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7 Sanders, Provost, Karisch, U.S. Dept. of
Homeland Security, U.S. Customs and
8 Border Protection, and the United States*

9
10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF ARIZONA**

12
13 Terrence Bressi,
14 **Plaintiff,**
15 **v.**
16 Pima County Sheriff Mark Napier, et al.
17 **Defendants.**

No. CV-18-186-TUC-DCB
**FEDERAL DEFENDANTS' FIRST
SUPPLEMENTAL MANDATORY
DISCOVERY REPSONSES**

18
19 The Federal Defendants, following the Court's April 10, 2019 Order (Doc. 4),
20 provides the following supplemental mandatory discovery responses:
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1 **FIRST SUPPLEMENTAL MANDATORY DISCOVERY RESPONSES**

2 **I. PEOPLE LIKELY TO HAVE DISCOVERABLE INFORMATION**

3 The following people, identified by name and, if known, address and telephone
4 number, are likely to have discoverable information relevant to any party's claims or
5 defenses, and they possess the information described below.

6 A. Terrence Bressi
7 c/o Ralph E. Ellinwood
8 PO Box 40158
9 Tucson, AZ 85717
10 520-413-2323

11 Terrence Bressi is the plaintiff in this case. He has knowledge of his encounter with
12 Border Patrol on April 10, 2017, and his other interactions at the checkpoint on State Route
13 86. He may be called to testify about the encounter, his other routine interactions with
14 Border Patrol at the checkpoint, and any other relevant information he may have.

15 B. Border Patrol Agents
16 c/o U.S. Attorney's Office
17 405 W Congress St, Suite 4800
18 Tucson, AZ 85701
19 520-620-7300

20 The following Border Patrol Agents were present during the April 10, 2017
21 checkpoint encounter with Mr. Bressi. Each agent wrote a report about the incident. They
22 have knowledge of the encounter with Mr. Bressi and the day-to-day operations at the
23 checkpoint on State Route 86. They may be called to testify about the encounter and the
24 checkpoint operations, and to lay foundation for their reports.

- 25 • Taylor Frye
- 26 • Edmundo Lopez Sr.
- 27 • Eduardo Fuentes Jr.
- 28 • Arturo Zapata Jr.

29 C. Agent Kerry Riden
30 c/o U.S. Attorney's Office
31 405 W Congress St, Suite 4800
32 Tucson, AZ 85701
33 520-620-7300

1 Agent Kerry Riden is a supervisor who is familiar with Border Patrol's policies and
2 practices at the checkpoint on State Route 86. Agent Riden may be called to testify about
3 the policies and practices at the checkpoint and to lay foundation for Border Patrol records.

4 D. Agent Michele D. Morales
c/o U.S. Attorney's Office
5 405 W Congress St, Suite 4800
Tucson, AZ 85701
6 520-620-7300

7 Agent Michele Morales is a supervisor who is familiar with Border Patrol's operations
8 in southern Arizona. She will testify about the purpose of checkpoints and how the
9 checkpoint on State Route 86 serves Border Patrol's purpose of protecting the border.

10 E. Agent Andrew Culp
c/o U.S. Attorney's Office
11 405 W Congress St, Suite 4800
Tucson, AZ 85701
12 520-620-7300

13 Agent Culp serves as the chair of the Integrated Planning Team for Operation
14 Stonegarden in southern Arizona. He will testify about how Border Patrol coordinates
15 with the state and local law-enforcement who participate in Operation Stonegarden
16 throughout Pima County.

17 F. Agent Eduardo Fuentes Jr.
c/o U.S. Attorney's Office
18 405 W Congress St, Suite 4800
Tucson, AZ 85701
19 520-620-7300

20 Agent Fuentes, in addition to being present at the scene during the April 10, 2017
21 encounter with Mr. Bressi, *see* § I(B) above, is a Station Coordinator for Operation
22 Stonegarden. He has knowledge of how Border Patrol coordinates with state and local
23 law-enforcement agencies closer to the Ajo Border Patrol Station.

24 G. Pima County Sheriff's Deputies
c/o Pima County Attorney's Office
25 32 N Stone Ave, Suite 2100
Tucson, AZ 85701
26 520-724-5700

27 The following Pima County Sheriff's Deputies were present during the April 10, 2017
28 encounter with Mr. Bressi. They each have knowledge of the encounter.

- Deputy Roher
- Deputy Kunze

H. Agent Juan Alonso
c/o U.S. Attorney's Office
405 W Congress St, Suite 4800
Tucson, AZ 85701
520-620-7300

Agent Alonso supervises the Field Training Office for Border Patrol agents in the Tucson Sector. He is familiar with how Border Patrol trains its agents to perform their duties at Border Patrol checkpoints. He may be called to testify about checkpoint policies and practices, about how agents are trained on those policies and practices after they leave the academy, and to lay foundation for field training records.

