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THE COST OF WETLANDS IN HALF MOON BAY—PART II

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Last January 14, 2008, I wrote about the federal court decision in *Yamagiwa, Trustee v. City of Half Moon Bay* (N.D. Cal 2007) 523 F. Supp. 2d 1036. It was a major victory for those believing that the protection of private property rights is a cornerstone of our constitutional freedom. The decision awarded Yamagiwa \$36,795,000, plus \$4.8 million in attorneys' fees, for the taking of what was once 24 acres of developable land. It was enough to bankrupt the city. How did this come about?

The city had flooded the property owner's land and then precluded its development on the grounds that it was now a wetland. The matter was tried by Edward Burg and Kathrin Wanner of Manatt, Phelps & Phillips on behalf of Ms. Yamagiwa.

The case has now been fully resolved and settled. What has become of Half Moon Bay and did settlement cause Half Moon Bay to go bankrupt? Were there other resolutions?

First, Half Moon Bay hired reputable counsel to appeal the decision, but ultimately chose not to appeal. This left in place the 167-page opinion by Chief Judge Vaughn Walker of the United States District Court for the Northern District of California.

For background, the California Coastal Act's definition of "development" (the "placement or erection of any solid material or structure") is so deliberately broad it would conceivably encompass the construction of a sand castle and the placement of a beach umbrella. The Coastal Act's definition of "wetlands" (lands which "may be covered periodically or permanently with shallow water") is likewise so deliberately broad that a puddle created by tire tracks could trigger California Coastal Commission oversight.

Seemingly unbeknownst to the drafters of the Coastal Act, however, there are state and federal constitutional provisions mandating the payment of just compensation for the taking or damaging of private property for public use. Curiously, neither the Coastal Act nor its interpretive regulations acknowledged the cost of environmental preservation, as if implementation of this objective should have been free for the taking.

Judge Walker wrote in great detail establishing that the City of Half Moon Bay had manipulated expert testimony on the existence of wetlands and had intentionally prevented the proposed development. Ms. Yamagiwa, acting as trustee for the

developer Charles “Chop” Keenan of Palo Alto, had sought to construct 83 homes on the 25-acre patch of scrubland called Beachwood. Yamagiwa sued the city in state court over the rejected permit in order to exhaust her state remedies. She also sued in the federal courts to preserve her federal remedies. After extensive proceedings in the state courts, the city had the matter removed to federal court.

After receiving Judge Walker’s opinion and foregoing an appeal, the city essentially caved in and approved a settlement. Instead of the 83 houses being sought, the city guaranteed a plan to build 129 homes on the 24-acre parcel and on an adjacent 12-acre parcel. Half Moon Bay would also take over the job of readying the land for construction and obtaining the permission of both state and federal authorities at its own expense, as well as paying for any mitigation measures. If the city’s efforts fell short for any reason, it would be forced to purchase the property for \$18 million—an amount less than half the original judgment. However, paying that sum would likely require a 40-year bond issue, city officials said, which could easily push the total cost above \$50 million.

To avoid that liability, Half Moon Bay proposed a state law to exempt the property from all California environmental laws, including the Coastal Act. Unless the special legislation passed and certain federal approval to allow the project to proceed had been secured by June 2008, the city would be responsible for the \$18 million payment that translates to annual bond payments of \$1.3 million or more than an eighth of its budget. For more details on the background see David P. Hamilton, *Treading Water*, California Lawyer, May 2008. See also attorney Gideon Kanner’s August 30, 2009 blog at <http://www.gideonstrumpet.info>.

As would be expected, the opponents put up a huge lobbying fight before the

Legislature and the city’s proposal was rejected. Thus the city was forced to pay the \$18 million to the Yamagiwa Trust in exchange for title to the property.

Yamagiwa also retained the water rights, which are marketable and worth \$3 million to \$5 million, plus the attorneys’ fee award of \$4.8 million. After cutting 19 city staff positions, the city was able to secure an AA-bond rating by eliminating \$1.75 million from annual staff expenditures. This brought the annual budget back to \$10 million. The bond is now 30 years and \$1.12 million per year totaling approximately \$35 million.

What’s interesting is that it was the City of Half Moon Bay that removed the case to federal court in the first place, where it consumed years of discovery and a long trial. At the end of trial, the city contended that the federal court lacked jurisdiction and the case should be remanded back to the state court where it would begin all over again. Judge Walker was not impressed but chose not to impose sanctions on the city.

If the City of Half Moon Bay had the foresight to recognize the property rights at stake and the high financial exposure, it could have avoided this whole scenario and allowed the project to proceed. Instead it exposed its head-in-the-sand, all-powerful autocratic attitude and paid the price. Citizens of Half Moon Bay will be paying for this audacity for decades to come. Perhaps they will consider this a warning to pay attention before electing members to the city council that do not value the protection of private property rights.

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