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BEAR RIVER CASINO

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**BEFORE THE**  
**ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD**

10 IN THE MATTER OF THE ACCUSATION )  
AGAINST: )  
11 Bear River Casino )  
11 11 Bear Paws Way )  
12 Loleta, CA 95551-9684 )  
13 ON-SALE GENERAL PUBLIC EATING PLACE )  
14 LICENSE )  
15 )  
16 )  
17 )

FILE NO. 47-423392  
REG. NO. 08070211

**APPELLANT/RESPONDENT BEAR RIVER CASINO'S REQUEST TO REMAND TO THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL FOR CONSIDERATION OF NEW EVIDENCE, AND DECLARATION IN SUPPORT THEREOF**

Hearing scheduled for October 7, 2010 at 9:00 a.m. in San Francisco

18

**INTRODUCTION**

20 At issue in this appeal is whether the Department lawfully adopted the May 20, 2009  
21 Proposed Decision of ALJ John W. Lewis sustaining Count 1 of the Accusation and ordering the  
22 revocation of Appellant Bear River Casino's ("Bear River") On-Sale General Public Eating-Place  
23 License, for ostensibly failing to comply with Condition #8<sup>1</sup> of that license, with said revocation to  
24 be postponed until June 15, 2011, unless Bear River comes into compliance before that date, in  
25 which case the revocation would be permanently stayed. ALJ's Order 2. The Alcoholic Beverage

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27 <sup>1</sup> "The licensee shall modify the entrance from Singley Road to Bear River Drive so that public vehicular ingress  
28 and egress is available only to and from the south on Singley Road. The modified entrance or a separate entrance shall provide access to the premises from the north on Singley Road for emergency vehicles only."

1 Appeals Board is scheduled to hear this appeal on October 7, 2010.

2 The evidence in the record is undisputed, and the ALJ found, that at all times since the  
3 issuance of the license, Bear River has been willing to comply with Condition #8 and has continued  
4 to make diligent, good faith efforts to do so, but that the permanent culmination of those efforts has  
5 been hindered or thwarted by other government agencies having jurisdiction over either the federal  
6 trust lands of the Bear River Rancheria (the U.S. Bureau of Indian Affairs required Bear River to  
7 remove barriers to right turns onto Singley Road that Bear River had installed on Bear River Drive)  
8 or the lands and roads adjacent to and outside the Rancheria's boundaries (the California Department  
9 of Transportation, the California Highway Patrol, the California Department of Forestry and Fire  
10 Protection, and the County of Humboldt would not agree to a succession of proposals to modify of  
11 Singley Road within their respective jurisdictions).

12 As described in the attached Declaration of Leonard Bowman, Bear River's Chairman,  
13 several events have occurred subsequent to the Department's adoption of the ALJ's decision that, had  
14 evidence of the occurrence of those events been available for introduction into the hearing record,  
15 likely would have resulted in materially different factual findings and/or materially different  
16 disciplinary action. Set forth below is a description and summary of the previously-unavailable  
17 evidence that Bear River would introduce on remand, its relevancy and the part of the record to  
18 which it pertains, the names of witnesses to be produced and their expected testimony, the nature of  
19 any exhibits to be introduced, and a detailed statement of the reasons why such evidence could not,  
20 with due diligence, have been discovered and produced at the hearing before the Department, and  
21 why remand to the Department for consideration of this new evidence would be the most appropriate  
22 action for the Appeals Board to take.

23 **I. THE EVIDENCE THAT COULD NOT HAVE BEEN INTRODUCED AT THE**  
24 **APRIL, 2009 HEARING**

25 **A. Indian Reservation Road Maintenance Agreement between Bear River and the**  
26 **Federal Highway Administration, executed in June, 2010**

27 This Agreement, a copy of which is attached as Exhibit 1 to the Declaration of Leonard  
28 Bowman submitted herewith, transferred responsibility for maintaining Bear River Drive from the  
U.S. Bureau of Indian Affairs ("BIA") to the Bear River Band of Rohnerville Rancheria, effectively

