



# County of Santa Cruz

461

## PLANNING DEPARTMENT

701 OCEAN STREET, 4<sup>TH</sup> FLOOR, SANTA CRUZ, CA 95060

(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123

ALVIN D. JAMES, DIRECTOR

March 17, 1999

### AGENDA: April 13, 1999

Board of Supervisors  
County of Santa Cruz  
701 Ocean Street  
Santa Cruz, CA 95060

**RE: ACCEPT UNANTICIPATED REVENUE AND APPROVE EXPENDITURE FROM  
FISH AND GAME ADVISORY COMMISSION BUDGET FOR A WETLAND  
RESTORATION PROJECT**

Members of the Board:

In December, 1998 the District Attorney's office completed a compromise agreement (Attachment 2) with Michels Pipeline Construction Inc. regarding a potential sedimentation violation. The agreement specified that a \$50,000 contribution be made to the Fish and Game Advisory Commission to be used exclusively by the California Department of Fish and Game and the California Department of Parks and Recreation for a wetland restoration project within the watershed where the sedimentation allegedly occurred.

The Department of Parks and Recreation has completed a budget for the wetland restoration project (Attachment 3), and the District Attorney's office has requested that the Fish and Game Advisory Commission release \$8,800 for plan preparation, survey, and permit acquisition.

It is therefore RECOMMENDED that your Board:

1. Approve the attached AUD60 Resolution accepting and appropriating unanticipated revenue (Attachment 1) in the amount of \$50,000 into the Fish and Game budget; and
2. Approve the payment of \$8,800 from the Fish and Game Advisory Commission budget to the California Department of Parks and Recreation for project planning and permitting; and
3. Authorize the Planning Director to disburse the remaining funds from the Fish and Game Advisory Commission budget, when requested by the District Attorney's office, to facilitate the completion of this wetland restoration project.

Sincerely,

RECOMMENDED:

ALVIN D. JAMES  
Planning Director

  
for SUSAN A. MAURIELLO  
County Administrative Officer

Attachments: 1. AUD60 Resolution Accepting and Appropriating Unanticipated Revenue  
2. Compromise Agreement and Release  
3. Project Budget

0: 469

BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

RESOLUTION NO. \_\_\_\_\_

On the motion of Supervisor \_\_\_\_\_  
duly seconded by Supervisor \_\_\_\_\_  
the following Resolution is adopted:

RESOLUTION ACCEPTING UNANTICIPATED REVENUE

WHEREAS, the County of Santa Cruz Fish and Game Commission is a recipient of funds from Michels Pipeline Construction, Inc. for a compromise agreement related to a potential sedimentation violation; and

WHEREAS, the County is a recipient of funds in the amount of \$50,000 which are either in excess of those anticipated or are not specifically set forth in the current fiscal year budget of the County; and

WHEREAS, pursuant to Government Code Section 29130(c)/29064(b), such funds may be made available for specific appropriation by a four-fifths vote of the Board of Supervisors;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Santa Cruz County Auditor-Controller accept funds in the amount of \$50,000 into

Department: Fish and Game Commission

T/C	Index Number	Revenue Sub-Object Number	UCD	Account Name	Amount
001	135420	0384	LO7220	Fish & Game Fines	\$50,000

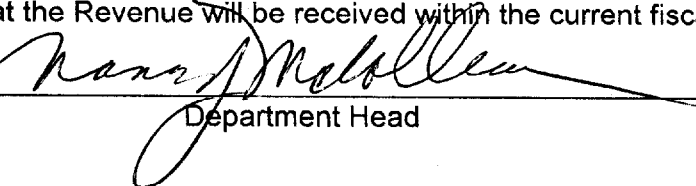
and that such funds be and are hereby appropriated as follows:

T/C	Index Number	Expenditure Sub-Object Number	UCD	Account Name	Amount
021	135420	5280	LO7220	Cont 0th Agencies	\$50,000

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DEPARTMENT HEAD -- I hereby certify that the fiscal provisions have been researched and that the Revenue will be received within the current fiscal year.

