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BEAR RIVER CASINO
7

8 **BEFORE THE**
9 **DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL**

10 IN THE MATTER OF THE ACCUSATION
AGAINST:
11 Bear River Casino
11 Bear Paws Way
12 Loleta, CA 95551-9684

13 ON-SALE GENERAL PUBLIC EATING PLACE
14 LICENSE

FILE NO. 47-423392

REG. NO. 08070211

**RESPONDENT BEAR RIVER
CASINO'S MOTION/PETITION FOR
RECONSIDERATION, AND
SUPPORTING MEMORANDUM**

**IMMEDIATE 10-DAY STAY
REQUESTED**

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20 By this motion, respondent, Bear River Casino ("Casino") hereby moves/petitions for
21 reconsideration of the Department's January 25, 2011 Order (copy attached as Exhibit 1)
22 remanding this matter to Administrative Law Judge John W. Lewis "... for such further and
23 additional proceedings as may be necessary and appropriate in the ALJ's sole discretion."
24 Because the Department's authority to grant reconsideration will expire at the close of business
25 on February 24, 2011, the Casino hereby also seeks an immediate 10-day stay of that order to
26 allow the Department additional time to consider the motion/petition.

27 The grounds for this motion/petition are set forth in the following supporting
28 memorandum and the exhibits submitted herewith.

1 **SUPPORTING MEMORANDUM**

2 **INTRODUCTION**

3 At issue in this dispute is whether the Bear River Casino ("Casino") properly should be
4 determined to be in violation of Condition #8¹ of its Type 47 license, and whether revocation of
5 that license is appropriate discipline in the event that the Casino is determined to be in violation
6 of Condition #8. Condition #8 purports to obligate the licensee to modify the intersection of
7 Singley Hill Road (a public Humboldt County road) and Bear River Drive (now a tribal road)² so
8 as to prohibit vehicles leaving the Tribe's trust lands (not just the Casino) from turning right
9 (north) on Singley Hill Road, and to prohibit vehicles travelling south on Singley Hill Road from
10 turning left onto Bear River Drive to access any of the Tribe's lands, including the lands on which
11 the Casino is located.

12 In a decision dated May 20, 2009, and adopted by the Department on June 15, 2009, ALJ
13 Lewis found that the Tribe diligently and in good faith had done everything within its power to
14 modify the intersection so as to fully and literally comply with Condition #8, but that full and
15 literal compliance had been prevented by other government agencies that would not grant the
16 permits needed to effect the modifications to the intersection purportedly required by Condition
17 #8. Notwithstanding the ALJ's determination that "It does not seem fair to punish Respondent's
18 license because of the inaction of the Bureau of Indian Affairs[,]"³ the ALJ proceeded to
19 recommend, and the Department concurred, that the Casino's license should be revoked if the
20 required modifications to the intersection have not been completed within two years.

21 _____
22 ¹ "The licensee shall modify the entrance from Singley Road to Bear River Drive so that public vehicular
23 ingress and egress is available only to and from the south on Singley Road. The modified entrance or a separate
24 entrance shall provide access to the premises from the north on Singley Road for emergency vehicles only."

25 ² Bear River Drive provides access to the Bear River Band of Rohnerville Rancheria's ("Tribe") trust lands
26 on which the Casino, tribal member residences, a tribal gas station/convenience store and tribal government offices
27 are located. The Casino is accessed from Bear River Drive via another tribal road, Bear Paws Way.

28 ³ The Bureau of Indian Affairs ("BIA") was only one obstructing agency, and then only as to the trust lands
on which Bear River Drive is located. Humboldt County and the California Department of Forestry and Fire
Protection also interposed objections to proposed modifications of the Singley Hill Road portion of the intersection
over which neither the Tribe nor the BIA had or has any jurisdiction. Other than to post a "No Left Turn" sign
within the Singley Hill Road right of way, there is no practical way to prevent southbound traffic from turning left
from Singley Hill Road onto Bear River Drive. Given that drivers turning left onto Bear River Drive would not have
been served alcoholic beverages at the Casino, this aspect of Condition #8 serves absolutely no useful purpose
relevant to the license at issue in this proceeding.

1 The licensee appealed, and the Appeals Board remanded the matter to the Department to
2 consider addition evidence that was not available when the matter was heard by the ALJ.
3 Specifically, by its order dated November 23, 2010, the Appeals Board reasoned that remand
4 would,
5 provide an early opportunity for the Department to confirm that appellant had
6 complied, *or substantially complied*, with the obligation of condition 8, and to be
7 current with appellant's progress while the Department once again has jurisdiction.
8 In addition, the Association would be in a position to voice its views to the
9 Department. Finally, appellant could avoid the risk that time and money would be
10 wasted by its pursuit of a remedy destined never to earn the Department's
11 approval. [Emphasis added].

12 In its order dated January 25, 2011, the Department observed that,

13 In its decision, the Board determined that, since the issuance of the Department's
14 original decision in this matter, a new federal agency now has jurisdiction over the
15 intersection in question, and respondent/licensee has made substantial progress in
16 its efforts to navigate the apparent conflicts between various government entities
17 and thus comply with Condition 8 on its license. Although not expressly stated,
18 the Department understands this to be a determination by the Board that there is
19 new evidence that was not available at the time of the original proceedings.

20 Both the Appeals Board's and the Department's orders have mischaracterized the actual
21 legal and factual situation as pertains to jurisdiction over the intersection. In fact, as
22 demonstrated by the Casino in its request that the Appeals Board remand the matter to the
23 Department, the Tribe has succeeded in removing the BIA as an obstacle to modifying the Bear
24 River Drive portion of the intersection, but the Tribe continues to lack any jurisdiction over
25 Singley Hill Road itself, because that road right of way is completely controlled by Humboldt
26 County. Thus, the Tribe still must obtain an encroachment permit from Humboldt County before
27 any modifications can be made in the Singley Hill Road right of way. Although the County has
28 had the Tribe's application for an encroachment permit for many months, no permit has yet been
issued.

The Department has ordered the matter returned to ALJ Lewis "for such further
proceedings as may be deemed necessary." For the reasons set forth below, the Casino contends
that the public welfare and morals would be better served by the Department's own consideration

1 whether the Tribe's implementation of its proposed plan to modify the intersection would
2 constitute sufficient compliance with Condition #8, rather than (or before) returning the matter to
3 ALJ Lewis for such further proceedings as he may determine, in his sole discretion, may be
4 necessary.

5 ARGUMENT

6 **I. THE DEPARTMENT CAN – AND SHOULD – MAKE A DETERMINATION**
7 **WHETHER IMPLEMENTATION OF BEAR RIVER'S CURRENT PLAN TO**
8 **MODIFY THE SINGLEY ROAD-BEAR RIVER ROAD INTERSECTION**
9 **WOULD CONSTITUTE ADEQUATE COMPLIANCE WITH CONDITION #8**
10 **WITHOUT FIRST REQUIRING FURTHER PROCEEDINGS BEFORE ALJ**
11 **LEWIS.**

12 The evidence that was introduced into the record before ALJ Lewis proved beyond any
13 dispute, as ALJ Lewis found and the Department concurred, that at all times since the issuance of
14 the license, Bear River has continued to make diligent, good faith efforts to comply with
15 Condition #8, but that Bear River's efforts have been hindered or thwarted by other government
16 agencies having jurisdiction over either the federal trust lands of the Bear River Rancheria (the
17 U.S. Bureau of Indian Affairs required Bear River to remove barriers to right turns onto Singley
18 Road that Bear River had installed on Bear River Drive) or the lands and roads adjacent to and
19 outside the Rancheria's boundaries, and thus beyond Bear River's or the BIA's jurisdiction (the
20 California Department of Forestry and Fire Protection and the County of Humboldt variously
21 rejected, for various reasons, a succession of proposals to modify Singley Road within their
22 respective jurisdictions), making literal compliance with the language of Condition #8 legally
23 impossible.

24 As described in the attached Declaration of Dakota McGinnis, Bear River's Vice-
25 Chairperson, since the original hearing in this accusation, as well as subsequent to the
26 Department's adoption of the ALJ's decision and the Appeals Board decision, several events have
27 occurred that likely would have resulted in materially different factual findings and likely would
28 have resulted in no imposition of disciplinary action. These events include the development of a
plan and design for modification of the intersection that would, to the maximum extent
practicable, effectively discourage, to the point of insignificance, Casino patrons from turning

1 right from Bear River Road onto northbound Singley Road; the Bear River Band's acquisition in
2 federal trust of lands ("Rancheria West") across Singley Road from the Rancheria lands on which
3 the Bear River Casino was developed ("Rancheria East"), and the non-gaming development of
4 those newly-acquired lands, with the attendant need of tribal employees and Rancheria residents
5 to travel to and from tribal offices on the original Rancheria to the Tribe's newly-developed
6 federal trust lands; the Bear River Band's assumption of jurisdiction over the Rancheria road
7 system; Bear River's documentation of how little Casino-related traffic actually uses the
8 northbound portion of Singley Road; the total lack of any relationship between the service of
9 alcoholic beverages at the Casino and vehicular access to the Casino from the northern portion of
10 Singley Road; and the refusal of the Singley Hill Homeowners' Association even to discuss
11 anything less than full and literal compliance with Condition #8, despite the impossibility of such
12 full and literal compliance.

