lawyers and accountants, and special districts, to perform any of the responsibilities of the Association under this Declaration, including without limitation maintenance responsibilities. The Association shall also have the power to retain and pay for the services of a manager or managers, which may be an affiliate of Declarant, to undertake any of the administrative or managerial responsibilities for which the Association may have responsibility under this Declaration, to the extent deemed advisable by the Association, and may delegate any of its duties, powers, or functions to any such manager. Notwithstanding any delegation to a manager of any duties, powers, or functions of the Association, the Association and its Board shall remain ultimately responsible for the performance and exercise of such duties, powers, and functions.

Section 9.10 **Power to Assign Future Income.** The Association shall have the power to assign its right to future income, including the right to receive Regular Assessments, but only following the affirmative vote of the Owners of Lots to which at least fifty-one (51) percent of the votes in the Association are allocated, at a duly-called meeting of the Members of the Association.

Section 9.11 **Duty to Accept Property and Facilities Transferred by Declarant.** The Association shall accept title to any real property, or interests in real property, including any Improvements and personal property thereon, and including water rights and related facilities, transferred to the Association by Declarant, or Declarant's successors or assigns. Property interests transferred to the Association by Declarant or its successors or assigns may include fee simple title, undivided interests, easements, leasehold interests and licenses to use. Except as may otherwise be approved by the Board, any property or interest in property transferred to the Association by Declarant or its successors or assigns shall be within the boundaries of the Common Interest Community; provided, however, that Declarant shall be entitled to transfer and convey the beneficial use of an easement, subject to any obligations thereunder, located outside of the Common Interest Community but which benefits the Association and the Owners.

Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board, be transferred to the Association free and clear of all monetary obligations, liens and encumbrances (other than the lien of property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration, and easements, covenants, conditions, restrictions, and equitable servitudes or other encumbrances of record or otherwise in existence. Except as otherwise specifically approved by resolution of the Board, no property or interest in property transferred to the Association by Declarant shall impose upon the Association any obligation to make monetary payments to Declarant or any affiliate of Declarant, including, but not limited to, any purchase price, rent, charge, or fee.

Any Improvements or personal property transferred to the Association by Declarant shall be in good working order, ordinary wear and tear excepted, and at the time of transfer Declarant shall make any repairs reasonably required to bring the transferred property into good working order. Subject only to the foregoing, the Association shall accept all properties transferred to it by Declarant in their "Where Is, As Is" condition, without recourse of any kind, and Declarant disclaims and shall not be deemed to make or to have made any representations or warranties, express or implied, by fact or law, with respect to the transferred properties or any aspect or element thereof, including without limitation warranties of merchantability, fitness for a particular purpose, or workmanlike construction.

Section 9.12 **Duty to Manage and Care for Association Property.** The Association shall manage, operate, care for, maintain, repair and replace all Association Property and keep the same in a functional, clean and attractive condition for the benefit and enjoyment of the Owners.

Section 9.13 **Duty to Pay Taxes.** The Association shall pay any taxes and assessments levied upon Association Property and any other taxes and assessments payable by the Association before they become delinquent. The Association shall have the right to contest any such taxes or assessments by appropriate legal proceedings provided no sale or foreclosure of any lien for such tax or assessment occurs and provided further that the Association shall keep and hold sufficient funds to pay and discharge the taxes and assessments, together with any interest and penalties which may accrue with respect thereto, if the contest of such taxes is unsuccessful.

Section 9.14 **Duty to Keep Association Records.** The Association shall keep financial records in sufficient detail to enable the Association to carry out its responsibilities under this Declaration and to comply with the requirements of the CCIOA, including, but not limited to, current records of paid and unpaid Assessments for each Lot. All financial and other records of the Association shall be made reasonably available

for examination by the Owners and the authorized agents of the Owners all as required by CCIOA.

Section 9.15 **Duty to Support Design Review Committee.** The Association shall take such actions, provide such funds, and do such other things as may be necessary or appropriate from time to time to support and assist the Design Review Committee in the performance of its responsibilities under this Declaration, and shall cooperate with said Committee to the fullest extent possible in such matters.

Section 9.16 **Insurance.** Commencing not later than the time of the first conveyance of a Lot to a Person other than Declarant, the Association shall maintain and keep in effect at all times the following types of insurance, and the cost of said coverage shall be paid by the Association as a Common Expense:

(1) *Casualty Insurance.* To the extent reasonably available, property insurance on all Association Property, including but not limited to Improvements and personalty, owned or leased by the Association, and on all property that must become Association Property. Such insurance shall be for broad form covered causes of loss, including casualty, fire, and extended coverage insurance including, if available at reasonable cost, coverage for vandalism and malicious mischief and, if available and if deemed appropriate, coverage for flood, earthquake, and war risk. Such insurance shall, to the extent reasonably obtainable, be for the full insurable replacement cost of the insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavation, foundations and other items normally excluded from property policies.

(2) *Liability Insurance.* Comprehensive general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, maintenance or management of the Association Property, and covering public liability or claims of liability for injury to persons and/or property, and death of any person or persons, and, if the Association owns or operates motor vehicles, public liability or claims of liability for bodily injury (including death) and property damage arising as a result of the ownership and operation of motor vehicles. Such liability insurance for other than motor vehicle liability shall, to the extent reasonably obtainable, (a) have limits of not less than One Million Dollars (\$1,000,000.00) per person and Two Million Dollars (\$2,000,000.00) per occurrence; (b) insure the Board, the Design Review Committee, the Association and its officers, the manager, if any, and their respective employees, agents and all Persons acting as agents; (c) include the Declarant as an additional insured as its interests may appear; (d) include the Owners as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use, maintenance or management of Association Property; (e) cover claims of one or more insured parties against other insured parties; (f) be written on an occurrence



basis; and (g) shall name as additional insureds such other parties as may be required by specific agreements.

(3) *Contractual Liability Insurance.* To the extent reasonably available, contractual liability insurance covering such contractual obligations and liabilities, indemnifications, hold harmless agreements, and agreements to defend, as the Association may have or be a party to from time to time, with coverage of at least One Million Dollars (\$1,000,000.00) or such greater amount as the Board shall determine to be appropriate from time to time.

(4) *Fidelity Bonds.* To the extent reasonably available, fidelity bond coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees or volunteers responsible for handling funds belonging to or administered by the Association. If funds of the Association are handled by a management agent, then fidelity bond coverage may also be obtained for the officers, employees, or agents thereof handling or responsible for Association funds. The fidelity bond or insurance must name the Association as the named insured and shall be written to provide protection in an amount no less than the lesser of (a) one-half times the Association's estimated annual operating expenses and reserves, (b) a sum equal to three (3) months aggregate Regular Assessments, plus reserves, as calculated from the current Budget of the Association; or (c) the estimated maximum amount of funds, including reserves, in the custody of the Association (and its management agent) at any one time. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers.

(5) *Worker's Compensation.* A Worker's Compensation policy, if necessary, to meet the requirements of law.

(6) *Directors and Officers Liability Insurance.* Directors and officers liability insurance with coverage of at least One Million Dollars (\$1,000,000.00) or such greater amount as the Board shall approve for all Association, Board and Design Review Committee directors, officers, members and managers, for any and all errors and/or omissions and other covered actions that occur during their tenure in office or employment. This insurance coverage shall be mandatory.

(7) *Other Insurance.* Such other insurance in such amounts as the Board shall determine, from time to time, to be appropriate to protect the Association or the Owners, or as may be required by the CCIOA.

(8) *General Provisions Respecting Insurance.* Insurance obtained by the Association may contain such deductible provisions as good business practice

may dictate. If the insurance described is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained by it, the Association shall promptly cause notice of that fact to be delivered or sent prepaid by U.S. Mail to all Owners.

Insurance policies carried pursuant to **Sections 9.16(1) and (2)** shall provide that (i) each Owner is an insured Person under the policy with respect to liability arising out of such Owner's interest in the Association Property or membership in the Association; (ii) the insurer waives its rights of subrogation under the policy against the Association, each Owner, and any Person claiming by, through, or under such Owner or any other director, agent, or employee of the foregoing; (c) no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and (d) if at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy shall be the primary insurance. An insurer that has issued an insurance policy for the insurance described in **Sections 9.16(1) and 9.16(2)** above shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or holder of a security interest. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, and each Owner and holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses.

Any loss covered by the property insurance policy described in **Section 9.16(1)** above must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and lienholders as their interests may appear. Subject to the provisions of Section 38.33.3-313(9) of the CCIOA, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners, and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Common Interest Community is terminated.

The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefitting from such repair or restoration for all deductibles paid by the Association. In the event more than one Lot is damaged by a loss, the Association in its reasonable discretion may assess each Owner a pro rata share of any deductible paid by the Association. Insurance obtained by the Association shall, to the extent reasonably possible, and provided Declarant reimburses the Association for any additional premium payable on account thereof, name Declarant as an additional insured and shall contain a waiver of rights of subrogation as against Declarant.

Insurance policies and insurance coverage shall be reviewed at least annually by the Board to ascertain whether coverage under the policies is sufficient in light of the current values of the Association Property and in light of the possible or potential liabilities of the Association and other insured parties. The aforementioned insurance may be provided under blanket policies covering the Association Property and property of Declarant.

In no event shall insurance coverage obtained or maintained by the Association obviate the need for Owners and Occupants to obtain insurance for their own benefit.

Furthermore, to the extent reasonably available, insurance policies obtained by the Association shall contain the following provisions:

(i) The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by an Owner, Occupant or Mortgagee.

(ii) The conduct of any one or more Owners or Occupants shall not constitute grounds for avoiding liability on any such policies.

(iii) Each policy must contain a waiver of any defenses based on co-insurance or on invalidity arising from the acts of the insured.

(iv) A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of an Owner or Occupant because of the conduct or negligent acts of the Association and its agents or other Owners or Occupants.

(v) Any "no other insurance" clause shall exclude insurance purchased by Owners, Occupants or Mortgagees.

(vi) Coverage must not be prejudiced by (i) any act or neglect of Owners or Occupants when such act or neglect is not within the control of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Common Interest Community over which the Association has no control.

(vii) Coverage may not be canceled or substantially modified without at least thirty (30) days (or such lesser period as the Association may reasonably deem appropriate) prior written notice to the Association.

(viii) Any policy of property insurance which gives the insurance carrier the right to elect to restore damage in lieu of a cash settlement must provide that such election is not exercisable without the prior written approval of the

Association, or when in conflict with the insurance trust provisions contained herein, or any requirement of law.

(ix) A recognition of any insurance trust agreement entered into by the Association.

(x) Each hazard insurance policy shall be written by a hazard insurance carrier which has a financial rating as designated in *Best's Key Rating Guide* of Class VI or better, or if such rating service be discontinued, an equivalent rating by a successor thereto or a similar such rating service. Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of Colorado.

(9) *Nonliability of Association or Executive Board.* Notwithstanding the duty of the Association to obtain insurance coverage, as stated herein, neither the Association nor any Board member, nor the Declarant, shall be liable to any Owner, Occupant, Mortgagee or other Person, if any risks or hazards are not covered by insurance, or if the appropriate insurance is not obtained because such insurance coverage is not reasonably obtainable on the Association's behalf, or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner and Occupant to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner or Occupant may desire.

(10) *Master Premiums.* Premiums for insurance policies purchased by the Association and other expenses connected with acquiring such insurance shall be paid by the Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Lot or its appurtenances, or Association Property, by an Owner or Occupant, may at the Board's election, be assessed against that particular Owner and his Lot as a Reimbursement Assessment.

(11) *Insurance Claims.* The Association is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in this regard, and may, in its discretion, appoint an authorized representative, or enter into an insurance trust agreement, wherein the trustee shall have the authority to negotiate losses under any policy purchased by the Association.

(12) *Benefit.* Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association or any insurance trustee shall be held or disposed of in trust for the Association, the Owners, or the Occupants, as their interests may appear.

(13) *Other Insurance to be Carried by Owners.* Insurance coverage on the furnishings and other items of personal property belonging to a Owner or Occupant, public liability insurance coverage upon each Lot, and casualty insurance coverage on the Improvements constructed on Lots, shall be the responsibility of the Owner or Occupant of the Lot. No Owner or Occupant shall maintain any insurance, whether on its Lot or otherwise, which would limit or reduce the insurance proceeds payable under the casualty insurance maintained by the Association in the event of damage to the Improvements or fixtures on Association Property.

Section 9.17 **Damage to Common Interest Community.** Any portion of the Common Interest Community for which insurance is required under Section 38-33.3-313 of the CCIOA which is damaged or destroyed must be repaired or replaced promptly by the Association unless: (i) the Common Interest Community is terminated; (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; (iii) sixty-seven percent (67%) of the Owners, including owners of every Lot that will not be rebuilt, vote not to rebuild; or (iv) prior to the conveyance of any Lot to a person other than Declarant, a Mortgagee on the damaged portion of the Common Interest Community rightfully demands all or a substantial part of the insurance proceeds.

The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Common Interest Community is not repaired or replaced, the insurance proceeds attributable to the damaged Association Property must be used to restore the damaged area to a condition compatible with the remainder of the Common Interest Community, and, except to the extent that other Persons will be distributees, the insurance proceeds attributable to Lots that are not rebuilt must be distributed to the Owners of those Lots, or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all Owners or lienholders as their interests may appear in proportion to the Common Expense liabilities of all the Lots.

In the event of damage to or destruction of all or a portion of the Association Property due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Association Property damage or destruction are insufficient to repair and

reconstruct the damage or destruction, the Association may levy a Special Assessment in the aggregate amount of such deficiency, or if any Owner or group of Owners is liable for such damage, may levy a Reimbursement Assessment against the Owner or group of Owners responsible therefor, and shall proceed to make such repairs or reconstruction. Such Assessment shall be due and payable as provided by resolution of the Board, but not sooner than sixty (60) days after written notice thereof. The Assessment provided for herein shall be a debt of each Owner assessed and a lien on his Lot, and may be enforced and collected in the same manner as any Assessment Lien provided for in this Declaration. If the entire damaged Association Property is not repaired or replaced, the insurance proceeds attributable to the damaged Association Property must be used to restore the damaged area to a condition compatible with the remainder of the Common Interest Community. No distributions of insurance proceeds shall be made unless made jointly payable to the Owners and first Mortgagees of their respective Lots, if any.

Section 9.18 **Limited Liability.** Neither the Association nor its past, present or future officers or directors, nor any other employee, agent or committee member of the Association shall be liable to any Owner or Occupant or to any other Person for actions taken or omissions made except for wanton and willful acts or omissions. Without limiting the generality of the foregoing, the Association, the Board and the Design Review Committee shall not be liable to any Owner or Occupant or other Person for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice. Acts taken upon the advice of legal counsel, certified public accountants, registered or licensed engineers, architects or surveyors shall conclusively be deemed to be in good faith and without malice. To the extent insurance carried by the Association for such purposes shall not be adequate, the Owners severally agree to indemnify and to defend the Association, the Board and the Design Review Committee against claims, damages or other liabilities resulting from such good faith action or failure to act.

ARTICLE X ASSESSMENTS

Section 10.1 **Assessment Obligation and Lien.** Declarant, for each Lot, shall be deemed to covenant and agree, and each Owner, by acceptance of a deed therefor (including a public trustee's or sheriff's deed), whether or not it shall be so expressed in any such deed or other instrument of conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) Regular Assessments or charges, (2) Special Assessments, and (3) Reimbursement Assessments, such assessments to be established and collected as hereinafter provided (collectively, the "Assessments"). No Owner shall have any right to set-off against an Assessment any claims that the

Owner may have or claim to have against the Association. The Assessments, together with interest, late charges, costs, and reasonable attorneys' fees, shall be a continuing lien and security interest upon the Lot against which each such Assessment is charged. The obligation for such payments by each Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) or demand, and without set-off or deduction of any kind or nature. Each Owner is liable for Assessments made against such Owner's Lot during his period of ownership of the Lot. Each Assessment, together with interest, late charges, costs and reasonable attorneys' fees, shall also be the joint, several and personal obligation of each Person who was an Owner of such Lot at the time when the Assessment became due. Upon the transfer of title to a Lot, the transferor and the transferee shall be jointly, severally and personally liable for all unpaid Assessments and other charges due to the Association prior to the date of transfer, and the transferee shall be personally liable for all such Assessments and charges becoming due thereafter.

Section 10.2 **Statutory Lien**. The Association has a statutory lien pursuant to Section 38-33.3-316 of the CCIOA on the Lot of an Owner for all Assessments levied against such Lot or fines imposed against such Lot's Owner from the time the Assessment or fine becomes due (the "Assessment Lien"). Fees, charges, late charges, attorneys' fees, fines and interest charged by the Association pursuant to the CCIOA or this Declaration are enforceable as Assessments. The amount of the lien shall include all such items from the time such items become due. If an Assessment is payable in installments, the Association has an Assessment Lien for each installment from the time it becomes due, including the due date set by the Board's acceleration of installment obligations. An Assessment Lien is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of Assessments becomes due.

Section 10.3 **Lien Superior to Homestead and Other Exemptions**. An Assessment Lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment Lien.

Section 10.4 **Priority of Lien**. An Assessment Lien is prior to all other liens and encumbrances on a Lot, except as follows:

(1) Liens and encumbrances recorded before the recordation of this Declaration;

(2) A security interest on the Lot which has priority over all other security interests on the Lot and which was recorded before the date on which the Assessment sought to be enforced became delinquent. An Assessment Lien is prior to the security interest described in the preceding sentence to the extent of an amount equal to the Regular Assessments (based on a Budget adopted by the Association pursuant to **Section 10.7** below) which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by the Association or any party holding a lien senior to any part of the Association lien created under this **Article X** of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien;

(3) Liens for real estate taxes and other governmental assessments or charges against the Lot; and

(4) As may otherwise be set forth in the CCIOA. The priority of mechanics' and materialmen's liens is not affected by the CCIOA.

This **Article X** does not prohibit an action or suit to recover sums for which this **Article X** creates a lien or prohibits the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Lot shall not affect the lien for an Assessment.

Section 10.5 **Perfection of Lien.** The recording of this Declaration constitutes record notice and perfection of the statutory lien. No further recordation of any claim of lien for Assessments is required; however, a claim may be recorded at the Association's option, in which event costs and attorneys' fees incurred in connection with the preparation and filing of such claim shall be assessed against the Lot as a Reimbursement Assessment.

Section 10.6 **Regular Assessments.**

(1) A Regular Assessment shall be made annually against each Lot, based upon an annual Budget prepared by the Board, for purposes of paying (i) the annual costs of operating and administering the Association and all other Common Expenses, (ii) reasonable reserves for contingencies, replacements, and other proper purposes, (iii) the costs of services rendered or expenditures incurred by the Association to or for less than all Lots, and (iv) such other matters as may be reasonably determined by the Board to be the subject of a Regular Assessment;

(2) Regular Assessments shall be allocated equally between all Lots in the Common Interest Community, except that any Common Expense or portion thereof that in the judgment of the Board benefits fewer than all of the Lots shall be assessed exclusively against the Lots benefitted. If Common Expense liabilities are reallocated, Common Expense Assessments and any installment thereof not yet

due shall be reallocated in accordance with the reallocated Common Expense liabilities.

(3) Regular Assessments shall be levied on a calendar year basis, except that the initial Regular Assessment period shall commence on the first day of the calendar month or quarter in which the first Lot is conveyed by Declarant to a Person other than Declarant. Regular Assessments shall be paid in installments on a monthly, quarterly or semi-annual basis, as the Board may determine from time to time, and shall be due either on the first day of each calendar month or on the first day of each calendar year quarter (January 1, April 1, July 1 and October 1), or on the first day of a semi-annual period (e.g., January 1, July 1) as appropriate. Unless and until changed to a monthly or semi-annual system by the Board, Regular Assessments shall be due and payable on the first day of each calendar quarter. Any Owner acquiring a Lot between installment due dates shall pay a pro rata share of the immediately preceding installment.

(4) The Board shall fix the amount of the Regular Assessment, using the Budget procedure described below, at least thirty (30) days before the end of each calendar year. Written notice of the Regular Assessment shall be sent to each Owner. Failure of the Board timely to fix and levy the Regular Assessments for any year or to send a notice thereof to any Owner shall not relieve or release any Owner from liability for payment of Regular Assessments or any installments thereof for that or subsequent years as soon as the Board levies the Regular Assessment and provides notice thereof. If a duly adopted Budget is amended during the calendar year, the Board shall provide written notice to the Owners of any changes caused thereby in the remaining Regular Assessments due during that year.

(5) The Board shall also mail to each Owner at least ten (10) days prior to the due date thereof a written notice of the amount of the next quarterly (or monthly or semi-annual, as the case may be) installment of Regular Assessment that is due from such Owner, and the date on which such installment is due pursuant to **Section 10.6(4)** above. Failure of the Board to send timely notice to any Owner of an installment of Regular Assessment due shall not relieve or release any Owner from liability for payment of that installment as soon as the Board in fact provides such notice.

(6) In accordance with Section 38-33.3-314 of the CCIOA, any surplus funds remaining after payment of or provision for Association expenses and any prepayment of or provision for reserves shall be carried forward as a credit against the next year's Budget.



Section 10.7 **Association Budget.** Commencing in 2007, and during the last three (3) months of each year thereafter, the Board shall prepare or cause to be prepared an operating budget (the "Budget") for the next calendar year. The Budget shall provide for the allocation of any surplus funds remaining from any previous Budget period. The annual Budget may provide for a Special Assessment in any calendar year, if considered necessary or appropriate by the Board. Alternatively, the Board may at any time adopt a special Budget that provides for a Special Assessment. Within thirty (30) days after adoption of any proposed Budget for the Association, the Board shall mail, by ordinary first class mail, or otherwise deliver, a summary of the Budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the Budget not less than fourteen (14) nor more than sixty (60) days after the mailing or other delivery of the summary. Such meeting may, but need not be, concurrent with the annual meeting of the Members as provided in the Bylaws. Unless at that meeting seventy-five percent (75%) of all Owners reject the Budget, the Budget shall be ratified, whether or not a quorum of Owners is present. In the event that the proposed Budget is rejected, the Budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent Budget proposed by the Board.

If the Board considers it necessary or appropriate, a duly adopted Budget may be amended during the calendar year by the Board, provided the same notice and ratification procedure is followed for the amended Budget as is required for the annual Budget.

Section 10.8 **Special Assessments.** In addition to the Regular Assessments and Reimbursement Assessments authorized in this **Article X**, the Board may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, maintenance or replacement of capital improvements (including related fixtures and personal property and including, without limitation, irrigation systems), to or upon or serving the Common Interest Community, or for excess reconstruction costs or other extraordinary expenses, or to acquire Association Property, or for funding any operating deficit of the Association. Special Assessments shall be allocated in the same manner as Regular Assessments, that is, equally amongst all Lots in the Common Interest Community, and shall be due and payable to the Association on the due date fixed by the Board in the notice given to the Owners of such Special Assessment, which due date shall be no earlier than thirty (30) days after the giving of such notice. Any Special Assessment for an Improvement or other expenditure which in the judgment of the Board will benefit fewer than all of the Lots shall only be levied against the Lots benefitted. If fewer than all of the Lots will be subject to the Special Assessment, then such Special Assessment shall be allocated equally amongst those Lots.

Section 10.9 **Reimbursement Assessments.** In addition to the Regular and Special Assessments authorized hereunder, the Board may levy against any Owner or Owners, at any time and from time to time, a Reimbursement Assessment for purposes of reimbursing the Association for all costs and expenses incurred by it in enforcing any provision of or in remedying any violation of this Declaration, the Articles, Bylaws, Rules and Regulations or Design Guidelines, or any approvals granted by the Design Review Committee, by such Owner or Owners, their Occupant(s), or their agents, employees or contractors. Reimbursement Assessments may also be made by the Board for any other purposes for which this Declaration provides for the levying of a Reimbursement Assessment. Finally, and in addition to the foregoing, a Reimbursement Assessment may also be levied in the form of a reasonable fine against an Owner for a violation of this Declaration, the Articles, Bylaws, or the Design Guidelines, but only after the Owner(s) to be so fined has been provided with Notice and Hearing. Reimbursement Assessments shall be due and payable to the Association on the due date fixed by the Board in the notice given to the Owner(s) of such Reimbursement Assessment, which date shall be no earlier than thirty (30) days after the giving of such notice.

Section 10.10 **Effect of Nonpayment of Assessments; Remedies of the Association.** Any Assessment or portion or installment thereof which is not paid when due (or for which a bad check is issued) shall be deemed delinquent and shall bear interest from and after the due date at the rate of interest set by the Board from time to time, which shall not be less than twelve percent (12%) nor more than twenty-one percent (21%) per year, and the Board may also assess a late charge (and/or a bad check charge) thereon. The Board may also elect to accelerate the installment obligations of any Regular Assessment for which an installment is delinquent. The delinquent Owner shall also be liable for all costs, including attorneys' fees, which may be incurred by the Association in collecting a delinquent Assessment, which collection costs shall be added to the delinquent Assessment. The Board may, but shall not be required to, record a Notice of Delinquent Assessment or charge against any Lot as to which an Assessment or charge is delinquent. The Notice shall be executed by an officer of the Board, and shall set forth the amount of the unpaid Assessment or charge, the name of the delinquent Owner and a description of the Lot.

The Assessment Lien may be foreclosed by the Association in the same manner as a mortgage on real property. The Association shall be entitled to purchase the Lot at foreclosure. The Association may also bring an action at law against the Owner personally obligated to pay the delinquent Assessment and/or foreclose the lien against said Owner's Lot in the discretion of the Association. No Owner may exempt himself or otherwise avoid liability for the Assessments provided for herein by abandonment of the Lot against which the Assessments are made. Where Assessments that are due from any Owner are more than ninety (90) days

delinquent, the Board may temporarily suspend any or all Association services or benefits to the delinquent Owner and his Lot until all delinquent Assessments are fully paid.

In any action by the Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver to collect all sums alleged to be due from the Owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Regular Assessments.

Section 10.11 **Statement of Unpaid Assessments.** The Association shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by facsimile transmittal or by certified mail, first class postage prepaid, return receipt requested, to the Association, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot, whether delinquent or not. The statement shall be furnished within fourteen (14) days after receipt of the request and is binding on the Association, the Board, and every Owner. If no statement is furnished either delivered personally or by facsimile transmission or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Lot for unpaid Assessments which were due as of the date of the request.

Section 10.12 **Assessments for Tort Liability.** In the event of any tort liability against the Association which is not covered completely by insurance, each Owner shall contribute for the payment of such liability as a Special Assessment. The Association may, however, require a larger contribution from fewer than all Owners under any legal or equitable principles regarding liability for negligent or willful acts or omissions.

ARTICLE XI EMINENT DOMAIN

Section 11.1 **Definition of Taking.** The term "taking", as used in this **Article XI**, shall mean condemnation by eminent domain or sale under threat of condemnation.

Section 11.2 **Taking of Lots.** If a Lot is acquired by eminent domain or part of a Lot is acquired by eminent domain leaving the Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the award must include compensation to the Owner for that Lot and its allocated interest in and to the Association. Upon acquisition, unless the decree otherwise provides, that Lot's allocated interests are automatically reallocated to the remaining Lots (as appropriate) in proportion to the respective allocated interests

of those Lots before the taking. Any remnant of a Lot remaining after part of a Lot is taken is thereafter Association Property. Otherwise, if part of a Lot is acquired by eminent domain, the award must compensate the Owner for the reduction in value of the Lot.

Section 11.3 **Miscellaneous**. The court decree shall be recorded in Garfield County. The reallocations of allocated interests pursuant to this **Article** shall be confirmed by an amendment to the Declaration prepared, executed, and recorded by the Association.

ARTICLE XII GENERAL PROVISIONS

Section 12.1 **Duration of Declaration**. The term of this Declaration shall be perpetual.

Section 12.2 **Termination of Common Interest Community**. The Common Interest Community may be terminated only by the agreement of (i) Owners to which at least eighty percent (80%) of the votes in the Association are allocated, and (ii) the holders of all First Mortgages on Lots. In the event of such termination, the provisions of Section 38-33.3-218 of the CCIOA shall apply.

Section 12.3 **Amendment of Declaration and Plat**. This Declaration and the Plat may be amended pursuant to Section 38-33.3-217 of the CCIOA. Under the CCIOA, the Declaration (including the Plat) may be amended by Declarant in certain defined circumstances, including, without limitation: (a) when the Declarant is exercising reserved rights under **Article VI** hereof, (b) for purposes of correcting clerical, typographical or technical errors, or (c) to comply with the requirements, standards, or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Federal National Mortgage Association. The CCIOA also provides that the Declaration may be amended by the Association in certain defined circumstances. Otherwise, and subject always to any provisions of this Declaration requiring the consent of Declarant and this Declaration (including the Plat) may be amended only by the vote or agreement of Owners to which more than fifty percent (50%) of the votes in the Association are allocated. Any amendments to Plats that were originally approved by the County shall also require County approval. No amendment shall be effective to change, limit, impair, reduce or eliminate any right of Declarant as reserved or otherwise provided in this Declaration unless such amendment is approved in writing by Declarant.



Furthermore, Section 38-33.3-217(4) of the CCIOA provides that except to the extent expressly permitted or required by other provisions of the CCIOA (e.g., permitted Declarant or Association amendments), no amendment may (i) create or increase special Declarant rights, (ii) increase the number of Lots, or (iii) change the boundaries of any Lot or the allocated interests of a Lot in the absence of a vote or agreement of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated, including sixty-seven percent (67%) of the votes allocated to Lots not owned by Declarant.

Further, Section 38-33.3-217(4.5) of the CCIOA provides that except to the extent expressly permitted or required by other provisions of the CCIOA, no amendment may change the uses to which any Lot is restricted in the absence of a vote or agreement of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

No consent of any mortgage or trust deed holder shall be required to accomplish any such amendments.

An amendment to this Declaration shall be in the form of a "First (or Second, etc.) Amendment to Declaration of Pinyon Mesa." With the exception of Declarant amendments, amendments to this Declaration shall be duly executed by the President and Secretary of the Association and Recorded in the office of the Clerk and Recorder of Garfield County. All amendments to this Declaration shall be indexed in the Grantee's index in the names of the Common Interest Community and the Association, and in the Grantor's index in the name of each Person executing the amendment.

Section 12.4 **Compliance; Enforcement.** Every Owner and Occupant of a Lot in the Common Interest Community shall fully and faithfully observe, abide by, comply with and perform all of the covenants, conditions and restrictions set forth in this Declaration, the Articles, Bylaws, the Pinyon Mesa P.U.D. Plan, the Design Guidelines and all approvals granted by the Design Review Committee, as the same or any of them may be amended from time to time. In addition to any other rights or remedies that may be provided to any Person under the terms and provisions of this Declaration, Declarant (for so long as it holds any of the rights set forth in **Article VI** hereof), the Association through its Board, the Design Review Committee as to matters involving (i) Improvements within the Common Interest Community, (ii) the Design Guidelines, or (iii) any other matters arising under **Article V** hereof, or with respect to which the Design Review Committee is otherwise expressly given enforcement authority under this Declaration, and every Owner (except an Owner that is delinquent in the payment of Assessments hereunder) shall have the right, acting alone or together with others having such right, to enforce, by any proceeding at law or in equity, any or all of the covenants,

conditions, restrictions, assessments, charges, liens, servitudes, easements and other provisions now or hereafter imposed by this Declaration, the Articles, Bylaws, the Design Guidelines, and approvals granted by the Design Review Committee.

Such enforcement rights shall include without limitation the right to bring an injunctive action for any form of injunctive relief available under Colorado law (including specific performance), or an action for damages, or both. Injunctive relief may include, without limitation, orders to stop work, orders to remove Improvements constructed in violation hereof, orders to compel performance, and any other orders appropriate under the circumstances.

The Board shall have the further right (a) to levy and collect, after Notice and Hearing, reasonable fines for the violation of any of the foregoing matters, (b) to levy and collect a Reimbursement Assessment against any Owner, (c) to enter upon any Lot within the Common Interest Community, after giving the Owner or Occupant at least five (5) days written notice of the nature of the violation (unless an emergency exists, in which case without notice), without liability to the Owner or Occupant thereof, to enforce or cause compliance with such matters, at the cost and expense of the Owner or Occupant in violation, and/or (d) where the violation has continued for more than ninety (90) days after the Board has given the Lot or Occupant written notice of the violation, the Board may temporarily cut off any or all Association services or benefits to the subject Owner or Occupant and his Lot until the violation is cured.

In any action brought under this **Section 12.4**, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection therewith. Failure by any party entitled to do so to exercise in a particular instance any of the rights available to it under this **Section 12.4** shall in no event be deemed a waiver of the right to do so in any other instance.

Provided always, that no Owner shall have the right to bring an enforcement action against another Owner or Occupant for a breach by that Owner or Occupant of any of such matters, or against Declarant, the Association or the Design Review Committee for a breach by the Declarant, the Association or the Design Review Committee of any of such matters or for a failure by Declarant, the Association or the Design Review Committee to enforce compliance with such matters by others, until the aggrieved Owner has given the offending Owner or Occupant, Declarant, the Association and/or the Design Review Committee at least thirty (30) days prior written notice of the aggrieved Owner's complaint and the opportunity to resolve the problem during that thirty (30) day period.

And further provided, that notwithstanding any law to the contrary, no action shall be commenced or maintained to enforce the terms of any building restriction contained in the provisions of this Declaration, the Bylaws, the Articles of Incorporation, the Pinyon Mesa P.U.D. Plan, or the Design Guidelines, or to compel the removal of any building or Improvement because of the violation of the terms of any such building restriction, unless the action is commenced within one (1) year from the date from which the person commencing the action knew or in the exercise of reasonable diligence should have known of the violation for which the action is sought to be brought or maintained.

Section 12.5 **Rights of First Mortgagees.** Upon the filing of a written request therefor with the Association, the holder of a First Mortgage on any Lot in the Common Interest Community shall be entitled to:

- (1) Written notice from the Association that the Owner of the subject Lot is delinquent in the payment of Assessments thereon;
- (2) Inspect the books and records of the Association during normal business hours;
- (3) Receive copies of annual Association financial statements;
- (4) Receive written notice of meetings of the Association where matters will be considered that, if approved, will require the consent of First Mortgagees or some of them; and
- (5) Receive written notice of the lapse of any insurance that the Association is required to maintain under this Declaration.

Section 12.6 **Notice.** Each Owner, and each First Mortgagee if it so elects, shall register its mailing address from time to time with the Association. Except as otherwise specifically provided in this Declaration, any notice permitted or required to be given hereunder shall be in writing and may be delivered either personally, or by facsimile transmission, or by mail. Notices delivered personally or sent by facsimile transmission shall be deemed given on the date so delivered or sent. If delivery is made by mail, it shall be deemed to have been delivered two (2) business days after a copy of the same has been posted in the first class U.S. Mail with adequate postage affixed, addressed to the receiving party at the address last registered by such party with the Association, or in the case of an Owner that has not provided such an address, to the Lot of that Owner. Notices to the Association shall be sent to such address as it may from time to time designate in writing to each Owner.



Section 12.7 **No Dedication to Public Use.** Except as otherwise expressly provided herein to the contrary or on the Plat, nothing contained in this Declaration shall be deemed to be or to constitute a dedication of all or any part of the Common Interest Community to the public or to any public use.

Section 12.8 **Interpretation of Declaration; Conflicts with CCIOA.** The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a common and general plan for the development, improvement, enhancement, protection and enjoyment of the Common Interest Community, and to the extent possible, shall be construed so as to be consistent with the CCIOA. In the event that any of the terms and conditions of this Declaration are determined to be inconsistent with the CCIOA, the CCIOA shall control. Notwithstanding anything to the contrary in this Declaration, no rights or powers reserved to Declarant hereunder shall exceed the time limitations upon or the permissible extent of such rights or powers under the CCIOA, and in the event any of such reserved rights or powers are determined to be inconsistent with the CCIOA, the related provisions shall not be invalidated but shall be modified to the extent required to comply with the CCIOA.

Section 12.9 **Conflict With Plats.** In the event of any conflict or inconsistency between the provisions of this Declaration and any Plat, including the Plat notes thereon, the provisions of said Plat or Plat notes, as the case may be, shall govern and control and this Declaration shall automatically be amended, but only to the extent necessary to conform the conflicting provisions hereof with the provisions of said Plat or Plat notes.

Section 12.10 **No Express or Implied Covenants on Lands Not Annexed.** Nothing in this Declaration shall create, or be deemed to create, any express or implied covenants upon or with respect to any real property or interest therein not actually annexed to the Common Interest Community in the manner provided herein.

Section 12.11 **Violations Constitute a Nuisance.** Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration. This provision does not limit the remedies that may be available under this Declaration or at law or in equity. Failure of the Association to bring enforcement action to correct any violation of this Declaration shall not constitute a waiver of or estop the Association from bringing a future or subsequent enforcement action to correct such violation or any other similar violation.

Section 12.12 **Declarant's Disclaimer of Representations and Warranties.** No representations or warranties of any kind, express or implied, have been given or made or shall be deemed to have been given or made by Declarant or its agents or employees in connection with the Common Interest Community or any portion thereof or any Improvements thereon, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use or operation, adequacy or availability of utilities, or in connection with the subdivision, sale, improvement, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing herein, in any registration statement or purchase and sale agreement executed by Declarant, or in any closing document related thereto. Furthermore, no such representations or warranties have been given or made or shall be deemed to have been given or made by Declarant or its agents or employees that the plans presently envisioned for the complete development of the Common Interest Community can or will be carried out, or that any land now owned or hereafter acquired by Declarant is or will be subjected to this Declaration or that any such land (whether or not it is subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect, unless and except as shall be specifically set forth in writing herein, in any registration statement or purchase and sale agreement executed by Declarant, or in any closing document related thereto.

