



COUNTY OF HUMBOLDT

AGENDA ITEM NO.  
**C11**

For the meeting of: **December 19, 2017**

Date: **December 6, 2017**

To: **Board of Supervisors**

From: **County Counsel's Office**  
**Jeffrey S. Blanck, County Counsel**

Subject: **Settlement Agreement for Randall Sand and Gravel v. County of Humboldt, et al., Humboldt County Superior Court Case No. CV170395.**

RECOMMENDATION(S):

That the Board of Supervisors:

1. Approve the Settlement Agreement with Randall Sand and Gravel in the matter of *Randall Sand and Gravel v. County of Humboldt, et. al.*, Humboldt County Superior Court Case No. CV170395;
2. Authorize the Chair of the Board to sign the signature page of the agreement; and
3. Direct the Clerk of the Board to return one (1) signed copy of the Settlement Agreement to County Counsel's Office.

SOURCE OF FUNDING:

3524354-6100      Liability Claim Payments

DISCUSSION:

On May 12, 2017, Petitioner/Plaintiff Randall Sand and Gravel ("Randall") filed a Verified Petition for Writ of Mandate and Complaint for Declaratory Relief and Complaint for Preliminary and Permanent Injunctive Relief ("Petition") against County of Humboldt, Humboldt County Board of Supervisors,

Prepared by: John B. Nguyen	CAO Approval:
REVIEW: Auditor:	County Counsel:
Human Resources:	Other: _____
TYPE OF ITEM: <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Departmental <input type="checkbox"/> Public Hearing <input type="checkbox"/> Other _____	<b>BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT</b> Upon motion of Supervisor <u>Sundberg</u> Seconded by Supervisor <u>Fennell</u> Ayes <u>Sundberg, Fennell, Bass, Bohn, Wilson</u> Nays _____ Abstain _____ Absent _____
PREVIOUS ACTION/REFERRAL: Board Order No. _____ Meeting of: _____	and carried by those members present, the Board hereby approves the recommended action contained in this Board report.  Dated: <u>12/19/17</u> By: <b>Kathy Hayes, Clerk of the Board</b>

Humboldt County Planning Director, and Humboldt County Planning Department (collectively as "County").

Randall's Petition requests the Court to direct the County to comply with all legal requirements applicable to the unpermitted surface mining operation occurring at 17603 Briceland Thorne Road, Whitethorn, California, Assessor Parcel Number 215-231-013 ("Site") including the issuance of cease and desist orders for any and all gravel operations and/or operations associated with gravel operations until all necessary environmental review and compliance have been achieved and all necessary permits have been acquired.

Randall's Petition also requests the Court to order the County to not allow unpermitted gravel operations to continue to occur on the Site.

On May 12, 2017, the County issued a Cease and Desist order letters to Real Parties In Interest Barnum Timber Company, G.R. Wilcox Enterprises, Inc., Norman A. Johannesen, and Deborah J. Johannesen (collectively as "Real Parties In Interest"). On the same day, COUNTY recorded a Notice of Nuisance for the Site at Humboldt County Clerk-Recorder's Office.

On May 31, 2017, the Court granted a Temporary Restraining Order Prohibiting the Removal of Gravel (Rock) from the Site ("TRO").

On June 14, 2017, after briefing by Parties, the Court held a hearing on whether Real Party in Interest G.R. Wilcox Enterprises, Inc. ("Wilcox") should be allowed to remove the existing gravel from the Site. The Court ordered that the TRO to remain in place.

On or about July 13, 2017, the County was informed by a representative of Wilcox that the rock processing equipment on the Site was removed. Code Enforcement confirmed the removal of the equipment in August 2017 of the equipment actively used for processing.

Given the costs and uncertainty of litigation, Randall and County desire to resolve this dispute and have negotiated the terms of this Settlement Agreement.

#### FINANCIAL IMPACT:

Per the Settlement Agreement, County will pay \$30,000 to Randall for attorneys' fees and costs related to this action. As to County's remaining obligations, Planning and Building Department will continue to investigate and enforce all legal requirements applicable to unpermitted surface mining operations as part of their duty to the public. The settlement will be paid from the Liability budget, which provides funding for claims for damages and lawsuits filed against the county, and also funds any investigative costs or expenses associated with existing or potential claims. This will result in no net impact to the County's General Fund. This item supports your Board's Strategic Framework by safeguarding public trust through management of resources to ensure sustainability of services.

#### OTHER AGENCY INVOLVEMENT:

Planning and Building Department.

#### ALTERNATIVES TO STAFF RECOMMENDATIONS:

If the Board chooses not to approve the recommendations, this lawsuit will continue.

#### ATTACHMENTS:

1. Original Settlement Agreement signed by representative of and attorney for Randall Sand and Gravel.

## SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (“Agreement”) is made and entered into by Petitioner/Plaintiff RANDALL SAND AND GRAVEL (“RANDALL”) and Respondents/Defendants COUNTY OF HUMBOLDT, HUMBOLDT COUNTY BOARD OF SUPERVISORS, HUMBOLDT COUNTY PLANNING DIRECTOR, and HUMBOLDT COUNTY PLANNING DEPARTMENT (collectively as “COUNTY”). RANDALL and COUNTY are sometimes referred to in this Agreement individually as “Party” and collectively as “Parties.”

