

# SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors  
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**Agenda Number:**  
**Prepared on:** 6/9/2004  
**Department Name:** Public Works  
**Department No.:** 054  
**Agenda Date:** 7/13/2004  
**Placement:** Administrative  
**Estimate Time:**  
**Continued Item:** NO  
**If Yes, date from:**

**TO:** Board of Supervisors

**FROM:** Phillip M. Demery, Director  
Public Works

## STAFF

**CONTACT:** Eric Pearson, Construction Section Manager, 681-5686

**SUBJECT:** Construction of Pipe & Tire Revetment at Santa Rosa Road Bridge No. 51C-020 on Salispuedes Creek Near the City of Lompoc, CA, in the Third Supervisorial District. Santa Barbara County Project No. 98R288

## Recommendation(s):

That the Board of Supervisors:

Review and approve the Statement of Final Quantities for work performed and materials supplied for this project by the Contractor, C. Beecham Corporation (not a local vendor), 755 Harbor Street, Morro Bay, California 93442, in the amount of \$58,748.14.

## Alignment with Board Strategic Plan:

The recommendation is primarily aligned with Goal No. 1, An Efficient Government Able to Anticipate and Respond Effectively to the Needs of the Community.

## Executive Summary and Discussion:

This project consisted of a new pipe and tire revetment construction along the creek banks of Salsipuedes Creek at Santa Rosa Road Bridge No. 51C-020 on Santa Rosa Road, near the City of Lompoc. The project received all the appropriate permits from California Department of Fish and Game, Regional Water Quality Control Board and U.S. Army Corp. of Engineers (ACOE) prior to the commencement of construction activities.

However, on October 3, 2003 the County of Santa Barbara notified ACOE that our biological monitors had observed several California red-legged frogs at the project site. The California red-legged frog was listed as threatened on May 23, 1996 (61 Federal Register 25813). Under Section 7 of the Endangered Species Act (ESA) Federal agencies are required to review their actions to determine whether they may affect listed species or critical habitat. Although we had an ACOE permit that was issued on September 24, 2003, the ACOE had an obligation to comply with the ESA. With the discovery of the California red-legged frogs at

the project site, the ACOE determined that the project may affect individuals of this threatened species and the County was therefore required to initiate formal Section consultation with the United States Fish and Wildlife Service (U.S.F.W.S.). The ACOE notified the County on October 3, 2003 by letter that “No further construction activities shall be performed within the ACOE jurisdiction until you have received written notification from the ACOE that the requirements of Section 7 of the ESA have been satisfied.” The ACOE initiated formal Section 7 consultation with the U.S.F.W.S. on October 6, 2003. By letter dated October 17, 2004, the U.S.F.W.S. informed the ACOE that they would be unable to complete the consultation in a timely manner. This inability to complete the consultation by the U.S.F.W.S. made it effectively impossible for the County to complete the project prior to the winter rains and within the agency-approved seasonal window.

At that point staff investigated options for either continuing the construction contract or terminating said contract. If the County was to shut the project down for the winter season, it was determined that due to the limited bonding capacity of the contractor, they would be unable to bid or perform any other work until this job was completed in mid-2004. This was determined to be a financial hardship for C. Beecham Corporation and was not the preferred option. The preferred option financially for both the contractor and the County was determined to be termination of the contract and to follow the procedures of the State Standard Specifications. The basis to contract termination includes paying for all work performed up to the shutdown of construction operations by the U.S.F.W.S. This included mobilization, demobilization, contract labor performed (access road construction, water diversion installation and subsequent removal, project security, and Right-of-Way Delay costs), material restocking, administration, bidding costs, and a reasonable allowance for profit, not to exceed 4% of the Reasonable Cost bottom line. The County also acquired approximately \$16,000 worth of culvert and steel pipe materials now inventoried at the Lompoc Road Yard, a creek access road that was constructed and is available for future emergency use, and potential claim avoidance by holding this contractor up from bidding other work for an unreasonable amount of time through a winter shutdown. The winter shutdown option would have cost the County approximately \$120,000, in additional contract costs.

The contractor was officially notified of the contract termination on October 31, 2003. The Contractor did file a Notice of Potential Claim, however after negotiation of the final quantity amounts, the dispute was resolved and the contractor agreed upon the attached Statement of Final Quantities amount of \$58,748.14.



