

Takings Snapshots, Volume 57, March, 7, 2003

1. Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 2003 WL 558512 (9th Cir. February 28, 2003) (in the latest round of the Lake Tahoe litigation, the Ninth Circuit ruled that takings claims by the Tahoe-Sierra Preservation Council and some of its members based on the 1987 TRPA plan were barred by res judicata because they were essentially identical to claims which were dismissed as time-barred in a previous round of Lake Tahoe litigation; the court also dismissed on ripeness grounds the plaintiffs' takings claims based on a rule allowing owners to obtain development approval by paying a mitigation fee or completing a water quality mitigation project, on the ground that none of the plaintiffs had actually applied to take advantage of this mitigation option).

2. Woodland Manor, III Associates, L.P. v. Reisma, unpublished opinion (R.I. Superior Ct., C.A. No. PC892447, February 24, 2003) (in an interesting and complex case, on remand from the Rhode Island Supreme Court, the Rhode Island Superior Court ruled that the state Department of Environmental Management effected a temporary taking by withholding a wetlands permit from the owner for an 8-year period; the court ruled: (1) the plaintiff, the assignee of the owner as of the commencement of the case, had standing to pursue the taking claim; (2) the relevant parcel consisted of the 20 acres purchased by the plaintiff rather than the seller's entire original ownership of 89 acres; (3) the fact that the agency's refusal to issue the permit was legally erroneous did not prevent a finding of a taking; and (4) application of the 3-factor Penn Central test supported a finding of a taking.)

3. Kottschade v. City of Rochester, 2003 WL 297380 (8th Cir., February 13, 2003) (reaffirming Williamson County, the Eighth Circuit, upholding a trial court decision, ruled that a taking claim based on local government land use restrictions had to be dismissed on the ground that the claim was not ripe in federal court until the plaintiff had pursued available state compensation remedies; the court specifically discussed and rejected the argument that the U.S. Supreme's

Court's 1999 City of Chicago decision effectively overruled Williamson County).

4. *PI Electronics, Inc. v. United States*, 2003 WL 552540 (Fed.Ct.Cls., February 20, 2003) (in another "takings and errors" case, the court of federal claims dismissed the plaintiffs' takings claim based on U.S. postal workers' alleged breach of a confidential agreement and conversion of trade secrets; adopting a broad view of the errors defense to a taking claim, the court said that "When government officers or employees act in contravention of their duties or positions, their actions cannot give rise to a takings claim").

5. *Boise Cascade Corp. v. Board of Forestry*, 2003 WL 292305 (Or. App. February 12, 2003) (in this latest installment in this long-running takings battle, based on logging restrictions designed to protect the endangered spotted owl, the Oregon Court of Appeals ruled that the trial court had improperly granted summary judgment to the State Board of Forestry on the ground of issue preclusion, and also ruled that the trial court properly denied Boise Cascade's motion for summary judgment on the issue of whether its claim was ripe because it was "futile" for the company to seek an incidental take permit to conduct logging on its property; the court remanded the case to the trial court to further evaluate whether or not an application to log the property would have been futile, explaining that a mere "unexplored possibility" that approval would be granted would rebut a futility argument and make the claim unripe)

6. *In The Matter of Property Located at 14255 53rd Ave. So.*, unpublished opinion (Wash. Superior Court, July 29, 2002) (the Washington Superior Court held that a state proclamation designed to deal with a potential citrus long-horned beetle infestation requiring the destruction of trees within 1/8 of a mile of the site of the infestation constituted a compensable taking of the property of the owners whose trees would be destroyed as a result of the order.)