
Decision re Mann Town Highway Access Road Permit Application

Jason Crance <Jason@crancelaw.com>

Wed, Nov 8, 2023 at 9:25 AM

To: Benjamin Brickner <benjamin.brickner@pomfretvt.us>, Andrew Mann <[REDACTED]>

Cc: Alison Sander <[REDACTED]>, Cabot Teachout <cteachout@doolaw.com>, John Peters <john.peters@pomfretvt.us>, Becky Fielder <clerk@pomfretvt.us>, Joseph McLean <jmclean@firmspf.com>

Dear Ben and members of the Select Board,

I am writing to request reconsideration and clarification of two (2) provisions of the Memorandum of Decision and Driveway Permit with Conditions and Limitations issued to Andrew Mann on October 13, 2023.

Given that the deadline to appeal the Select Board's decision under VRCP 75 is fast approaching, and consistent with my conversation with Attorney McLean, please confirm upon receipt of this request for reconsideration and clarification that the thirty (30) day appeal deadline under VRCP 75 is tolled analogous to the provisions of VRCP 59.

Dr. White and Mr. Dechert seek reconsideration and clarification from the Selectboard regarding: (1) the contemplated disposition of the "berm" or "flat spot" currently constructed within the Town's highway right-of-way given Mr. Mann's testimony at the hearing indicating his willingness to remove the "berm," and the Select Board's imposition of Condition and Limitation A and Condition and Limitation G addressing the location and existence of the berm or flat spot; and (2) the approved Permit Application and the Memorandum of Decision and the perceived conflicts they have with each other and with Mr. Mann's Amended Site Plan, testimony, and Condition and Limitation B.

Request for Clarification and Reconsideration regarding the removal of the Berm or Flat Spot

With respect to the "berm", during the hearing Mr. Mann testified (34:30) that he could lower the "flat spot" [the berm], that he planned on lowering the flat spot, and that the reason the flat spot was so tall was because he got two loads of hardpack to put down to make a surface for his sand. He also testifies (35:07) that "if this is all a go, [to] cut that [the flat spot] down, at least enough to put 6 to 12 inches of top soil or other material to plant grass," and that he has "no problem dropping it [the flat spot] down to meet the driveway."

In that context, second part of Condition A reads: "[i]f despite Applicant's [Mr. Mann] best efforts all work in the highway right-of-way cannot be completed by November 30, 2023, Applicant shall by the same day remove (or cause to be removed) all objects, fill or other obstructions in the highway right-of-way interfering with the normal use of the existing traveled way of Dinsmoor Road or maintenance of the highway right-of way."

Condition G reads: "[t]he area south of Dinsmoor Road and within the highway right-of way shall be restored to a permeable surface sufficient to absorb the anticipated runoff from the modified driveway and kept open to allow for placement of snow removed from the driveway."

At the hearing before the Select Board on September 12, 2023, there was conflicting testimony with respect to the "normal use" of the existing traveled way of Dinsmoor Road and the Memorandum of Decision does not address or define what that "normal use" was. Nor does the Memorandum of Decision address what the definition of normal use looks like on the ground and as contemplated by the second paragraph of Condition A.

As it pertains to Condition G, pictures of the “berm” or “flat spot” were submitted into evidence at the hearing. It appears (and depending on the Select Board’s definition of “normal use”) that a portion of the fill deposited by Mr. Mann may not be within the “normal use” of the travel way. However, it is not disputed that all of the “berm” or “flat spot” or fill that exists was deposited wholly within the Town right-of-way. Although Condition G indicates that the area within the highway right of way needs to be restored to a permeable surface sufficient to absorb anticipated runoff from the modified driveway and kept open to allow for placement of snow removed from the driveway, it does not indicate whether that means, for example, that the slope and grade of this restoration needs to be consistent with the existing slope and grade of the unaltered portion of the Town’s right-of-way. As a result clarification is requested on this issue as well.

Lastly, the Memorandum of Decision makes no reference to the fact that Mr. Mann added the fill and constructed the “berm” or “flat spot” within the Town right of way and without any permit to do so. Nor does Mr. Mann’s Permit Application identify any proposed berm or flat spot. Moreover, Mr. Mann testified that at the time of the hearing he was “85% finished” with what he was proposing at that same hearing (21:24), an admission that he was already working in the Town right-of-way without a permit in violation of 19 VSA 1111(b) and Section 7.4 of Pomfret’s Highway Ordinance. As such, and irrespective of the clarification requests above, Dr. White and Mr. Dechert request the Select Board reconsider this issue and require Mr. Mann to remove all fill he has deposited into the right of way and return the area to the south of Dinsmoor road to the condition it was prior to him depositing any fill there for any reason whether this permit goes forward or is appealed.

Request for Clarification and Reconsideration of the Driveway Area Dimensions

Mr. Mann’s Permit Application indicates that he proposes to construct a “[w]idth of driveway between 17’ and 19’”. “Driveway will enter town road at 90 degrees and pitch away from the town road 1’ over the first 20’ from the town road.” “See green rectangle on sketch.” Condition and Limitation B states that “[t]he first 20 feet of the driveway shall conform in all material respects to the materials included in the Mann Application, Revised Site Plan, and testimony of the witnesses, except as modified herein.”

