



## City of Ketchum

P.O. Box 2315 | 480 East Ave. N. | Ketchum, ID 83340

October 14, 2014

Mayor Jonas and City Councilors  
City of Ketchum  
Ketchum, Idaho

Mayor Jonas and City Councilors:

### Consideration re: Freis Right-of-Way Encroachment Permit Application & Agreement

**FILE NUMBER:** 14-098

**OWNER:** Jay Freis

**REQUEST:** Right-of-Way (ROW) Encroachment Permit and Agreement for removal of existing railroad tie retaining wall, extension of East Avenue pavement about ten (10) feet to the north and construction of the new retaining wall at the north end of the pavement.

**LOCATION:** 713 East Avenue North (Ketchum Townsite, Lot 6, Block 28)

**ZONING:** Limited Residential (LR)

**ATTACHMENTS:**

- A. Right-of-Way Encroachment Agreement
- B. Applicant's Submittal
  - Application, dated August 28, 2014
  - Civil Plan, Sheet C-1, dated October 3, 2014
- C. Site Photos
- D. Public Comment – None to date

#### Introduction/History

Currently, the north end of East Avenue dead ends at a steep slope and a crumbling railroad tie retaining wall in the right of way. At its north end the paved road serves an existing home and a vacant lot.

#### Current Report

The applicant is proposing to extend East Avenue about ten (10) feet to the north, remove the existing retaining wall and construct a new concrete retaining wall at the north end of the extended East Avenue pavement. The proposed project will extend the city street within the public right-of-way so that the applicant will be able to reasonably access his property. The proposed retaining wall will connect to a private retaining

wall on the applicant's property. (See Attachment B, Civil Plan.) As stated in the attached Right-of Way Encroachment Agreement (See Attachment A.), the applicant shall be responsible for maintenance of the improvements and "shall obtain no claim or interest in said right-of-way which is adverse to that of Ketchum."

On September 22, 2014, representatives from Public Works, Street and Planning Departments met on site to discuss this application for right-of-way encroachment. In addition, the applicant's general contractor met with the Fire Chief to discuss the street extension. Staff found that the proposed street extension does not adversely impact the City, and the Fire Chief has determined that adequate fire suppression service can be provided with the proposed design. The Street Superintendent has noted that, while the City plows snow from East Avenue by backing in and pushing the snow south, the City will not be responsible for clearing the snow behind the plow at the northernmost end of the street. A condition of approval has been added to the right-of-way encroachment agreement stating that, "Owner shall be responsible for the maintenance of said improvements, including snow removal. All snow on private property shall be stored on said private property, and all snow removed from the pavement at the north end of East Avenue shall be stored on the unimproved portions of the East Avenue right-of-way."

The applicant has applied for and received a building permit (#14-079) for a new house on the subject lot. The approved building permit site plan and civil plans show a mix of pavement surfaces, with pavers and concrete comprising the walking surfaces and asphalt proposed for the driveway. All of these are all capable of handling vehicular traffic as necessary to honor the access easement to the home directly to the south and to serve the Fire Department's needs.

It is staff's recommendation that the City Council approve this application for Right-of-Way Encroachment Permit Application and that the attached Right-of-Way Agreement be entered into by the City.

Financial Requirement/Impact

There is no financial requirement or impact associated with this agreement. A Right-of-Way Agreement is intended to help protect the City in the event that the proposed construction were ever to pose an issue for the City.

Recommendation

Staff respectfully recommends that the City Council:

- (1) Approves the permit application.
- (2) Authorizes the Mayor to sign the agreement which officially executes the permit.

Recommended Motion

"I move to approve the proposed Right-of-Way Encroachment Permit application by Jay Freis and authorize of the Mayor to sign a Right-of-Way Encroachment Permit agreement with said owner."

