

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

IN THE MATTER OF THE APPLICATION OF THE ) **DOCKET NO. 05A-534R**  
CITY OF FRUITA, COLORADO FOR THE )  
AUTHORITY TO CHANGE THE UNION PACIFIC )  
RAILROAD COMPANY'S PRIVATE HIGHWAY- )  
RAILROAD CROSSING DESIGNATION, )  
LOCATED AT COULSON STREET (17 ROAD) ) **APPLICANT'S MOTION TO**  
AND SOUTH OF U.S. HIGHWAY 6, NUMBER ) **SUBSTITUTE STIPULATION**  
253-793-C, IN FRUITA, COLORADO TO THAT OF ) **AND SETTLEMENT**  
A PUBLIC HIGHWAY-RAILROAD CROSSING ) **AGREEMENT**

Applicant, the City of Fruita, Colorado, a municipal corporation, by and through its attorney, Edward P. Sands, hereby requests that the Public Utilities Commission substitute the correct Stipulation and Settlement Agreement attached hereto for the document with an identical title which was filed with the Commission on May 3, 2006. The document inadvertently filed on May 3 was a discussion draft containing several errors.

Kathleen M. Snead, the attorney for the Union Pacific Railroad Company joins in this request.

WHEREFORE, the City respectfully requests the Commission to substitute the enclosed Stipulation and Settlement Agreement for the one erroneously filed on May 3, 2006.

Respectfully submitted this 5<sup>th</sup> day of May, 2006.



Edward P. Sands, Attorney for Applicant  
Attorney Registration No. 8459  
Carter & Sands, P.C.  
201 West Third Street, Ste. 201  
Rifle, CO 81650

CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of May, 2006, a true and correct copy of the foregoing **Applicant's Motion to Substitute Stipulation and Settlement Agreement** was sent by U.S. mail, first class, postage prepaid to:

Kathleen M. Snead, Esq.  
1331 Seventeenth Street, Suite 406  
Denver, CO 80202

*Bryette Bamford*  
Person Certifying Service

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

IN THE MATTER OF THE )  
APPLICATION OF THE CITY OF )  
FRUITA, COLORADO FOR THE )  
AUTHORITY TO CHANGE THE UNION )  
PACIFIC RAILROAD COMPANY'S )  
PRIVATE HIGHWAY-RAILROAD )  
CROSSING DESIGNATION, LOCATED )  
AT COULSON STREET (17 ROAD) AND )  
SOUTH OF U.S. HIGHWAY 6, NUMBER )  
253-793-C, IN FRUITA, COLORADO TO )  
THAT OF A PUBLIC HIGHWAY- )  
RAILROAD CROSSING )

**DOCKET NO. 05A-534R**  
**STIPULATION AND**  
**SETTLEMENT AGREEMENT**

Applicant City of Fruita, Colorado, a municipal corporation ("City") and the Intervener, Union Pacific Railroad Company ("Union Pacific"), by and through their respective counsel, hereby enter into this Stipulation and Settlement Agreement ("Stipulation") and in consideration of all of the terms and conditions set forth herein, hereby agree and stipulate as follows:

1. The Application commencing this action was filed with the Colorado Public Utilities Commission ("Commission") by the City on December 19, 2005. In the Application, the City seeks authority to change the status of US DOT Crossing Number 253-793-C on the Union Pacific Green River Sub from a private crossing to a public crossing in the City of Fruita, State of Colorado.

2. On January 23, 2006 Union Pacific filed an Entry of Appearance, Notice of Intervention and Objection contesting and objecting to the Application filed.

3. By Order dated February 1, 2006, the Commission has reviewed the record in this matter, has deemed the Application as complete within the meaning of Section 40-6-109.5, C.R.S., and has found that the Commission has jurisdiction in the matter under Sections 40-4-106(2)(a) and (3)(a), C.R.S. By such Order, the Commission has referred the subject Application to an Administrative Law Judge for determination of its merits, including disposition of motions for intervention, determination of the proposed time frame for improvements to the Crossing resulting from the Greenway Business Park Plan and the filing of a final agreement between the parties for construction and maintenance of the Crossing. This matter is currently set for hearing on May 15, 2006.

