



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: Staff Member/Dept:

Agenda Item:

Recommended Motion:

I move to authorize the Mayor to sign Utility Encroachment Agreement #22862 with David and Michelle Duffield.

Reasons for Recommendation:

- The property located at 110 Bear Lane contains a 45-foot-wide utility easement to benefit the City of Ketchum. The property owner wishes to permit the placement of concrete driveway pavers, pathway pavers, and landscaping improvements over the utility easement.
- The improvements will not impact the use or operation of the municipal water line within the utility easement.
- Encroachment Agreement 22862 allows the City to enter the subject property without notification to the property owner at any time to perform any necessary repair or maintenance to the municipal water system lying within the utility easement as may be required. All costs and expenses incident to the repair or maintenance of the municipal water utilities within the utility easement as well as all costs and expenses for repairs and replacement of any damage to the paver driveway, paver pathway, and landscaping improvements shall be borne by the property owner and not by the City.

Policy Analysis and Background (non-consent items only):

Sustainability Impact:

None OR state impact here: The Encroachment Agreement does not limit the ability of the city to reach the goals of the Ketchum Sustainability Action Plan – 2020.

Financial Impact:

| | |
|--|---|
| None OR Adequate funds exist in account: | There is no financial requirement from the city for this action at this time. The agreement obligates the property owner to install, maintain, and repair the permanent encroachments at their own expense. |
|--|---|

Attachments:

| |
|--|
| 1. Utility Encroachment Agreement #22862 |
| 2. Exhibit "A" |
| 3. |

WHEN RECORDED, PLEASE RETURN TO:

**OFFICE OF THE CITY CLERK
CITY OF KETCHUM
POST OFFICE BOX 2315
KETCHUM, IDAHO 83340**

ENCROACHMENT AGREEMENT 22862

THIS AGREEMENT, made and entered into this ____ day of June, 2023, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho 83340 and DAVID & MICHELLE DUFFIELD, (collectively referred to as "Owner"), whose address is Post Office Box 10092, Ketchum, Idaho 83340.

RECITALS

WHEREAS, Owner is the owner of real property described as 110 Bear Lane ("Subject Property"), located within the City of Ketchum, State of Idaho; and

WHEREAS, the Subject Property contains a 45-foot-wide utility easement granted per the Rocking Ranch No. 3 Subdivision (referred to as "Utility Easement"); and

WHEREAS, the Utility Easement on the Subject Property is for the operation, replacement, maintenance, and repair of City water lines with the free right of access at any and all times so that the City may construct, improve, maintain, replace, and repair the public water line within the Utility Easement;

WHEREAS, Owner wishes to permit placement of stone driveway pavers, pathway pavers, and landscaping over the Utility Easement on the Subject Property. These Improvements are shown in Exhibit "A" attached hereto and incorporated herein (collectively referred to as the "Improvements"); and,

WHEREAS, Ketchum finds that said Improvements will not impede the use of said Utility Easement at this time subject to the terms and provisions of this Agreement;

NOW, THEREFORE, in contemplation of the above stated facts and objectives, it is hereby agreed as follows:

TERMS AND CONDITIONS

1. Ketchum shall permit Owner to install and maintain concrete driveway pavers, pathway pavers, and landscaping identified in Exhibit "A" within the Utility Easement on the Subject Property until notified by Ketchum to remove the infrastructure at which time Owner shall remove infrastructure at Owner's expense.

2. Owner shall be responsible for the maintenance and repair of said Improvements. Any modification to the Improvements identified in Exhibit "A" shall be approved by the City prior to any modifications taking place.

3. The City and City's agents and employees shall be permitted to enter the Subject Property without notification to the property owner at any time to perform any necessary repair or maintenance of any portion of the municipal water system lying within the Utility Easement as may be required. All costs and expenses incident to the repair or maintenance of the municipal water utilities within the Utility Easement as well as all costs and expenses for repairs and replacement of any damage to the Improvements shall be borne by the Owner and not by the City.