As set forth in Footnote 4 of the Memorandum of Decision, Mr. Mann chose to use altered CAD engineering drawings prepared by Ian MacKenzie for his Revised Site Plan and which were part of Dr. White’s and Mr. Dechert’s proposed driveway permit application. CAD drawings are not sketches. CAD drawings use actual units of measurement based on the existing topography and distances on the ground. Although ultimately rejected by the Select Board, Mr. MacKenzie testified as to how he created his drawings and what the lines in his site plan represented as to distance, elevation, slope, and the markers called out on the ground. Those same distances and slope exist in Mr. Mann’s Revised Site Plan to which he is bound per the Memorandum of Decision and Conditions of Limitation.

Attached as Slide 1 and Slide 2 to this request for reconsideration are CAD drawings prepared by Mr. MacKenzie. In Slide 1 Mr. MacKenzie has overlaid Mr. Mann’s Revised Site Plan onto a CAD drawing that mirrors the lines and circles Mr. Mann drew and submitted as part of his Revised Site Plan. By way of comparison, Slide 2 is the actual CAD drawing calling out Mr. Mann’s lines (and the distances he drew for the driveway area). Mr. Mann testified (13:42) that the blue lines in his Revised Site Plan represented the edges of his proposed (and approved) travel way on Dinsmoor Road. Given that testimony, and given what he submitted as a Revised Site Plan, those CAD drawings demonstrate that Mr. Mann’s Revised Site Plan actually contemplates an almost square box that is 23.1’ in width along Bartlett Brook Road and 23.4 feet deep.

This reading is also consistent with the Select Board’s Condition H which requires Mr. Mann to grant the record owners of the White Parcel and Sander Parcel a right of way in terms no less favorable to the 1987 right of way as defined to include all of the lands and premises within the red circles depicted on the Revised Site Plan. The distance to the red circles which will provide the White and Sander parcels additional rights of ingress and egress are beyond the distances called out in the Permit Application, the testimony of the parties including Mr. Mann, and the Memorandum of Decision with Conditions and Limitations.

By way of illustration and comparison, attached are Slides 3 through 6. These CAD slides illustrate the location of the proposed driveway box if Mr. Mann is bound by the language of his permit application (i.e., between 17' and 19' feet wide and pitching away from the road 1' over the first 20'). As the Select Board will note, whether 17' or 19' feet wide (as set forth in Slide 3 and Slide 5), if the driveway area defined in the permit application is located at the southern end of Mr. Mann's site plan abutting his southern boundary of the proposed (and approved) Dinsmoor Road travel way, there appears to be little or no need for the extension of the culvert at the north end of Dinsmoor road, a topic of discussion and expectation at the September 13 hearing (14:42 and 28:32). The location of the green box at that point in the CAD slides is consistent with his own testimony (21:24) that the project is 85% finished and that "[t]he only part that is really going to change is the upper left hand corner [on the Revised Site Plan] where we still got to cut it back."

Alternatively, if either a 17' or 19' box is located at the northern end of the Revised Site Plan (as set forth in Slide 4 and Slide 6) abutting the proposed (and approved) Dinsmoor Road travel way to the north, the southern end of the driveway entrance is located almost in the middle of the proposed travel way which is inconsistent with Mr. Mann's testimony and potentially changes what the Select Board contemplated in Conditions F and Condition G given that it is unclear what work would be contemplated between the edge of the green box and the southern edge of Mr. Mann's proposed travel way in his site plan.

Lastly, on Page 2 of the Memorandum of Decision, the Select Board indicates that the Mann application proposes to address the challenges of the existing Dinsmoor Road by "excavating the embankment north of the existing traveled way of Dinsmoor Road to create a level graded 20-foot wide by 16-foot deep area." Condition B also references a 20 foot wide by 16 foot deep area of "90-degree intersection between Dinsmoor Rd and Bartlett Brook Rd...". Mr. Mann testified (32:06) that he painted a white line in a picture from the site visit and that was 20 feet along Bartlett Brook road and stated that he was only required to have 16 feet but wanted to have "plenty of extra room." However, even at 20 feet of width it is unclear where the Select Board contemplates the beginning and end of that area within the proposed Dinsmoor Road travel way identified in the Revised Site Plan.

It is therefore unclear: (1) what the Select Board is approving as to the specific dimensions of the green box in Mr. Mann's Revised Site Plan (if not those dimensions as Mr. Mann drew them on the Revised Site Plan and as illustrated in Slides 1 and 2); (2) if not the dimensions as set forth in the Revised Site Plan, what the Select Board expects the actual dimensions to be (both along Bartlett Brook Road and extending onto Dinsmoor Road); and (3) where the Select Board anticipates Mr. Mann locating the green box on his Revised Site Plan as between the boundaries of his proposed (and approved) new travel way of Dinsmoor road.

To expedite and or assist in the clarification and reconsideration, Dr. White and Mr. Dechert are happy to produce Mr. MacKenzie at their expense to map out the location of Mr. Mann's driveway area as contemplated by the approved permit and conditions imposed.

For the above reasons, Dr. White and Mr. Dechert seek reconsideration and clarification of the basis for the Selectboard's decisions and conditions.

Dr. White and Mr. Dechert to supplement this request for reconsideration and clarification as necessary.

Thank you for your time and consideration of these requests.