By

  
Department Head

Date

3/24/19

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COUNTY ADMINISTRATIVE OFFICER

☒ Recommended to Board☐ Not Recommended to Board

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz,  
State of California, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
by the following vote (requires four-fifths vote for approval):

AYES: SUPERVISORS

NOES: SUPERVISORS

ABSENT: SUPERVISORS

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Chairperson of the Board

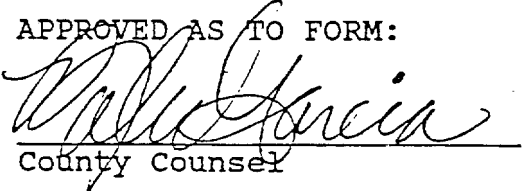
ATTEST:

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Clerk of the Board

APPROVED AS TO FORM:

APPROVED AS TO ACCOUNTING DETAIL:

  
County Counsel  
Auditor-Controller

Distribution:

Auditor-Controller  
County Council  
County Administrative Officer  
Originating Department

## COMPROMISE AGREEMENT AND RELEASE

THE PEOPLE OF THE STATE OF CALIFORNIA (hereinafter "People"), and MICHELS PIPELINE CONSTRUCTION, INC., (hereinafter "Michels"), in consideration of the promises made herein, agree as follows:

Nature and Effect of Agreement

1. This Agreement consists of a compromise and settlement by the parties of the People's claims against Michels arising from the circumstances described in Paragraph 2. By executing this Agreement, each of the parties intends to and does hereby discharge and release the obligations which may have arisen between them as a result of the circumstances described in Paragraph 2, in the manner and to the extent set forth herein. This Agreement is not, and shall not be treated as, an admission of liability or fault by either party for any purpose.

Nature and Status of Dispute

2. The parties agree that the Santa Cruz City landfill was constructed over a section of Lombardi Creek, in Santa Cruz County, California. Originally, the creek and its tributary were piped under the landfill. Those pipes failed, the streams were dammed, and the city pumped water over the landfill, down to California State Park property, in order to prevent water from leaching undesirable chemicals from the municipal landfill into the environment. The Central Coast Regional Water Quality Control Board required the City of Santa Cruz to restore the streams back to free-flowing waterways by installing a freshwater bypass system, consisting of two tunnels through the landfill. The City contracted with Michels to undertake this project. A "streambed alteration agreement" with the California Department of Fish & Game was prepared and executed by the City on June 16, 1995. The agreement included among its terms that certain erosion control measures were to be taken within certain specified time frames. Michels was obliged to operate under the terms and conditions of that agreement. Michels submitted a letter to the California Department of fish and Game, indicating its intent to take steps to manage erosion control in and around the project sites. Construction of the project commenced in late 1995, and continued through mid-1996. In or about early January, 1996, a series of significant storm events occurred, delaying completion of the project by Michels. Between early January, and continuing through March 1996, officials of the California Department of Fish & Game and California State Parks found what they believed to be excessive siltation at the project sites which they believed should have been reduced or eliminated by the installation and maintenance of additional and more effective erosion control measures by Michels. Michels contended that it was taking all feasible steps under the circumstances, and that its conduct was both consistent with the streambed alteration agreement, and did not result in any injury to fish, plant life, bird life or habitat.

3. The People contend, inter alia, that Michels conduct may have been contrary to Fish & Game Code Section 5650(a)(6) and other provisions of State and Federal law. Michels denies that it acted improperly at any time during the course of the freshwater bypass project described above.

Compromise Agreement

4. In consideration of the payments set forth below, the People and Michels hereby agree to compromise and settle the claims which the People may be entitled to pursue which arise out of the circumstances set forth in Paragraph 2, above, to have the same effect as if such facts were properly pleaded in a civil action filed against Michels by the People and the action was subsequently dismissed with prejudice. The People agree that to that extent this compromise agreement and release shall constitute a bar to all such claims. The payments are as follows:

a. \$4,500 to the Department of Fish & Game for reimbursement of its costs of investigation.

b. \$1,500 to the Department of Parks & Recreation for reimbursement of its costs of investigation.

c. \$50,000 as a contribution to the Santa Cruz County Fish & Game Commission, to be used exclusively by the Department of Fish & Game and the Department of Parks & Recreation for wetlands improvement, restoration and enhancement, and red-legged frog habitat, and related stream enhancement projects within Santa Cruz County, as set forth in Exhibit "A" to this Agreement. This payment is a contribution by Michels for the benefit of or improvement of the natural environment, and is not paid in mitigation or as a fine or penalty.

Execution of Other Documents

5. Each party to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

Attorney's Fees and Costs

6. Except as provided in Paragraphs 4(a) and (b), each party to this Agreement shall bear its own attorney's fees and costs.

Entire Agreement

7. This Agreement contains the entire agreement between the parties.

Effective Date

8. This Agreement shall become effective immediately upon execution by the People and Michels, and the tender of payment as set forth in Paragraph 4.

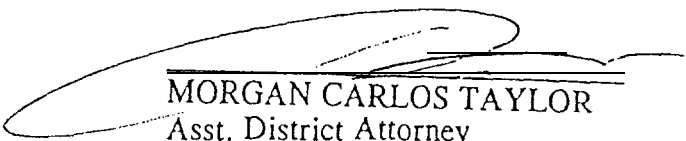
Governing Law

9. This Agreement is entered into, and shall be construed and interpreted in accordance with, the laws of the State of California.