Section 12.13 **Captions.** Captions given to various Articles and Sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof and shall not be considered in interpreting any of the provisions hereof.

Section 12.14 **Singular Includes Plural.** Unless the context requires a contrary construction, as employed in this Declaration the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

Section 12.15 **Remedies Cumulative.** Each remedy provided under this Declaration is cumulative and not exclusive.

Section 12.16 **Costs and Attorneys' Fees.** In any action or proceeding involving the interpretation or enforcement of any provision of this Declaration, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection therewith.

Section 12.17 **Governing Law; Jurisdiction.** The laws of the County and of the State of Colorado shall govern the interpretation, validity, performance, and enforcement of this Declaration. Any legal action brought in connection with this Declaration

shall be commenced in the District Court for Eagle County, Colorado, and by acceptance of a deed to a Lot, each Owner voluntarily submits to the jurisdiction of such court.

Section 12.18 **Severability.** Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof. Where any provision of this Declaration is alleged to be or declared by a court of competent jurisdiction to be unconscionable, Declarant shall have the right by amendment to this Declaration to replace such provision with a new provision, as similar thereto as practicable but which in Declarant's reasonable opinion would be considered not to be unconscionable.

Section 12.19 **Disclaimer Regarding Safety.** **DECLARANT AND THE ASSOCIATION HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMON INTEREST COMMUNITY. ANY OWNER OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY ACKNOWLEDGES THAT DECLARANT AND THE ASSOCIATION ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION AND BYLAWS, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMON INTEREST COMMUNITY.**

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

DECLARANT:

PINYON MESA HOLDINGS, LLC, a Colorado limited liability company

SEP 26 2007

By: 

John A. Elmore II, Manager

PINYON MESA DEVELOPMENT, INC., a Colorado corporation

By: 

John A. Elmore II, President

(Notarization is on the Following Page)



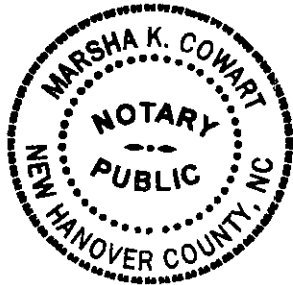
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North Carolina
STATE OF COLORADO)
) SS.
COUNTY OF New Hanover)

The foregoing instrument was acknowledged before me this 25th day of
September, 2007, by John A. Elmore II, as Manager of Pinyon Mesa Holdings, LLC and
Pinyon Mesa Development, Inc., collectively the Declarant.

Witness my hand and official seal.

My commission expires: 2-2-2009



Marsha K Cowart
Notary Public

EXHIBIT A

LEGAL DESCRIPTION – PINYON MESA (LOS AMIGOS RANCH LOWER BENCH)

A tract of land situate in Section 7 and 8, Township 7 South, Range 88 West of the 6th Principal Meridian, Garfield County, Colorado being more particularly described as follows:

Beginning at the SW corner of Lot 11 of said Section 7 thence. N 00°32'01" E 676.97 feet along the west line of said Lot 11 to the SE corner of Van Rand Park, County of Garfield, State of Colorado according to the plat thereof recorded as Reception No. 265177 of the records of the Clerk and Recorder of Garfield County, Colorado; thence, N 00°36'37" E, 302.75 feet along the east line of said Van Rand Park, and a northerly projection thereof, to a point being 30 feet southerly of the centerline of the paved surface of County Road 114; thence along a line 30 feet southerly of the centerline of the paved surface of County Road 114 the following courses:
thence, S 40°18'31" E, 166.87 feet;
thence 515.89 feet along the arc of a 334.71 feet radius curve to the left, having a central angle of 88°18'40" and subtending a chord bearing S 84°27'51" E 466.32 feet;
thence, N 51°22'49" E, 137.77 feet;
thence 297.88 feet along the arc of a 2805.91 feet radius curve to the right, having a central angle of 6°04'58" and subtending a chord bearing N 54°25'18" E 297.74 feet;
thence, N 57°27'47" E, 128.76 feet;
thence 287.77 feet along the arc of a 299.84 feet radius curve to the right, having a central angle of 54°59'28" and subtending a chord bearing N 84°57'31" E 276.86 feet;
thence, S 67°32'45" E, 61.03 feet;
thence 162.40 feet along the arc of a 445.95 feet radius curve to the right, having a central angle of 20°51'53" and subtending a chord bearing S 57°06'49" E 161.50 feet;
thence, S 46°40'52" E, 196.40 feet;
thence 265.46 feet along the arc of a 388.35 feet radius curve to the left, having a central angle of 39°09'55" and subtending a chord bearing S 66°15'50" E 260.33 feet;
thence, S 85°50'48" E, 156.83 feet;
thence 239.96 feet along the arc of a 1082.20 feet radius curve to the left, having a central angle of 12°42'16" and subtending a chord bearing N 87°48'04" E 239.47 feet;
thence, N 81°26'56" E, 227.05 feet;
thence 421.75 feet along the arc of a 304.73 feet radius curve to the right, having a central angle of 79°17'50" and subtending a chord bearing S 58°54'09" E 388.88 feet;
thence, S 19°15'14" E, 85.23 feet;
thence 156.71 feet along the arc of a 341.45 feet radius curve to the right, having a central angle of 26°17'49" and subtending a chord bearing S 06°06'19" E 155.34 feet;
thence, S 07°02'35" W, 176.97 feet;
thence 269.26 feet along the arc of a 240.05 feet radius curve to the left, having a central angle of 64°16'08" and subtending a chord bearing S 25°05'29" E 255.36 feet;
thence, S 57°13'33" E, 38.38 feet to a point on the south line of Lot 6 of said Section 8;
thence, S 89°32'22" W, 1011.21 feet along the south line of Lot 6 of said Section 8 to the SE corner of Lot 10 of said Section 7;
thence, N 89°07'48" W, 1994.76 feet along the south line of said Lots 10 and 11 to the point of beginning, containing 2,634,869 sq.ft. or 60.49 acres more or less.

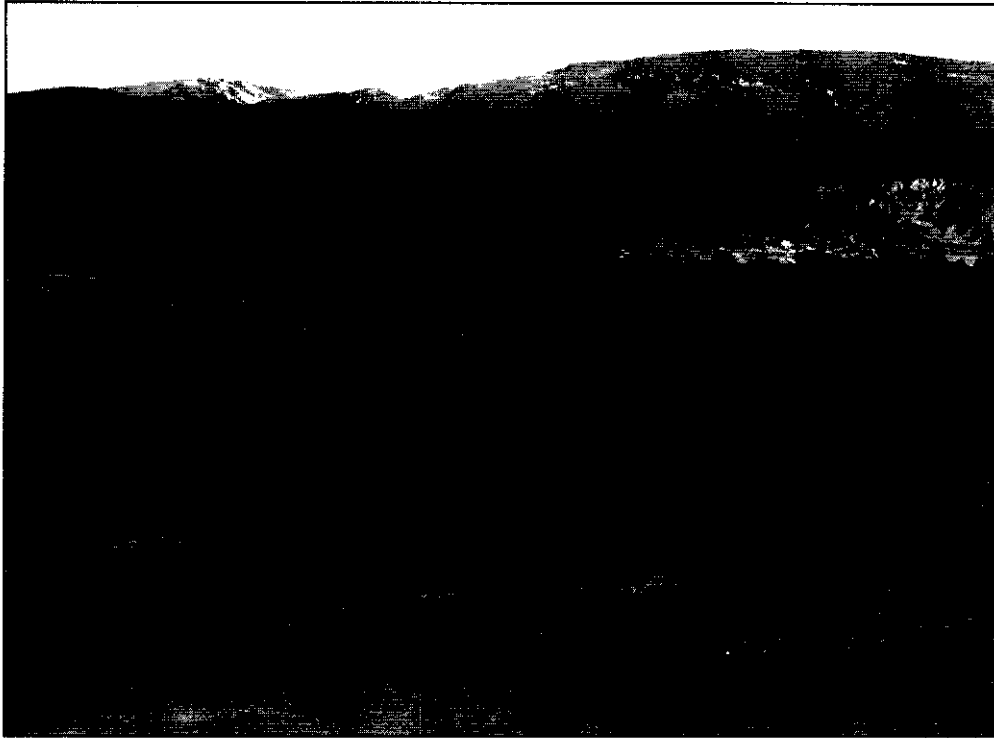


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EXHIBIT B

ROCKY MOUNTAIN ECOLOGICAL SERVICES, INC.
NEPA • WILDLIFE • VEGETATION • WILDFIRE MITIGATION • WETLANDS • PLANNING



WILDLIFE ANALYSIS
IMPACT AND MITIGATION REPORT
FOR THE
LOS AMIGOS, LOWER VALLEY PROJECT

GARFIELD COUNTY COLORADO

PREPARED FOR:
NOBLE DESIGN STUDIO

APRIL, 2006

0222 BOBCAT LANE • REDSTONE • COLORADO • 81623
PHONE/FAX: (970) 963-2190 • CELL: (970) 309-4454
EMAIL: ERIC.PETTERSON@STARBAND.NET



1 SUMMARY

This Wildlife Assessment Report details the habitats, wildlife use, potential impacts and mitigation measures proposed on the Lost Amigos, Lower Valley Subdivision (also known as Phase 3), adjacent to the Thunder River Marketplace and immediately south of County Road 114 in Garfield County (see **Figure 1**).

The proponent is proposing the development of the property, placing 80 building envelopes within the 60 acre parcel. The property is currently zoned PUD- Subdivision (High Density).

The site is located on a mid-slope bench in between the greater Missouri Heights area and the Roaring Fork Valley. The site is dominated by sagebrush (*Artemisia tridentata pauciflora*) flats, and scattered pinyon pine (*Pinus edulis*) and juniper tree (*Sabina osteosperma*) stands. Most of the sagebrush stands appear to have been cleared many years ago for grazing, as evidenced by the lack of native understory grasses and forbs, and the dominance of the cultivar crested wheatgrass (*Agropyron cristatum*) on the site. There is one area in the southwestern corner of the property that appears to have not been cleared in the past. In this area the understory of the sagebrush is dominated by a variety of native forbs and grasses. The greater area is commonly used by elk during the winter months.

After a site visit on April 24, 2006, coordination with Kelly Wood, District Wildlife Manager with the Colorado Division of Wildlife occurred to discuss potential impacts to wintering big game in the area.

1.1 EVALUATED SPECIES

Information on species status, distribution, and ecology was derived from USFWS recovery plans, Colorado Natural Heritage Program maps and reports, Colorado Division of Wildlife habitat mapping, personal knowledge from the CDOW District Wildlife Manager, various scientific studies and reports, and field reviews. The US Fish and Wildlife list of Threatened and Endangered Species was used to determine if any species potentially occurred within or adjacent to the property. Additionally, the Colorado Division of Wildlife's list of Threatened, Endangered, and Species of Concern was referenced to determine if any species had potential habitat on or adjacent to the property (see:

<http://wildlife.state.co.us/WildlifeSpecies/SpeciesOfConcern/ThreatenedEndangeredList/ListOfThreatenedAndEndangeredSpecies.htm> for the complete CDOW list).

Research was conducted by Rocky Mountain Ecological Services to determine relevant habitat associations, life history traits, the rangewide or statewide distribution of known populations, and current status and trend of each species.

The Colorado Natural Heritage database was consulted to ascertain the existence of known occurrences within the project area. Habitat surveys were conducted in April 2006 by Eric Petterson, Principal Ecologist of Rocky Mountain Ecological Services, Inc.





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The following species either had habitat on or adjacent to the property:

- Elk
- Mule Deer
- Black Bear
- Bald Eagle (Federally Threatened)
- Colorado River Cutthroat Trout (State Species of Concern)
- River Otter (State Threatened)

The property does not contain any habitat for Federally Threatened or Endangered species. However, bald eagles (Federally Threatened) are known to use the Roaring Fork drainage during the winter months, and a nest site occurs south of the project area in the Aspen Glen subdivision.

Additionally, Colorado River cutthroat trout (State Species of Concern) have suitable habitat in the Roaring Fork River and its tributaries. The development of the property should not impact the ability of this species to utilize suitable riverine habitats near the project area.

River Otter (State Threatened) does have suitable habitat within the Roaring Fork River, but as the property does not have any streams, this project should have no impact on River Otter or its habitat.



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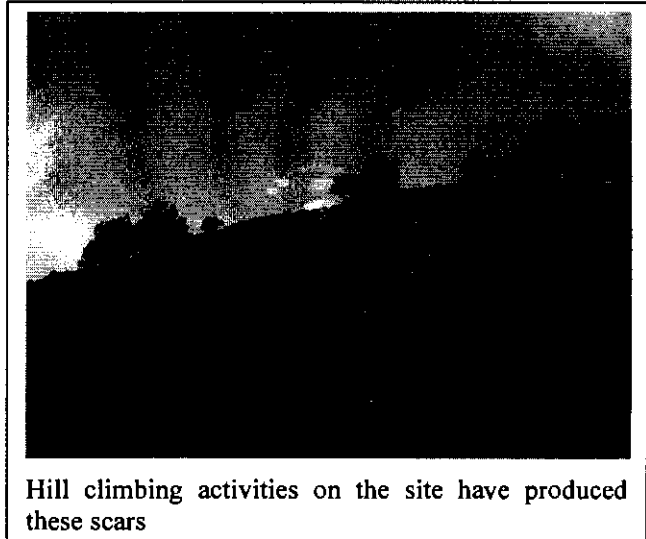
3 EXISTING CONDITIONS

3.1.1 HISTORICAL USE AND IMPACTS

The sagebrush flats on the property were cleared many years ago for increased grazing or possibly hay meadow production. This deduction was made based on the almost complete lack of native forbs and grasses in the sagebrush areas, and instead of native plants, the dominance of the understory by crested wheatgrass (a cultivar from Asia). Over time, the sagebrush has become reestablished in the flats.

The area is currently used by OHV's and four-wheel drive vehicles for hill climbing and other off-road activities. Because of the highly erosive soils in the area, these activities have produced evident scarring of hillsides.

There is also quite a bit of trash in the drainage bisecting the property, with old cars, tires and other refuse in the gulch. A buried utility corridor and pad exists along the northern side of the property.



Hill climbing activities on the site have produced these scars

3.1.2 UPLAND VEGETATION

The site is dominated by sagebrush (both *Artemisia tridentata* sbsp. *pauciflora* and *A.t.* sbsp. *tridentata*) and possibly black sage (*Artemisia nova*). There are scattered stands of pinyon / juniper trees on the property as well. These two tree species are notorious for providing very harsh growing conditions under them due to allelopathic chemicals released by the dominant trees. These chemicals retard and prevent the establishment of grasses, forbs and other shrub species from becoming established under the tree crowns. However, this is the natural condition of these pinyon/juniper woodlands.

In the southwest corner of the property, some of the sagebrush was not historically cleared and reseeded with exotic grasses, and therefore has a healthy native understory suite of species, including: Fendler's bluegrass (*Poa fendleri*), Indian paintbrush (*Castilleja chromosa*), dwarf larkspur (*Delphinium nelsonii*), prairie Junegrass (*Koeleria macrantha*), sedge (*Carex geophila*), Indian ricegrass (*Oryzopsis hymenoides*), western wheatgrass (*Pascopyrum smithii*), horsebrush (*Tetradymia canescens*), rabbitbrush (*Chrysothamnus nauseosus*), *Orercarya* spp., and milkvetch (*Astragalus mollissimus* var. *thompsoniae*).

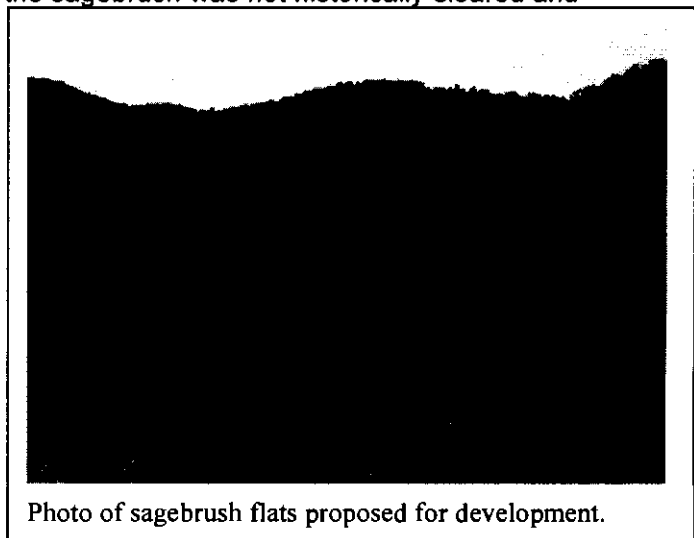


Photo of sagebrush flats proposed for development.






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3.2 FIGURE 1: MAP OF LOS AMIGOS LOWER VALLEY PROPERTY



 Rocky Mountain Ecological Services, Inc. 0222 Bobcat Lane, Redstone, CO 81623 970.963.2190 eric.pettersen@starband.net	Los Amigos- Lower Valley	Figure 1	Drawn By: Eric Pettersen
	Los Amigos-Phase J Garfield County, Colorado		Date: April 2006
			Scale: 1:5,370

3.3 WILDLIFE USE OF AREA

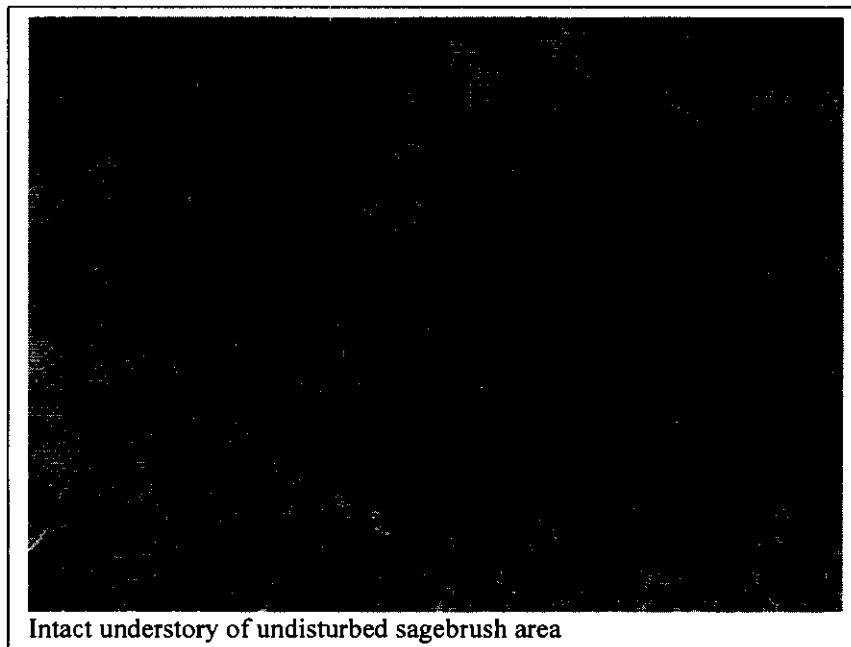
3.3.1 MULE DEER

The property has moderate levels of mule deer use, but this use increases during the winter months. The CDOW has most of the area mapped as mule deer Winter Range and Severe Winter Range. The significant use of the property by elk may preclude some deer use.

Development of the property will convert a significant portion to unavailable habitat for deer use. Based on the current land use plan, there will be some "Open Space" areas within the development (mainly along the gulch), and around some of the edges of the property. Deer are more likely to continue to use some of these areas than elk are, but the presence of dogs in the subdivision will likely exclude any significant deer use of these open spaces. Even with dogs in kenneled or fenced yards, their barking and activities will keep deer away from the general area. Also, it is inevitable that off-leash or loose dogs will chase any deer near the subdivision.

Some recommendations to minimize impacts to deer from the development would be:

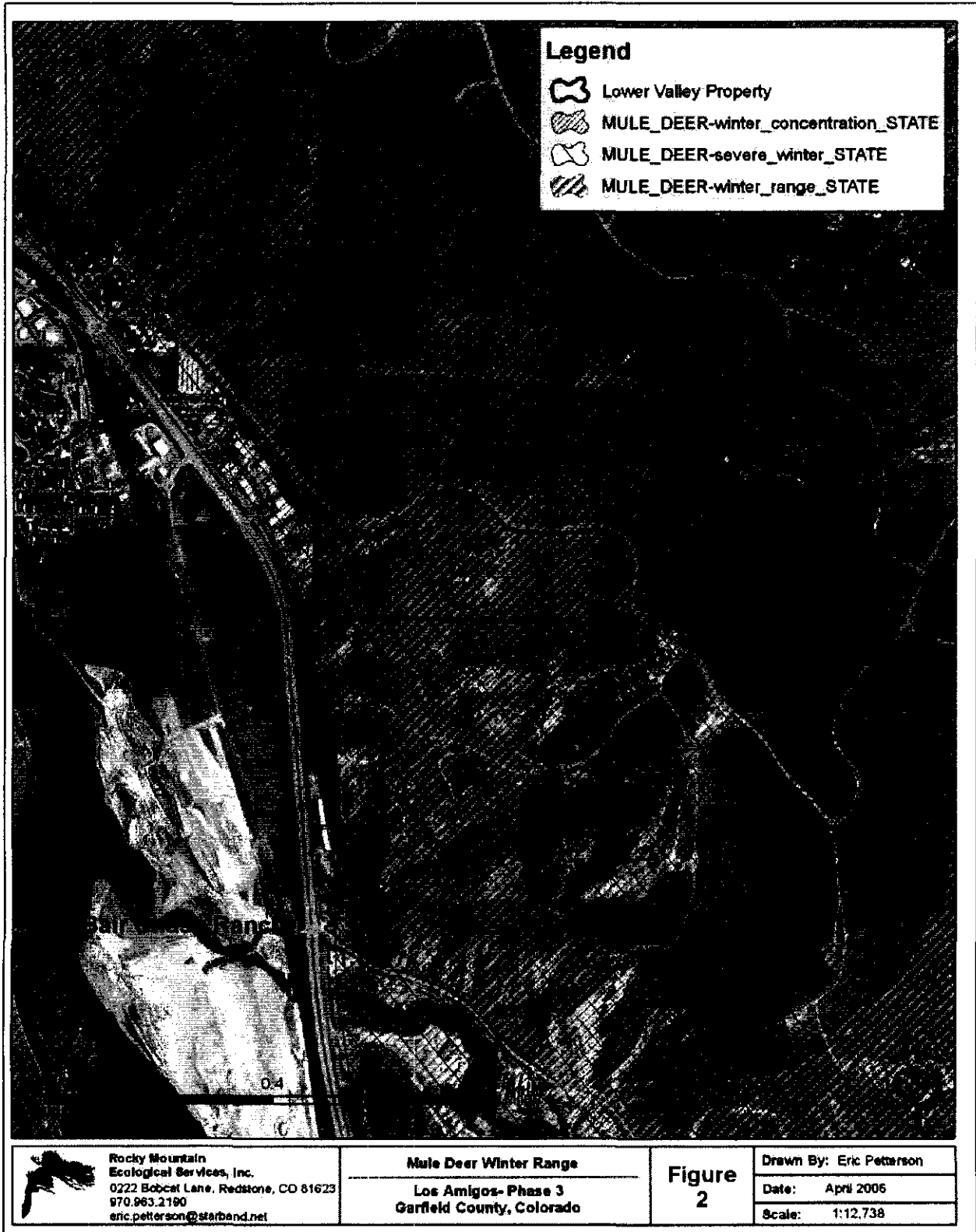
- Prohibit dogs (although having one dog per household is permitted at this time).
- Incorporate provisions in the covenants enforcing prohibition of off-leash dogs (through fines, etc.). This should be especially considered for the winter months (November 1st through March 31st).
- Remove all fences. If fences are needed to dissuade trespass from nearby BLM lands, then fences should be "wildlife friendly"- See Section 3.3.5 below
- Work with BLM to curtail OHV use and possible restoration of impacted habitats adjacent to the property.





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3.3.1.1 FIGURE 2: MULE DEER WINTER RANGE





3.3.2 ELK

The property is within an important migration corridor channeling elk from the Missouri Heights, Spring Valley, and Red Table Mountain areas. North of the property, the steep cliffs preclude significant elk migration routes down to the Roaring Fork Valley, and the Cattle Creek drainage provides a good route for migrating elk. Because of this, herds congregate and move through the area, wintering near the Roaring Fork River, Aspen Glen and the Bair Chase Ranch. Even before Bair Chase vegetation (and winter foraging opportunities) was removed in 2005, elk would move back and forth from the Bair Chase and Aspen Glen properties up onto the Los Amigos properties and adjacent BLM and private lands east of SH-83. This movement around their winter ranges is driven by snowfall events, and subsequent snowmelt periods throughout the winter. With the lack of winter foraging opportunities on Bair Chase, elk use of other winter ranges in the area have become more important for elk nutritional needs.

Because of the understory of crested wheatgrass in much of the sagebrush meadows, and OHV use in adjacent BLM lands, elk foraging in the area of the Lower Valley project has already been compromised to some degree. However, as elk have very traditional use patterns, elk will continue to use these compromised winter ranges.

The CDOW has the property, and surrounding areas mapped as elk Winter Range, and Severe Winter Range.

Development of the property will convert a significant portion of the area to unavailable habitat for elk use. Based on the current land use plan, there will be some "Open Space" areas within the development (mainly along the gulch), and around some of the edges of the property. As elk can be very sensitive to human activities, elk will generally avoid much of the property. Elk may pass through the property during the nighttime hours, as they move through the area looking for more suitable winter foraging opportunities. There is even the likelihood that elk will browse within the subdivision after development. Because elk are very habitual, they will likely show up in the area during the early winter as they move out of the high country onto their traditional winter ranges. Elk will likely continue to use the adjacent BLM lands south of the property, and will likely utilize these habitats much more intensively.

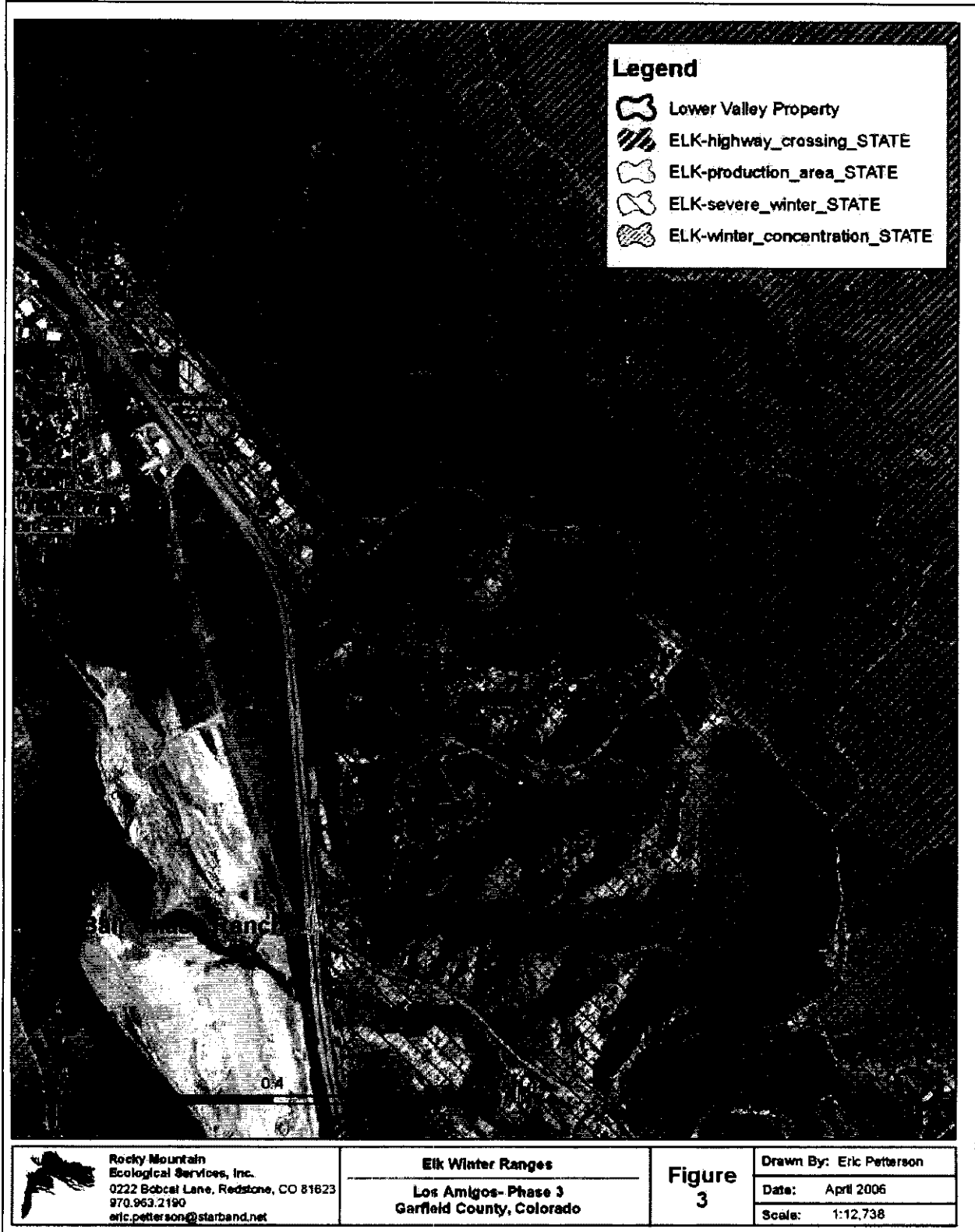
As elk will continue to use these traditional yet compromised habitats (Bair Chase, the BLM lands, adjacent subdivisions, and the Los Amigos Lower Valley property), the ability of elk to find adequate forage throughout the winter, coupled with increased stress from elevated human activity in the area will likely mean that over-wintering elk will have increased levels of winter mortality from nutritional deficiencies.

In summary, this project will contribute with other land use changes in the greater Cattle Creek area that are having a negative impact on elk's ability to procure suitable winter forage. The direct negative impacts of this particular project on elk fitness and spring health of elk coming off of winter range is not likely measurable or quantifiable, but cumulatively the loss of habitat on Bair-Chase, increased traffic on SH-84, and OHV use on BLM lands, may produce measurable increases in elk mortality, and decreased fitness of elk coming off of winter ranges in this area. In the future, the redevelopment of Bair-Chase and associated revegetation of the property will help improve this situation. Given the high density of homesites proposed for the Los Amigos property, on-site habitat improvement or mitigations to increase winter forage quality on-site are not likely feasible or would have no measurable improvements to elk winter range.

There are recommendations to minimize other stresses or negative impacts to elk moving through and using the area. These recommendations are listed below.



3.3.2.1 FIGURE 3: ELK WINTER RANGE



3.3.3 LIGHTING & GAME USE

Because the area will likely receive use by mule deer and elk during the night, nighttime lighting of the property and excessive lighting of driveways (beyond what is required for safe driving conditions) is not recommended in order to allow big game use of the area. Further, lighting of existing winter range beyond the building envelope areas is strongly discouraged (for instance; from bright backyard lights illuminating adjacent BLM lands). Vegetation should be planted 10' off of roadsides in areas where headlights from vehicles illuminate winter range areas in order to minimize unintended "spotlighting" of foraging game at night.

3.3.4 ROADS

Along the existing and new roads that would occur in this area, the following requirements should be followed:

- Fences along the roads should not be allowed.
- Cut and/or fill slopes along the roads should be designed to facilitate wildlife movement; this includes using native plant materials that mimic local native vegetation species and distribution.
- Large or extensive retaining walls should not be utilized.

3.3.5 FENCES

As the area will be used extensively by big game in the winter months, fencing will inhibit big game movement, and is therefore strongly discouraged. As the area is no longer grazed by cattle or domestic sheep, fencing should not be necessary. Decorative fencing that is not designed to allow wildlife passage is strongly discouraged. Additionally, existing fencing shall be removed as soon as possible. Fencing that is needed to keep pets and children adjacent to the houses are allowed, as well as to keep BLM lands delineated from private lands.

Any fences intended to keep pets or children adjacent to the homes are acceptable, other fences to keep OHV use or trespass from BLM lands from occurring should comply with the following specifications:

- Fences may consist of two rails, with the upper rail 44 inches above the ground, and the top of the bottom rail 24 inches above the ground. This will allow adult animals to easily jump over fences, even in deep snow, and will allow calves and fawns to crawl under or pass through the rails, or
- Buck and rail fences are practically impossible for wildlife to cross, therefore buck and rail fences are strongly discouraged.
- If cattle or domestic sheep grazing resumes in the area, and fencing livestock out becomes a necessity, the property owners should consult with CDOW & BLM personnel to develop an acceptable fence design. There are various types of fences that are compatible with fencing out horses, domestic sheep, and cattle and still allow for wildlife movements across fence lines.
- Prior to construction in or adjacent to winter range habitats, snow fencing or silt fencing shall be erected at the edge of the building envelopes to contain disturbance to native vegetation by indirect construction activities (i.e. trampling of vegetation by equipment, etc.).



3.3.6 LANDSCAPING AND REVEGETATION

As the area is used as winter range (and critical winter range), reclamation of road cuts, infrastructure routes and open spaces will need to occur using similar native plant species and vegetation profiles. Revegetation should also occur as soon as possible, however planting in the spring after big game have left the area would be best as newly planted materials would likely be browsed first, and plants with little time to set roots will likely be pulled up by grazing big game. Additionally, noxious weeds should be treated bi-annually in order to minimize their spread and impact on winter range and increase the success of revegetation activities.

Revegetation along roadsides should not include trees and tall shrubs (such as chokecherry or willows) within 10 feet of the road to improve visual detection of wildlife along roadsides and to minimize road kill. Local native grasses, forbs and low shrubs may be planted along roadsides to keep wildlife habitat conditions as viable as possible.

3.3.7 DOMESTIC DOGS

Domestic dogs, unless they are seeing-eye dogs or assistance dogs for the disabled, should be prohibited outside of fenced areas within winter forage areas. As this area is a very important big game winter range habitat, it is inevitable that if dogs were allowed outside of fenced yards, even under leash control, dogs would escape control and chase and likely injure wildlife. Specifically:

- o Dogs should be not be allowed outside of fenced yards during the winter months (November 15 through March 15).
- o This includes dogs owned by contractors, subcontractors, delivery personnel, home owners and their guests. Loose or uncontrolled dogs can have a significant impact to big game through direct and indirect mortality, increased stress, and displacement from preferred ranges. Control of dogs is vital when living within an elk migration corridor, and adjacent to elk winter range. In the past, CDOW has had numerous reports of dogs brought to construction sites by workers which chase and harass wildlife. Due to the location and proximity of this parcel to sensitive wildlife habitat areas, construction workers should not be allowed to bring dogs on site.

Stray or loose dogs may be controlled by CDOW or Garfield County, which could include destruction of dogs chasing wildlife, as permitted by Colorado law. Under Colorado law, persons who are not in compliance with this dog policy will be responsible for any and all costs the CDOW or Garfield County may incur due to control of loose dogs on the property. If home owners knowingly permit illegal dog activity on the property, those persons will be financially responsible for costs of controlling dogs. CDOW and County representatives may be granted access to the property to enforce any of the dog restrictions and other wildlife restrictions set within these recommendations. CDOW enforcement may include the capture or destruction of any dogs running at large on the property, regardless of where the dogs may have originated.

3.3.8 CDOW INDEMNIFICATION

As the property occurs within mule deer and elk winter ranges, there will be damage and use of the landscaping by foraging big game. The property owners should be informed of this and agree to indemnify CDOW from wildlife damage and not seek funding for game damage reimbursement from CDOW.



3.3.9 BEARS

Black bears are very common in the area from spring (April) through fall (late November). There are existing problems with bears, garbage, and people in Garfield County and some bears have shown signs of habituation and aggression towards residents.

The following measures should be implemented to reduce potential bear problems:

- There should be no dumps that have edible materials associated with the construction and post-construction activities. Construction workers and contractors should be notified and educated about the importance of keeping trash, food and drink items properly disposed of to discourage bear activities in the area.
- Residential garbage should be placed in bear-proof dumpsters, individual bear-proof trash containers, or kept in trash cans inside closed buildings. Trash cans should not be left outside overnight prior to trash collection, and bears quickly become habituated to these schedules.
- Because of the layout of the subdivision, there is an opportunity to install bear-proof centralized trash stations which will decrease the number and availability of trash cans for bears to rummage through.
- Pets should not be fed outside. Bowls of pet food left around buildings will attract bears and other predators (e.g. coyotes or red fox) and nuisance species (e.g. skunks, raccoon, woodrats) of wildlife.
- Birdfeeders and hummingbird feeders need to be brought in during the evenings, and removed altogether during the fall months (September through late November).
- Nut, fruit, or berry producing trees or shrubs should not be used in landscaping in order to minimize an attractant for bears.
- Homeowners should be educated about bears and other local wildlife via a homeowner's brochure, such as that produced by the CDOW.

