'Takings' Snapshots Volume 27, November 15, 1999

1. Bamber v. United States, 1999 WL 997749 (U.S. Ct. Fed.Cls., October 29, 1999) (in a very interesting and important decision, the Court of Federal Claims (Bruggink, J.) dismissed a claim that federal regulators effected a taking under the Agins substantially advance theory by coercing the president of a savings and loan into giving up his job; the court said that the Agins test 'has not had a fruitful life,' and has not been 'extended further' than Nollan and Dolan; this is apparently the first ruling to explicitly address the scope of the ostensible means-ends test post-Del Monte Dunes, and unequivocally rejects the notion that the Agins means-ends test provides an appropriate general test for a taking).

2. Boise Cascade Corp. v. State of Oregon, 1999 WL 1013787 (Or.Ct. Apps., Nov. 10, 1999) (the Oregon Court of Appeals reversed a regulatory takings award of $2.3 million based on Oregon Board of Forestry restrictions on logging on private land designed to protect the spotted owl; the Court ruled that the claim was not ripe because the company had not pursued available administrative remedies for seeking relief from the restrictions; the Court also ruled that the claim that the regulation effected a type of physical occupation under Loretto failed as a matter of law; the Court also rejected as a matter of the law the State's argument that a taking claim was barred under background principles of Oregon nuisance law). (The Environmental Policy Project brief in this case on behalf of Portland Audubon Society is available on the EPP website).

3. Seiber v. State of Oregon, No 98-0649 (Oregon Circuit Court, November 10, 1999) (in an unpublished letter opinion, and relying heavily on the Court of Appeals' ruling in Boise Cascade, the Oregon trial court rejected a regulatory takings challenge to the Board of Forestry's spotted owl regulations as unripe; the Court rejected the State's defense that this type of regulatory taking claim should have been filed in the Court of Appeals in the first instance; the Court also rejected the State's defense based on background principles of State law, 'because there is no law supporting the assertion that the public trust doctrine bars recovery under a claim of inverse condemnation.') (The Environmental Policy Project brief in this case on behalf of Portland Audubon Society is available on the EPP website).

4. Tahoe Regional Planning Agency v. Barbieri, No. S- 94-1380 LKK (E.D. Cal., August 4, 1999) (in a case involving a regulatory takings counterclaim challenging the Tahoe Regional Planning Agency's land use restrictions, a federal district court held that the TRPA was not entitled to summary judgment on a Lucas categorical claim where the owner of the restricted lot could sell transferable development rights; the court ruled that the 'factual' issues that needed to be resolved to decide this takings question precluded a grant of summary judgment; this decision implicitly endorses the notion that TDR's can defeat takings claims in at least some circumstances).

5. Santini v. Connecticut Hazardous Waste Management Service, 1999 WL 1007923 (Conn., November 9, 1999) (in a decision that is very helpful for upholding the constitutionality of development moratoria and other interim restrictions, the Connecticut Supreme Court, in a hotly debated 5 to 2 decision, ruled that designation of plaintiff's property as one of three potential sites for a waste disposal facility did not effect a taking because 'mere government planning' does not constitute a taking).

6. Lopes v. City of Peabody, 1999 WL 993630 (Mass. Sp. Ct., November 3, 1999) (in a rare case involving calculation of damages following a finding of a temporary regulatory taking, the Massachusetts Supreme Court held that the trial court erred in refusing to award the owner reimbursement of property taxes paid during the period of the temporary taking, but affirmed denial of recovery of prejudgment interest, partly because owner was, in effect, seeking double recovery of interest on the award.)