

Fort Bragg, California
September 26, 2005
Town Hall

The Agency Members of the Fort Bragg Redevelopment Agency met in regular session on the above date at the hour of 8:06 p.m., in Town Hall, southwest corner of North Main and Laurel Streets (363 North Main Street), Fort Bragg, with Chair Dave Turner presiding.

ROLL CALL as acknowledged by Chair Turner

Present: Agency members Dan Gjerde, Brian Baltierra, Doug Hammerstrom, Jere Melo, and Chair Dave Turner.

AGENDA REVIEW

CHAIR'S RECOGNITION AND ANNOUNCEMENTS

1. PUBLIC HEARING

2. CONDUCT OF BUSINESS

A. Receive Oral Report from Agency Counsel Regarding Indemnification Agreement with Georgia-Pacific

Agency Counsel Gogna reminded the Agency Members that they directed staff to work with the Georgia-Pacific (GP) team on a proposed indemnification agreement regarding contamination on the site. He reported that he received a response back from GP late last week in the form of a red-line revision of what the Agency submitted to them. Below is a summary of points included in their proposal:

- Indemnity would be limited to the coastal trail and parcels acquired through the Coastal Conservancy.
- The indemnity agreement would extend for 20 years with no dollar limit.
- The Agency would be required to waive any claim for consequential or punitive damages arising out of contamination.
- The Agreement would require the Agency/City to give notice of known or suspected environmental releases involving City activities on the site (such as storm water discharge and the wastewater treatment facility).
- Indemnity does not cover releases or contamination caused by the Agency/City or third party. (Their specific concern pertained to contamination from the Skunk Train operation.)
- Their proposal would extend indemnity to what is covered in prior and existing laws but does not extend to future changes to environmental laws.

Gogna stated that the issues he believed still need to be resolved are:

- The fact that there is no indemnity for Agency/City and third party claims; he would request that there be a provision that includes a presumption that the contamination is from a GP source and that they provide indemnification until such time as it is determined not to be a GP source of contamination.
- There are a couple of issues regarding notice requirements and mitigation measures following notice which are not significant and can be worked out.
- They need to resolve whether indemnity will cover future changes in environmental law; this can be a significant potential problem in the future.

Discussion: The following was noted by the Council during discussion:

- In response to a question by Chair Turner regarding the Polanco Act coverage, Gogna noted that Polanco provides immunity, not indemnity. If the Agency acquires land and there is a subsequent problem from a known release identified in the Remedial Action Plan (RAP), then the Agency would have no responsibility for that release under Polanco. This agreement provides indemnity, which

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means that if there is a problem on property acquired by the Agency, GP would take care of it.

- This indemnity agreement would not cover future potentially acquired property such as streets or utility easements. GP's position is that the City should negotiate that indemnity with the future property owner as it may jeopardize their market position.
- Under Polanco the Agency would be immune from subsequently changed regulations but under GP's proposed indemnity agreement the Agency/City would not be indemnified.

Agency consensus was that once the indemnity agreement is worked out with GP it be reviewed in comparison to the Polanco Act to see which option best fits the Agency's needs.

3. COMMENTS ON NON-AGENDA ITEMS

- A. Staff Comments
- B. Public Comments

4. CONSENT CALENDAR

Moved by Baltierra, seconded by Melo, to accept the Consent Calendar, as received, with the actions noted, namely:

- A. Matters from Committees
- B. Approval of Minutes
(1) Minutes of September 12, 2005.

VOTE: Ayes: Agency Members Gjerde, Baltierra, Hammerstrom, Melo, and Chair Turner.

5. MATTERS FROM AGENCY MEMBERS

6. CLOSED SESSION

Mayor/Chair Turner adjourned the Fort Bragg Redevelopment Agency at 8:28 p.m.

DAVE TURNER, Chair

ATTEST:

**Cynthia M. VanWormer, CMC
Secretary**

INDEXED: _____(____)

IMAGED: _____(____)