### RECITALS

A. On May 12, 2017, RANDALL filed a Verified Petition for Writ of Mandate and Complaint for Declaratory Relief and Complaint for Preliminary and Permanent Injunctive Relief (“Petition”) against COUNTY known as *Randall Sand and Gravel v. County of Humboldt, et al.* in the Superior Court for the County of Humboldt, Case No. CV170395.

B. RANDALL’s Petition requests the Court to direct the COUNTY to comply with all legal requirements applicable to the unpermitted surface mining operation occurring at 17603 Briceland Thorne Road, Whitethorn, California, Assessor Parcel Number 215-231-013 (“Site”) including the issuance of cease and desist orders for any and all gravel operations and/or operations associated with gravel operations until all necessary environmental review and compliance have been achieved and all necessary permits have been acquired.

C. RANDALL’s Petition also requests the Court to order the COUNTY to not allow unpermitted gravel operations to continue to occur on the Site.

D. On May 12, 2017, the COUNTY issued a Cease and Desist order letters to Real Parties In Interest BARNUM TIMBER COMPANY, G.R. WILCOX ENTERPRISES, INC., NORMAN A. JOHANNESSEN, and DEBORAH J. JOHANNESSEN (“REAL PARTIES IN INTEREST”).

E. On May 12, 2017, COUNTY recorded a Notice of Nuisance on Site at Humboldt County Clerk-Recorder’s Office.

F. On May 31, 2017, the Court granted a Temporary Restraining Order Prohibiting the Removal of Gravel (Rock) from the Site (“TRO”).

G. On June 14, 2017, after briefing by Parties, the Court held a hearing on whether Real Party in Interest G.R. WILCOX ENTERPRISES, INC. (“WILCOX”) should be allowed to remove the existing gravel from the Site. The Court ordered that the TRO to remain in place.

H. On or about July 13, 2017, the COUNTY was informed by a representative of WILCOX that the rock processing equipment on the Site was removed. The COUNTY confirmed the removal of the equipment in August 2017 of the equipment actively used for processing.

### **AGREEMENT**

Through this Agreement, given the cost and uncertainty of litigation, the Parties now desire to resolve this dispute under the terms and conditions set forth herein.

In consideration of the mutual terms, covenants, and conditions set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- A. **Effective Date.** This Agreement shall become effective on the day it is signed by the last signatory.
- B. **Incorporation of Recitals.** The Parties incorporate herein each of the foregoing Recitals in full.
- C. **No Admissions.** The Parties understand and agree that this Settlement Agreement is the result of a compromise and nothing contained herein shall be construed as an admission of liability, responsibility, or wrongdoing by any Party hereto.
- D. **Obligations of COUNTY.**
  - 1. The COUNTY shall pay, via check, a total sum of THIRTY THOUSAND DOLLARS (\$30,000) to Randall Sand and Gravel and the Harland Law Firm, LLP within thirty (30) days of the Effective Date of this Settlement Agreement, for attorney's fees and costs related to this action. All checks shall be delivered to Allison G. Jackson, Harland Law Firm, LLP, 622 H Street, Eureka, California, 95501.
  - 2. The COUNTY will enforce all legal requirements applicable to the unpermitted surface mining operation occurring at the Site, including without limitation, mitigation of all environmental damage, and continue to work with other governmental agencies including but not limited to California Department of Fish and Wildlife to enforce any known violations as of the Effective Date.
  - 3. No later than six (6) months after the Effective Date, the COUNTY will investigate the gravel mine operations that are allegedly operating without proper permits as identified by RANDALL. The COUNTY will notify RANDALL of these investigations of gravel mining operations that are allegedly operating without proper permits. Failure to notify RANDALL will not constitute a breach of this Agreement unless the COUNTY fails to notify RANDALL within 20 business days of the

initiation of investigation and/or if the COUNTY fails to timely respond to a request concerning these investigations by RANDALL under the California Public Records Act. Notifications will be sent to Randall Sand and Gravel, P.O. Box 339, Garberville, California 95542 and/or if vial email to [shawn@mendocinoblue.com](mailto:shawn@mendocinoblue.com).

4. The COUNTY will notify RANDALL of any permit application or associated documents submitted for any use by any REAL PARTIES IN INTEREST for the Site for a period of one (1) year. Failure to notify RANDALL will not constitute a breach of this Agreement unless the COUNTY fails to notify RANDALL of any permit applications or documents associated with the Site within 20 days of the application and/or if the COUNTY fails to timely respond to a request by RANDALL under the California Public Records Act. Notifications will be sent to Randall Sand and Gravel, P.O. Box 339, Garberville, California 95542 and/or if via email to [shawn@mendocinoblue.com](mailto:shawn@mendocinoblue.com).
5. The COUNTY agrees to bear its own fees and costs, including attorneys' fees, in relation to this Petition.
6. Associated Persons and Associated Entities with regard to the COUNTY shall include, to the broadest extent permitted by law, any and all officers, employees, elected department heads, appointed department heads, assigns, agents, law enforcement personnel, code enforcement personnel, attorneys, insurers, and/or any person(s) acting or purporting to act on behalf of the County of Humboldt.
7. The COUNTY, on behalf of itself and all of its Associated Persons and/or Associated Entities, agrees to settle any and all claims it may have known or unknown, against RANDALL and/or persons or entities associated with RANDALL, arising in any way from the facts or circumstances alleged in the Petition.
8. The COUNTY agrees to ensure that any and all remaining equipment will be removed from the Site.

