

'Takings' Snapshots Volume 30, February 9, 2000

1. Animas Valley Sand & Gravel, Inc. v. Board of County Commissioners, 2000 WL 123991 (Col. Ct. App., February 3, 2000) (in an interesting and slightly schizophrenic decision, the Colorado intermediate court of appeals reversed a trial court's rejection of a takings claim by the owner of a sand and gravel operation, part of whose property was included in a new river corridor district in which mining was prohibited; the court held that the judgment in favor of the city had to be vacated and remanded because the trial court might have imposed too heavy a burden of proof on the plaintiff; contrary to the established property as a whole rule, the appeals court ruled that the relevant property unit consisted of the plaintiff's restricted 33 acres, not the entire 45-acre contiguous property; however, the court rejected the partial takings theory, stating (with understatement) that the views expressed in the Federal Circuit's Florida Rock decision are 'not universally accepted').

2. Calprop Corp. v. City of San Diego, 91 Cal.Rptr.2d 792 (Cal. Ct. App., Jan. 12, 2000) (California court of appeals affirmed grant of summary judgment to city, holding that takings claim was not ripe because owners had failed to submit an actual development proposal to the city which the city had an opportunity to pass on; court also ruled that extensive delays in community planning process by themselves did not constitute a taking).

3. Tandy Corp. v. City of Livonia, 1999 WL 1334781 (E.D. Mich., Nov. 10, 1999) (in a takings and due process challenge to the rezoning of property from commercial use to professional office use, a federal district court held that a takings claim based on the denial of economic use theory was barred by the facts, but that summary judgment on both the takings and due process claims was precluded by disputed issues of fact as to whether the rezoning was substantially (takings theory) or rationally (due process theory) related to the changing market for office space; the court said that while the means-ends inquiry under both clauses is 'essentially the same,' the plaintiff's burden in a takings case is 'somewhat lessened;' the court did not address the question raised in the Supreme Court's Del Monte Dunes decision about whether means-ends analysis has any place in takings doctrine at all).

4. Washington Legal Foundation v. Texas Equal Access to Justice Foundation (so far apparently unreported by any legal service) (W.D. Texas, January 28, 2000) (on remand from the 1998 Supreme Court decision that interest earned on client funds held in a lawyer's IOLTA trust account represents the property of the client, the District Court held that use of the funds to support legal services for low-income persons did not effect a taking because (1) the client suffered no compensable harm under the Takings Clause (because the money would have generated no interest in the absence of the IOLTA program), and (2) in any event there was no taking based on either a physical occupation theory or the three-factor Penn Central test).

5. Glosemeyer v. United States, 2000 WL 132808 (Fed.Cl., Jan. 14, 2000) (in a class action takings challenge to rail/trail conversions in Missouri, court of federal claims held that rail-banking and temporary trail use did not constitute a railroad purpose within the scope of the original easement under Missouri law and, therefore, the imposition of interim trail use pursuant to the federal rails/trails legislation constitutes a taking of a new easement in plaintiffs' land; this decision is inconsistent with a 1998 Maryland Court of Appeals decision holding that trail use was within the scope of a railroad easement under Maryland law, 733 A.2d 1055 (1999), as well as an unpublished Federal Circuit ruling in January 2000 dismissing a takings claim based on the Maryland court decision).

6. Asarco, Inc. v. State of Washington (transcript of oral opinion only) (Wash. Superior Ct., December 16, 1999) (Washington trial court held the Washington state superfund statute unconstitutional under the takings clause and the due process clause based on the Supreme Court's Eastern Enterprises decision insofar as it required Asarco to clean up several hundred acres surrounding a former smelting and arsenic production facility).

7. Recreational Developments of Phoenix, Inc. v. City of Phoenix, 1999 WL 1399674 (D. Ariz., August 23, 1999) (in a challenge to a city ordinance regulating live sex businesses, federal district court held that as applied federal takings claim was not ripe because city had not made a final determination that businesses were operating in violation of the ordinance and plaintiffs failed to pursue state procedures for seeking compensation; court also ruled that facial takings challenge based on theory that ordinance eliminated all economic use was not ripe for failure to pursue state procedures; however, court ruled that facial takings claim based on theory that ordinance failed to substantially advance a legitimate state interest was ripe; as to this last claim, court held that it failed on the merits, observing that 'the standards for assessing whether an enactment substantially advances a legitimate public purpose are undefined and appear to afford considerable deference to the determinations of the legislative body').

8. Banning v. State Department of Fish and Wildlife, (unpublished decision) (Wash. Ct. App., February 7, 2000) (Washington intermediate appeals court affirmed dismissal of various takings challenges by coastal property owners; court held that roadway and other construction which cut off owners' direct access to tideland grants did not effect a taking because reasonable alternative access remained; court also ruled that designation of tidelands as 'saltwater habitat of special concern,' on which essentially no development was permitted, did not effect a taking because tidelands and developed upland parcel should be considered single unit of property for purpose of takings analysis based on unity of ownership, unity of use, and contiguity)