Sincerely,



Rebecca F. Bundy  
Senior Planner

**Attachment A.**  
**Right-of-Way Encroachment Agreement**

**WHEN RECORDED, PLEASE RETURN TO:**

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

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**RIGHT-OF-WAY ENCROACHMENT AGREEMENT**

THIS AGREEMENT, made and entered into this 20<sup>th</sup> day of October, 2014, by and between JAY FREIS, (collectively referred to as "Owner"), whose address is PO Box 2392, Ketchum, Idaho 83340, and the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho.

*RECITALS*

WHEREAS, Owner is the owner of real property described as 713 East Avenue North ("Subject Property"), located within the City of Ketchum, State of Idaho; and

WHEREAS, Owner wishes to permit to extend East Avenue about ten (10) feet to the north, remove the existing railroad tie retaining wall and construct a new retaining wall at the north end of the extended East Avenue pavement. This extends the city street within the public right-of-way, so the applicant will be able to reasonably access his property. Said proposed 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;

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 maintain the Improvements identified in Exhibit "A" within the public right-of-way of Sun Valley Road, located adjacent to the real property described as 713 East Avenue North, Ketchum, Idaho, until notified by Ketchum to remove the same.

2. Owner shall be responsible for the maintenance of said Improvements, including snow removal. All snow on private property shall be stored on said private property, and all snow removed from the pavement at the north end of East Avenue shall be stored on the unimproved portions of the East Avenue right-of-way.

3. 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.

4. 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.

5. 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.

6. This Agreement shall be a covenant running with the Subject Property and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties and the respective heirs, personal representatives, successors and assigns of the parties hereof.

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"**





**Attachment B.**  
**Applicant's Submittal**

- Application, dated August 28, 2014
- Civil Plan, Sheet C-1, dated October 3, 2014

14-098

CITY OF KETCHUM RIGHT-OF-WAY ENCROACHMENT PERMIT APPLICATION

Permit Fee: \$50.00

Date Paid: 8-28-2014

Property Owner: JAY FREIS JFREIS@MAC.COM Phone No.: 208 770-7510

Mailing Address: PO 2392 KETCHUM ID 83340

Property Street Address: 713 EAST AVENUE KETCHUM ID 83340

Property Legal Description: LOT 6, BLOCK 28 KETCHUM TOWNSITE

Encroachment(s) in Right-of-Way:

PER ATTACHED PLAN

Name or Description of Right-of-Way Affected: NORTH END OF EAST AVENUE

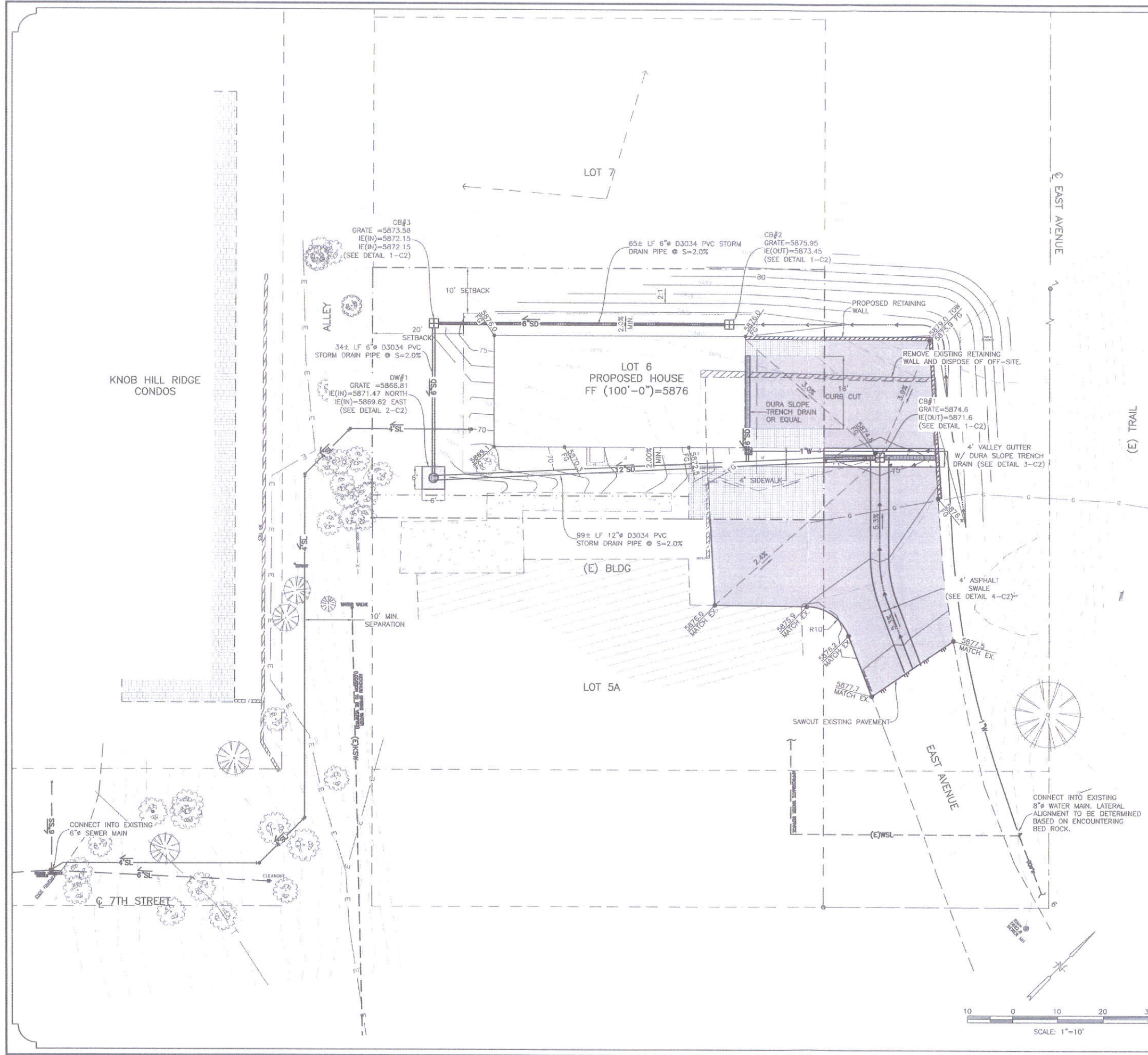
Width of Right-of-Way: 100'

Dimensions of Right-of-Way Encroachment(s): PER ATTACHED PLAN

Distance of Encroachment from Existing Pavement: NOT APPLICABLE

Attach diagram identifying streets and/or alleys, total width of right-of-way, dimensions of right-of-way encroachment, type(s) of encroachment and visual aides sufficient to show the impacts of the encroachment.