E. **Obligations of RANDALL.**

1. No later than 30 calendar days after the Effective Date, RANDALL will provide a list of gravel mine operations within the County of Humboldt that are allegedly operating without proper permits.
2. Upon delivery of said payment referred above, RANDALL shall cause to have filed within 7 calendar days a Request for Dismissal, with prejudice, of its Petition.

- F. **Release by RANDALL.** Except as to COUNTY's compliance and/or performance of the terms of this Agreement, RANDALL release and forever discharge COUNTY and its employees, agents, contractors, affiliates, successors, assigns, creditors, and administrators, from any and all claims, demands, damage, liabilities, obligations, agreements, expenses (including attorneys' fees), actions and causes of action, of whatever description or nature, arising out of, or relating to RANDALL's Petition, whether now known or unknown.
- G. **Civil Code Section 1542.** By executing this Agreement, with regards to allegations associated with those alleged in RANDALL's Petition, each Party expressly waives the provisions of Civil Code Section 1542, which provides:  
A general release does not extend to the claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.
- H. **No Representations Not Contained Herein.** Each Party acknowledges that no other party, nor any agent or attorney of any party, has made any promise, representation or warranty whatsoever, express or implied, not expressly contained herein, concerning the subject matter hereto so as to induce it to execute this Agreement; and each party acknowledges that it has not executed this Agreement in reliance on any promise, representation or warranty not contained herein.
- I. **Parties Represented By Counsel.** Each party acknowledges that it has been represented in negotiations for settlement and preparation of this Agreement by counsel of its own choosing, or has had the opportunity to seek the advice of counsel, and that each of the Parties has read this Agreement and has had it fully explained to it by its own counsel, and is fully aware of its contents and its legal effect.
- J. **Right to Execute Agreement.** The Parties each warrant that they believe no other person has or had, or claims any interest in any of the claims, demands, causes of action, obligations, damages or liabilities asserted by it referred to herein; that it has the sole right and exclusive authority to execute this Agreement and to bind itself and its assigns thereby; that it has not sold, assigned, transferred, conveyed or otherwise disposed of any claims, demands, causes of action, obligations, damages or liability asserted by it referred to herein.
- K. **Joint Drafting.** The Parties hereto have reviewed this Agreement and agree that any rule of construction to the effect that any ambiguity in the interpretation of an agreement is to be resolved against the drafting party shall not apply. This Agreement shall be construed

as if drawn and prepared by all parties hereto jointly. Any uncertainty or ambiguity shall not be interpreted for one against any other Party.

- L. **Law of California.** The Parties agree that this Agreement shall be governed by the laws of the State of California.
- M. **Litigation to Enforce Agreement.** This Agreement shall be admissible for purposes of enforcing it. If any action, at law or in equity, is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and expenses, costs, collection costs, and necessary disbursements in addition to any other relief to which that party may be entitled. This provision shall be construed as applicable to the entire Agreement.
- N. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties. No supplement, modification, waiver or termination of this Agreement or any provision hereof shall be binding unless executed in writing by the Parties in the same manner as this Agreement.
- O. **Severability.** If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing the term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this Section shall not be applied to the extent that it would result in a frustration of the Parties' intent under this Agreement.
- P. **Execution in Counterparts.** This Agreement may be executed in counterparts. A fax or electronic signature shall be effective to bind a signatory to this Agreement.
- Q. **Headings.** The headings of the paragraphs of this Agreement have been included only for convenience and shall not be deemed in any manner to modify or limit any of the provision of this Agreement, or be used in any manner in the interpretation of this Agreement.



R. **Execution of Additional Document.** The Parties, and each of them, agree to execute any documents necessary to effectuate the terms of this Agreement.

IN WITNESS WHEREOF, the Parties do hereby agree to the full performance of the terms set forth herein and have executed this Agreement as of the date below written:

RANDALL SAND AND GRAVEL

APPROVED AS TO FORM:

By: Cathy Randall Studelaker

By: Allison G. Jackson  
Allison G. Jackson, Attorney for  
Randall Sand and Gravel

Dated: 12-4-2017

COUNTY OF HUMBOLDT

APPROVED AS TO FORM:

By: Virginia Bass  
Virginia Bass, Chairperson for  
Humboldt County Board of Supervisors

By: Jeffrey Blanck  
Jeffrey Blanck  
John B. Nguyen, Attorneys for  
County of Humboldt, Humboldt  
County Board of Supervisors,  
Humboldt County Planning  
Director, and Humboldt County  
Planning Department

Dated: 12/19/17