13 In June, 2010, Bear River and the Federal Highway Administration executed an "Indian
14 Reservation Road Maintenance Agreement" under which Bear River assumed full jurisdiction
15 and responsibility for the roads on the Bear River Rancheria, including Bear River Road. A true
16 copy of that Agreement is attached as Exhibit 1 to the Tribal Vice Chairperson Dakota McGinnis
17 submitted herewith. The effect of this Agreement was to remove the BIA as an obstacle to Bear
18 River's ability to modify Bear River Drive as part of a larger project to modify the entire Singley
19 Road-Bear River Drive intersection. Had the BIA not interfered with Bear River's previous
20 efforts to discourage Casino patrons from turning right onto Singley Road, the Department might
21 never have concluded that Bear River had failed to comply with Condition #8.

22 Although Bear River now has full control over Bear River Drive, it has no jurisdiction to
23 authorize modification of Singley Road itself. To do anything within the County's easement for
24 Singley Road, Bear River requires permission from the County, as well as the concurrence of
25 other non-tribal government agencies such as the California Department of Forestry and Fire
26 Protection, which provides emergency services in the vicinity of the Casino. Therefore, ever
27 since its license was issued, Bear River has continued to seek the consent of Humboldt County
28 and other non-tribal government agencies with jurisdiction over the Singley Road-Bear River

1 Drive intersection to allow modification of that intersection so as to more effectively fulfill the
2 objective of Condition #8 without compromising the safe and proper utilization of Singley Road
3 by persons other than Casino patrons as well as emergency vehicles.

4 The record from the first hearing before ALJ Lewis is undisputed: various proposals were
5 made by the Tribe, only to be rejected by State agencies and/or the County.⁴ For one example,
6 County Supervisor Jimmy Smith worked with the Tribe for more than a year to secure permission
7 to simply block off Singley Road north of Bear River Drive, but was precluded from doing so by
8 objections from, among other agencies, the California Division of Forestry and Fire Protection.

9 ALJ Factual Finding ¶ 9.⁵

10 ⁴ HEARING OFFICER LEWIS: What I'm hearing loud and clear is the tribe has suggested many ways to
11 comply with condition No. 8 so that -- I understand that nobody wants traffic to continue beyond the entrance to the
casino. Is that it? RT 92:8-12.

12 HEARING OFFICER LEWIS: Now, the tribe has submitted proposal -- other proposals to try to comply
13 with condition 8 without -- and one of them had to do with a -- a barrier where CDF said "Uh-uh, can't do that." RT
93:21-14.

14 HEARING OFFICER LEWIS: Okay. Now, in an attempt to comply with condition 8, the tribe put up "K"
rails and barriers to prevent people from turning, coming out of here and going this way. Am I right? RT 93:4-7.

15 HEARING OFFICER LEWIS: Well, let me -- let me ask you. I'm going to ask you quite -- quite frankly.
16 Has the tribe been dragging their feet?

17 THE WITNESS (County Supervisor Jimmy Smith): I don't believe so.

18 HEARING OFFICER LEWIS: I didn't think so, but I wanted to hear it from you. Okay. All right. RT 96:
2-7

19 ⁵ Q. (By Mr. Acosta): Let me focus on specific design. Full road closure. We pursued that for -- how long
was that
20 pursued?

21 A. (By County Supervisor Jimmy Smith): I want to say over a year.

22 Q. Over a year. And you were very positive in the early phases that that would occur?

23 A. Yes.

24 Q. And were you surprised yourself that the CDF ultimately shot it down?

25 A. Yes.

26 Q. Okay. Did you represent after the meeting with the CDF at the tribal office that you thought maybe you
could do some work with the person above that representative to get it through?

27 A. Yes.

28 Q. And did you make those attempts?

A. You recall that? That's good. I did.

Q. You did make those attempts?

1 After literally years of effort, Bear River has developed and submitted an encroachment
2 permit application and supporting design to the County of Humboldt Public Works Department
3 that not only reasonably should be deemed to fulfill Condition #8, but also should satisfy
4 Humboldt County and the other agencies involved in the permitting process. A copy of the latest
5 version of that diagram depicting the modifications that would be made to the intersection is
6 attached as Exhibit 2 to the Declaration of Dakota McGinnis submitted herewith. An explanation
7 of how the proposed modifications would affect the flow of traffic between Singley Hill Road
8 and Bear River Drive, and why other solutions would not be practical, is set forth in the
9 Declaration of engineer Netra Khatri submitted herewith.

10 As substantiated by the Declaration of Tribal Vice-Chairperson Dakota McGinnis, the
11 Tribe is prepared to proceed with whatever modifications to the intersection that the County will
12 allow in order to substantially reduce, if not altogether eliminate traffic originating on Rancheria
13 East, including both the Casino and other tribal facilities, from proceeding north on Singley Hill
14 Road, thus bringing Bear River into at least substantial compliance with the most material
15 provision of Condition #8.

16 As shown by the Declaration of Will Sand submitted herewith, very few vehicles actually
17 turn north from Bear River Drive onto Singley Hill Road. As documented by Mr. Sand, during
18 the 24 hours starting at 11:00 a.m. on February 4, 2011 and ending at 11:00 a.m. on February 5,
19 2011, a total of 174 vehicles turned right from Bear River Drive onto Singley Hill Road, of which
20 58 later turned left into the northern entrance to Rancheria West and 116 continued north past the
21 northern entrance to Rancheria West, for an average of about five vehicles per hour continuing up
22 Singley Hill Road beyond the northern entrance to Rancheria West. Of the 2,074 vehicles

23 A. Yes.

24 Q. And who did you communicate with above that person?

25 A. That -- I believe that person retired. It was the chief at the time. Anyway, from -- at that time,
26 California Department of Forestry & Fire Protection, and it was moved back to the level for fire protection locally.

27 Q. So that attempt by yourself to intervene above the CDF representative -- representative was
28 unsuccessful?

A. Yes.

1 documented during the aforementioned 24-hour period, 58% of the inbound and outbound traffic
2 was casino-related, with the other 42% accessing either tribal residences, the gas station or tribal
3 offices elsewhere on Rancheria East.

4 Thus, the impacts that Condition #8 was intended to mitigate already are virtually non-
5 existent even without any major modifications to the intersection of Singley Hill Road and Bear
6 River Drive, and no connection has been demonstrated between those minimal impacts and
7 service of alcoholic beverages at the Casino. However, assuming that the required permit will be
8 issued soon (see Khatri Declaration), considerations of basic fairness require that Bear River be
9 assured before commencing the work whether the Department will regard completion of the
10 proposed modifications as substantial compliance with Condition #8 sufficient to avoid
11 imposition of the discipline proposed.

12 Reconsideration of the Department's January 25, 2011 Order would give the Department
13 the opportunity to provide the guidance that the Appeals Board recommended. Doing so instead
14 of (or at least before) returning the matter to ALJ Lewis likely would result in substantial savings
15 of time and money for the Homeowners Association, the Casino and the Department as a solution
16 is pursued to what in reality is a non-existent problem.

17 **II. RECONSIDERATION WOULD ENABLE THE DEPARTMENT TO**
18 **DETERMINE WHETHER CONDITION #8 SHOULD BE INTERPRETED TO**
19 **REQUIRE COMPLIANCE WITH A PRACTICABLE IMPOSSIBILITY.**

20 Condition #8 was drafted by the Department's legal counsel in the course of settlement
21 negotiations at the hearing (RT 165:3-13). Neither its drafter nor the parties could have
22 contemplated that Condition #8 would be construed so as to require modifications to the
23 intersection that would be legally or practically impossible to make. *See, e.g.,* Civ. Code Sec.
24 3531; *see also*, Declaration of engineer Netra Khatri submitted herewith. It contains no timetable
25 for implementation, and even more important, no clear criteria by which to measure the Casino's
26 compliance or the efficacy of any steps that Bear River has taken or might take to discourage
27 persons entering or leaving the Reservation – including its own members, employees, vendors
28 and visitors, and not just Casino patrons who may or may not have consumed alcohol on the

1 licensed premises – from lawfully entering and using a public road. By not providing Bear River
2 with any guidance as to whether, and if so, to what extent, it has complied with Condition #8, the
3 Department would subject the Casino to the risk that the ALJ might decide that his authority is
4 limited solely to determining whether the Casino has literally complied with Condition #8, rather
5 than determining that Bear River's proposed modifications, if approved by the County, would
6 fulfill Condition #8's legitimate objectives, and thus constitute substantial compliance sufficient
7 to warrant no imposition of discipline.

8 **CONCLUSION**

9 For all of the reasons set forth above, the Department should grant the Casino's motion for
10 reconsideration and stay, and thereafter determine without further proceedings before an
11 Administrative Law Judge that the Tribe's implementation of the plan it has proposed would
12 constitute adequate compliance with Condition #8.

13
14 Dated: February 23, 2011

Respectfully submitted,

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17 George Forman
18 FORMAN & ASSOCIATES
19 Attorneys for Bear River Casino
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EXHIBIT 1

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

COPY

**IN THE MATTER OF THE ACCUSATION
AGAINST:**

Bear River Casino
Dba Bear River Casino
11 Bear Paws Way
Loleta, CA 95551-9684

FILE: 47-423392

REG: 08070211

AB-9047

On-Sale General Public Eating Place License,
under the Alcoholic Beverage Control Act.

DECISION FOLLOWING APPEALS BOARD DECISION

The above-entitled matter is before the Department of Alcoholic Beverage Control (Department) for decision following a decision of the Alcoholic Beverage Control Appeals Board (Board) filed on November 23, 2010.

In its decision, the Board determined that, since the issuance of the Department's original decision in this matter, a new federal agency now has jurisdiction over the intersection in question, and respondent/licensee has made substantial progress in its efforts to navigate the apparent conflicts between various government entities and thus comply with Condition 8 on its license. Although not expressly stated, the Department understands this to be a determination by the Board that there is new evidence that was not available at the time of the original proceedings.