4. In its Entry of Appearance and Notice of Intervention, Union Pacific has stated that it has no objection to converting the subject crossing into a public crossing, but it does have concerns regarding the improvement of the Crossing. According to the Union Pacific's database, the Crossing currently consists of a twenty-four foot (24') timber crossing, which is a substandard public crossing in terms of width and material. Union Pacific has requested that the Crossing be upgraded to a standard thirty-six foot (36') wide asphalt crossing with two (2)

sixteen foot (16') lanes and two (2) two-foot curb and gutter, and that the applicable signage should be converted to crossbucks. The City agrees that the Crossing should be upgraded as stated by Union Pacific at the City's sole cost and expense. The City agrees to construct a thirty-six foot (36') wide asphalt roadway, consisting of a thirty-two foot (32') wide travel area with two foot (2') curb and gutter on each side of the roadway in accordance with the drawings attached hereto as Exhibit "A" and incorporated herein by this reference. The approach grade shall not be greater than three percent (3.0%). Asphalt paving will then be extended for the remaining length of Coulson Street. The total length of the paved surface will be approximately four hundred feet (400'). The City further agrees to pay Union Pacific to install crossbucks at the crossing. The City reserves the right to obtain reimbursement of all or part of the costs of the improvements from landowners benefited by the improvements. The cost of the roadway improvements is estimated to be \$140,000. The work on the crossing surface shall be performed by Union Pacific at City's expense. An estimate of the costs associated with the construction of the crossing surface shall be filed as a late filed exhibit.

The City agrees to begin construction of such improvements as soon as practical after approval is received from the Public Utilities Commission and should be completed in approximately thirty-six (36) months. After construction is complete, maintenance of the tracks and operating facilities shall continue to be the responsibility of the Union Pacific. Maintenance of Coulson Street shall be the responsibility of the City of Fruita.

5. The City and Union Pacific hereby request that the Commission enter an order approving the construction of the grade crossing improvements as set forth in the Application and in this Stipulation and Settlement Agreement.

6. This Stipulation may be enforced only by the parties hereto or their successors. The parties agree to cooperate and otherwise perform this Stipulation in good faith, and shall execute such additional documents or instruments as may be reasonably necessary or required in order to properly carry out and effectuate the terms, provisions and intent of this Stipulation.

7. This Stipulation shall not become effective until the Commission issues an order approving the Stipulation, which order does not contain any modification of the terms and conditions of this Stipulation that is unacceptable to either of the parties to the Stipulation. In the event the Commission modifies this Stipulation in a manner unacceptable to either party hereto, that party may withdraw from the Stipulation and shall notify the Commission and the other party to the Stipulation in writing within ten (10) days of the date of the final Commission order. In the event a party exercises its right to withdraw from the Stipulation, the Stipulation shall be null and void and have no effect.

8. In the event this Stipulation becomes null and void, or in the event the Commission does not approve this Stipulation, this Stipulation as well as the negotiations undertaken in conjunction with this Stipulation shall not be admissible into evidence in any proceeding.

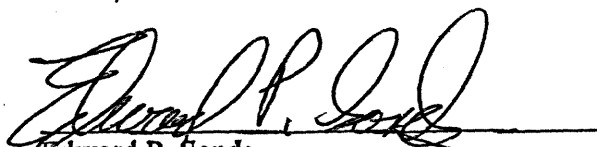
9. The parties state that they have reached this Stipulation by means of a negotiated process that is in the public interest and that the results reflected in this Stipulation are just,

reasonable and in the public interest.

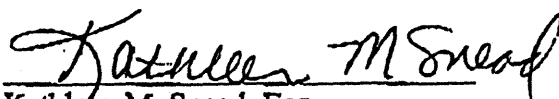
10. This Stipulation may be executed in separate counterparts, including facsimile. The counterparts taken together shall constitute the Stipulation. The parties represent that the signatories to this Stipulation shall have full authority to bind their respective parties to the terms of this Stipulation.

11. The Stipulation shall be governed by and construed in accordance with the laws of the State of Colorado.

Respectfully submitted this 3RD day of MAY, 2006.