3.3.10 BIRDS

Many Sensitive bird species utilize the area, including:

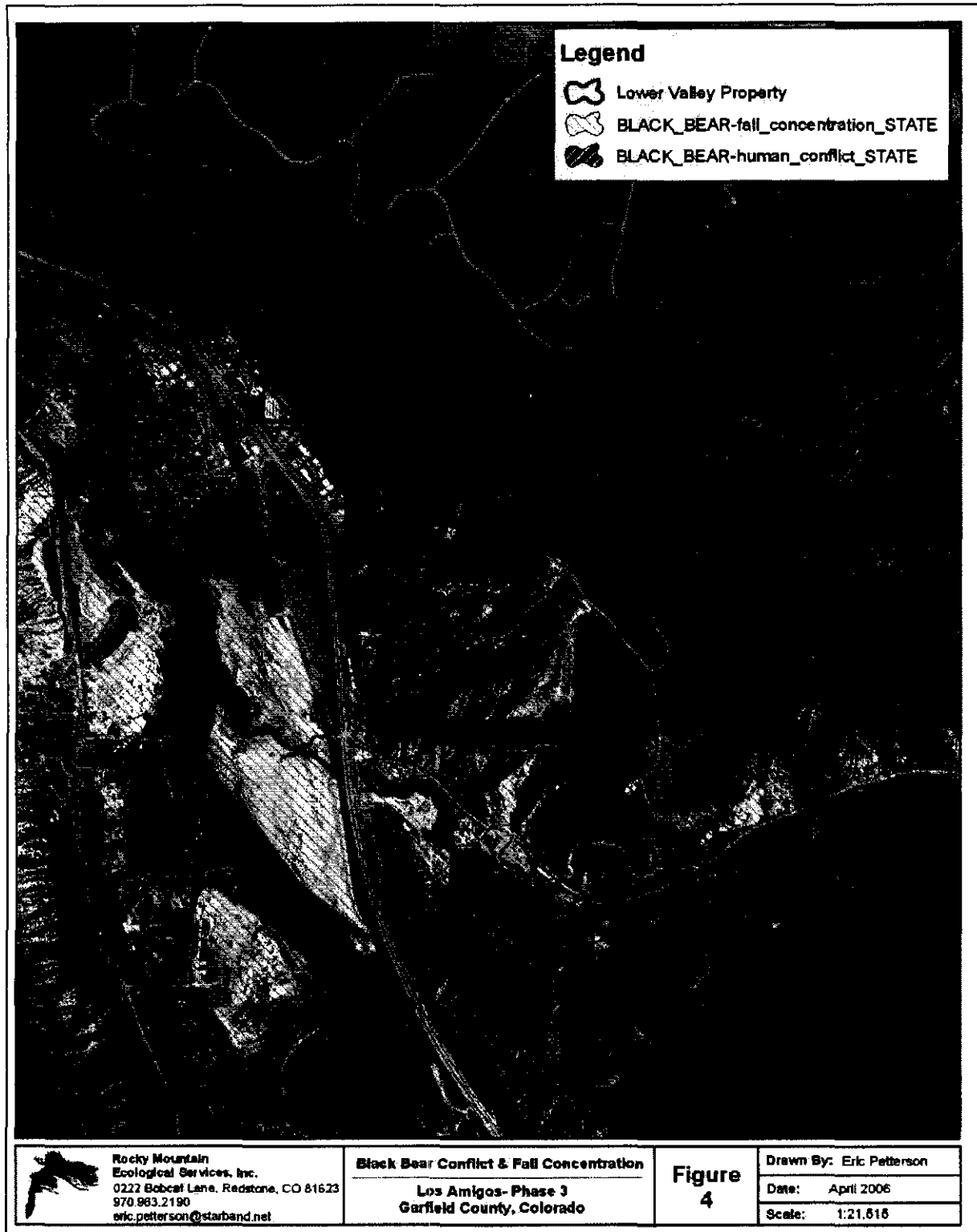
- Pygmy nuthatch
 - Western tanager
 - Various warbler species
 - Brewers' sparrow
- Therefore, pet cats should remain indoors, as cats will readily prey upon these species and can have a significant impact on bird use in the area and on bird populations.
 - Bird feeders are discouraged due to the heavy black bear use in the area. Bird feeders can be used in the winter (from mid November through mid March), as bears are hibernating during this time.
 - All bird feeders, including hummingbird feeders, should be hung away from any window or deck, be at least 10' from the ground, and be suspended between two trees or posts. Any seed feeders should have a seed catchment pan to catch discarded seed.
 - As the area can contain high numbers of cavity nesters, larger trees, and especially trees with cavities (woodpecker holes) should be preserved if possible, or nest boxes may be installed if many trees need to be removed.





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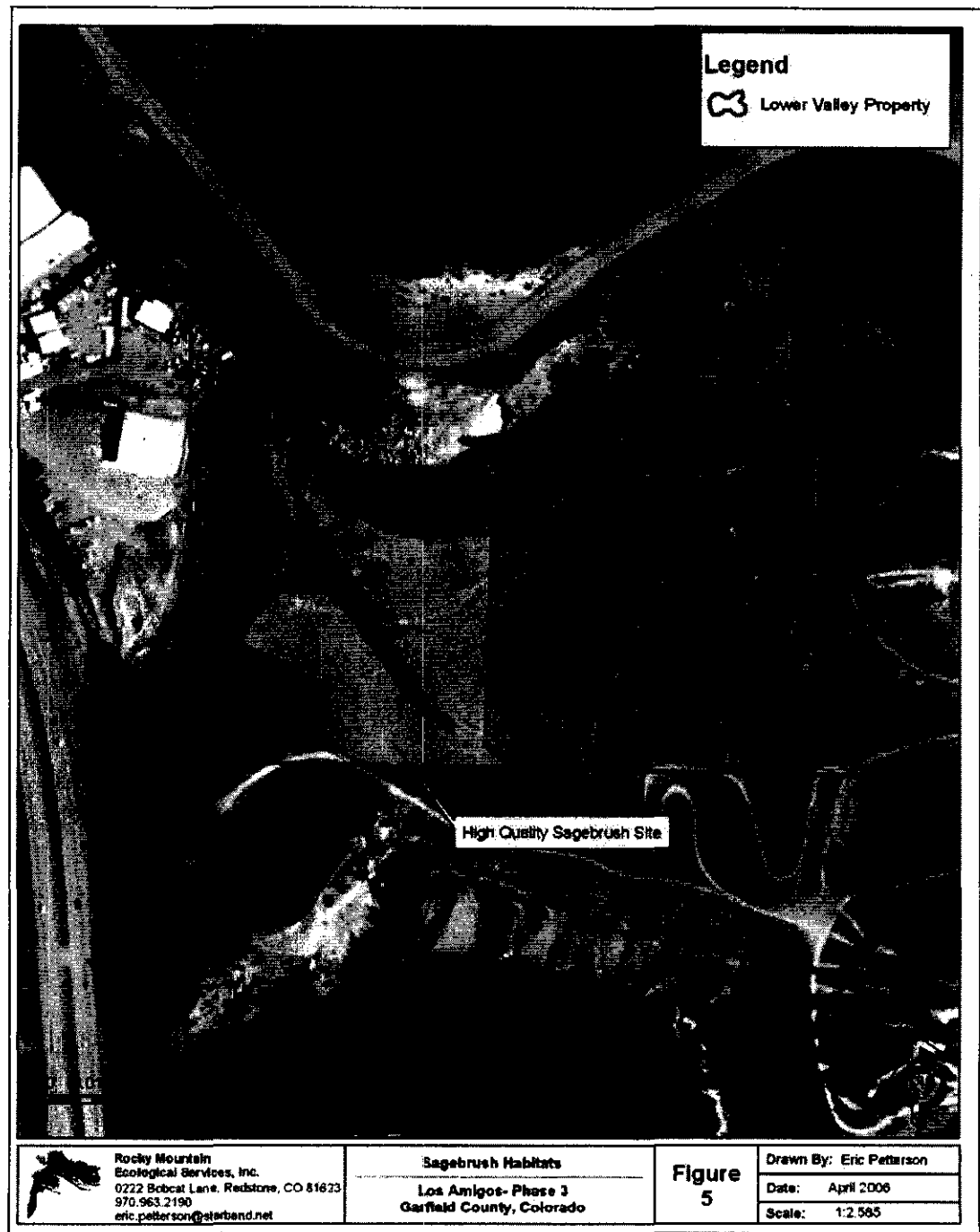
3.3.11 FIGURE 4: MAP OF BLACK BEAR HUMAN CONFLICT AREA (CDOW)



4 SAGEBRUSH HABITATS

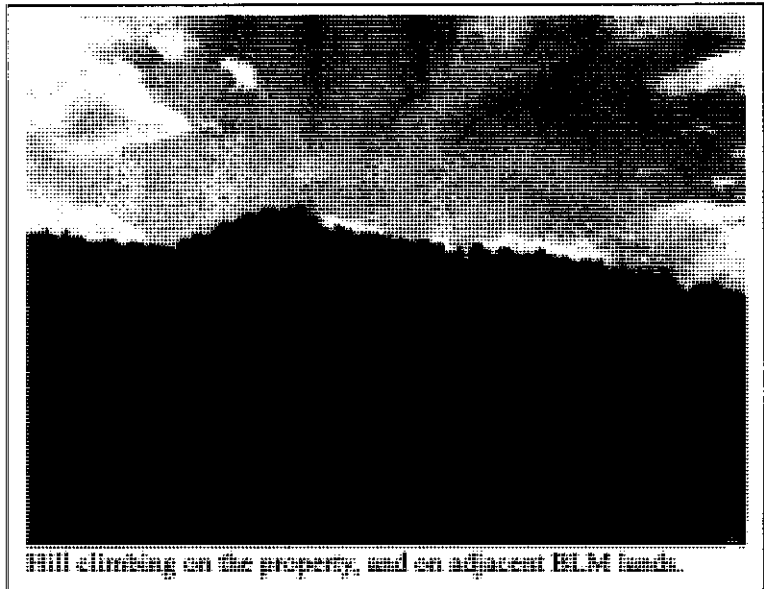
At the southwestern corner of the property, an undisturbed sagebrush habitat exists. Although likely too small to be effective habitat for big game, it does provide better habitat components for other wildlife species such as birds, small mammals and reptiles.

4.1 FIGURE 5: HIGH QUALITY SAGEBRUSH HABITATS ON PROPERTY

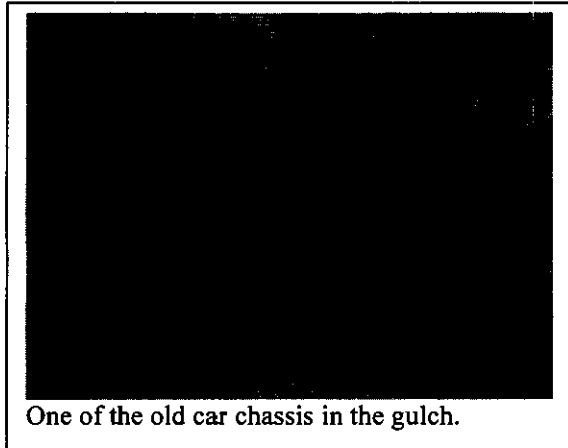


4.2 OTHER RECOMMENDED MITIGATIONS

As much of the area is also impacted by OHV use, this motorized use further decreases the suitability of the area for elk and mule deer winter range. Restoration and closure of these areas to OHV use would increase the effective habitat in this area. The proponent may wish to look into opening discussions with BLM regarding the management goals of the BLM parcel, and if the OHV use is consistent with the goals and management direction for that parcel. Restoration of OHV sites on both the Los Amigos parcel and the BLM parcel would improve existing winter range, and would help mitigate the large erosion issues associated with the OHV use of the site.



Hill climbing on the property, and on adjacent BLM lands.



One of the old car chassis in the gulch.

The gulch running through the property also has significant amounts of trash in it from apparent illegal dumping that has occurred for quite some time. Removing trash and improving bank stability and revegetating eroding areas would improve habitat for non-game species such as birds, small mammals, and may also provide some refuge cover for deer or elk passing through the subdivision.

Thank you for the opportunity to comment on this property. Please feel free to call if you have any questions regarding this report.

Eric Petterson
Rocky Mountain Ecological Services, Inc.

cc: Kelly Wood, Colorado Division of Wildlife



H. Engineering Reports

a. Roads, Trails, Walkways and Bikeways

The street grades and road centerline data are shown on the road plan and profile sheets within the application. The primary entry road, Pinyon Mesa Drive, has been designed in Phase 1 with maximum grades of 8% under the criteria established for a minor collector road, with grades of 2% at its intersection with County Road 114. Grades in Phase 2 are 4% and flatter.

Paintbrush Way has varying road grades with a 6% maximum in residential areas. The northerly end of Paintbrush Way will be constructed as an emergency access road. An 8 % maximum grade was used for this roadway as it crosses a gulch. A twenty foot wide gravel road, with a gated entry, will provide a secondary access in case of emergency. In addition, pull-outs are provided at 600 foot intervals along the roadways. These will provide both emergency equipment and residents the ability to turn around if the road were to be blocked.

Pinyon Mesa Drive and Paintbrush Way will be constructed with two eleven-foot wide travel lanes with a one-foot gutter on each side for a 12-foot wide travel width in each direction.

The road centerline radii are within the criteria established for minor collectors and secondary access roads. Pinyon Mesa Drive has a minimum radius of 400 feet, while Paintbrush Way has a minimum radius of 150 feet. Both are well above the minimum radius required for these road classifications.

Per the approved Preliminary Plan, the roads will also serve as trails, walkways and bikeways.

b. Mitigation of Geological hazard

Geologic hazards that will be mitigated include hydro-compressive soils and steep slopes.

Two soils and geology analyses have been completed on the site and are included with this application. The first report titled "Preliminary Geotechnical Study, Proposed Residential Development, Elk Springs Ranch Lower Bench Area, County Road 114, Garfield County, Colorado," was prepared by HP Geotech and is dated November 11, 2005. The study included five test borings spaced throughout the property and presented preliminary design recommendations for foundations and roadways.

The second study, titled "Supplemental Geotechnical Study, Proposed Residential Development, Elk Springs Ranch Lower Bench Area, County Road 114, Garfield County, Colorado," was also prepared by HP Geotech and is dated

April 10, 2006. Subsoil conditions were investigated by drilling 12 additional exploratory borings.

It further presents the general subsoil conditions, surficial geology, site grading and drainage considerations and preliminary foundation recommendations. The report concludes "Development of the project should be feasible based on geotechnical conditions, however there are several conditions of a geologic nature that could affect the proposed development and which should be considered in project planning and design." Preliminary design recommendations in the report address concerns related to potentially hydrocompressive soils and provide recommended mitigation techniques.

The potential effect of moisture sensitive soils will be mitigated by directing surface drainage away from the buildings. Under-drain systems will be used to protect basement levels or retaining walls from wetting and hydrostatic pressure. The conditions at each individual building site will be evaluated at the time of construction to determine if additional measures are warranted.

The interior roadways will be designed in accordance with the recommendations of the soils report. The road section will consist of nine inches of base course and three inches of asphalt. The sub-grade will be sub-excavated and re-compacted to a depth of six feet before placing the base course and asphalt. It is also recommended that water and sewer lines within the roadways be constructed using restrained joint pipe to limit the potential for joint separation in the event of excessive settlement.

The report further evaluated the conditions on the property relative to slope instability, sinkholes flow and the potential for strong earthquake related ground shaking.

This property, as well as the surrounding area, falls within Seismic Risk Zone 1 in terms of earthquake potential. All of the building construction within this development will be required to meet the requirements of the Uniform Building Code for this seismic zone.

The Colorado Geologic Survey expressed concern about appropriate setback from steep slopes during the Preliminary Plan review. This situation was addressed by HP Geotech with the recommendation that foundations be at least 30 feet away from edge of slope.

Further design recommendations for foundations, retaining walls and floor slabs are contained within the geotechnical reports. Test hole logs, swell-consolidation test results, and gradation test results can be found within the full text of the reports which are included in this application.

c. Sewage Collection and Water Supply and Distribution System

Sewage Collection

Sewer service for this development will be provided by the Spring Valley Sanitation District. (See “Intent to Serve” letter attached). Provisions for sewer service to the 32 EQR’s remaining for Pinyon Mesa Filing 2 on the Lower Bench were made during the construction of the Spring Valley Wastewater Treatment Plant.

A 4-inch sewer force main carries wastewater from an existing lift station across the northern portion of the property and on up to the Spring Valley Wastewater plant. An existing eight-inch gravity sewer line extends through a portion of this property to the lift station. New 8-inch gravity sewer lines, serving all of the lots within the subdivision, will connect to the existing 8-inch sewer mains and deliver flow to the lift station. Refer to the engineering drawings included within this application for specific information regarding the location and configuration of the sewer lines.

Water Supply and Distribution

Water service for this development will be provided by the Elk Springs Homeowners Association (formerly Los Amigos Ranch Homeowners Association operated by the Red Canyon Water Company). (See the “Intent to Serve” letter attached.)

The Elk Springs HOA provides water for domestic and lawn irrigation purposes. The master plan development of the infrastructure for Elk Springs anticipated the development of Pinyon Mesa and its inclusion in its water service area. In preparation for development of this property, water service was previously extended to Pinyon Mesa Filing 1 and to the boundary of Pinyon Mesa Filing 2. That extension includes an 8-inch diameter water line and two (2) pressure reducing vaults along the main and an additional pressure reducing vault constructed just above Filing 1. When Phase Two is developed, additional eight-inch lines will be extended to serve the lots at the end of Pinyon Mesa Drive and Paintbrush Way.

The water company has two water storage tanks, with a combined storage capacity of 620,000 gallons. The existing tanks have sufficient volume to provide equalization, fire and emergency storage for “build-out” conditions. Water is produced from a well field consisting of two wells, currently rated at 270 gpm each. The supply receives disinfection through chlorination prior to being delivered to the water users.

Within Pinyon Mesa Filing 2, the water delivery system will consist of 8-inch

diameter distribution mains as shown on the accompanying engineering drawings.

The sizing of the water system components has been based on the following:

- Average domestic use: 280 gpd/EQR.
- Lawn Irrigation: 150-day, 3000 sf/lot @ 2.523 A-F/Ac.
- Peaking Factor: 2.0 for peak day (x domestic and irrigation).
- Fire flow availability: 1000 gpm.

The water system proposed for Pinyon Mesa has been modeled to verify that adequate static and residual pressures will be available to the individual lots. Normal pressures with Pinyon Mesa will range from 60 psi to 112 psi, depending on location. Note that in-house PRV's should be installed on all lots. Available fire flows exceed 1000 gpm at 20 psi residual at all locations. □

Fire hydrants will be placed throughout the project as necessary to provide both fire protection and the ability to flush the water lines at appropriate locations. More specific information regarding the location and configuration of the water lines is provided on the engineering drawings included within this application.

d. Soil Suitability information

On-site soils are generally suitable for residential development, Refer to section b. of this engineering report and the attached soils reports.

e. Groundwater Drainage

Groundwater was not encountered in the soil borings and consequently is not anticipated to be a major factor in the development of Pinyon Mesa Filing 2. The soils reports recommend proper provisions for surface drainage and that below grade construction be protected by an underdrain system.

f. Engineering design and construction features for any bridge, culverts, or other drainage features to be constructed

The Pinyon Mesa II Final Plat/Construction drawings contain complete information for all drainage elements. The drainage report from the approved Preliminary Plan is also attached.

g. Final cost estimates for public improvements

Refer to attached Exhibit A which is intended to accompany the Subdivision Improvements Agreement.

ATTACHMENTS

TO

ENGINEERING

REPORT



1502 F.
Hepworth-Pawlak Geotechnical, Inc.
5020 County Road 154
Glenwood Springs, Colorado 81601
Phone: 970-945-7988

Fax: 970-945-8454
email: hpgeo@hpgeotech.com

**PRELIMINARY GEOTECHNICAL STUDY
PROPOSED RESIDENTIAL DEVELOPMENT
ELK SPRINGS RANCH LOWER BENCH AREA
COUNTY ROAD 114
GARFIELD COUNTY, COLORADO**

JOB NO. 105 652

NOVEMBER 11, 2005

PREPARED FOR:

**JOHN A. ELMORE
P.O. BOX 381
WRIGHTSVILLE, NORTH CAROLINA 28480**

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PURPOSE AND SCOPE OF STUDY

This report presents the results of a preliminary geotechnical study for the proposed residential development at Elk Springs Ranch Lower Bench Area, County Road 114, Garfield County, Colorado. The project site is shown on Figures 1 and 2. The purpose of the study was to evaluate the geologic conditions and develop recommendations for preliminary foundation and grading designs. The study was conducted in accordance with our proposal for professional engineering services to John Elmore dated July 7, 2005.

A field exploration program consisting of a geologic reconnaissance and exploratory borings was conducted to obtain information on the site and general subsurface conditions. Samples of the subsoils obtained during the field exploration were tested in the laboratory to determine their classification, compressibility or expansion potential and other engineering characteristics. The results of the field exploration and laboratory testing were analyzed for possible impacts from the geologic conditions and to develop recommendations for preliminary foundation design for the proposed buildings and the subdivision grading. This report summarizes the data obtained during this study and presents our conclusions, design recommendations and other geotechnical engineering considerations based on the proposed construction and the subsurface conditions encountered.

PROPOSED CONSTRUCTION

At the time of this study, project planning was in the preliminary stages. The preliminary schematic plan available at that time is an 80 lot, single family residential subdivision with a network of streets and utilities. It is expected the schematic plan will be modified as project planning and design proceeds. We understand that the streets and lots are generally proposed to follow the terrain but considering the variable relief and closely spaced lots, relatively extensive grading could be required.

If building types, locations or development plans change significantly from those described above, we should be notified to re-evaluate the recommendations contained in this report.

SITE CONDITIONS

The 60 acre property is located on a valley side bench on the east side of the Roaring Fork River valley about 7 miles southeast of the Glenwood Springs town center, see Figure 1. The upland bench lies about 270 feet above the river channel which is located about one-half mile to the west of the property. The bench is located about one-third of the way between the valley bottom and Los Amigos Mesa at the top of the valley side. The general topography in the project area is shown by the contour lines on Figure 2. County Road 114 borders the property on the north and east. Ground slopes on the bench are typically moderate and do not exceed about 10 percent in most areas. A steep, 100 foot high, river terrace escarpment with slopes of about 60 percent is located near the western property boundary. The moderate sloping bench transitions to hilly terrain to the north, south and east of the property. Slopes in these areas are typically between about 25 and 60 percent. Two prominent topographic knobs stand about 50 feet above the bench in the central part of the property. All drainages tributary to the property are ephemeral and only have surface flow following periods of heavy rainfall and snow melt. Most are small and have basins that cover less than 40 acres. A relatively large ephemeral drainage with an upstream basin that covers about 214 acres enters the property from the north and a second relatively large ephemeral drainage with an upstream basin that covers about 75 acres enters the property from the east. The two drainages join in the western part of the property and have eroded relatively deep gullies below the upland bench. Relief between the gully bottoms and the adjacent bench surface is between about 15 and 75 feet. At the time of this study the property was undeveloped. Vegetation on the bench is mostly grass and sagebrush. Juniper trees, sage brush and grass grow on the adjacent hills. An abandoned gravel pit has been excavated into the terrace escarpment near the western property line. Fills associated with the gravel mining and fills along County Road 114 have been placed across the ephemeral drainages tributary to the property and a large fill is present across the incised gully where it exits the western part of the property. The fill

in the western part of the property associated with gravel mining is about 50 feet high and in places fills along County Road 114 are about 25 feet high.

REGIONAL GEOLOGIC SETTING

The project site is located in an area of complex geology in the south central part of the Carbondale Evaporite collapse center to the east of the Grand Hogback monocline, see Figure 1. The Grand Hogback is a first order geologic structure that marks the transition between the White River uplift to the northeast and the Piceance basin to the southwest. Both were formed during the Laramide orogeny about 40 to 80 million years ago. The Grand Hogback marks the western limit of the western Colorado evaporite region. The Carbondale evaporite collapse center is a northwest trending regional geologic structure that covers about 460 square miles and extends from Basalt to north of Rifle (Kirkham and Others 2002). As much as 4,000 feet of regional subsidence is believed to have occurred in the southern part of the collapse center near Carbondale during the past 10 million years as a result of dissolution and flowage of evaporite from beneath the center. Much of the collapse appears to have occurred within the past 3 million years which also corresponds to high incision rates along the Colorado River and its main tributaries such as the Roaring Fork River (Kirkham and Others, 2002). If this is the case, the long-term average subsidence rate was between 0.5 and 1.6 inches per 100 years. Some geologically young fault and evaporite related anticlines are present in the project area but because of the nature of evaporite tectonics the faults are not considered capable of generating large earthquakes. The closest geologically young faults, faults less than about 15,000 years, considered capable of generation large earthquakes are faults in the Williams Fork Mountains fault zone that is about 60 miles to the northeast of the project site and faults in the southern section of the Sawatch fault zone about 66 miles to the southeast of the project site (Widmann and Others, 1998).

PROJECT SITE GEOLOGY

The main geologic features at the project site and vicinity are shown on Figure 2. The upland bench at the project site appears to be associated with a former, higher level Roaring Fork River valley floor that existed at the time of a middle Pleistocene-age Bull Lake glaciation. Surficial soil deposits in the area include Roaring Fork River glacial outwash, alluvium of varying ages on the upland bench and colluvium on the adjacent hillsides. Near surface formation rock is the Eagle Valley Evaporite, basalt flows and associated volcanic sediments.

SURFICIAL SOIL DEPOSITS

Roaring Fork River glacial outwash gravels (Qt5) form a high level terrace in the western part of the project area and have been mined for aggregate near the western property line. The terrace surface stands about 255 feet above the modern river channel and the outwash is probably associated with a middle Pleistocene-age Bull Lake glaciation about 132 to 198 thousand years ago. Three ages of tributary drainage alluvium are present below the upland bench. Qa5a and Qa5b are the oldest, Qa2 is of intermediate age and Qa1 is the youngest alluvium. The oldest tributary drainage alluvium directly overlies the Bull Lake outwash along the terrace escarpment, is of a similar age and probably extends below the intermediate age and youngest alluvium on the upland bench to the east of terrace. The Qa1 and Qa2 alluviums are geologically young and were deposited in post-glacial time, during about the past 15,000 years. Relatively thin colluvium (Qc1) is present below the incised gully sides in the western part of the property and relatively thin colluvium (Qc2) usually covers the formation rock on the hills to the north, east and south of the property. Relatively extensive man-placed fills (af) associated with gravel mining and County Road 114 are present in the project area.

At the boring sites the tributary drainage alluvial deposits were from 14 to greater than 59.5 feet thick, see Figure 3. The soil profiles at the borings typically consisted of an upper fine sandy silt and clay from 14 to 25 feet thick that overlies stratified sand and silt with scattered gravel and sand and gravel with scattered cobbles. Interbedded siltstone,

sandstone and gypsum was encountered in Boring 3 at a depth of 14 feet and in Boring 4 at a depth of 33 feet.

FORMATION ROCK

The middle Pennsylvanian age Eagle Valley Evaporite (Pee) underlies the surficial soil on the upland bench and locally crops out on the knobs and hillsides that stand above the bench. The Eagle Valley Evaporite is a sequence of evaporitic rocks (mainly gypsum, anhydrite and halite) that are interbedded with light colored mudstone, fine-grained sandstone, thin carbonate beds and black shale. Outcrops along the county road near the project site indicate that the bedding in this area strikes to the northeast and dips between 45 and 67 degrees to the southeast, see Figure 2. The local bedding is not consistent with the northwest regional structural trend and indicates that the evaporite in the project area has been deformed by evaporite flow. The middle Pleistocene-age glacial outwash terrace in the area does not appear to have been substantially deformed by evaporite tectonics since formed about 132 to 198 thousand years ago. The evaporite is relatively soluble and subsurface voids and related sinkholes are locally present through the western Colorado evaporite region in areas where the evaporite is near the surface, see Figure 1. Sinkholes were not observed during our field visit but subsurface voids that could lead to surface sinkholes may be present locally on the property.

Miocene-age basalt flow and associated volcanic sediments (Tb) overlie the Eagle Valley Evaporite on the valley side to the north of the property and the basalt is the Los Amigos Mesa rim rock. The basalt in the area has been radiometric dated to be between about 7.5 and 10 million years old (Kirkham and Others 2002). The basalt flows are broken and deformed as a result of regional subsidence since they were erupted. The associated interflow sediments consist of rounded basalt, sandstone and quartzite gravel, cobbles and boulders in a soil matrix.

FIELD EXPLORATION

The field exploration for the project was conducted between October 6 and 14, 2005. Five exploratory borings were drilled at the locations shown on Figure 2 to evaluate the subsurface conditions. The borings were advanced with 4 inch diameter continuous flight auger powered by truck-mounted CME-45B and track-mounted CME-45 drill rigs. The borings were logged by a representative of Hepworth-Pawlak Geotechnical, Inc.

Samples of the subsoils were taken with a 1¾ inch and 2 inch I.D. spoon samplers. The samplers were driven into the subsoils at various depths with blows from a 140 pound hammer falling 30 inches. This test is similar to the standard penetration test described by ASTM Method D-1586. The penetration resistance values are an indication of the relative density or consistency of the subsoils and hardness of the bedrock. Depths at which the samples were taken and the penetration resistance values are shown on the Logs of Exploratory Borings, Figure 3. The samples were returned to our laboratory for review by the project engineer and testing.

SUBSURFACE CONDITIONS

Graphic logs of the subsurface conditions encountered at the site are shown on Figure 3. The subsoils, below a thin topsoil root zone, consist of a variable depth of inter-layered silt, sand and clay alluvial deposits overlying very hard siltstone/sandstone bedrock. The alluvial soils were encountered to a depth of 48 feet in the western part and to a depth of 59½ feet in the east part of the property. In Borings 3 and 4, located in the central part of the property, siltstone/sandstone and gypsum bedrock of the Eagle Valley Evaporite was encountered below the alluvial soils at depths of 14 and 32½ feet, respectively. The bedrock was consistently very hard and did not appear to contain voids. Drilling with depth in the alluvial soils and bedrock with auger equipment was difficult due to the hardness and possible cemented zones, and practical drilling refusal was typically encountered in the deposits.

Laboratory testing performed on samples obtained from the borings included natural moisture content and density, liquid and plastic limits and finer than sand size gradation analyses. Results of swell-consolidation testing, presented on Figures 5 through 8, indicate the alluvial soils within about the upper 10 feet are typically hydrocompressive and moderately to highly compressible under load after wetting. Some of the clay soils with depth typically showed a minor to moderate expansion potential when wetted under relatively light loading. The laboratory test results are summarized in Table 1.

Free water was not encountered in the borings and the subsoils and bedrock were relatively dry.

GEOLOGIC SITE ASSESSMENT

There are several conditions of a geologic nature that could affect the proposed development and which should be considered in project planning and design. These conditions, their relative risks and possible mitigation to reduce the risks are discussed below.

FOUNDATION BEARING CONDITIONS

Much of the tributary drainage alluvium (Qa1, Qa2, Qa5a and Qa5b) is a low density silty soil that has a collapse potential when wetted and presents a settlement risk to building foundations, roadways and utilities. Ways of mitigating this potential risk are discussed in the *Preliminary Design Recommendations – Foundations* section of this report.

CONSTRUCTION RELATED SLOPE INSTABILITY

We do not anticipate unusual risks associated with construction related slope instability if the project grading is properly engineered and constructed. Geotechnical grading recommendations are presented in the *Preliminary Design Recommendations – Site Grading* section of this report.

STORM WATER RUNOFF AND FLOODING

Several drainages are tributary to the project site and will contribute water and sediments to the site related to direct runoff from unusually intense rainfall and heavy snow melt. In most places the drainages have been modified by fill associated with past gravel mining and construction of County Road 114. The influence of these fills should be considered in the drainage study and grading plan for the proposed development. Sediments deposited by runoff from the tributary drainages are fine-grained and not related to sediments typical of debris flow and floods. The two larger drainage basins tributary to the property have roughness coefficients (Milton numbers) less than 0.4 which is indicative of basins that should not produce debris flows.

SINKHOLES

Sinkholes were not observed on the property but geologically young sinkholes are locally present in the evaporite region between Glenwood Springs and Carbondale and we are aware of three sinkhole collapses in this region during the past two years. Based on our current understanding of the evaporite sinkhole process, all areas in western Colorado, including the project site, where evaporite is shallow have the potential for sinkhole development that could be a safety risk to building occupants if open solution voids are present in the subsurface, see Figure 1. However, considering the large extent of the sinkhole prone area in comparison to the small number of geologically young sinkholes and historic sinkholes, in our opinion, it is reasonable to infer that the probability of a sinkhole collapse at a specific location on the property is low. The sinkhole risk at the project site does not appear to be greater than elsewhere in the Glenwood Springs/Carbondale evaporite region.

Because of the complex nature of the evaporite related sinkholes, it will not be possible to avoid all sinkhole risk at the project site but the risk can be reduced by site specific studies. The potential for shallow subsurface voids at building sites and other important facilities can be evaluated by subsurface exploration. If conditions indicative of sinkhole

related problems are encountered, an alternative location should be considered or the feasibility of mitigation evaluated. Mitigation measures could include (1) stabilization by grouting, (2) stabilization by excavation and backfilling, (3) a deep foundation system, (4) structural bridging, or (5) a mat foundation system. Home owners should be advised of the sinkhole risk, since early detection of building distress and timely remedial actions are important in reducing the cost of remediation and for life safety concerns should an undetected sinkhole start to develop after construction.

REGIONAL EVAPORITE DEFORMATION

The project site is in the Carbondale evaporite collapse center where regional ground deformations have been associated with evaporite solution and flow in the geologic past. Evaporite deformation in the project area started about 10 million years ago and much of the deformation may have occurred within the past 3 million years, but it is uncertain if the deformation is still active or if deformation has stopped. If evaporite deformation is still active, it appears to be taking place at very slow rates and over broad areas with little risk of abrupt differential ground displacement except along evaporite related faults which are not present at the project site. We are not aware of evaporite related deformation problems in the region. In our opinion, the currently available information on regional evaporite deformation indicates a low risk to the proposed project facilities.

EARTHQUAKE CONSIDERATIONS

The project area could experience earthquake related ground shaking. Historic earthquake ground shaking in the region has been moderately strong but has not exceeded Modified Mercalli Intensity VI (Kirkham and Rogers, 1985). Modified Mercalli Intensity VI ground shaking should be expected during a reasonable exposure time for the proposed development, but the probability of stronger ground shaking is low. Intensity VI ground shaking is felt by most people and causes general alarm, but results in negligible damage to structures of good design and construction. The buildings should be designed to withstand moderately strong ground shaking with little or no damage and not

to collapse under stronger ground shaking. The U. S. Geological Survey National Seismic Hazard Map indicates that a peak ground acceleration of 0.06g has a 10% exceedence probability for a 50 year exposure time at the project site (Frankel and Others, 2002). This corresponds to a statistical recurrence time of 475 years. The region is in the 1997 Uniform Building Code, Seismic Risk Zone 1. Based on our current understanding of the earthquake potential in this part of Colorado we see no reason to increase the previously accepted seismic risk zone for the region.

ENGINEERING ANALYSIS

Development of the project as proposed should be feasible based on geotechnical conditions. The upper alluvial soils encountered in the borings tend to collapse (settle under constant load) when wetted. The depth of collapsible soils is expected to be variable across the project site. The amount of settlement will depend on the depth of the compressible soils and the wetted depth below the foundation. The deeper soils that show some expansion potential when wetted are expected to not be typically encountered in excavations and not significantly impact the foundation design. The settlement potential and risk of excessive building distress can be reduced by compaction of the soils to a certain depth below the foundation bearing level and by heavily reinforcing the foundation to resist differential settlements. The compaction could also extend to below driveway and utility areas. Structural fill sections are expected to be relatively minor but relatively deep structural fills will have some potential for long term settlement. Proper grading and compaction as presented below in *Site Grading* will help reduce the settlement risks. A heavily reinforced mat foundation designed for large differential settlements could also be used to reduce the settlement risk.

Recommendations for preliminary design of the proposed development are presented below. When the building plans have been developed, we should review the information for compliance with our recommendations.

PRELIMINARY DESIGN RECOMMENDATIONS

FOUNDATIONS

Considering the subsurface conditions encountered in the exploratory borings, the variable terrain and the residential proposed construction, we recommend the buildings be founded with spread footings bearing on at least 3 feet of compacted on-site soils. The feasibility of footings placed on the natural soils should be evaluated by additional subsurface exploration prior to construction. If mat foundations are considered for building support, we should be contacted for additional recommendations.

The design and construction criteria presented below should be observed for a spread footing foundation system.

- 1) Footings placed on at least 3 feet of compacted fill or on natural soils depending on the results of additional exploration, should be designed for an allowable bearing pressure of 1,500 psf. Based on experience, we expect initial settlement of footings designed and constructed as discussed in this section will be about 1 inch or less. Additional differential settlement between about 1 to 2 inches could occur if the soils are wetted.
- 2) The footings should have a minimum width of 20 inches for continuous walls and 2 feet for isolated pads.
- 3) Exterior footings and footings beneath unheated areas should be provided with adequate soil cover above their bearing elevation for frost protection. Placement of foundations at least 36 inches below exterior grade is typically used in this area.
- 4) The foundation should be constructed in a "box-like" configuration rather than with isolated footings. The foundation walls should be heavily reinforced top and bottom to span local anomalies such as by assuming an unsupported length of at least 14 feet. Foundation walls acting as retaining structures should also be designed to resist lateral earth pressures as discussed in the "Foundation and Retaining Walls" section of this report.

- 5) The topsoil and any loose or disturbed soils should be removed. The soils should be subexcavated as needed to provide at least 3 feet of structural fill below the footing bearing level compacted to at least 98% of the maximum standard Proctor density within 2 percentage points of optimum moisture content. Where footings are placed on the natural soils, the exposed soils in footing area should be moistened and compacted.
- 6) A representative of the geotechnical engineer should evaluate the compaction of the fill materials and observe all footing excavations prior to concrete placement for bearing conditions.