4. In consideration of Ketchum allowing Owner to maintain the Improvements in the Utility Easement, Owner agrees to indemnify and hold harmless Ketchum from and against any and all claims of liability for any injury or damage to any person or property arising from the Improvements constructed, installed and maintained in the public utility easements. Owner shall further indemnify and hold Ketchum harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Owner's part to be performed under this Agreement, or arising from any negligence of Owner or Owner's agents, contractors or employees and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such action or proceeding brought thereon. In the event any action or proceeding is brought against Ketchum by reason of such claim, Owner, upon notice from Ketchum, shall defend Ketchum at Owner's expense by counsel satisfactory to Ketchum. Owner, as a material part of the consideration to Ketchum, hereby assumes all risk of damages to property or injury to persons in, upon or about the Improvements constructed, installed and maintained in the public right-of-way arising from the construction, installation and maintenance of said Improvements and Owner hereby waives all claims in respect thereof against Ketchum.

5. Ketchum shall not be liable for injury to Owner's business or loss of income therefrom or for damage which may be sustained by the person, goods, wares, merchandise or property of Owner, its tenants, employees, invitees, customers, agents or contractors or any other person in or about the Subject Property caused by or resulting from the Improvements constructed, installed, removed or maintained in the public utility easement.

6. Owner understands and agrees that by maintaining the Improvements in the public utility easement pursuant to this Agreement, Owner obtains no claim or interest in said public utility easement which is adverse to that of Ketchum and that Owner obtains no exclusive right to said public utility easement nor any other right to use the public right-of-way not specifically described herein.

7. In the event either party hereto retains an attorney to enforce any of the rights, duties and obligations arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorney's fees at the trial and appellate levels and, whether or not litigation is actually instituted.

8. This Agreement shall be governed by, construed, and enforced in accordance with the laws and decisions of the State of Idaho. Venue shall be in the District Court of the fifth Judicial District of the State of Idaho.

9. This Agreement sets forth the entire understanding of the parties hereto and shall not be changed or terminated orally. It is understood and agreed by the parties hereto that there are no verbal promises or implied promises, agreements, stipulations or other representations of any kind or character pertaining to the Improvements maintained in the public right-of-way other than as set forth in this Agreement.

10. No presumption shall exist in favor of or against any party to this Agreement as the result of the drafting and preparation of this document.

11. This Agreement shall be recorded with the Blaine County Recorder by Ketchum.

12. The parties fully understand all of the provisions of this Agreement, and believe them to be fair, just, adequate, and reasonable, and accordingly accept the provisions of this Agreement freely and voluntarily.

OWNER:

CITY OF KETCHUM:

By: _____
David Duffield

By: _____
Neil Bradshaw
Its: Mayor

By: _____
Michelle Duffield

STATE OF _____,)
County of _____,) ss.

On this ____ day of _____, 2023, before me, the undersigned Notary Public in and for said State, personally appeared DAVID DUFFIELD, known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for _____
Residing at _____
Commission expires _____

STATE OF _____,)
County of _____,) ss.

On this ____ day of _____, 2023, before me, the undersigned Notary Public in and for said State, personally appeared MICHELLE DUFFIELD, known to me to be the person who executed the foregoing instrument and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for _____
Residing at _____
Commission expires _____

