



## City of Ketchum

November 7, 2022

Mayor Bradshaw and City Councilors  
City of Ketchum  
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

### **Recommendation to Approve Right-of-Way Encroachment Agreement 22807 for the placement of a paver driveway in the public right-of-way adjacent to 191 N 3rd Ave.**

#### Recommendation and Summary

Staff recommends the Ketchum City Council approve the attached Right-of-Way Encroachment Agreement 22807 and adopt the following motion:

“I move to authorize the Mayor to sign Right-of-Way Encroachment Agreement 22807 between the City and Lowell Bengoechea.”

#### The reasons for the recommendation are as follows:

- The improvements will not impact the use or operation of Edelweiss Ave or First Street.
- The improvements will not impact drainage or snow removal within the public right-of-way.
- The project complies with all standards for Right-of-Way Encroachment Permit issuance specified in Ketchum Municipal Code §12.12.060.
- No snowmelt is being proposed.

#### Introduction and History

The City of Ketchum receive a building permit application on August 31, 2022, for the construction of a new single-family residence and attached accessory dwelling unit (ADU) at 191 N 3<sup>rd</sup> Ave. The project proposes to improve the right-of-way along N 3<sup>rd</sup> Ave per the City of Ketchum’s street standards. The project proposes to construct a paver driveway without snowmelt from the garage to the edge of asphalt of N 3<sup>rd</sup> Ave.

A public right-of-way is defined as improved or unimproved public property dedicated or deeded to the City for the purpose of providing vehicular, pedestrian, and public use. In Ketchum, the public rights-of-way consist of roadways, curbs, gutters, sidewalks, signage, and drainage facilities. The public rights-of-way are also used for public parking, wintertime snow storage, and conveyance of utilities, such as water, sewer, electricity, telephone, and cable.

#### Analysis

Pursuant to Ketchum Municipal Code §12.12.040.C, a Right-of-Way Encroachment Permit is required for any permanent encroachment of the public right-of-way where a permanent fixture to the ground or a building will occur. The associated Right-of-Way Encroachment Agreement is intended to help

protect the City in the event the proposed encroachments were to ever pose an issue requiring repair, relocation, or removal of the encroachment. The standards for issuance of a Right-of-Way Encroachment Permit are specified in Ketchum Municipal Code §12.12.060. The encroachments proposed for the 191 N 3<sup>rd</sup> Ave project complies with all standards.

#### Sustainability

The proposed project does not limit the city's ability to reach its sustainability goals outlined in the 2020 Ketchum Sustainability Action Plan.

#### Financial Impact

There is no financial requirement from the city for this action.

#### Attachments

ROW Encroachment Agreement 22807 and Exhibits

**WHEN RECORDED, PLEASE RETURN TO:**

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

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**RIGHT-OF-WAY ENCROACHMENT AGREEMENT 22807**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_, 2022, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho and Lowell Bengoechea, ("Owner"), whose mailing address is 1754 Locksley Way, Eagle, ID 83616 and who owns real property located at 191 N 3<sup>rd</sup> Ave, Ketchum, ID 83340 ("subject property").

*RECITALS*

WHEREAS, Owner wishes to permit placement of a paver driveway adjacent to the subject property from the property line to the edge of asphalt on N 3<sup>rd</sup> Ave. 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 public right-of-way at this time subject to the terms and provisions of this Agreement;

WHEREAS, following construction of the Improvements, the Owner will restore the right-of-way, as shown in Exhibit A, acceptable to the Streets and Facilities Director;

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 a paver driveway identified in Exhibit "A" within the public right-of-way adjacent to 191 N 3<sup>rd</sup> Ave 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 of said Improvements and shall repair said improvements within 48 hours upon notice from Ketchum that repairs are needed. Any modification to the improvements identified in Exhibit "A" shall be approved by the City prior to any modifications taking place.

3. Owner shall be responsible for restoring the street, curb and gutter and landscaping that is altered due to the construction and installation of the Improvements, to the satisfaction of the Director of Streets and Facilities.

4. In consideration of Ketchum allowing Owner to maintain the Improvements in the public right-of-way, 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 right-of-way. 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 right-of-way.

6. Owner understands and agrees that by maintaining the Improvements in the public right-of-way pursuant to this Agreement, Owner obtains no claim or interest in said public right-of-way which is adverse to that of Ketchum and that Owner obtains no exclusive right to said public right-of-way 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.

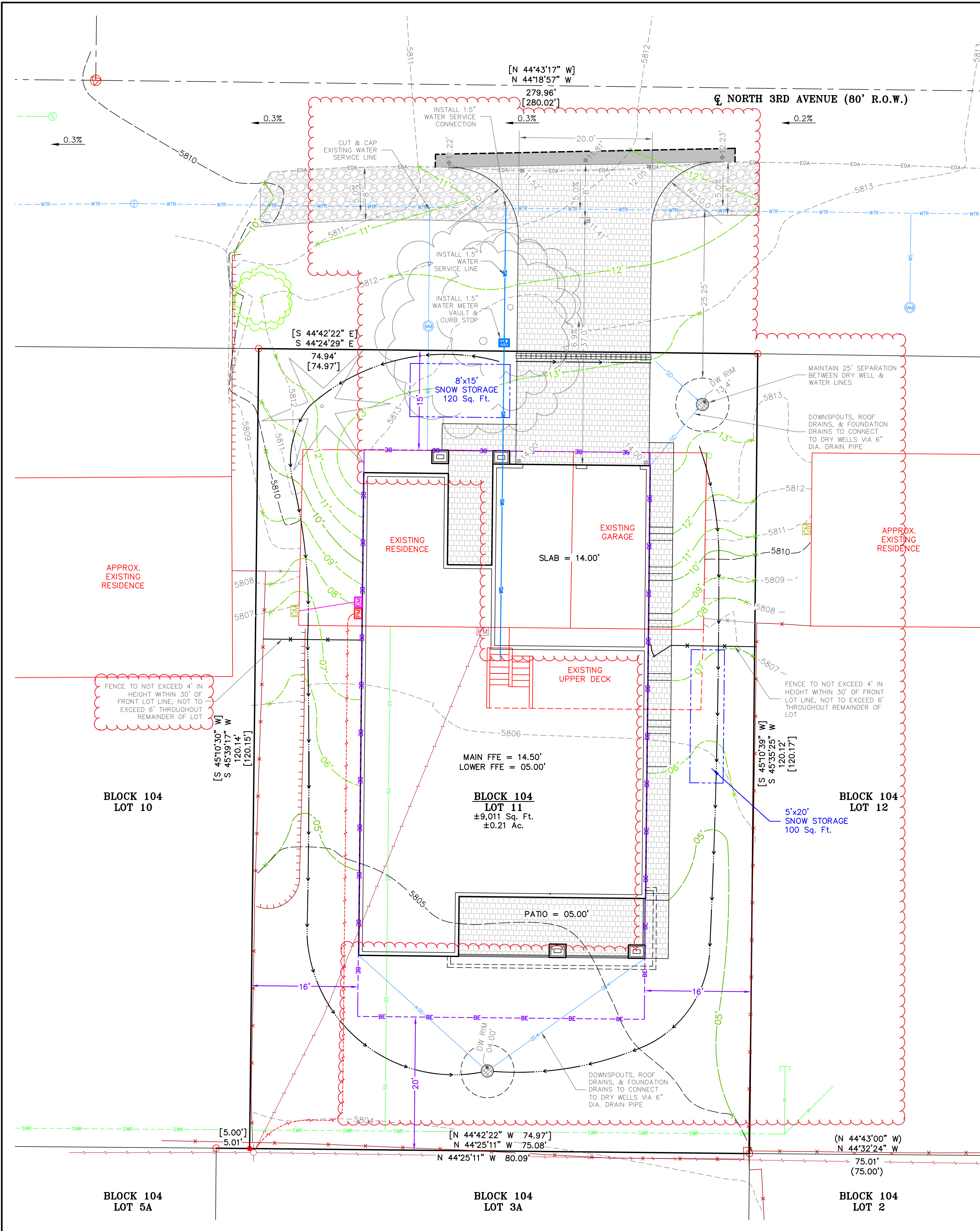
10. No presumption shall exist in favor of or against any party to this Agreement as the result of the drafting and preparation of this document.