Regards,

Jason

Jason R. Crance

Law Office of Jason R. Crance

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6 attachments


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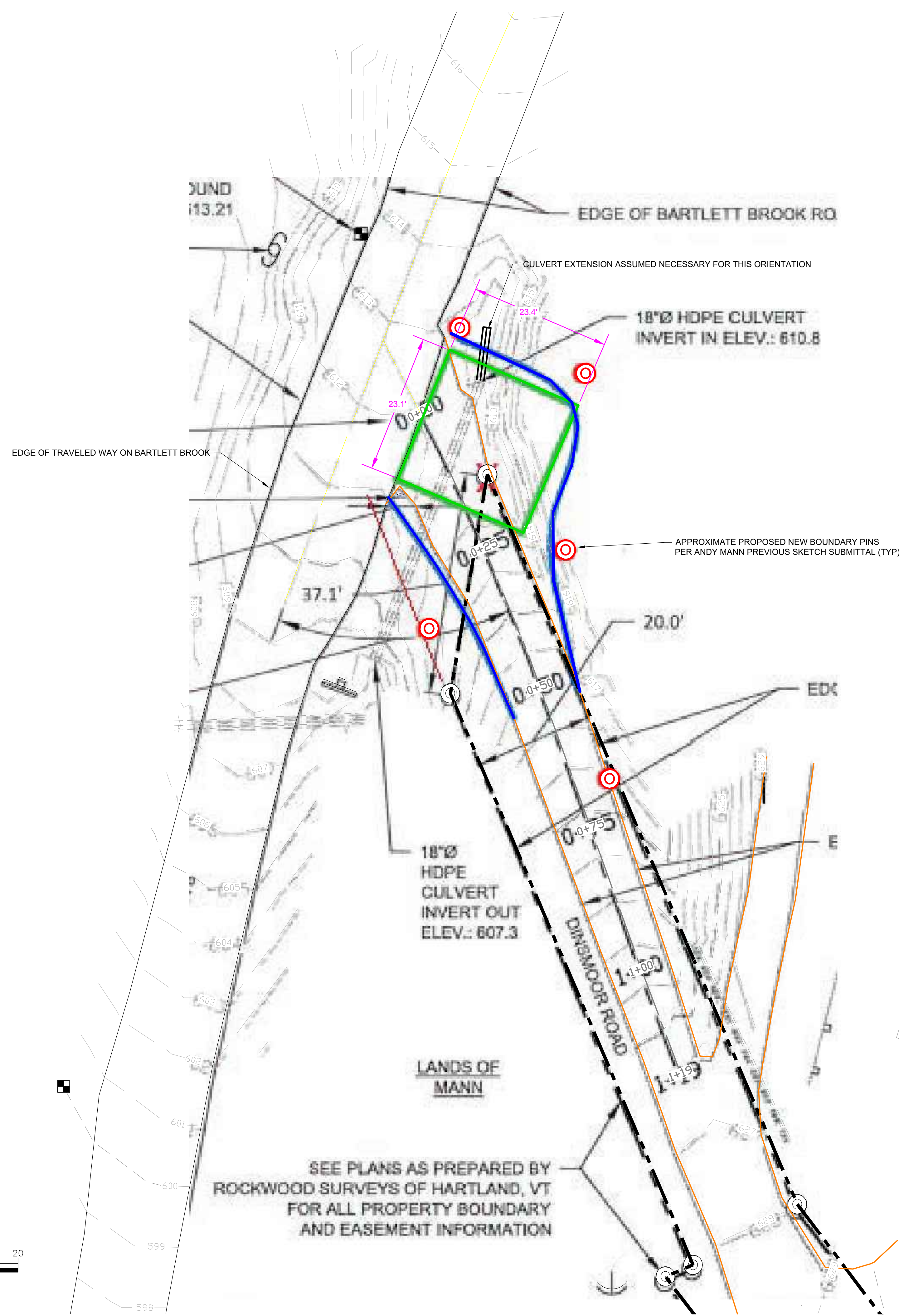