Owner's Signature [Signature] Date: 8-28-2014



- GENERAL NOTES:**
- CONTRACTOR SHALL FIELD VERIFY THE LOCATIONS OF ALL EXISTING UTILITIES BEFORE COMMENCING CONSTRUCTION. ANY CONFLICT SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER.
  - THE CONTRACTOR SHALL NOTIFY DIGLINE (1-800-342-1585) AND THE CITY OF KETCHUM UTILITIES DEPT. (1-208-726-7825) AT LEAST 48 HOURS PRIOR TO BEGINNING CONSTRUCTION ACTIVITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DAMAGE TO EXISTING UTILITIES ENCOUNTERED DURING CONSTRUCTION.
  - THE CONTRACTOR SHALL BE RESPONSIBLE FOR DUST CONTROL DURING THE 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.
  - CONSTRUCTION OF WATER MAINS AND ALL OTHER RELATED APPURTENANCES SHALL BE IN ACCORDANCE WITH THE IDAHO STANDARDS FOR PUBLIC WORKS CONSTRUCTION (ISPC), IDAPA 58.01.08, IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS AND THE CITY OF KETCHUM STANDARDS.
  - CONTRACTOR SHALL DISINFECT WATER MAIN, PRESSURE TEST AND CONDUCT BIOLOGICAL TESTING IN ACCORDANCE WITH THE IDAHO STANDARDS FOR PUBLIC WORKS CONSTRUCTION (ISPC) AND AMERICAN WATER WORKS ASSOCIATION (AWWA) STANDARDS.
  - THE CONSTRUCTION OF WATER MAINS SHALL BE IN ACCORDANCE WITH THE ISPC, LATEST EDITION AND THE CITY OF KETCHUM STANDARDS.
  - ALL WATER SERVICE FIXTURES, FITTINGS, PIPING AND ALL RELATED APPURTENANCES SHALL BE ANSI/NSF STD. 61 COMPLIANT.
  - CONTRACTOR SHALL USE ANSI/NSF STANDARD 60 CHEMICALS AND COMPOUNDS DURING INSTALLATION & DISINFECTION OF POTABLE WATER MAIN.
  - ALL SANITARY SEWERS, INCLUSIVE OF LATERALS, SHALL BE CONSTRUCTED TO A DEPTH SUFFICIENT TO ALLOW FOR GRAVITY FLOW TO THE SEWER SYSTEM FROM ALL FLOORS OF RESIDENTIAL STRUCTURES.
  - ELECTRICAL SERVICE TO BE DESIGNED BY IDAHO POWER AT THE REQUEST OF THE DEVELOPER FOR SPECIFIC PROJECT.
  - ALL UTILITIES INCLUDING NATURAL GAS, ELECTRICAL, TELEPHONE AND CABLE TO BE EXTENDED UNDERGROUND.
  - SAWCUT EXISTING PAVEMENT. REMOVE SUBGRADE TO PROVIDE 6 INCHES OF 3/4\" ROADMIX.
  - STORM DRAIN PIPE SHALL HAVE 2\" MIN. COVER AND A SLOPE OF 2% MIN.

**LEGEND**

- PROPERTY BOUNDARY
- ADJOINING PROPERTY BOUNDARY
- EXISTING TELEPHONE
- EXISTING ELECTRICAL
- EXISTING GAS
- EXISTING RAIL RETAINING WALL
- EXISTING FENCE
- EXISTING SEWER MAIN
- EXISTING SEWER LATERAL
- EXISTING 4-INCH KETCHUM SPRINGS WATER MAIN
- EXISTING WATER SERVICE LATERAL
- EXISTING 8-INCH WATER MAIN
- EXISTING TREES
- PROPOSED 4\" SEWER SERVICE LATERAL
- PROPOSED 1-INCH (200 PSI POLY PIPE) WATER SERVICE
- PROPOSED WATER METER
- PROPOSED PAVEMENT
- PROPOSED VALLEY GUTTER
- PROPOSED 4\" SIDEWALK
- PROPOSED PAVERS
- PROPOSED DRYWELL
- PROPOSED CATCH BASIN
- PROPOSED TRENCH DRAIN
- PROPOSED 6-INCH STORM DRAIN (2\" MIN. COVER, 2% MIN. SLOPE)
- PROPOSED 12-INCH STORM DRAIN (2\" MIN. COVER, 2% MIN. SLOPE)
- CENTERLINE OF SWALE
- PROPOSED FINISH GRADE ELEVATION
- PROPOSED GRATE ELEVATION
- TOP OF WALL
- EXISTING ELEVATION
- PROPOSED DIRECTION OF FLOW

| No. | DESCRIPTION              | DATE     | BY  |
|-----|--------------------------|----------|-----|
| A.  | ISSUED FOR DESIGN REVIEW | 09/22/14 | JPG |
| B.  | ADDED MAX CURB CUT NOTE  | 09/26/14 | JPG |
| C.  | REV DRAINAGE             | 10/03/14 | JPG |

PREPARED BY:  
BENCHMARK ASSOCIATES, P.A.  
P.O. BOX 733 100 BELL DRIVE  
KETCHUM, IDAHO 83340  
(208) 726-9512  
FAX 726-9514  
WEB: WWW.BMASB.COM  
MAIL: WWW.BMASB.COM