I. Agent Brett Berghouse
c/o U.S. Attorney's Office
405 W Congress St, Suite 4800
Tucson, AZ 85701
520-620-7300

Agent Berghouse runs post-academy training for Border Patrol agents in the Tucson Sector. He has also served as a field-training officer. He is familiar with how Border Patrol trains its agents to perform their duties at Border Patrol checkpoints. He may be called to testify about checkpoint policies and practices, about how agents are trained on those policies and practices after they leave the academy, and to lay foundation for field training records.

J. Agent Chris DeFreitas
c/o U.S. Attorney's Office
405 W Congress St, Suite 4800
Tucson, AZ 85701
520-620-7300

Agent DeFreitas serves as the Assistant Chief Patrol Agent for Tucson Station. He is familiar with Border Patrol's general operations in Arizona and the broader policy rationales for checkpoints and why they are effective. He may be called to testify about the effectiveness of checkpoints, the reasons why a checkpoint exists on

1 Highway 86, Border Patrol's general policies and practices relating to checkpoint
2 operations, and to lay foundation for Border Patrol records.

3 Other Individuals

4 Additionally, the United States may call as witnesses

- 5 • any individual disclosed by the Plaintiff;
- 6 • any individual who signs an affidavit or declaration;
- 7 • any individual who responds to written discovery; and
- 8 • any individual whose deposition is taken.

9 **II. PEOPLE WHO HAVE GIVEN WRITTEN OR RECORDED STATEMENTS**

10 The following people, identified by name and, if known, address and telephone
11 number, have given written or recorded statements relevant to any party's claims or
12 defenses.

13 A. Border Patrol Agents
14 (see § I(B) above)

15 Each of the four Border Patrol Agents who were present during the April 10, 2017
16 encounter with Mr. Bressi wrote reports. Those reports are included in Reports re
17 Noncompliant Motorist Encounter, which are bates-stamped 38-57.

18 **III. DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND**
19 **TANGIBLE EVIDENCE**

20 The following documents, electronically stored information, and tangible evidence,
21 may be relevant to any party's claims or defenses.

22 **Documents [Bates nos.]**

- 23 1. Federal Tort Claim File [USA 0001-0037]
- 24 2. Reports re Noncompliant Motorist Encounter (redacted) [USA 0038- 0057]
- 25 3. ADOT Permit No. 1221862 [USA 0058-0070]
- 26 4. FEMA Preparedness Grants Manual [USA 0071-0246]
- 27 5. CBP Significant Incident Report (redacted) [USA 0247-0248]
- 28 6. Sector Profile FY18 [USA 0249-0252]

1 *The following documents contain material that is law-enforcement sensitive*
2 *and cannot be produced without a protective order. See Fed. R. Civ. P.*
3 *26(b)(5).*

- 4 7. Border Patrol Handbook Chapter 13, Checkpoints ****privileged****
5 8. Field Training Program Instructor Guide, Checkpoints ****privileged****
6 9. Guidance re Noncompliant Motorists ****privileged****
7 10. Operations Order Report OPSG OO Arizona Pima FY18 ****privileged****

8 **11. ADOT Highway Encroachment Permit Application [USA 0310 - 0315]**

9 *The following documents contain material that is law-enforcement sensitive*
10 *and cannot be produced without a protective order. See Fed. R. Civ. P.*
11 *26(b)(5).*

12 **12. USBP Immigration and Narcotics Related Events December 2018 to**
13 **November 2019 ****privileged******

14 **13. March 29, 2013 Memo re Encounter with Terry Bressi ****privileged******

15 **14. April 30, 2014 Memo re Uncooperative Motorist ****privileged******

16 **15. Border Patrol Traffic Checkpoint Policy ****privileged******

17 **16. U.S. Border Patrol Academy Instructor Guide, Traffic Check**
18 ******privileged******

19 **17. U.S. Border Patrol Academy Student Guide, Traffic Check**
20 ******privileged******

21 **18. U.S. Border Patrol National Field Training Program, Record of**
22 **Instruction Week 10 ****privileged******

23 **19. U.S. Border Patrol National Field Training Program, Record of**
24 **Instruction Week 11 ****privileged******

25 **20. U.S. Customs and Border Protection Instructor Guide, Lesson 3 –**
26 **Checkpoint Operations ****privileged******

27 **Electronically Stored Information**

- 28 1. Video Files of Checkpoint Encounter

1 The following electronically stored information contains material that is law-
2 enforcement sensitive and cannot be produced without a protective order. See
3 Fed. R. Civ. P. 26(b)(5).

