# AIRD & BERLIS LLP

Barristers and Solicitors

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June 4, 2013

EMAIL, COURIER AND RESS

Kirsten Walli Board Secretary Ontario Energy Board 2300 Yonge Street 27th Floor, Box 2329 Toronto, ON M4P 1E4

Dear Ms. Walli:

Re:

Wainfleet Wind Energy Inc. ("Wainfleet")

**Reply Submissions** 

Board File No: EB-2013-0031

Please find attached Wainfleet's Reply to Board Staff Submissions issued May 27<sup>th</sup>, 2013.

As per Procedural Order No. 1, dated April 26<sup>th</sup>, 2013, an electronic copy has been filed on RESS and two hard copies are being couriered to the Board Secretary.

If you have any questions, please feel free to contact the undersigned.

Yours truly,

AIRD & BERLIS LLP

Scott Stoll

SAS/hm

cc:

Harold Loeffen, the Applicant

Tom Rankin, Rankin Construction

Donald C. DeLorenzo, Counsel for the Township of Wainfleet

Rudra Mukherji, Ontario Energy Board

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EB-2013-0031 Filed: February 4, 2013 Exhibit B

Tab 3

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Schedule 1

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### **ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the Ontario Energy Board Act, 1998, S.O. 1998, c. 15 (Schedule B);

AND IN THE MATTER OF an application by Wainfleet Wind Energy Inc. for a n Order or Orders pursuant to section 41(9) of the *Electricity Act 1998*, S.O. 1998, c. 15, Schedule A, as amended, establishing the location of Wainfleet Wind Energy Inc.'s distribution facilities within certain public right-of-way and street owned by the Township of Wainfleet, Regional Municipality of Niagara.

# REPLY SUBMISSIONS OF Wainfleet Wind Energy Inc. EB-2013-0031

### Overview

- 1. The Applicant is Wainfleet Wind Energy Inc. ("Wainfleet Wind" or the "Applicant"), an Ontario corporation formed by the Loeffen family and located in the Township of Wainfleet, Ontario ("Township"). Wainfleet Wind is a corporation which carries on the business of developing renewable wind energy generation projects and the associated distribution facilities in the Township. It has partnered with Rankin Construction Inc., a local contractor which carries on the business of building renewable infrastructure, including wind projects.
- 2. Wainfleet Wind applied to the Ontario Energy Board (the "Board") pursuant to section 41(9) of the *Electricity Act*, 1998, S.O. 1998, c. 15 (Sched. A), as amended (the "Electricity Act") for an order or orders establishing the location of Wainfleston 4, 2013

Exhibit B

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Wainfleet Wind

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installation of high voltage power cables, associated ducts and communications cable

along and across Concession 1 Road and across the unopened Sideroad 22 road

allowance at the municipal drain more particularly identified in Exhibit B, Tab 3,

Schedule 1, Appendix B (collectively referred to as the "Road Allowances") owned by

the Township, all substantially in accordance with the Applicant's plans as set out in

Exhibit B, Tab 3, Schedule 1, Appendix A. A copy of the plans has been provided as an

attachment to these submissions.

3. The distribution system is necessary to convey electricity from the wind turbines to the

distribution system. Wainfleet Wind has a contract to sell all of the electricity from the

project to the Ontario Power Authority under the FIT Program.

4. Wainfleet Wind is a distributor within the meaning of section 41 of the *Electricity Act* and

has the right to seek the determination of the Board where it is unable to obtain

agreement with the Township in respect of the distribution system.

5. The Township was named as a party to these proceedings by the Board but did not

participate.

6. The proposed location advanced by Wainfleet Wind has been developed in consultation

with Township Staff and no issues or alterations have been requested.

7. The Distribution System will use three different construction approaches in various

sections, as detailed in the drawings:

(i) Direct buried cables across private land and along Concession 1 Rd. and

north portions of Station Rd.;

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- (ii) Concrete encased duct bank for the crossing of Concession 1 Rd.(optional directional bore);
- (iii) Directional bored ducts for south portion along Station Rd. and for crossing Station Rd.
- 8. The proposed cable installation meets or exceeds the requirements of the Ontario Electrical Safety Code and CSA Standard C22.3-#7, Underground Systems.
- 9. Permanent Buried Cable Markers will be installed at either end of road crossings and are recommended by CSA for identifying the trench location in rural locations.
- 10. Board Staff support Wainfleet Wind's Application.
- 11. Approval is required for Wainfleet Wind to fulfill its obligations to the Ontario Power Authority under the FIT Program and therefore, the approval is in the public interest.
- 12. Wainfleet Wind submits there are no outstanding issues and that its Application should be approved.

### Costs

- 13. Wainfleet Wind requests the Board consider an award of costs against the Township.

  While such a request is unusual, the Applicant feels it is appropriate in the circumstances.
- 14. In particular, Wainfleet Wind is of the view that Rule 3.07 of the Board's Practice Direction on Cost Awards is appropriate in the circumstances. Wainfleet Wind was forced to apply to the Board because of the Township's general opposition to wind EB-2013-0031

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projects not because of any specific concern regarding proposal regarding the

distribution system. This is reinforced by the Township's lack of meaningful participation

in this Application.

15. In the present circumstance, Wainfleet Wind has been put to significant expense in

preparing and prosecuting this application including costs for publishing the Notice of

Application of \$3,500.00. Other costs include costs of counsel, expenses related to the

hearings (e.g. courier, Board) and the diverting of resources from other tasks. A copy of

the invoices for the publication of the Notice are appended to these submissions.

16. In addition, the Board had to use scarce resources to process this Application. Board

Staff noted the Township's behaviour seems to be based upon a disagreement with the

provincial policy regarding green energy rather than any issue with the Applicant or the

proposed project.

17. The Township, while forcing the Applicant to pursue a decision of the Board, did not

consider the request for municipal consent and then failed to participate in the OEB

proceeding.

18. Wainfleet Wind infers from this conduct that the Township wished to inflict unnecessary

costs and inconvenience on Wainfleet Wind. Further, this behaviour impacts other

entities that are regulated by the Board as resources are diverted to deal with this

Application. This type of behaviour should be strongly discouraged.

19. The Board has considerable discretion to award costs and Wainfleet Wind feels it is

appropriate for the Board to exercise its discretion to award costs against the Township

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in favour of Wainfleet Wind in the amount of \$3,500.00 plus the Board's cost of the

Application. The request for costs covers the publishing costs only and not the other

expenses incurred by Wainfleet Wind.

Conclusion

20. Wainfleet Wind requests an order or order(s) granting it the right to construct and install

the proposed distribution system as requested.

21. Wainfleet Wind requests the Board issue a decision at its earliest opportunity. Further,

Wainfleet Wind does not wish any consideration of the costs to delay a decision and

order regarding the ability to install the proposed distribution system.

DATED June 4<sup>th</sup>, 2013 at Toronto, Ontario.

Wainfleet Wind Energy Inc.

Soll.