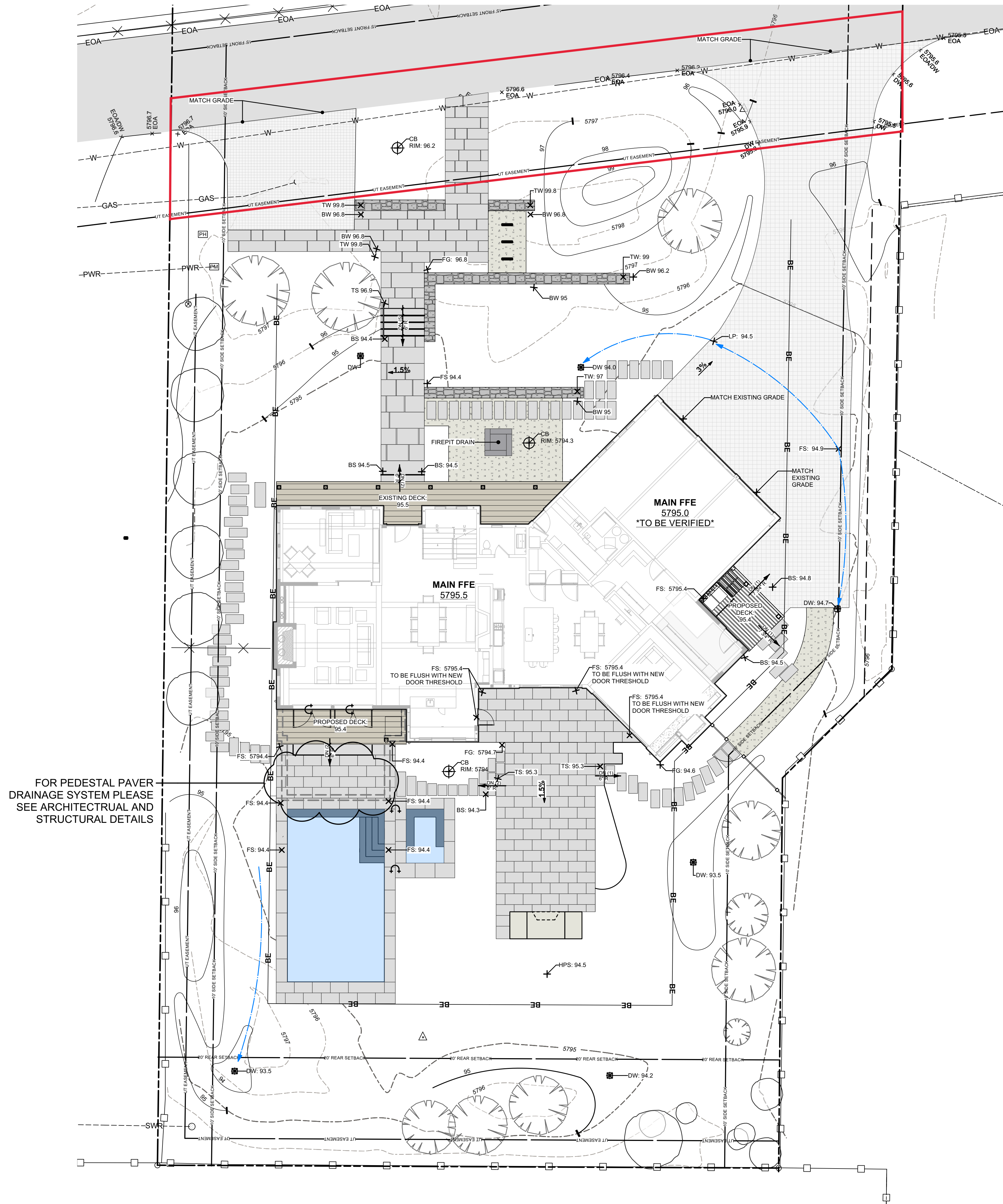
STATE OF IDAHO)
) ss.
County of Blaine)

On this ___ day of _____, 2023, before me, the undersigned Notary Public in and for said State, personally appeared NEIL BRADSHAW, known or identified to me to be the Mayor of the CITY OF KETCHUM, IDAHO, and the person who executed the foregoing instrument on behalf of said municipal corporation and acknowledged to me that said municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

Notary Public for _____
Residing at _____
Commission expires _____

EXHIBIT "A"



FOR PEDESTAL PAVER DRAINAGE SYSTEM PLEASE SEE ARCHITECTURAL AND STRUCTURAL DETAILS

| SHEET LEGEND | |
|--------------|------------------------------|
| SYMBOL | DESCRIPTION |
| --- | Property Line |
| BE | Building Envelope |
| EOA | Edge of Asphalt |
| --- | 60' SV Access Easement |
| --- | 10' Side Setback |
| --- | 20' Rear Setback |
| --- | Utility Easement |
| --- | Existing Contours |
| XXXX | Proposed Contours |
| --- | Existing Utility |
| --- | Surface Material - Gravel |
| --- | Hardscape - Cut Stone Pavers |
| --- | Hardscape - Cut Stone Steps |
| --- | Hardscape - Deck |
| --- | Masonry Wall |