1 removing the BIA as an obstacle to Bear River's ability to modify Bear River Drive as part of a larger  
2 project to modify the entire Singley Road-Bear River Drive intersection. The record shows without  
3 dispute, and the ALJ so found, that Bear River actually had complied with Condition #8 by, among  
4 other things, installing barriers on Bear River Drive and signage to prevent vehicles leaving the  
5 Rancheria from turning right onto Singley Road, but that the BIA had required the removal of the  
6 barriers as unjustified by Humboldt County's traffic counts. (RT 64-68; ALJ Factual Findings #7-8;  
7 Penalty Consideration #5). Had the BIA not required removal of those barriers, the ALJ and the  
8 Department might well have concluded that Bear River in fact never has violated Condition #8, and  
9 thus that no disciplinary action was or is warranted. In any event, Bear River now is free to work  
10 with Humboldt County and other non-tribal agencies to complete and implement the planning and  
11 permitting process for further modifications to the intersection, without interference from the BIA.

12 The Agreement speaks for itself, but would be authenticated and explained by Bear River's  
13 Chairman, Leonard Bowman, who signed the Agreement for Bear River. The reason why the  
14 Agreement could not have been introduced at the hearing is simple: the hearing before the ALJ took  
15 place on April 29, 2009 and the ALJ's proposed decision was issued on May 20, 2009, but the  
16 Agreement was not executed until June, 2010, and thus did not yet exist at the time of the hearing.

17 **B. Bear River's Current Permit Application and Design to Modify Intersection.**

18 Since its license was issued, Bear River has continued to seek the consent of Humboldt  
19 County and other non-tribal government agencies with jurisdiction over the Singley Road-Bear River  
20 Drive intersection to allow modification of that intersection so as to more effectively fulfill the  
21 objective of Condition #8 without compromising the safe and proper utilization of Singley Road by  
22 private and emergency vehicles. As the hearing record shows, various proposals were made by Bear  
23 River but were rejected by State agencies and the County.<sup>2</sup> For one example, County Supervisor  
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25 <sup>2</sup> HEARING OFFICER LEWIS: What I'm hearing loud and clear is the tribe has suggested many ways to comply  
26 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.

27 HEARING OFFICER LEWIS: Now, the tribe has submitted proposal -- other proposals to try to comply 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.

28 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.

1 Jimmy Smith worked with Bear River for more than a year to secure permission to simply block off  
2 Singley Road north of Bear River Drive, but was precluded from doing so by objections from,  
3 among other agencies, the California Division of Forestry and Fire Protection. ALJ Factual Finding  
4 9.<sup>3</sup>

5 After literally years of effort, Bear River has developed and submitted an encroachment  
6 permit application and supporting design to the County of Humboldt Public Works Department that  
7 not only reasonably should be deemed to fulfill Condition #8, but also should satisfy Humboldt  
8 County and the other agencies involved in the permitting process. A copy of that application,  
9 together with a diagram showing the modifications that would be made to the intersection, is  
10 attached as Exhibit 2 to the Declaration of Leonard Bowman submitted herewith.

11 The relevancy of this application and design is that when approved, Bear River immediately  
12 will be able to proceed with intersection modifications that should suffice to virtually eliminate any  
13 traffic originating at the Casino from proceeding north on Singley Road, thus bringing Bear River  
14 into unquestionable compliance with Condition #8.

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

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

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

20 <sup>3</sup> Q. (By Mr. Acosta): Let me focus on specific design. Full road closure. We pursued that for -- how long was that  
21 pursued?

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

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

24 A. Yes.

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

26 A. Yes.

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

A. Yes.

Q. And did you make those attempts?

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

Q. You did make those attempts?

A. Yes.

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

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

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

A. Yes.

1 The permit should be self-authenticating, but Bear River would present as witnesses John  
2 Bergenske, of the engineering firm that developed the design, to explain how the design, when  
3 implemented, would accomplish its objectives, and Bear River Chairman Leonard Bowman, to  
4 confirm Bear River's readiness and ability to implement the improvements upon approval of the  
5 permit application. If necessary, Bear River would call as an additional witness the Director of the  
6 Humboldt County Department of Public Works to confirm the County's agreement to the design as  
7 submitted. All three witnesses also would testify about the process through which Humboldt  
8 County's agreement to the current application and design was secured.

9 As is clear from the hearing record and the findings of ALJ Lewis, until now, Bear River has  
10 been attempting to comply with ever-changing requirements for modifications to the intersection,  
11 and thus has not been able to secure the permits necessary to complete those modifications. Thus,  
12 this design and application, and the negotiations that preceded it, could not have been presented in  
13 April, 2009, because those negotiations had not yet concluded and the design and application did not  
14 yet exist.