By its counsel

AIRD & BERLIS LLP

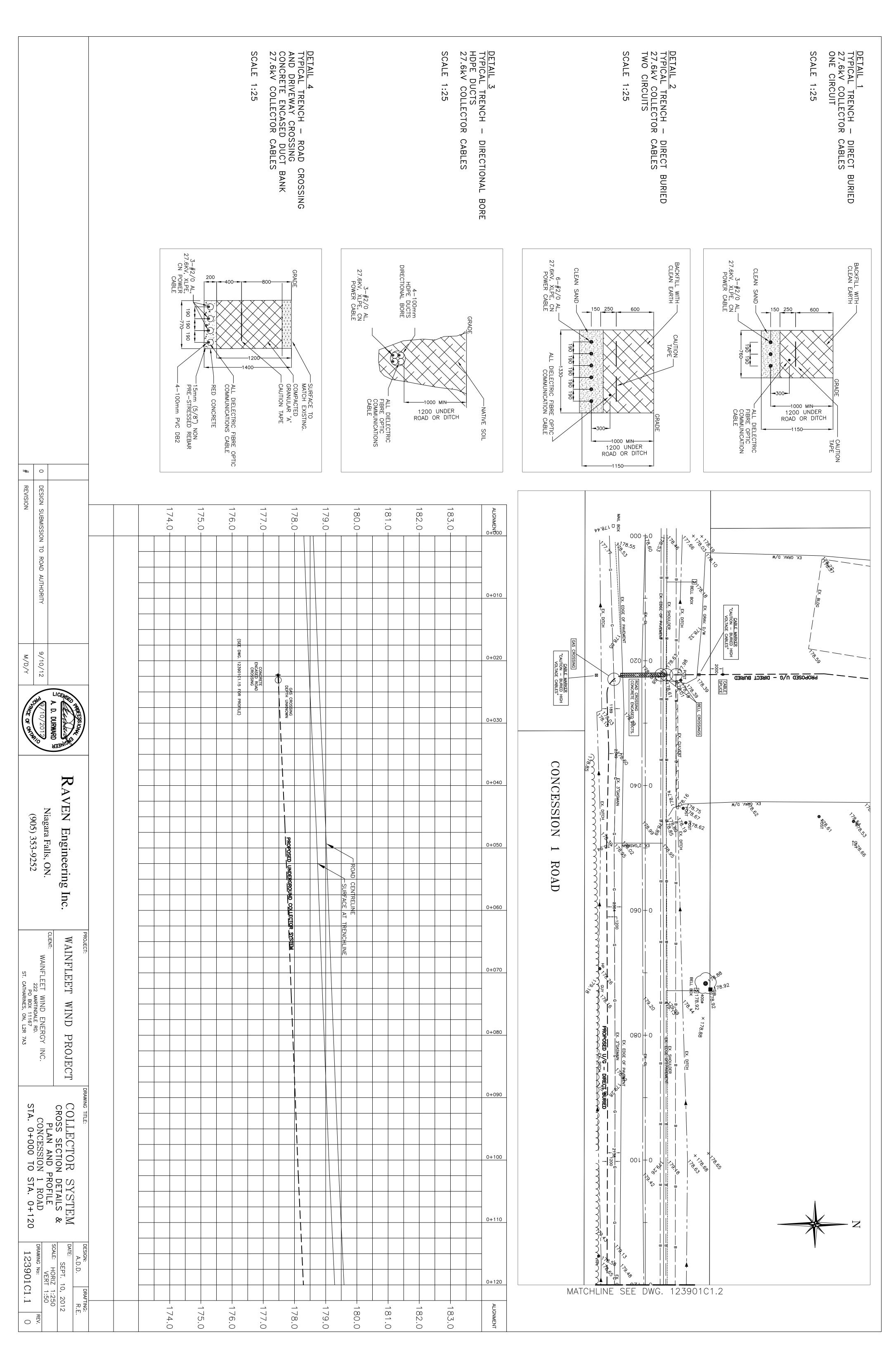
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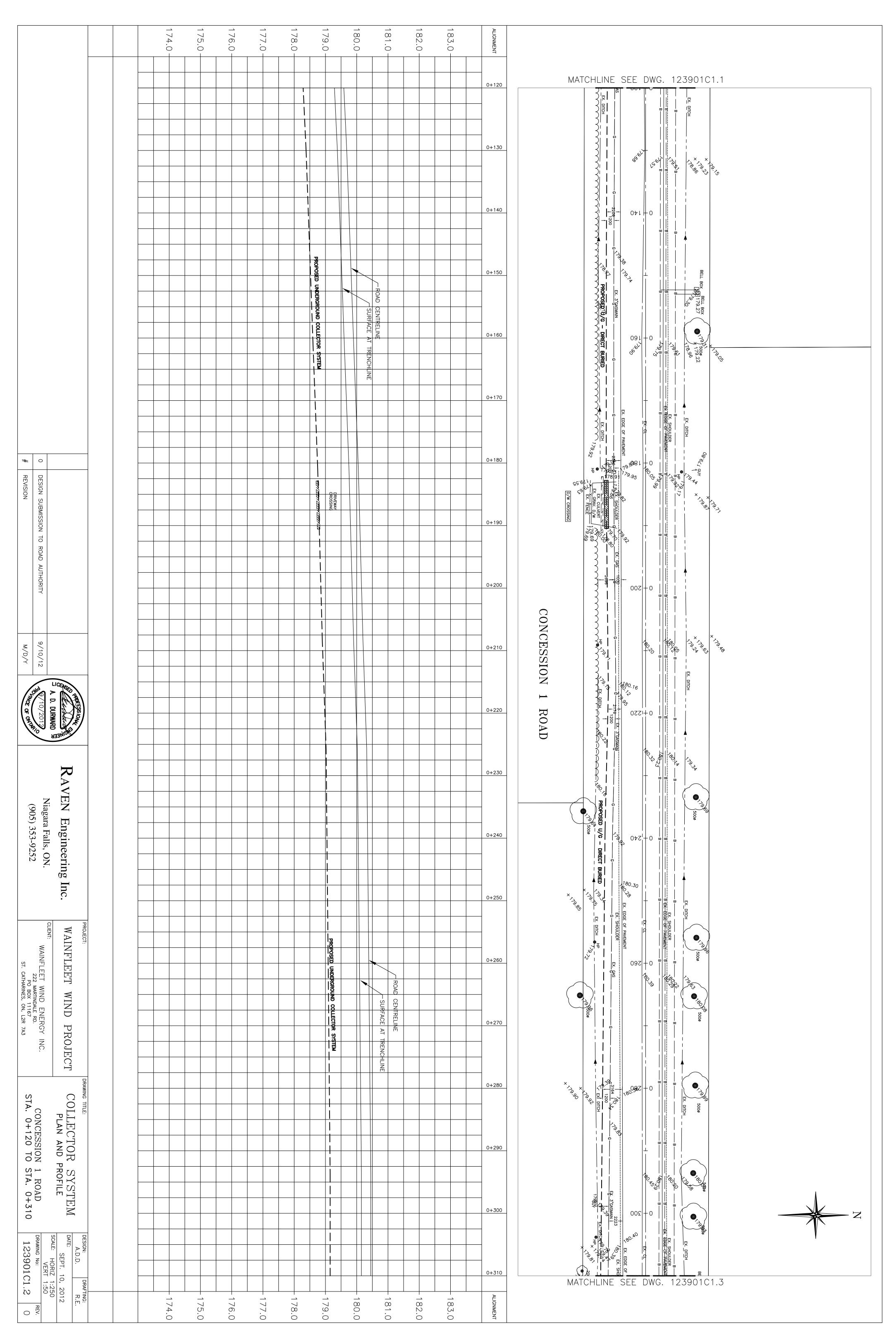