**KETCHUM BLOCK 28 - LOT 6  
GRADING, DRAINAGE & UTILITIES**

T4N, R17E, SEC 18, B.M.,  
BLAINE COUNTY, IDAHO

PREPARED FOR:  
JAY FRIES

|              |          |
|--------------|----------|
| DRAWN BY:    | JPG      |
| DESIGNED BY: | JPG      |
| CHECKED BY:  | SB       |
| DATE:        | 10/03/14 |
| PROJECT NO.: | 14082    |

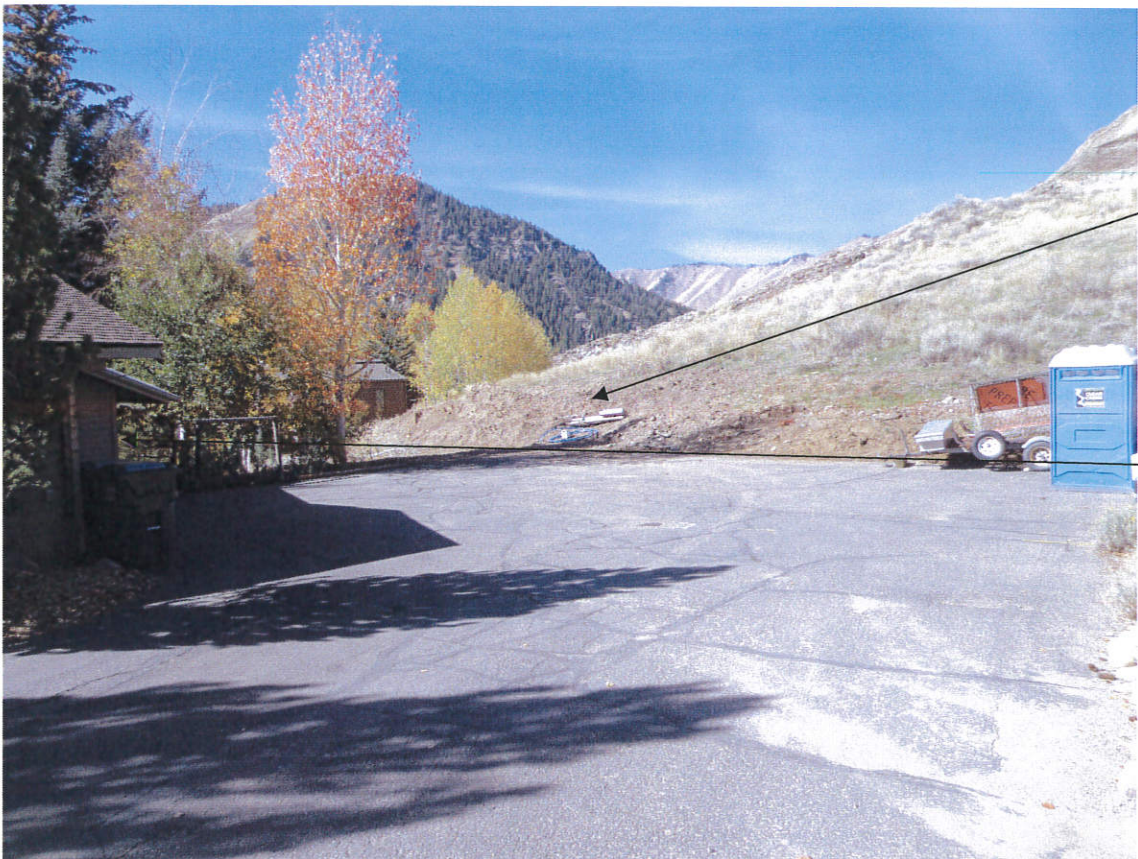
C-1

## Attachment C: Site Photos



Existing  
Railroad Tie  
Retaining  
Wall

Dead End at North End of East Avenue From Top of Hill



Applicant's  
Property

Adjacent  
Existing  
Home

Dead End at North End of East Avenue Showing Existing Driveway Access

**Attachment D.**  
**Public Comment**  
None to date