The Board ordered that the matter be remanded to the Department for several reasons: (1) to provide an opportunity to determine whether the steps taken by respondent/licensee comply or substantially comply with Condition 8; and (2) to give both respondent/licensee and accuser/protestant Singley Hill Homeowners Association an opportunity to voice their respective positions and concerns.

Bear River Casino
47-423392, 08070211, AB-9047

The Department, having reviewed the entire record, hereby adopts the following as its ORDER in the case.

ORDER

The matter is remanded to Administrative Law Judge John W. Lewis, or other Administrative Law Judge of the Department's Administrative Hearing Office as may be necessary, for such further and additional proceedings as may be necessary and appropriate in the ALJ's sole discretion.

CERTIFICATION

It is hereby certified that on January 25, 2011, the Department of Alcoholic Beverage Control adopted the foregoing as its decision in the proceeding therein described.

Dated: January 25, 2011


Matthew D. Botting
General Counsel

Pursuant to Government Code section 11521(a), any party may petition for reconsideration of this decision. The Department's power to order reconsideration expires 30 days after the delivery or mailing of this decision, or on the effective date of the decision, whichever is earlier.

Any appeal of this decision must be made in accordance with Chapter 1.5, Articles 3, 4 and 5, Division 9, of the Business and Professions Code. For further information, call the Alcoholic Beverage Control Appeals Board at (916) 445-4005.

BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE ACCUSATION AGAINST:

BEAR RIVER CASINO

BEAR RIVER CASINO
11 BEAR PAWS WAY
LOLETA, CA 95551-9684

ON-SALE GENERAL EATING PLACE

FILE : 47-423392

REG. : 08070211

AB: 9047

DECLARATION OF
SERVICE BY MAIL

under the Alcoholic Beverage Control Act

The undersigned declares:

I am over eighteen years of age, and not a party to the within cause; my business address is 3927 Lennane Drive, Suite 100, Sacramento, California 95834. I served by X-CERTIFIED & *-REGULAR mail a copy of the following documents:

DECISION FOLLOWING APPEALS BOARD DECISION

on each of the following, by placing same in an envelope(s) addressed as follows:

X- BEAR RIVER CASINO
32 BEAR RIVER DR
LOLETA, CA 95551

X- SINGLEY HILL HOMEOWNERS ASSC.
ATTN: NOAH KRAHFORST & JIM MCVICKER
PO BOX 755
LOLETA, CA 95551

X- GEORGE FORMAN
ATTORNEY AT LAW
4340 REDWOOD HIGHWAY STE F228
SAN RAFAEL, CA 94903

*- Alcoholic Beverage Control Appeals Board
300 Capital Mall, Suite 1245
Sacramento, CA 95814
(MESSENGER MAIL)

Each said envelope was then, on January 26, 2011 sealed and deposited in the United States Mail at Sacramento, California, the county in which I am employed, with the postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on January 26, 2011 at Sacramento, California.



Declarant

Eureka District Office(interoffice mail)
 Division Office(interoffice mail)

EXHIBIT 2

1 George Forman (SBN 047822)
2 Kimberly A. Cluff (SBN 196139)
3 Jay B. Shapiro (SBN 224100)
4 Jeffrey R. Keohane (SBN 190201)
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10 Attorneys for Respondent
11 BEAR RIVER CASINO

12 **BEFORE THE**

13 **CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL**

14 IN THE MATTER OF THE ACCUSATION
15 AGAINST:

16 Bear River Casino
17 11 Bear Paws Way
18 Loleta, CA 95551-9684

19 FILE NO. 47-423392

20 REG. NO. 08070211

21 AB-9047

22 ON-SALE GENERAL PUBLIC EATING PLACE
23 LICENSE

24 **DECLARATION OF DAKOTA**
25 **MCGINNIS IN SUPPORT OF**
26 **RESPONDENT BEAR RIVER'S**
27 **MOTION FOR RECONSIDERATION**
28 **OF ORDER DATED JANUARY 25, 2011**

Dakota McGinnis declares as follows:

1. I am now, and at all times relevant to this matter, have been, the duly elected Vice-Chairman of the Bear River Band of Rohnerville Rancheria ("Tribe"), the federally-recognized Indian Tribe that is the beneficial owner of and exercises jurisdiction over the lands that the United States of America holds in trust for the Bear River Band of Rohnerville Rancheria near Fortuna, California. I make this Declaration on the basis of both my personal knowledge of the facts set forth herein and the records and other information available to me in my official tribal capacity.

2. The Tribe's trust lands on the east side of Singley Hill Road ("Rancheria East")

1 have been held in trust for the Tribe since January 20, 1994. Located on Rancheria East are the
2 Bear River Casino, the Tribe's gas station/convenience store, tribal offices and 10 single-family
3 tribal member dwellings.

4 3. The Tribe's trust lands on the west side of Singley Hill Road ("Rancheria West") were
5 taken into federal trust by the United States of America in 2010. The Tribe currently is in the
6 process of developing Rancheria West for multiple uses, including tribal housing consisting of
7 approximately 64 single-family residences and three multi-family four-plexes, a community
8 center, a recreation facility, possible future business facilities and the infrastructure necessary to
9 support that development, including a water treatment plant, wastewater treatment plant and
10 roads. Attached to my Declaration as Exhibit 1 is a true copy of the Tribe's current Master Plan
11 for development of Rancheria West. All of the homes shown on the Master Plan as Phases 1, 2
12 and 3 are scheduled to be completed in 2011, with approximately 26 single-family dwellings
13 scheduled to be completed by May, 2011, and six additional homes scheduled to be completed
14 during the summer of 2011. The Community Center also is scheduled to be completed by the
15 end of 2011. All of the roads except the segments of Carroll and Bowie Roads outlined in dark
16 black currently are under construction, as are the water treatment plant and the wastewater
17 treatment plant.

18 3. As shown on the Master Plan for Rancheria West, access to Rancheria West is
19 from Singley Hill Road via Brenard Road, which is directly across Singley Hill Road from Bear
20 River Drive. The Master Plan also shows an existing house that is used by the Tribal Council for
21 business meetings; that facility is located north and slightly west of the Water Treatment Plant
22 (indicated on the Master Plan as "WTP"). To travel between the Tribal offices on Rancheria East
23 to the Tribal Council's meeting facility on Rancheria West, one must use the portion of Singley
24 Hill Road north of Bear River Drive.

25 4. Attached to my Declaration as Exhibit 2 is a true copy of the "Indian Reservation
26 Roads Program Agreement between the Bear River Band of Rohnerville Rancheria and the
27 United States Department of Transportation" that I signed on behalf of the Bear River Band of
28 Rohnerville Rancheria on or about June 22, 2010, and that a representative of the U.S.

1 Department of Transportation signed on June 23, 2010. This Agreement did not exist in April or
2 May, 2009, and thus could not have been offered into evidence at the hearing before ALJ Lewis
3 in this matter. Under this Agreement, authority, responsibility and funding for maintaining the
4 roads on the federal trust lands of the Rohnerville Rancheria, including Bear River Drive, was
5 transferred from the United States Bureau of Indian Affairs to the Bear River Band of
6 Rohnerville Rancheria. However, this agreement did not give the Tribe jurisdiction over Singley
7 Hill Road, which is a road owned and maintained by Humboldt County. Thus, in order to make
8 any modifications to the intersection between Singley Hill Road and Bear River Drive, a permit
9 from Humboldt County is required. However, had the agreement attached as Exhibit 2 been in
10 existence and effect before the hearing on the accusation in this matter, the Tribe would not have
11 had to remove the physical barriers that it had installed on Bear River Drive to prevent
12 automobiles from turning right from Bear River Drive onto Singley Road.

13 3. Attached to my Declaration as Exhibit 3 is a true copy of the most recent plan and
14 design that Bear River has submitted to the Humboldt County Department of Public Works for
15 the purpose of obtaining the encroachment permit required to modify the intersection of Bear
16 River Drive and Singley Road so as to discourage vehicles from turning right from Bear River
17 Drive onto Singley Road. As a practical matter, there would appear to be no way to prevent
18 vehicles southbound on Singley Hill Road from turning left onto Bear River Road without also
19 preventing vehicles from crossing Singley Hill Road between Rancheria East and Rancheria
20 West, forcing tribal members and others with personal or tribal business unrelated to the Casino
21 to go south on Singley Hill Road for three tenths of a mile to the Highway 101 interchange, and
22 then come back north on Singley Hill Road, thus increasing traffic in both directions and
23 subjecting tribal members, employees, vendors and visitors to considerable inconvenience. Once
24 the modifications that the Tribe has proposed to make to the Singley Hill Road/Bear River Road
25 intersection have been implemented, the already minimal amount of traffic that uses the portion
26 of Singley Hill Road north of Bear River Drive for the purpose of leaving the Bear River Casino
27 should be substantially reduced.

28 4. The plan depicted on Exhibit 3 to my declaration is the result of many months of

1 consultations between Humboldt County and LACO Associates ("LACO), the civil engineering
2 and planning firm that Bear River has retained to design appropriate modifications to the Singley
3 Road-Bear River Drive intersection and to assist in obtaining the permit(s) necessary to make
4 those modifications. I am informed and believe, and on that basis state, that the modifications
5 proposed in the attached design can be completed within a matter of a month or two after the
6 permit is issued, and the Tribe stands ready to commence the modification project as soon as it
7 obtains the necessary permit(s), and to diligently complete all necessary work, even though
8 implementation of this project will impose considerable expense and inconvenience on the tribal
9 community, its employees and customers of both its Casino and its non-gaming businesses.