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.



**EXHIBIT "A"**



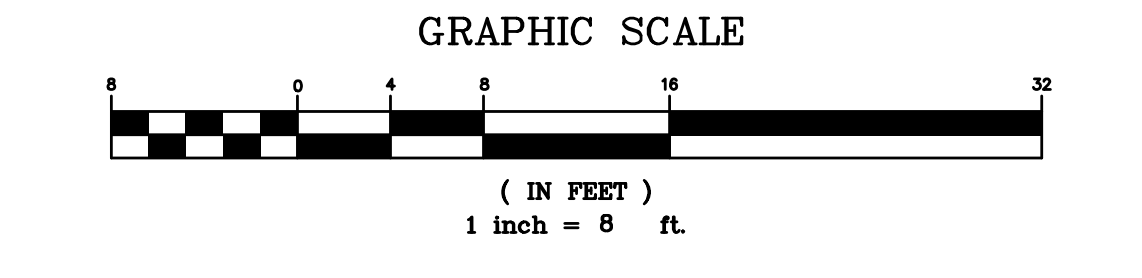
### LEGEND

- Subject Boundary
- Adjainers Boundary
- Right-of-Way Centerline
- BE --- BE --- Property Setback
- EDA --- EDA --- Existing Edge of Asphalt
- Existing Building/Structure
- Proposed Building
- Proposed Concrete Paver Driveway & Walkway
- Proposed Roadside Gravel Swale
- Proposed Asphalt Patch & Saw-Cut Line
- Existing Fence
- Existing Fence (To Be Removed)
- Proposed Fence
- Existing 1' Contour
- Existing 5' Contour
- Proposed 1' Contour
- Proposed 5' Contour
- Proposed Drainage Flowline
- Proposed 6" Dia. Storm Drain Pipe
- Proposed Snow Storage Area
- Existing Overhead Power
- Proposed Underground Power
- Proposed Underground Gas Service
- Existing Water Main
- Existing Water Service
- Proposed Water Service
- Existing Sewer Main
- Existing Sewer Service
- Found 1/2" Rebar
- Found 5/8" Rebar
- Set 1/2" rebar PLS 7048
- ⊗ Existing Water Valve
- ⊕ Existing Water Meter
- WM Proposed Water Meter
- ⊖ Existing Power Pole
- PM Proposed Power Meter
- ⊕ Existing Gas Meter
- ⊖ Proposed Gas Meter
- ⊕ Existing Sewer Cleanout
- ⊕ Existing Deciduous Tree
- ⊕ Deciduous Tree To Be Removed
- ⊕ Existing Coniferous Tree
- ⊕ Coniferous Tree To Be Removed
- DW = Proposed Landscape Drywell
- Proposed Driveway Trench Drain
- 2.3% Proposed Grade
- 2.3% Existing Grade
- ⊕00.50' Proposed Spot Elevation (00.50'=5800.50')
- DESC. Description
- 98.87 Elevation
- RIM Drywell Rim Elevation
- FFE Finish Floor Elevation
- SLAB Garage Slab Elevation
- ( ) Record Bearing and Distance per Inst. No. 111300
- [ ] Record Bearing and Distance per Inst. No. 543880

- ### NOTES
- 1) Basis of Bearings is Idaho State Plane Coordinate System, NAD83, Central Zone, at Grid in US Survey Feet. Vertical Datum is NAVD1988.
  - 2) Boundary Information is from the Replat of Blocks 76, 77 & 78, The Village of Ketchum, Inst. No. 111300; the Record of Survey of Ketchum Townsite : Block 104 : Lot 3A, Inst. No. 543880; Records of Blaine County, Idaho.
  - 3) Refer to the Plat Notes, Conditions, Covenants, and Restrictions on Original Plat.
  - 4) Utility Locations shown are based on visual surface evidence, and City Maps. Utility locations should be verified before any excavation.
  - 5) Current Zoning appears to be Limited Residential, (LR). Please refer to City of Ketchum Zoning Ordinances for more information about this Zone.
  - 6) Not all trees and vegetation are shown, some locations are approximate.