FOUNDATION AND RETAINING WALLS

Foundation walls and retaining structures which are laterally supported and can be expected to undergo only a slight amount of deflection should be designed for a lateral earth pressure computed on the basis of an equivalent fluid unit weight of at least 55 pcf for backfill consisting of the on-site soils. Cantilevered retaining structures which are separate from the buildings and can be expected to deflect sufficiently to mobilize the full active earth pressure condition should be designed for a lateral earth pressure computed on the basis of an equivalent fluid unit weight of at least 45 pcf for backfill consisting of the on-site soils.

All foundation and retaining structures should be designed for appropriate hydrostatic and surcharge pressures such as adjacent footings, traffic, construction materials and equipment. The pressures recommended above assume drained conditions behind the walls and a horizontal backfill surface. The buildup of water behind a wall or an upward sloping backfill surface will increase the lateral pressure imposed on a foundation wall or retaining structure. An underdrain should be provided to prevent hydrostatic pressure buildup behind walls.

Backfill should be placed in uniform lifts and compacted to at least 90% of the maximum standard Proctor density at a moisture content near optimum. Backfill in pavement and walkway areas should be compacted to at least 95% of the maximum standard Proctor

density. Care should be taken not to overcompact the backfill or use large equipment near the wall, since this could cause excessive lateral pressure on the wall. Some settlement of deep foundation wall backfill should be expected, even if the material is placed correctly, and could result in distress to facilities constructed on the backfill.

The lateral resistance of foundation or retaining wall footings will be a combination of the sliding resistance of the footing on the foundation materials and passive earth pressure against the side of the footing. Resistance to sliding at the bottoms of the footings can be calculated based on a coefficient of friction of 0.35. Passive pressure of compacted backfill against the sides of the footings can be calculated using an equivalent fluid unit weight of 300 pcf. The coefficient of friction and passive pressure values recommended above assume ultimate soil strength. Suitable factors of safety should be included in the design to limit the strain which will occur at the ultimate strength, particularly in the case of passive resistance. Fill placed against the sides of the footings to resist lateral loads should be compacted to at least 95% of the maximum standard Proctor density at a moisture content near optimum.

FLOOR SLABS

The natural on-site soils, exclusive of topsoil, and compacted structural fill can be used to support lightly loaded slab-on-grade construction. The upper natural soils are compressible when wetted and there could be some post-construction settlement. To reduce the effects of some differential movement, nonstructural floor slabs should be separated from all bearing walls and columns with expansion joints which allow unrestrained vertical movement. Floor slab control joints should be used to reduce damage due to shrinkage cracking. The requirements for joint spacing and slab reinforcement should be established by the designer based on experience and the intended slab use. A minimum 4 inch layer of free-draining gravel should be placed beneath basement level slabs to facilitate drainage. This material should consist of minus 2 inch aggregate with at least 50% retained on the No. 4 sieve and less than 2% passing the No. 200 sieve.

All fill materials for support of floor slabs above footing bearing level should be compacted to at least 95% of maximum standard Proctor density at a moisture content near optimum. Required fill can consist of the on-site soils devoid of vegetation, topsoil and oversized rock.

UNDERDRAIN SYSTEM

Although free water was not encountered during our exploration, it has been our experience in the area that local perched groundwater can develop during times of heavy precipitation or seasonal runoff. Frozen ground during spring runoff can create a perched condition. We recommend below-grade construction, such as retaining walls and basement areas, be protected from wetting and hydrostatic pressure buildup by an underdrain system. An underdrain should not be provided around shallow crawlspace areas and floor slabs constructed near finish ground surface.

If installed, the drains should consist of drainpipe placed in the bottom of the wall backfill surrounded above the invert level with free-draining granular material. The drain should be placed at each level of excavation and at least 1 foot below lowest adjacent finish grade and sloped at a minimum 1% to a suitable gravity outlet. Free-draining granular material used in the underdrain system should contain less than 2% passing the No. 200 sieve, less than 50% passing the No. 4 sieve and have a maximum size of 2 inches. The drain gravel backfill should be at least 1½ feet deep. An impervious membrane, such as a 20 mil PVC liner, should be placed beneath the drain gravel in a trough shape and attached to the foundation wall with mastic to prevent wetting of the bearing soils.

SITE GRADING

A moderate amount of grading could be needed as part of the proposed development plan due to the variable terrain. In addition, removal and replacement of the alluvial soils compacted is recommended to reduce the risk of excessive differential settlements and building distress. The structural fill should extend to at least 6 feet below design surface grade surrounding the buildings and could be extended to below the access roads. The

water and sewer pipe joints in the roadways should be mechanically restrained to reduce the risk of joint separation in the event of excessive settlement. Excavation and compaction below footing bearing level may not be needed depending on the results of additional site-specific exploration and analysis. The structural fill materials below footing bearing level should be compacted to at least 98% of the maximum standard Proctor density within 2 percentage points of optimum moisture content. Prior to fill placement, the subgrade should be carefully prepared by removing the vegetation and topsoil and compacting to at least 95% of the maximum standard Proctor density at near optimum moisture content. The fill should be benched into slopes that exceed 20% grade. Based on our experience, shrinkage of the upper alluvial soils due to compaction is expected to be about 20%.

Permanent unretained cut and fill slopes should be graded at 2 horizontal to 1 vertical or flatter and protected against erosion by revegetation or other means. This office should review site grading plans for the project prior to construction.

SURFACE DRAINAGE:

Precautions to prevent wetting of the bearing soils such as proper backfill construction, positive backfill slopes, restricting landscape irrigation and use of roof gutters need to be taken to help limit settlement and building distress. The following drainage precautions should be observed during construction and maintained at all times after each residence has been completed:

- 1) Inundation of the foundation excavations and underslab areas should be avoided during construction.
- 2) Exterior backfill should be adjusted to near optimum moisture and compacted to at least 95% of the maximum standard Proctor density in pavement and slab areas and to at least 90% of the maximum standard Proctor density in landscape areas.
- 3) The ground surface surrounding the exterior of the building should be sloped to drain away from the foundation in all directions. The slope should be at least 12 inches in the first 10 feet in unpaved areas and at least

3 inches in the first 10 feet in paved areas. Drain gravel of retaining walls should be capped with at least 2 feet of the on-site soils to reduce surface water infiltration.

- 4) Roof gutters should be provided with downspouts that discharge beyond the limits of the foundation wall backfill.
- 5) Landscaping which requires regular heavy irrigation, such as sod, should be located at least 5 feet from foundation walls. Consideration should be given to use of xeriscape to reduce the potential for wetting of soils below the building caused by irrigation.

PAVEMENT SECTION

The upper soils encountered at the site consist of low plasticity sand, silt and clay that are considered a poor support of pavement sections. A Hveem stabilometer 'R' value of 15 was assumed for the native soils. The traffic loadings for the development have not been provided but are assumed to be relatively light for the service traffic loading condition, after the construction phase. Based on these conditions, a preliminary pavement section consisting of 3 inches of asphalt on 9 inches of CDOT Class 6 base course is recommended. We should review the pavement section design when the roadway subgrade has been rough graded and the traffic loadings have been determined.

LIMITATIONS

This study has been conducted in accordance with generally accepted geotechnical engineering principles and practices in this area at this time. We make no warranty either express or implied. The conclusions and recommendations submitted in this report are based upon the data obtained from the exploratory borings drilled at the locations indicated on Figure 2, the proposed type of construction and our experience in the area. Our services do not include determining the presence, prevention or possibility of mold or other biological contaminants (MOBC) developing in the future. If the client is concerned about MOBC, then a professional in this special field of practice should be consulted. Our findings include interpolation and extrapolation of the subsurface

conditions identified at the exploratory borings and variations in the subsurface conditions may not become evident until excavation is performed. If conditions encountered during construction appear different from those described in this report, we should be notified so that re-evaluation of the recommendations may be made.

This report has been prepared for the exclusive use by our client for planning and preliminary design purposes. We are not responsible for technical interpretations by others of our information. As the project evolves, we should provide continued consultation and field services during construction to review and monitor the implementation of our recommendations, and to verify that the recommendations have been appropriately interpreted. Significant design changes may require additional analysis or modifications to the recommendations presented herein. We recommend on-site observation of excavations and foundation bearing strata and testing of structural fill on a regular basis by a representative of the geotechnical engineer.

Respectfully Submitted,

HEPWORTH - PAWLAK GEOTECHNICAL, INC.

Steven L. Pawlak, P.E.

Reviewed by:

Daniel E. Hardin, P.E.

SLP/ksw

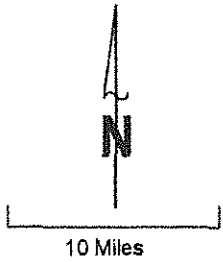
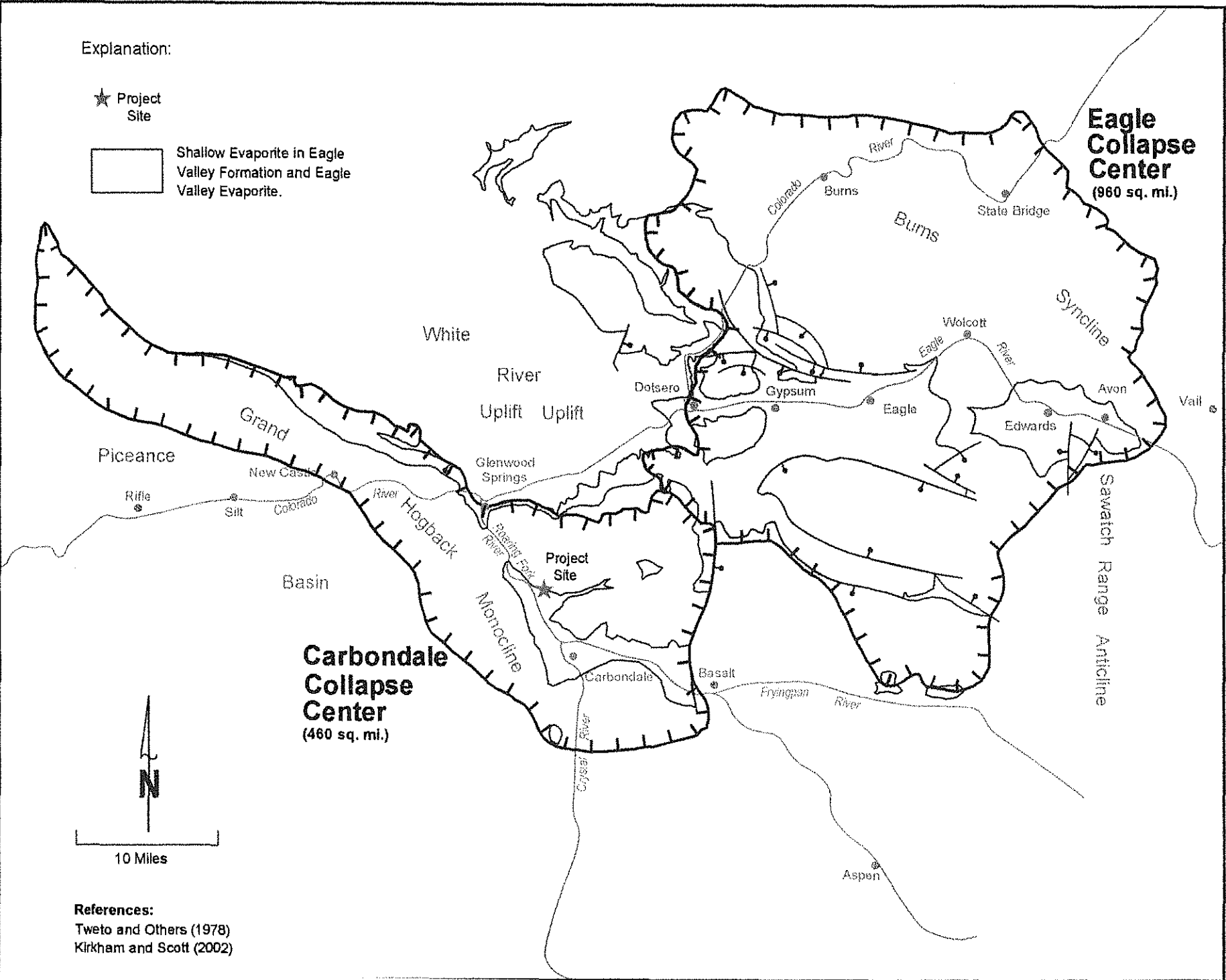
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Explanation:

★ Project Site

Shallow Evaporite in Eagle Valley Formation and Eagle Valley Evaporite.



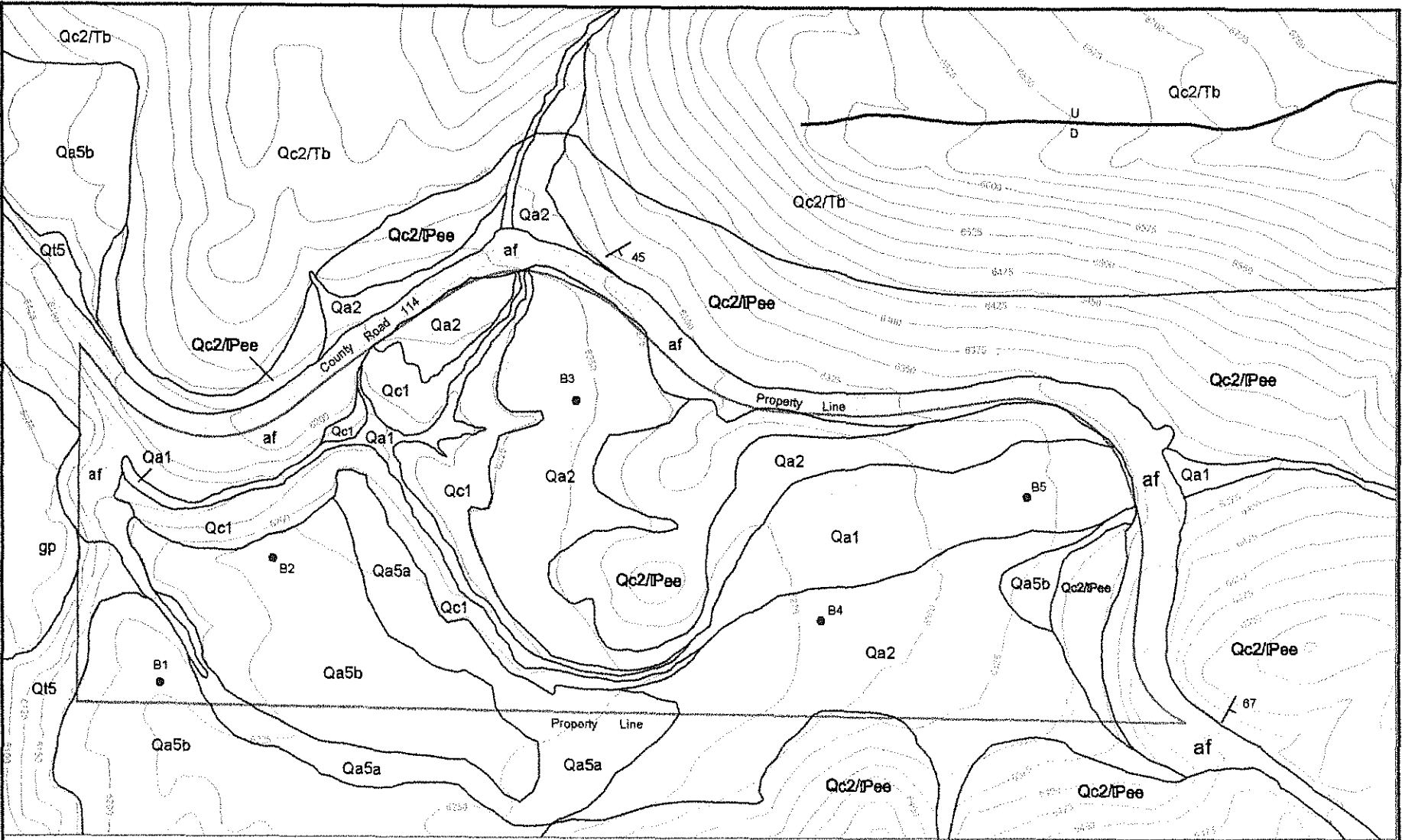
References:
 Tweto and Others (1978)
 Kirkham and Scott (2002)

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HP
Geotech
HEP/NORTH/PAV/LAK GEOTECHNICAL

Elk Springs Ranch Lower Bench
Geology Map and Exploratory Boring Locations

Figure 2

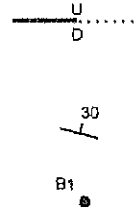


Explanation:

- gp Gravel Pit Floor
- af Man-Placed Fill
- Qc1 Colluvium:
Colluvium on incised gully sides.
- Qc2 Colluvium:
Shallow colluvium over formation rock.
- Qa1 Youngest Tributary Alluvium:
- Q2 Intermediate Age Tributary Alluvium
- Qa5a Oldest Tributary Alluvium:
a - lower terrace level, b - higher terrace level

- Q15 Bull Lake Outwash
- Tb Basalt Flows and Sediments
- IPee Eagle Valley Evaporite

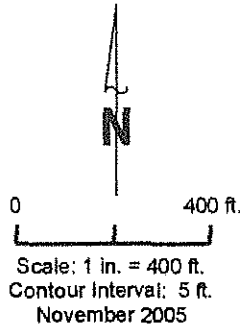
— Contact:
Approximate boundary of map units.

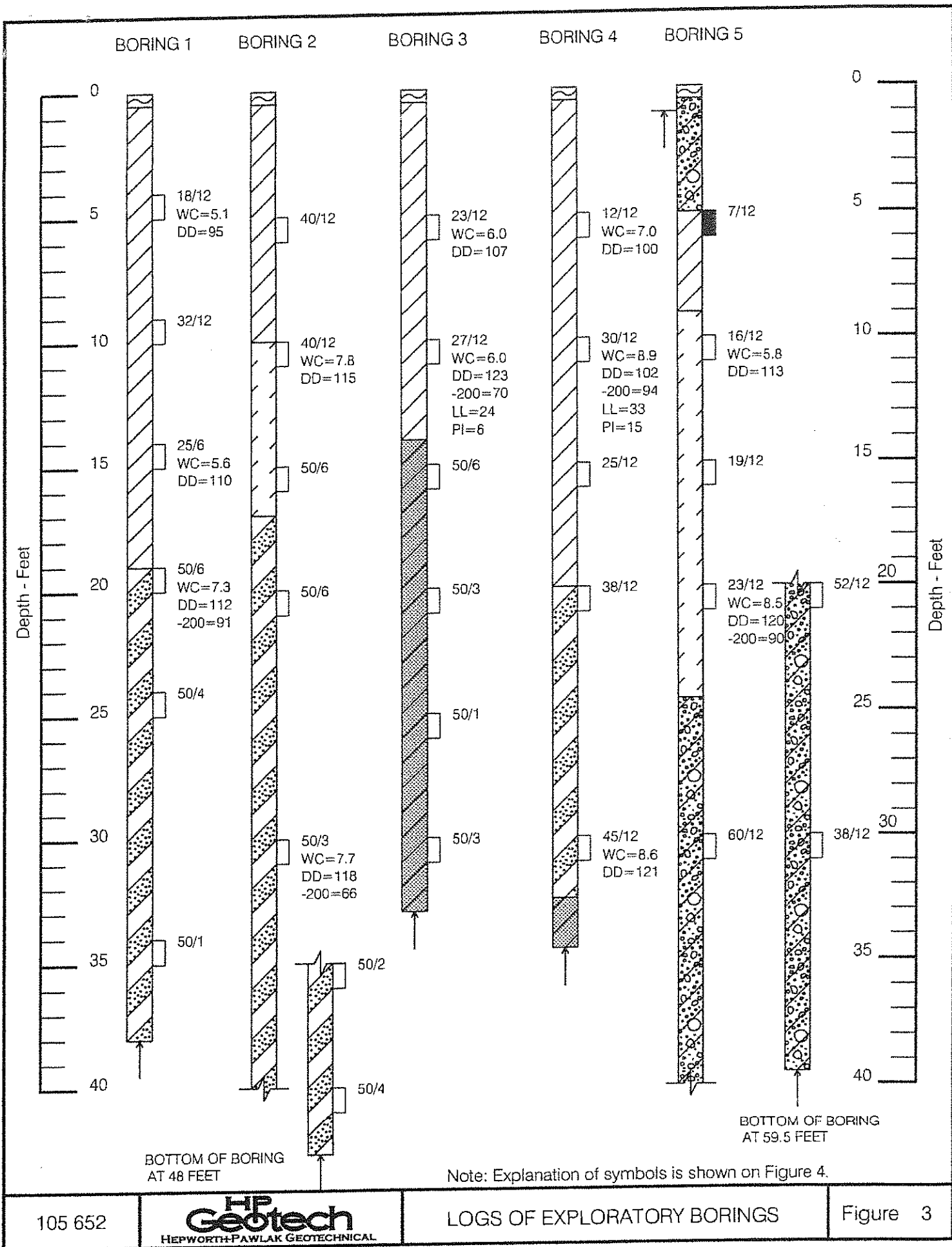


Regional Faults:
Approximate location, dotted where concealed,
U - upthrown side, D - downthrown side.










Strike and Dip:
Strike and dip of bedding in degrees.

Exploratory Borings:
Approximate location.



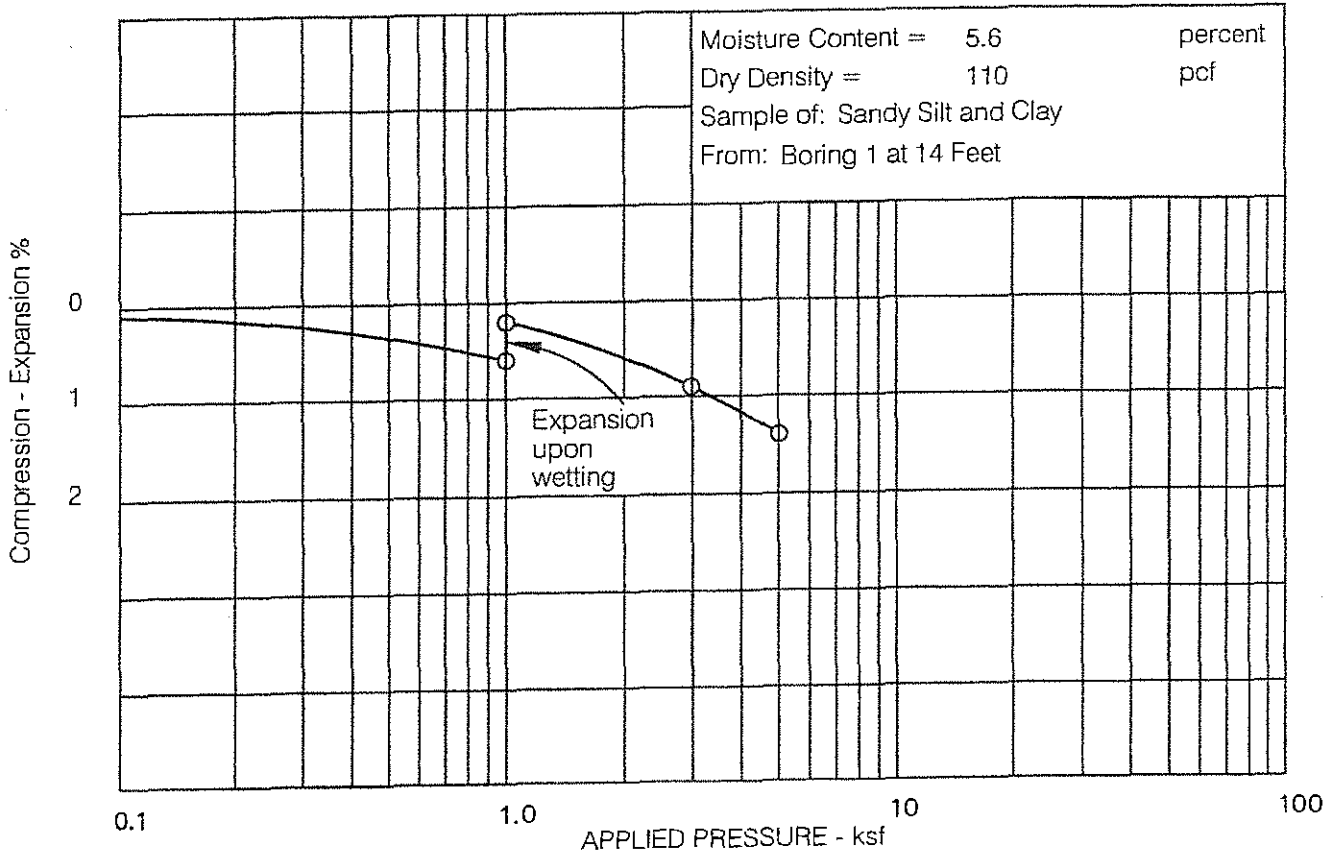
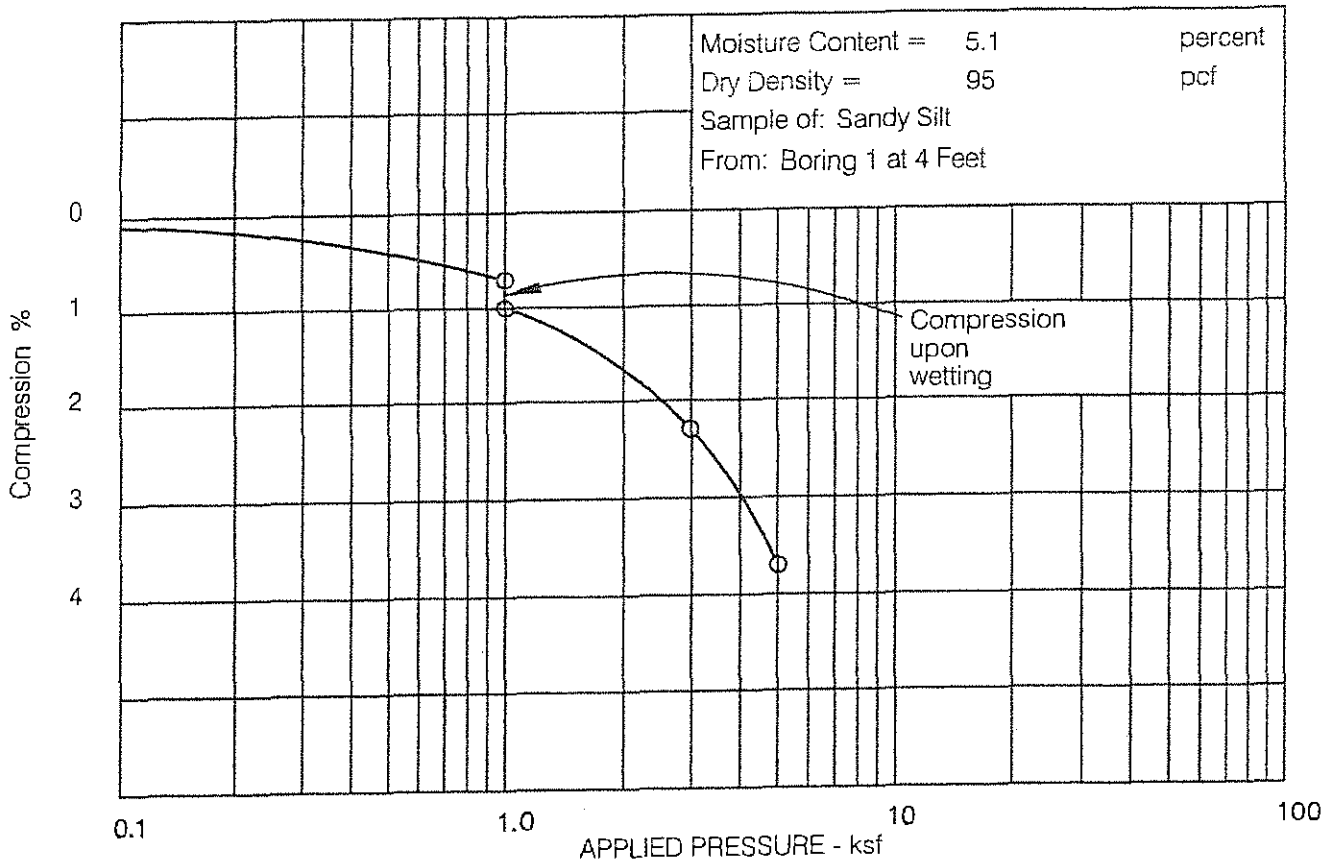


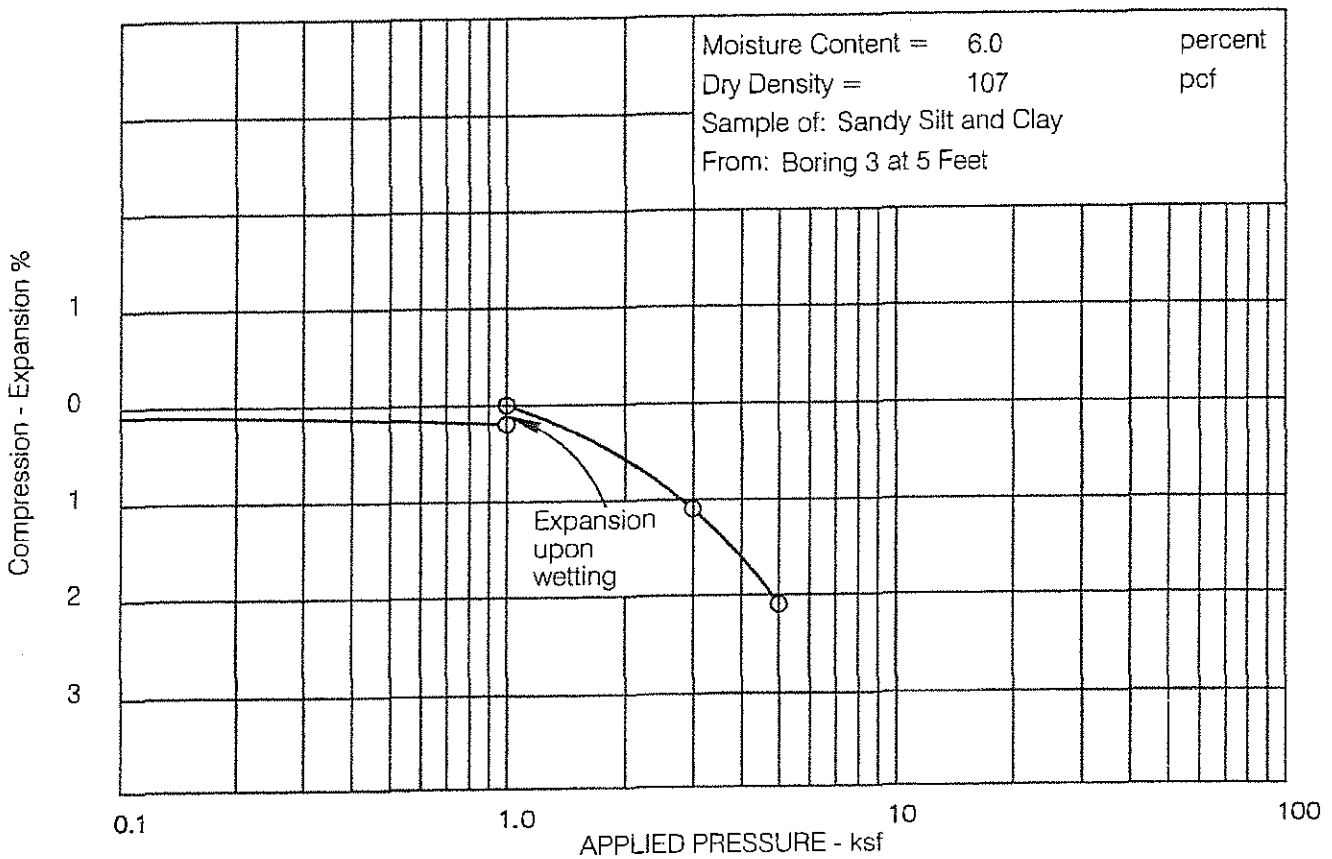
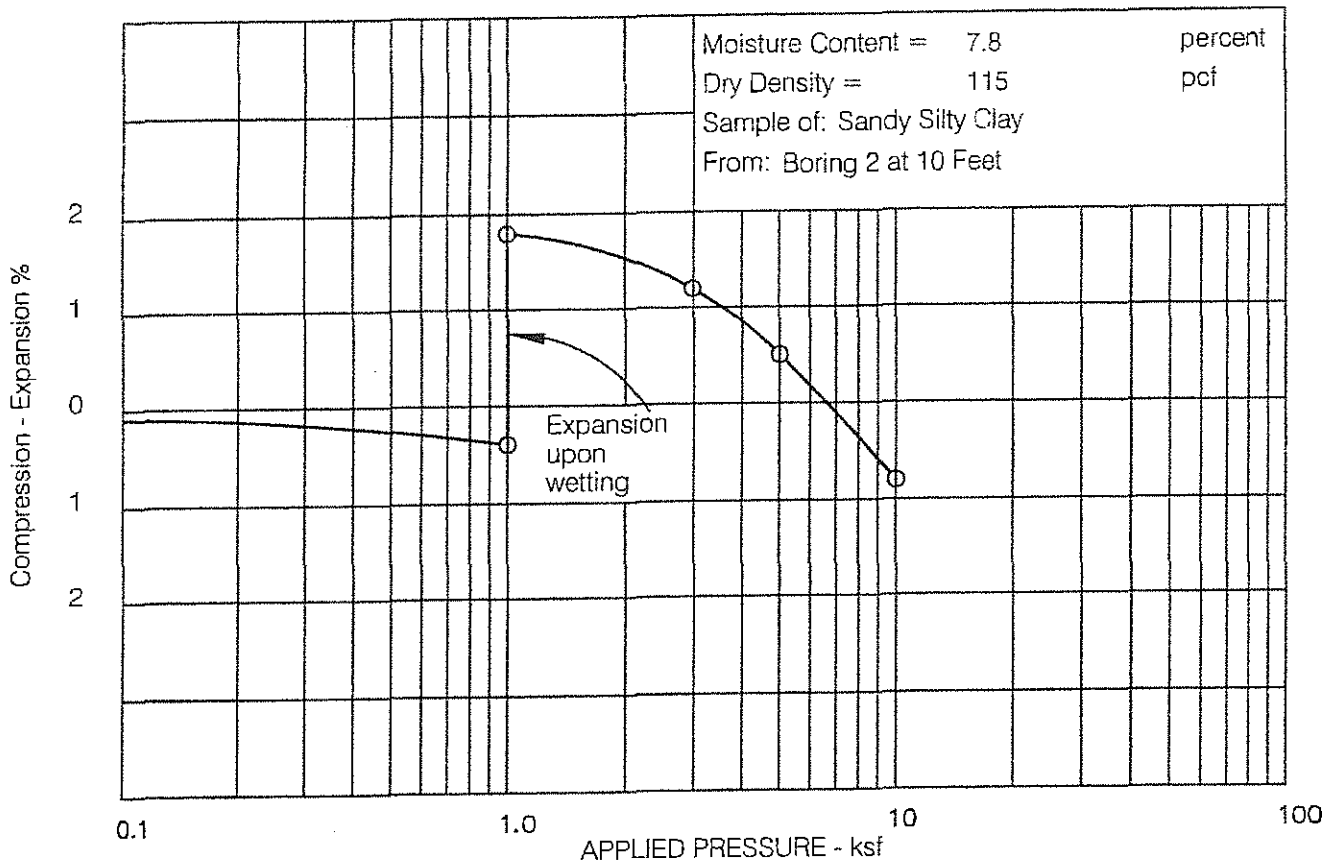
LEGEND:

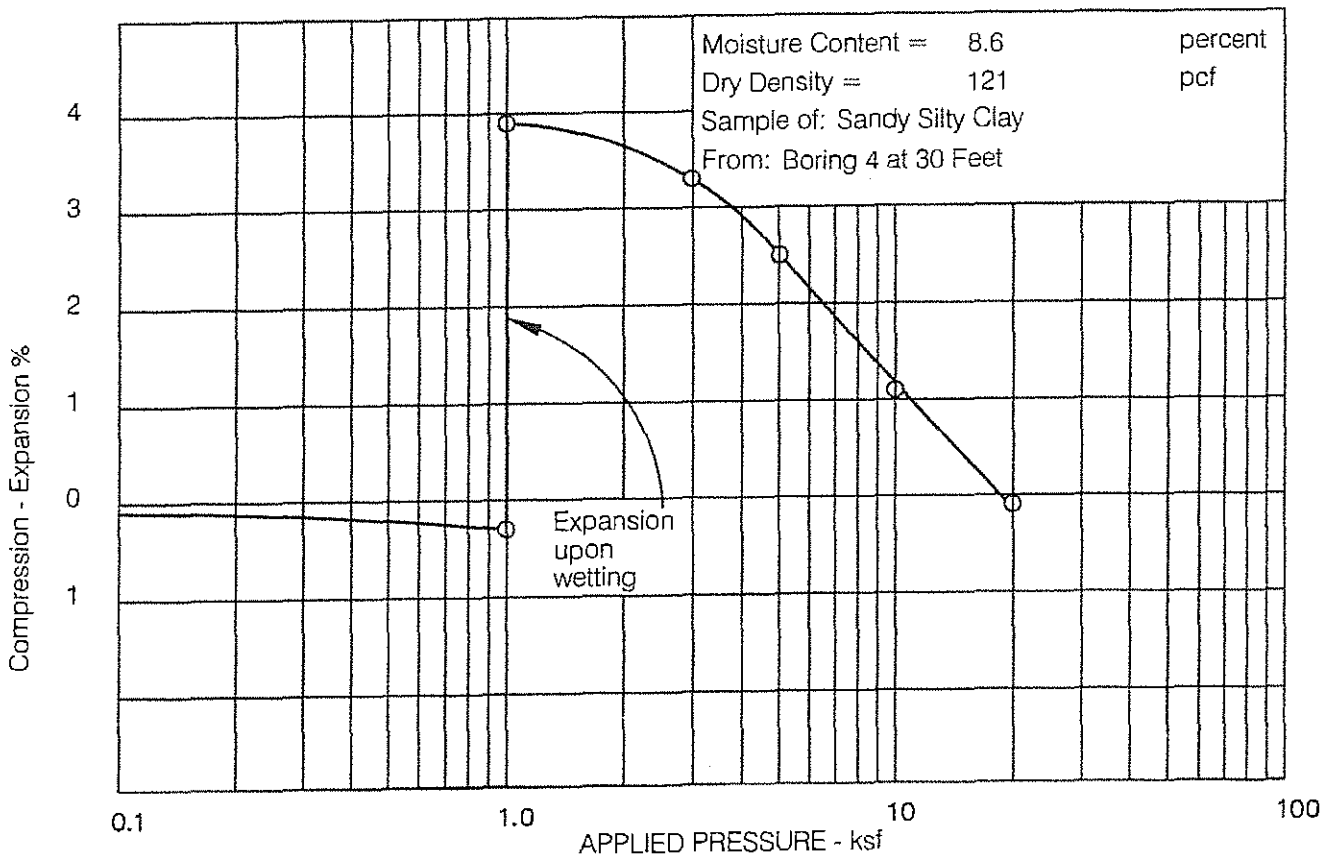
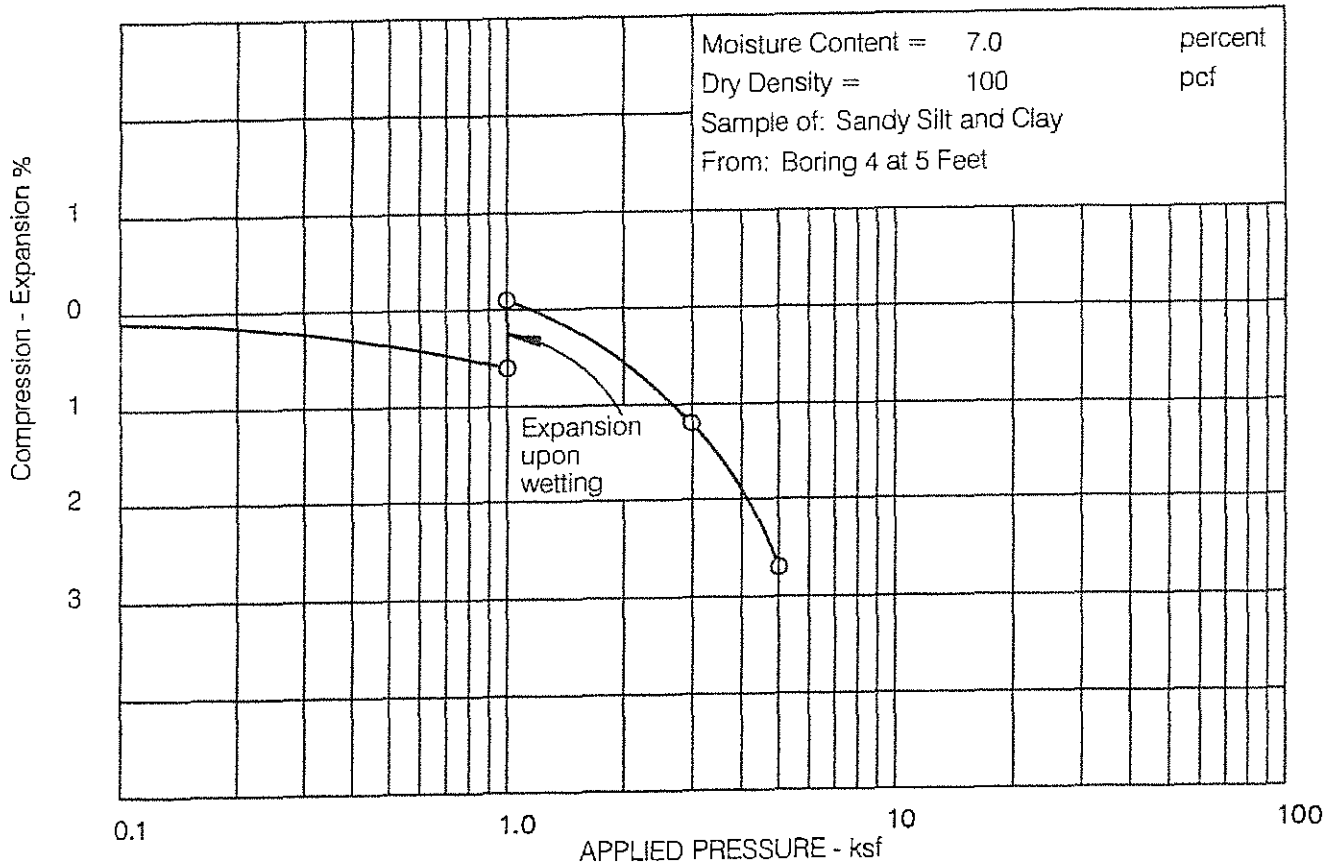
-  TOPSOIL; sandy silt, root zone, brown.
-  SILT (ML); slightly sandy to sandy, clayey zones, stiff to very stiff, slightly moist, light brown, slightly calcareous.
-  CLAY (CL); slightly sandy to sandy, silty, stiff to very stiff, slightly moist, light brown to brown, low plasticity, slightly calcareous.
-  SILT AND SAND (ML-SM); scattered gravel to gravelly, very stiff to hard, slightly moist, light brown, subangular basalt rock, slightly calcareous.
-  SAND AND GRAVEL (SM-GM); silty, sandy, scattered cobbles, sandy silt layers, medium dense, slightly moist, brown, subangular basalt rock.
-  SILTSTONE/SANDSTONE BEDROCK; some gypsum, very hard, dry, grey. Eagle Valley Evaporite.
-  Relatively undisturbed drive sample; 2-inch I.D. California liner sample.
-  Drive sample; standard penetration test (SPT), 1 3/8 inch I.D. split spoon sample, ASTM D-1586.
- 18/12 Drive sample blow count; indicates that 18 blows of a 140 pound hammer falling 30 inches were required to drive the California or SPT sampler 12 inches.
-  Practical drilling refusal. Where shown above bottom of log indicates multiple attempts were made to advance the boring.

NOTES:

1. Exploratory borings were drilled between October 6 and 14, 2005 with 4-inch diameter continuous flight power auger.
2. Locations of exploratory borings were measured approximately by pacing from features shown on the site plan provided.
3. Elevations of exploratory borings were not measured and the logs of exploratory borings are drawn to depth.
4. The exploratory boring locations should be considered accurate only to the degree implied by the method used.
5. The lines between materials shown on the exploratory boring logs represent the approximate boundaries between material types and transitions may be gradual.
6. No free water was encountered in the borings at the time of drilling. Fluctuation in water level may occur with time.
7. Laboratory Testing Results:
 WC = Water Content (%)
 DD = Dry Density (pcf)
 -200 = Percent passing No. 200 sieve
 LL = Liquid Limit (%)
 PI = Plasticity Index (%)





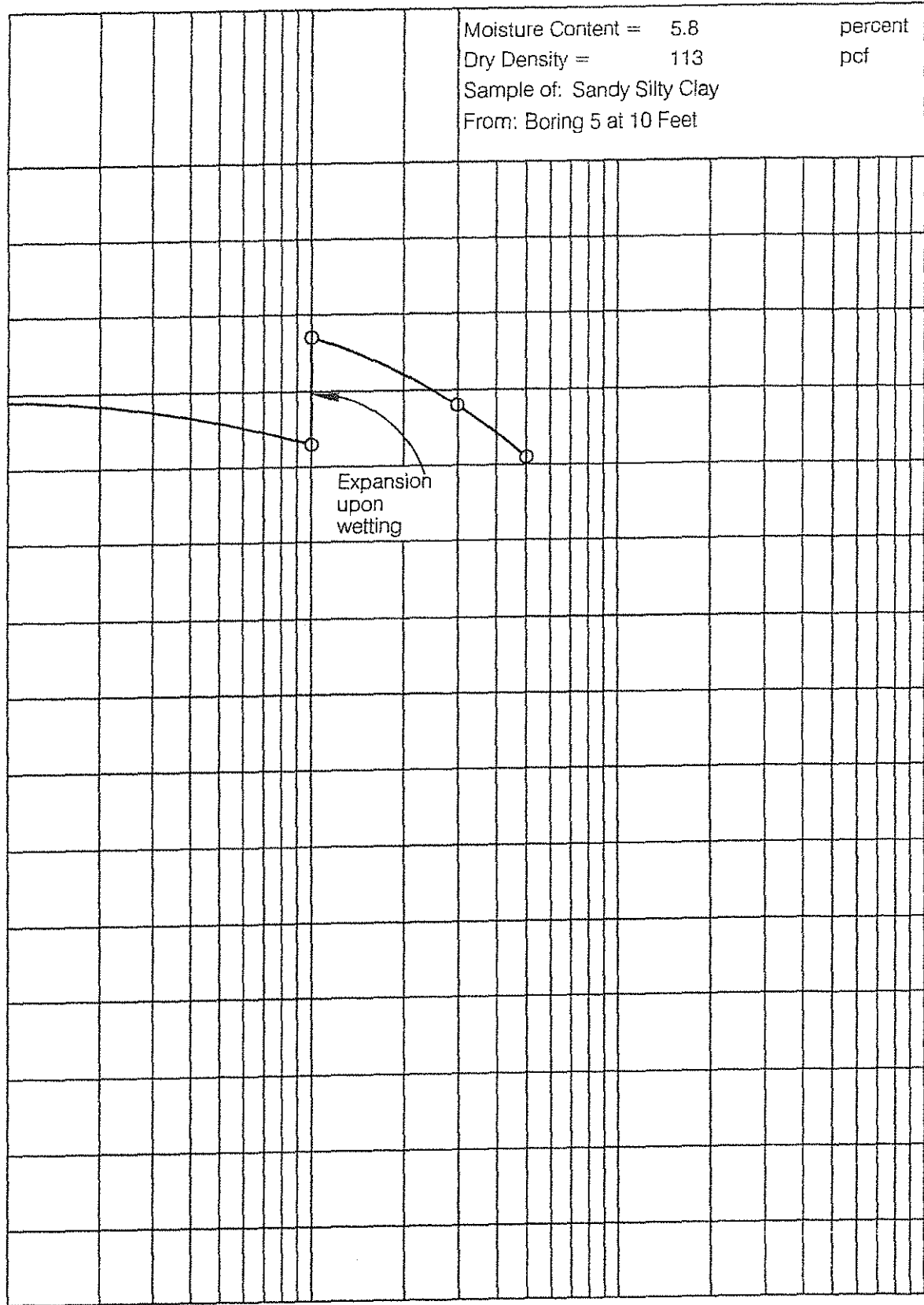


Moisture Content = 5.8 percent
 Dry Density = 113 pcf
 Sample of: Sandy Silty Clay
 From: Boring 5 at 10 Feet

Compression - Expansion %

1
0
1
2

Expansion upon wetting



0.1

1.0

10

100

APPLIED PRESSURE - ksf



Hepworth-Pawlak Geotechnical, Inc.
5020 County Road 154
Glenwood Springs, Colorado 81601
Phone: 970-945-7988

Fax: 970-945-8454
email: hpgeo@hpgeotech.com

**SUPPLEMENTAL GEOTECHNICAL STUDY
PROPOSED RESIDENTIAL DEVELOPMENT
ELK SPRINGS RANCH LOWER BENCH AREA
COUNTY ROAD 114
GARFIELD COUNTY, COLORADO**

JOB NO. 105 652

APRIL 10, 2006

PREPARED FOR:

**JOHN A. ELMORE
2929 COUNTY ROAD 114
GLENWOOD SPRINGS, COLORADO 81601**

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PURPOSE AND SCOPE OF STUDY

This report presents the results of a supplemental geotechnical study for the proposed residential development at Elk Springs Ranch Lower Bench Area, County Road 114, Garfield County, Colorado. The project site is shown on Figure 1. The purpose of the study was to develop recommendations for foundation and grading designs. The study was conducted as a supplement to our proposal for professional engineering services to John Elmore dated July 7, 2005. A preliminary geotechnical study and geologic conditions assessment was conducted for the schematic subdivision plan (Hepworth-Pawlak Geotechnical, 2005).

A field exploration program consisting of additional exploratory borings was conducted to obtain information on the general subsurface conditions. Samples of the subsoils obtained during the field exploration were tested in the laboratory to determine their classification, compressibility or expansion potential and other engineering characteristics. The results of the field exploration and laboratory testing were analyzed to develop recommendations for preliminary foundation design of the proposed buildings and for the subdivision grading. This report summarizes the data obtained during this study and presents our conclusions, design recommendations and other geotechnical engineering considerations based on the proposed construction and the subsurface conditions encountered.

PROPOSED CONSTRUCTION

The preliminary schematic plan was being developed at that time of our study. In general, it is an 80 lot, single family residential subdivision with a network of streets and utilities as shown on Figure 1. Since our initial study, the plan has been changed, mainly to the west of the main entrance. We understand that the streets and lots are generally proposed to follow the terrain but considering the variable relief and closely spaced lots, relatively extensive grading could be required.

If building types, locations or development plans change significantly from those described above, we should be notified to re-evaluate the recommendations contained in this report.

SITE CONDITIONS

The terrain across the project site is variable and the general topography is shown by the contour lines on Figure 1. County Road 114 borders the property on the north and east. Ground surface slopes in the east and west building areas are typically moderate and do not exceed about 10 percent in most areas. A steep river terrace escarpment about 100 feet high with slopes of about 60 percent is located near the western property boundary. The moderate sloping bench transitions to hilly terrain to the north, south and east of the property. Slopes in these areas are typically between about 25 and 60 percent. Vegetation consists of mostly grass and sagebrush with juniper trees, sage brush and grass on the adjacent hills.

FIELD EXPLORATION

The field exploration for the project was conducted between January 9 and March 9, 2006. Twelve exploratory borings (Borings 6 through 17) were drilled at the locations shown on Figure 1 to evaluate the subsurface conditions. The borings were advanced with 4 inch diameter continuous flight auger powered by CME-45 and CME-55 drill rigs mounted on all terrain vehicles. The borings were logged by a representative of Hepworth-Pawlak Geotechnical, Inc. Borings 1 through 5 were drilled as part of the preliminary study and their locations are also shown on Figure 1.

Samples of the subsoils were taken with a 1¾ inch and 2 inch I.D. spoon samplers. The samplers were driven into the subsoils at various depths with blows from a 140 pound hammer falling 30 inches. This test is similar to the standard penetration test described by ASTM Method D-1586. The penetration resistance values are an indication of the relative density or consistency of the subsoils and hardness of the bedrock. Depths at which the samples were taken and the penetration resistance values are shown on the

Logs of Exploratory Borings, Figure 2 through 4. The samples were returned to our laboratory for review by the project engineer and testing.

SUBSURFACE CONDITIONS

Graphic logs of the subsurface conditions encountered at the site are shown on Figures 2 through 4. The subsoils, below a thin topsoil root zone, consist of a variable depth of inter-layered silt, sand and clay alluvial deposits typically overlying very hard siltstone/sandstone bedrock. The alluvial soils were encountered to a depth of 48 feet in the western part and to a depth of 59½ feet in the east part of the property in the borings drilled for the preliminary study. At the borings located in the central part of the property, siltstone/sandstone and gypsum bedrock of the Eagle Valley Evaporite was encountered below the alluvial/colluvial soils at depths between 7 and 19 feet. The bedrock was typically very hard and did not appear to contain voids. At Boring 15, about 17 feet of soft and weathered gypsum was encountered between harder rock layers but did not appear to contain voids. Borings 16 and 17, drilled nearby did not encounter the gypsum.

Laboratory testing performed on samples obtained from the borings included natural moisture content and density, liquid and plastic limits and finer than sand size gradation analyses. Results of swell-consolidation testing, presented on Figures 6 through 12, indicate the alluvial soils within about the upper 10 feet are typically hydrocompressive and moderately to highly compressible under load after wetting. Some of the clay soils with depth typically showed a minor to moderate expansion potential when wetted under relatively light loading. The laboratory test results are summarized in Table 1.

Free water was not encountered in the borings and the subsoils and bedrock were relatively dry. The gypsum at Boring 15 was moist.

ENGINEERING ANALYSIS

Development of the project as proposed should be feasible based on geotechnical conditions. The alluvial/colluvial soils encountered in the borings have variable settlement/heave characteristics. The shallow soils tend to collapse (settle under constant load) when wetted. The depth of collapsible soils is expected to be variable across the project site but appears to be on the order of 8 to 15 feet based on the laboratory testing. The amount of settlement will depend on the depth of the compressible soils and the wetted depth below the foundation. The deeper soils that show some expansion potential when wetted are expected to not be typically encountered in shallow excavations and should not impact shallow foundation design. Deep foundations may require mitigation of the expansive soils including subexcavation or minimum dead loads. The settlement/heave potential and risk of excessive building distress can be reduced by compaction of the soils to a certain depth below the foundation bearing level and by heavily reinforcing the foundation to resist differential settlements. The compaction could also extend to below driveway and utility areas. Structural fill sections are expected to be relatively minor but relatively deep structural fills will have some potential for long term settlement. Proper grading and compaction as presented below in *Site Grading* will help reduce the settlement risks. A heavily reinforced mat foundation designed for large differential settlements could also be used to reduce the settlement risk.

Recommendations for design of the proposed development are presented below. When the building plans have been developed, we should review the information for compliance with our recommendations.

PRELIMINARY DESIGN RECOMMENDATIONS

FOUNDATIONS

Considering the subsurface conditions encountered in the exploratory borings, the variable terrain and the residential proposed construction, we recommend the buildings be founded with spread footings. The feasibility of footings placed on the natural soils

should be evaluated by either additional subsurface exploration or evaluation of the bearing conditions at the time of construction. If mat foundations are considered for building support, we should be contacted for additional recommendations.

The design and construction criteria presented below should be observed for a spread footing foundation system.

- 1) Footings placed on the natural soils or at least 3 feet of compacted fill depending on the results of additional exploration, should be designed for an allowable bearing pressure of 1,500 psf. Based on experience, we expect initial settlement of footings designed and constructed as discussed in this section will be about 1 inch or less. Additional differential settlement between about 1 to 2 inches could occur if the soils are wetted.
- 2) The footings should have a minimum width of 20 inches for continuous walls and 2 feet for isolated pads. If expansive soils are encountered at bearing level, narrower footings may be feasible.
- 3) Exterior footings and footings beneath unheated areas should be provided with adequate soil cover above their bearing elevation for frost protection. Placement of foundations at least 36 inches below exterior grade is typically used in this area.
- 4) The foundation should be constructed in a "box-like" configuration rather than with isolated footings. The foundation walls should be heavily reinforced top and bottom to span local anomalies and limit the effects of differential movements, such as by assuming an unsupported length of at least 14 feet. Foundation walls acting as retaining structures should also be designed to resist lateral earth pressures as discussed in the "Foundation and Retaining Walls" section of this report.
- 5) The topsoil and any loose or disturbed soils should be removed. In areas where the bearing soils will be compacted, the soils should be subexcavated as needed to provide at least 3 feet of structural fill below the footing bearing level compacted to at least 98% of the maximum standard Proctor density within 2 percentage points of optimum moisture content. Where footings are placed on the natural soils, the exposed soils

should be further evaluated for settlement/heave potential and should be moistened and compacted in footing areas. An exploratory boring should be drilled on each of the lots located along the bedrock knolls to further evaluate bedrock conditions and possible soft gypsum or subsurface voids for the individual lot owners.

- 6) A representative of the geotechnical engineer should evaluate compaction of the fill materials and observe all footing excavations prior to concrete placement for bearing conditions.

FOUNDATION AND RETAINING WALLS

Foundation walls and retaining structures which are laterally supported and can be expected to undergo only a slight amount of deflection should be designed for a lateral earth pressure computed on the basis of an equivalent fluid unit weight of at least 55 pcf for backfill consisting of the on-site soils. Cantilevered retaining structures which are separate from the buildings and can be expected to deflect sufficiently to mobilize the full active earth pressure condition should be designed for a lateral earth pressure computed on the basis of an equivalent fluid unit weight of at least 45 pcf for backfill consisting of the on-site soils.

All foundation and retaining structures should be designed for appropriate hydrostatic and surcharge pressures such as adjacent footings, traffic, construction materials and equipment. The pressures recommended above assume drained conditions behind the walls and a horizontal backfill surface. The buildup of water behind a wall or an upward sloping backfill surface will increase the lateral pressure imposed on a foundation wall or retaining structure. An underdrain should be provided to prevent hydrostatic pressure buildup behind walls.

Backfill should be placed in uniform lifts and compacted to at least 90% of the maximum standard Proctor density at a moisture content near optimum. Backfill in pavement and walkway areas should be compacted to at least 95% of the maximum standard Proctor density. Care should be taken not to overcompact the backfill or use large equipment

near the wall, since this could cause excessive lateral pressure on the wall. Some settlement of deep foundation wall backfill should be expected, even if the material is placed correctly, and could result in distress to facilities constructed on the backfill.

The lateral resistance of foundation or retaining wall footings will be a combination of the sliding resistance of the footing on the foundation materials and passive earth pressure against the side of the footing. Resistance to sliding at the bottoms of the footings can be calculated based on a coefficient of friction of 0.35. Passive pressure of compacted backfill against the sides of the footings can be calculated using an equivalent fluid unit weight of 300 pcf. The coefficient of friction and passive pressure values recommended above assume ultimate soil strength. Suitable factors of safety should be included in the design to limit the strain which will occur at the ultimate strength, particularly in the case of passive resistance. Fill placed against the sides of the footings to resist lateral loads should be compacted to at least 95% of the maximum standard Proctor density at a moisture content near optimum.

FLOOR SLABS

The natural on-site soils, exclusive of topsoil, and compacted structural fill can be used to support lightly loaded slab-on-grade construction. The upper natural soils are compressible when wetted and there could be some post-construction settlement. To reduce the effects of some differential movement, nonstructural floor slabs should be separated from all bearing walls and columns with expansion joints which allow unrestrained vertical movement. Floor slab control joints should be used to reduce damage due to shrinkage cracking. The requirements for joint spacing and slab reinforcement should be established by the designer based on experience and the intended slab use. A minimum 4 inch layer of free-draining gravel should be placed beneath basement level slabs to facilitate drainage. This material should consist of minus 2 inch aggregate with at least 50% retained on the No. 4 sieve and less than 2% passing the No. 200 sieve.

All fill materials for support of floor slabs above footing bearing level should be compacted to at least 95% of maximum standard Proctor density at a moisture content near optimum. Required fill can consist of the on-site soils devoid of vegetation, topsoil and oversized rock.

UNDERDRAIN SYSTEM

Although free water was not encountered during our exploration, it has been our experience in the area that local perched groundwater can develop during times of heavy precipitation or seasonal runoff. Frozen ground during spring runoff can create a perched condition. We recommend below-grade construction, such as retaining walls and basement areas, be protected from wetting and hydrostatic pressure buildup by an underdrain system. An underdrain should not be provided around shallow crawlspace areas and floor slabs constructed near finish ground surface.

If installed, the drains should consist of drainpipe placed in the bottom of the wall backfill surrounded above the invert level with free-draining granular material. The drain should be placed at each level of excavation and at least 1 foot below lowest adjacent finish grade and sloped at a minimum 1% to a suitable gravity outlet. Free-draining granular material used in the underdrain system should contain less than 2% passing the No. 200 sieve, less than 50% passing the No. 4 sieve and have a maximum size of 2 inches. The drain gravel backfill should be at least 1½ feet deep. An impervious membrane, such as a 20 mil PVC liner, should be placed beneath the drain gravel in a trough shape and attached to the foundation wall with mastic to prevent wetting of the bearing soils.

SITE GRADING

A moderate amount of grading could be needed as part of the proposed development plan due to the variable terrain. In addition, removal and replacement of the alluvial/colluvial soils compacted is recommended to in roadway areas to reduce the risk of excessive differential settlements and distress. The structural fill should extend to at least 6 feet below design subgrade level of the access roads. The water and sewer pipe joints in the

~~roadways should be mechanically restrained to reduce~~ the risk of joint separation in the event of excessive settlement. Excavation and compaction below footing bearing level may not be needed depending on the results of additional site-specific exploration and analysis. The structural fill materials below footing bearing level should be compacted to at least 98% of the maximum standard Proctor density within 2 percentage points of optimum moisture content. Prior to fill placement, the subgrade should be carefully prepared by removing the vegetation and topsoil and compacting to at least 95% of the maximum standard Proctor density at near optimum moisture content. The fill should be benched into slopes that exceed 20% grade. Based on our experience, shrinkage of the upper alluvial soils due to compaction is expected to be about 20%.

Permanent unretained cut and fill slopes should be graded at 2 horizontal to 1 vertical or flatter and protected against erosion by revegetation or other means. This office should review site grading plans for the project prior to construction.

SURFACE DRAINAGE

Precautions to prevent wetting of the bearing soils such as proper backfill construction, positive backfill slopes, restricting landscape irrigation and use of roof gutters need to be taken to help limit settlement and building distress. The following drainage precautions should be observed during construction and maintained at all times after each residence has been completed:

- 1) Inundation of the foundation excavations and underslab areas should be avoided during construction.
- 2) Exterior backfill should be adjusted to near optimum moisture and compacted to at least 95% of the maximum standard Proctor density in pavement and slab areas and to at least 90% of the maximum standard Proctor density in landscape areas.
- 3) The ground surface surrounding the exterior of the building should be sloped to drain away from the foundation in all directions. The slope should be at least 12 inches in the first 10 feet in unpaved areas and at least 3 inches in the first 10 feet in paved areas. Drain gravel of retaining walls

should be capped with at least 2 feet of the on-site soils to reduce surface water infiltration.

- 4) Roof gutters should be provided with downspouts that discharge beyond the limits of the foundation wall backfill.
- 5) Landscaping which requires regular heavy irrigation, such as sod, should be located at least 5 feet from foundation walls. Consideration should be given to use of xeriscape to reduce the potential for wetting of soils below the building caused by irrigation.

LIMITATIONS

This study has been conducted in accordance with generally accepted geotechnical engineering principles and practices in this area at this time. We make no warranty either express or implied. The conclusions and recommendations submitted in this report are based upon the data obtained from the exploratory borings drilled at the locations indicated on Figure 1, the proposed type of construction and our experience in the area. Our services do not include determining the presence, prevention or possibility of mold or other biological contaminants (MOBC) developing in the future. If the client is concerned about MOBC, then a professional in this special field of practice should be consulted. Our findings include interpolation and extrapolation of the subsurface conditions identified at the exploratory borings and variations in the subsurface conditions may not become evident until excavation is performed. If conditions encountered during construction appear different from those described in this report, we should be notified so that re-evaluation of the recommendations may be made.

This report has been prepared for the exclusive use by our client for planning and preliminary design purposes. We are not responsible for technical interpretations by others of our information. As the project evolves, we should provide continued consultation and field services during construction to review and monitor the implementation of our recommendations, and to verify that the recommendations have been appropriately interpreted. Significant design changes may require additional analysis or modifications to the recommendations presented herein. We recommend on-

site observation of excavations and foundation bearing strata and testing of structural fill on a regular basis by a representative of the geotechnical engineer.

Respectfully Submitted,

HEPWORTH - PAWLAK GEOTECHNICAL, INC.

Steven L. Pawlak, P.E.



Reviewed by:

A handwritten signature in cursive script that reads "Daniel E. Hardin".

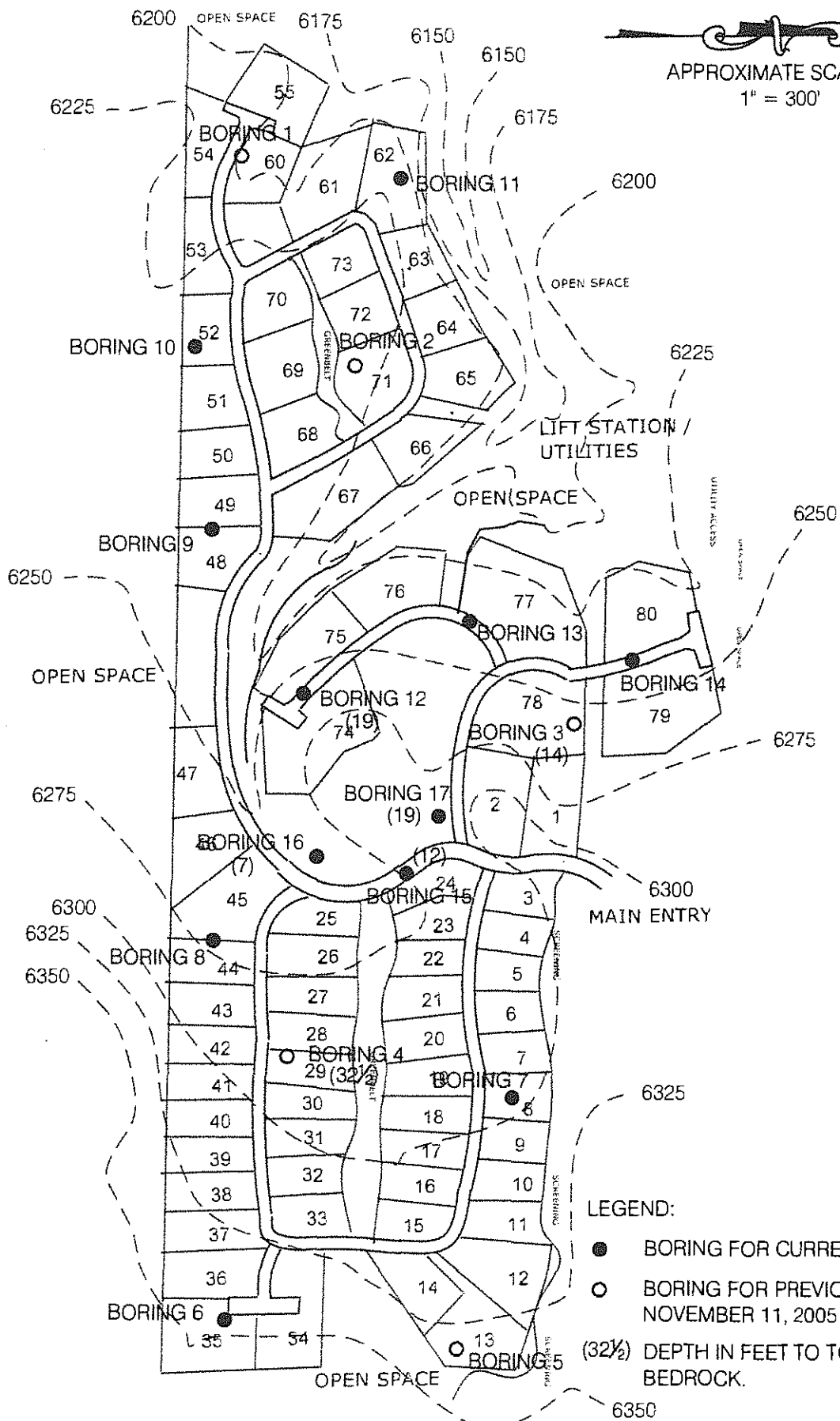
Daniel E. Hardin, P.E.

SLP/ksw

cc: Schmueser Gordon Meyer – Attn: Dean Gordon
Noble Design Studio – Attn: Robert Adams
Kjell Vanghagen

REFERENCE

Hepworth-Pawlak Geotechnical, 2005, *Preliminary Geotechnical Study, Proposed Residential Development, Elk Springs Ranch Lower Bench Area, County Road 114, Garfield County, Colorado*. Job No. 105 652 dated November 11, 2005.




 APPROXIMATE SCALE
 1" = 300'

LEGEND:
 ● BORING FOR CURRENT STUDY.
 ○ BORING FOR PREVIOUS STUDY,
 NOVEMBER 11, 2005
 (32 1/2) DEPTH IN FEET TO TOP OF
 BEDROCK.

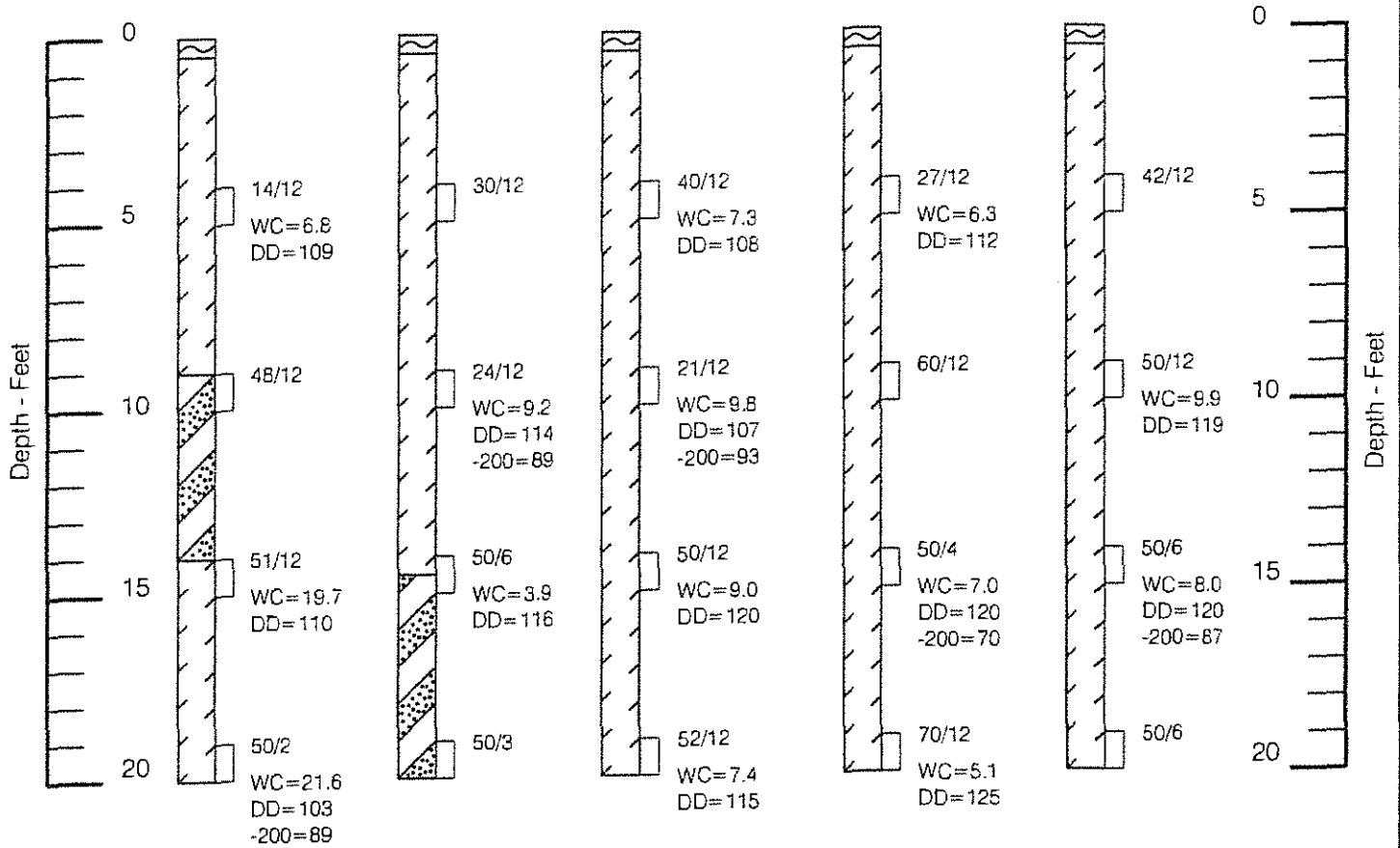
BORING 6
ELEV. = 6345'

BORING 7
ELEV. = 6295'

BORING 8
ELEV. = 6270'

BORING 9
ELEV. = 6235'

BORING 10
ELEV. = 6230'



Note: Explanation of symbols is shown on Figure 5.