4 2. Power Point File of U.S. Customs and Border Protection, Lesson 3 –
5 Checkpoint Operations [“U5 L3 CheckpointOperations.ppt”]
6 **privileged**

7 3. OPSG Daily Activity Report for April 10, 2017 **privileged**

8 Other Exhibits

9 Additionally, the United States may use as exhibits

- 10 • any document disclosed by the Plaintiff;
- 11 • any document produced in response to written discovery;
- 12 • any document produced in response to a subpoena; and
- 13 • any document used as an exhibit to a deposition.

14 **IV. RELEVANT FACTS AND LEGAL THEORIES**

15 The following facts are relevant to the United States’ defenses, which are based on
16 the following legal theories.

17 The Federal Defendants, in their answer, preserved the affirmative defenses of statute
18 of limitations, failure to exhaust administrative remedies, the discretionary function
19 exception, and the independent contractor exception. The Federal Defendants will
20 supplement their mandatory initial discovery responses if they discover a factual basis
21 to support any of those defenses.

22 **V. COMPUTATION OF DAMAGES**

23 The following is a computation of each category of damages claimed by the United
24 States with a description of the documents or other evidentiary material on which it is
25 based, including materials bearing on the nature and extent of the injuries suffered.

26 None.

27 **VI. INSURANCE AGREEMENTS**

28 The following insurance or other agreements may satisfy all or part of a possible
judgment in the action to indemnify or reimburse a party for payments made by the party
to satisfy the judgment.

None.

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March 18, 2020.

MICHAEL BAILEY
United States Attorney
District of Arizona

By 
DENNIS C. BASTRON
Assistant U.S. Attorney
Attorney for the Federal Defendants

CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2020, I mailed the foregoing to the following parties:

Ralph E. Ellinwood
Attorney at Law
P.O. Box 40158
Tucson, AZ 85717
Attorney for Plaintiff

Nancy J. Davis
Deputy County Attorney
32 N Stone Ave, Suite 2100
Tucson, AZ 85701
Attorney for the Pima County Defendants

By 



ARIZONA DEPARTMENT OF TRANSPORTATION
 INTERMODAL TRANSPORTATION DIVISION
HIGHWAY ENCROACHMENT PERMIT APPLICATION
(Application for Permission to Use State Highway Right-of-Way)

FOR ADOT USE ADOT Agreement Number: _____ ECS JPA Other _____

PERMIT NUMBER: _____ ROUTE: _____ MILEPOST: _____

ADOT PROJECT NUMBER: _____ ADOT ENGINEERING STATION: _____

Name of Encroachment Owner:

UNITED STATES BORDER PATROL

Mailing Address of Owner:

2430 S SWAN RD

City:

TUCSON

State: AZ Zip: 85711

Phone: _____

E-mail address: _____

Name of Local Point of Contact: _____

Phone Number for Local Point of Contact: _____

Name of Authorized Agent / Applicant (If other than the Encroachment Owner):

Mailing Address:

City:

State: Zip:

Phone: _____

Legal Relationship to Owner:
 Contractor Sub Contractor Authorized Employee
 Engineer Attorney Other: _____

E-mail Address: _____

City (in or near) ROBLES JUNCTION Side of Highway: N S X E W (check one)

Highway Route # 86 Approximately 1100 Feet N S E W X (check one) of Milepost # 146

Encroachment Owner's Project # or Property Parcel #: _____ Project Duration : INDEFINITE

Description of the proposed work or activity in the right-of-way: UNITED STATES BORDER PATROL CHECKPOINT located on AZ Highway 86 near MP146 used to deter human and narcotics smuggling activities. The checkpoint will be operated 24 hours a day. Located on site will be non-permanent office/processing building portable restroom facilities, worker shade canopy, light carts, generator, and various law enforcement equipment. Note: late 2019 to early 2020 a contractor shall deliver, assemble and install an overhead canopy over both travel lanes at this checkpoint. Right of way permit submitted separately and is under review.

The Encroachment Owner will be the Permittee. By signing this application, the Encroachment Owner and the Owner's Agent acknowledge that the information given and statements made in this application are true and correct to the best of his/her knowledge. The Encroachment Owner agrees as the Permittee to accept the following General Obligations and Responsibilities as described on page 2 of the application. By accepting an approved encroachment permit, the Permittee agrees to the requirements described in the permit, to be responsible for all permit requirements, and to comply with ADOT's requirements as set out in the permit. An approved permit consists of but is not limited to this application and final supporting documentation approved by ADOT, and any requirements set by ADOT. NO WORK SHALL TAKE PLACE INSIDE THE RIGHT OF WAY WITHOUT AN APPROVED PERMIT ON SITE.