### CONSTRUCTION NOTES

- 1) Utility Locations shown are based on Digline locates and visual surface evidence. They are approximate. Contractor shall be responsible for locating existing utilities prior to commencing and during construction.
- 2) The design of the driveway and drainage improvements have only been performed within the public Right-of-Way. See the Landscape Grading Plan from N.S. Consulting for the remainder of the design.
- 3) Contractor shall assure positive drainage away from the house and driveway.
- 4) Contractor shall be responsible for dust control during construction of all items hereon. Dust control shall be continuous during construction, 24 hours per day 7 days per week. The contractor shall follow the requirements of the Storm Water Pollution Prevention Program at all times until permanent erosion control is established.
- 5) The Trench Drain shall be a 6" wide HDPE channel with a 0.75 built in channel slope (Zurn Flo-Thru Model Z886 or equivalent). Gate shall be ductile iron with a slotted pattern. All components shall be rated for H-20 loading.
- 6) All construction shall be in accordance with the most current edition of the Idaho Standards for Public Works Construction, ISPWC, and the City of Ketchum, Idaho, Codes and Standards. The contractor shall be responsible for obtaining and keeping a copy of the ISPWC and the City of Ketchum Codes and Standards on site during construction.
- 7) Per Idaho Code, 55-1613, the contractor shall retain and protect all monuments, accessories to corners, benchmarks, and points set in control surveys. All monuments, accessories to corners, benchmarks, and points set in control surveys that are lost or disturbed by construction shall be reestablished and re-monumented, at the expense of the agency or person causing their loss or disturbance under the direction of a professional land surveyor.
- 8) The contractor shall clean up the site after construction so that it is in a condition equal to or better than that which existed prior to construction.
- 9) The contractor shall be required to obtain all the necessary permits prior to construction and shall check with the City of Ketchum for permits the owner may have already obtained.
- 10) All clearing and grubbing shall conform to ISPWC Section 201 and City of Ketchum standards of excavation and backfill.
- 11) All excavation and embankment shall conform to ISPWC Section 202 and City of Ketchum standards for excavation and backfill. Excavated subgrade shall be compacted and all unsuitable Sections removed and replaced with structural fill as determined by the engineer per ISPWC Section 204. Minimum compaction of placed material shall be 95% of maximum laboratory density as determined by AASHTO T-99 or IDT T-91.
- 12) All 2" minus aggregate shall be placed in conformance with ISPWC Section 802. It shall be compacted per ISPWC Section 202 and the City of Ketchum standards. 2" minus crushed aggregate material shall conform to ISPWC Section 802 Type II and to the City of Ketchum specifications. Minimum compaction of placed material shall be 95% of maximum laboratory density as determined by AASHTO T-99 or IDT T-91.
- 13) All 3/4" minus aggregate shall be placed in conformance with ISPWC Section 802. It shall be compacted per ISPWC Section 202 and the City of Ketchum standards. 3/4" minus crushed aggregate for leveling course shall conform to ISPWC Table 802 Type I and to the City of Ketchum specifications. Minimum compaction of placed material shall be 95% of maximum laboratory density as determined by AASHTO T-99 or IDT T-91.
- 14) All asphaltic concrete pavement work shall conform to ISPWC Section(s) 805, 810, and 811 for Class II pavement and to the City of Ketchum standards. Asphalt aggregate shall be 1/2" nominal size conforming to Table 803b in ISPWC Section 803. Asphalt binder shall be pg 58-28 conforming to Table A-1 in ISPWC Section 805.
- 15) All edges of existing asphalt paving shall be saw cut a minimum of 24" to provide a clean pavement edge for matching. No wheel cutting shall be allowed. Pavement shall be cut prior to paving to prevent damage to the cut edge.
- 16) All mains and services shall comply with IDAPA 58.01.08.542.07.a and IDAPA 58.01.08.542.07.b which address the requirements for separation distances between potable water lines (including mains and service lines) with non-potable lines. In addition, water services shall be constructed with at least 25 feet horizontal separation from infiltration trenches and dry wells.
- 17) Potable/non-potable crossings shall comply with ISPWC Standard Drawing SD-407 and IDAPA section 58.01.08.542.07.
- 18) Sewer service lines shall be placed at a slope of 2%, with markers per ISPWC. Cleanouts are required at changes in alignment, grade, and minimum 150' length.
- 19) All pipe shall be bedded with (ISPWC) Type I bedding material.
- 20) Trenches shall be backfilled and compacted to a minimum of 95% of maximum density as determined by AASHTO T-99.
- 21) The contractor shall pressure test all sewer service connections in accordance with the Idaho Standards for Public Works Construction (ISPWC).
- 22) Snow Storage based on 30% of the Improved Parking and Pedestrian Circulation Areas.  
 Driveway = 340 Sq. Ft.  
 Front Walkway = 40 Sq. Ft.  
 Side Walkway = 275 Sq. Ft.  
 Total = 655 Sq. Ft.  
 30% of Total = 197 Sq. Ft.  
 Area Designated = 220 of Snow Storage
- 23) The contractor shall be responsible for providing traffic control per the current edition of the US Department of Transportation Manual of Uniform Traffic Control Devices (MUTCD).
- 24) All right-of-way improvements per sheet C1 must be completed prior to issuance of a temporary or final Certificate of Occupancy unless otherwise agreed upon in writing by the City.
- 25) Alpine Enterprises Inc. is not responsible for any deviation from these plans, unless such changes have been authorized in writing.