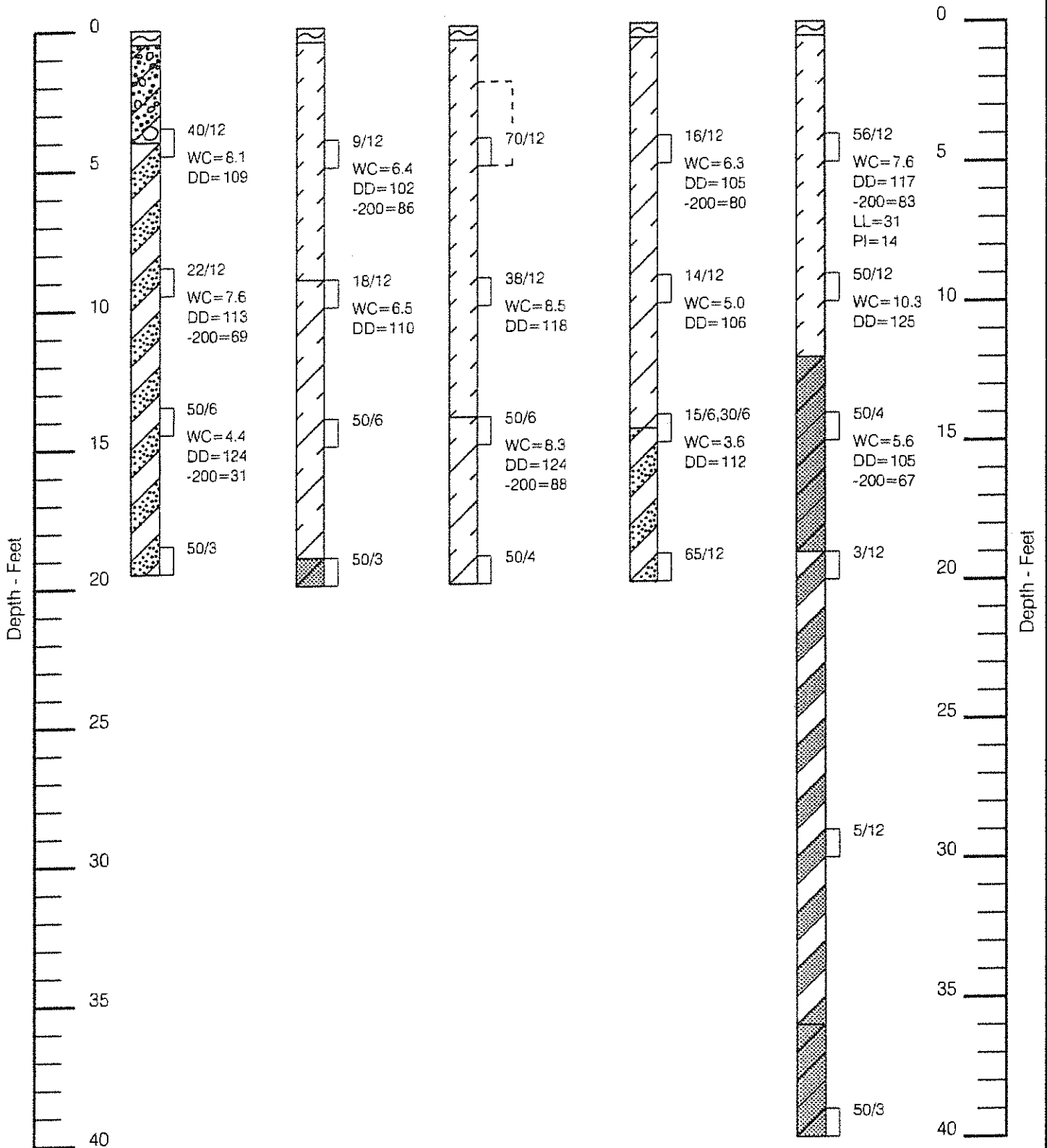
BORING 11
ELEV.= 6270'

BORING 12
ELEV.= 6260'

BORING 13
ELEV.= 6240'

BORING 14
ELEV.= 6245'

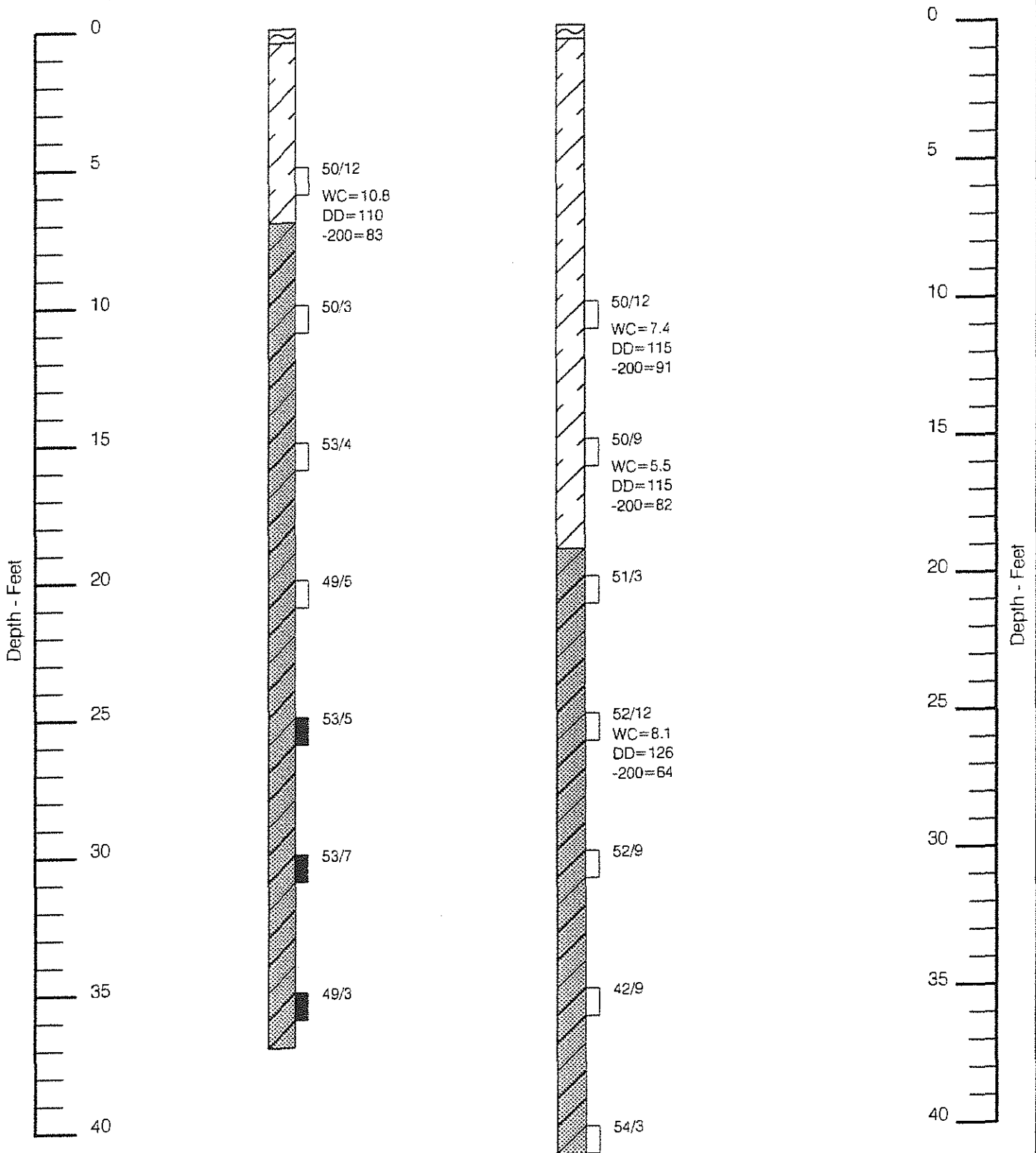
BORING 15
ELEV.= 6275'



Note: Explanation of symbols is shown on Figure 5.

BORING 16
ELEV. = 6292'

BORING 17
ELEV. = 6267'



Note: Explanation of symbols is shown on Figure 5.

LEGEND:



TOPSOIL; sandy silt, root zone, brown.



SILT AND CLAY (ML-CL); slightly sandy to sandy, stiff to very stiff, slightly moist, light brown, slightly calcareous.



CLAY (CL); slightly sandy to sandy, silty, stiff to very stiff, slightly moist, light brown to brown, low plasticity, slightly calcareous.



SILT AND SAND (ML-SM); scattered gravel to gravelly, very stiff to hard, slightly moist, light brown, subangular basalt rock, slightly calcareous.



SAND AND GRAVEL (SM-GM); silty, sandy, scattered cobbles, sandy silt layers, medium dense, slightly moist, brown, subangular basalt rock.



WEATHERED SILTSTONE AND GYPSUM; soft, moist, white. Eagle Valley Evaporite. (Boring 15 only)



SILTSTONE/SANDSTONE BEDROCK; some gypsum, very hard, dry, grey. Eagle Valley Evaporite.



Relatively undisturbed drive sample; 2-inch I.D. California liner sample.



Drive sample; standard penetration test (STP), 1 3/8 inch I.D. split spoon sample, ASTM D-1586.

18/12

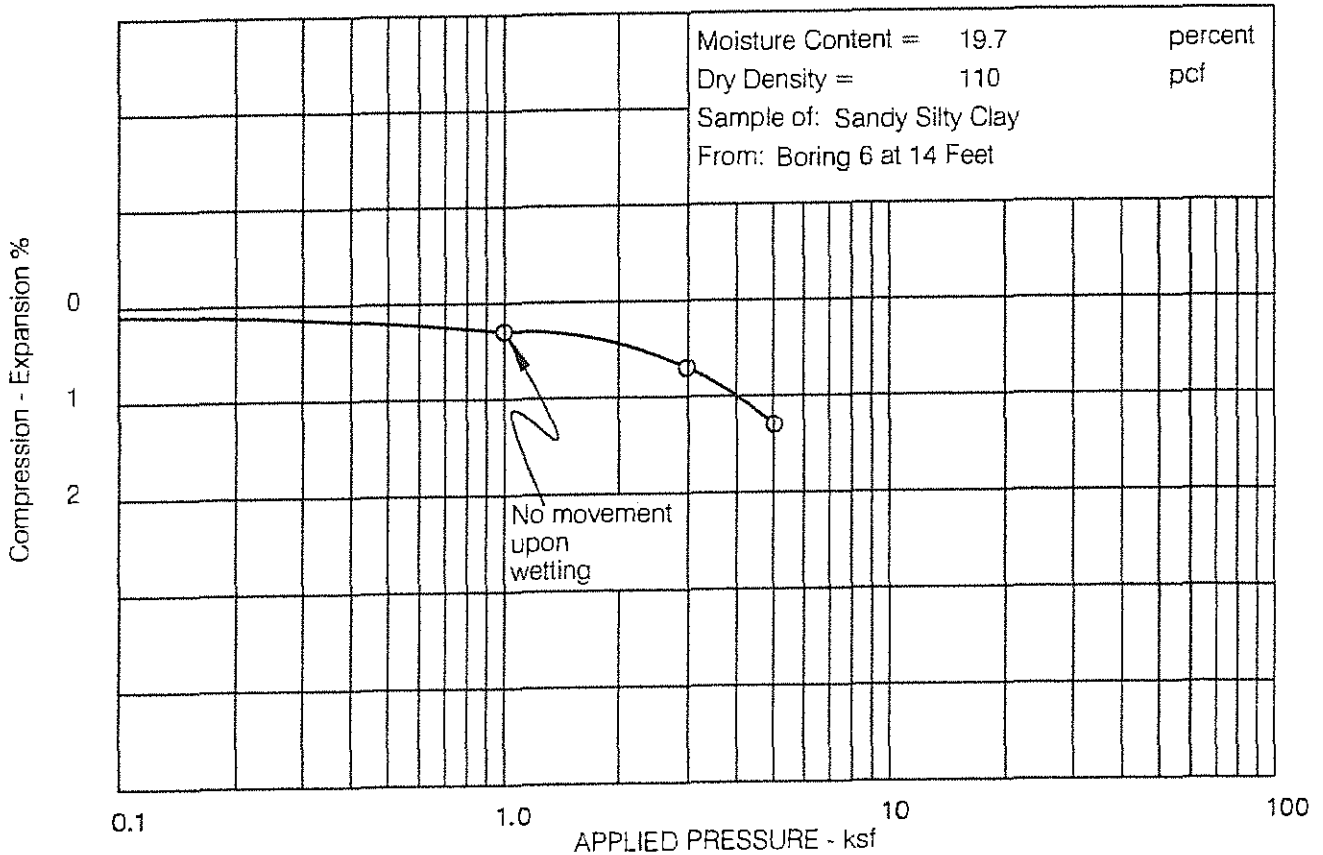
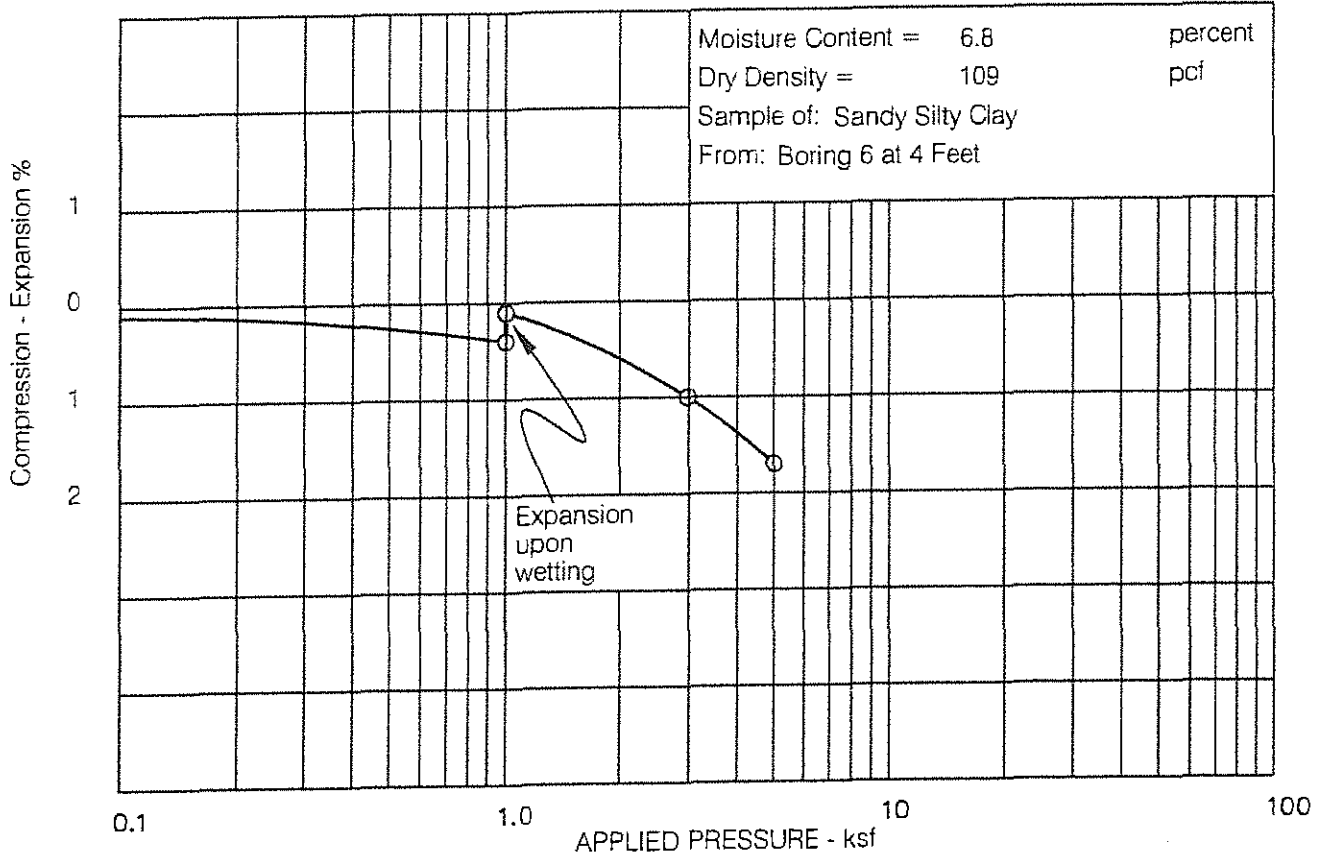
Drive sample blow count; indicates that 18 blows of a 140 pound hammer falling 30 inches were required to drive the California or SPT sampler 12 inches.

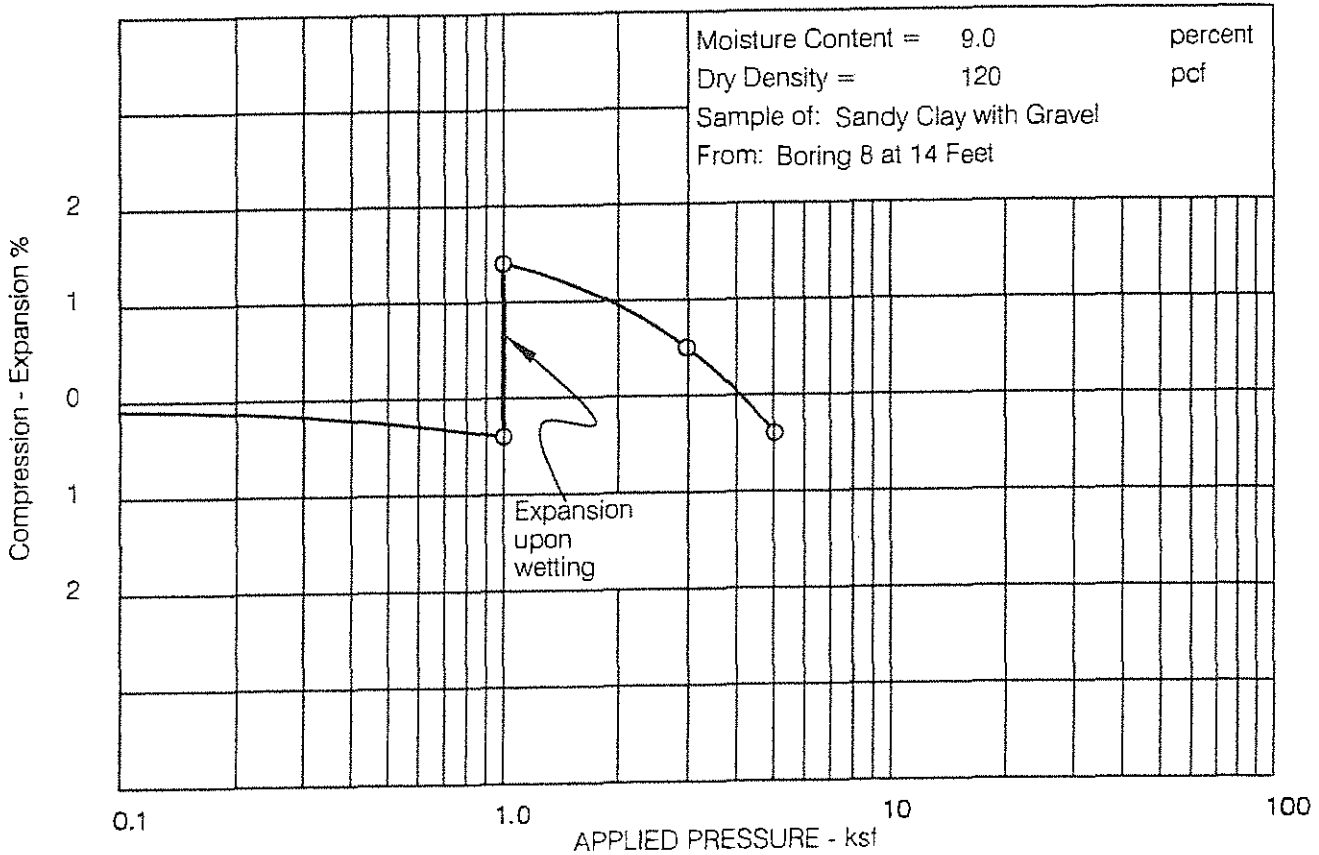
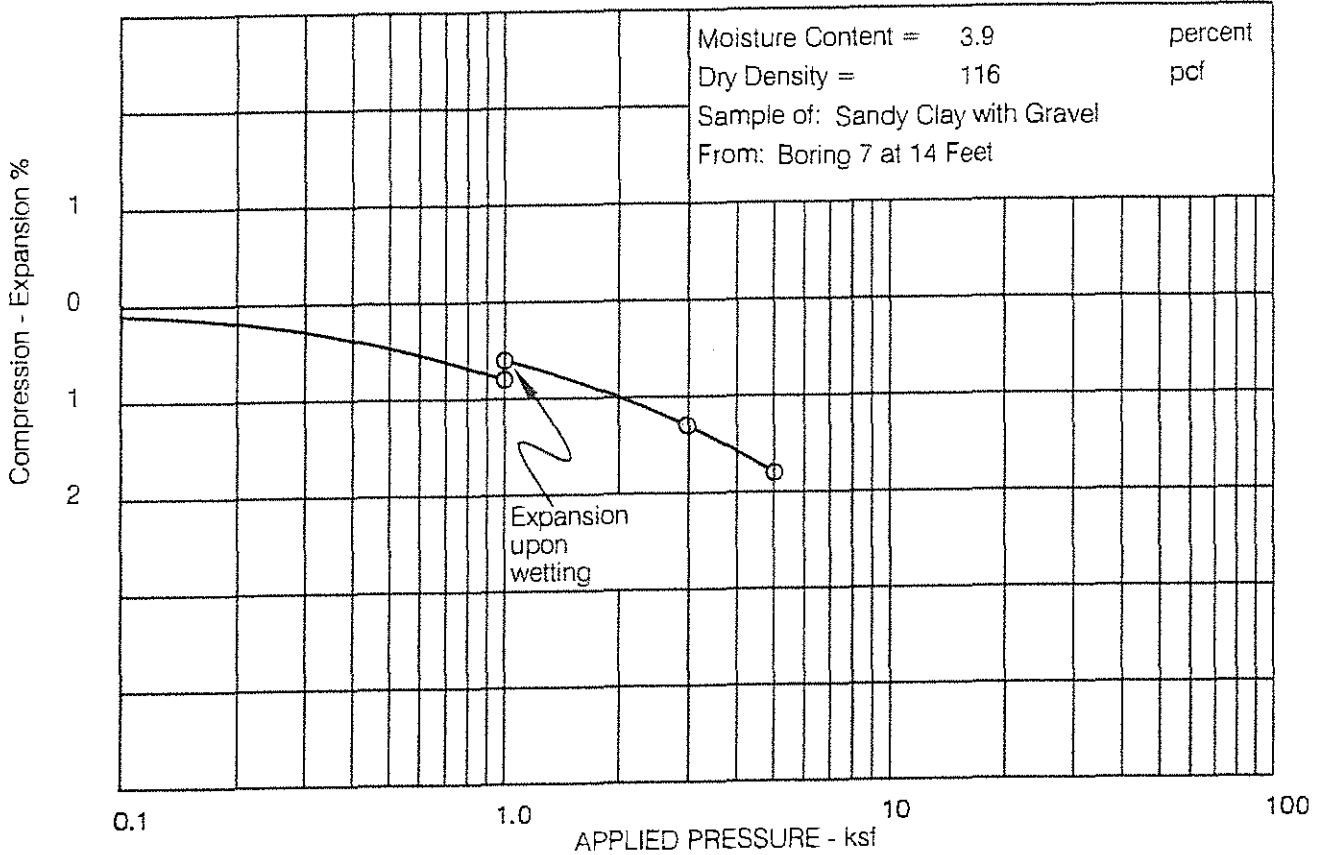


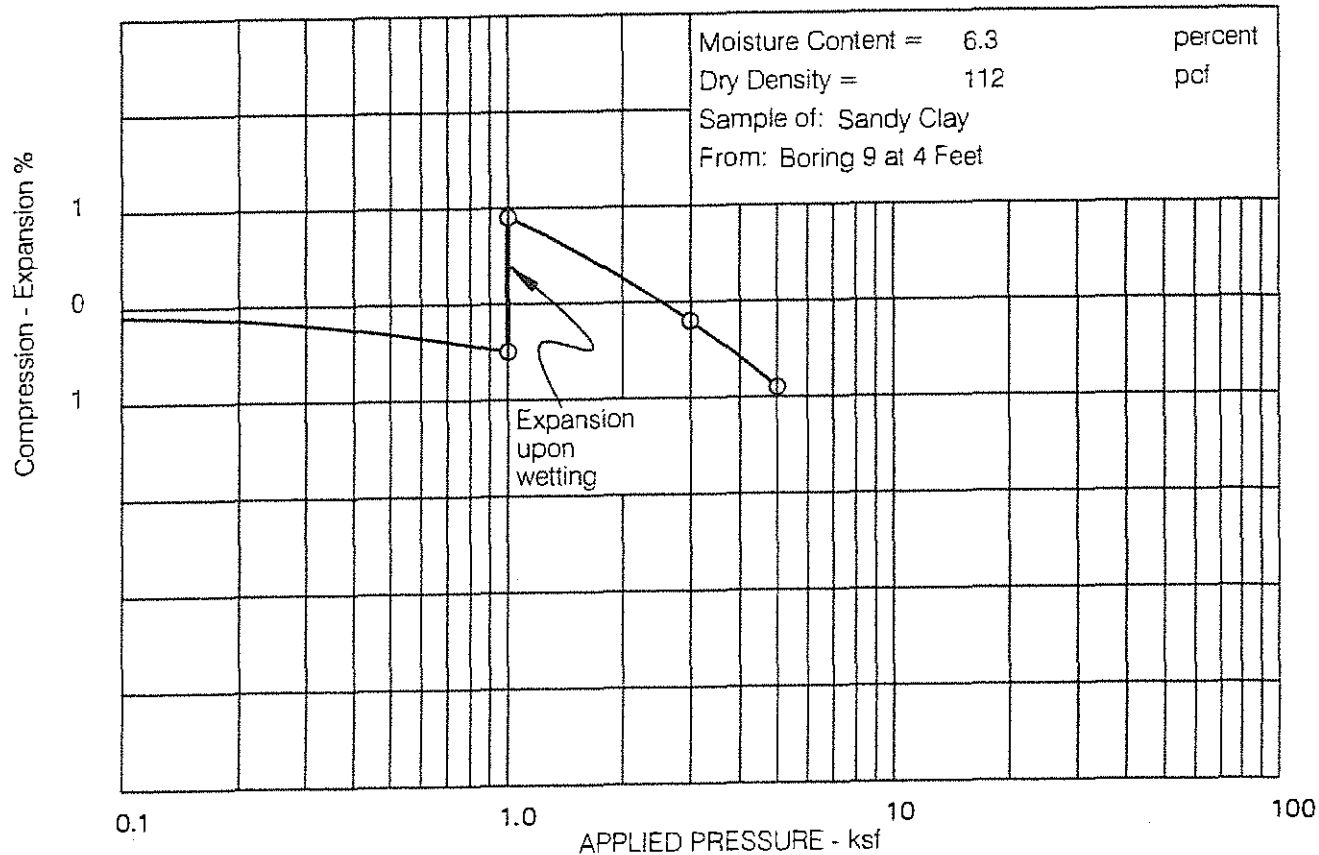
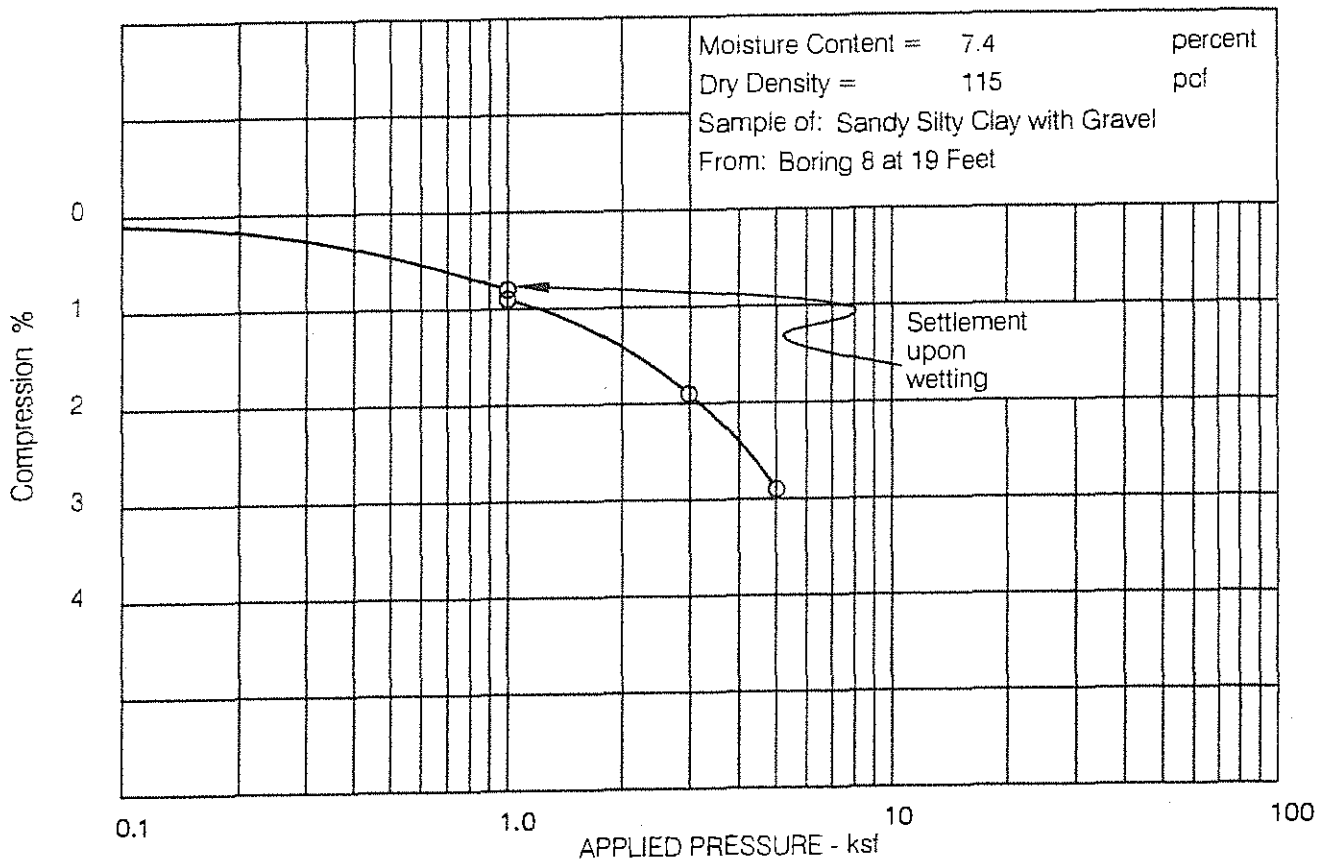
Disturbed bulk sample.

