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 14 CITY OF HALF MOON BAY

15 UNITED STATES DISTRICT COURT  
 16 FOR THE NORTHERN DISTRICT OF CALIFORNIA

17 JOYCE YAMAGIWA, Trustee of the Trust  
 18 Created Under Trust Agreement dated January  
 19 30, 1980, by Charles J. Keenan, III and Anne  
 Marie Keenan, for the benefit of Charles J.  
 20 Keenan IV, as to an undivided 50% interest,  
 and Trustee of the Trust Created Under Trust  
 21 Agreement dated January 30, 1980, by Charles  
 J. Keenan III and Anne Marie Keenan for the  
 22 Benefit of Ann Marie Keenan, as to an  
 23 undivided 50% interest,

Plaintiff,

v.

25 CITY OF HALF MOON BAY, COASTSIDE  
 26 COUNTY WATER DISTRICT and DOES 1-  
 50,

Defendants.

Case No.: C 05-04149 VRW

**CITY OF HALF MOON BAY'S  
 SECOND MOTION IN LIMINE TO  
 PRECLUDE EVIDENCE  
 PERTAINING TO THE CITY'S  
 REGULATORY CONDUCT**

Trial Date: June 4, 2007  
 Complaint Filed: September 8, 2005  
 Action Removed: October 13, 2005

Hon. Vaughn R. Walker

**INTRODUCTION**

Defendant CITY OF HALF MOON BAY hereby moves this Court *in limine* for an Order precluding Plaintiff JOYCE YAMIGIWA, trustee from introducing evidence of, or making reference to evidence relating to the City’s sewer capacity regulations, as well as other regulatory conduct of the City.<sup>1</sup>

**ARGUMENT**

The dispute between the City of Half Moon Bay and Yamagiwa began as two lawsuits—a physical takings case based on the theory that the wetlands on the Beachwood property constituted a physical invasion of the property and a regulatory takings case based on the theory that the City’s denial of a Coastal Development Permit (“CDP”) for the Beachwood property constituted an unconstitutional take. *See*, Docket (“Doc.”) No. 101, Court’s MSJ Order at 8:14-17; 8:18-24. In January of 2004, Yamagiwa dismissed with prejudice her claim that the City’s denial of a CDP for the Beachwood property constituted a regulatory taking.

This case is about Yamagiwa’s physical takings claim. Yamagiwa asserts that the wetlands on her property constitute a physical invasion. *See*, Doc. No. 101, Court’s MSJ Order at 8:14-17; Doc No. 1, Yamagiwa Complaint, at ¶¶ 17-19. She argues that the City’s construction of the TAAD drainage improvements was the substantial cause of the wetlands, and therefore contends that the City is liable for the alleged physical invasion. *Id.* To be admissible, evidence must be relevant and material to the issues in controversy—that is, the evidence *must* relate to the alleged physical invasion. *U.S. v. 1,129.75 Acres of Land, More or Less, in Cross and Poinsett Counties*, 473 F.2d 996 (8th Cir. 1973), citing Fed. R. Evid. Rule 402. Evidence of the City’s sewer capacity regulations, as well as the other regulatory conduct of the City relates to Yamagiwa’s dismissed regulatory takings case, not to the physical takings claim before this court. This evidence should therefore be excluded. Moreover, even if the Court finds that evidence of the City’s sewer

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<sup>1</sup> These documents include, but are not limited to: Doc. No. 45, Exhibits 89, 270, 312-314, 316, 317, 319, 320, 323, 324, 392

1 capacity regulations, as well as the other regulatory conduct of the City is relevant, its probative  
2 value is outweighed by the danger of prejudice.