10 5. On January 18, 2011, the Tribe hosted a public meeting, to which the Singley
11 Hills Homeowners Association was invited, for the purpose of announcing and receiving public
12 comment on the plan shown on Exhibit 3. Some members of the Homeowners Association
13 attended the meeting, and while they indicated that they did not object to the County's issuance of
14 an encroachment permit for the work described in Exhibit 3 to my declaration, they also rejected
15 that plan as compliance with Condition #8, because it would not altogether prohibit access from
16 Singley Hill Road onto Bear River Drive by all vehicles southbound on Singley Hill Road,
17 including vendors, tribal members and tribal employees not going to the Casino, and even though
18 the occupants of vehicles accessing Bear River Drive from the north would not yet have
19 consumed alcoholic beverages at the Casino.

20 6. When the Tribe accepted Condition #8, it did not know that compliance with its
21 literal terms would be a practical and legal impossibility, or that literal compliance would prove
22 to be a huge and burdensome source of inconvenience for the entire tribal community, tribal
23 employees, vendors and visitors to both Rancheria East and Rancheria West. If the Tribe had
24 known that its many efforts to obtain approval of plans to reasonably reduce already minimal
25 traffic on the portion of Singley Hill Road north of the Casino to the satisfaction of its neighbors
26 would be rejected, and that its neighbors would insist on implementing zero-traffic plans that
27 could not be approved, the Tribe never would have agreed to the inclusion of Condition #8 in its
28 license.

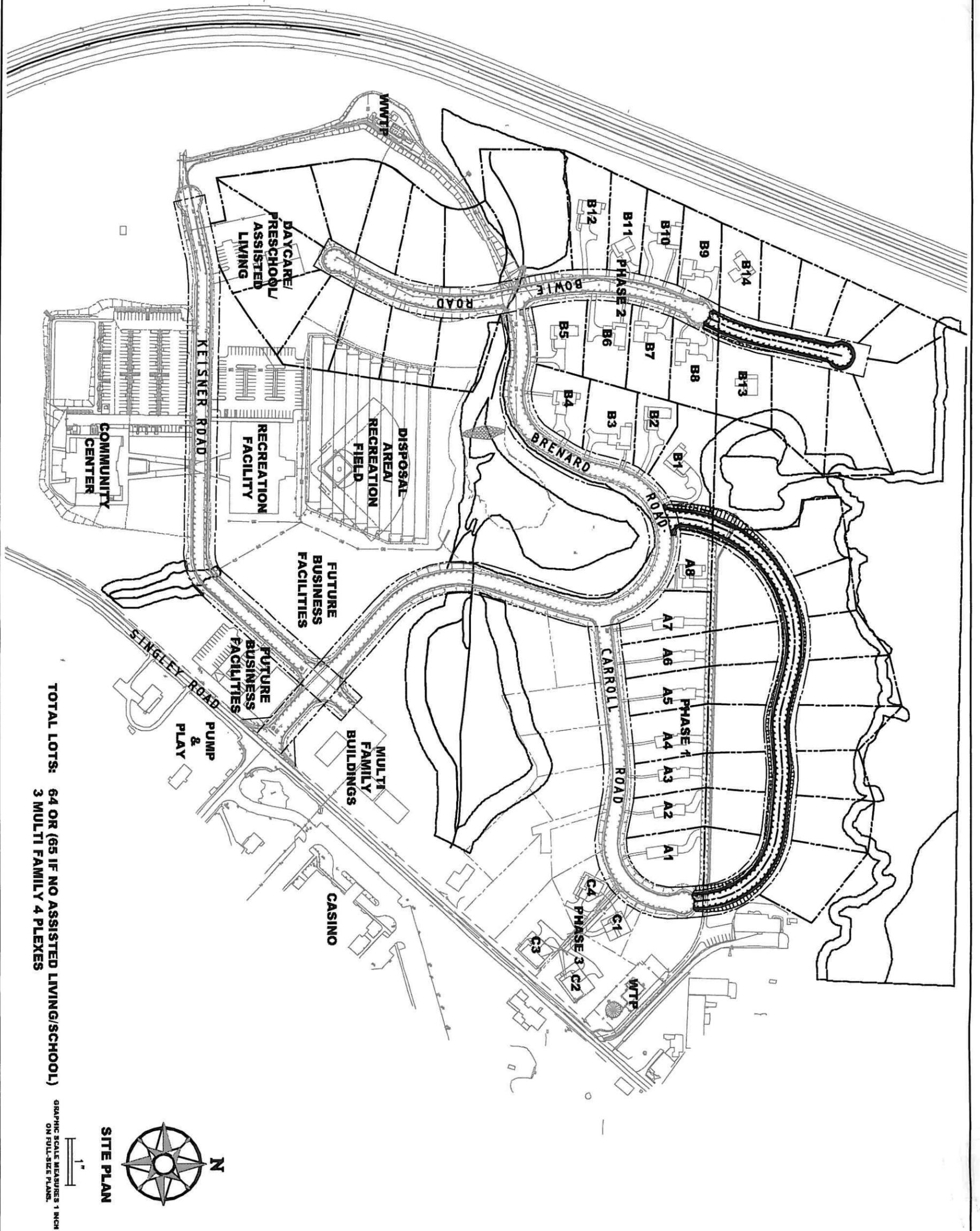
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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this Declaration was executed at Fortuna, California on February 23, 2011.



DAKOTA MCGINNIS

EXHIBIT 1



TOTAL LOTS: 64 OR (65 IF NO ASSISTED LIVING/SCHOOL)
 3 MULTI FAMILY 4 PLEXES



SITE PLAN

GRAPHIC SCALE MEASURES 1 INCH
 ON FULL-SIZE PLANS.

SCALE	AS SHOWN
DRAWN	JOB
CHECK	DAN
APP'D	LMD
DATE	7/27/10
JOB NO.	6500-11
SHEET	1 OF 1

BEAR RIVER BAND SITE PLAN
MASTER PLAN
 BEAR RIVER BAND OF
 ROHNERVILLE RANCHERIA
 LOLETA, CA.

NO.	REVISION	BY	CHK	DATE

LACO ASSOCIATES
 **CONSULTING ENGINEERS**
 21 W 4TH ST. EUREKA, CA 95501 (707)443-5054

DRAFT

EXHIBIT 2

**INDIAN RESERVATION ROADS PROGRAM
AGREEMENT
BETWEEN
THE BEAR RIVER BAND of ROHNERVILLE
RANCHERIA
AND THE
UNITED STATES DEPARTMENT OF
TRANSPORTATION**

ARTICLE I – AUTHORITY AND PURPOSE

Section 1. Authority. This Indian Reservation Roads Program Agreement (hereinafter “the Agreement”) is entered into by the Administrator, Federal Highway Administration, (hereinafter “Administrator”), for and on behalf of the United States Department of Transportation (hereinafter “DOT”) and by the Bear River Band of Rohnerville Rancheria (hereinafter “the Tribe”) (collectively hereinafter the “Parties”), under the authority of the Constitution and By-Laws of the Tribe and by resolution of the Tribal Government, a copy of which is attached hereto, and under the authority granted by section 202(d)(5) of Chapter 2 of Title 23, United States Code, as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144 (August 10, 2005), and the Delegations of Authority set forth in 49 CFR § 1.48(b)(29). This agreement will be implemented in a manner consistent with Executive Order 13175 (Nov. 6, 2000, 65 Fed. Reg. 67249) (Consultation and Coordination with Indian Tribal Governments) and the DOT’s Order regarding Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes (DOT 5301.1, November 16, 1999), as amended by SAFETEA-LU. This Agreement authorizes the Tribe to perform the planning, research, design, engineering, construction, and

maintenance of highway, road, bridge, parkway, or transit facility programs or projects that are located on or which provide access to the Bear River Band of Rohnerville Rancheria or a community of the Tribe and are eligible for funding pursuant to 25 CFR Part 170. This Agreement is made pursuant to 23 U.S.C. § 202(d)(5), as amended by section 1119(g)(4) of SAFTEA-LU, the Indian Reservation Roads (IRR) Program regulations (25 CFR Part 170), and in accordance with the Indian Self-Determination and Education Assistance Act (hereinafter "the ISDEAA"), Pub. L. 93-638, as amended (25 U.S.C. § 450 et seq.).¹

Section 2. Purpose. The purpose of this Agreement is as follows:

- (1) to transfer to the Tribe all of the functions and duties that the Secretary of the Interior would have performed with respect to a program or project under Chapter 2 of Title 23, United States Code, other than those functions and duties that cannot be legally transferred under the ISDEAA, together with such additional activities as the Tribe may perform under SAFETEA-LU and the IRR Program regulations (25 CFR Part 170);
- (2) to carry out the Federal Highway Administration's (FHWA) statutory requirements pursuant to section 1119 of SAFETEA-LU and to maintain and improve its unique and continuing government-to-government relationship with and responsibility to the Tribe;
- (3) to provide the Tribe or its designee, under the attached Referenced Funding Agreement (RFA), its formula share of IRR Program funds pursuant to 25 CFR Part 170, and those additional amounts as the Administrator determines equal the amounts that would have been withheld for the costs of the Bureau of Indian Affairs for administration of

¹ The Tribe and FHWA have recognized that each Party has a different understanding as to the application of the ISDEAA (Act) and its implementing regulations (25 CFR Parts 900 and 1000) to this Agreement. It is expressly understood that through the execution of this Agreement, neither party waives any rights regarding the application of the aforementioned Act and its regulations to this Agreement and no precedent is established for future agreements with this Tribe or any other Indian Tribe. The parties agree to work in good faith to resolve this issue in future agreements.

the program or project, together with such additional Federal Lands Highways funds as the Tribe may receive or otherwise be entitled to through a formula or competitive grant, award, earmark or other appropriation to the Department of Transportation (DOT). The Pacific Region Bureau of Indian Affairs (BIA) Regional Office shall continue to receive the funds identified in 23 U.S.C. § 202(d)(2)(F)(i) for certain program management and oversight (PM&O) activities and project-related administrative expenses as further identified in Article II, Section 2 and the attached RFA (Attachment A).