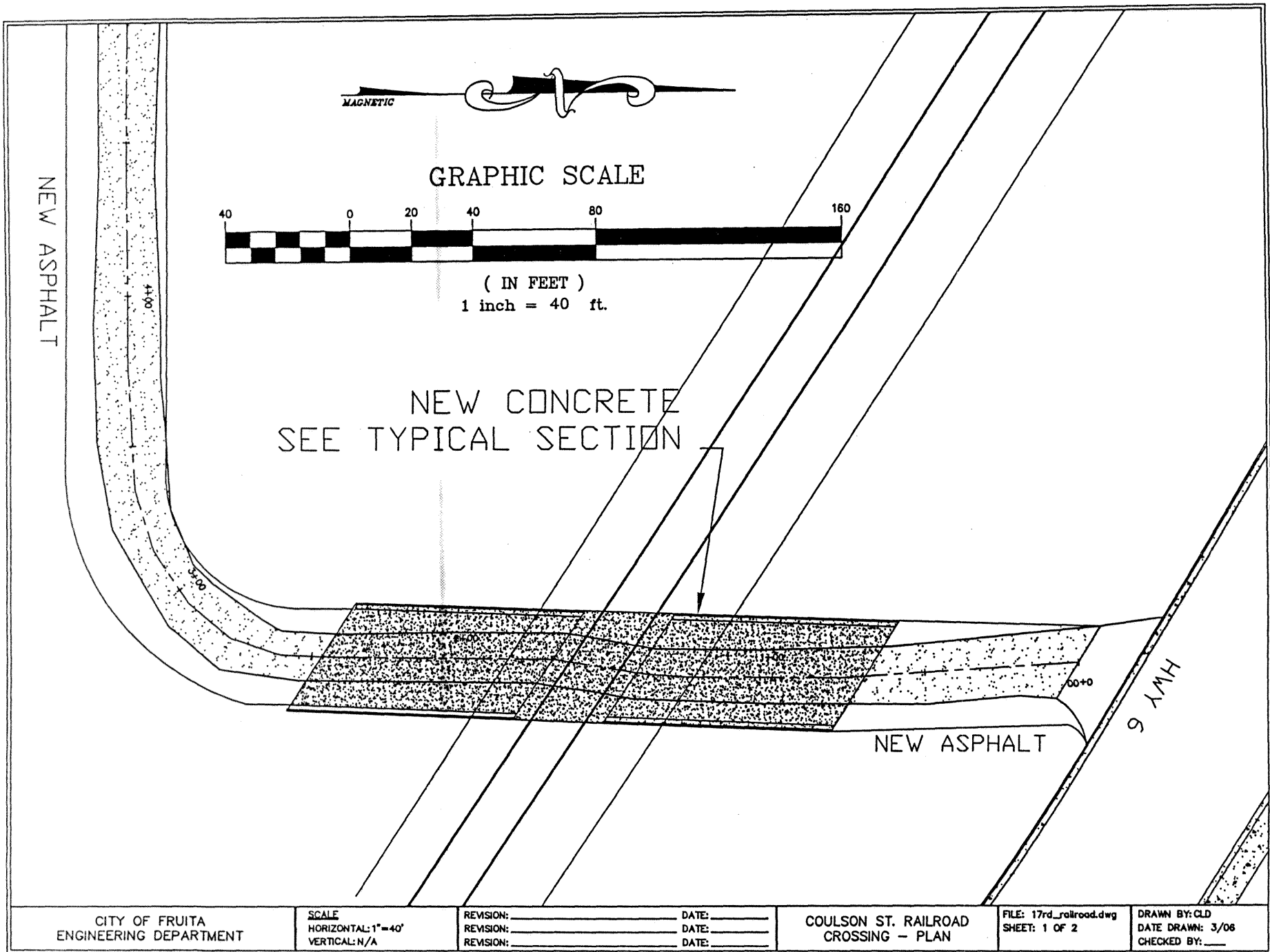


Edward P. Sands  
Attorney for Applicant, City of Fruita  
201 W. Third St., Ste. 201  
P.O. Box 192  
Rifle, CO 81650  
(970) 625-1075  
(970) 625-3989 (fax)



Kathleen M. Snead, Esq.  
Attorney for Union Pacific Railroad Company  
1331 Seventeenth St., Ste. 406  
Denver, CO 80202  
(303) 964-4582  
(303) 964-4585 (fax)

EXHIBIT "A"