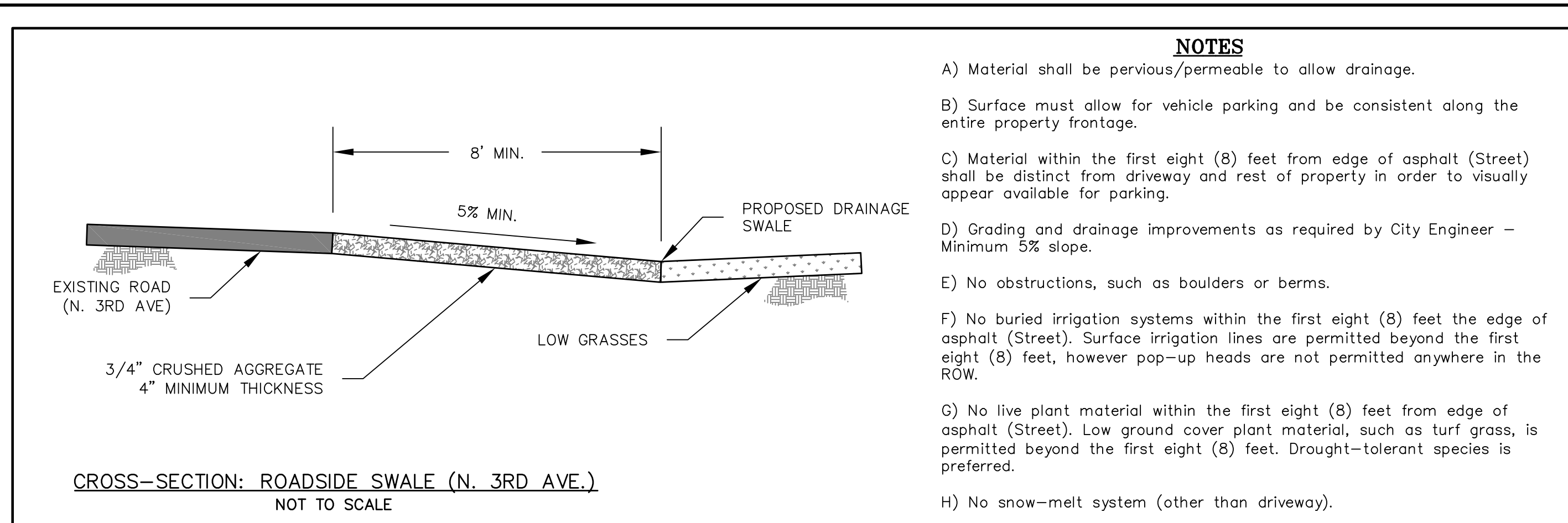
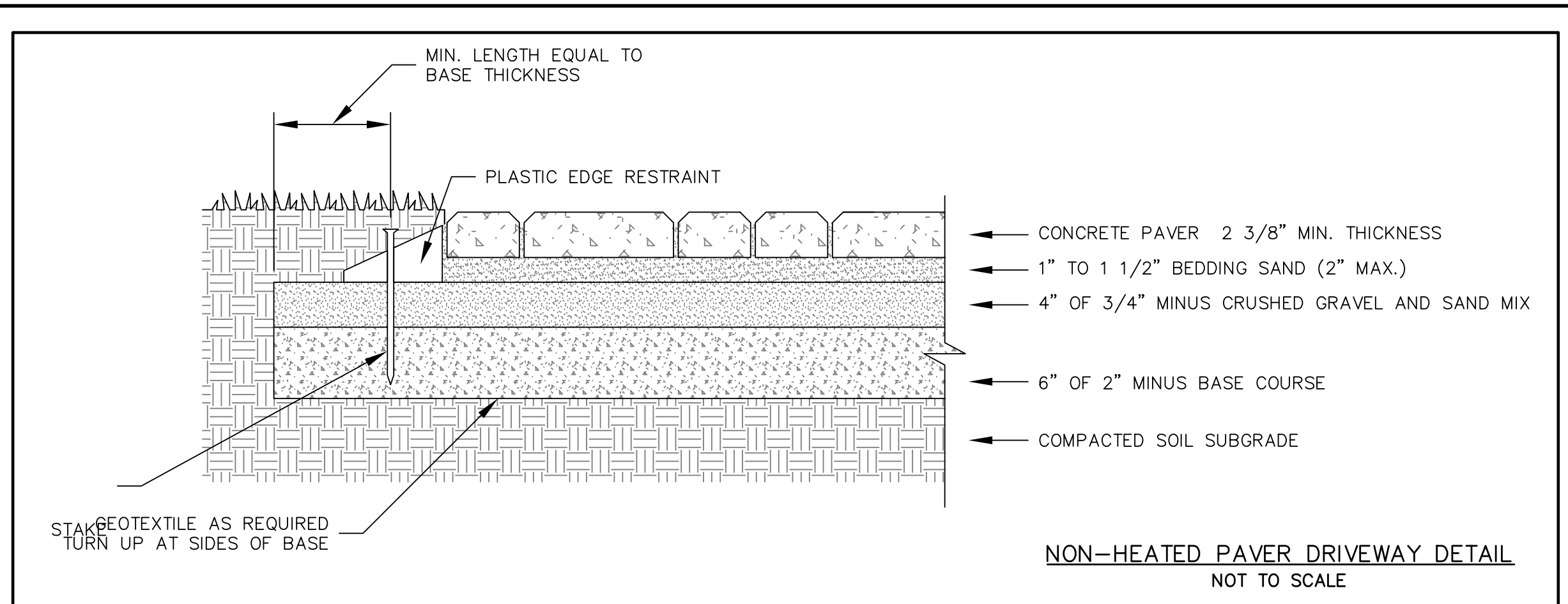
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A SITE, UTILITY, & R.O.W. ENCROACHMENT PLAN SHOWING  
 LOT 11, BLK 104, KETCHUM TOWNSITE  
 WITHIN S13, T.4N., R.17E., B.M., CITY OF KETCHUM, BLAINE COUNTY, IDAHO  
 PREPARED FOR LOWELL BENGOCHEA & DRAW ARCHITECTURE + DESIGN