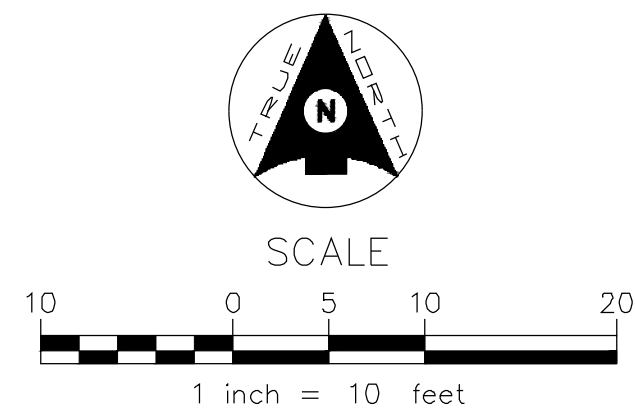
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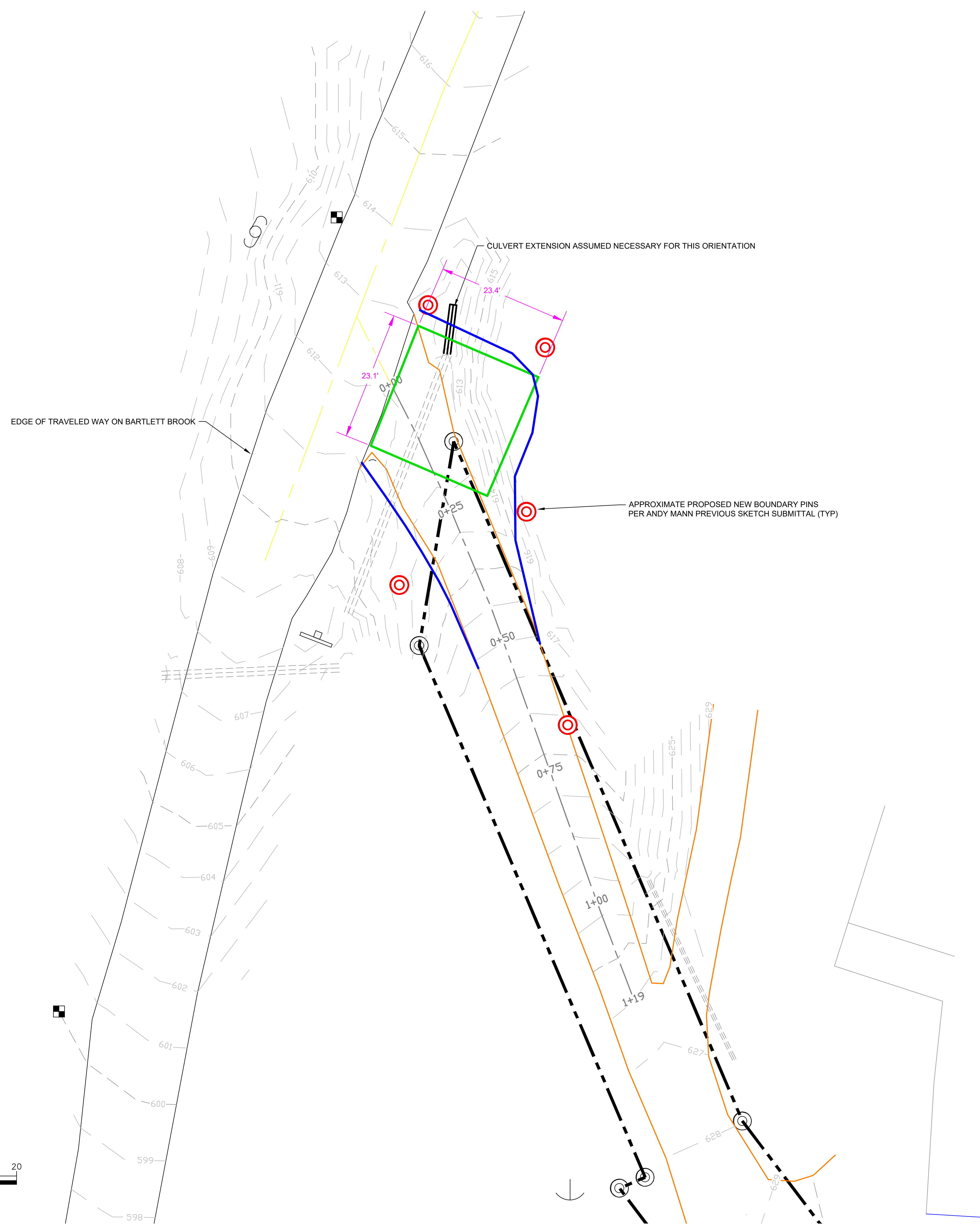
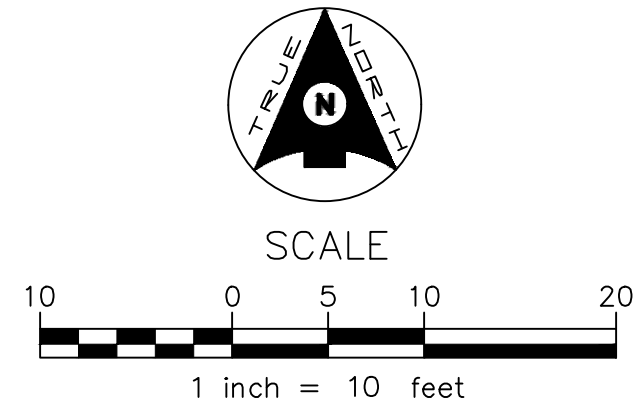