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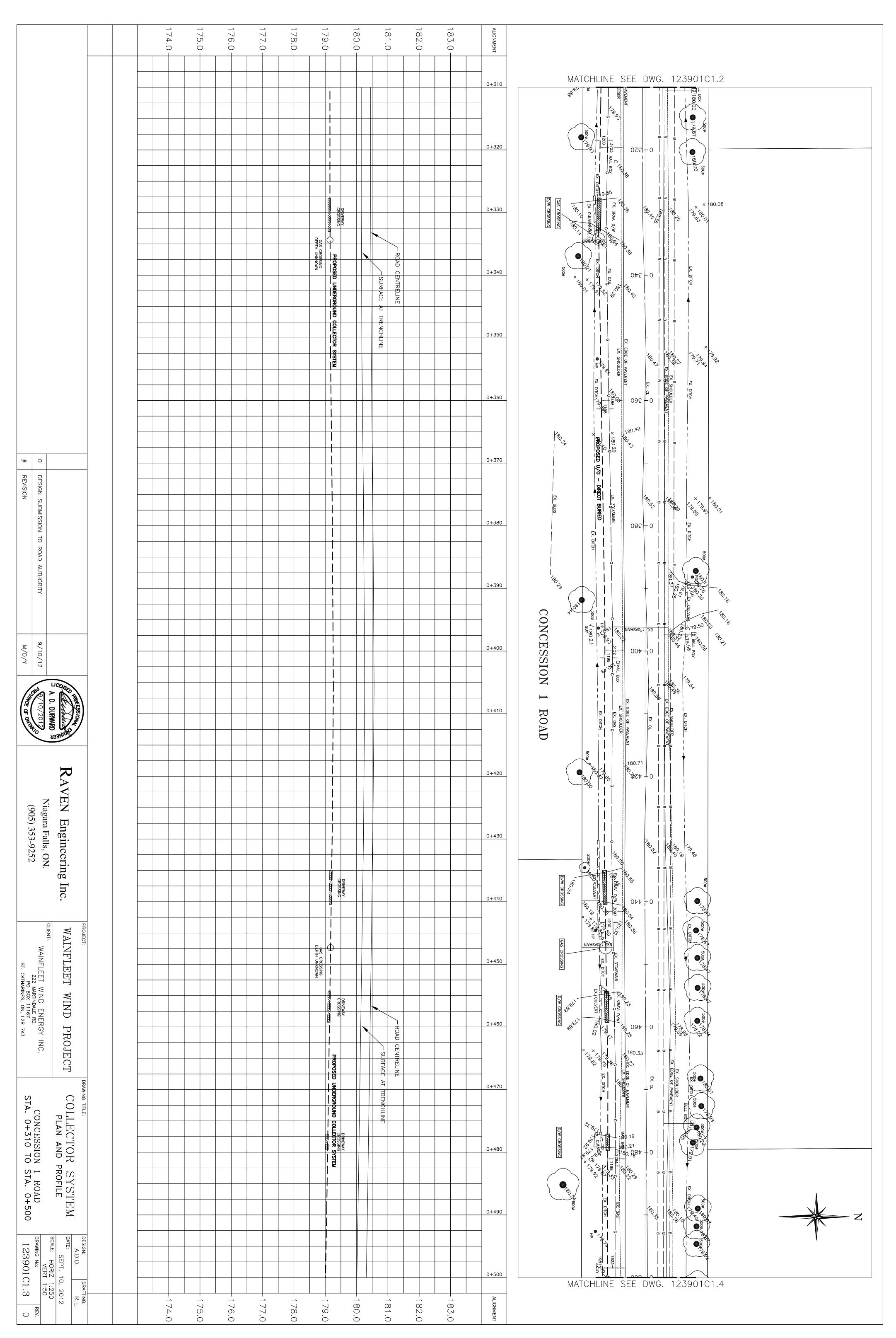
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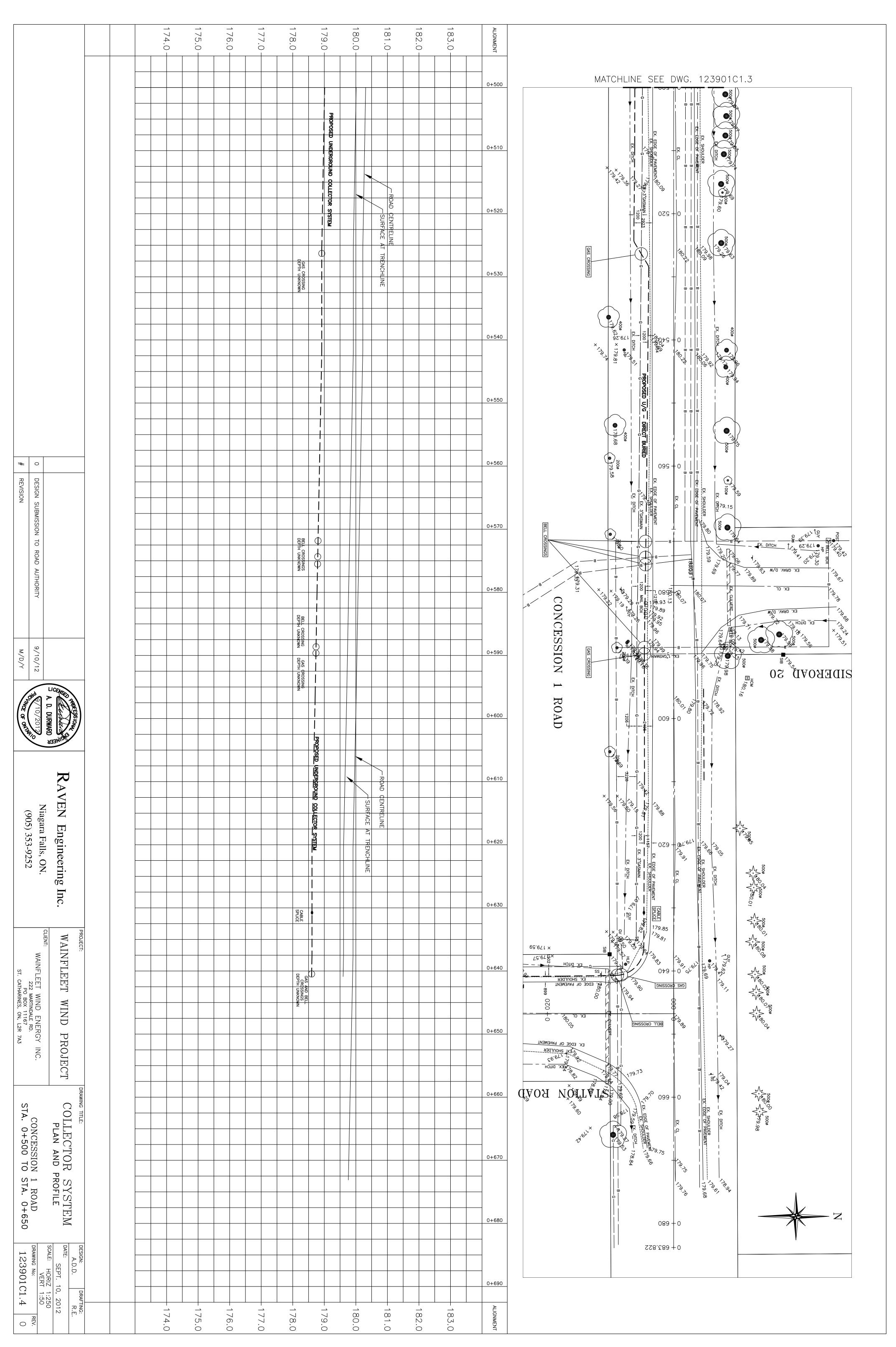