3 **I. EVIDENCE RELATING TO THE CITY'S SEWER CAPACITY REGULATIONS IS**  
4 **INADMISSIBLE BECAUSE IT IS IRRELEVANT**

5 Federal Rules of Evidence 402 states in pertinent part that evidence which is not relevant is  
6 inadmissible. Evidence relating to the City's sewer regulations is not relevant to Plaintiff's physical  
7 takings claim. To be relevant, the evidence proffered must be relevant and material to the issues in  
8 controversy—that is, the evidence *must* relate to the alleged physical invasion. *See, U.S. v. 1,129.75*  
9 *Acres of Land*, 473 F.2d 996. Ordinances and other actions taken by the City regarding sewer  
10 capacity, as well as other regulatory conduct on the part of the City, do not tend logically, or by  
11 reasonable inference to establish a material fact or any fact relevant to the proceedings before this  
12 Court and are therefore not relevant.

13 **A. Evidence Relating to the City's Sewer Regulations, As Well as Other**  
14 **Regulatory Conduct of the City is Only Relevant to Plaintiff's Dismissed**  
15 **Regulatory Takings Claim**

16 Throughout this litigation, Yamagiwa has made much of the City's sewer capacity  
17 regulations, as well as other regulatory conduct of the City. Presumably, Yamagiwa's theory is that  
18 these regulations somehow prevented her from developing her property. Whether that is true or not,  
19 evidence of the City's sewer capacity regulations has no bearing on Yamagiwa's physical takings  
20 claim. The issue in a physical takings case is whether the government action has caused property to  
21 be invaded, and its usefulness to be destroyed or impaired. *See, Brace v. United States*, 72 Fed.Cl.  
22 337, 360-361 (2006). In contrast, a regulatory taking claim is based on government action that  
23 affects or restricts *use* of property but not possession. Clearly, any argument that the City's sewer  
24 regulations, as well as the other regulatory conduct of the City, somehow precluded Yamagiwa  
25 from developing the property falls into the latter category.

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1           **B. Yamagiwa Cannot Make Evidence Relevant by Resurrecting Her Dismissed**  
2           **Regulatory Takings Claim**

3           In this case, Plaintiff has only alleged a physical taking of property. The allegations in the  
4           Complaint are limited to the physical activities of the City that resulted in physical possession of  
5           or damage to the Property—construction of the TAAD improvements, including the construction  
6           of the berm and digging the depressions on the Property, which led to water on the Property and  
7           the formation of wetlands. *See*, Doc. No. 1, Yamagiwa Complaint, at ¶¶ 10-12, 17-19.

8           Yamagiwa *dismissed with prejudice* her regulatory taking claim against the City based on the  
9           City's denial of her request for a CDP. *See*, Doc. No. 70, Request for Judicial Notice filed in  
10          Support of City's Motion for Summary Judgment Exhibit 2, Verified Petition/Complaint, at ¶¶  
11          148-149; Exhibit 4, Stipulated Settlement and Order; and Exhibit 6, Stipulated Judgment.

12          Whether the City's application of its sewer capacity regulations, and other regulatory conduct had  
13          an impact on Yamagiwa's ability to develop her property might have been a relevant question in  
14          the regulatory takings case. It is *not* relevant to whether the City's actions in 1984 caused  
15          wetlands to develop on the property, which is the issue in the current dispute. Yamagiwa lost the  
16          right to introduce this evidence when she dismissed her regulatory takings claim with prejudice.

17           **II. THE PROBATIVE VALUE OF EVIDENCE RELATING TO THE CITY'S SEWER**  
18           **CAPACITY REGULATIONS IS SUBSTANTIALLY OUTWEIGHED BY THE**  
19           **DANGER OF UNFAIR PREJUDICE**

20          In the alternative, if the Court finds that evidence relating to the City's sewer capacity  
21          regulations is relevant to these proceedings, per Federal Rules of Evidence Rule 403, the Court  
22          may exclude evidence if "its probative value is substantially outweighed by the danger of unfair  
23          prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay,  
24          waste of time, or needless presentation of cumulative evidence." Fed. R. Evid. Rule 403.

