



## CITY NOTES

September 25, 2014

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### **A BRIEF HISTORY OF THE GEORGIA-PACIFIC v. OFFICEMAX LITIGATION**

After 120 years of operation on Fort Bragg's coastal bluffs, the Georgia-Pacific (GP) lumber mill closed in 2002. Since then, GP has pursued the cleanup of contaminated soils and groundwater on the property. The site investigation and remediation is proceeding under a remediation order that was issued by the California Department of Toxic Substances Control (DTSC) in 2006 following disclosure of the presence of dioxin-contaminated soils on the property.

To date, GP has spent over \$30 million on the site investigation and cleanup, and the remediation process is not yet finished. In June 2012, GP filed a cost-recovery claim against OfficeMax seeking a contribution to past and future costs associated with the cleanup. OfficeMax is the successor to Boise Cascade, the entity who purchased the Union Lumber Company and operated the mill before selling it to GP. OfficeMax then filed a claim against the City of Fort Bragg seeking payment for a portion of the cleanup costs. Their claims alleged that the City was liable for cleanup costs relating to two sources of pollution: (1) storm water runoff from City streets that flows through the mill pond before discharging into the ocean; and (2) the coastal burn dumps that were used by local residents long ago. At the same time, Louisiana Pacific (LP) was pulled into the lawsuit since they operated a small plywood mill on a portion of the property for a few years. Eventually, all four parties (GP, OfficeMax, LP and Fort Bragg) filed claims against each other and a spectacularly complicated lawsuit unfolded.

The first action taken by the City Council once Fort Bragg was brought into the litigation was to tender its defense and indemnity to several insurance companies. The City also retained Jon Enscoe of Barg Coffin Lewis & Trap, an environmental insurance coverage lawyer, to help the City get benefits under its insurance policies. With the help of City Clerk Cindy VanWormer, the City team assembled sufficient documentation to convince three companies that had issued insurance policies to the City more than 25 years ago that they were obligated to provide the City with a defense in the litigation. The insurance companies retained a law firm specializing in Superfund litigation, Bassi Edlin Huie & Blum (BEHB), to defend the City, and over the course of the litigation paid approximately \$3 million dollars in defense costs on behalf of the City of Fort Bragg. While navigating the complex world of Superfund litigation, the City Council also received excellent counsel from attorney Greg Newmark of Meyers-Nave.

From day one, the City Council took a very aggressive stance in defense of the City. BEHB attorney Fred Blum led a team of attorneys and expert witnesses who developed a number of defenses, filed counter-claims against GP, and charged headlong into discovery in the case. The discovery process was lengthy and complicated, with over 11 million pages of records produced and depositions of key witnesses taken at various locations across the country. While the City had a number of strong defenses in the case, the prospect of even a small judgment was daunting. With total cleanup costs for the mill site estimated at approximately \$50 million, if even a small fraction of the cost was allocated to the City, a judgment could have spelled bankruptcy.

I'd like to summarize a few of the arguments that the City made as to why its taxpayers should not be required to subsidize the cleanup of the mill site property. With regard to cleanup costs associated with the burn dumps on the coastline, perhaps the most compelling argument was that the City paid full market value for a clean piece of property when it bought the coastal parkland for \$4.2 million in 2010. The purchase agreement assumed that GP would incur costs for the cleanup of the burn dumps and provided that, if the cleanup costs got too expensive relative to the purchase price, GP could cancel the deal. The City (and GP) never contemplated that GP would come back with a lawsuit seeking more money for the cleanup. The City had a number of arguments as to why it was not liable for cleanup costs related to contaminants in the City's stormwater that may have settled out in the mill pond. First, prior to the mill, stormwater flowed across the property in natural drainageways that discharged into the ocean. Then, the mill owners altered the flow of Alder Creek and Maple Creek and created ponds so that the water could be collected and used for their industrial purposes. The City did not dispose of its stormwater on the mill property, but rather the mill owners tapped into the City's stormwater system and used the water for their own benefit.

All four parties to the litigation engaged in settlement negotiations from the outset with the assistance of a highly-regarded mediator- Judge Layne Phillips (best known for successfully mediating a settlement between the NFL and its football players regarding concussions)- but a settlement was not immediately forthcoming. This summer, as the parties continued to prepare for trial and various defense arguments and affirmative claims were revealed, settlement negotiations began in earnest. In the end, LP paid GP \$1.5 million towards cleanup of the property. OfficeMax also settled, although the amount of their payment towards cleanup costs has not yet been made public. The City of Fort Bragg was not required to contribute any money towards the cleanup costs and all claims have been dismissed with prejudice-- which means they cannot be resurrected in the future.

While the lawsuit was a tremendous waste of time, energy and money-- it is over now and the City can get back to work planning for the reuse of the mill site property to benefit our community for generations to come.

*City Notes is published on the second and fourth Thursday of each month. If you have questions or suggestions regarding the column, feel free to contact City Manager Linda Ruffing at (707) 961-2823, ext. 118 or [L.Ruffing@fortbragg.com](mailto:L.Ruffing@fortbragg.com).*