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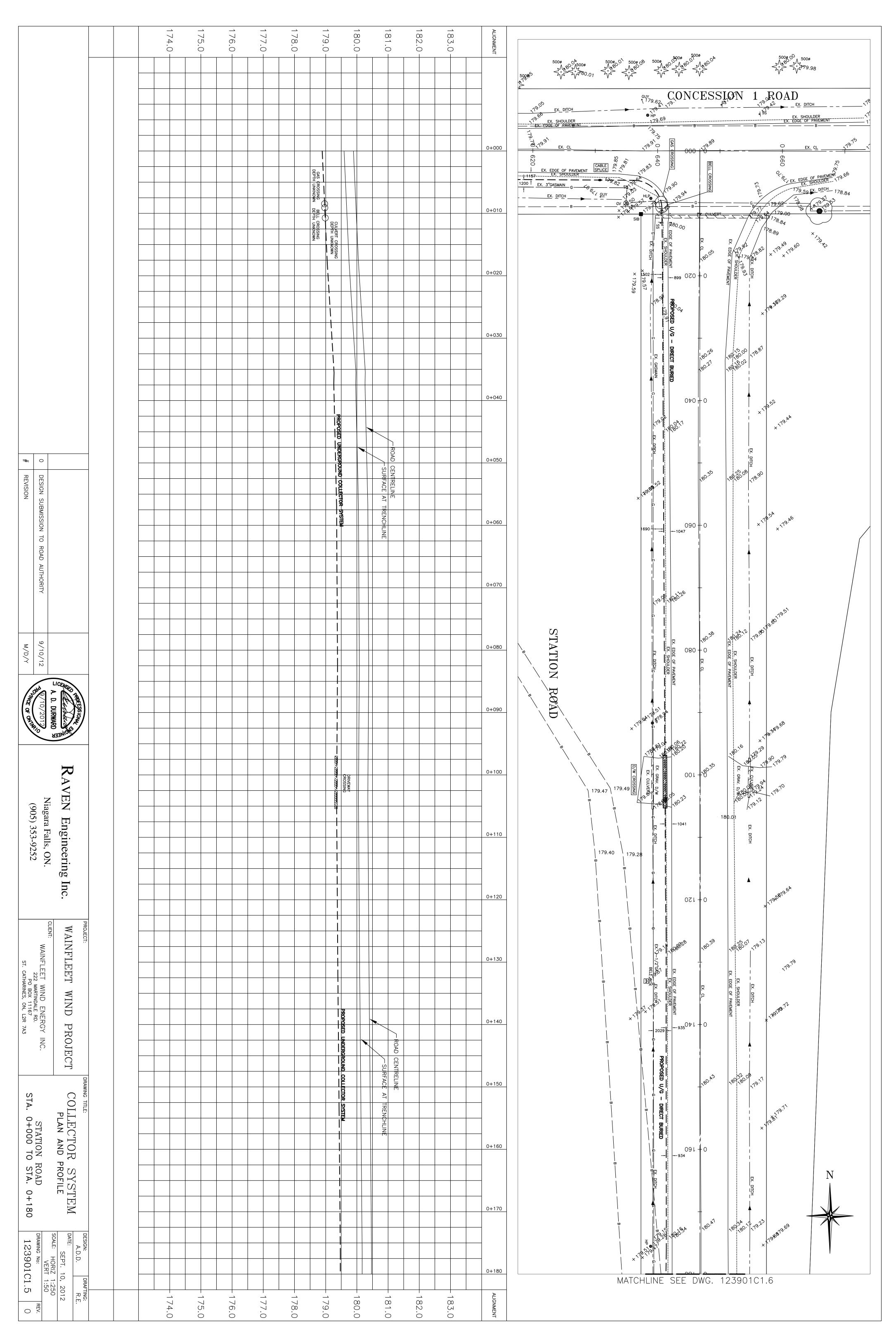
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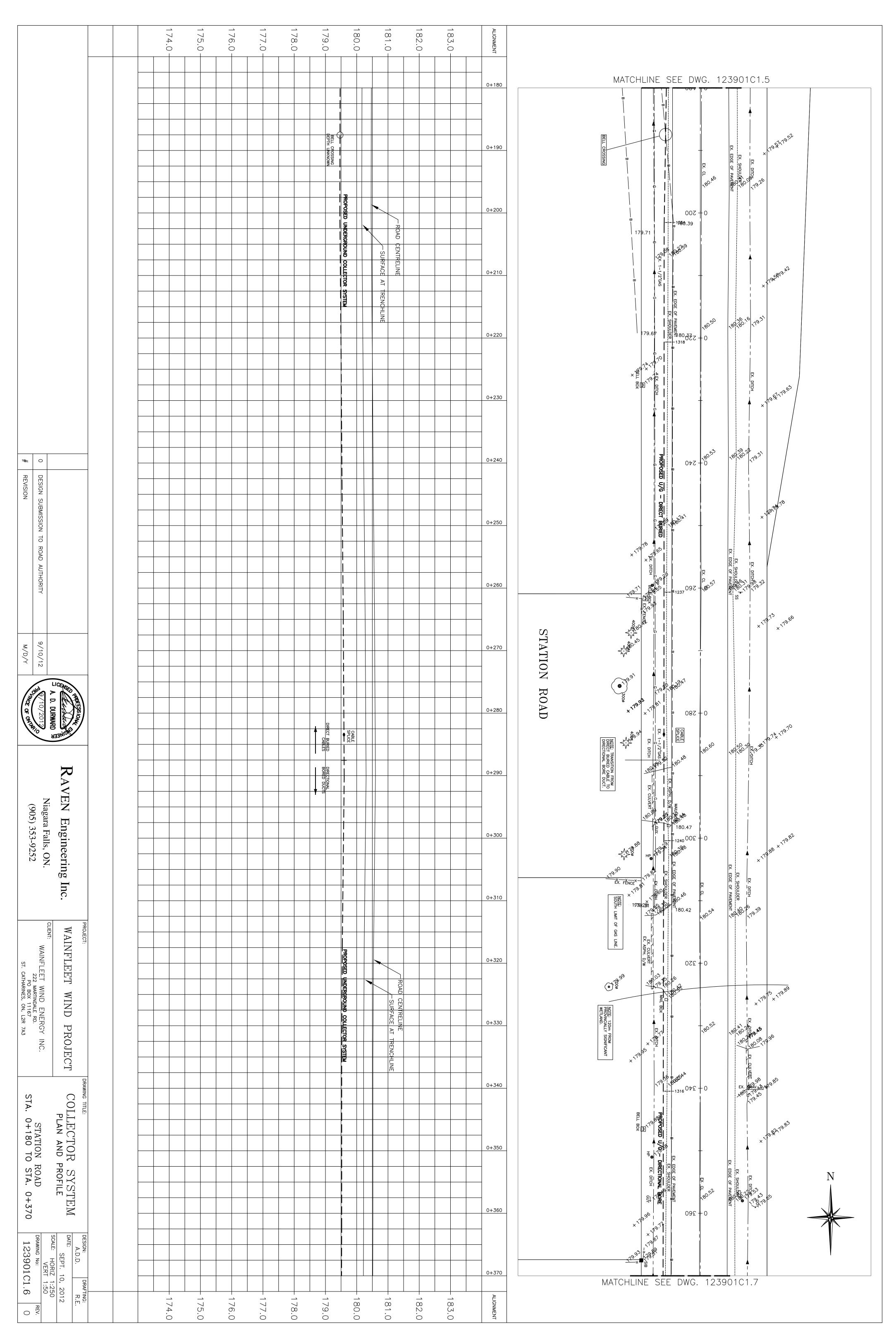