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SHEET TITLE:	SLIDE #1 - 23.1' WIDE X 23.4' DEEP WITH MANN UNDERLAY
PROJECT NO.:	2304
SHEET NO.:	2304
SLIDE #:	
DATE:	11-7-2023

**DINSMOOR ROAD
SHARED DRIVEWAY OFF
BARTLETT BROOK ROAD
POMFRET, VERMONT**

DOCUMENT NOT VALID
WITHOUT ORIGINAL
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MACKENZIE
Engineering and Construction
1313 VT Route 110, So. Royalton, VT 05068
Mobile No.: 802.356.5617
Email: ian@mack-eng.com

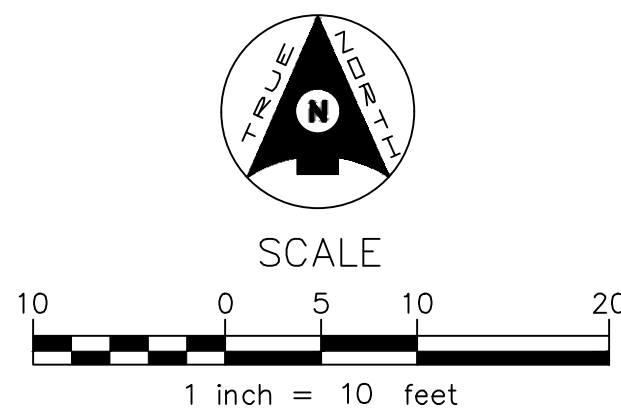


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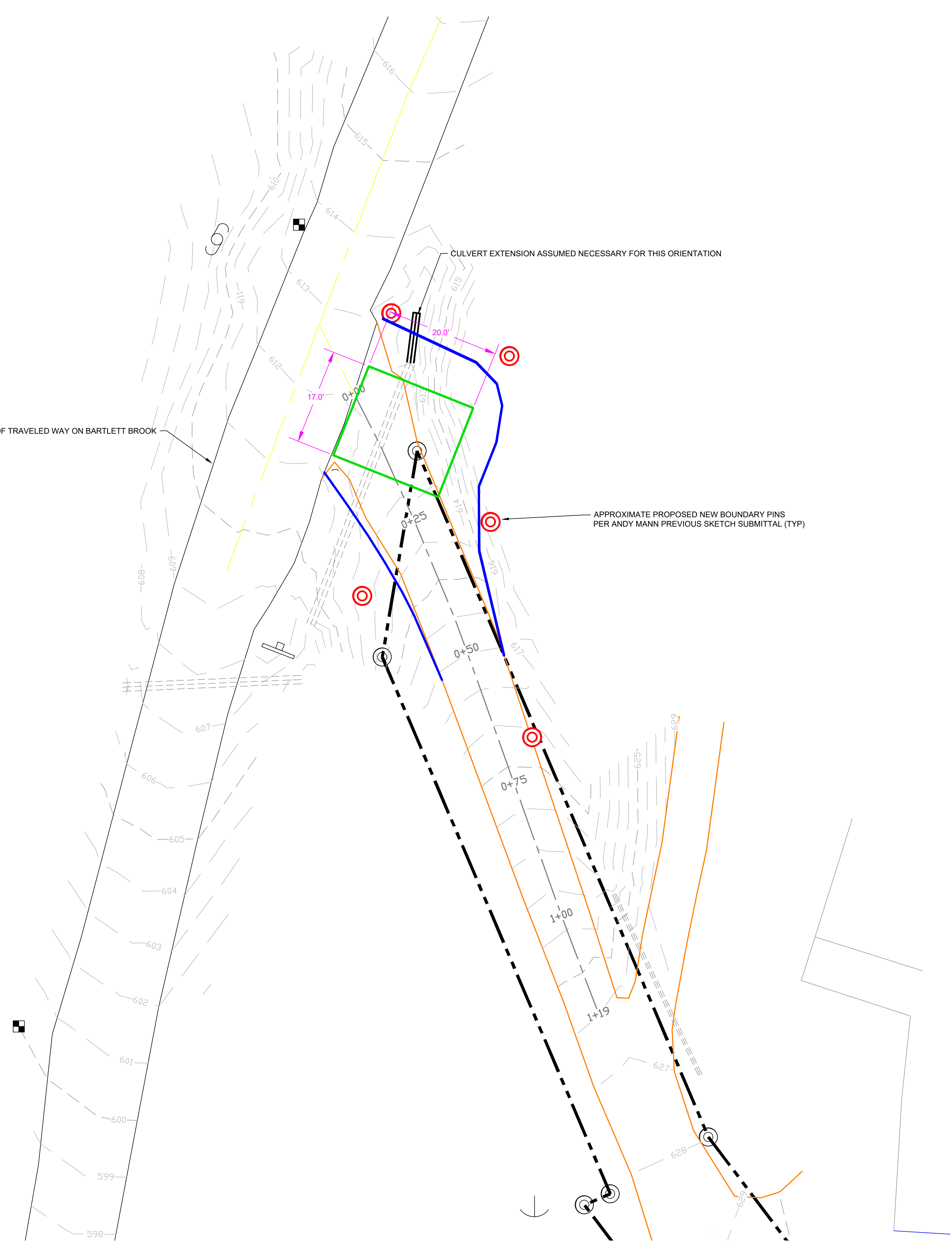
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PROJECT NO.:	2304
SHEET NO.:	SLIDE #2
DATE:	11-7-2023



EDGE OF TRAVELED WAY ON BARTLETT BROOK

CULVERT EXTENSION ASSUMED NECESSARY FOR THIS ORIENTATION

APPROXIMATE PROPOSED NEW BOUNDARY PINS PER ANDY MANN PREVIOUS SKETCH SUBMITTAL (TYP)



