

'Takings' Snapshots Volume 20, March 31, 1999

- 1. City of Monterey v. Del Monte Dunes Limited** (U.S. Supreme Court) (There is still no decision in this case, which has been pending the longest time since oral argument of any case before the Court).
- 2. Unity Real Estate Co. v. Hudson**, 1999 WL 167765 (3rd Cir. March 29, 1999) (in a sequel to *Eastern Enterprises*, the federal court of appeals for the third circuit (per Becker, CJ), rejected as applied due process and takings challenges to the Coal Act by coal companies in a slightly different position than *Eastern Enterprises*; on the taking claim, the court adopted the reasoning of the 5-Justice "majority" in *Eastern Enterprises* that the imposition of general monetary liability cannot constitute a taking; the court also ruled that the taking claim in this case was not made any more viable by the allegation that plaintiffs were being subjected to a categorical taking because the Coal Act liabilities would force them out of business).
- 3. Maritrans, Inc. v. United States**, 1999 WL 130216 (Cl. Ct., March 11, 1999) (Court of Federal Claims dismissed takings challenge to Oil Pollution Act of 1990 which requires that single hull tankers either be retrofitted with double hulls or phased out of service in the future; applying 3-factor Penn Central test, court concluded that expectations factor favored plaintiff, character factor favored government, and that alleged economic impact was insufficient to support finding of a taking given that tankers have not yet been forced out of service; opinion includes skeptical discussion of Florida Rock partial takings theory).
- 4. Town of Jupiter v. Michelle**, 1998 Fla. App. Lexis 11626 (Florida Court of Appeals, September 16, 1998) (reversing trial court finding of a taking, court of appeals held that mainland parcel and nearby but noncontiguous island, which were subject to different zoning classifications, should be treated as one parcel for the purpose of temporary takings analysis, where there was unity of purchase and ownership and the owner intended an integrated use of the entire property; court then ruled that taking claim necessarily failed because government did not prevent "all development" of the relevant parcel).
- 5. Clay County v. Harley and Susie Bogue, Inc.**, 1999 WL 118185 (Missouri Court of Appeals, March 9, 1999) (the Missouri court of appeals dismissed, for lack of a final judgment, a trial court ruling that the county had effected a taking by improperly imposing zoning restrictions on plaintiffs' proposed expansion of their hog operations; however, the court analyzed at great length whether, given that the county had exceeded its authority, the county could potentially be liable for a temporary partial regulatory taking).
- 6. Mark v. State of Oregon**, 158 Or.App. 355 (Oregon Court of Appeals, February 17, 1999) (court of appeals affirmed dismissal of taking claim based on allegation that Department of Fish and Wildlife's maintenance of a nude bathing beach took property rights of neighboring homeowners, reasoning that plaintiffs had failed to allege a deprivation of all feasible private uses of their property; the court of appeals reversed dismissal of the nuisance claim).
- 7. McMillan v. Northwest Harris County Municipal Utility District**, 1999 WL 144269 (Texas Court of Appeals, February 18, 1999) (Texas appeals court rejected landowner's statutory and constitutional takings challenges to utility standby charges assessed by county municipal utility district; court held that Texas Takings Act claim failed because the fee was covered by the Act's exception for an action of a political subdivision that is reasonably taken to fulfill an obligation mandated by state law; rejected federal constitutional claim because plaintiff failed to allege that the fee, which supposedly reduced the value of the property by 25%, denied him all economically viable use of his land; and court rejected taking claim under Texas Constitution, principally because plaintiff was not singled out to pay fee).

8. Parker v. City of Austin, 1999 WL 106720 (Texas Court of Appeals, March 4, 1999) (the court of appeals affirmed the trial court's rejection of a takings claim based on the city's erroneous assertion of jurisdiction over the plaintiff's property; the court ruled that the claim failed because (1) plaintiff did not suffer a total deprivation of all economically viable use of his land, and (2) the city did not intentionally perform acts that resulted in a "taking of property for public use").

9. Benchmark Land Co. v. City of Battle Ground, 1999 WL 130213 (Wash.Ct. Apps., March 12, 1999) (in a significant departure from the usual interpretation of Nollan/Dolan, a Washington appeals court ruled that a city ordinance requiring developers to finance improvements to adjacent roads did not satisfy the rough proportionality test; the court rejected the argument that a site-specific analysis was not required for a legislatively-mandated condition; the court also rejected the argument that Nollan/Dolan was inapplicable to a monetary exaction, relying on the California Supreme Court decision in Ehrlich).

10. Phillips v. Portsmouth Water & Fire District, 1998 WL 1012969 (R.I.Super. Ct., November 6, 1998) (court rejected claim that abandonment of water main serving developer's subdivision because of health concerns effected a taking, because there was "no evidence to even remotely suggest that he was deprived of all economically viable use of his two lots").