15 **II. REMAND TO THE DEPARTMENT IS APPROPRIATE UNDER THE**  
16 **CIRCUMSTANCES OF THIS CASE**

17 Condition #8, which was drafted by the Department's legal counsel in the course of  
18 settlement negotiations at the hearing (RT 165:3-13), contains no timetable for implementation, and  
19 even more important, no clear criteria by which to measure Bear River's compliance or the efficacy  
20 of any steps that Bear River has taken or might take to discourage persons leaving the Reservation –  
21 including its own members, and not just Casino patrons who may or may not have consumed alcohol  
22 on the licensed premises – from lawfully entering and using a public road. By not providing Bear  
23 River with any guidance as to whether, and if so, to what extent, it has complied with Condition #8,  
24 the Department's decision, if not reversed or remanded for consideration of Bear River's new  
25 evidence and circumstances, subjects Bear River to a very real risk that even after spending  
26 substantial sums of money to implement everything the County and other jurisdictions might require  
27 of it, someone could still complain that Bear River hasn't done enough to comply with Condition #8,  
28 subjecting Bear River to another round of costly and time-consuming proceedings. Moreover, by

1 finding Bear River in violation, although indefinitely staying the revocation of Bear River's license if  
2 Bear River complies with Condition #8 by June, 2011, Bear River would be stigmatized by having  
3 been found to be in violation of its license, making the consequences of any future violation,  
4 however minor, potentially much more severe.

5 **CONCLUSION**

6 For all of the reasons set forth above, the Appeals Board should grant Bear River's request to  
7 remand this matter to the Department for reconsideration in light of the previously-unavailable  
8 material evidence described in this request.

9  
10 Dated: September 27, 2010

Respectfully submitted,

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13 George Forman  
14 FORMAN & ASSOCIATES  
15 Attorneys for Bear River Casino  
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**DECLARATION OF LEONARD  
BOWMAN IN SUPPORT OF  
RESPONDENT/APPELLANT BEAR  
RIVER'S REQUEST TO REMAND TO  
DEPARTMENT OF ALCOHOLIC  
BEVERAGE CONTROL**

Hearing scheduled for October 7, 2010 at  
9:00 a.m. in San Francisco

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20 Leonard Bowman declares as follows:

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

28 2. Attached to my Declaration as Exhibit 1 is a true copy of the "Indian Reservation

1 Roads Program Agreement between the Bear River Band of Rohnerville Rancheria and the  
2 United States Department of Transportation" that I signed on behalf of the Bear River Band of  
3 Rohnerville Rancheria on or about June 22, 2010, and that a representative of the U.S.  
4 Department of Transportation signed on June 23, 2010. This Agreement did not exist in April or  
5 May, 2009, and thus could not have been offered into evidence at the hearing before ALJ Lewis  
6 in this matter. Under this Agreement, authority, responsibility and funding for maintaining the  
7 roads on the federal trust lands of the Rohnerville Rancheria, including Bear River Drive, was  
8 transferred from the United States Bureau of Indian Affairs to the Bear River Band of  
9 Rohnerville Rancheria. Had this agreement been in existence and effect before the hearing in this  
10 matter, the Bear River Band would not have had to remove the physical barriers that it had  
11 installed to prevent automobiles from turning right from Bear River Drive onto Singley Road.