Encroachment Owner (Print Name and Sign) _____ Date 11/4/2019

Authorized Agent or Applicant: If other than the Encroachment Owner (Print Name and Sign) _____ Date _____

FOR ADOT USE
PERMIT TO USE STATE HIGHWAY RIGHT-OF-WAY
This application is approved as a permit and a permit is issued to the Permittee. Construction is authorized only for the period indicated below.

Authorized ADOT Name and Signature _____ Authorized ADOT Name and Signature _____
 Issue Date _____ Permit work to be completed by: _____

GENERAL OBLIGATIONS AND RESPONSIBILITIES
APPLICABLE TO UNITED STATES GOVERNMENT AGENCIES

Permittee (hereinafter, the Government) agrees to the following:

1. The Government shall require any non-Government contractor performing work on the encroachment on the Government's behalf to obtain a permit from ADOT and comply with the permit terms.
2. The Government may be liable for damages caused by the negligent or wrongful acts or omissions of its employees acting within the scope of their employment under circumstances where the Government, if a private person, would be liable in accordance with the law of the place where the act or omission occurred. This liability is coextensive with the liability of the Government under the Federal Tort Claims Act, 28 U.S.C. 2671, et seq. In the absence of statutory authority to purchase insurance, the Government is self-insured.
3. Compliance with Environmental Laws:
 - A. "Environmental Laws" refers collectively to any and all applicable federal, state, or local statutes, laws, ordinances, codes, rules, regulations, permits, orders or decrees regulating, relating to, or imposing liability or standards of conduct on a person discharging, releasing or threatening to discharge or release or causing the discharge or release of any hazardous or solid waste or any hazardous substance, pollutant, contaminant, water, wastewater or storm water, and specifically includes, but is not limited to: The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act; the Comprehensive Environmental Response, Compensation and Liability Act, as amended; the Toxic Substances Control Act; the Clean Water Act (CWA); the Clean Air Act; the Occupational Safety and Health Act; the Arizona Water Quality Act Revolving Fund Act, the Arizona Hazardous Waste Management Act, any applicable National Pollutant Discharge Elimination System (NPDES) or Arizona Pollution Discharge Elimination System (AZPDES) permit, and applicable CWA Section 404 permit, or any local pretreatment permit.
 - B. The Government shall comply with all applicable Environmental Laws, including those that affect ADOT's compliance within the boundary and scope of said encroachment permit area as outlined in plans approved by ADOT. Where Government installations or activity result in an environmental hazard on the encroachment, the Government shall remove and remediate such hazard. ADOT reserves the right to revoke the encroachment permit if the Government fails to remediate or remove such environmental hazard or violates an Environmental Law, however, ADOT agrees that it will not revoke the permit under this subsection if the Government corrects the environmental hazard or violation within a reasonable amount of time, as determined by ADOT. Nothing herein shall constitute a waiver of the Government's sovereign immunity unless expressly so waived by Congress.
 - C. The Government shall be responsible for any required remediation or any penalties arising from enforcement actions based on the disposal, escape, seepage, leakage, spillage, discharge, emission, or release of any hazardous waste, solid waste, hazardous substance, pollutant or contaminant, water, wastewater or storm water or any violation of Environmental Laws that is the result of Government activity on or pertaining to the encroachment.
4. Be responsible for any repair or maintenance work to the Government's installations on the ADOT right of way until 1) the installations are transferred to another party who is required to repair and maintain said installations under authority of an approved ADOT encroachment permit or 2) the encroachment permit is terminated and the installations are removed or ADOT and the Government agree to leave the installations in place;
5. Comply with ADOT's traffic standards;
6. Obtain written approval from the abutting property owner (and/or underlying fee owner where ADOT owns its right of way by easement) if the encroachment encroaches on abutting property owned by someone other than the permittee (and/or on underlying fee land owned by someone other than the permittee where ADOT owns its right of way by easement).
7. ADOT may, upon termination of the permit due to the Government's breach of the conditions herein, require the Government to remove its installations and appurtenances from the encroachment and restore, said premises to the conditions existing at the time of entering upon the same under this permit ADOT agrees, however, to provide 60 days notice to the Government before terminating the permit in order to allow the Government an opportunity to cure any breach of the conditions herein.
8. Upon notice from ADOT, repair any aspect or condition of the Government installations in or on the encroachment area that causes danger or hazard to the traveling public.
9. In the event of transfer or disposal, the Government shall notify the new owner to apply for an encroachment permit, as required by Arizona Administrative Rule R17-3-502(D);
10. Apply for a new encroachment permit if the use of the permitted encroachment changes;
11. Keep a copy of the encroachment permit at the work site or site of encroachment activity;
12. Construct the encroachment according to plans that ADOT approves as part of the final permit;
13. Obtain required permits from other government agencies or political subdivisions, as applicable;
14. Remove any defective materials, or materials that fail to pass ADOT's final inspection, and replace with materials ADOT approved during its review of the encroachment plans.
15. If the permit application is denied, applicant has a right to a hearing or other applicable remedies under federal law.
16. All expenditures to be made by the Government under the provisions of this permit shall be subject to appropriations being available for the purpose, and nothing herein shall guarantee that Congress shall later appropriate such funds.