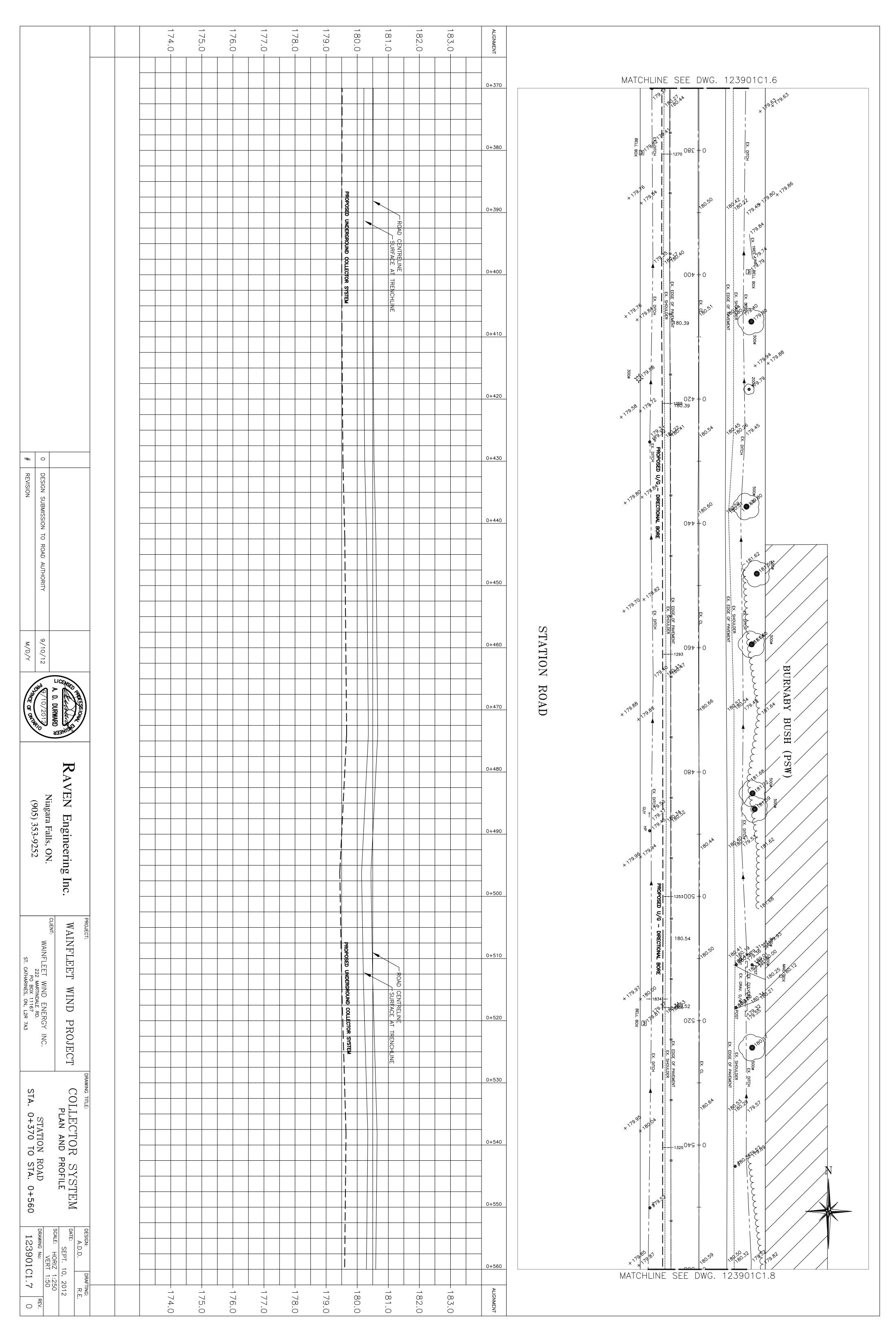


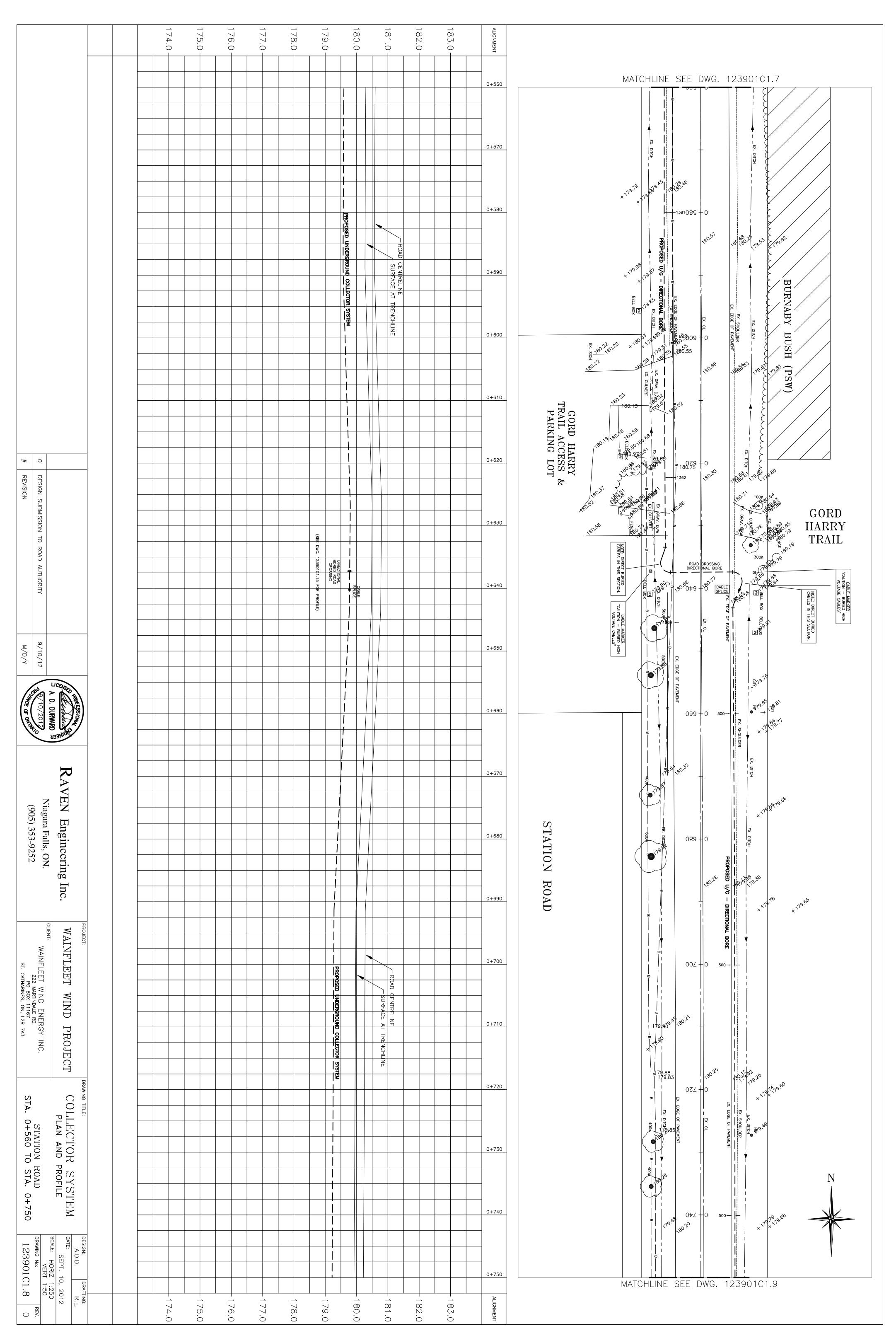


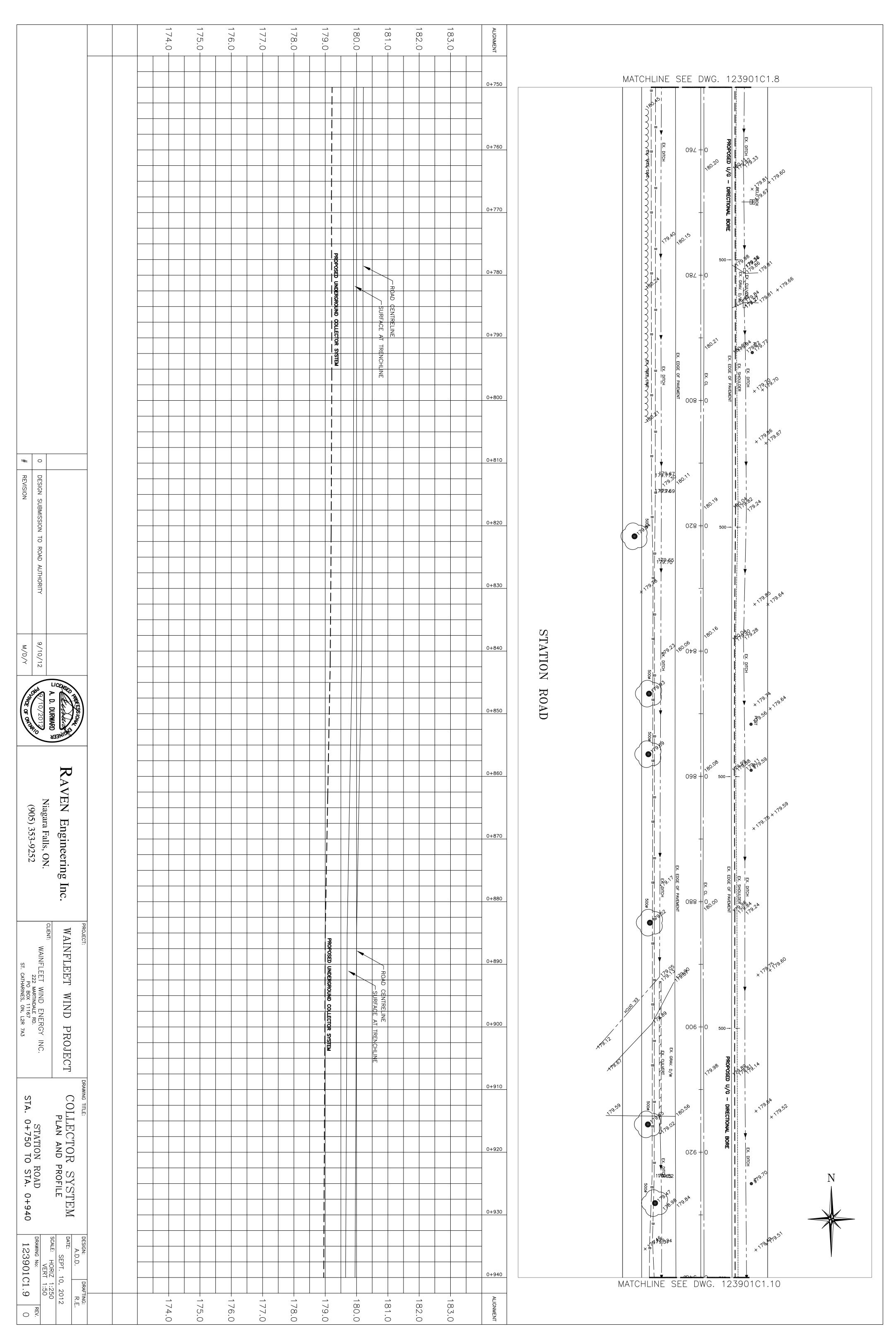


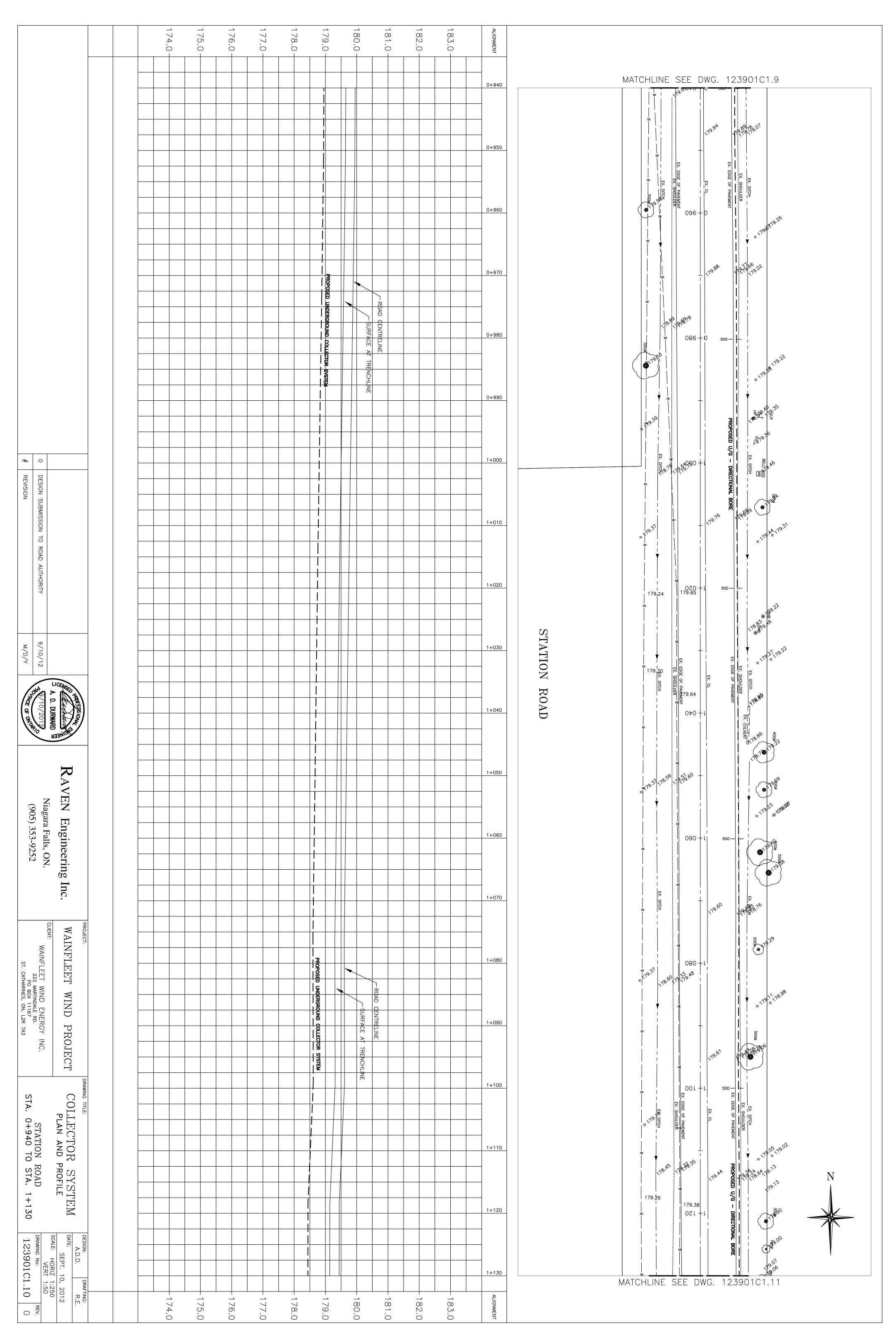


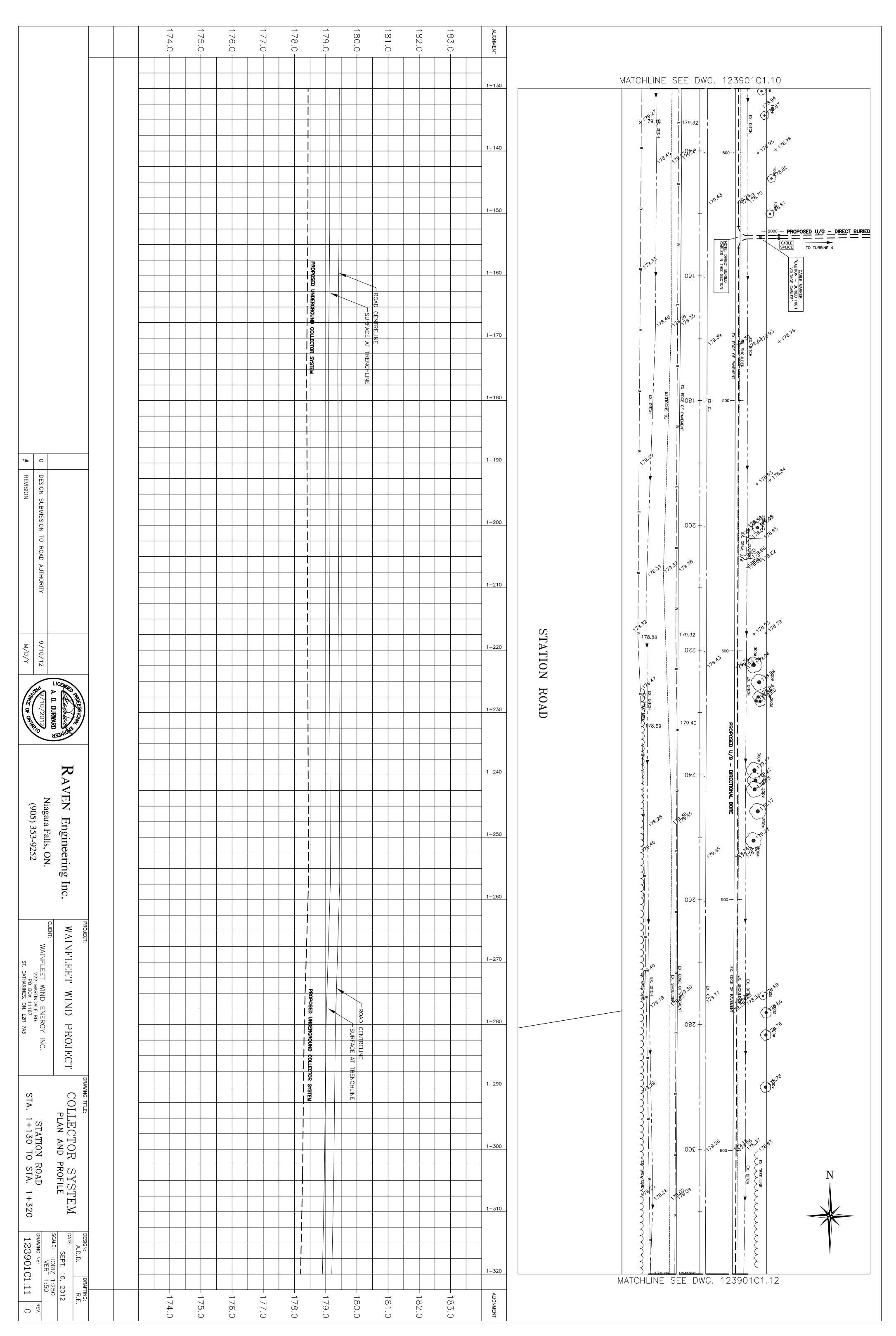


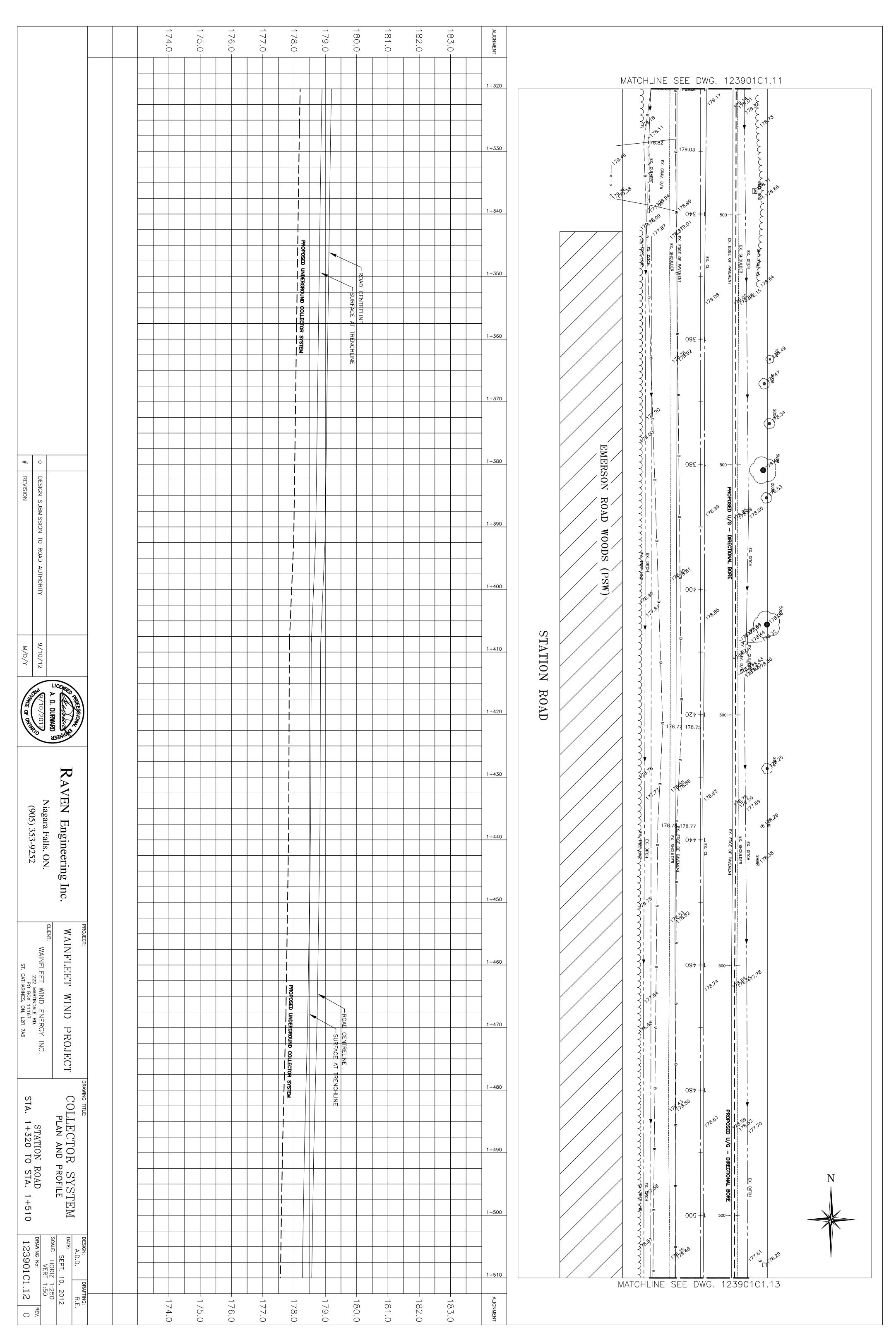


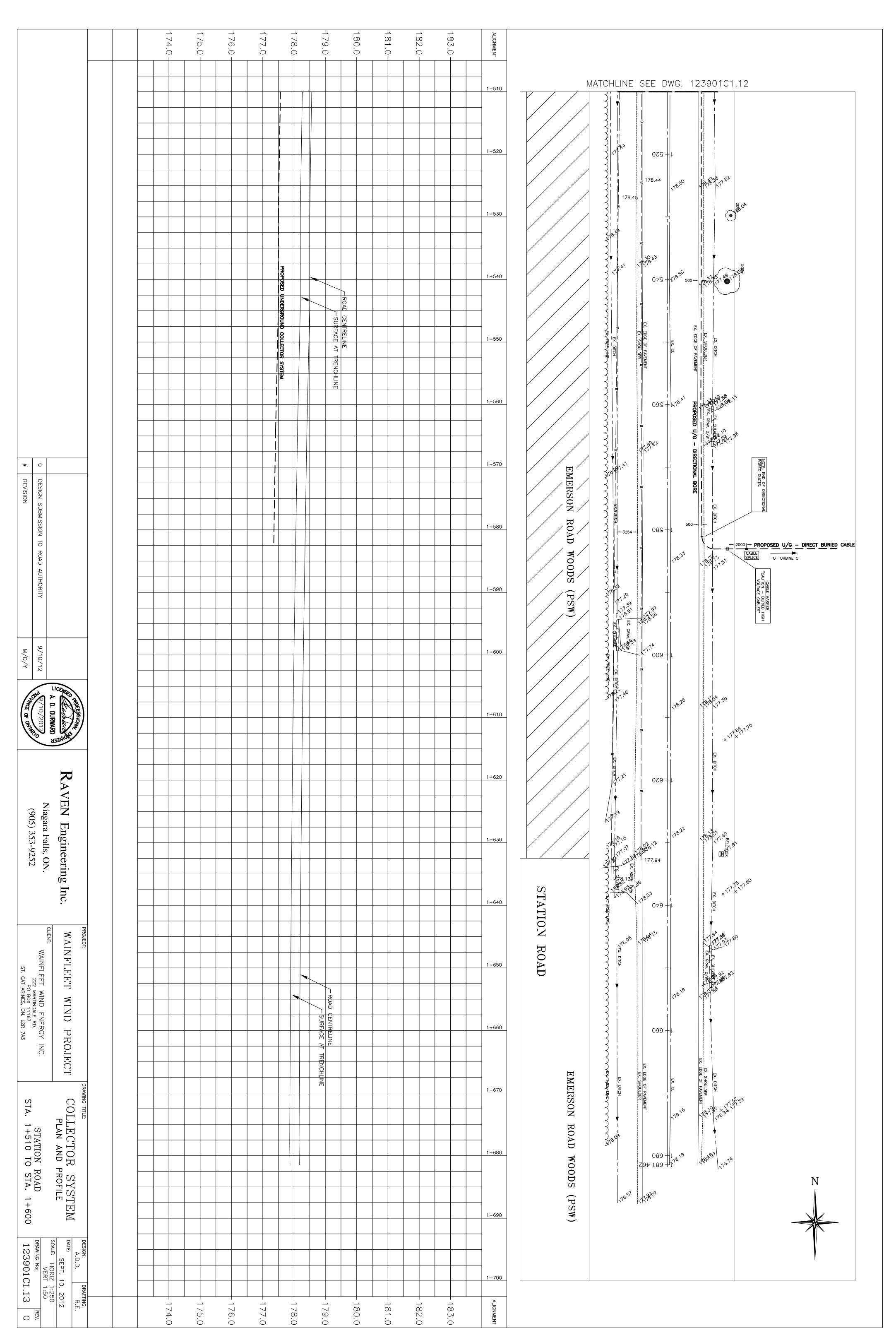


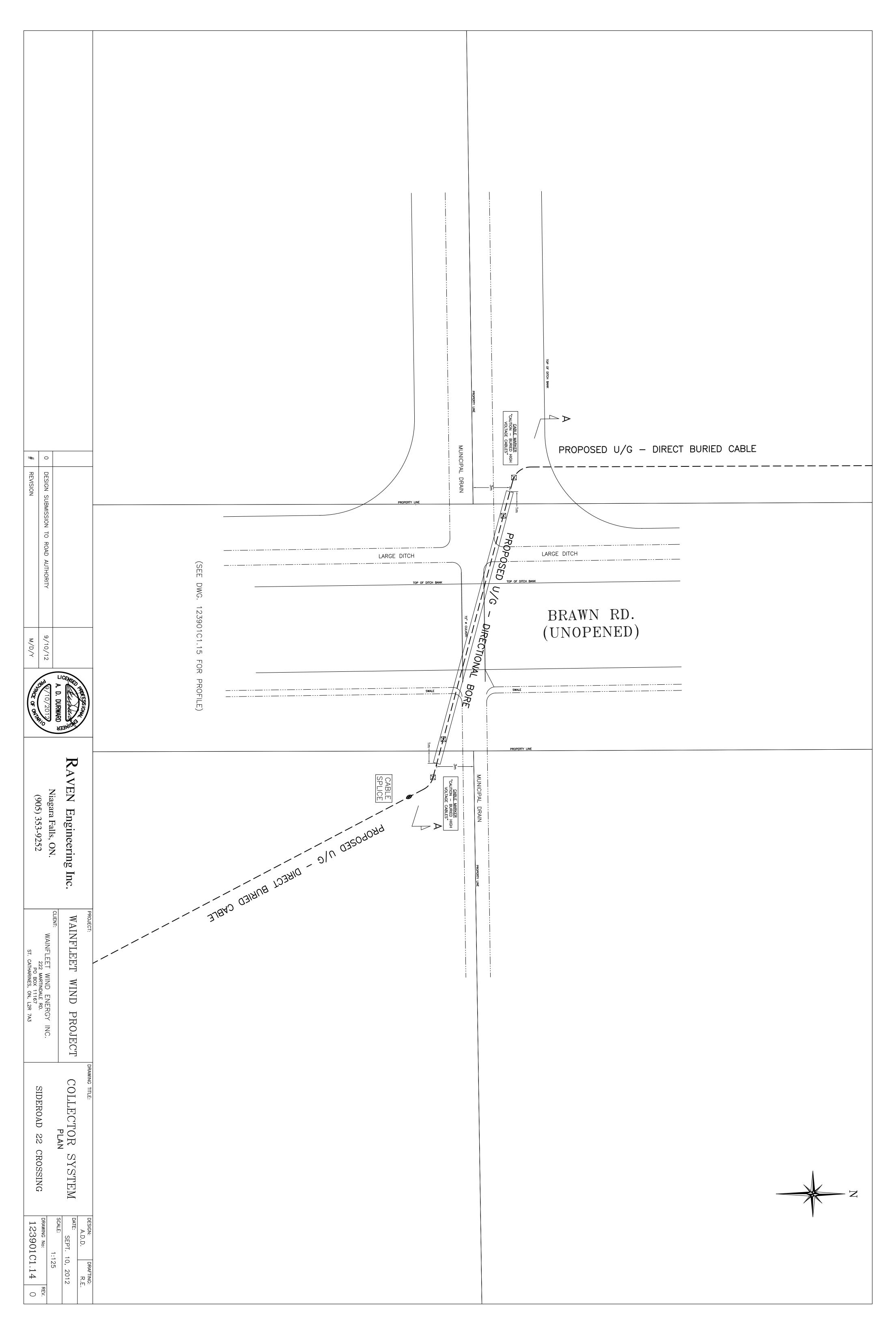


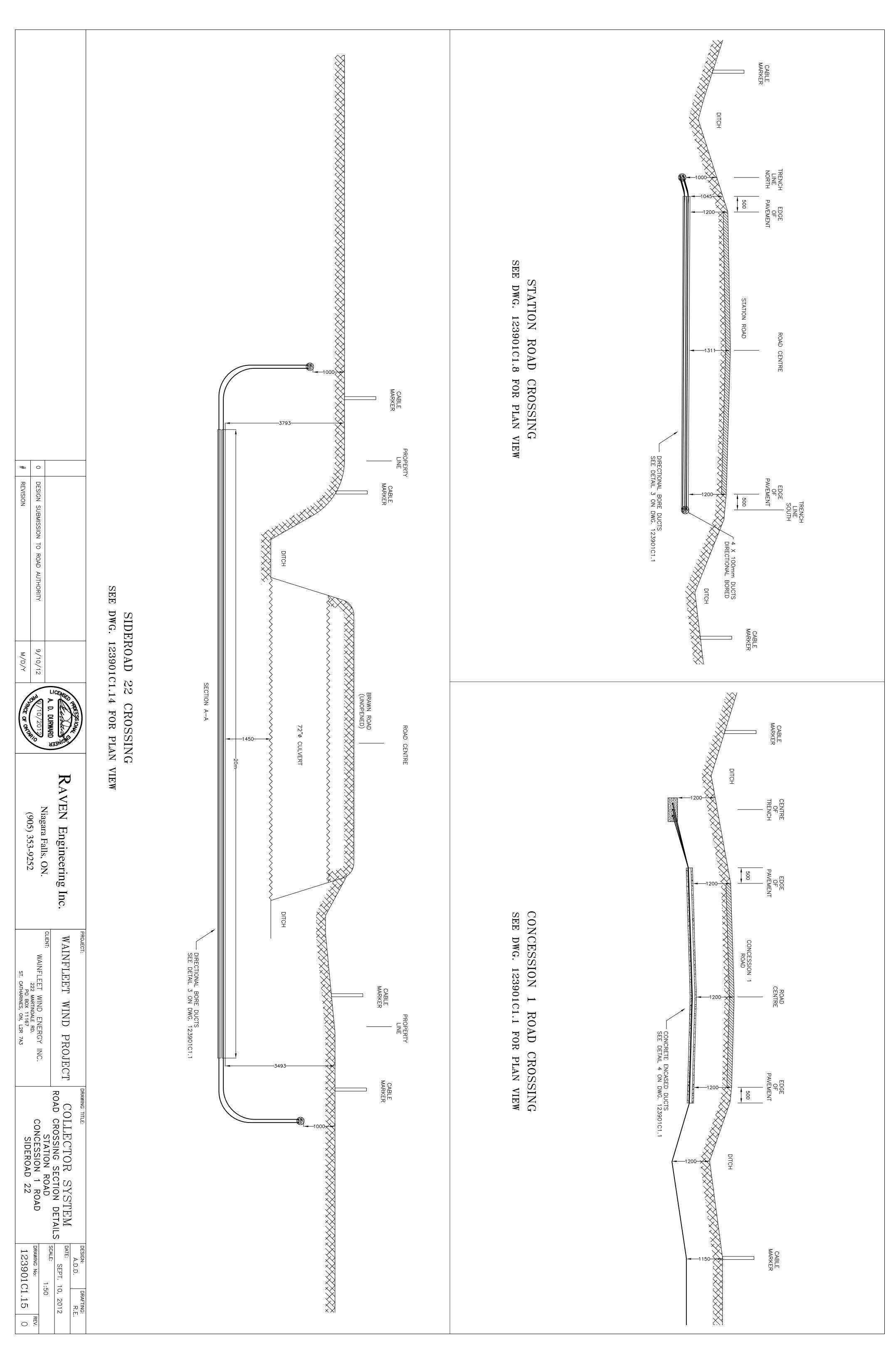












Purchase Order No.

1395



### Rankin Construction Inc.

222 Martindale Rd. P.O. Box 1116 St. Catharines, ON L2R 7A3 Fax: (905) 684-2260 Tel: (905) 684-1111 Hamilton Office: Tel: (905) 525-5153 Fax: (905) 525-9110 Reference