ARTICLE II – TERMS, PROVISIONS, and CONDITIONS

Section 1. Effective Date and Term: This agreement shall become effective upon the date of its approval and execution by authorized representatives of the Tribe and the Administrator and shall extend for the maximum period authorized by any statutory extensions to SAFETEA-LU. In the event SAFETEA-LU is reauthorized in whole or in part, this agreement shall continue to the extent authorized by law until a successive agreement is negotiated by the parties.

Section 2. Funding.

A. Subject to the availability of funding and in accordance with 23 U.S.C. § 202(d)(5)(E), as amended by section 1119(g)(4) of Pub. L. 109-59, the Administrator shall provide to the Tribe or its designee, through an electronic transfer, a single annual lump sum funding amount equal to the amount that the Tribe would otherwise receive for the IRR program in accordance with the funding formula applicable to the IRR Program (25 CFR Part 170, Subpart C), and such additional amount, as determined by the Administrator that would have been withheld by the BIA for the administration of the Tribe's IRR Program or projects. The Parties agree to annually provide the Tribe the amounts that would have been withheld for the costs of the BIA for administration of the Tribe's program or projects as provided in 23 U.S.C. § 202(d)(5)(E) and further identified in Attachment A to this Agreement.

B. Upon the execution of this Agreement and the RFA by both Parties, and subject to the availability of funds and the determination of the Tribe's annual Relative Need Distribution Factor (RNDF) percentage, the Administrator shall notify the Tribe or its designee, in accordance with Article IV, section 5, that the funds identified in the RFA are available. The Tribe shall submit electronic banking information under an ACH Vendor/Miscellaneous Payment Enrollment Form (see Attachment B) to the Administrator and the Administrator shall provide to the Tribe a single advance payment in the amount identified in the attached RFA within thirty (30) calendar days of his receipt of the Payment Enrollment Form. The Parties agree that the RFA will be renegotiated annually on a fiscal year basis.

C. Pursuant to section 1119(g)(5)(B) of SAFETEA-LU (23 U.S.C. § 202(d)(5)), all funds shall be paid to the Tribe without regard to the organizational level at which the Department of the Interior or the DOT has previously carried out under the Federal Lands Highways Program, the programs, functions, services, or activities (PFSAs) involved.

D. Pursuant to 25 CFR §§ 170.607 – 170.608, Contract Support Costs are an eligible cost and the Tribe may use their IRR Program allocation to pay such costs. The Tribe shall include a line item for Contract Support Costs in the Tribe's project construction budgets. The Tribe may also include, as eligible Contract Support Costs, one-time start-up costs and preaward costs incurred by the Tribe in the initial year of this Agreement in accordance with 25 U.S.C. §§ 450j-1(a)(5) and (6). The Parties acknowledge that no additional IRR Program funds are available for Contract Support Costs.

E. Funds advanced to the Tribe under this Agreement shall be used by the Tribe as permitted under 23 U.S.C. § 202(d) and 25 CFR Part 170, as amended by SAFETEA-LU, other applicable laws, and as authorized under this Agreement. The Tribe reserves the right to reallocate funds among the eligible projects identified on an FHWA-approved IRR Transportation Improvement Program (IRRTIP), so long as such funds are used in accordance with Federal appropriations law. Funds advanced to the Tribe pending disbursement for a purpose authorized under the Agreement shall be placed in appropriate savings, checking or

investment accounts. For purposes of this Agreement, such funds when invested or deposited by the Tribe shall be subject to the following:

(i) Advanced funds not immediately spent for program activities may be invested only in obligations of the United States, in obligations or securities that are guaranteed or insured by the United States, or mutual (or other) funds registered with the Securities and Exchange Commission and which only invest in obligations of the United States or securities that are guaranteed by the United States;

(ii) If not invested, advanced funds must be deposited into accounts that are insured by an agency or instrumentality of the United States or must be fully collateralized to ensure protection of the funds, even in the event of a bank failure;

(iii) Interest and investment income that accrue on any funds provided for by agreement become the property of the Tribe in accordance with the provisions of 25 U.S.C. § 450j(b) and may be used on projects identified on an FHWA approved IRR TIP (section 1119(c) of SAFETEA-LU).

(iv) Upon the receipt of funds under this Agreement, the Tribe shall expend the funds for the purposes set forth in this Agreement and as authorized by law; provided however that the Tribe may accumulate multiple annual allocations of IRR Program funds when necessary to fund an eligible project which requires more than one fiscal year of funding and is identified on a tribal TIP or a tribal priority list (25 CFR Part 170).

F. The Tribe may use funds provided under this agreement for flexible financing as provided in 23 U.S.C. § 122, 25 CFR §§ 170.300 – 303, and other applicable laws.

G. 1. The Tribe may issue bonds or enter into other debt financing instruments under 23 U.S.C. §122 with the expectation of payment of IRR Program funds to satisfy the instruments, including, but not limited to, the repayment of loan principal and interest on such debt instruments. When the Tribe elects to use flexible financing to advance construct an eligible project or projects under this Agreement, the Administrator agrees (i) to maintain the project(s) on the FHWA-approved TIP until all debt instruments, including interest thereon, are repaid in full by the Tribe, and (ii) at the option and direction of the Tribe (after receipt of electronic banking information on the Payment Enrollment Form by the Administrator), to provide all or a portion of the funds the Tribe is eligible to receive under this Agreement directly to a trustee or other depository so designated by the Tribe pursuant to the provisions of any RFA received by the Administrator thereunder.

2. The designation of an eligible debt financing instrument for reimbursement with funds awarded under this Agreement shall not –

- a) constitute a commitment, guarantee, or obligation on the part of the United States to provide for payment of principle or interest on the eligible debt financing instrument entered into by the Tribe; or
- b) create any right of a third party against the United States for payment under the eligible debt financing instrument.

H. As authorized by 25 CFR § 170.301, the Tribe may use IRR Program funds to:

- (i) leverage other funds; and
- (ii) pay back loans or other finance instruments for a project that:
 - (a) the Tribe paid for in advance of the current year using non-IRR Program funds, including Tribal funds; and

(b) was included in an FHWA-approved IRR TIP.

I. The Tribe may use IRR Program funds awarded under this Agreement to meet matching or cost participation requirements for any Federal or non-Federal transit grant or program.

J. The Parties agree that this Agreement is entered into, and that funds are made available to the Tribe, in accordance with the ISDEAA pursuant to 23 U.S.C. § 202(d)(5), as amended by section 1119(g)(4) of SAFETEA-LU. Payments made by the Administrator under this Agreement shall be made in accordance with Article II, Section 2.B. herein. In the event funds due the Tribe under this Agreement are not paid to the Tribe in accordance with the requirements of Article II, Section 2.B., the Parties shall rely upon the dispute resolution provisions set forth in Article II, Section 4 of this Agreement.²

Section 3. Powers. The Tribe shall have all powers that the Secretary of the Interior would have exercised in administering the funds provided to the Tribe for such program under 23 U.S.C. § 202(d), except to the extent that such powers are powers that inherently cannot be legally transferred under the ISDEAA. Such powers shall include, but are not limited to the Secretary of the Interior's powers under 25 CFR Part 170, together with such duties and responsibilities as may be performed by an Indian tribe under the 25 CFR Part 170 regulations or as are otherwise permitted by law.

Section 4. Dispute Resolution. In the event of a dispute arising under this Agreement, the Tribe and the Administrator agree to use mediation, conciliation, arbitration, and other dispute resolution procedures authorized under 25 CFR § 170.934. The goal of these dispute resolution procedures is to provide an inexpensive and expeditious forum to resolve disputes. The Administrator agrees to resolve disputes at the lowest possible staff level and by consent whenever possible.

² The language of footnote 1 is incorporated by reference herein.

Section 5. Construction of this Agreement. This Agreement shall be construed in a manner to facilitate and enable the transfer of programs authorized by 23 U.S.C. § 202, as amended by SAFETEA-LU, Pub. L. 109-59, 119 Stat. 1144 (August 10, 2005).

Section 6. Activities to be Performed. The activities covered by this Agreement are:

- Transportation Planning;
- Construction Management;
- Program Administration;
- Design;
- Construction;
- Road Maintenance as authorized under SAFETEA-LU section 1119(i) (not more than 25% of the funds allocated to a tribe may be expended for the purpose of maintenance, excluding road sealing which shall not be subject to any limitation);
- Development and negotiation of Tribal-State road maintenance agreements authorized under section 1119(k) of SAFETEA-LU; and
- Other IRR Program-eligible activities authorized under Chapter 2 of Title 23 or 25 CFR Part 170, as each may be amended by SAFETEA-LU, or other applicable law.

