

## **Takings Snapshots, Volume 1, October 29, 1997**

**1. Eastern Enterprises v. Appel.** On October 20, the U.S. Supreme granted certiorari in suit involving due process and taking challenges to a federal statute imposing retroactive liability for health care costs for retired mine workers. The case appears to raise broad questions about the "investment-backed expectations" prong of the Penn Central test, and the required degree of fit between a company's contribution to a problem and the burden imposed on the company by remedial legislation.

**2. Lambert v. City and County of San Francisco** (Cal. Ct. App., 9/23/97). A California appellate court upheld, over a dissent, the city planning commission's rejection of an application to convert a hotel's long-term residential units to tourist use. Key issue is whether Dolan/Nollan applies if government denies land use approval, but (arguably) indicated willingness to grant approval upon payment of an exaction.

**3. California Coastal Commission v. Buckley** (Cal. Ct. App, 10/15/97). A California appellate court overturned trial court finding of a taking based on what trial court characterized as "government tyranny" and "tyrannical behavior" by coastal commission. Appellate court concluded that claimants were not denied all economic use of lot by coastal restrictions.

**4. Thorp v. Town of Lebanon** (Wisc. Ct. App.5/15/97) (unpublished decision) Wisconsin appellate court affirmed dismissal of taking claim because plaintiff failed to allege facts sufficient to demonstrate that downzoning property to agricultural classification denied owner "all or substantially all practical uses of the property," as required by Wisconsin Supreme Court Zealy decision.

**5. Rumpke Road Development Corp. v. Union Township Board of Trustees** (Ohio Ct. App. 1996, discretionary appeal to State Supreme Court denied 1997). Rejecting taking challenge to zoning decision on the ground that it advanced a legitimate governmental interest. Following Ohio Supreme Court Gerijo precedent, appellate court did not consider whether regulation also may have denied owner economically viable use of property. By rejecting application for discretionary appeal, Ohio Supreme Court rejected appellate court's "express invitation" that Ohio Supreme Court "reconsider" or "explain" Gerijo decision.