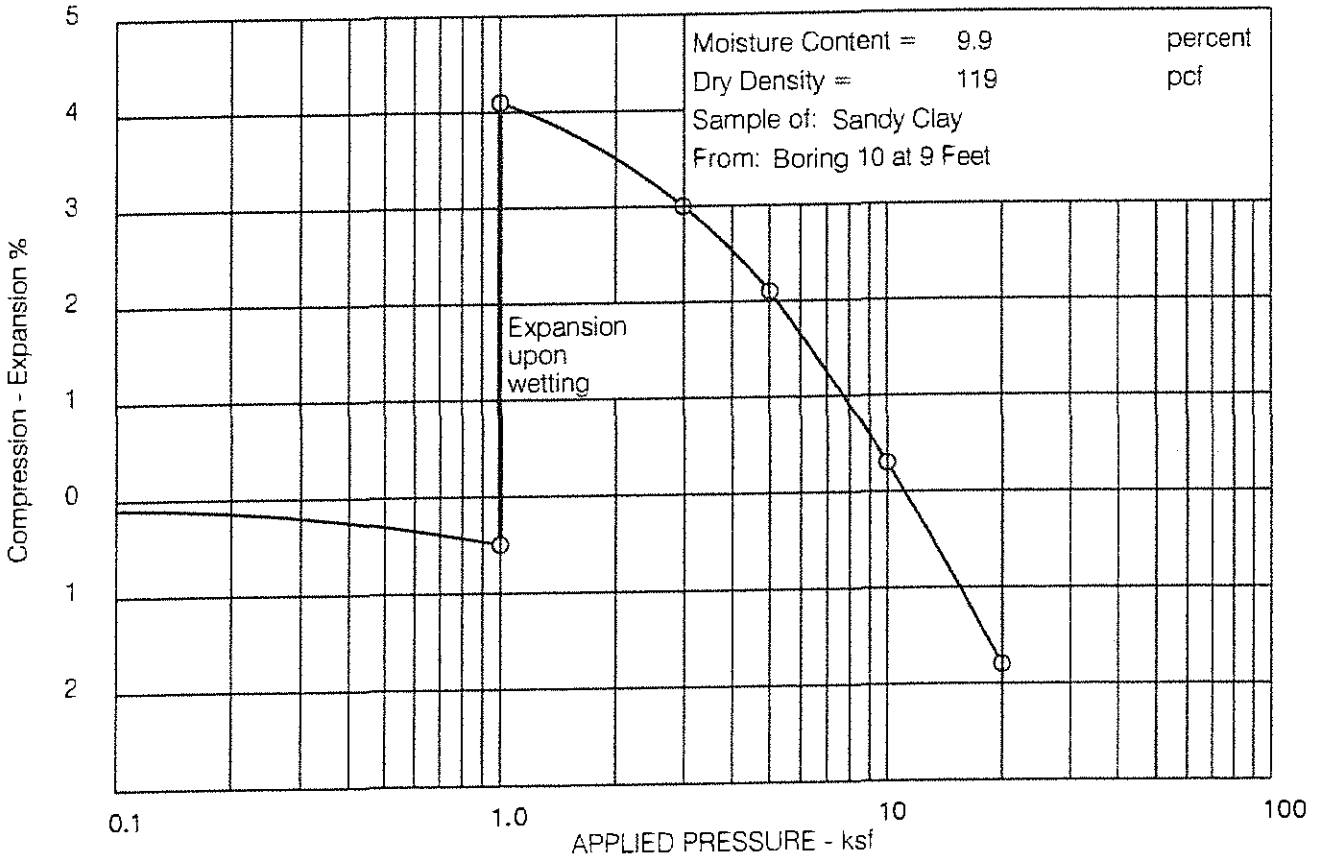
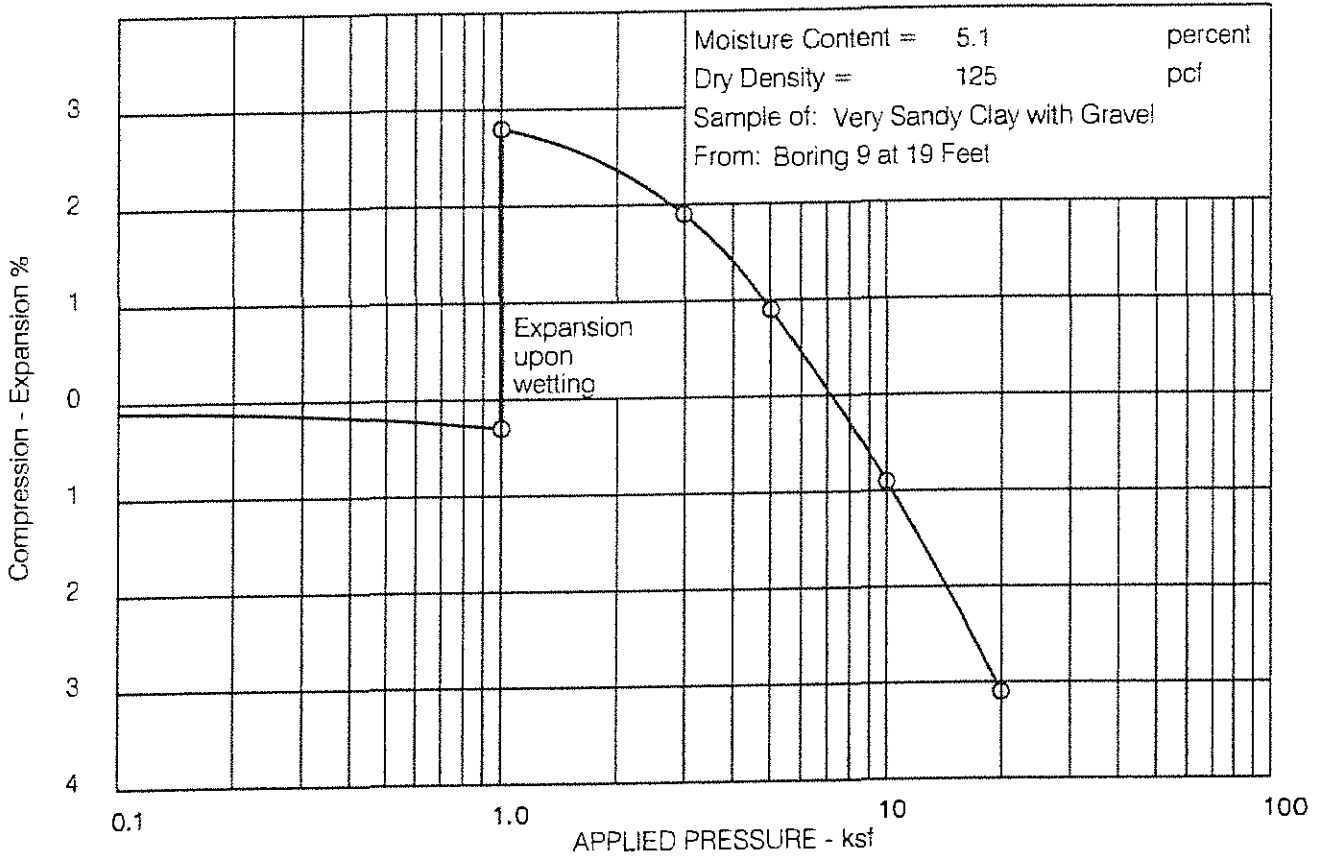
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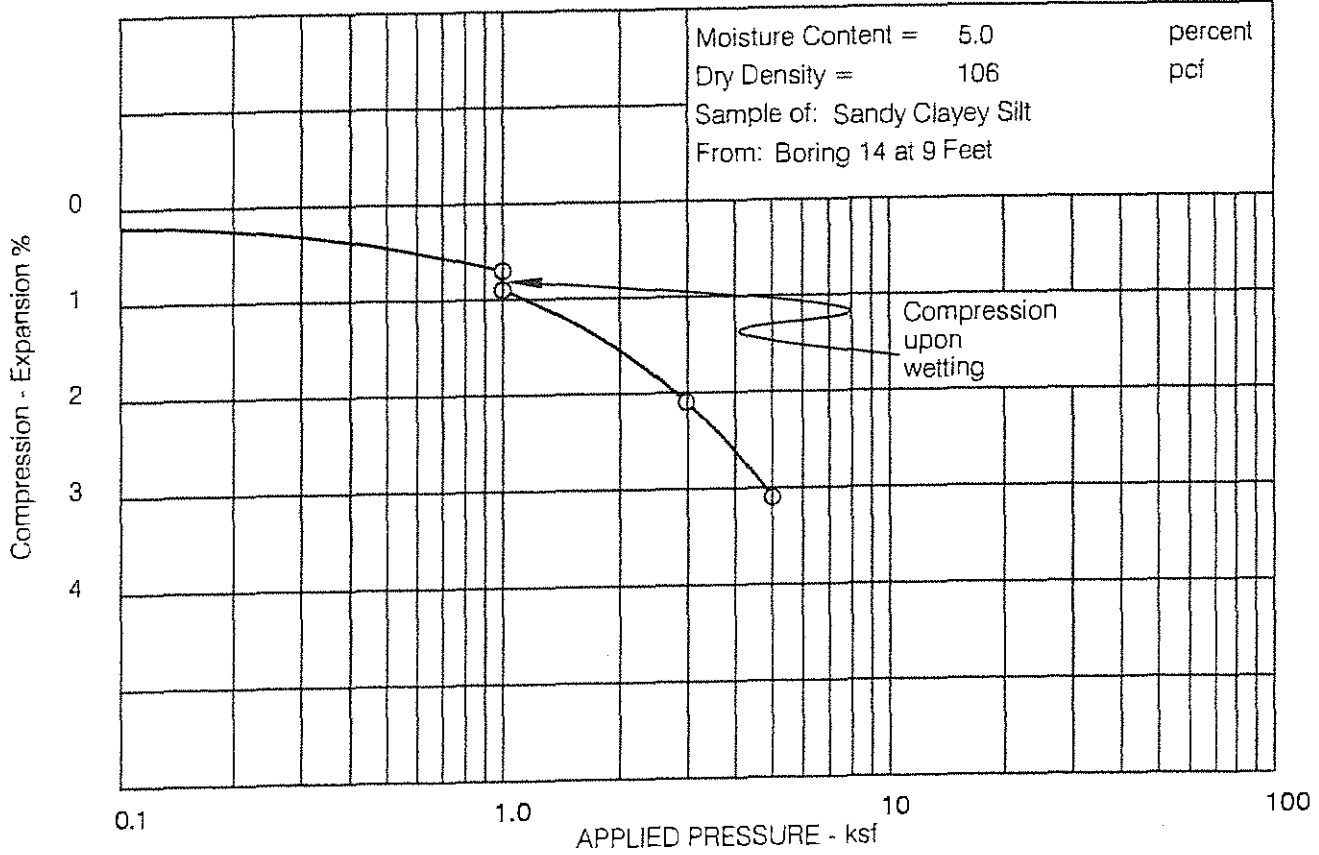
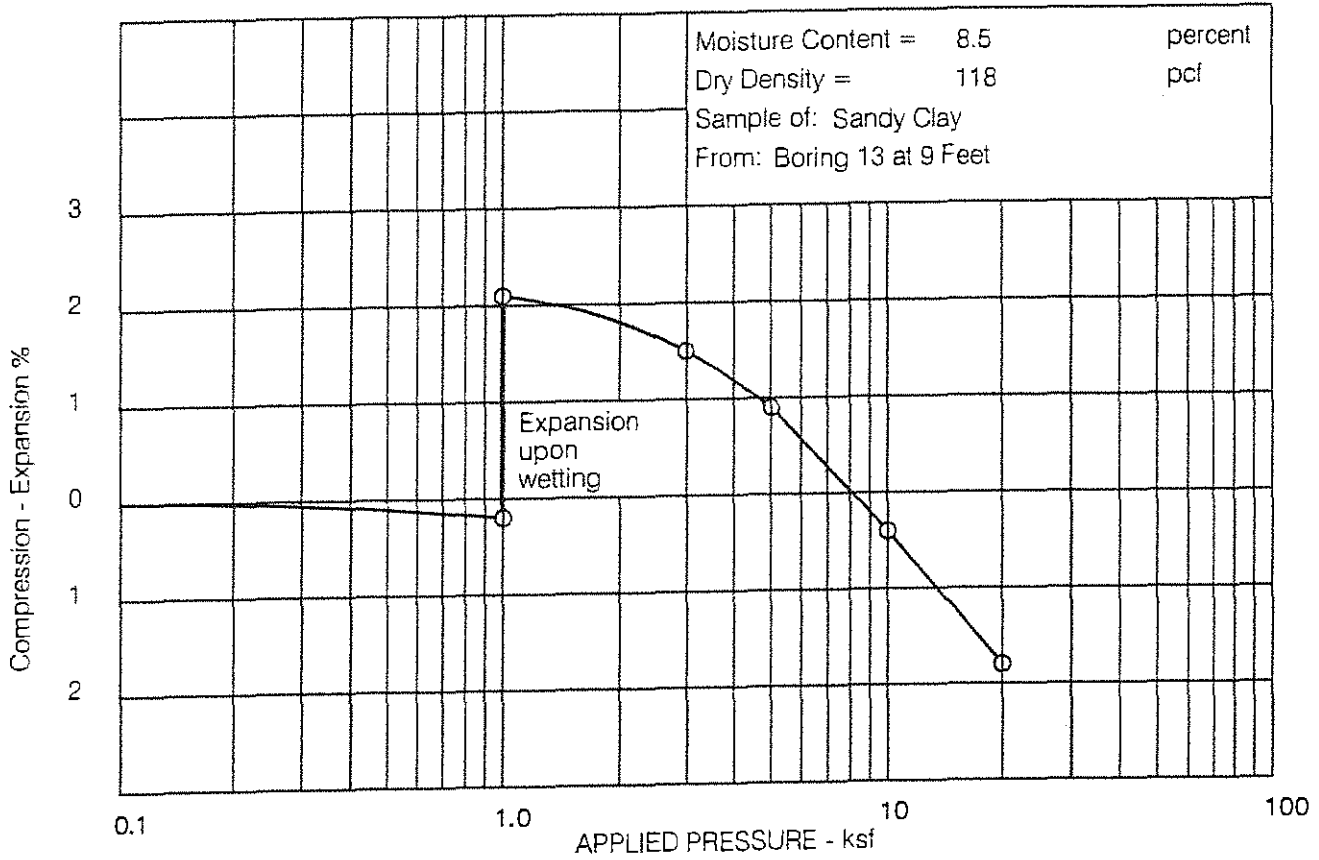
1. Borings 6 through 15 were drilled on January 9 and 10, 2006 and Borings 16 and 17 were drilled on March 9, 2006 with 4-inch diameter continuous flight power auger.
2. Locations of exploratory borings were measured approximately by pacing from features shown on the site plan provided.
3. Elevations of exploratory borings were estimated from contours shown on the site plan provided.
4. The exploratory boring locations and elevations should be considered accurate only to the degree implied by the method used.
5. The lines between materials shown on the exploratory boring logs represent the approximate boundaries between material types and transitions may be gradual.
6. No free water was encountered in the borings at the time of drilling or when checked one day later. Fluctuation in water level may occur with time.
7. Laboratory Testing Results:
 WC = Water Content (%)
 DD = Dry Density (pcf)
 -200 = Percent passing No. 200 sieve
 LL = Liquid Limit (%)
 PI = Plasticity Index (%)

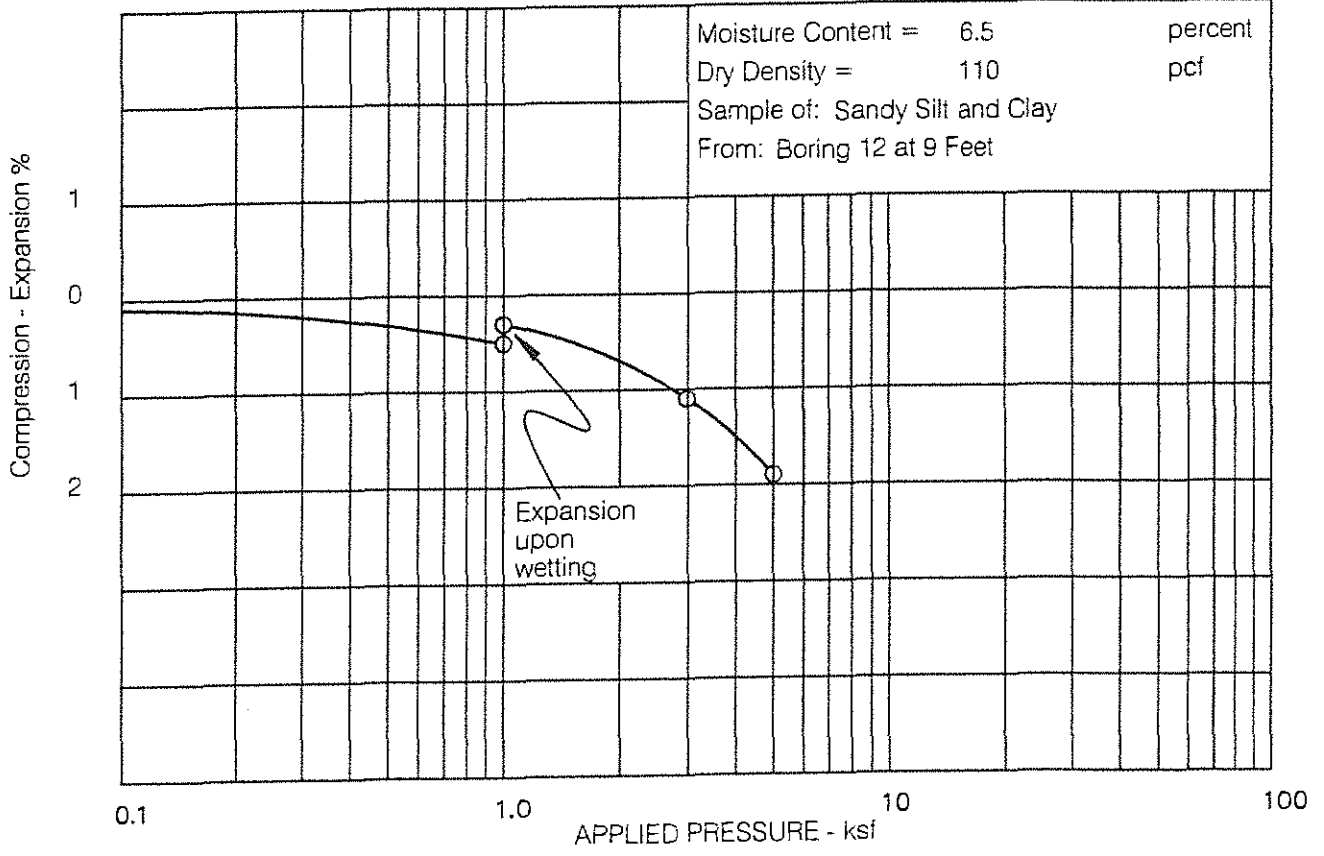
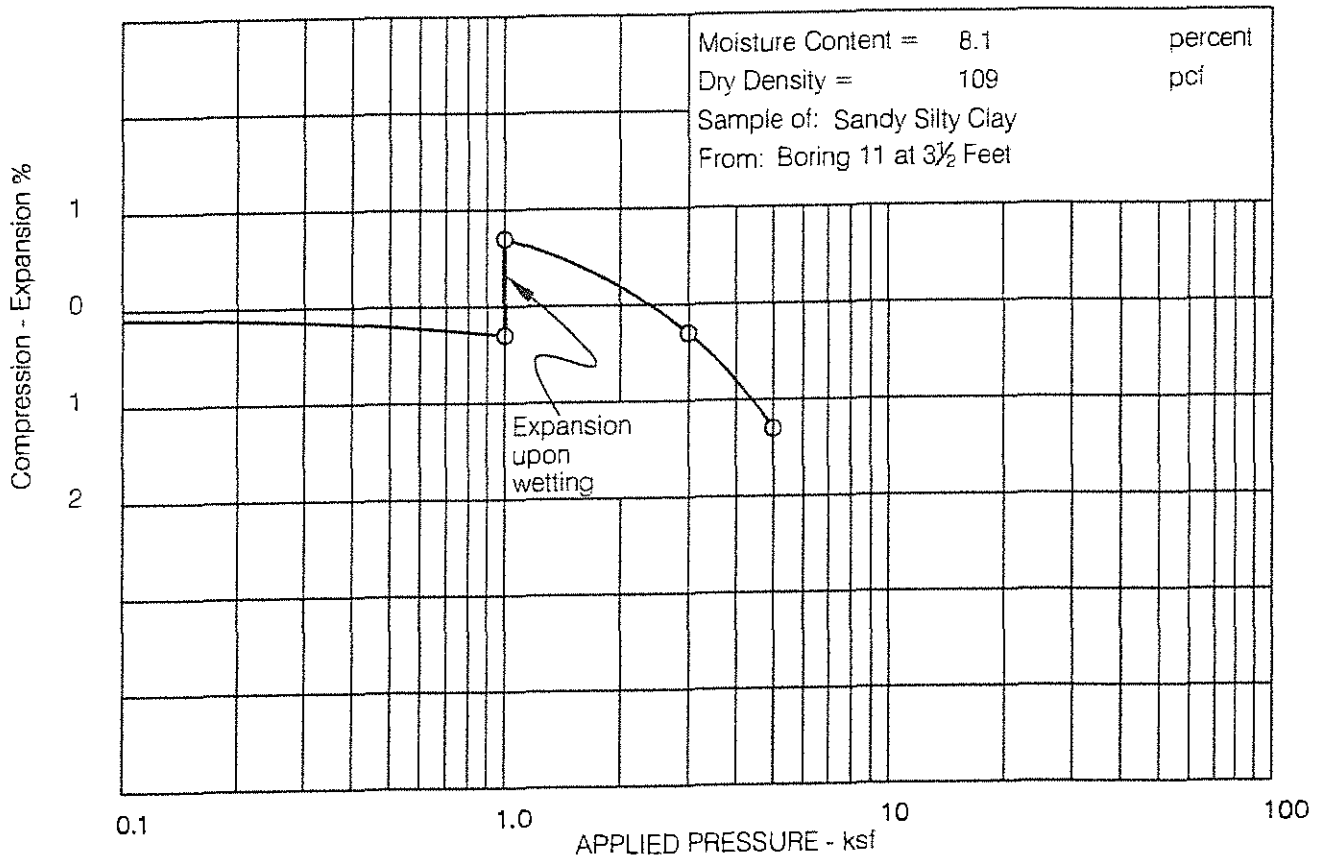


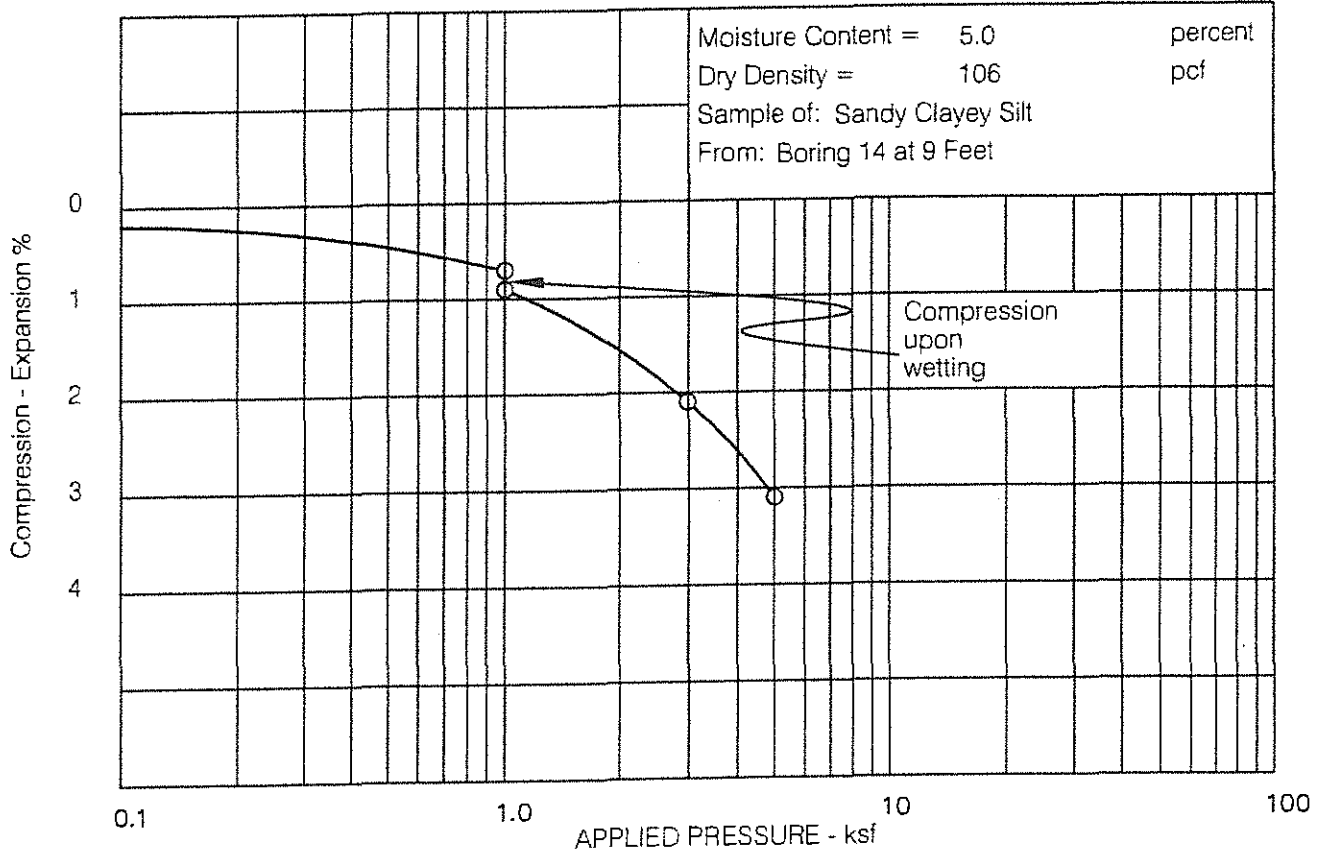
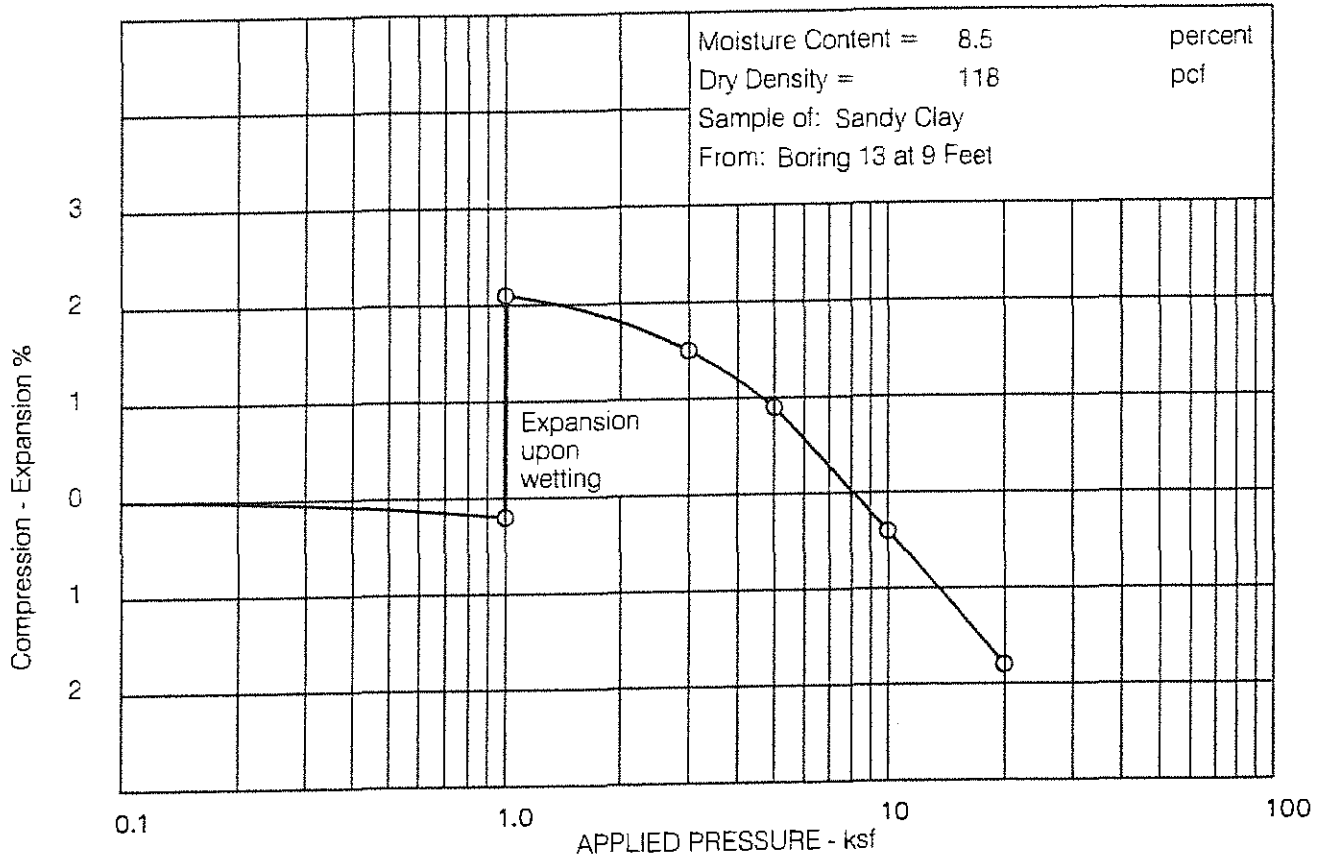


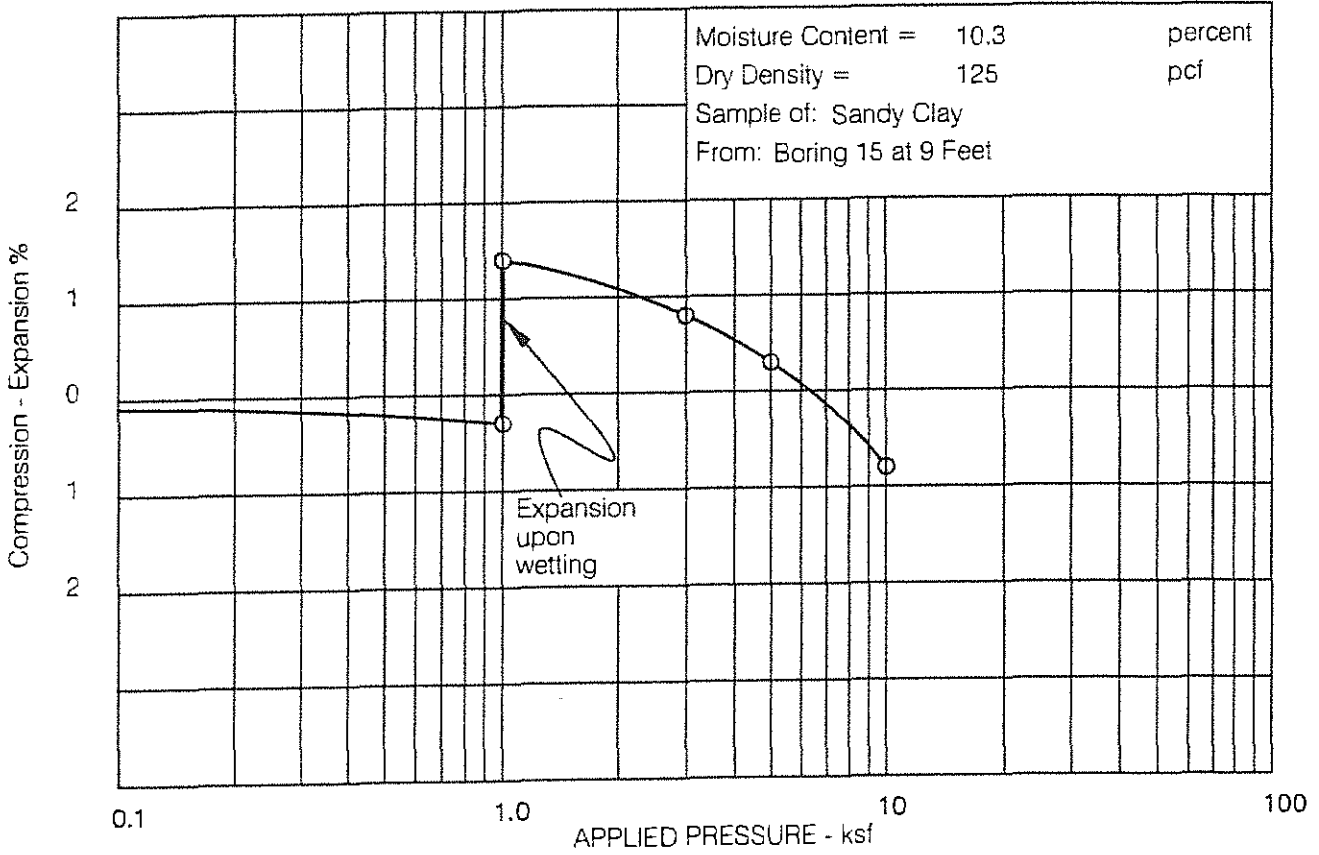
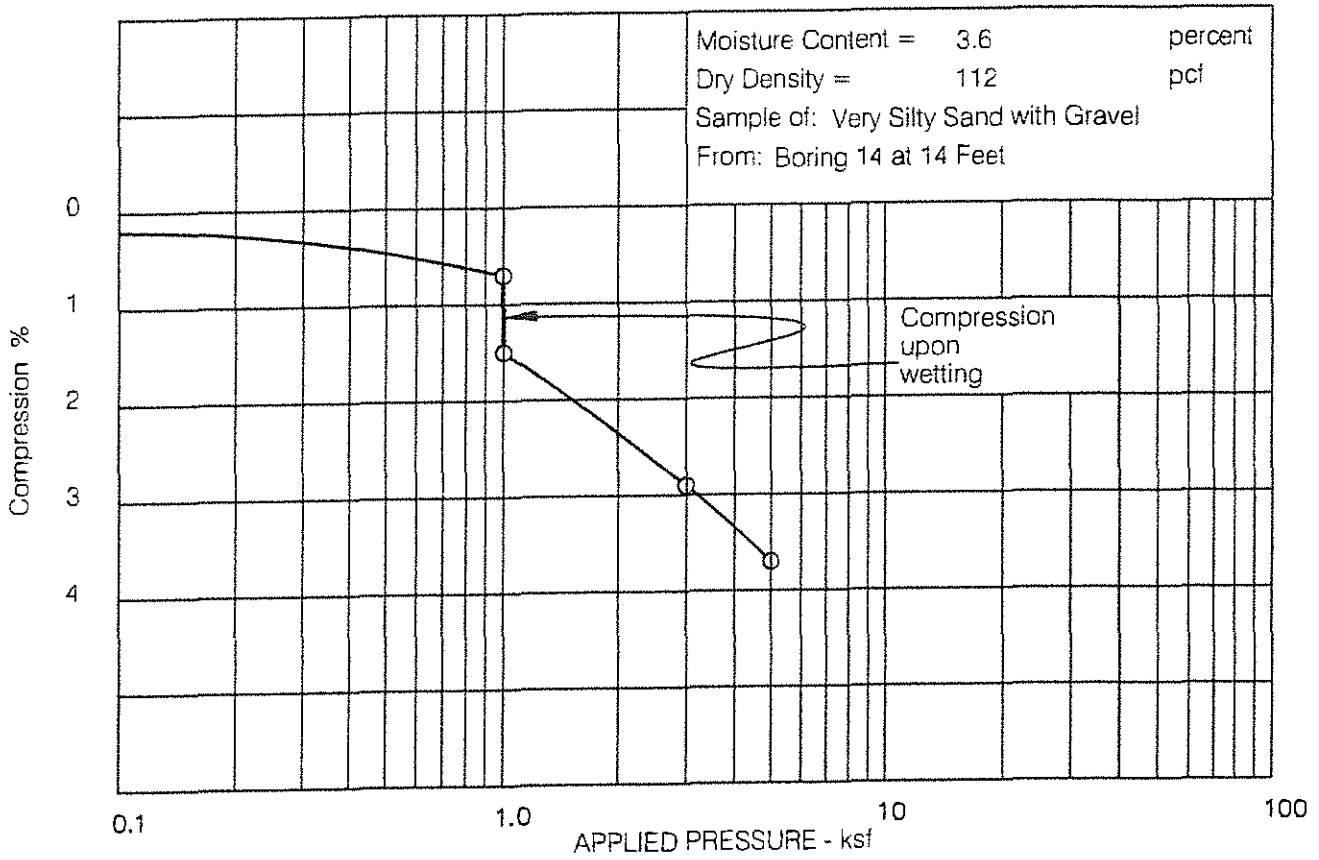












HEPWORTH-PAWLAK GEOTECHNICAL, INC.

TABLE 1

SUMMARY OF LABORATORY TEST RESULTS

Job No. 105 652

Page 1 of 3

SAMPLE LOCATION		NATURAL MOISTURE CONTENT (%)	NATURAL DRY DENSITY (pcf)	GRADATION		PERCENT PASSING NO. 200 STEVE	ATTERBERG LIMITS		UNCONFINED COMPRESSIVE STRENGTH (PSF)	SOIL OR BEDROCK TYPE
BORINGS	DEPTH (ft)			GRAVEL (%)	SAND (%)		LIQUID LIMIT (%)	PLASTIC INDEX (%)		
6	4	6.8	109							Sandy silty clay
	14	19.7	110							Sandy silty clay
	19	21.6	103			89				Sandy clay with gravel
7	9	9.2	114			89				Sandy silty clay
	14	3.9	116							Sandy clay with gravel
8	4	7.3	108							Sandy silt and clay
	9	9.8	107			93				Slightly sandy silty clay
	14	9.0	120							Sandy clay with gravel
	19	7.4	115							Sandy silty clay with gravel
9	4	6.3	112							Sandy clay
	14	7.0	120			70				Sandy silty clay
	19	5.1	125							Very sandy clay with gravel
10	9	9.9	119							Sandy clay
	14	8.0	120			87				Sandy clay

HEPWORTH-PAWLAK GEOTECHNICAL, INC.
 TABLE 1
 SUMMARY OF LABORATORY TEST RESULTS

Job No. 105 652

Page 2 of 3

SAMPLE LOCATION		NATURAL MOISTURE CONTENT (%)	NATURAL DRY DENSITY (pcf)	GRADATION		PERCENT PASSING NO. 200 SIEVE	ATTERBERG LIMITS		UNCONFINED COMPRESSIVE STRENGTH (PSF)	SOIL OR BEDROCK TYPE
BORINGS	DEPTH (ft)			GRAVEL (%)	SAND (%)		LIQUID LIMIT (%)	PLASTIC INDEX (%)		
11	3½	8.1	109							Sandy silty clay
	8½	7.6	113			69				Sandy silty clay
	13½	4.4	124			31				Silty sand with gravel
12	4	6.4	102			86				Sandy silt and clay
	9	6.5	110							Sandy silt and clay
13	9	8.5	118							Sandy clay
	14	8.3	124			88				Sandy clay
14	4	6.3	105			80				Sandy silt and clay
	9	5.0	106							Sandy clayey silt
	14	3.6	112							Very silty sand with gravel
15	4	7.6	117			83	31	14		Sandy silty clay
	9	10.3	125							Sandy clay
	19	5.6	105			67				Weathered siltstone and gypsum

James S. Neu
jsh@mountainlawfirm.com

Sander N. Karp*
James S. Neu
Karl J. Hanlon
Michael J. Sawyer
James F. Fosnaught
Jeffrey J. Conklin
Andrew A. Mueller

* Fellow of the College of
Labor and Employment
Lawyers

Matthew L. Trinidad
Patrick L. Barker
Jon T. Hoistad
Delphine F. Janey

Of Counsel
Richard I. Zuber**
Anna S. Itenberg
Greg S. Russi
Hollie L. Wieland

** Fellow of the American
Academy of Matrimonial Lawyers

Glenwood Springs Office
201 14th Street, Suite 200
P. O. Drawer 2030
Glenwood Springs, CO 81602

*Aspen Office****
323 W. Main Street, Suite 301
Aspen, CO 81611

Telephone: (970) 945-2261
Facsimile: (970) 945-7336
www.mountainlawfirm.com

***All correspondence should be sent to the
Glenwood Springs office

January 11, 2016

Scott Dillard
sdillardrealtor@gmail.com

Re: Spring Valley Sanitation District/Pinyon Mesa Phase II
PUD Amendment – Time Extension

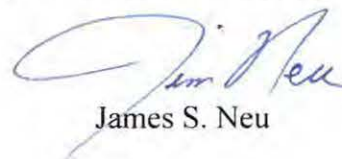
Dear Scott:

As you know, we represent the Spring Valley Sanitation District (the "District"). It is my understanding that you own a portion of Elk Springs PUD known as Pinyon Mesa Phase II which is to be developed with thirty-two (32) single family dwellings (the "Property"). The District has the capacity in its wastewater treatment plant and can and will serve the Property with wastewater treatment service subject to the following conditions:

1. A complete set of sewer construction plans are provided to the District for its review and approval;
2. The approval by the District of any Line Extension Agreement or Line Connection Agreement that may be required by the District's Rules and Regulations; and
3. Pursuant to the District's Rules and Regulations, the Applicant shall reimburse the District for all costs incurred by the District regarding this project, including, but not limited to legal and engineering review.

Please let me know if you have any questions.

Very truly yours,
KARP NEU HANLON, P.C.



James S. Neu

cc: Kelly Mullane

ELK SPRINGS HOMEOWNER'S ASSOCIATION
2929 County Road 114
Glenwood Springs, CO 81601
(970)945-6399

February 16, 2016

To Whom It May Concern:

The Elk Springs Homeowner's Association (Association) owns and operates the potable water system for the Los Amigos Ranch PUD.

The Red Canyon Water Company and the Elk Springs Homeowners Association agreed to deliver to the Lower Valley (Pinyon Mesa), at the Point of Delivery, an amount of water sufficient to serve the reasonable domestic and residential needs of up to eighty (80) single family homes in a monthly volume measured at the Master Water Meter not to exceed the Monthly Basic Allotment of 1,400,000 gallons of water.

Red Canyon the Elk Springs Homeowners Association also committed "Supplemental volumes of water in excess of the Monthly Basic Allotment can be provided if such supplemental water is available to the company after the company fulfils all other water deliver obligations. "

The Association understands Pinyon Mesa Phase II will be developed with thirty-two (32) single family lots which combined with the forty-eight (48) existing platted lots will complete development of the eighty (80) lots envisioned in the Lower Valley.

By means of the letter, the Association acknowledges the obligation to provide potable water to the thirty-two (32) single family lots.

R. A. Sweikert

A handwritten signature in black ink that reads "RA Sweikert". The signature is written in a cursive, flowing style.

President, Elk Springs Homeowner's Association

**PINYON MESA
DRAINAGE REPORT
FOR
PRELIMINARY PLAN SUBMISSION
Garfield County, Colorado**



Prepared for

**JOHN ELMORE II
Aspen, Colorado**

Prepared by

**Schmueser Gordon Meyer
Glenwood Springs, Colorado**

May 2006

**PINYON MESA
DRAINAGE REPORT
Garfield County, Colorado**

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TABLES

- 1 GARFIELD COUNTY RAINFALL**
- 2 PRE-DEVELOPMENT BASINS - PEAK DISCHARGE AT POINTS OF CONCENTRATION**
- 3 POST-DEVELOPMENT BASINS - PEAK DISCHARGE AT POINTS OF CONCENTRATION**

APPENDIX

- 1) REACH FLOW PATH**
- 2) PRE AND POST DEVELOPMENT CALCULATIONS**

1. INTRODUCTION

The Pinyon Mesa Drainage Report has been prepared to satisfy the requirements of the Garfield County Code and conditions. The following are the objectives of the report

- 1** Identify existing and proposed drainage basins, and quantify expected runoff rates, volumes and frequencies.
- 2** Describe the features of the drainage design necessary to ensure adequate protection from flooding for the development, both on-site and downstream.
- 3** Review the existing drainage study and the associated pond
- 4** Provide design calculations for proposed drainage structures.
- 5** Demonstrate that the Historical runoff is maintained in a post development condition though the use of detention.

PROJECT OVERVIEW

This development is located 1.25 miles east of the intersection of Highway 82 along County Road 114. Proposed development of this subdivision is to include eighty one-quarter and one-third acre lots for residential development of single family homes.

Pinyon Mesa is a resubmission of Filing 10 of Los Amigos Ranch PUD and all calculations will conform with the assumptions made in the drainage report submitted within the Los Amigos Ranch PUD application.

The design reports containing the results from the 2, 25, 50 and 100 year storms are included for both historic and developed conditions. Since this development was originally submitted as Filing 10 of Los Amigos Ranch PUD, historic conditions contain no development in Los Amigos Ranch.