YOU MUST HAVE THE AUTHORITY TO SIGN ON BEHALF OF THE AGENCY YOU REPRESENT TO LEGALLY OBTAIN THIS PERMIT

By accepting an approved encroachment permit, the Permittee agrees to the requirements described in the permit, to be responsible for all permit requirements, and to comply with ADOT's requirements as set out in the permit. NO WORK SHALL TAKE PLACE INSIDE THE RIGHT OF WAY WITHOUT AN APPROVED PERMIT ON SITE. I have read and understand the above requirements, and I am authorized to sign on behalf of the agency I am representing:

PRINTED NAME

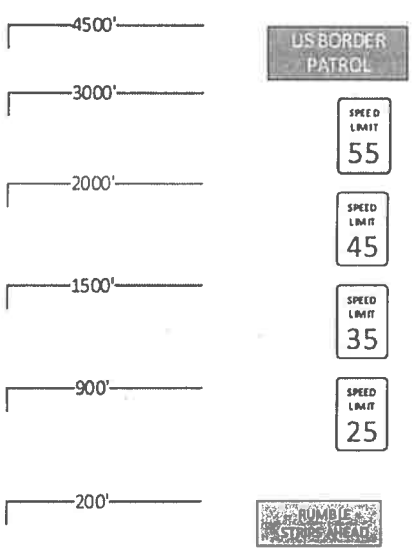
TITLE *DPAC*

SIGNATURE

DATE

11/27/2015

Traffic Control Plan
 US Border Patrol Checkpoint
 SR 86 near MP 146
 Nov. 2018

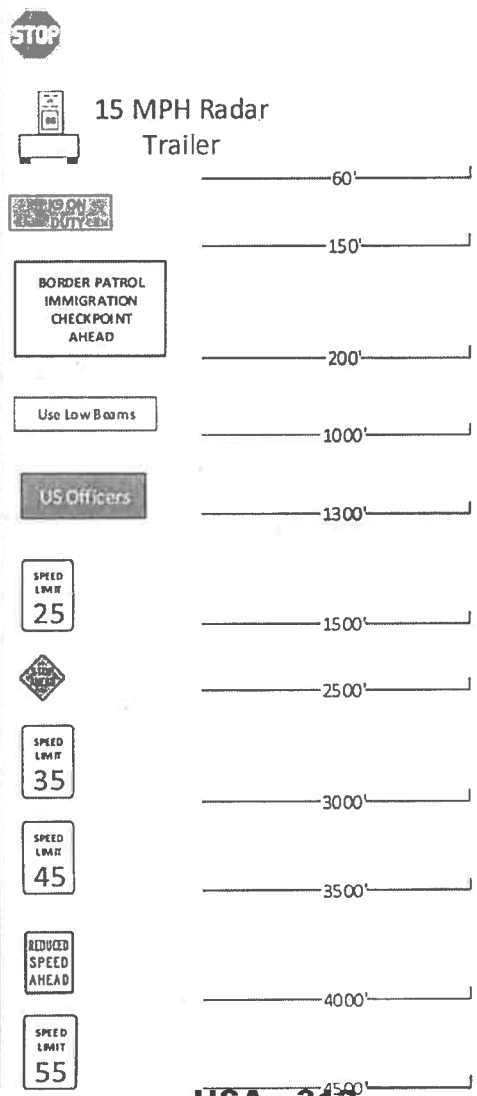
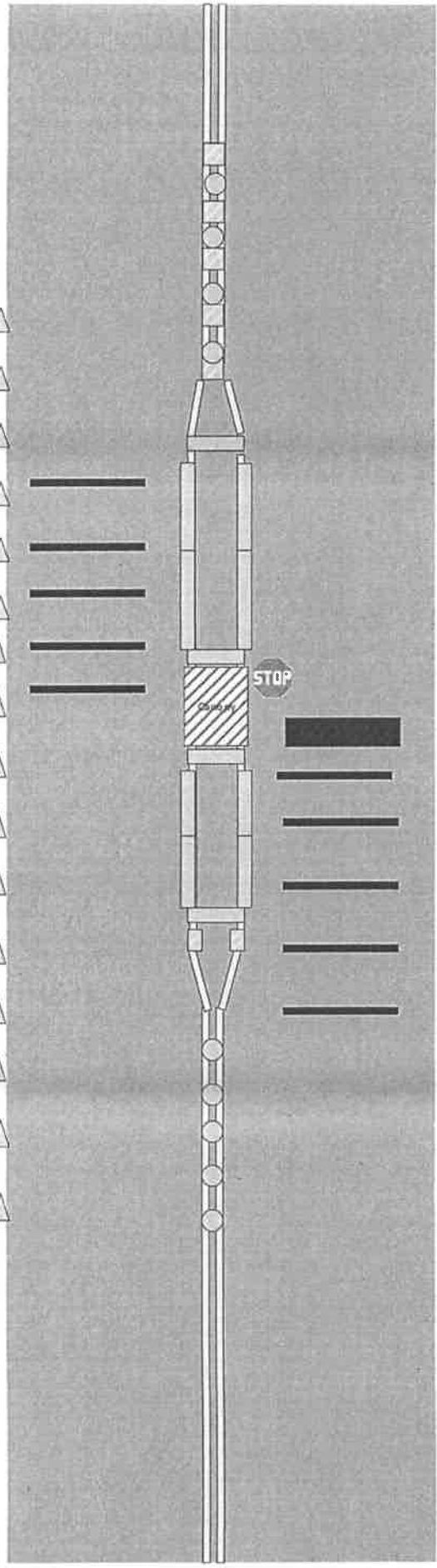