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DATED: Dec. 30, 1998

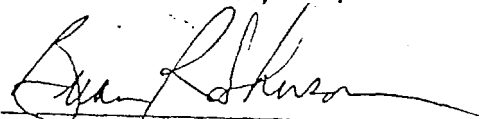
ARTHUR DANNER III  
District Attorney



MORGAN CARLOS TAYLOR  
Asst. District Attorney

DATED: Dec. 30, 1998

MICHELS PIPELINE  
CONSTRUCTION, INC.,



BRIAN P. JOHNSON  
Executive Vice-President

## EXHIBIT "A"

The project described in paragraph 4(c) of the agreement is, in summary, as follows:

Several portions in and adjacent to Lombardi Creek, situated within Wilder Ranch State Park in the County of Santa Cruz, California, are currently in a degraded state.

The California Departments of Fish & Game and Parks & Recreation will work jointly to prepare and execute a plan to enhance the wildlife and aquatic resources at this site. The project shall include the reclamation of lowland agricultural fields, re-establishment of wetlands and riparian vegetation, removal of sediments and exotic vegetation, replanting with native vegetation, and maintenance of the completed plan.

Expenditures of monies obtained in this settlement shall be made in a manner determined by the Departments, and may include such items as are consistent with the preparation and execution of the plan, including but not limited to, rental of heavy equipment, permits and approvals, acquisition of monitoring equipment, purchase of native plants and other necessary materials, and the employment of appropriate professionals and field personnel.

SANTA CRUZ DISTRICT ATTORNEY'S OFFICE  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060  
Tel: (831) 454-2553  
Fax: (831) 454-2227

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**Memo to:** Matt Baldzikowski; F&G Commission; Auditor  
**From:** Morgan Taylor, Asst. DA  
**Re:** Lombardi Creek Restoration  
**Date:** 3/3/99

This memo concerns the \$50,000 check that was presented to the County Fish & Game Commission to be used for Lombardi Creek restoration work, per the agreement that was distributed to the Commission at its last meeting'.

A field meeting was held this morning between Ecologist George Gray of State Parks, Warden Carmel Babich and Biologist Deborah Johnston of Fish & Game, and me. We determined that a payment covering the first three items on the attached budget (totalling \$8,800.00) should be made to a State Park contingency fund at this time so that the initial work on this project may proceed. This is preferable to making reimbursement payments to State Parks, because the department has a non-waivable processing charge of 10% in such cases which we would naturally like to avoid.

Thank you for taking the requested action. If you need more information in connection with making this payment, please contact me at 454-2553.

MCT





State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION

ATTACHMENT 3

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RESOURCE MANAGEMENT PROJECT PROPOSAL  
— BUDGET —

Project Title: Lombardi Creek Restoration

Unit Name: Wilder Ranch State Park Program: \_\_\_\_\_ Budget Year: 3 years  
FY 1

Project Code: District # \_\_\_\_\_ Unit # \_\_\_\_\_ Project # \_\_\_\_\_ Phase Year \_\_\_\_\_

SALARY AND WAGES:

District/Section Classification		Hours Required	SAM Billing Rate		cost	
Nonreimbursable (base support staff)						
Associate Resource Ecologist		400	Not	to	be	included
			Not	to	be	included
Reimbursable (Assistant Ecologist)						
Plan Preparation		200	\$20		\$4,000	
Field Surveys		80	\$20		\$1,600	
Permits (Army Corps, DFG, Water Qual., U.S. FWS, Coastal Commission, CEQA)		160	\$20		\$3,200	
Phase I	Establish Vol./Intern Prog.	100	\$20		\$2,000	
	Volunteer Management	300	\$20		\$6,000	
OPERATING EXPENSES: Phase II Vol. Man.		300	\$20		\$6,000	
Expenditure Code	Monitoring	400	\$20		\$8,000	
201 — General Project Expense					SUBTOTAL \$30,800	
Earthmoving			\$16,200			
					\$16,200	
402 — Consulting, Construction and Labor Contracts — External						
Hydrologist - Review of Plan			\$1,000			
Herpetologist - Red-legged frog surveys			\$1,000			
Tidewater goby, Pac. Pond Turt.			\$1,000			
382 — Consulting, Construction and Labor Contracts — Interagency Agreements						
					\$3,000	
291 — In-state Transportation and Per Diem						

BUDGET YEAR PROJECT COST

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