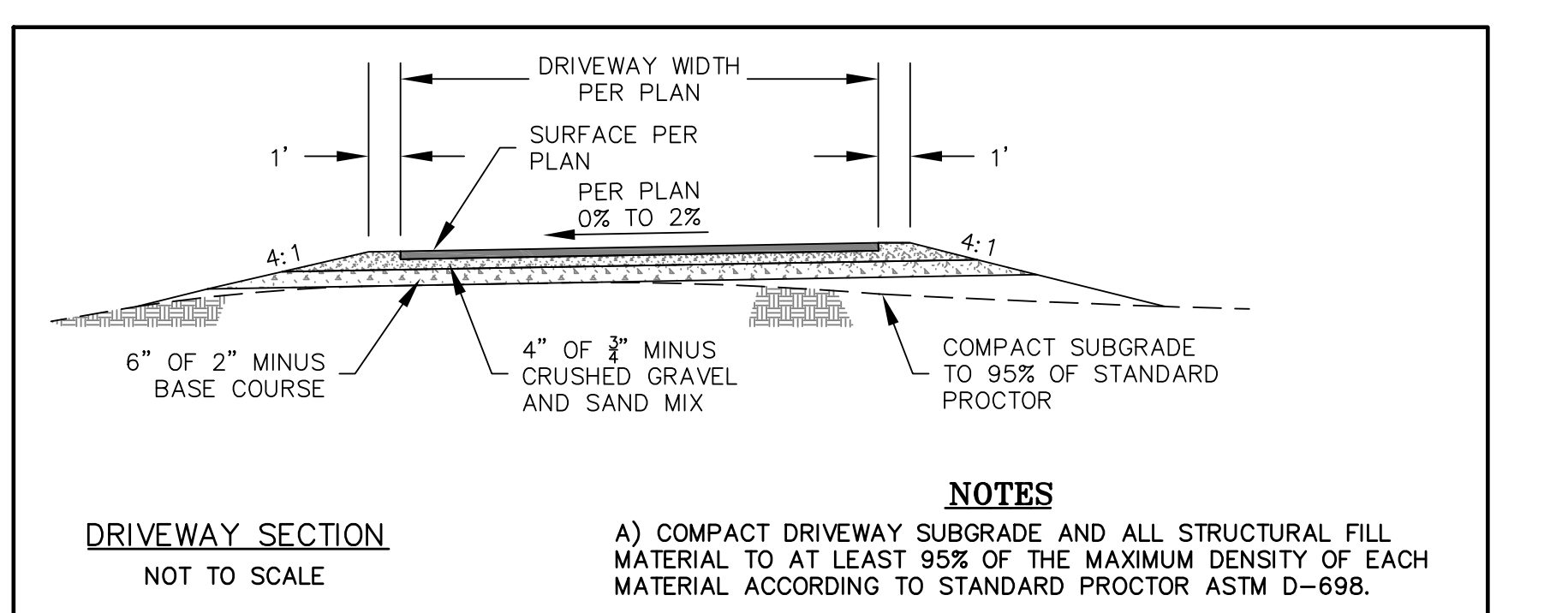
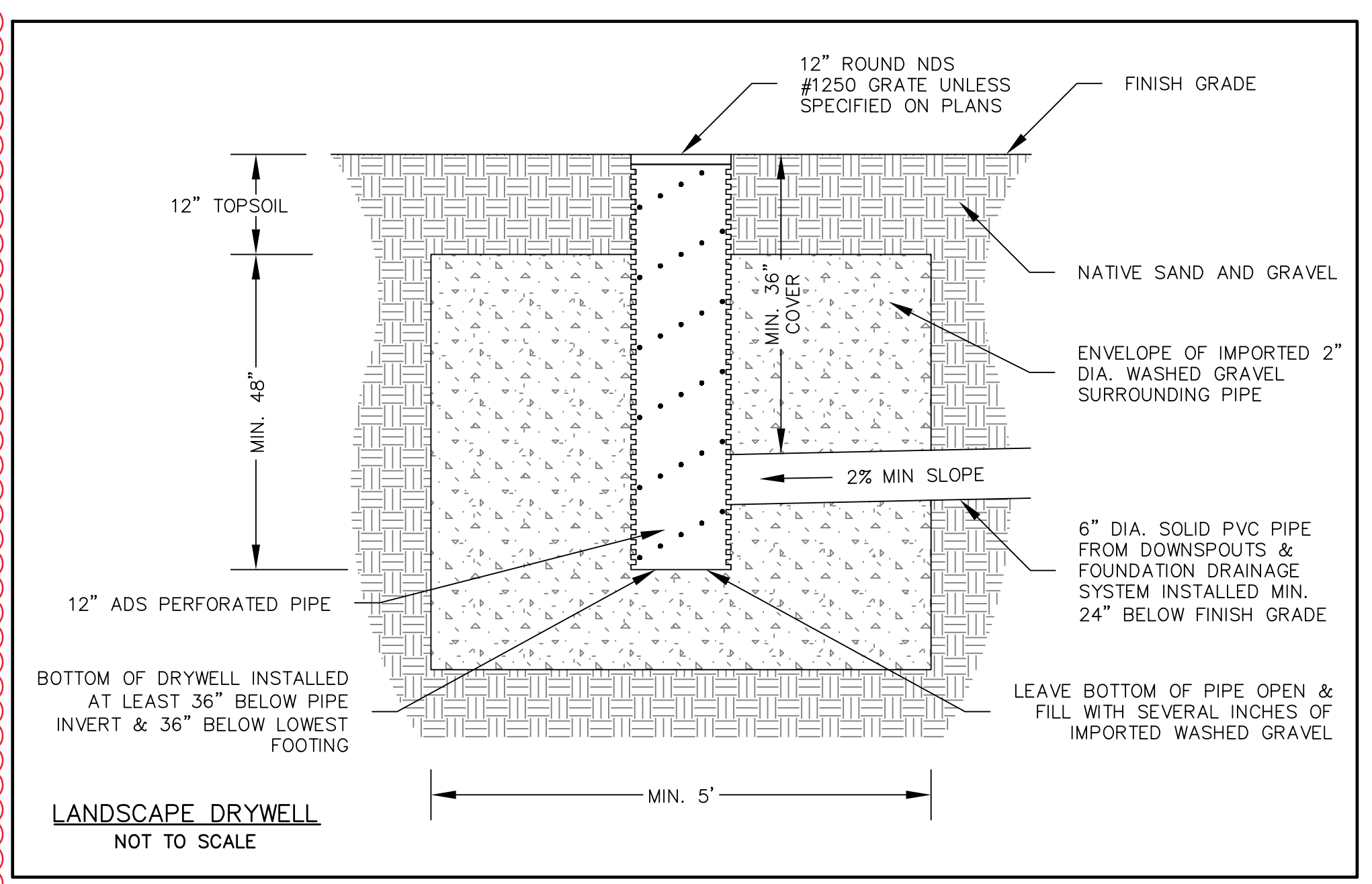
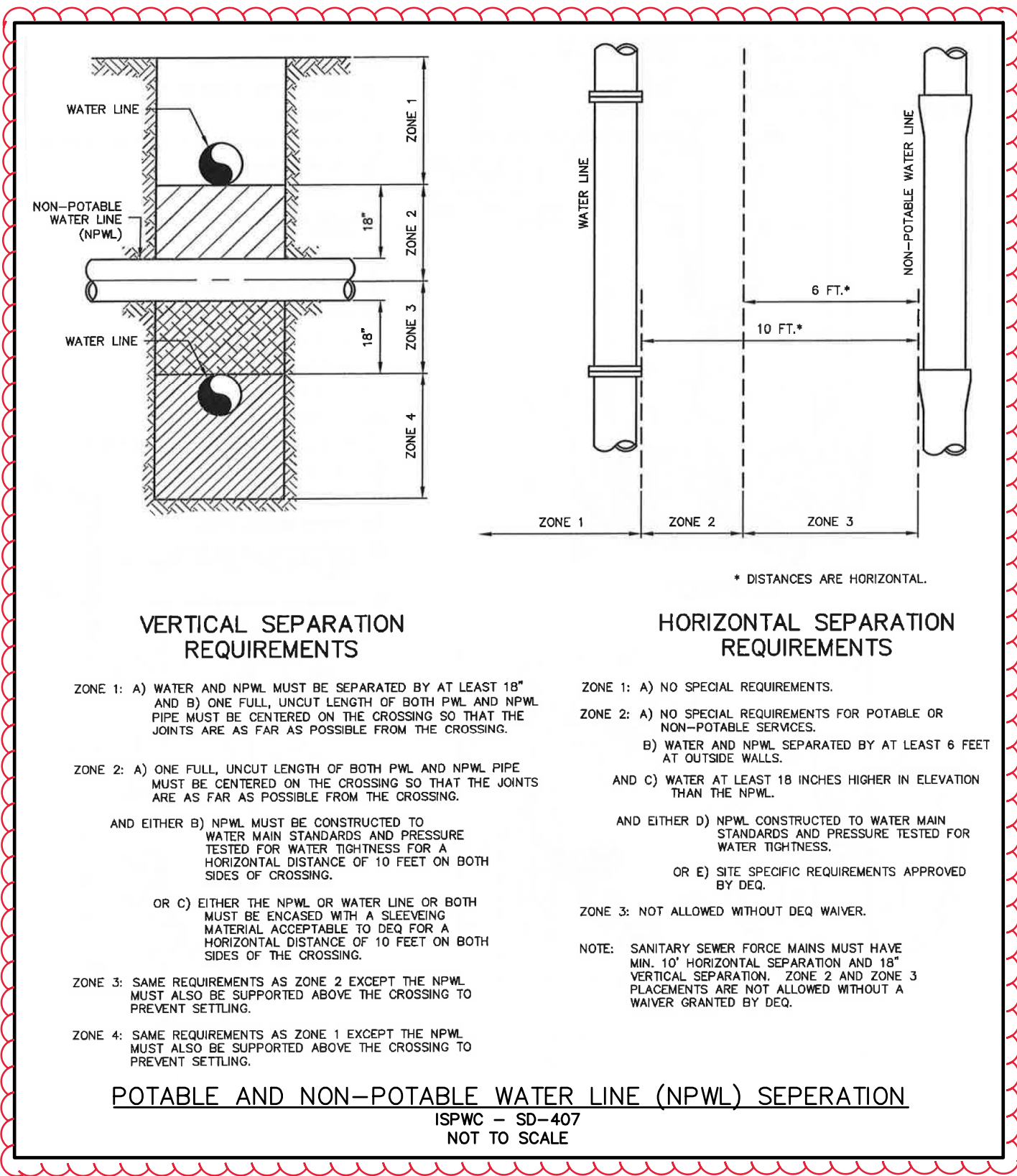
Alpine Enterprises Inc.  
 Surveying, Mapping, Civil Engineering,  
 and Natural Hazards Consulting  
 660 Bell Dr., Unit 1  
 P.O. Box 2037, Ketchum, ID 83340 USA  
 (208) 727-1998 727-1997 fax  
 email: bsmith@alpineenterprisesinc.com

