

**'Takings' Snapshots Volume 17**  
**December 22, 1998**

**1. Suitum v. Tahoe Regional Planning Agency**, CV- N-91-040 (D. Nev., December 9, 1998) (on remand from the U.S. Supreme Court's decision (ruling that Mrs. Suitum had a ripe takings claim), federal district court denied TRPA's motion for summary judgment, ruling that both prongs of Williamson County ripeness test are satisfied, and that asserted value of TDR rights is irrelevant to issue of whether there has been a Lucas- type taking, and ordering a trial on whether nondevelopment uses are sufficient to avoid a finding of a taking on that theory).

**2. DLC Management Corp. v. Town of Hyde Park**, 1998 WL 865128 (2nd Cir, December 15, 1998) (affirming grant of summary judgment to town on land owner's substantive due process claim, on the ground that change in zoning and denial of special use permit did not result in the denial of a property right protected by substantive due process; court distinguished definition of property for substantive due process purposes from broader definition of property for takings purposes, justifying distinction on the ground that successful due process claim can "completely stop" government action).

**3. Palm Beach Isles Associates v. United States**, 1998 WL 784551 (Fed.Cl., October 19, 1998) (rejecting takings claim based on Army Corps of Engineers' denial of permit to fill 49.3 acres of submerged land in Lake Worth in Palm Beach County Florida, because of federal navigational servitude; also rejecting taking claim based on denial of permission to fill additional 1.4 acres of adjacent (non-navigable) swamp, because owner lacked reasonable investment-backed expectations given the date of purchase of the property and because relevant parcel included the entire 312 acres originally purchased by owner; court ruled that major portion of property previously sold off for development should be included in relevant parcel because owner made sale with awareness of the restrictions on the portion that remained, distinguishing Loveladies Harbor).

**4. Adirondack League Club v. Sierra Club**, 1998 N.Y. Lexis 4137 (N.Y. , December 17, 1998) (in a trespass action brought by a private club in the Adirondacks against the Sierra Club and a group of individuals who traveled by canoe and kayak down the South Branch of the Moose River through the club's land, New York's highest court ruled that suitability of river for recreational boating is sufficient to demonstrate navigability in fact and the existence of a public easement to use the river; court rejected the argument that this expanded version of the navigability test to reflect "modern circumstances" effected a taking for public use without just compensation).

**5. Board of Zoning Appeals v. Leisz**, 1998 WL 865107 (Indiana, December 2, 1998) (reversing trial court finding of a taking and rejecting takings challenge to city ordinance requiring owners to register non- conforming uses or forfeit right to maintain uses; court repudiated prior Indiana Supreme Court precedent establishing that elimination of non-conforming uses through amortization process was per se unconstitutional).

**6. Buckley v. California Coastal Commission**, 1998 Cal.App. LEXIS 997 (Cal.Ct.Apps., December 1, 1998) (on remand from the California Supreme for reconsideration in light of Landgate (ruling that erroneous assertion of regulatory jurisdiction is not a taking), the court of appeals reaffirmed its earlier decision reversing the finding of a taking, concluding that this claim based on delay resulting from erroneous assertion of commission jurisdiction was barred by Landgate and that, in any event, commission's action never denied plaintiffs all economic use of the property).