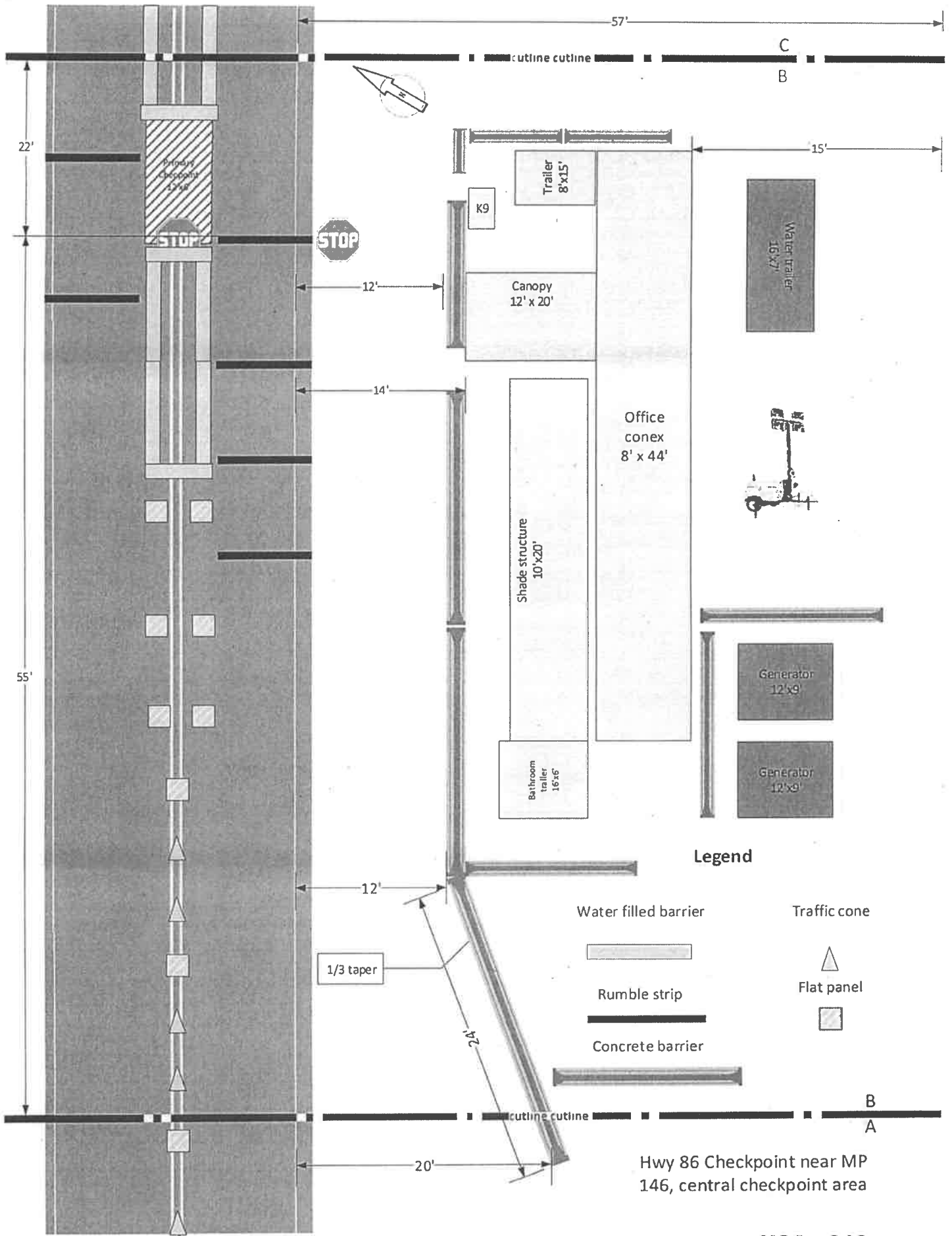
Legend

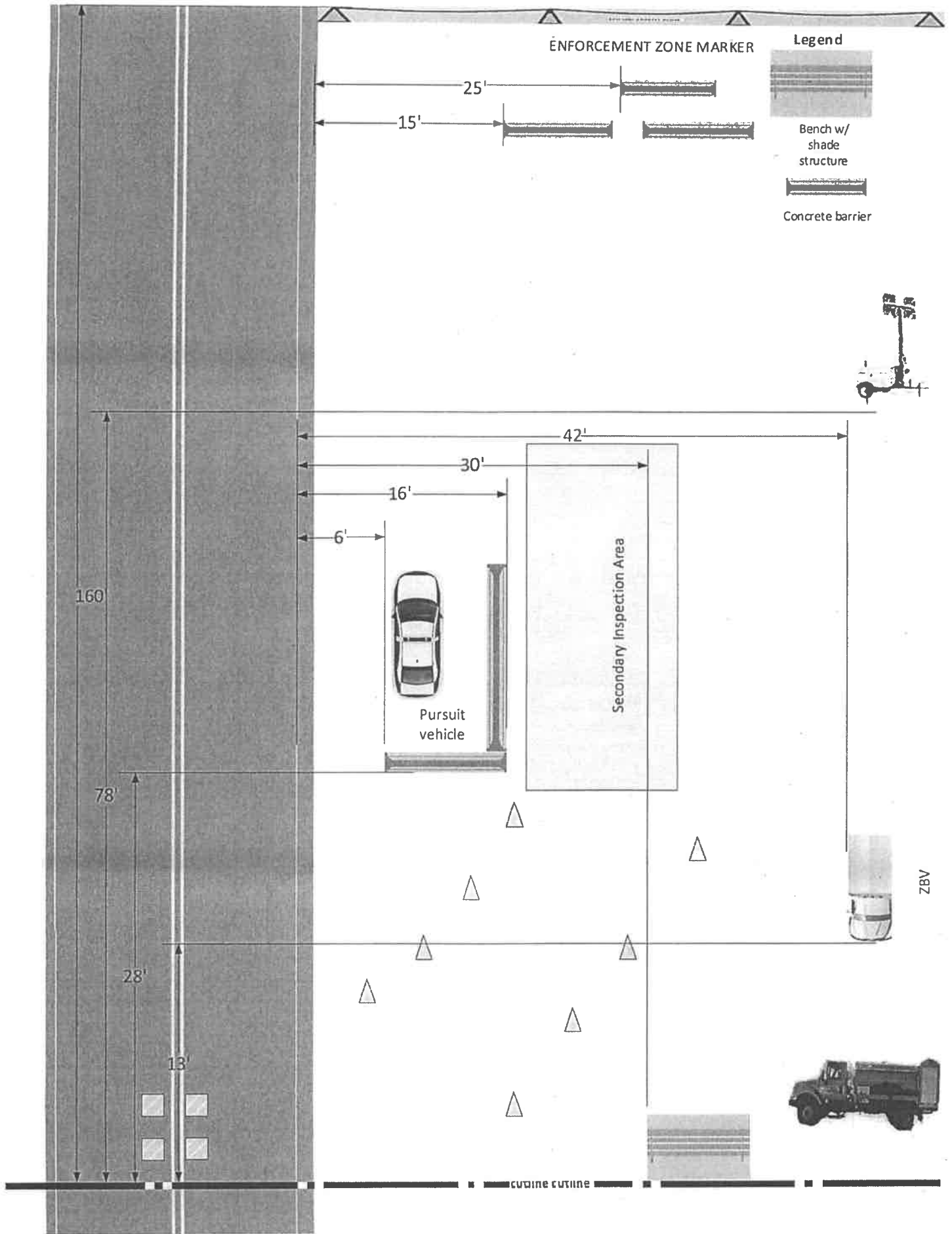
- Large rumble strip
- Rumble strip
- Water filled barrier
- Traffic cone (7' spacing)
- Type I Barricade (10' spacing)
- Yellow Sand Barrel (22' spacing)