REVISIONS	NO	DATE	BY
PRELIMINARY ONLY: NOT FOR CONSTRUCTION			
BUILDING REVIEW SUBMITTAL			
REVISED: PLANNING & ENGINEERING REVIEW	1	11OCT22	AHN

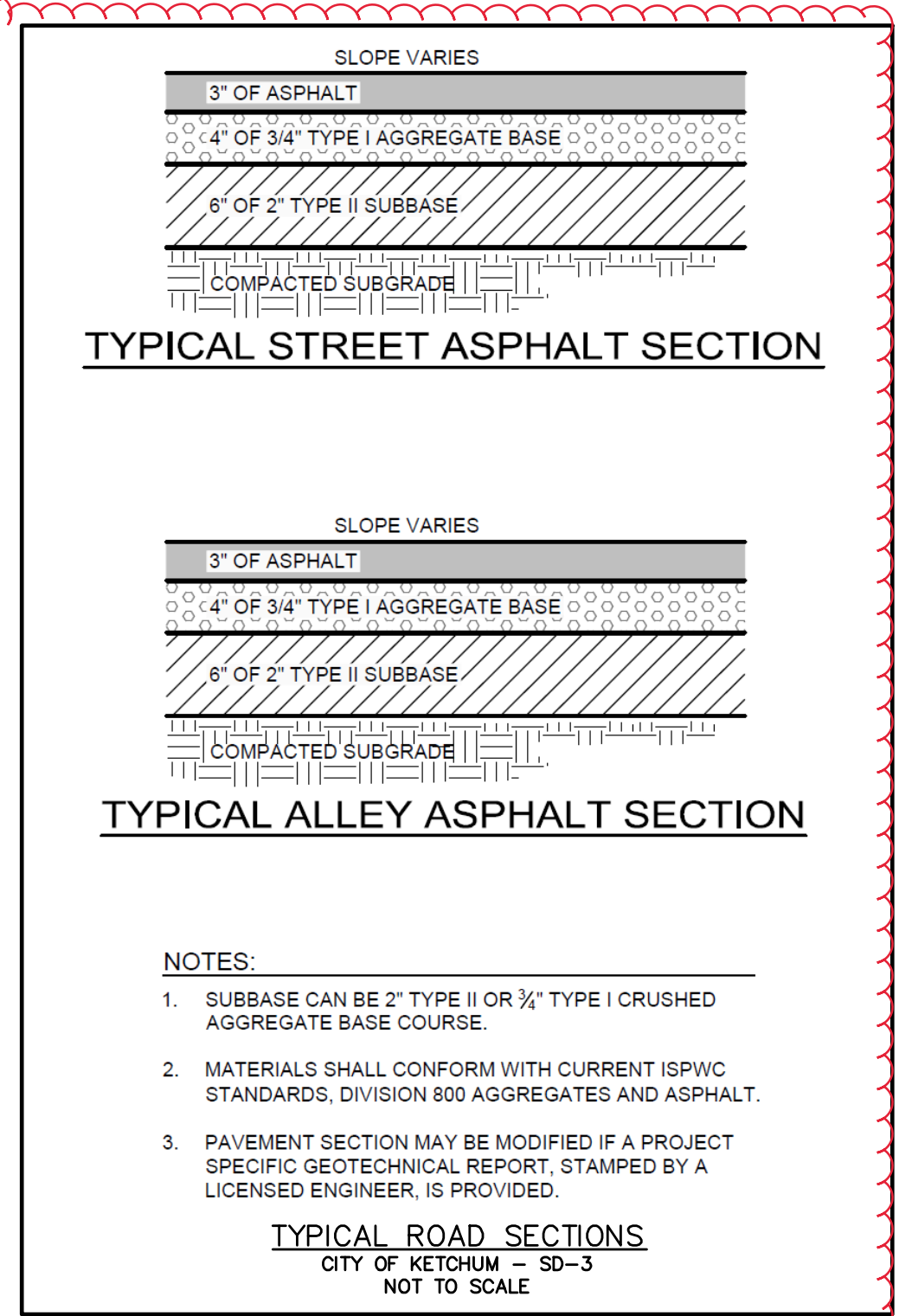
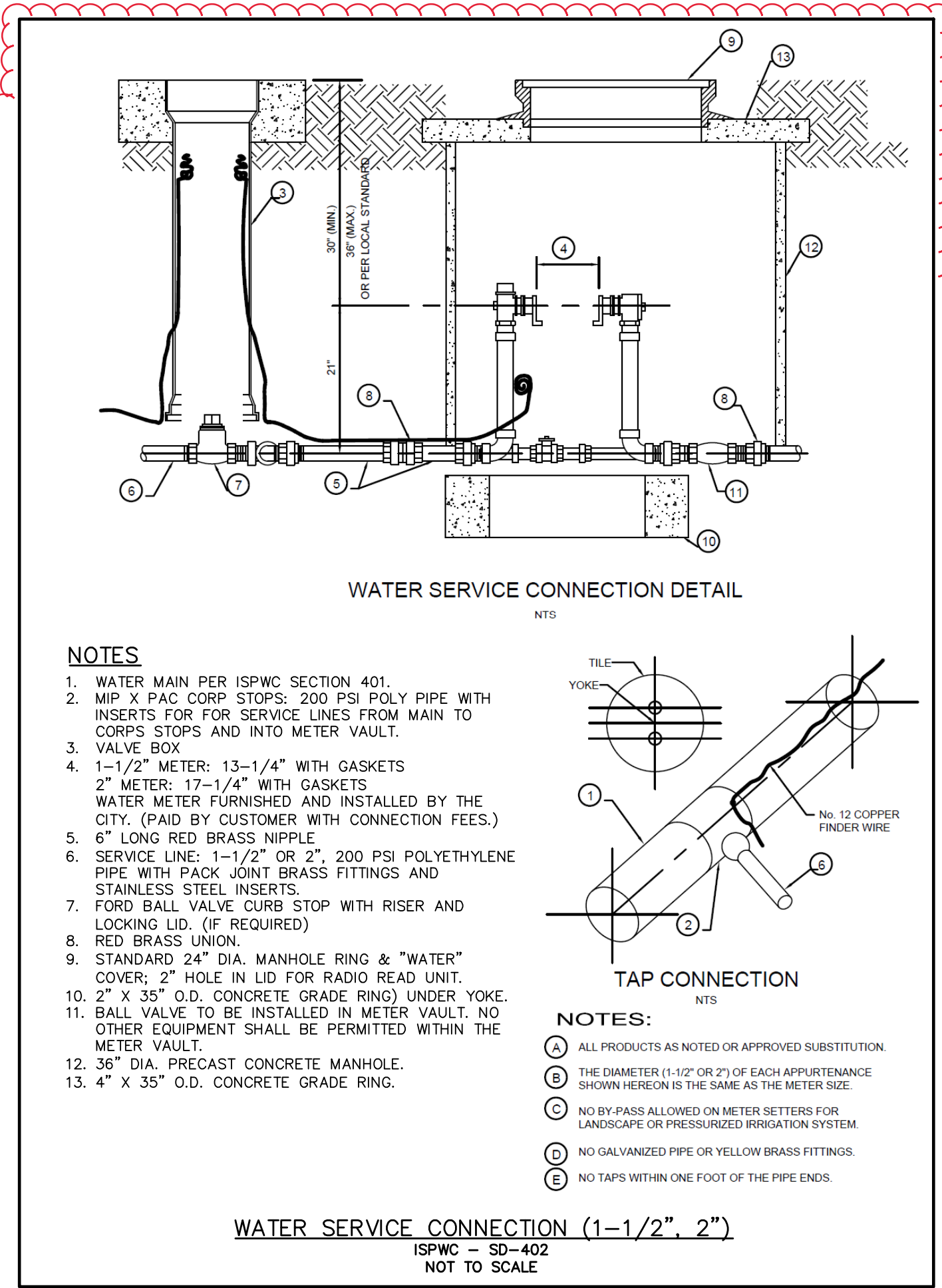
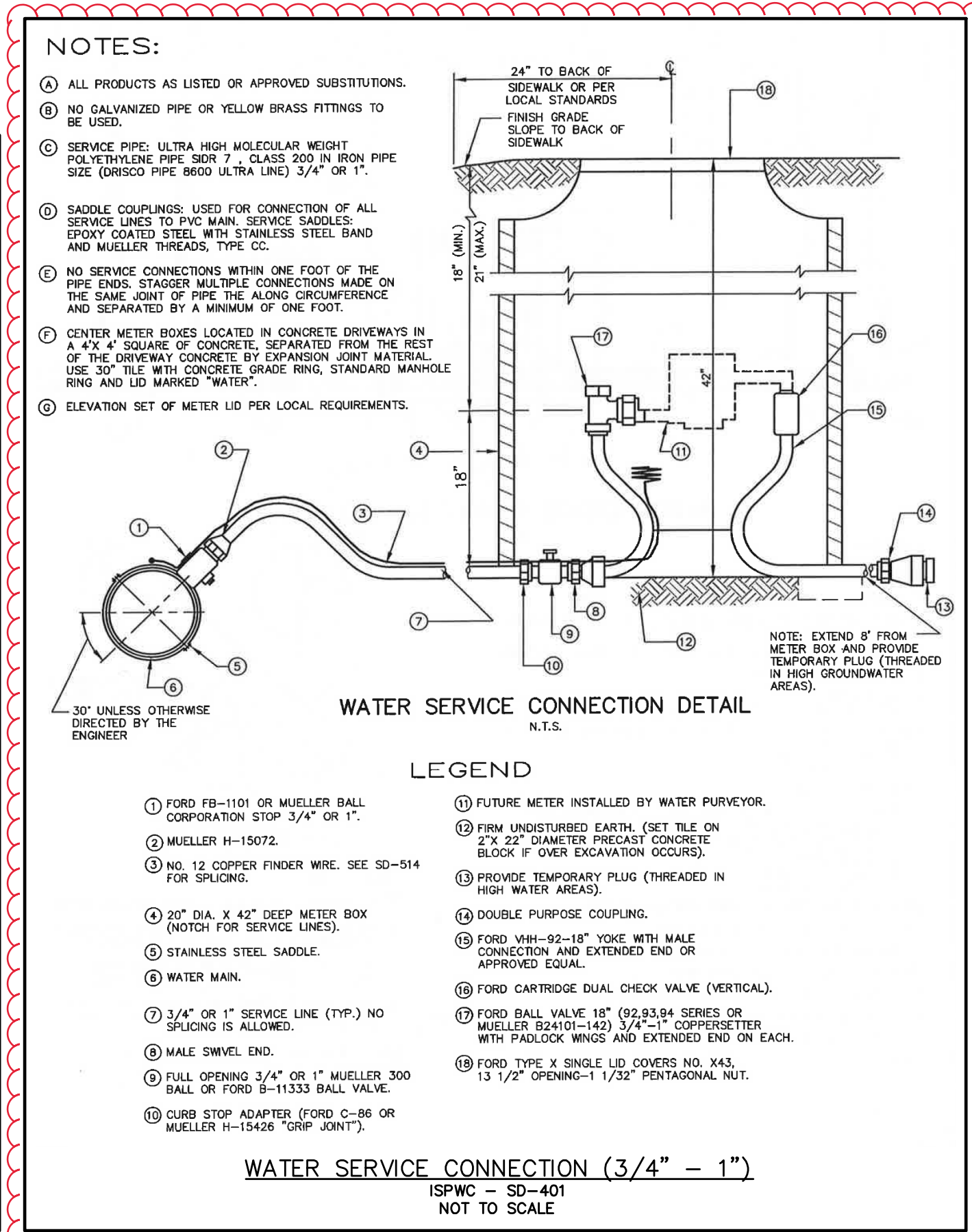
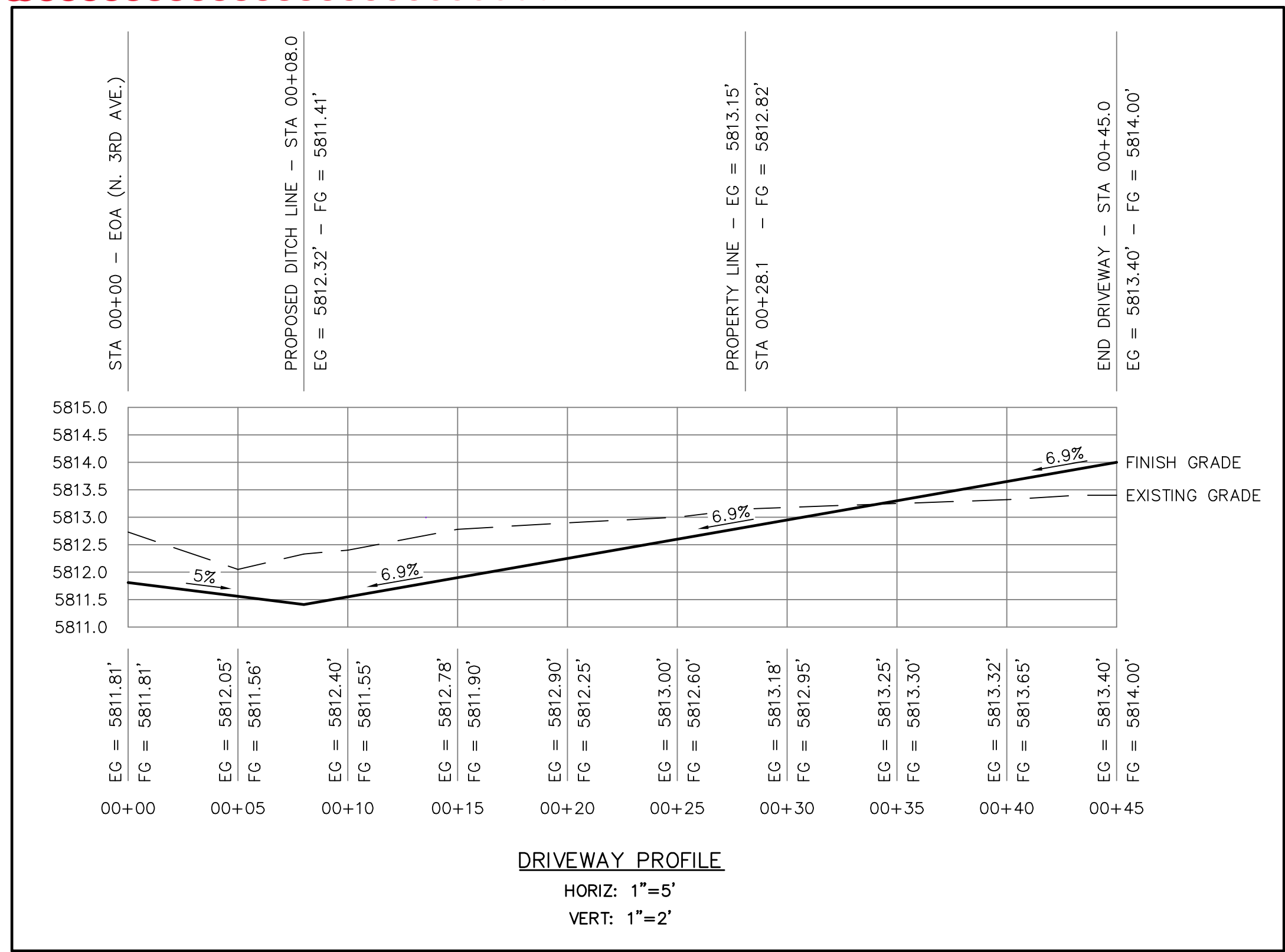
C1



