'Takings' Snapshots Volume 42, June 25, 2001

1. Palazzolo v. Rhode Island (Today, Monday, June 25, Chief Justice Rehnquist announced that the final session of the Court's term will be held on Thursday, June 28, and that the Court will issue decisions in all pending cases on that day; so, unless there is some unexpected development, the Court should issue its decision in Palazzolo on Thursday).

2. Tulare Lake Basin Water Storage District v. United States, 48 Fed Cl. 313 (Ct. Cls., April 30, 2001) (in a novel Court of Federal Claims decision, the court (per Weise, J.) ruled that government-imposed water use restrictions under the Endangered Species Act resulted in a per se physical-occupation type taking; the court recognized that various California legal rules (public trust, nuisance) potentially represented "background principles" under Lucas limiting water rights holders' property interests, but ruled that since the State of California itself had not invoked these rules to impose limitations on water use the United States could not rely on these rules to defend against a taking claim).

3. Sea Cabins on the Ocean IV Homeowners Association, Inc. v. City of North Myrtle Beach, 2001 WL 639180 (S.C. June 11, 2001) (in an important ruling on the "takings vs. errors" issue, the South Carolina Supreme Court rejected the claim that a city's legally erroneous denial of a zoning application to rebuild a dock damaged in a hurricane resulted in a constitutional taking; the court said that "although a property owner who successfully challenges the applicability of a governmental regulation is likely to have suffered some temporary harm during the process, the harm does not give rise to constitutional taking;" while not a central issue in the case, the court also observed that the U.S. Supreme Court in Del Monte Dunes established that the Dolan rough proportionality test is limited to the context of "physical exactions").

4. MC Associates v. Town of Cape Elizabeth, 2001 WL 668410 (Me. June 15, 2001) (the Maine Supreme Court affirmed a Superior Court judgment rejecting federal and state takings claims based on a municipal wetlands regulation barring development of a roughly one half acre lot for residential purposes; the Supreme Court reversed the Superior Court's dismissal of the federal taking claim on ripeness grounds, ruling that ripeness doctrine does not bar a takings claimant from asserting both federal and state takings claims in a single lawsuit filed in state court; on the merits, the Court ruled that the plaintiff failed to establish a taking because it did not demonstrate that the lot had ever been buildable, given the preexisting standards for use of private sanitary systems; finally the Court ruled that the appraisal evidence that the property was worth $88,000 as a buildable lot and $3,000 as a nonbuildable lot did not establish a taking, because this evidence did not establish the actual value of the property prior to the alleged taking, nor did it address whether the lot retained substantial uses other than single family residential).

5. West Maricopa Combine, Inc. v. Arizona Department of Water Resources, 2001 WL 604916 (Arizona App. Ct., June 5, 2001) (the Arizona Court of Appeals rejected the

argument that Arizona law effected a physical-occupation type taking by granting holders of water rights authority to transport their water through natural riverbeds located on private property without landowner consent; applying the concept of background principles of property law from the Lucas decision, the court said that the plaintiff "took its title subject to the inherent limits arising from the state's reservation of the natural channels to move and store water").

6. Home Builders Association of Northern California v. City of Napa, 2001 WL 615185 (Calif. App. Ct., June 6, 2001) (the California Court of Appeals rejected a facial taking challenge to the City of Napa's inclusionary housing ordinance; the court ruled that the requirement that ten percent of all newly constructed housing be affordable was substantially related to a legitimate government interest; the court also ruled that the demanding Nollan/Dolan tests did not apply to a legislatively established mandate such as this (as opposed to an ad hoc decision on a specific development application)).

7. Mount Olive Complex v. Township of Mount Olive, 2001 WL 604269 (N.J. App. Div., June 4, 2001) (the N.J. appellate division ruled that rezoning of land from 3-units per acre to five acre minimum lot size did not effect a taking, citing the N.J. Supreme Court Gardiner decision rejecting a takings challenge to 40-acre zoning).

8. Maine People's Alliance v. Holtrachem Manufacturing Co., 2001 WL 584464 (D. Maine, May 29, 2001) (a Federal magistrate, in a recommended decision, rejected as "futile" a proposal by the defendant to amend its answer in a suit under the Resource Conservation and Recovery Act; the magistrate ruled that the proposed defense that RCRA's imposition of retroactive liability was unconstitutional, based on the Supreme Court's Eastern Enterprises decision, was without merit because Eastern Enterprises has no precedential value (given that there was no single rationale for the outcome endorsed by a majority of the Court); the magistrate also ruled that the Coal Act at issue in Eastern Enterprises was distinguishable from statutes such as RCRA which assign retroactive liability based on past conduct which actually contributed to the harm Congress is trying to address).

9. Marquez v. Municipality of Guaynabo, 2001 WL 567832 (D. Puerto Rico, May 17, 2001) (the federal district court ruled that a plaintiff stated a valid taking when the municipality allegedly announced its intention to acquire the plaintiff's property, prohibited the plaintiff from renewing its commercial leases for the property, and advised several prospective purchasers of the property not to pursue the acquisition; however, the court ruled that the plaintiff was required to pursue the taking claim in state court, which provided a "colorably adequate" forum for this type of alleged taking).