Wainfleet Wind Energy Inc.

Delivery Info

Date:

March 15, 2013

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Vendor Info Sun Media Company Name: Address:

Phone: 905-931-5711 **Delivery Date:** 

Contact:

Trevor Beattie Email: trevor.beattie@sunmedia.ca

F.O.B.:

Item	Description	Quantity	Units	Unit Price	TOTAL
1	Ontario Energy Board Notice of Application and Hearing Run on Monday March 18, 2013 in the Standard Tribune and Review				\$3,500.00

Total \$3,500.00

**General Notes** 

- 1) As per attached quotation
- 2) Ontario Energy Board name and logo heading up the ad and project map incl.

P.S.T. EXEMPT P.S.T. INCLUDED

P.S.T. EXTRA

G.S.T. Extra G.S.T. # R105015200

Jordan Beekhuis P.Eng.

DTI

MediaPlus - Display

**Production Ticket** SEE JOB NUMBER(S) BELOW User: TBEATT Date: 03/15/2013

Time: 9:39 AM

Order #:

1217213

Advertiser: AMA0362900

RANKIN CONSTRUCTION INC

Creation: Reference #: 03/15/2013 08:42 AM

Placed by:

Sold by:

**PN70** 

Trevor Beattie

P.O. #:

N/A

Agency/Client: AMA0362900

RANKIN CONSTRUCTION INC

Contact:

**ACCOUNTS PAYABLE** 

Tel.: (905) 684-1111

Address:

222 MARTINDALE Road

Fax: (905) 684-2260

NOTICE OF APPLICATION

Caption: Product:

RETL

Retail

Coupon: No

Brand: Position:

N

HBqSunMedOrd - CENTRAL\_812

Reversed: No

Total Ad/Order Cost:

\$3,500.00

Date	Job#	Pub.	Units	Supplement- Section	Class.	Ad#	Line Rate	Flat Charge	Color	Spot	Spot	Spot
Mon Mar 18 2013	TS2249916	NRPR	5.0 x 230.0	NEWS-ANYW		2249916		\$1,100.00	B&W			
Mon Mar 18 2013	TS2249917	SCPR	5.0 x 230.0	NEWS-ANYW		2249917		\$1,300.00	B&W			
Mon Mar 18 2013	TS2249920	WTPR	5.0 x 230.0	NEWS-ANYW		2249920		\$1,100.00	B&W			

PO BOX 1116 ST CATHARINES, ON L2R 7A3

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