Section 7. Limitation of Costs. The Tribe shall not be obligated to continue performance under this Agreement that requires an expenditure of funds in excess of the amount of funds awarded under this Agreement or the RFA. If, at any time, the Tribe has reason to believe that the total amount required for performance of this Agreement, or a specific activity conducted under this Agreement or the RFA would be greater than the amount of funds provided under this Agreement or the RFA, the Tribe shall provide reasonable notice to the Administrator. If the Administrator does not increase the amount of funds allocated under this Agreement or the RFA, the Tribe may suspend performance of the Agreement until such time as additional funds are made available.

Section 8. Carryover. Any funds provided to the Tribe under this Agreement or the RFA which have not been expended at the conclusion of the fiscal year in which such funds were

allocated shall remain in the custody of the Tribe and be used for the purposes authorized under this Agreement. Determination of the priority and amount of funds to be used for each program, function, service or activity shall be the responsibility of the Tribe, except as limited by law or otherwise proscribed by this Agreement.

Section 9. Applicable Regulations. 25 CFR Part 170, and any amendments thereto apply to this Agreement.³ The Tribe may seek a waiver of these regulations to the extent permitted by law and as set out in 25 CFR §§ 170.625 and 170.626.

Section 10. Use of Tribal Facilities and Equipment. The Parties agree that the Tribe shall be permitted to utilize IRR Program and other Federal Lands Highway funds awarded under this Agreement to pay such lease/rental rates, as well as to maintain such facilities and equipment when performing PFSAs under this Agreement. For purposes of this Agreement, in those cases where the Tribe reasonably determines, and provides written notice and analysis documentation to the Administrator that the purchase of equipment is more cost effective than the leasing of equipment, the Parties agree that the purchase of construction equipment shall be an allowable cost to the Tribe, as permitted under 25 CFR Part 170, Appendix A to Subpart G, so long as not more than 25% of the Tribe's IRR Program funds are used for this purpose.

ARTICLE III – RESPONSIBILITIES OF THE TRIBE

Section 1. A. Health and Safety. In exercising responsibility for carrying out the eligible programs and projects under this Agreement, the Tribe assures the Administrator that within available funding, they will meet all applicable health, safety, and labor standards related to the administration, planning, engineering and construction activities performed. To this end, and within available funding, the Tribe agrees to obtain or provide qualified personnel, equipment, materials, and services necessary to administer the transportation programs, including opportunities that provide for Indian preference in employment and sub-contracting as mandated by 25 U.S.C. § 450e(b).

³ The language of footnote 1 is incorporated by reference herein.

B. Program Standards and Regulations. The Tribe agrees to initiate and perform the contracted programs and projects in accordance with the requirements of 25 CFR Part 170, as amended by SAFETEA-LU. Additionally, the Tribe may, at its sole option, adopt applicable FHWA or BIA policies, procedures, program guidelines and memoranda, or develop tribal policies, procedures, program guidelines and memoranda which meet or exceed federal standards to facilitate operation or administration of any aspect of the programs assumed by or delegated to the Tribe under this Agreement.

C. Plans, Specifications and Estimate (PS&E) Approval Authority.

(1) Tribal and BIA-owned facilities. The Tribe is authorized to review and approve plans, specifications and estimates ("PS&E") project packages in accordance with the requirements of 25 CFR §§ 170.460 through 170.463, as amended by section 1119(e) of SAFETEA-LU (amending § 202(d)(2) of Chapter 2 of Title 23, United States Code), and provide a copy of said PS&E approval to the facility owner. The Tribe hereby:

a) provides assurances under this Agreement that the construction will meet or exceed applicable health and safety standards; b) agrees to obtain the advance review of the PS&E from a State-licensed civil engineer who has certified that the PS&E meet or exceed the applicable health and safety standards; and c) will provide a copy of the State-licensed civil engineer's certification to the Deputy Assistant Secretary for Tribal Government Affairs, with a copy to the Federal Lands Highways Associate Administrator and BIA.

(2) Facilities owned or maintained by a public authority other than the Tribe or the BIA. In the interest of building stronger government-to-government relations in transportation planning and coordination, the Tribe voluntarily agrees to perform its PS&E review and approval function as to facilities owned or maintained by a public authority, as that term is defined in 23 U.S.C. § 101(a)(23), as follows. For a facility

owned or maintained by a public authority other than the BIA or the Tribe, in addition to satisfying the requirements of paragraph (C)(1) herein, the Tribe further agrees to:

- (a) provide the public authority an opportunity to review and comment on the Tribe's PS&E package when it is between 75 and 95 percent complete, unless an agreement between the Tribe and the public authority states otherwise;
- (b) allow the public authority at least 30 days for review and comment on the PS&E package, unless the Tribe and the public authority agree upon a longer period of time;
- (c) before soliciting bids for the project(s), certify in writing to the Administrator that it afforded the public authority an opportunity to review and comment on the PS&E package and received no written comments from the public authority that prevent the Tribe from proceeding with the project.⁴

D. Transportation Planning and Inventory. Within available funding, the Tribe further agrees to carry out a transportation planning process and provide this information to the BIA, with courtesy copies to FHWA, as may be reasonably necessary for the BIA to maintain an updated inventory of roads and bridges and to develop the annual IRR Transportation Improvement Program (IRRTIP).

E. Easements, Maintenance and Utility Agreements, Environmental Assessments. In coordination with local jurisdictions and to the extent required by Federal law and 25 CFR Part 170, the Tribe agrees to develop appropriate construction easements, maintenance and utility agreements needed for the construction of IRR facilities carried out under this Agreement. The Tribe agrees to perform all environmental and archeological review functions under this Agreement

⁴ The Parties agree that these procedures establish no precedent for future agreements with this Tribe or any other Indian tribe, nor waives any rights of the Parties.

in accordance with 25 CFR Part 170, Section 6002 of SAFETEA-LU, codified at 23 U.S.C. § 139, and other applicable laws.

F. Construction.

1) In accordance with the FHWA-approved IRR-TIP, the Tribe agrees to initiate and complete IRR construction projects in accordance with the approved PS&E and any Tribally-approved change orders and shall periodically ensure that construction engineering is performed according to applicable FHWA, BIA or Tribal standards which meet or exceed federal standards.

2) The Tribe agrees to expend IRR Program funds on:

(a) program and administrative expenses authorized under:

- (i) this Agreement;
- (ii) 25 CFR Part 170, as amended by SAFETEA-LU;
- (iii) OMB Circular A-87; or
- (iv) other applicable law; and

(b) construction activities on projects that are listed on an FHWA-approved IRR-TIP.

3) Once an IRR construction project is completed, the Tribe will prepare for the Administrator a final construction report and as-built plans for final inspection in accordance with 25 CFR Part 170.

4) The Tribe agrees to allow FHWA Officials or by mutual agreement, a delegated representative of FHWA, the opportunity to visit project sites on a monthly basis or at critical project milestones, provided that FHWA gives the Tribe reasonable advance written notice. These visits are intended to allow FHWA to carry out its oversight and stewardship responsibilities for the IRR Program or project(s) assumed by the Tribe under this Agreement.

FHWA will not provide direction or instruction to the Tribe's contractor or any subcontractor at any time.

G. Reporting Requirements. The Tribe shall provide the Administrator a courtesy copy of its annual single agency audit report; semi-annual progress reports which contain a narrative of the work accomplished; and semi-annual financial status reports using an SF269A - Financial Status Report (Short Form) or such similar form as is used by the DOT. The Tribe shall provide the Administrator the semi-annual reports within ninety (90) days following the conclusion of the reporting period, which shall run from October 1 to March 31 and from April 1 to September 30.

ARTICLE IV – RESPONSIBILITIES OF THE ADMINISTRATOR

Section 1. Provision of Funds. The Administrator shall provide funds pursuant to the RFA to the Tribe to carry out this Agreement in accordance with Article II, Section 2 of this Agreement.

Section 2. Authorize Project Work. The Administrator authorizes the Tribe to carry out preliminary engineering, construction engineering, development of management systems, construction, and maintenance of the programs and projects carried out by the Tribe under this Agreement for PFSAs and projects/facilities included on an FHWA-approved IRRTIP in accordance with the approved PS&E packages, this Agreement, and applicable laws and regulations.

Section 3. Coordination with BIA.

A. The Administrator shall coordinate with the Bureau of Indian Affairs (BIA) concerning transportation functions and activities delegated by law to that agency to aide the Tribe in the proper and efficient administration of the PFSAs performed by the Tribe under this Agreement.

B. The Administrator will encourage a representative of the BIA, with knowledge of the IRR Program, to meet at least annually with a designee of the Tribe and the Administrator to review their respective duties and obligations under SAFETEA-LU, the IRR Program, applicable regulations, and this Agreement with the goal of identifying actions which the Tribe, the Administrator and the BIA can take to ensure the Tribe's successful administration of the transportation PFSAs carried out under this Agreement.

Section 4. Coordination with Public Authorities. The Administrator, or his authorized FHWA representative, upon the Tribe's request, shall coordinate with representatives of a public authority to assist the Tribe during the public authority's review of a PS&E package or final inspection of a completed project to ensure that the public authority's input during the review and comment period, or during the final inspection does not interfere with the Tribe's efficient administration of projects performed under this Agreement.