2.1 ON-SITE DRAINAGE CONSIDERATIONS

The drainage design for Pinyon Mesa utilizes several drainage goals, including, 1) **Maintain historical flows** 2) **Preventing flood damage**. This report will show that the increase in historical flows created by a developed Pinyon Mesa Property will be mitigated through the use of a pond that was built for this purpose in Basin 4.1.

Major drainage paths are evaluated to ensure capacity to safely convey a 100-year storm event; individual structures will be designed to collect a 25-year storm event, with any bypass flow safely conveyed within the downstream drainage route.

2.2 HYDROLOGIC ANALYSIS

2.2.1. *Designation of Drainage Basins*

The off-site basin delineation was completed to assess existing runoff patterns, quantify existing runoff flows and provide a baseline for the drainage design. The designation of off-site drainage basins and basin boundaries are found on Sheet DR1. The on-site post-developed drainage structures are on sheet DR2.

2.2.2 *Methodology*

Hydrologic procedures outlined in the Soil Conservation Service (SCS) Technical Release 55 "Urban Hydrology for Small Watersheds" (TR-55) were utilized to determine peak flows and volumes of runoff generated by the basins 4.1, 4.2, 1.0, and 2.0. The model is a simplified procedure based on the TR-20 computer program and uses a set of more readily available input parameters to define watershed characteristics and estimate runoff. A uniformly distributed time varying rainfall is imposed over the basin area. The rainfall is then converted to runoff by using a runoff curve number based on soils, plant cover, impervious area, interception and surface storage. The runoff is then transformed into a hydrograph (flow rate versus time), using unit hydrograph theory and routing methods based on the travel time through drainage segments. The Pinyon Mesa Basins are attached in Appendix 1.

2.2.3. Basin Area

Basin areas were delineated from a USGS quad map map of the area. Sheet DR1 shows the location of these Basins.

2.2.4. Rainfall

TR-55 uses a 24-hour rainfall total and a synthetic time distribution to produce a centrally peaked design storm. The SCS Type II distribution is applicable to this region. Twenty-four hour rainfall amounts for specific return periods were obtained from the NOAA Atlas 2 maps contained in "Procedures for Determining Peak Flows in Colorado", SCS, 1980 and are shown in Table 1.

TABLE 1

	GARFIELD COUNTY RAINFALL		
	RETURN PERIOD (years)		
24-Hour Storm Total	2	25	100
	1.3"	2.0"	2.4"

2.2.5 Time of Concentration

Time of concentration (T_c) is defined as the time it would take for a drop of water falling on the most hydrologically remote point in a watershed to reach the outfall. TR-55 uses a segmented approach consisting of sheetflow; shallow concentrated flow and channel flow to estimate T_c . The T_c is affected by surface roughness; overland slope and channel slope and flow patterns. T_c influences the shape and peak of the runoff hydrograph with shorter times producing higher and sharper peaks. T_c directly affects the rainfall intensity used in Rational Method.

2.2.6 Travel Time

Travel Time (T_t) is the time it takes for outflow from individual sub-areas to travel through downstream sub-areas and reach the watershed outfall. It may consist of shallow concentrated or channel flow and is used only when more than one sub-area is used to model a watershed.

2.2.7. Runoff Curve Number

The Runoff Curve Number (CN) determines the amount of rainfall that becomes runoff and the amount that infiltrates or is abstracted. Major factors that determine CN are hydrologic soil group (HSG) cover type and hydrologic condition.

Soils are classified into one of four hydrologic soil groups based on their minimum infiltration rate, with Type "A" soils having the highest infiltration capabilities. Soil groups were determined from the SCS soil survey. Soil groups for the area were mostly B with small area of C type. The soil group for the entire project was conservatively modeled using a Type C soil. The existing on-site soils within the overall drainage basin are predominantly hydrologic soil group Type B soils. To take a more conservative approach, the runoff curve numbers selected from the appropriate land use were an average of the Type B and Type C curve numbers.

Cover type considers whether the surface is bare soil, vegetated, or impervious to some extent. Hydrologic condition is usually estimated from density of plant and residue cover with "fair" to "good" conditions having lower runoff potential. Cover on this project consists of junipers, sagebrush, weeds, grasses and landscaping with a majority of the cover attributed to pavements and gravel parking. Off site basins consist of residential development (1/3 to 2 acre lots) and a mixture of juniper, sagebrush and pasture.

2.2.8. Results

The results of the Rational and TR-55 analysis for the pre-developed basins are summarized in Table 2. Flows are routed through the site shown in sheet DR2. The results for the post-developed basins are summarized in Table 3. See Sheet DR1 for locations of each off-site Reach. Based on the results from Win TR-55, the Pinyon Mesa development does not increase the 100 year storm flow at the outlet because of storm water runoff mitigation above our development. The historic rate prior to construction of the pond was 283cfs for a 100 year event. The post developed number of 275cfs for a 100 year event includes both the pond and a built out condition at the Los Amigos property.

Subsequently, while no detention is necessary to reduce 100 year flow levels, water quality inlets will be installed to minimize the impact from the development.

The actual calculations and computed printouts that contain T_C , T_T , CN and runoff results can be found in the Calculations Appendix 1

TABLE 2

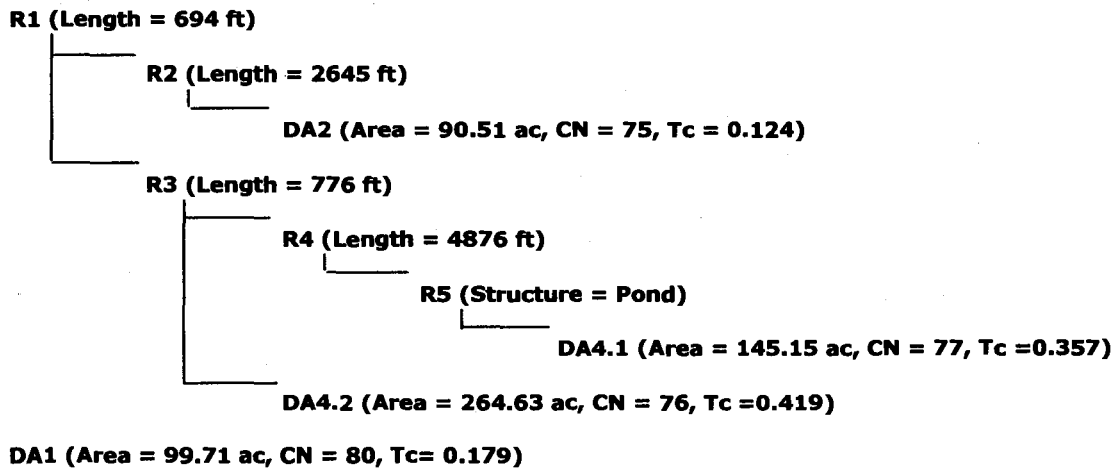
		Existing Condition		
Basin	Runoff Amount [in]	Runoff Amount [ft]	Area [ac]	Runoff 100year (cfs)
DA4.1	0.678	0.057	145.15	89.44
DA4.2	0.553	0.046	264.63	134.91
DA1	0.724	0.060	99.96	93.51
DA2	0.593	0.049	90.51	73.03
Outlet	2.548	0.212	600.25	283.33

TABLE 4

		Proposed Condition		
Basin	Runoff Amount [in]	Runoff Amount [ft]	Area [ac]	Runoff 100year (cfs)
DA4.1	0.678	0.057	145.15	96.90
DA4.2	0.635	0.053	264.63	147.52
DA1	0.820	0.068	99.96	109.66
DA2	0.593	0.049	90.51	73.03
Outlet	2.726	0.227	600.25	275.30

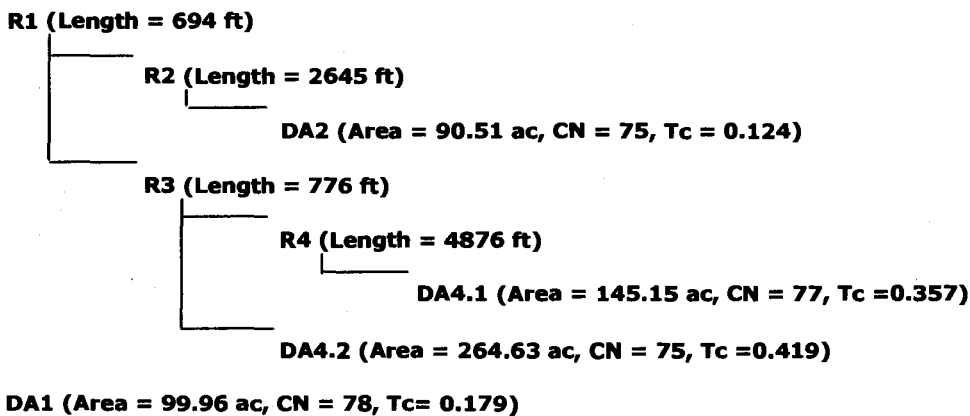
REACH FLOW PATH Project 01502F

Outlet



REACH FLOW PATH Project 01502F

Outlet



NEK

01502F
Pinyon Mesa (Historic)
Garfield County, Colorado

Storm Data

Rainfall Depth by Rainfall Return Period

2-Yr (in)	5-Yr (in)	10-Yr (in)	25-Yr (in)	50-Yr (in)	100-Yr (in)	1-Yr (in)
1.3	1.5	1.8	2.0	2.2	2.4	1.0

Storm Data Source: User-provided custom storm data
Rainfall Distribution Type: Type II
Dimensionless Unit Hydrograph: <standard>

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Garfield County, Colorado

Watershed Peak Table

Sub-Area or Reach Identifier	Peak Flow by Rainfall Return Period		
	2-Yr (cfs)	25-Yr (cfs)	100-Yr (cfs)

SUBAREAS			
DA4.1	10.05	54.78	89.44
DA4.2	10.24	78.12	134.91
DA1	14.35	61.59	95.51
DA2	7.17	44.75	73.03
REACHES			
R1	20.13	142.96	247.46
Down	20.12	142.86	247.21
R2	7.17	44.75	73.03
Down	7.02	44.45	72.88
R3	17.72	116.29	199.64
Down	17.72	116.29	199.64
R4	10.05	54.78	89.44
Down	9.98	54.43	89.19
OUTLET	23.26	164.19	283.33

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 Pinyon Mesa (Historic)
 Garfield County, Colorado

Hydrograph Peak/Peak Time Table

Sub-Area Peak Flow and Peak Time (hr) by Rainfall Return Period
 or Reach 2-Yr 25-Yr 100-Yr
 Identifier (cfs) (cfs) (cfs)
 (hr) (hr) (hr)

 SUBAREAS

DA4.1	10.05	54.78	89.44
	12.21	12.16	12.16
DA4.2	10.24	78.12	134.91
	12.26	12.19	12.17
DA1	14.35	61.59	95.51
	12.06	12.03	12.02
DA2	7.17	44.75	73.03
	12.04	12.02	12.00

REACHES

R1	20.13	142.96	247.46
	12.52	12.19	12.18
Down	20.12	142.86	247.21
	12.56	12.22	12.20
R2	7.17	44.75	73.03
	12.04	12.02	12.00
Down	7.02	44.45	72.88
	12.27	12.16	12.12
R3	17.72	116.29	199.64
	12.47	12.27	12.23
Down	17.72	116.29	199.64
	12.52	12.29	12.26
R4	10.05	54.78	89.44
	12.21	12.16	12.16
Down	9.98	54.43	89.19
	12.49	12.34	12.34

OUTLET 23.26 164.19 283.33

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Pinyon Mesa (Historic)
Garfield County, Colorado

Sub-Area Summary Table

Sub-Area Identifier	Drainage Area (ac)	Time of Concentration (hr)	Curve Number	Receiving Reach	Sub-Area Description
DA4.1	145.15	0.410	77	R4	
DA4.2	264.63	0.419	75	R3	
DA1	99.96	0.179	78	Outlet	
DA2	90.51	0.124	75	R2	

Total Area: 600.25 (ac)

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Pinyon Mesa (Historic)
Garfield County, Colorado

Reach Summary Table

Reach Identifier	Receiving Reach Identifier	Reach Length (ft)	Routing Method
R1	Outlet	694	CHANNEL
R2	R1	2645	CHANNEL
R3	R1	776	CHANNEL
R4	R3	4876	CHANNEL

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 Pinyon Mesa (Historic)
 Garfield County, Colorado

Sub-Area Time of Concentration Details

Sub-Area Identifier/	Flow Length (ft)	Slope (ft/ft)	Mannings's n	End Area (sq ft)	Wetted Perimeter (ft)	Velocity (ft/sec)	Travel Time (hr)

DA4.1							
SHEET	100	0.0915	0.130				0.124
SHALLOW	1858	0.1073	0.050				0.098
SHALLOW	2331	0.0454	0.050				0.188
							Time of Concentration .41
							=====
DA4.2							
SHEET	100	0.0375	0.130				0.178
SHALLOW	2000	0.1147	0.050				0.102
SHALLOW	1532	0.1305	0.050				0.073
CHANNEL	2468	0.1805	0.080	30.00	19.97	10.387	0.066
							Time of Concentration 0.419
							=====
DA1							
SHEET	100	0.3333	0.130				0.074
SHALLOW	485	0.1649	0.025				0.016
SHALLOW	998	0.0802	0.050				0.061
CHANNEL	1652	0.0726	0.045	80.00	32.62	16.389	0.028
							Time of Concentration .179
							=====
DA2							
SHEET	100	0.2222	0.130				0.087
CHANNEL	786	0.2546	0.045	30.00	19.97	21.833	0.010
CHANNEL	1446	0.1186	0.045	30.00	19.97	14.877	0.027
							Time of Concentration .124
							=====

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 Pinyon Mesa (Historic)
 Garfield County, Colorado

Sub-Area Land Use and Curve Number Details

Sub-Area Identifier	Land Use	Hydrologic Soil Group	Sub-Area Area (ac)	Curve Number
DA4.1	Pasture, grassland or range	(poor) B	62.265	79
	Pasture, grassland or range	(poor) C	12.71	86
	Pinyon - juniper	(poor) B	52.23	75
	Sagebrush (w/ grass understory)	(poor) B	16.965	67
	Sagebrush (w/ grass understory)	(poor) C	.98	80
	Total Area / Weighted Curve Number		145.15	77
		=====	==	
DA4.2	CN directly entered by user	-	264.63	75
	Total Area / Weighted Curve Number		264.63	75
			=====	==
DA1	Pinyon - juniper	(poor) B	31.256	75
	Pinyon - juniper	(poor) C	5.085	85
	Sagebrush (w/ grass understory)	(poor) B	7.814	67
	Sagebrush (w/ grass understory)	(poor) C	55.805	80
	Total Area / Weighted Curve Number		99.96	78
		=====	==	
DA2	Pinyon - juniper	(poor) B	87.41	75
	Pinyon - juniper	(poor) C	1.89	85
	Sagebrush (w/ grass understory)	(poor) B	1.21	67
	Total Area / Weighted Curve Number		90.51	75
		=====	==	

NEK

01502F
 Pinyon Mesa (Historic)
 Garfield County, Colorado

Reach Channel Rating Details

Reach Identifier	Reach Length (ft)	Reach Manning's n	Friction Slope (ft/ft)	Bottom Width (ft)	Side Slope
R1	694	0.1	0.0561	2	3 :1
R2	2645	0.1	0.0687	2	3 :1
R3	776	0.1	0.172	2	3 :1
R4	4876	0.1	0.1352	2	3 :1

Reach Identifier	Stage (ft)	Flow (cfs)	End Area (sq ft)	Top Width (ft)	Friction Slope (ft/ft)
R1	0.0	0.000	0	2	0.0561
	0.5	2.995	1.8	5	
	1.0	12.528	5	8	
	2.0	59.725	16	14	
	5.0	555.191	85	32	
	10.0	3251.244	320	62	
	20.0	19782.796	1240	122	
R2	0.0	0.000	0	2	0.0687
	0.5	3.314	1.8	5	
	1.0	13.864	5	8	
	2.0	66.093	16	14	
	5.0	614.384	85	32	
	10.0	3597.879	320	62	
	20.0	21891.958	1240	122	
R3	0.0	0.000	0	2	0.172
	0.5	5.243	1.8	5	
	1.0	21.936	5	8	
	2.0	104.578	16	14	
	5.0	972.133	85	32	
	10.0	5692.885	320	62	
	20.0	34639.408	1240	122	
R4	0.0	0.000	0	2	0.1352
	0.5	4.649	1.8	5	
	1.0	19.448	5	8	
	2.0	92.718	16	14	
	5.0	861.886	85	32	
	10.0	5047.270	320	62	
	20.0	30711.044	1240	122	

NEK

01502F
 Pinyon Mesa (Developed)
 Garfield County, Colorado

Hydrograph Peak/Peak Time Table

Sub-Area Peak Flow and Peak Time (hr) by Rainfall Return Period
 or Reach 2-Yr 25-Yr 100-Yr
 Identifier (cfs) (cfs) (cfs)
 (hr) (hr) (hr)

 SUBAREAS

DA4.1	11.04	59.67	96.90
	12.18	12.13	12.12
DA4.2	13.85	87.98	147.52
	12.24	12.17	12.17
DA1	20.97	73.30	109.66
	12.04	12.02	12.02
DA2	7.17	44.75	73.03
	12.04	12.02	12.00

REACHES

R1	20.77	133.44	226.00
	12.27	12.18	12.16
Down	20.74	133.29	225.67
	12.31	12.20	12.18
R2	7.17	44.75	73.03
	12.04	12.02	12.00
Down	7.02	44.45	72.88
	12.27	12.16	12.12
R3	13.82	93.18	161.26
	12.25	12.20	12.19
Down	13.80	93.13	161.20
	12.29	12.22	12.21
R4	5.96	31.73	52.59
	12.47	12.36	12.32
Down	5.95	31.70	52.58
	12.81	12.56	12.53
R5	11.04	59.67	96.90
	12.18	12.13	12.12
Down	5.96	31.73	52.59
	12.47	12.36	12.32
OUTLET	26.75	160.84	275.30

WinTR-55 Current Data Description

--- Identification Data ---

User: NEK Date: 5/31/2006
 Project: 01502F Units: English
 SubTitle: Pinyon Mesa (Historic) Areal Units: Acres
 State: Colorado
 County: Garfield
 Filename: I:\1981\01502\F-Lower Bench\Drainage\ExDrainage.w55

--- Sub-Area Data ---

Name	Description	Reach	Area(ac)	RCN	Tc
DA4.1		R4	145.15	77	.41
DA4.2		R3	264.63	75	0.419
DA1		Outlet	99.96	78	.179
DA2		R2	90.51	75	.124

Total area: 600.25 (ac)

--- Storm Data ---

Rainfall Depth by Rainfall Return Period

2-Yr (in)	5-Yr (in)	10-Yr (in)	25-Yr (in)	50-Yr (in)	100-Yr (in)	1-Yr (in)
1.3	1.5	1.8	2.0	2.2	2.4	1.0

Storm Data Source: User-provided custom storm data
 Rainfall Distribution Type: Type II
 Dimensionless Unit Hydrograph: <standard>

Exhibit A



Pinyon Mesa Phase II

Public Improvements Cost Estimate

Unit	Description	Unit Amount	Unit Price	Total	
1	Lump sum	Mobilization	1	\$45,000.00	\$45,000.00
2	Cubic Yard	Road over ex – recompact	12100	\$7.00	\$84,700.00
3	Cubic Yard	Cut Fill	2200	\$6.00	\$13,200.00
4	Cubic Yard	Pit run fill	4400	\$8.00	\$35,200.00
5	Ton	Class 6 road base	1900	\$30.00	\$57,000.00
6	Ton	Asphalt pavint	1000	\$105.00	\$105,000.00
7	Linear foot (LF)	Type 2 curb and gutter	4400	\$28.00	\$123,200.00
8	Square feet	Valley Pans and Fillets	1620	\$9.00	\$14,580.00
9	Each	48" FES	2	\$600.00	\$1,200.00
10	LF	ADS N-12 18"	380	\$40.00	\$15,200.00
11	LF	ADS N-12 48"	80	\$115.00	\$9,200.00
12	Each	18" FES	3	\$300.00	\$900.00
13	Cubic Yard	Outlet rip rap	60	\$60.00	\$3,600.00
14	Each	Drain Inlet w/ 2' overex	6	\$3,800.00	\$22,800.00
15	LF	8" PVC Sewer Pipe	665	\$35.00	\$23,275.00
16	LF	8" Certa_Flo sewer pipe restrain	250	\$90.00	\$22,500.00
17	Each	Sewer Service	15	\$2,600.00	\$39,000.00
18	Each	Sewer Manholes with 2' overex	6	\$4,600.00	\$27,600.00
19	Each	Sewer Manholes with Dissipator	1	\$4,900.00	\$4,900.00
20	LF	8"DIP Water Main	1900	\$70.00	\$133,000.00
21	Each	Water Main Fittings	8	\$350.00	\$2,800.00
22	Each	8" Gate Valve with Valve Box	3	\$2,100.00	\$6,300.00
23	Each	Fire Hydrant Assembly4	4	\$6,200.00	\$24,800.00
24	Each	Water Service	32	\$2,200.00	\$70,400.00
25	Lump sum	Erosion Control	1	\$12,000.00	\$12,000.00
26	LF	Shallow Utility Trenching	4400	\$8.75	\$38,500.00
27	Each	Electric Vault Installation	15	\$800.00	\$12,000.00
ITEM TOTAL					\$947,855.00
10 % Contingency					\$94,785.50
TOTAL W/ CONTINGENCY					\$1,042,640.50

Note:

This cost estimate is an engineer's opinion of probable cost and is not a quotation or bid. As with any estimate, actual costs may vary due to unforeseen circumstances and market conditions.





Chad J. Lee, Esq.
Office Ph: (970) 945-6546
Facsimile (970) 945-8902
clee@balcombgreen.com

July 15, 2016

VIA HAND DELIVERY TO:

David Pesnichak, Senior Planner
Garfield County Community Development Department
108 8th Street, Suite 401
Glenwood Springs, CO 81601

Re: ***Pinyon Mesa Subdivision Filing 2; Final Plat Application***

Dear David:

Below is supplementary information in response to your completeness review letter dated July 7, 2016. Please let me know if you need any additional materials.

- 1. Resolution 2007-04 contains Conditions of Approval 2-19 that need to be addressed as a part of the application. Please provide a response to each of these conditions along with any requested or supporting documentation.**

Response: This application is for Phase 2 of the subdivision, which includes the remaining 32 lots within Pinyon Mesa. Currently, PMGC2, LLC is the owner of all of the real property known as Pinyon Mesa, Filing 2. The development was preliminarily approved via Resolution 2007-04, which contained several conditions of approval. Applicant will comply with all conditions of approval. Specifically, responses to conditions 2-19 are below.

Resolution 2007-04 Conditions of Approval 2-19

- 2. All internal roads shall be designed to have to have a road surface of at least two 12-foot driving lanes with curb and gutter throughout the subdivision with a minimum right of way of 50 feet. Such design of the internal road system shall be consistent with the design proposed to the BOCC in the Preliminary Plan.*

Mailing Address:
P.O. Drawer 790
Glenwood Springs, CO 81602
www.balcombgreen.com

Glenwood Springs Office:
818 Colorado Avenue
Glenwood Springs, CO
(970) 945-6546

Aspen Office:
0133 Prospector Road, Ste. 4102E
Aspen, CO 81611
(970) 920-5467

Pinyon Mesa Drive and Paintbrush Way are designed with a 22-foot asphalt surface between curb and gutters for a total driving surface of 24-feet curb to curb. The right of way is 50 feet wide.

- 3. The length of the cul-de-sac represented as Pinyon Mesa Drive shall be allowed to be designed, as shown, to 900 linear feet and the bulb at the end of the cul-de-sac may remain as designed with a landscaped island in the middle.*

Applicant agrees to this condition.

- 4. The Applicant shall furnish a design and specifications for the secondary emergency point at the end of Paintbrush Way that indicates the ability to handle large / emergency vehicles and methods of break-away gates or other appropriate mechanism to deter use unless for emergency. This shall be prepared and provided prior to final plat.*

The emergency access road, Paintbrush Way, which is the subject of this condition, is platted and designed as part of Phase 2. Refer to the Final Plat and Construction Drawings include in this application.

- 5. Applicant shall obtain a driveway access permit for both the main entrance into the project and for the secondary emergency access point onto CR 114. These shall be obtained prior to final plat.*

An existing access and gate for the Spring Valley Sanitation District lift station access is located at the same spot as the Emergency Access Road, Paintbrush Way. This application constitutes proper notice for the driveway access permit application.

- 6. The Applicant shall install a stop sign at each entrance to CR 114. The signs, posts and location shall be as required by the MUTCD (Manual on Uniform Traffic Control Devices). An intersection sign shall be placed on both sides of the main entrance to the subdivision alerting uphill and downhill traffic to the entrance. The signs, posts and installation shall be as required in the MUTCD (Manual on Uniform Traffic Control Devices).*

These signs were installed as part of the Filing 1 construction.

- 7. Pursuant to the suggestions by the Road and Bridge Department in Exhibit M, the Applicant may either 1) construct a right-hand turn lane on the uphill lane to the main entrance to the subdivision and be reimbursed by the total amount of Traffic Impact Fees required by the*

Development (approximately \$150,000.00) or 2) choose not to construct the improvement and only pay the Traffic Impact Fee.

The right turn lane was designed and constructed with Filing 1.

8. *The Applicant shall pay the appropriately calculated Traffic Impact Fee for Study Area 10 which results in a fee of approximately \$149,292.00. Only half of this fee (approximately \$74,646.00) is required to be paid at Final Plat with the remaining half to be amortized by way of individual building permits as the project develops over time.*

Phase 2 is responsible for 40% (32/80) of the total fee, which amounts to \$59,716.80. Only half of this fee (\$29,858.40) is due at the time of Final Plat, with the remaining half to be amortized by way of individual building permits as the project develops over time. Applicant is prepared to tender the amount due (\$29,858.40) at the time of approval of the Final Plat in accordance with the Garfield County Land Use and Development Code.

9. *The Applicant shall cause the conveyance of the School Parcel by deed to the RE-1 School District prior to Final Plat or pay the appropriately calculated School Land Dedication Fee pursuant to the Subdivision Regulations.*

The School Parcel was conveyed to the School District by that certain deed recorded at Reception No. 723310 in accordance with Section 30-28-133(4). Therefore, this condition has been satisfied (See also, Pinyon Mesa Filing 1 SIA, recorded as Reception No. 734760, Paragraph 10).

10. *All development of this property shall follow the recommendations of the Colorado State Forest Service as stated in their letter dated August 28, 2006. (attached as Exhibit N to the Staff Report) which shall be incorporated into the CCRs as a requirement of the BOCC particularly as they relate to lots 17-20, 36-48, 66-72 and lots 59-65.*

The recommendations have been incorporated into the CCRs.

11. *The Applicant shall pay in full the fire impact fee of \$437 per dwelling unit to Carbondale Fire Protection District at the time of Final Plat. (This fee shall be \$34,960.00).*

The attached application is for Phase 2 of Pinyon Mesa, comprised of 32 lots. This Phase requires payment of a proportionate amount of the fire impact fees (\$437 x 32 UNITS) of \$13,984.00. Applicant will pay this amount upon approval, or as otherwise required by the County in accordance with the Garfield County Land Use and Development Code.

12. *The Applicant shall incorporate the recommendations contained in the "Wildlife Analysis / Impact and Mitigation Report" prepared by Rocky Mountain Ecological Services, Inc. contained in the Application and shall be included as a component in the CCRs.*

The recommendations have been incorporated into the CCRs.

13. *Prior to Final Plat submittal, the Applicant shall meet with the DOW in order to prepare an Elk Management Plan due to the amount of critical wintering habitat being eliminated with development.*

This was completed as part of Filing 1.

14. *The Applicant shall cause the open space tracts to be deeded to the Homeowners Association as part of the Final Plat.*

This will be accomplished by the language on Page 1 of the Final Plat.

15. *The Applicant shall provide a security for revegetation in the amount to be determined by the County Vegetation Manager (based on disturbed acreage) for all areas to be disturbed in connection with the final plat and the obligations of said security which security shall be incorporated in to Subdivision Improvements Agreement. The security shall be held by Garfield County until vegetation has been successfully re-established according to the Reclamation Standards in the Garfield County Vegetation Management Plan.*

The disturbed area is estimated to be 5 acres. The Applicant proposed to provide a Letter of Credit in the amount of \$2,500.00 per acre for revegetation or \$12,500.00.

16. *The Applicant shall provide a Soil Management Plan that includes 1) provisions for salvaging on-site topsoil, 2) a timetable for eliminating topsoil and or/ aggregate piles, and 3) a plan that provides for soil cover if any disturbances or stockpiles will sit exposed for a period of 90 days or more. The Applicant shall prepare this plan to be submitted with the final plat documents so that the County can review prior to final plat approval.*

A Soil Management Plan is included within the Construction Plans included in this application. The topsoil and aggregate piles will be eliminated during the 2017 construction season. Plan notes and specifications require temporary mulching is required for all disturbances and stockpiles exposed for > 90 days.

17. The Applicant shall follow all of the recommendations provided in the geotechnical analysis prepared by HP Geotech (reports in the Application and Exhibit S to the Staff Report) as well as follow the recommendations provided by the Colorado Geologic Survey in their letter dated August 30, 2006 also attached as Exhibit J to the staff report.

The attached construction plans and specifications incorporate HP and CGS comments.

18. All easements of record shall be shown on the Final Plat.

All existing and proposed easements are shown on the Final Plat.

19. The Applicant shall include the six points provided in the letter from the Bureau of Land Management dated August 22, 2006 (and attached to the Staff report as Exhibit P) in the CCRs to place residents in the PUD on notice of these issues. The CCRs shall be provided as part of the Final Plat submittal.

The recommendations have been incorporated into the CCRs.

20. The following plat notes shall be placed on the final plat.

All of the indicated notes appear on Page 1 of the Final Plat documents.

- 2. Please provide a fully completed, but not executed, SIA with exhibits and engineering costs.**

Response: Enclosed is a fully completed draft SIA with exhibits and engineering costs. Please note that Applicant still intends to discuss alternatives to the LOC requirement as permitted by the Garfield County Land Use and Development Code including, for example, an escrow account with a title company. Applicant will follow up with the County Attorney's office for further discussions on this issue.

- 3. Per review of the Plat for conformance with Section 5-402(F) the following items need to be corrected on the Plat:**

Response: Enclosed is a revised plat incorporating all of these items.

Thank you very much for your attention to this Application. As always, we look forward to working with you to process this request.

Very truly yours,
BALCOMB & GREEN, P.C.

By: 
Chad J. Lee

CJL/bc
Encls.
xc: Ronald Norman

Garfield County

Road and Bridge Department
0298 CR 333A
Rifle, CO 81650
Phone-(970)625-8601 Fax- (970)625-8627

Invoice

Driveway Permit Number: GRB16-D-13

Invoice Date: 8/2/2016

Bill To: PMGC2, LLC
6300 Ridglea Place #900
Fort Worth, TX 76116

\$75.00 per Driveway Permit.

Driveway Permit Fee:	\$75.00
Total Due:	\$75.00

Thank You!

Please Sign & Return -
Thank You -

PAID



Application for Driveway Permit

Person Obtaining Permit: PMGC 2, LLC

Application Date: 8/2/2016

County Road Number: CR 114

District: Glenwood

Permit Number: GRB16-D-13

Termination Date: 11/1/2016

Inspector: Wyatt Keesbery

hereby requests permission and authority from the Board of County Commissioners to construct a driveway approach (es) on the right-of-way off of County Road, CR 114, 1357ft West of Mile Post 1, located on the South side of road for the purpose of obtaining access to property.

Applicant submits herewith for the consideration and approval of the Board of County Commissioners, a sketch of the proposed installation showing all the necessary specification detail including:

1. Frontage of lot along road.
2. Distance from centerline of road to property line.
3. Number of driveways requested
4. Width of proposed driveways and angle of approach.
5. Distance from driveway to road intersection, if any.
6. Size and shape of area separating driveways if more than one approach.
7. Setback distance of building(s) and other structure improvements.
8. No unloading of equipment on county road, any damage caused to county road will be repaired at subdivision expense.
9. Responsible for two years from the date of completion.

General Provisions

- 1) The applicant represents all parties in interest, and affirms that the driveway approach (es) is to be constructed by him for the bona fide purpose of securing access to his property and not for the purpose of doing business or servicing vehicles on the road right of way.
- 2) The applicant shall furnish all labor and materials, perform all work, and pay all costs in connection with the construction of the driveway(s). All work shall be completed within thirty (30) days of the permit date.
- 3) The type of construction shall be as designated and/or approved by the Board of County Commissioners or their representative and all materials used shall be of satisfactory quality and subject to inspection and approval of the Board of County Commissioners or their representative.
- 4) The traveling public shall be protected during the installation with proper warning signs and signals and the Board of County Commissioners and their duly appointed agents and employee shall be held harmless against any action for personal injury or property damage sustained by any reason of the exercise of the Permit.
- 5) The Applicant shall assume responsibility for the removal or clearance of snow, ice, or sleet upon any portion of the driveway approach (es) even though deposited on the driveway(s) in the course of the County snow removal operations.
- 6) In the event it becomes necessary to remove any right-of-way fence, the posts on either side of the entrance shall be surely braced before the fence is cut to prevent any slacking of the remaining fence and all posts and wire removed shall be turned over to the District Road Supervisor of the Board of County Commissioners.

- 7) No revisions or additions shall be made to the driveway(s) or its appurtenances on the right-of-way without written permission of the Board of County Commissioners.
- 8) Provisions and specifications outlined herein shall apply on all roads under the jurisdiction of the Board of County Commissioners of Garfield County, Colorado, and the Specifications, set forth on the attached hereof and incorporated herein as conditions hereof.
- 9) Final inspection of driveway will be required upon completion and must be approved by person issuing permit or representative of person issuing permit.
 The inspection and sign off must be done prior to any CO from the Building and Planning Department being issued.

Special Conditions:

- 1. Driveway Width- 50ft
- 2. Culvert required? False Size: by
- 3. Asphalt or concrete pad required? True Size of pad: 50' Wide 10' Long 4" Thick
- 4. Gravel portion required? True Length: 100ft
- 5. Trees, brush and/or fence need to be removed for visibility? True
- 6. Distance and Direction: As Needed
- 7. Certified Traffic Control Required? False
- 8. Work zone signs required? True
- 9. Hard surface apron (No Chipseal) of no less than 10' long from edge of road by full width of drive
- 10. including taper required. MUST HAVE STOP SIGN.

In signing this application and upon receiving authorization and permission to install the driveway approach (es) described herein the Applicant signifies that he has read, understands and accepts the foregoing provisions and conditions and agrees to construct the driveway(s) in accordance with the accompanying specification plan reviewed and approved by the Board of County Commissioners.

Signed: 

Address: _____

Telephone Number: _____

Permit granted 8/2/2016, subject to the provisions, specifications and conditions stipulated herein.

For Board of County Commissioners' of Garfield County, Colorado:


 Representative of Garfield County Road and Bridge Signature

Specifications

1. A driveway approach is understood to be that portion of the county road right-of way between the pavement edge and the property line that is designed and used for the interchange of traffic between the roadway and abutting property.
2. At any intersection, a driveway shall be restricted for a sufficient distance from the intersection to preserve the normal and safe movement of traffic. (It is recommended for rural residence entrances that a minimum intersection clearance of 50 feet be provided and for rural commercial entrances a minimum of 100 feet be provided.)
3. All entrances and exits shall be so located and constructed that vehicles approaching or using them will be able to obtain adequate sight distance in both directions along the county road in order to maneuver safely and without interfering with county road traffic.
4. The Applicant shall not be permitted to erect any sign or display material, either fixed or movable, on or extending over any portion of the county road right-of-way.
5. Generally, no more than one approach shall be allowed any parcel or property the frontage of which is less than one hundred (100) feet. Additional entrances or exits for parcels having a frontage in excess of one hundred (100) feet shall be permitted only after showing of actual convenience and necessity.
6. All driveways shall be so located that the flared portion adjacent to the traveled way will not encroach upon adjoining property.
7. No commercial driveway shall have a width greater than thirty (30) feet measured at right angles to the centerline of the driveway except as increased by permissible radii. No noncommercial driveway shall have a width greater than twenty (20) feet measured at right angles to the centerline of the driveway, except as increased by permissible radii.
8. The axis of an approach to the road may be at a right angle to the centerline of the county road and of any angle between ninety (90) degrees and sixty (60) degrees but shall not be less than sixty (60) degrees. Adjustment will be made according to the type of traffic to be served and other physical conditions.
9. The construction of parking or servicing areas on the county road right-of-way is specifically prohibited. Commercial establishments for customer vehicles should provide off-the-road parking facilities.
10. The grade of entrance and exit shall slope downward and away from the road surface at the same rate as the normal shoulder slope and for a distance equal to the width of the shoulder but in no case less than twenty (20) feet from the pavement edge. Approach grades are restricted to not more than ten percent (10%).
11. All driveways and approaches shall be so constructed that they shall not interfere with the drainage system of the street or county road. The Applicant will be required to provide, at his own expense, drainage structures at entrances and exits, which will become an integral part of the existing drainage system. The Board of County Commissioners or their representative, prior to installation, must approve the dimensions and types of all drainage structures.

Note: This permit shall be made available at the site where and when work is being done. A work sketch or drawing of the proposed driveway(s) must accompany application. No permit will be issued without drawing, blueprint, or sketch.