CITY OF FRUITA  
ENGINEERING DEPARTMENT

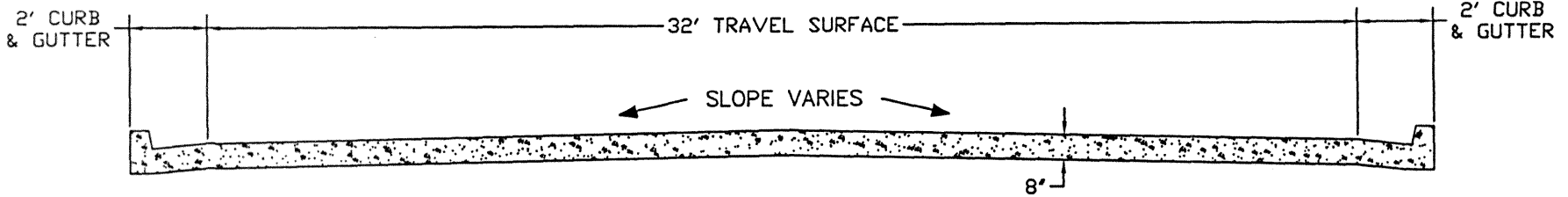
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VERTICAL: N/A

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REVISION: \_\_\_\_\_ DATE: \_\_\_\_\_  
REVISION: \_\_\_\_\_ DATE: \_\_\_\_\_

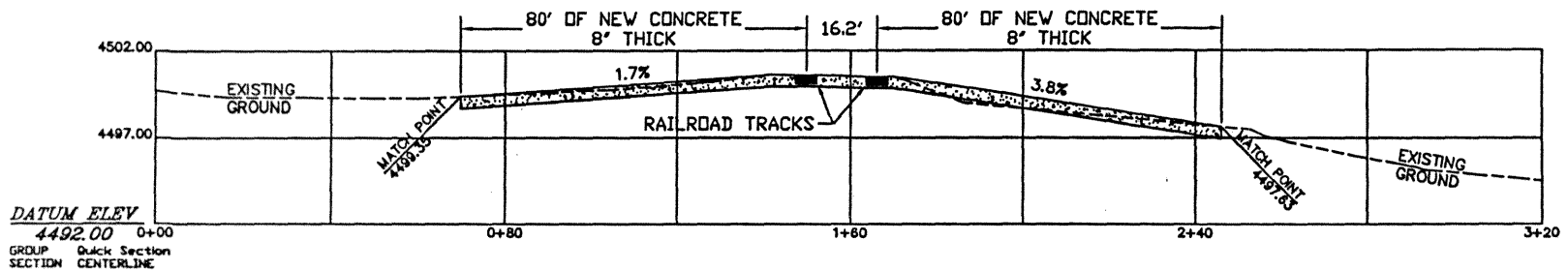
COULSON ST. RAILROAD  
CROSSING - PLAN

FILE: 17rd\_railroad.dwg  
SHEET: 1 OF 2

DRAWN BY: CLD  
DATE DRAWN: 3/06  
CHECKED BY: \_\_\_\_\_



TYPICAL SECTION  
N.T.S.



EXISTING/PROPOSED

CITY OF FRUITA  
ENGINEERING DEPARTMENT

SCALE  
HORIZONTAL: 1"=40'  
VERTICAL: 1"=10'

REVISION: \_\_\_\_\_ DATE: \_\_\_\_\_  
REVISION: \_\_\_\_\_ DATE: \_\_\_\_\_  
REVISION: \_\_\_\_\_ DATE: \_\_\_\_\_

COULSON ST. RAILROAD  
CROSSING - PROFILE

FILE: 17rd\_railroad.dwg  
SHEET: 2 OF 2

DRAWN BY: CLD  
DATE DRAWN: 3/08  
CHECKED BY: \_\_\_\_\_

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

2006 MAY 25 AM 10:52

IN THE MATTER OF THE APPLICATION OF THE )  
CITY OF FRUITA, COLORADO FOR THE )  
AUTHORITY TO CHANGE THE UNION PACIFIC )  
RAILROAD COMPANY'S PRIVATE HIGHWAY- )  
RAILROAD CROSSING DESIGNATION, )  
LOCATED AT COULSON STREET (17 ROAD) )  
AND SOUTH OF U.S. HIGHWAY 6, NUMBER )  
253-793-C, IN FRUITA, COLORADO TO THAT OF )  
A PUBLIC HIGHWAY-RAILROAD CROSSING )

**DOCKET NO. 05A-534R**

**RESPONSE TO INTERIM  
ORDER REQUESTING  
CLARIFICATION OF A  
PORTION OF THE  
STIPULATION AND  
SETTLEMENT AGREEMENT**

On May 5, 2006, Applicant, City of Fruita, filed a Motion to Substitute Stipulation and Settlement Agreement. Attached to that Motion was the incorrect drawing showing the material to be used at the crossing as concrete.