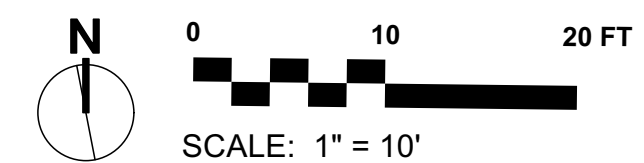
| GRADING + DRAINAGE LEGEND | |
|---------------------------|----------------------------|
| SYMBOL | DESCRIPTION |
| ⊕ | 12" Catch Basin: # |
| ⊕ | 12" Drywell: # |
| ⊕ | 24" Drywell (Cast Iron): # |
| --- | 4" Solid SDR-35 Drain Pipe |
| --- | 4" Perforated Drain Pipe |
| X.X% | % Pitch |
| → | Drainage Direction |
| FLUSH | Flush Grade Condition |
| FFE | Finished Floor Elevation |
| +10.50 | Spot Elevation |
| FG | Finished Grade |
| FS | Finished Surface |
| TS | Top of Step |
| BS | Bottom of Step |
| TW | Top of Wall |
| BW | Bottom of Wall |
| TM | Top of Metal |
| LP | Low Point |
| HP | High Point |

PERMIT SET
DUFFIELD RESIDENCE
110 BEAR LANE KETCHUM, ID 83340

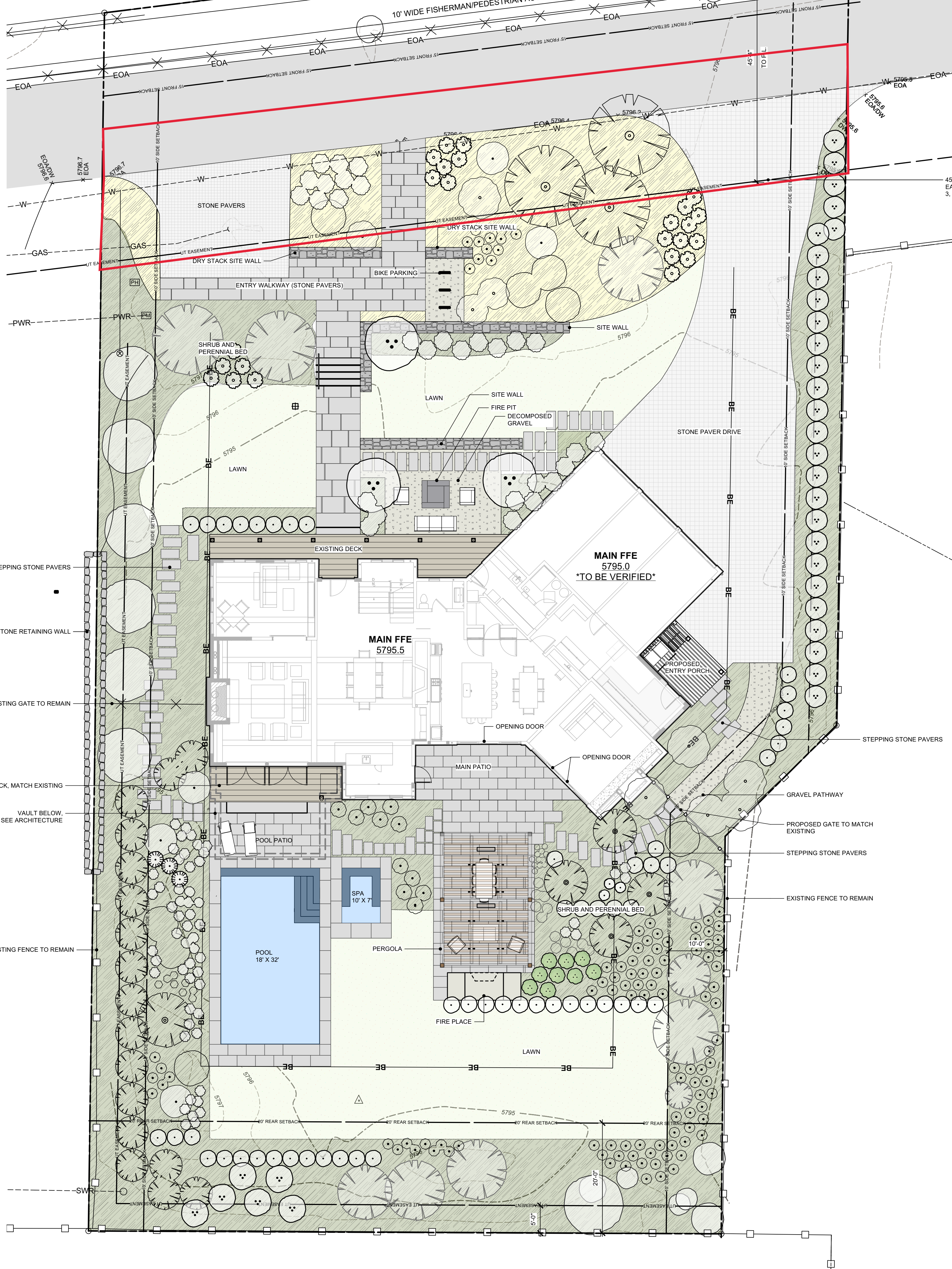
FILENAME: DUFFIELD_City
Comment
PROJECT MANAGER: Revisions.vyx
DRAWN BY: XX
ISSUE DATE: 5/3/2023
PLOT DATE: 5/4/23 10:34:55 AM