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

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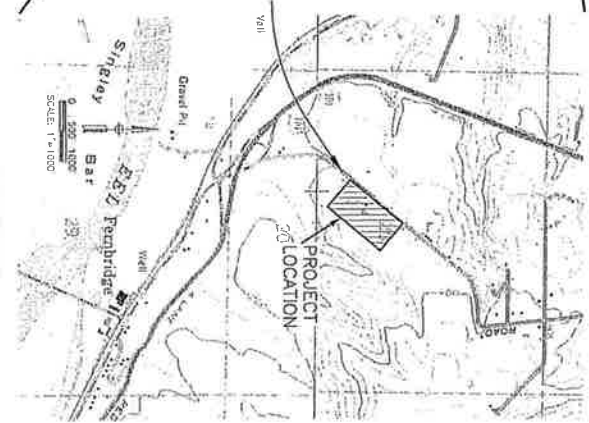
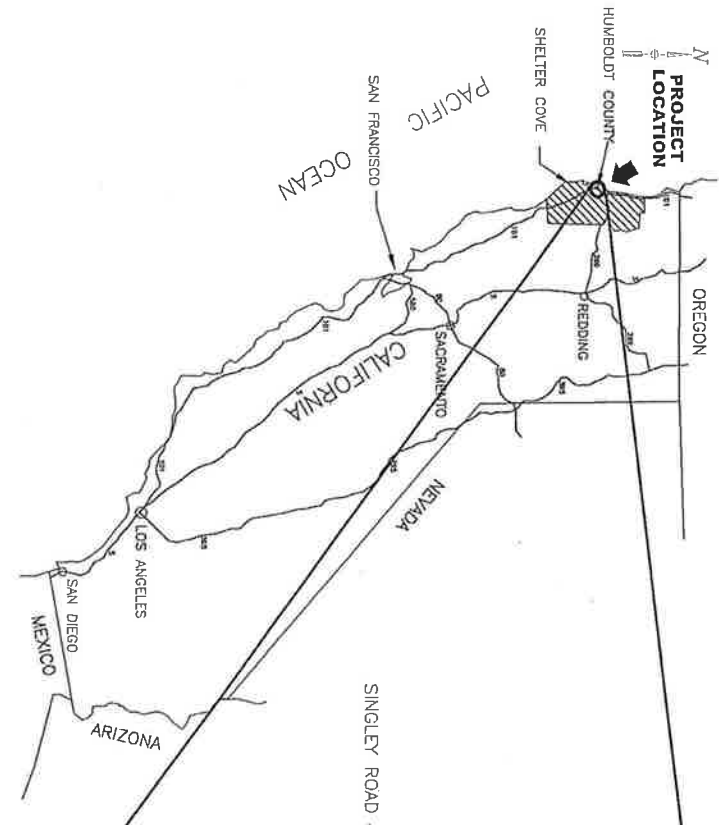


1 I declare under penalty of perjury that the foregoing is true and correct to the best of my  
2 knowledge, and that this Declaration was executed at Fortuna, California on September \_\_\_\_,  
3 2010.

4  
5   
6 LEONARD BOWMAN



# THE BEAR RIVER BAND OF ROHNERVILLE RANCHERIA SINGLEY HILL ROAD AND BEAR RIVER DRIVE IMPROVEMENT PROJECT HUMBOLDT COUNTY, CALIFORNIA



**SHEET INDEX**

SHEET No.	DESCRIPTION
G1	TITLE SHEET
G2	ABBREVIATIONS AND LEGEND
G3	CONSTRUCTION NOTES
C1-1	GRADING & DEMOLITION PLAN
G2	GRADING ALTERNATIVE
C3	DEMOLITION PLAN
C4	EROSION & SEDIMENT CONTROL PLAN
C5	EROSION CONTROL DETAILS

**DESIGN PARAMETERS:**

LANE WIDTH	13 FT (4M)	(ON BEAR RIVER DRIVE)
RIGHT OF WAY	23 FT	(ON SINGLEY ROAD)
DESIGN SPEED (MPH)	30	(ON SINGLEY ROAD)
INTERSECTION	TWO WAY STOP CONTROL	