- NOTES**
- A) Material shall be pervious/permeable to allow drainage.
  - B) Surface must allow for vehicle parking and be consistent along the entire property frontage.
  - C) Material within the first eight (8) feet from edge of asphalt (Street) shall be distinct from driveway and rest of property in order to visually appear available for parking.
  - D) Grading and drainage improvements as required by City Engineer - Minimum 5% slope.
  - E) No obstructions, such as boulders or berms.
  - F) No buried irrigation systems within the first eight (8) feet from the edge of asphalt (Street). Surface irrigation lines are permitted beyond the first eight (8) feet, however pop-up heads are not permitted anywhere in the ROW.
  - G) No live plant material within the first eight (8) feet from edge of asphalt (Street). Low ground cover plant material, such as turf grass, is permitted beyond the first eight (8) feet. Drought-tolerant species is preferred.
  - H) No snow-melt system (other than driveway).



- NOTES**
- A) COMPACT DRIVEWAY SUBGRADE AND ALL STRUCTURAL FILL MATERIAL TO AT LEAST 95% OF THE MAXIMUM DENSITY OF EACH MATERIAL ACCORDING TO STANDARD PROCTOR ASTM D-698.



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 Alpine Enterprises Inc.  
 Surveying, Mapping, Civil Engineering,  
 and Natural Hazards Consulting  
 Dr. J. R. Ketchum, P.E., B.S., ID# 83340 USA  
 P.O. Box 2037, Ketchum, ID 83340  
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 email: barmth@alpineenterprisesinc.com