The correct drawing is attached hereto as Exhibit "A" showing the material to be used at the crossing as asphalt.

Respectfully submitted this 22 day of May, 2006.



Edward P. Sands, Attorney for Applicant  
Attorney Registration No. 8459  
Carter & Sands, P.C.  
201 West Third Street, Ste. 201  
Rifle, CO 81650



EXHIBIT "A"



GRAPHIC SCALE



( IN FEET )  
1 inch = 40 ft.

NEW ASPHALT MAT  
& 2' CURB & GUTTER  
SEE TYPICAL SECTION

NEW ASPHALT

4+00

3+00

2+00

1+00

00+0

NEW ASPHALT

HWY 6

CITY OF FRUITA  
ENGINEERING DEPARTMENT

SCALE  
HORIZONTAL: 1"=40'  
VERTICAL: N/A

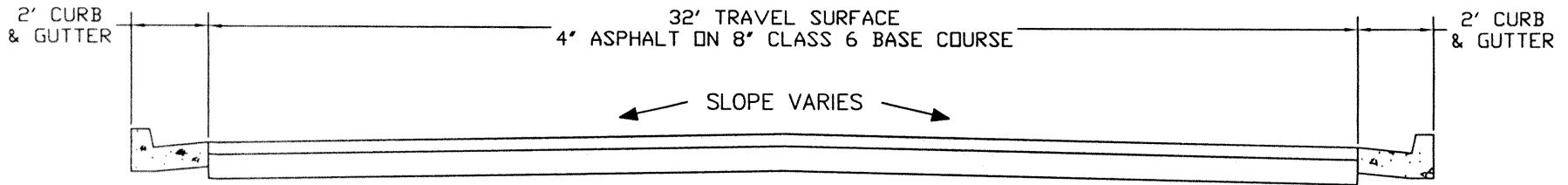
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REVISION: \_\_\_\_\_  
REVISION: \_\_\_\_\_

DATE: 3/28/06  
DATE: \_\_\_\_\_  
DATE: \_\_\_\_\_

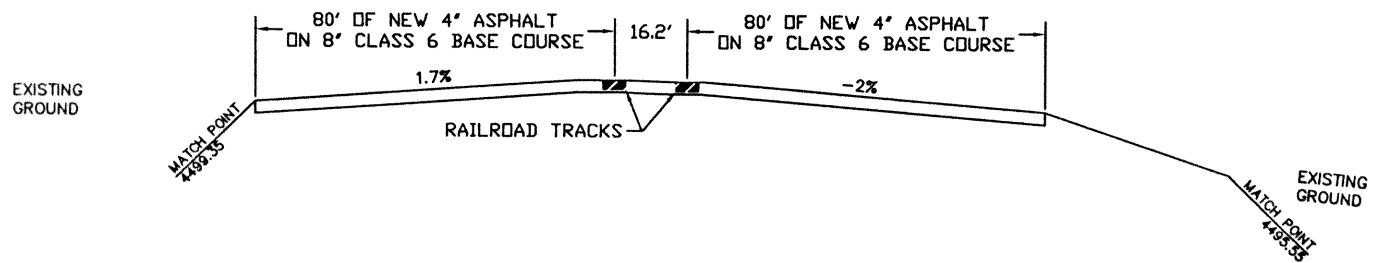
COULSON ST. RAILROAD  
CROSSING - PLAN

FILE: 17rd\_railroad.dwg  
SHEET: 1 OF 2

DRAWN BY: CLD  
DATE DRAWN: 3/06  
CHECKED BY: \_\_\_\_\_



TYPICAL SECTION  
N.T.S.



DATUM ELEV

4492.00

GROUP Quick Section  
SECTION CENTERLINE

EXISTING/PROPOSED GRADES  
AT 17 RD. RAILROAD CROSSING

CITY OF FRUITA  
ENGINEERING DEPARTMENT

SCALE  
HORIZONTAL: 1"=40'  
VERTICAL: 1"=10'

REVISION: ASPHALT MAT  
REVISION: \_\_\_\_\_  
REVISION: \_\_\_\_\_

DATE: 3/28/06  
DATE: \_\_\_\_\_  
DATE: \_\_\_\_\_

COULSON ST. RAILROAD  
CROSSING - PROFILE

FILE: 17rd\_railroad.dwg  
SHEET: 2 OF 2

DRAWN BY: CLD  
DATE DRAWN: 3/06  
CHECKED BY: \_\_\_\_\_