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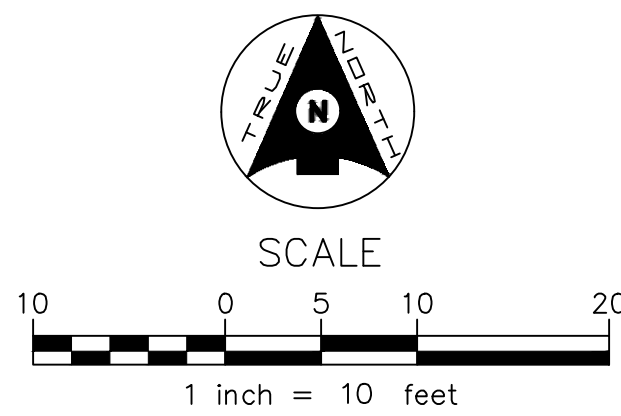
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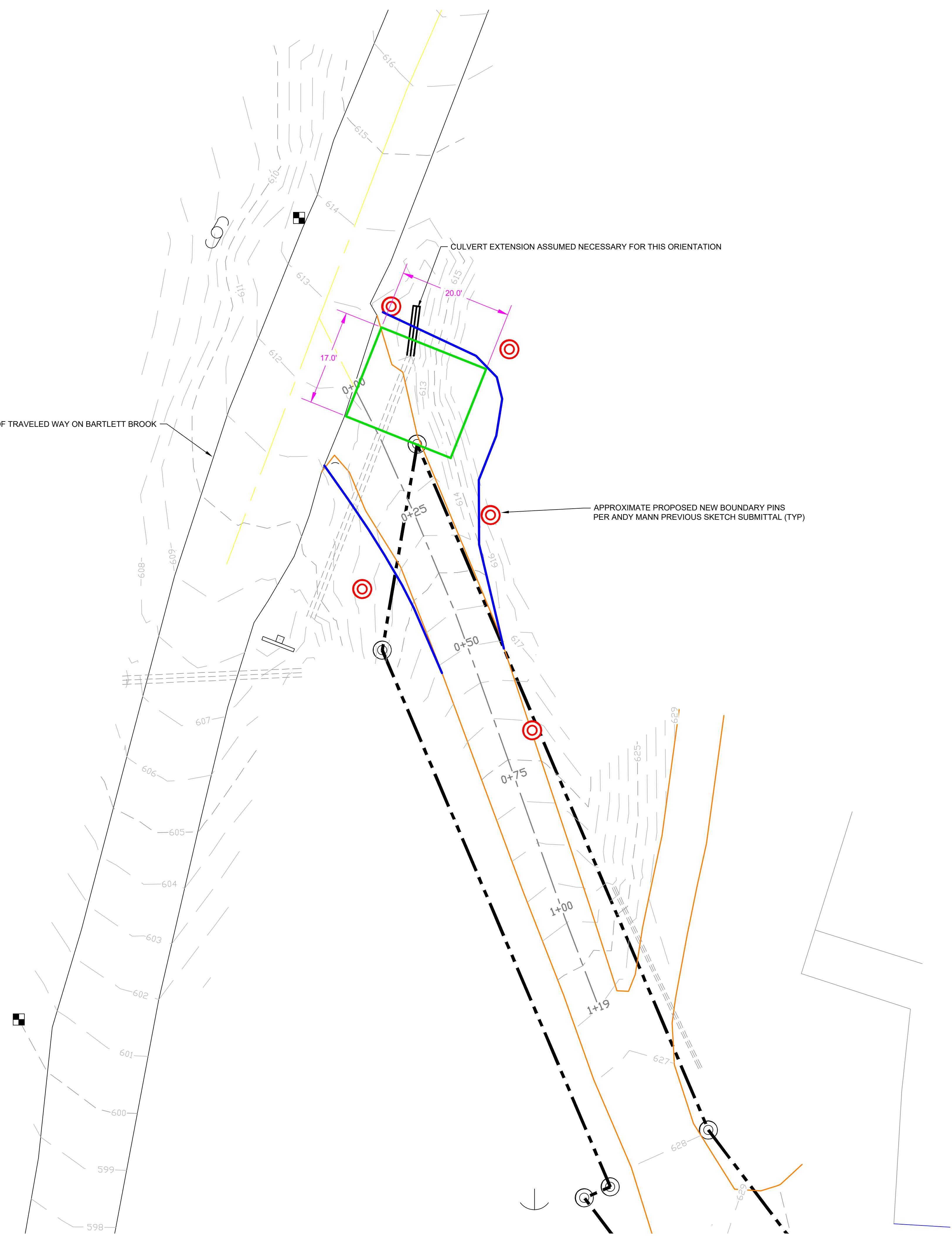
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SHEET TITLE: SLIDE #3 - 17' WIDE X 20' DEEP HELD TO SOUTH EXTENT

PROJECT NO.: 2304 SHEET NO.: SLIDE #3 DATE: 11-7-2023



EDGE OF TRAVELED WAY ON BARTLETT BROOK



APPROXIMATE PROPOSED NEW BOUNDARY PINS
PER ANDY MANN PREVIOUS SKETCH SUBMITTAL (TYP)