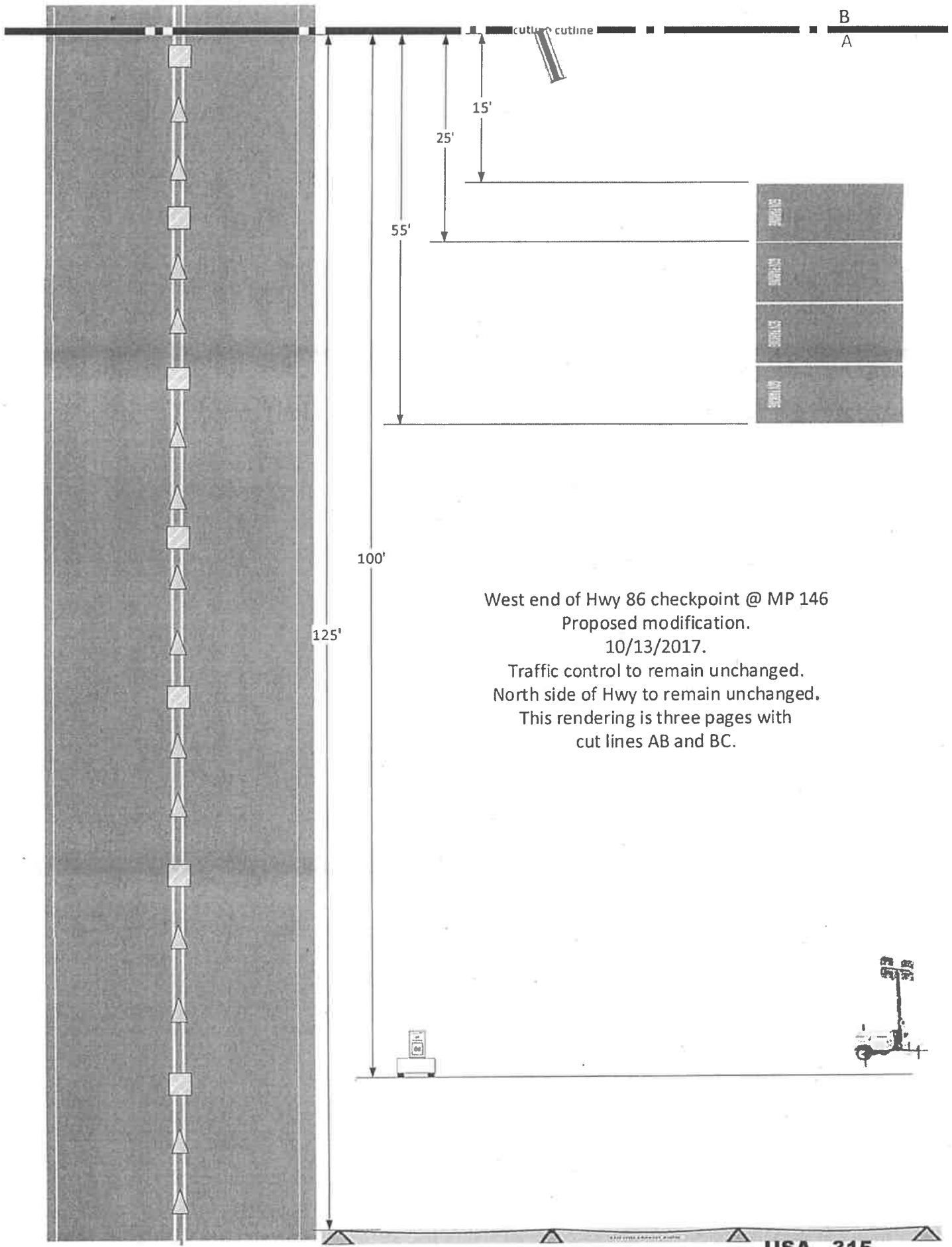
Notes:

1. Simplified diagram to show traffic signage, refer to attachments for further details.
2. Enforcement zone clearly delineated with signage and rope 180' from primary inspection area (Stop Sign), verbiage on signage states "BORDER PATROL ENFORCEMENT ZONE NO UNAUTHORIZED ENTRY BEYOND THIS POINT"; see attached pages.
3. Distances shown on signage are measured from primary inspection area (Stop Sign).
4. Not to scale.
5. Large rumble strip with power cord channels. Anchored in pavement with manufacturer issued anchors.









B
A

West end of Hwy 86 checkpoint @ MP 146
 Proposed modification.
 10/13/2017.
 Traffic control to remain unchanged.
 North side of Hwy to remain unchanged.
 This rendering is three pages with
 cut lines AB and BC.