Takings Snapshots, Volume 2, November 11, 1997

1. Richardson v. City and County of Honolulu (9th Cir., 9/8/97). In an interesting and important case, the court held that a city ordinance for condemnation of condominium leasehold interests and conversion to fee interests met the Midkiff public purpose requirement; in a concurring opinion, one judge argued that the Supreme Court should revisit its Midkiff decision in light of Lucas, Nollan and Dolan. The court struck down as a taking an ordinance controlling land rent increases, on the ground that the ordinance did not "substantially further a legitimate interest." Finally, the court ruled that the compensation claim against the condemnation ordinance was not ripe for failure to exhaust state judicial remedies; one judge dissented on the ground that this remedy was futile. The court held the taking claim against the rent control ordinance was ripe because traditional ripeness rules do not apply to a taking claim asserting that a government action failed to substantially advance a legitimate state interest.

2. Del Monte Dunes v. City of Monterey (9th Cir. 10/28/97). The court, after considerable delay, issued a brief order declining to change its prior decision and rejecting the suggestion for rehearing en banc, leaving in place a $1.45 million jury verdict against the city. The underlying decision is significant because it recognizes a right to a jury trial in the liability phase in a takings case, and because it imports proportionality concepts developed in the "exactions" context into the context of a regulatory denial.

3. Norman v. United States (Fed. Ct. Claims, 8/12/97). The court granted in part and rejected in part a U.S. motion for summary judgment in a taking case challenging delineation of wetlands, including delays and reconsideration in making the delineations. The court granted the motion with respect to a portion of the property delineated prior to plaintiffs' purchase on the ground that the alleged taking had occurred before plaintiffs purchased the property. The Court held that material issues of fact precluded summary judgment on the "permanent" and "temporary" taking claims relating to the balance of the property.

4. Forty-Niner Truck Plaza v. Union Oil Co. of California (Cal. Ct. Apps. 10/22/97). California statute authorizing operators of franchise service stations to purchase their station if the franchisor is going to sell the station to a third party held not to be a taking.