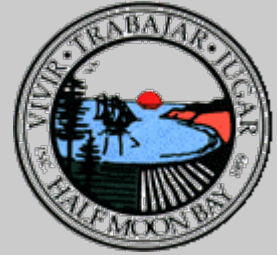


# COMMUNITY WORKSHOP

## January 22, 2008



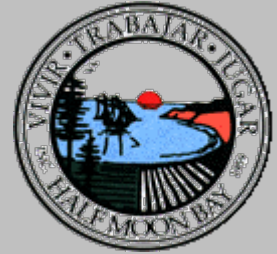
Yamagiwa (Beachwood)

v.

City of Half Moon Bay

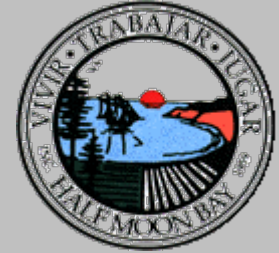
Study Session

# Purpose of this Study Session



- Present City's Position, Goals, and Process
- Listen to the Citizens of Half Moon Bay

# What Can the City Council and City Staff Say Publicly?



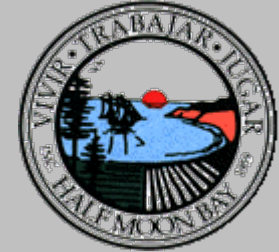
- City Cannot Negotiate Publicly
- City Must Explore All Options
- City Goal is to Create a Framework for Both Successful Appeal and Effective Negotiations
- City Cannot Disclose Settlement Positions or Strategy Until a Settlement is Reached

# Goals For This Process



- No adverse impact on day to day operations of the City
- Resolve matter as soon as possible so City can move on to better endeavors
- Continue to communicate with the Citizens of Half Moon Bay

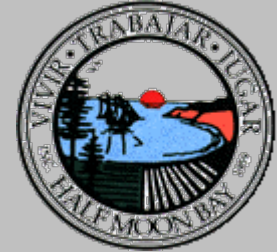
# Background – Page 1



## ➤ History of Beachwood

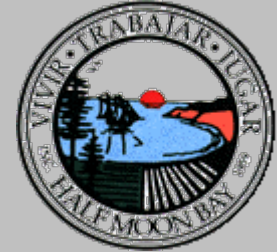
- 1980s: developer/owner of Beachwood and adjacent properties requests that City undertake Terrace Avenue Assessment District (TAAD)
  - 13,000 cubic yards removed
  - Developer/owner paid for removal of 8,000 cubic yards
- 1990s: Crowell purchases Beachwood
  - Granted tentative subdivision map, subject to coastal permit approval
  - Fails to act on permit to import 32,000 cubic yards, cost \$485,000
  - Financial difficulty, Keenan buys for \$1 million

# Background – Page 2



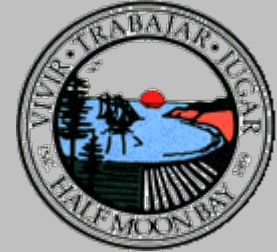
- What did Mr. Keenan Know and When did he Know it?
  - Judge Walker’s decision shows wetland conditions existed on Beachwood when Keenan purchased
- What did Mr. Keenan do with his Knowledge?
  - 1993 to 1999: Keenan had the right to drain the pooling water from his property. He chose not to do so.
  - 1999: *After* City consultant identifies wetlands on Beachwood, Keenan attempts to drain for first time.

# Background – Page 3



- On appeal, City won previous State Court lawsuit involving Keenan and Beachwood
- Keenan filed “physical takings” lawsuit in Federal Court, resulting in \$36.8 million judgment against the City
- City will appeal decision to the 9<sup>th</sup> Circuit unless Post-Trial motion is successful
- City open to negotiations with Keenan. Appeal has no effect on ability to negotiate— experience shows that appealing increases chances of settlement

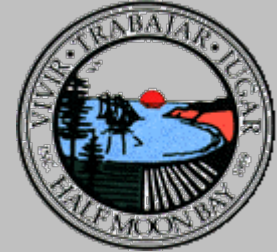
# City Lines of Action



- City must pursue all reasonable lines of action to resolve this matter
- City believes there are errors and oversights in the judgment that call for an appeal
- City talking with Keenan (first meeting held January 14) and reviewing other options to determine if a settlement is viable
- City reviewing insurance claim options



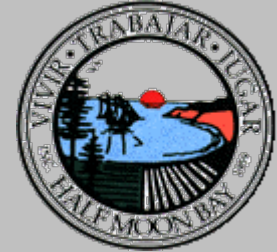
# Arguments on Appeal



## 1. Principles of Fairness

- Judge Walker’s decision shows that Wetland Conditions existed when Keenan bought Beachwood
- Keenan failed to mitigate Wetland Conditions between 1993-1999
- Keenan only prevented from draining Beachwood after wetlands identified in 1999—when draining became illegal
- Damages limited to \$485,000– cost of importing 32,000 cubic yards of fill onto Beachwood

# Arguments on Appeal Continued



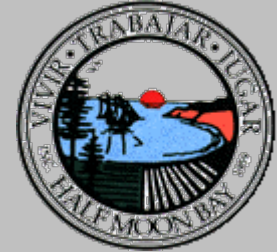
## 2. Regulatory Taking v. Physical Taking

- Statute of limitations
- Distinction without a difference

## 3. Additional Arguments

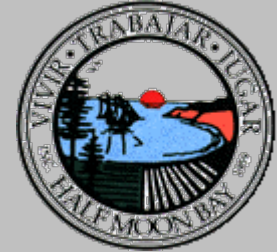
- Consent of the Property Owner
- Incorrect damages calculation
- Expert reliability
- Lack of jurisdiction

# Settlement Considerations



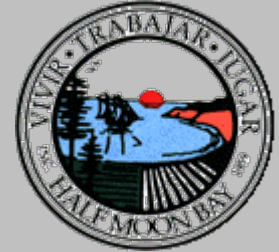
- Settlement negotiations are not limited to simply paying money
- City committed to serious negotiations and will view all potential assets, resources, and development possibilities to craft most effective settlement
- Settlement could include public financing vehicles

# Impacts on Citizens and Property



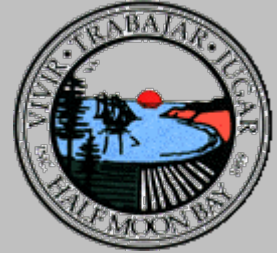
- Pending appeal, there should be no impacts on:
  - City services
  - Property values
  - Selling and financing of property
  - Vendor services.
  
- Remember: Even if City eventually loses on appeal, judgment will be against the City, not homeowners, business owners, or citizens
  - Keenan can only collect damages from the City, not individuals or businesses
  - Judgment is not a lien on City property
  - City assets cannot be seized to pay the judgment
  
- **Tax or assessment imposed on property to pay any eventual judgment or settlement amount could only be imposed by 2/3 voter approval**

# Goals For This Process– Repeat



- No adverse impact on the day to day operations of the City
- Resolve the matter as soon as possible so the City can move on to better endeavors
- Continue to communicate with the Citizens of Half Moon Bay

# Question and Comment Time



Questions  
or  
Comments?