25          Here, the probative value of the evidence relating to the City's sewer capacity regulations,  
26          as well as the other regulatory conduct of the City is outweighed by the danger of unfair prejudice  
27          to the City. If evidence of the City's sewer capacity regulations and other regulatory conduct is  
28          introduced, the trial will cease to be about the alleged physical invasion of the property and will  
                instead be about the legitimacy of the City's regulatory decisions. This would have been a  
                legitimate inquiry in a regulatory takings case—and it would have involved a complex factual

1 inquiry that looks at various factors including: the economic impact of the regulation on the  
2 claimant, the extent to which the regulation has interfered with distinct investment-backed  
3 expectations, and the character of the governmental action. *Penn Central*, 438 U.S. 104 (1978);  
4 *see also Kavanau v. Santa Monica Rent Control Bd.*, 16 Cal.4th 761, 780-781 (1997) (describing  
5 even broader range of factors to consider under the *Penn Central* test). But this is *not* a  
6 regulatory takings case. To require the City to present evidence to justify its regulatory decisions  
7 in a trial that has nothing to do with a regulatory taking would confuse the actual issues in the  
8 case, mislead the jury, and be unfairly prejudicial—which is precisely what FRE 403 is designed  
9 to prevent. Consequently, this Court should exclude all evidence relating to the City’s sewer  
10 capacity regulations, as well as the City’s other regulatory conduct.

11 **III. PLAINTIFF’S EQUITABLE CLAIM DOES NOT RENDER EVIDENCE**  
12 **RELATING TO THE CITY’S SEWER CAPACITY REGULATIONS, AS WELL**  
13 **AS OTHER REGULATORY CONDUCT OF THE CITY RELEVANT TO THE**  
14 **JURY TRIAL OF THE LEGAL CLAIMS IN THIS MATTER**

15 Yamagiwa cannot shoehorn this evidence into the trial on its damages claims on the  
16 theory that the evidence is relevant to its equitable claims. Her Fourth Cause of Action is a  
17 refund claim for the City’s assessments. This Court has already held that this claim is equitable  
18 in nature, and that Yamagiwa is limited to equitable relief. *See* Doc. No. 101, Court’s MSJ Order  
19 at 33:3-4; 33:10-18.

20 Equitable claims are resolved by the judge, not by a jury. *See e.g., Beacon Theatres, Inc.*  
21 *v. Westover*, 359 U.S. 500 (1959); *see also, Los Angeles Police Protective League v. Gates*, 995  
22 F.2d 1469 (9th Cir.1993). As a result, it is routine for judges to hear evidence and make findings  
23 of fact on equitable claims. *See, e.g., Grace Bros. v. C.I.R.*, 173 F.2d 170, 173-174 (9th Cir.  
24 1949)(findings of fact shall not be set aside unless clearly erroneous, and due regard shall be  
25 given to the opportunity of the trial court to judge of the credibility of the witnesses and evidence  
26 in resolving equitable claims). When the facts underlying the equitable claims are identical to the  
27 facts underlying the legal claims, the legal claims are first tried to a jury, and their findings of fact  
28 are binding on the Court. *See id.* Here, the situation is reversed. The facts underlying the  
equitable claims are different than the facts underlying the legal claims. As a result, the facts that

1 are relevant to the equitable claims are irrelevant and therefore inadmissible with regard to the  
2 legal claims. Since the jury has no right to resolve the equitable claims, it would be an injustice  
3 to permit Yamagiwa to present evidence to the jury that has no bearing on the actual issues that  
4 they are charged with resolving.

5 Accordingly, any evidence of the City's sewer capacity regulations, as well as the City's  
6 other regulatory conduct, should be excluded from the jury trial of Yamagiwa's legal claims,  
7 given that such evidence would only be relevant to her equitable claim for refund.<sup>2</sup>

8 **CONCLUSION**

9 Based upon the foregoing, the City respectfully requests that this Court exclude all  
10 evidence of the City's sewer capacity regulations, and other regulatory conduct.

11  
12 Dated: April 17, 2007

MEYERS, NAVE, RIBACK, SILVER & WILSON

13  
14 By:                   /s/ J. Leah Castella                  

15 David W. Skinner  
16 J. Leah Castella  
17 Attorneys for Defendant  
18 CITY OF HALF MOON BAY

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<sup>2</sup> The City contends that issues relating to Yamagiwa's equitable claim should be tried to the judge in advance of any jury trial on her damages claims.