'Takings' Snapshots Volume 4
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1. Alves v. United States, No. 97-5042 (Fed.Cir. January 12, 1997) (government did not effect a taking of public land rancher's grazing rights by allegedly failing to contain trespass by neighbor's livestock, because claimant had no property right either in grazing permit or grazing preference and government is not responsible for controlling unlawful third party actions).

2. Bass Enterprises Production Co. v. United States, 1998 WL 2843 (Fed.Cir. January 7, 1998) (reversing and remanding court of federal claims ruling that United States was liable for a permanent taking, because government delay in deciding whether or not to acquire oil and gas lease which could potentially interfere with government nuclear material storage facility was, at most, a temporary taking).

3. Jankowsky v. United States, 1998 WL 1945 (Fed. Cir., January 6, 1998) (vacating dismissal of contract and taking claims by former government informant who operated business as an FBI sting operation, because there was an unresolved factual issue as to whether claimant was coerced by FBI into granting access to property with threat that FBI would not protect owner from criminals).

4. Bayou des Familles v. United States, 130 F.3rd 1034 (Fed.Cir. December 8, 1997) (affirming dismissal as time-barred taking claim filed in 1991 based on Army Corps denial of permit to build levee, when the Army Corps issued its order denying permit in 1979 and in 1982 a federal district court specifically instructed claimant to pursue any taking claim in the court of federal claims).

5. Abrahim-Youri v. United States, No. 97-5011 (Fed.Cir. December 4, 1997) (federal government espousal and settlement of private claims against government of Iran does not effect a taking, because those involved in foreign commerce are on notice that conduct of U.S. foreign affairs may affect property interests involved in international commercial dealings).

6. Waste Management, Inc v. Metropolitan Government of Nashville & Davidson County, 130 F.3rd 731 (6th Cir. 1997) (vacating denial of taking claim based on metropolitan government ordinance requiring waste facility operator to accept waste without payment from private automobiles because, depending upon evidence, ordinance might effect a physical occupation; also remanding to allow district court to decide whether judicial exhaustion prong of Williamson County applies).

7. Good v. United States, 39 Fed.Cl. 81 (Ct.Cl., August 22, 1997) (rejecting taking claim based on denial of wetlands permit in Florida Keys because of presence of endangered species, because Fish and Wildlife Service 'reasonable and prudent' alternatives and local transferable development rights program left owner some economic value, and lack of investment-backed expectations and other Penn Central factors precluded finding of a taking).

8. Forest Properties, Inc. v. United States, 39 Fed.Cl. 56 (Ct.Cl. August 6, 1997) (rejecting taking claim, after concluding that two adjacent parcels purchased at different times should be considered as one property, based on Penn Central factors, including the property's substantial remaining economic value and the fact that the owner purchased with notice of applicable federal wetland permitting regulations).

9. Lakewood Associates v. Commissioner of Internal Revenue Service, 1997 WL 791494 (U.S. Tax Court, December 29, 1997) (real estate investment partners are not entitled to loss deduction under section 165 of the IRC based on the adoption of the 1989 federal wetlands delineation manual, given that local agricultural zoning rules already barred the proposed

residential use of the property, and because reduction in land values because of land use regulations is not a 'loss realization event' under section 165).

10. Stupak-Thrall v. Glickman, 1997 WL 780973 (W.D.Mich, December 16, 1997) (declaring invalid and enjoining implementation of Forest Service regulation barring use of gas powered motor boats to reach private homes bordering wilderness area, because regulation is outside of Forest Service's authority under the Michigan Wilderness Act, which protects 'valid existing rights,' and also because infringement on owners' riparian rights constitutes a taking).

11. Holland v. United States, 1997 WL 735471 (D.D.C. November 17, 1997) (granting summary judgment to trustees of health benefit plan in suit to recover financial assessments owed by coal companies under the Coal Industry Retiree Health Benefits Act of 1992, and rejecting defense that assessment effected a taking under 3-part Penn Central test).

12. Lechuza Villas West v. California Coastal Commission, 1997 WL 790409 (Cal. App., December 19, 1997) (in a procedurally complicated decision, the court of appeals reversed the finding of a taking, because the claimant had failed to establish its property boundary line upon which the claim was premised; court also held that boundary of land bordered by ocean is an ambulatory line that moves as the land moves, and that the public has no recreational rights in periodically inundated lands above the boundary line).

13. Main Union Associates v. Township of Little Falls Rent Level Board, 1997 WL 784474 (N.J.App.Div., December 23, 1997) (affirming trial court decision rejecting various challenges to municipal rent control law, including argument that law effected a taking because it failed to allow full recovery of capital investments; distinguishing and disagreeing with Santa Monica Beach Ltd. v. Santa Monica Rent Control Board, 50 Cal.Rptr.2d 726 (Cal.App.), review granted, 917 P.2d 623 (1996)).

14. City of Cincinnati v. Chavez Properties, 1996 WL 932716 (Ohio App. 1996) (in inverse condemnation case which originated as counterclaim in aborted eminent domain proceeding, court held there was no taking because abandonment of eminent domain proceeding furthered legitimate government purposes in that government concluded that property originally slated for condemnation was unnecessary for government project and was too costly).

15. Standard Materials, Inc v. City of Slidell, 700 So.2nd 975 (La. App, September 23, 1997) (holding that city's erroneous effort to block concrete manufacturing facility, which was ultimately found to be a grand-fathered use by the Zoning Board of Adjustment, (1) did not effect a taking because action did not eliminate a 'major portion' of the property's value considering other permissible uses, and First English was not applicable because in that case government action had already been determined to effect a taking, and (2) did not effect a substantive due process violation because owner had no protected property interest in getting permit, and government action, though 'high handed,' was not arbitrary and capricious, given that city relied on debatable reading of zoning code).