Section 5. Designated Officials. All notices, proposed amendments, and other written correspondence between the Parties shall be submitted to the following officials:

To the Tribe:

Chairman
Bear River Band of Rohnerville Rancheria
27 Bear River Drive
Loleta, CA. 95551

To the FHWA:

Associate Administrator
Federal Lands Highways (HFL-1)
U.S. Department of Transportation
1200 New Jersey Ave, SE, Room E61-316
Washington, D.C. 20590

With a copy to:

Tribal Transportation Director
Bear River Band of Rohnerville Rancheria
27 Bear River Drive
Loleta, CA. 95551

With a copy to:

Indian Reservation Roads Program Manager
(HFPD-1)
Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Ave, SE, Room E61-311
Washington, D.C. 20590

Section 6. Federal Construction Standards. The Administrator may provide information about Federal construction standards as early as possible in the construction process. If Tribal construction standards are consistent with or exceed applicable federal standards, the Tribe's

proposed standards will be accepted. The Administrator may also accept commonly used industry construction standards, including design and construction standards adopted by the State of California.

Section 7. Joint Inspection. The Administrator shall conduct the final project inspection jointly with the Tribe and facility owner and shall concur in the BIA's acceptance of the construction project or activity for the purpose of including the completed project in the BIA's IRR Program Inventory.

Section 8. Technical Assistance. Upon the request of the Tribe and subject to the availability of funds, the Administrator shall provide or make available technical assistance to the Tribe to aide the Tribe in carrying out its responsibilities under this Agreement.

Section 9. Reporting. The Administrator shall provide the Tribe with semi-annual reports on program matters of common concern to the parties. The times for these reports are identical to those set out in Article III, Section 1(G).

Section 10. Notice of Additional Funds. If the Administrator receives notice of the availability of additional funding for any purpose authorized under this Agreement, including the availability of unspent IRR Program funds, the Administrator shall promptly notify the Tribe regarding such funding so that the Tribe may apply for any funds they may be eligible to receive on the same basis as any other Indian tribe.

ARTICLE V – OTHER PROVISIONS

Section 1. Eligibility for Additional Funding and Services. The Tribe shall be eligible, under this Agreement, to receive additional IRR Program funds on the same basis as other Indian tribes according to the Tribal Transportation Allocation Methodology (TTAM) set forth in 25 CFR Part 170, as well as other funds of the DOT, not included in this Agreement, which are available to Tribe on a competitive, formula, or other basis, including non-recurring funding such as High Priority Project funding, and Congressional earmarks such as Public Lands Highways

Discretionary grants. Whenever there are errors in calculations or other mistakes regarding estimates of available funding which may need to be renegotiated, both Parties agree to take action as necessary to correct such errors.

Section 2. Access to Data Available to the Administrator to Administer the Program.

The Tribe is administering a federal program under the authority of SAFETEA-LU, in accordance with the ISDEAA, and by resolution of the Tribal government. In order for the Tribe to carry out this program effectively and without diminishment of federal services to program beneficiaries, and consistent with this Agreement, the Administrator shall provide the Tribe with all releasable data and information necessary to carry out the PFSAs assumed by the Tribe under this Agreement.

Section 3. Sovereign Immunity. Nothing in this Agreement shall be construed as—

- (1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by the Tribe; or
- (2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

Section 4. Trust Responsibility. Nothing in this Agreement shall absolve the United States from any responsibility to individual Indians and the Tribe, including responsibilities derived from the trust relationship and any treaty, executive order, or agreement between the United States and the Tribe.

Section 5. Federal Tort Claims Act/Insurance. In accordance with the provisions of Pub.L. 101-512, Title III, § 314, 104 Stat. 1959, as amended Pub.L. 103-138, Title III, § 308, 107 Stat. 1416 (25 U.S.C. § 450f, note), for purposes of Federal Tort Claims Act coverage under this Agreement, the Tribe and its employees are deemed to be employees of the Federal government while performing work under this Agreement. This status is not changed by the source of the funds used by the Tribe to pay the employee's salary and benefits unless the

employee receives additional compensation for performing covered services from anyone other than the Tribe. The Tribe is also authorized to use the funds provided under this Agreement to purchase such insurance coverage as may be necessary and prudent, in the determination of the Tribe. In full recognition of and without undermining the federal tort claims protection provided in this section, the Parties understand and agree that prudent project management requires that Tribal contractors purchase adequate workers compensation, auto and general liability insurance when completing construction projects funded under this Agreement. Accordingly, the Tribe shall include in any construction contracts entered into with funds provided under this Agreement a requirement that Tribal contractors maintain workers compensation, auto and general liability insurance coverage consistent with statutory minimums and local construction industry standards. The Parties understand and agree that this insurance requirement does not apply to the Tribe itself.

Section 6. Indian and Tribal Preference.

A. Federal law gives hiring and training preferences, to the greatest extent feasible, to Indians for all work performed under the IRR Program. Under 25 U.S.C. § 450e(b) and 23 U.S.C. § 204(e), Indian organizations and Indian-owned economic enterprises are entitled to a preference, to the greatest extent feasible, in the award of contracts, subcontracts, and sub-grants for all work performed under the IRR Program.

B. The Tribe's employment rights and contracting preference laws, including tribal preference laws, apply to this Agreement.

Section 7. Severability. Should any portion or provision of this Agreement be held invalid, it is the intent of the Parties that the remaining portions or provisions thereof continue in full force and effect.

Section 8. Termination of the Agreement. On the date of the termination of the Agreement by the Tribe as authorized under 23 U.S.C. § 202(d)(5), as amended by section 1119(g)(4) of SAFETEA-LU, or if the Administrator makes a specific written finding and provides notice to the Tribe in accordance with this Agreement that the Tribe is no longer eligible to receive funding

under this section as authorized under section 1119(g)(4) of SAFETEA-LU, the Administrator shall allocate the funds that would have been provided to the Tribe under the Agreement to the Secretary of the Interior to provide continued transportation services in accordance with applicable law; provided however, that if the Tribe disputes the Administrator's eligibility determination, the Parties may utilize the dispute remedies available under Article II, Section 4 herein, and the Administrator shall suspend any decision to transfer funds to the Secretary of the Interior pending the outcome of the dispute. At the Tribe's election, the Tribe may perform such functions, services and activities as it chooses to include in an ISDEAA contract or agreement to be entered into with the Secretary of the Interior upon the termination of this Agreement.

Section 9. Amendments. Any modification of this Agreement shall be in the form of a written amendment and shall require the signed agreement of a duly authorized representative of the Tribe and the Administrator. The Parties agree to work together in good faith, following the implementation of this Agreement, to identify additional issues or matters that should be addressed in this Agreement subject to the Parties' mutual written consent.

Section 10. Good Faith. The Parties agree to exercise the utmost good faith in the implementation and interpretation of this Agreement and agree to consider and negotiate such additional provisions as may be required to improve the delivery and cost-effectiveness of transportation services.

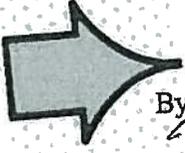
Section 11. Successor Agreements.

A. **Indian Reservation Roads Program Agreement.** No later than six months prior to the expiration of this Agreement, the Parties shall commence negotiation of a successor Indian Reservation Roads Program Agreement. It is the intent of the Parties to have a successor Agreement in place to run concurrent with the highway reauthorization legislation which succeeds SAFETEA-LU.

B. **Referenced Funding Agreement.** Ninety (90) days before the expiration of each year's RFA, the Parties shall commence negotiation of the subsequent year's RFA.

Bear River Band of Rohnerville Rancheria

**U.S. Department of Transportation
Federal Highway Administration**



By Leonard Bowman
Leonard Bowman
Chairman

By John R. Baxter
for John R. Baxter, P.E., Associate Administrator
Office of Federal Lands Highway

6-22-10
Date

6/23/10
Date

EXHIBIT 3

EXHIBIT 3

1 George Forman (SBN 047822)
2 Kimberly A. Cluff (SBN 196139)
3 Jay B. Shapiro (SBN 224100)
4 Jeffrey R. Keohane (SBN 190201)
5 FORMAN & ASSOCIATES
6 4340 Redwood Highway, Suite E352
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8 Telephone: 415/491-2310
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10 Attorneys for Respondent
11 BEAR RIVER CASINO

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BEFORE THE
CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

IN THE MATTER OF THE ACCUSATION
AGAINST:

Bear River Casino
11 Bear Paws Way
Loleta, CA 95551-9684

FILE NO. 47-423392

REG. NO. 08070211

AB-9047

ON-SALE GENERAL PUBLIC EATING PLACE
LICENSE

**DECLARATION OF WILL SAND IN
SUPPORT OF RESPONDENT BEAR
RIVER'S MOTION FOR
RECONSIDERATION OF ORDER
DATED JANUARY 25, 2011**

WILL SAND declares as follows:

1. I am now, and at all times relevant to this matter, have been, the Executive Director for Gaming of the Bear River Band of Rohnerville Rancheria ("Tribe"), the federally-recognized Indian Tribe that is the beneficial owner of and exercises jurisdiction over the lands that the United States of America holds in trust for the Bear River Band of Rohnerville Rancheria ("Rancheria") near Fortuna, California. I make this Declaration on the basis of both my personal knowledge of the facts set forth herein and the records and other information prepared under my supervision and available to me in my official tribal capacity.

2. The Rancheria consists of two tracts of trust land bisected by Singley Hill Road.

1 The portion of the Rancheria located east of Singley Hill Road was taken into trust for the Tribe
2 by the United States of America more than 20 years ago, and is the site of housing for tribal
3 members, the Tribe's administrative offices, the Casino and a gas station and convenience store.
4 For ease of reference, I will refer to this portion of the Rancheria as the "Rancheria East."

5 3. The portion of the Rancheria located west of Singley Hill Road was taken into
6 trust for the Tribe by the United States of America in 2010. For ease of reference, I will refer to
7 this portion of the Rancheria as "Rancheria West."