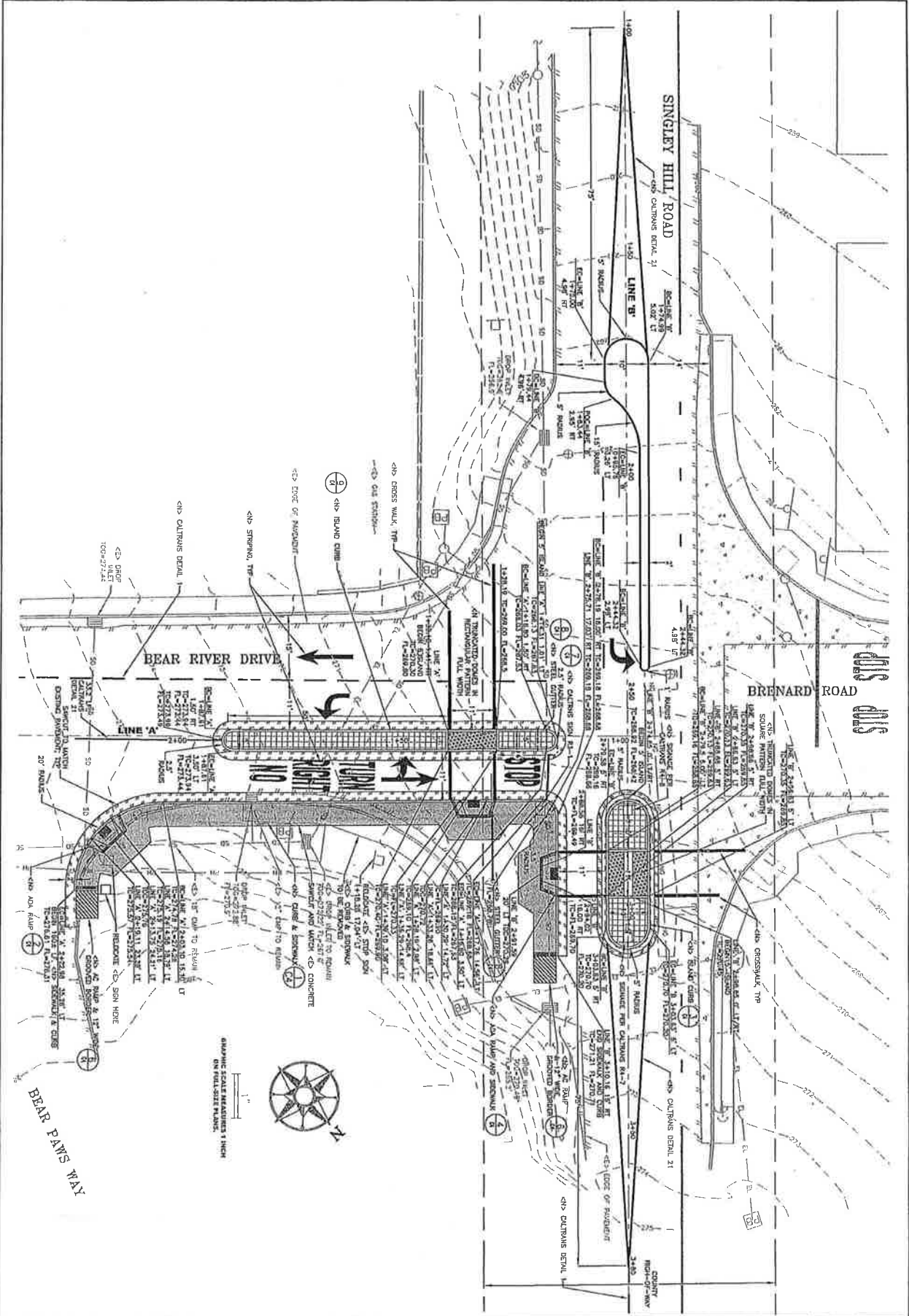
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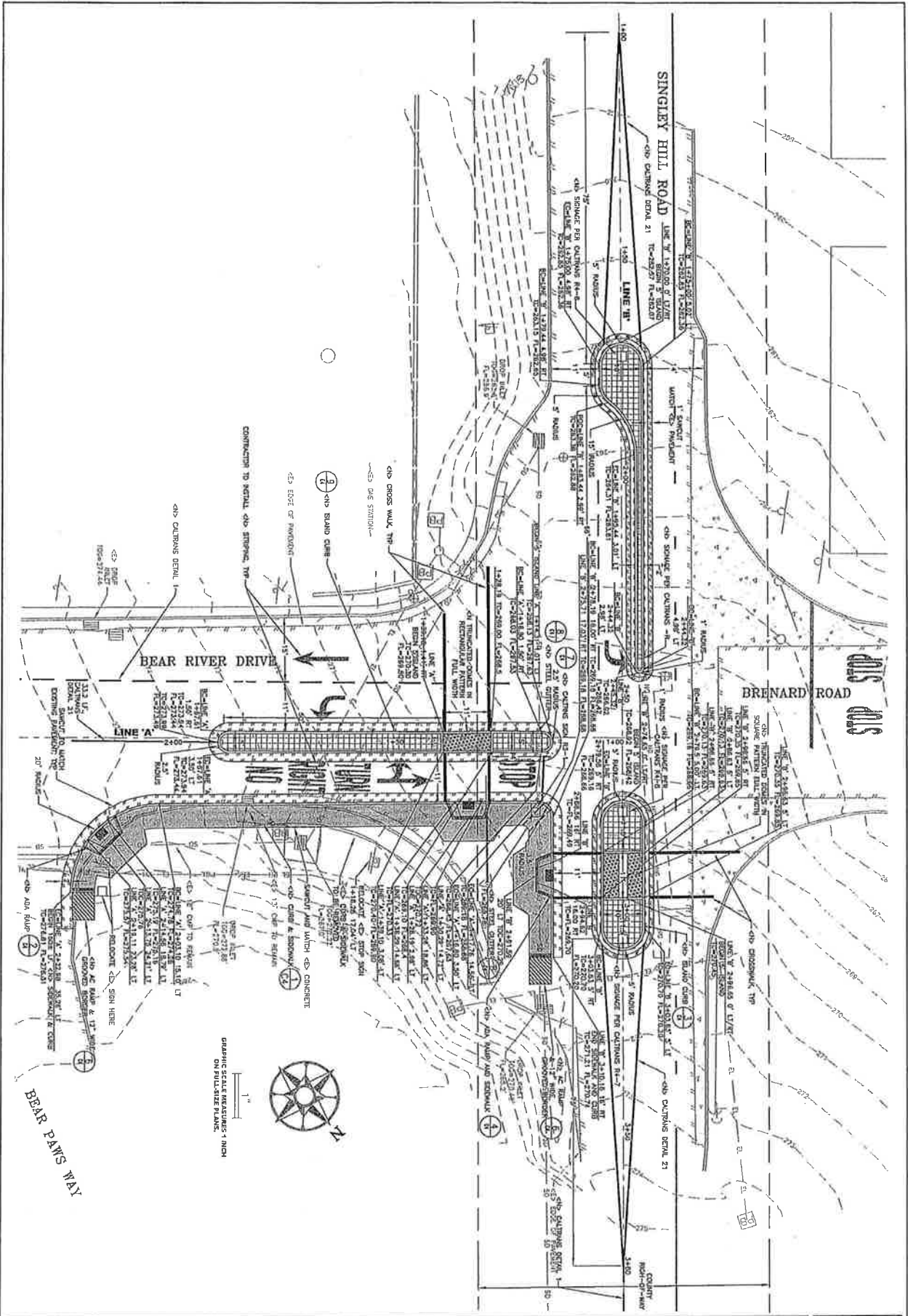
**SIGNALLING:** COUNTY OF HUMBOLDT  
 PER CA MUTCD  
 PER COUNTY STANDARD/CALTRANS  
 PER CA MUTCD  
 PER CA MUTCD  
 PER CA MUTCD