CULVERT EXTENSION ASSUMED NECESSARY FOR THIS ORIENTATION

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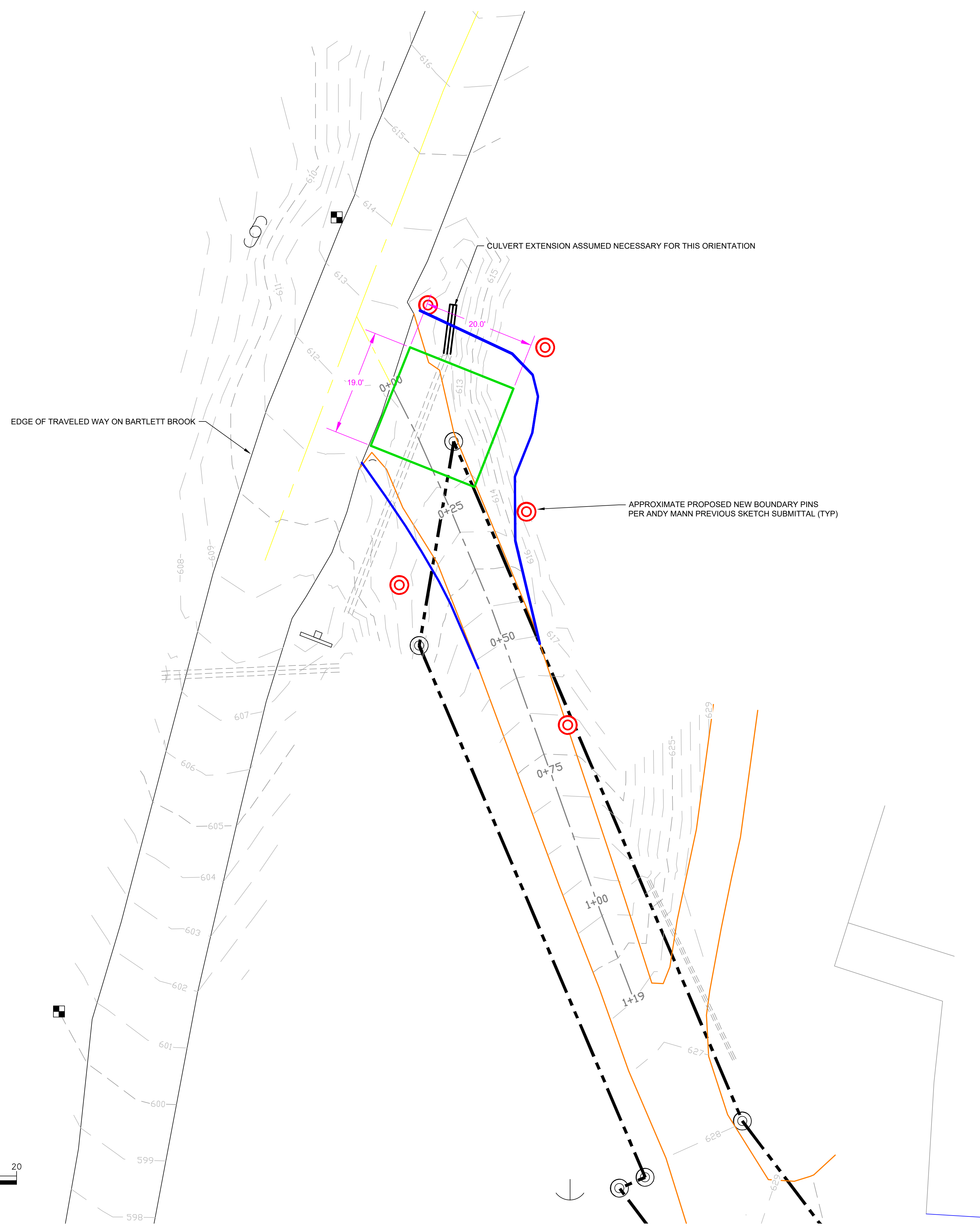
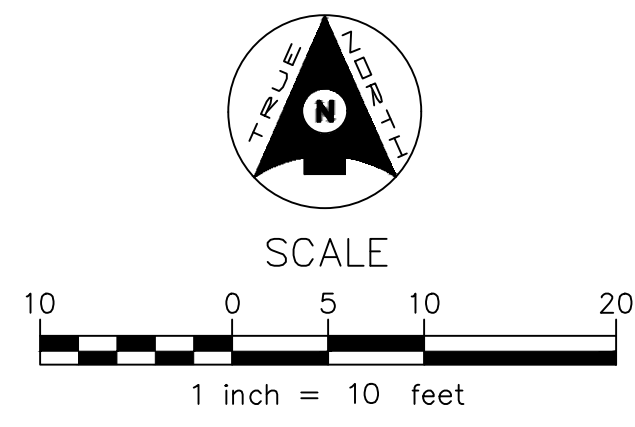
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PROJECT TITLE: ANDY MANN ACCESS PERMIT REVIEW