GRADING + DRAINAGE

SHEET NO.



L4.0



| SHEET LEGEND | |
|-------------------------------|-------------------------------|
| SYMBOL | DESCRIPTION |
| --- | Property Line |
| BE | Building Envelope |
| EOA | Edge of Asphalt |
| 60' SV ACCESS EASEMENT | 60' SV Access Easement |
| 20' REAR SETBACK | 20' Rear Setback |
| 10' SIDE SETBACK | 10' Side Setback |
| UT EASEMENT | Utility Easement |
| X X | Construction Fence |
| -(XXXX) | Existing Contours |
| XXXX | Proposed Contours |
| -W- | Existing Utility |
| -GAS- | Existing Utility |
| -SWR- | Existing Utility |
| -PWR- | Existing Utility |
| (Circle with lines) | Existing Vegetation |
| (Stippled pattern) | Surface Material - Gravel |
| (Rectangular pattern) | Hardscape - Cut Stone Pavers |
| (Horizontal line pattern) | Hardscape - Stone Paver Drive |
| (Vertical line pattern) | Hardscape - Cut Stone Steps |
| (Diagonal line pattern) | Hardscape - Deck |
| (Brick pattern) | Masonry Wall |
| (Yellow hatched pattern) | Landscape - Native |
| (Light green hatched pattern) | Landscape - Lawn |
| (Dark green hatched pattern) | Landscape - Perennials |
| (Small circle) | Landscape - Shrubs |
| (Large circle with lines) | Landscape - Deciduous Trees |
| (Large circle with dots) | Landscape - Evergreen Trees |

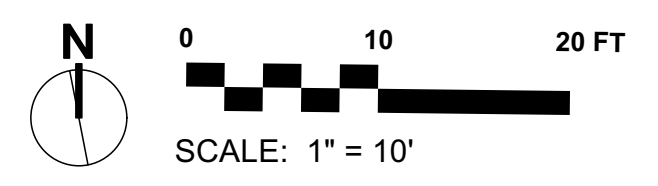
| CITY OF KETCHUM SETBACK REQUIREMENTS | | | | | | | | | | | | | | |
|--------------------------------------|------------------|---------------------------|------------------------------------|-------------|-----------------|--------------------------------|--------------------|------------|---|--------------|--|----------------------|--------------------------------------|---|
| Districts | Minimum Lot Area | Minimum Lot Area With PUD | Minimum Lot Area, Townhouse Sublot | Lot Width | Building Height | Maximum Building Coverage/ FAR | Minimum Open Space | Front/Back | Side Setback | Rear Setback | Lot Lines Created By Townhouse Sublots | Setbacks From Hwy 75 | Any Set back Along Warm Springs Road | Setbacks Along 200' Former Railroad ROW |
| LR | 9,000 sf | n/a | n/a | 30' average | 35' | 35% | n/a | 15' | The greater of 1' for every 2' in building height, or 10' | 20' | n/a | 25/32' 7' | 30' | 3' |

PERMIT SET
DUFFIELD RESIDENCE
110 BEAR LANE KETCHUM, ID 83340

FILENAME: DUFFIELD_City
Comment: Revisions.vyx
PROJECT MANAGER: vvx
DRAWN BY: xx
ISSUE DATE: 5/3/2023
PLOT DATE: 5/4/23 10:34:53 AM

SITE OVERVIEW

SHEET NO.



L3.0