<p><b>SINGLEY HILL ROAD AND BEAR RIVER DRIVE IMPROVEMENT PROJECT</b>  <b>TITLE SHEET</b>  <b>BEAR RIVER BAND OF ROHNERVILLE RANCHERIA</b>  <b>LOLETA, CALIFORNIA</b></p>	<p><b>LACO ASSOCIATES</b>  <b>CONSULTING ENGINEERS</b>          21 W 4TH ST, EUREKA, CA 95501 (707)443-5054</p>	<p><b>PROFESSIONAL ENGINEER</b>          No. 75428          Exp. 12/31/11          STATE OF CALIFORNIA</p>										
<p>SCALE: NONE          DRAWN: JDB/ABE          CHECKED: MBE          DATE: 9/23/10          SHEET NO.: 6588.15          SHEET: <b>G1</b></p>	<table border="1" style="width: 100%;"> <thead> <tr> <th>NO.</th> <th>REVISION</th> <th>BY</th> <th>CHK</th> <th>DATE</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	NO.	REVISION	BY	CHK	DATE						
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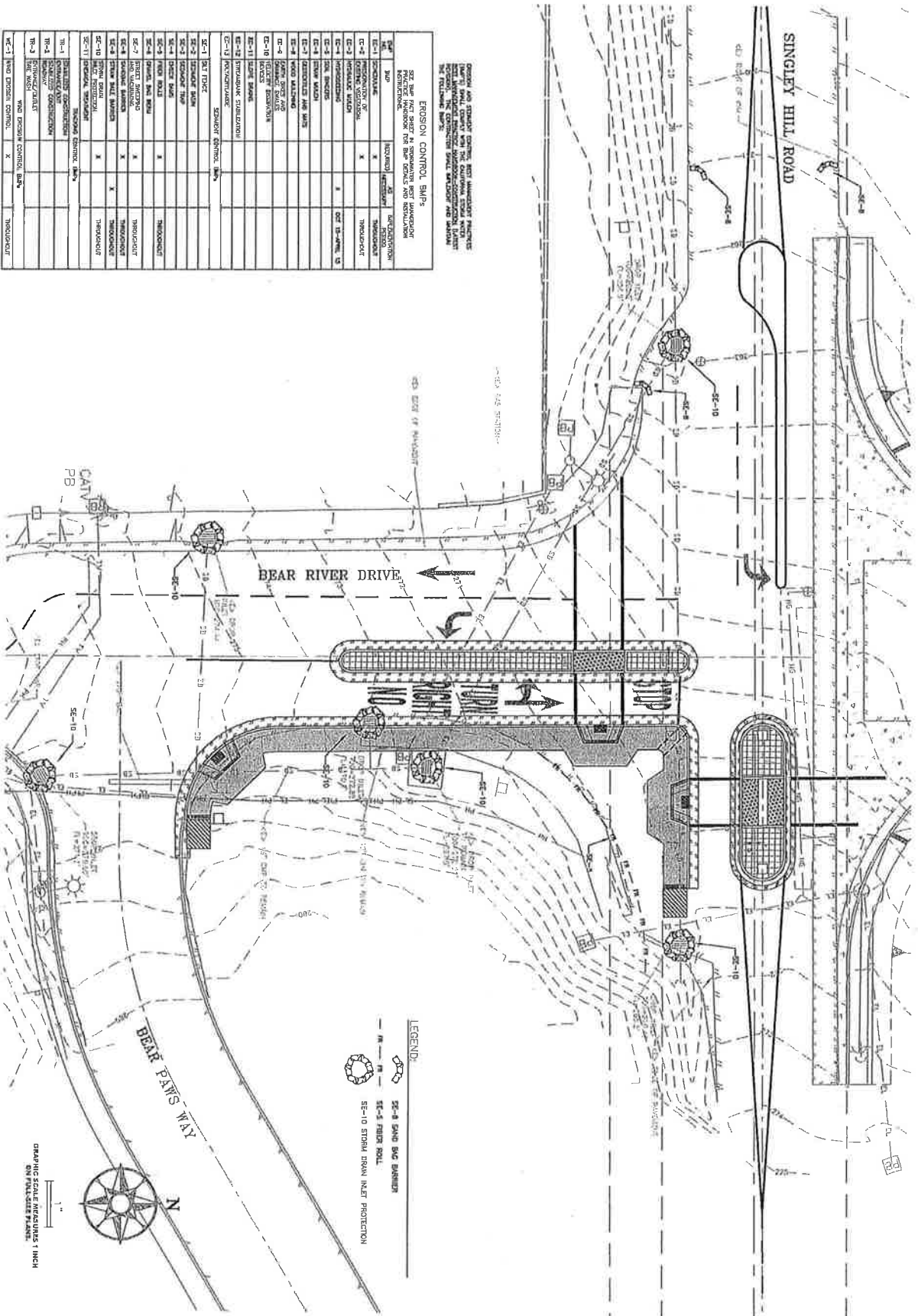