SHEET TITLE: SLIDE #4 - 17' WIDE X 20' DEEP HELD TO NORTH EXTENT

PROJECT NO.: 2304 SHEET NO.: SLIDE #4 DATE: 11-7-2023



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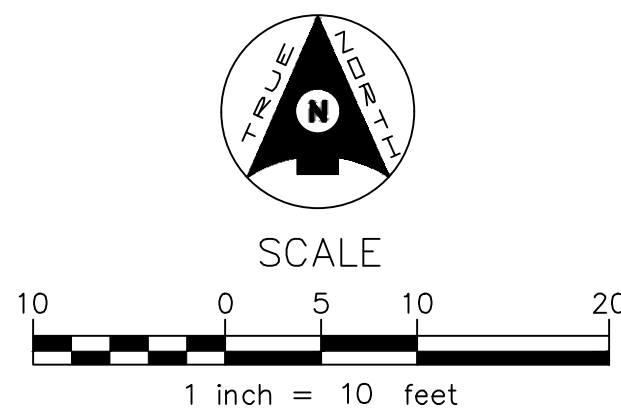
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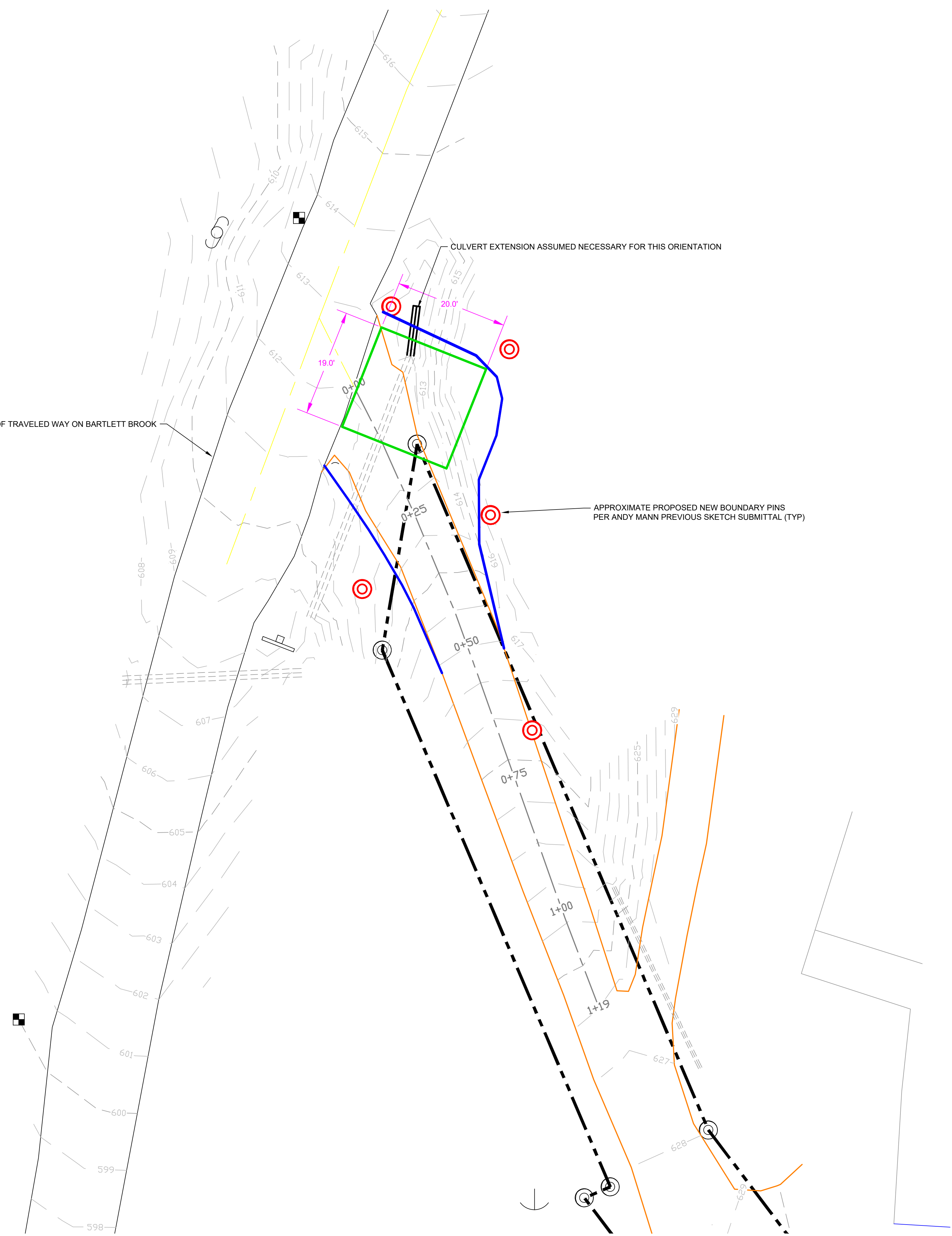
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SHEET TITLE: SLIDE #5 - 15' WIDE X 20' DEEP HELD TO SOUTH EXTENT

PROJECT NO.: 2304 SHEET NO.: SLIDE #5 DATE: 11-7-2023



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PROJECT TITLE: ANDY MANN ACCESS PERMIT REVIEW

SHEET TITLE: SLIDE #6 - 19' WIDE X 20' DEEP HELD TO NORTH EXTENT

PROJECT NO.: 2304 SHEET NO.: SLIDE #6 DATE: 11-7-2023

Decision re Mann Town Highway Access Road Permit Application

Andrew Snow <snow@yourvtlawyer.com>

Mon, Nov 13, 2023 at 2:14 PM

To: Benjamin Brickner <benjamin.brickner@pomfretvt.us>

Cc: Alison Sander <[REDACTED]>, Cabot Teachout <cteachout@doolaw.com>, John Peters <john.peters@pomfretvt.us>, Becky Fielder <clerk@pomfretvt.us>, Joseph McLean <jmclean@firmspf.com>, Jason Crance <Jason@crancelaw.com>

Good Afternoon Ben and Select Board Members, et al.

I am writing this email on behalf of my clients, Andy and Kathy Mann. Please be aware that this firm, Meub Associates, PLC, will be representing the Manns in connection with Dr. White's and Mr. Dechert's request for clarification and reconsideration of the Mann Town Highway Access Road Permit dated October 13, 2023 (the "Approved Permit"). Please include me on all correspondence and communications in this matter going forward.

The Manns have reviewed Dr. White's and Mr. Dechert's request for clarification and reconsideration of the Approved Permit (the email below). While the Manns dispute many of the underlying factual representations and characterizations contained in the White/Dechert request, the Manns do not think these disputed representations are ultimately relevant to the current request before the Board – which is to clarify what it intended to authorize and/or require under the Approved Permit's Condition G as well as the dimensions of the approved driveway improvements. If there are specific questions, information, or clarifications that the Town would like from the Manns in order to address these two specific issues, please let us know and they will be happy to provide a response.

Additionally, in light of the White/Dechert request and the related tolling of the 30-day period to appeal the permit while this request is pending, the Manns do not intend to conduct any further work under the Approved Permit until these pending issues can be clarified by the Town and, to the extent there is any appeal, it is resolved. The Manns respectfully request that the Town confirm the Manns will not be prejudiced by the White/Dechert request for clarification and reconsideration and that all deadlines under the approved permit will be stayed and that reasonable deadlines will be established once the pending request for clarification and reconsideration is resolved, and any appeal period has either passed or been waived. Please confirm this will be the case.

I look forward to hearing from you in this matter.

Bests,

Andrew

Andrew James Snow, Esq.

Meub Associates, PLC

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From: Jason Crance

Sent: Wednesday, November 8, 2023 9:25 AM

To: Benjamin Brickner <benjamin.brickner@pomfretvt.us>; Andrew Mann <andy@andrewmannconsulting.com>

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