8 4. Bear River Drive is the entrance to Rancheria East. About 45 feet west of Singley
9 Hill Road is access to the gas station/convenience store. About 75 feet west of Singley Hill
10 Road, Bear Paws Way intersects Bear River Drive and provides access to the Casino. Beyond
11 Bear Paws Way, Bear River drive provides access to 9 tribal residences and the tribal offices and
12 other tribal facilities located east of the Casino.

13 5. Access to Rancheria West is on recently-constructed Brenard Road, which
14 intersects Singley Hill Road directly across from Bear River Drive. North of Bear River Drive,
15 on the northern portion of Rancheria West, is a dwelling that is used by the Bear River Tribal
16 Council for its business meetings; to reach this facility by vehicle from anywhere on Rancheria
17 East, one must either turn right (north) on Singley Hill Road, or turn left, drive three-tenths of a
18 mile down to the Highway 101 interchange, turn around and drive back up Singley Hill Road
19 past Bear River Drive.

20 6. In early February, 2011, I was assigned by the Tribe's governing body, the Tribal
21 Council, to make arrangements to accurately monitor vehicle traffic entering and leaving the
22 Rancheria, and to the extent feasible, to determine the following, both on average and hourly over
23 the course of a 24-hour day:

24 a. how many vehicles leave the Rancheria by turning right from Bear River Drive onto
25 northbound Singley Hill Road or enter the Rancheria by turning left onto Bear River Drive from
26 the north on Singley Hill Road, and of all of those vehicles, how many come from or are going to
27 the Casino and how many come from or are going to other areas of Rancheria East;

28 b. how many vehicles entering or leaving the Rancheria are coming from or going to

1 Rancheria West across Singley Hill Road; and

2 c. of all of the vehicles entering or leaving Rancheria East, how many are driven by tribal
3 members, vendors or tribal employees, and how many are driven by Casino customers.

4 7. I undertook to gather this information in two ways. First, I assigned the Casino
5 Surveillance Department to focus video cameras connected to video recorders on the intersection
6 of Bear Paws Way and Bear River Drive, and on the intersection of Bear River Drive and Singley
7 Hills Road. In this manner, a constant video record of all traffic passing through those
8 intersections could be recorded and counted, vendor and tribal vehicles could be distinguished
9 from Casino patrons' vehicles and direction of travel could be determined. Second, I arranged for
10 LACO Associates, the Tribe's engineering firm under contract to design the modifications to the
11 intersection of Bear River Drive and Singley Hill Road, to perform traffic counts on the northern
12 portion of Singley Hill Road so as to determine the number of vehicles travelling to or beyond
13 the Tribal Council's meeting facility on the northern edge of Rancheria West.

14 8. Because placing traffic counters in Singley Hill Road required an encroachment
15 permit from Humboldt County, and because of the 30-day deadline for filing a motion for
16 reconsideration with the Department of Alcoholic Beverage Control, I first commenced the
17 process of obtaining a video record of vehicle traffic in and out of Rancheria East. A complete
18 video record was made between the hours of 11:00 a.m. on Thursday, February 4, 2011 and
19 11:00 a.m. on Friday, February 5, 2011. Thereafter, I reviewed the video recordings that were
20 made during that time and made a visual count of each vehicle entering or leaving Rancheria
21 East, noted whether each vehicle entered from or left on the northern portion of Singley Hill
22 Road, noted whether each vehicle turned onto or from Bear Paws Way and, to the extent I could
23 recognize whether the vehicle was a vendor or tribal vehicle, made note of that fact as well.
24 Attached to this Declaration as Exhibit 1 is a spreadsheet showing the results of my observations.
25 A DVD with all of the video recordings will be provided upon request.

26 9. By way of summary, during the 24 hours from 11:00 a.m. on February 4th, 2011 to
27 11:00 a.m. on February 5th, 2011, I recorded the following vehicle travel:

28 a. Total number of vehicles turning right (north) from Bear River Drive onto Singley Hill

1 Road: 174;

2 b. Total number of vehicles turning left from Bear River Drive onto Singley Hill Road:
3 2074;

4 c. Total number of inbound vehicles using Bear River Drive and Bear Paws Way to reach
5 the Casino: 1269;

6 d. Total number of vehicles using Bear River Drive to access other areas of Rancheria
7 East: 904;

8 e. Total number of vehicles entering or leaving Rancheria East either to or from
9 Rancheria West: 58;

10 f. Total number of vehicles using Singley Hill Road to access or depart the tribal meeting
11 facility on the northern portion of Rancheria West: 35.

12 10. I have not yet received the results of the traffic counts being performed by LACO
13 and Associates.

14 11. Attached to my Declaration as Exhibit 2 is a true copy of the most recent
15 application and design that Bear River has submitted to the Humboldt County Department of
16 Public Works for the purpose of obtaining the encroachment permit required to modify the
17 intersection of Bear River Drive and Singley Road so as to prevent vehicles from turning right
18 from Bear River Drive onto Singley Road. Once implemented, these modifications should
19 reduce the already minimal amount of traffic that uses the portion of Singley Road north of Bear
20 River Drive for the purpose of leaving the Bear River Casino. This design is the result of many
21 months of consultations between Humboldt County and LACO Associates ("LACO). I am
22 informed and believe, and on that basis state, that the modifications proposed in the attached
23 design can be completed within a matter of a month or two after the permit is issued, and that the
24 Tribe is willing to commence the modification project as soon as it obtains the necessary
25 permit(s), and to diligently complete all necessary work.

26 I declare under penalty of perjury that the foregoing is true and correct to the best of my
27 knowledge, and that this Declaration was executed at Fortuna, California on February 23, 2011.

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 2-23-11

WILL SAND

EXHIBIT 1

Time Period for Data Collection

2/4/11 16:00hrs.-2/5/11 1600hrs.

On Property	To Casino	To Tribal	To C-store	Off Property	L Turn	R Turn	Employee to Rancheria West	PatronFrom Casino Northbound	Drive By Northbound	Southbound	
2190	1269	101	803	2248	2074	174	58	116	200	95	103

EXHIBIT 2

EXHIBIT 4

1 George Forman (SBN 047822)
Kimberly A. Cluff (SBN 196139)
2 Jay B. Shapiro (SBN 224100)
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6 Attorneys for Respondent
BEAR RIVER CASINO
7

8 **BEFORE THE**

9 **CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL**

10 IN THE MATTER OF THE ACCUSATION
AGAINST:
11 Bear River Casino
11 Bear Paws Way
12 Loleta, CA 95551-9684

FILE NO. 47-423392
REG. NO. 08070211
AB-9047

13 ON-SALE GENERAL PUBLIC EATING PLACE
14 LICENSE

**DECLARATION OF NETRA B. KHATRI
IN SUPPORT OF RESPONDENT BEAR
RIVER'S MOTION FOR
RECONSIDERATION OF ORDER
DATED JANUARY 25, 2011**

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20 NETRA B. KHATRI declares as follows:

21 1. I am a registered civil engineer employed by LACO Associates, and in that
22 capacity have been directly involved in the development of a plan to modify the intersection of
23 Singley Hill Road and Bear River Drive in Humboldt County, California in order to comply with
24 Condition #8 of the Bear River Casino's alcoholic beverage license.

25 2. LACO's engineering resources have reviewed numerous alternatives with the
26 intent of meeting the criteria established by Condition 8. It is our assessment that a practical
27 engineering solution that fully meets the intent of Condition 8 is not feasible without affecting
28 tribal members residing in Tish Non Village who have business and personal reasons for

1 traveling on Brenard Road, crossing Singley Hill Road, and continuing onto Bear River Drive.
2 This concern also exists for Tribal staff traveling southbound on Singley Hill Road and having
3 the ability to make a left turn onto Bear River Drive, as well as for patrons of the tribal gas
4 station/convenience store and visitors to tribal offices on the tribal lands.

5 3. In our opinion, the preferred design alternative that best meets the criteria set forth
6 by Condition 8 is shown on the diagram attached hereto as Exhibit 1. This preferred alternative
7 would utilize concrete islands to both calm traffic passing through the intersection and create
8 turning radiuses that would prevent most passenger vehicles from making a right-hand turn when
9 exiting Bear River Drive (vehicles would be able to go straight across Singley Hill Road onto
10 Brenard Road or make a left-hand turn onto Singley Hill Road). Additionally, a traffic sign is
11 recommended to be included in the design that is placed approximately 50 feet north of the
12 intersection with the words "NO LEFT HAND TURN" or a Left Hand Arrow within a struck
13 circle. In addition, coherent striping would be placed on the road surface prohibiting left-hand
14 turns onto Bear River Drive for traffic proceeding southbound on Singley Hill Road.

15 4. One of the alternatives LACO explored was a major infrastructure project that
16 would meet Condition #8 through construction of such major improvements as over/underpasses,
17 road widening and ROW adjustments of portions of Singley Hill Road both below and above the
18 intersection, but this option was considered impractical and not financially feasible. Moreover,
19 construction of such improvements would cause major long-term disruptions of all traffic on
20 Singley Hill Road for an extended period of time, and would take at least several years and many
21 millions of dollars to complete, assuming the necessary permits could be obtained from
22 Humboldt County and possibly the California Department of Transportation.

23 5. Based on our alternatives assessment, we are providing the attached preferred
24 alternative as a practical and feasible design solution to meet Condition 8.

25 I declare under penalty of perjury that the foregoing is true and correct to the best of my
26 knowledge, and that this Declaration was executed at Eureka, California on
27 February 23, 2011.

28

NETRA B. KHATRI

DECLARATION OF NETRA B. KHATRI IN SUPPORT OF MOTION FOR RECONSIDERATION



EXHIBIT 1