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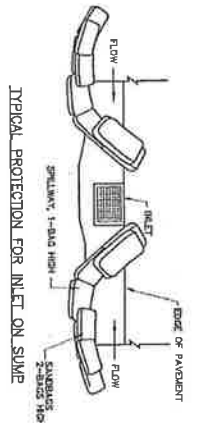
**EROSION CONTROL BMPs**

GENERAL AND SPECIAL NOTES: SEE SHEET 23 2101-3.159m FOR EROSION CONTROL MEASURES. SEE SHEET 23 2101-3.159m FOR EROSION CONTROL MEASURES. SEE SHEET 23 2101-3.159m FOR EROSION CONTROL MEASURES.

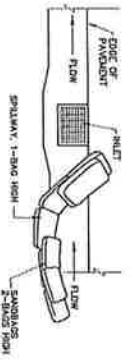
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SC-93	93	VEGETATIVE FILTER STRIP	INDICATED
SC-94	94	VEGETATIVE FILTER STRIP	INDICATED
SC-95	95	VEGETATIVE FILTER STRIP	INDICATED
SC-96	96	VEGETATIVE FILTER STRIP	INDICATED
SC-97	97	VEGETATIVE FILTER STRIP	INDICATED
SC-98	98	VEGETATIVE FILTER STRIP	INDICATED
SC-99	99	VEGETATIVE FILTER STRIP	INDICATED
SC-100	100	VEGETATIVE FILTER STRIP	INDICATED

<p><b>SINGLEY HILL ROAD AND BEAR RIVER DRIVE IMPROVEMENT PROJECT</b>  <b>EROSION &amp; SEDIMENT CONTROL PLAN</b>  <b>BEAR RIVER BAND OF ROHNERVILLE RANCHERIA</b>  <b>LOLETA, CALIFORNIA</b></p>		<p><b>LACO ASSOCIATES</b>   CONSULTING ENGINEERS                  21 W 4TH ST. EUREKA, CA 95501 (707)443-5054</p>			
NO.	REVISION	BY	CHK	DATE	
<p>SCALE: 1" = 10'</p> <p>DRAWN: NRB                  CHECKED: NRB                  DATE: 9/23/10                  JOB NO.: 6506.1B                  SHEET: C3</p>					





TYPICAL PROTECTION FOR INLET ON SLUMP

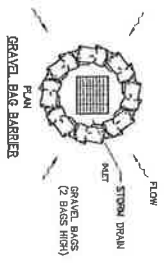


TYPICAL PROTECTION FOR INLET ON GRADE

- NOTES:
1. INTENDED FOR SHORT-TERM USE.
  2. ALLOW FOR PROPER MAINTENANCE AND CLEANUP.
  3. BAGS MUST BE REMOVED AFTER ADVISORY OPERATION IS COMPLETED.
  4. NOT APPLICABLE IN AREAS WITH HIGH WINDS AND LARGE WINDST-DRIVEN WAVES.

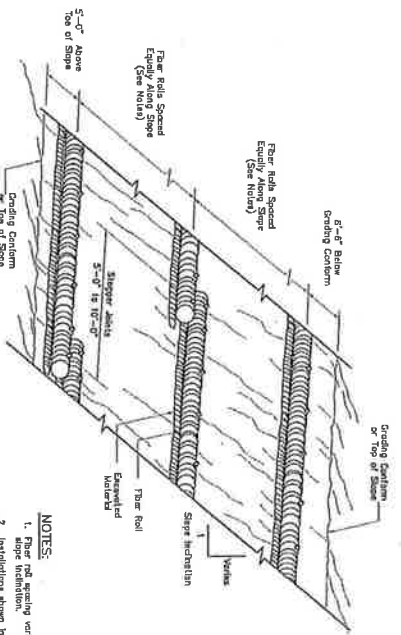
1 GRAVEL BAG BERM

N.T.S.



2 STORM DRAIN INLET PROTECTION

N.T.S.

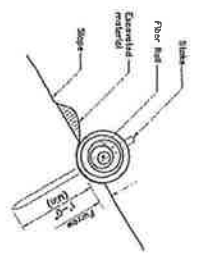


FIBER ROLL (TYPE 1)

3 FIBER ROLL DETAIL

N.T.S.

- NOTES:
1. Fiber roll meeting surface depending upon slope.
  2. Installations shown in the perspective are for slope inclination of 10:1 and steeper.



SECTION FIBER ROLL (TYPE 1)

DATE	1-1-10
DESIGNED	JOB/JS
CHECKED	MBR
APPROVED	MBR
DATE	9/21/10
SHEET NO.	6586-15
SHEET	CA

**SINGLE HILL ROAD AND BEAR RIVER DRIVE IMPROVEMENT PROJECT**  
**EROSION CONTROL DETAILS**  
**BEAR RIVER BAND OF ROHNERVILLE RANCHERIA**  
**LOLETA, CALIFORNIA**

NO.	REVISION	BY	CHK	DATE

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





