Takings Snapshots, Volume 60, June 27, 2003

1. SDS Lumber Co. v. State of Washington (Wash.) (Yesterday, on June 26, 2003, Washington Governor Gary Locke, rejecting a veto request submitted by the Washington environmental community, approved a state operating budget which includes $2.7 million to settle this long-running takings suit based on Department of Natural Resources regulations designed to protect endangered spotted owls; the State lost in the trial court but had appealed the ruling to the Washington Supreme Court, with the support of the States of California and Oregon as well as Washington environmentalists; while the Governor approved the appropriation, he vetoed a provision of the bill stating that it was the intent of the legislature to reduce the department's budget in future years by the amount of the settlement to the extent the State could not recoup the settlement either by logging the site or obtaining reimbursement from the federal government; the Governor's veto message also stated that "I believe this settlement is a one-time event limited to the facts of this specific case, and not administrative precedent.")

2. Cienega Gardens v. United States, 2003 WL 21356416 (Fed. Cir. June 12, 2003) (in what is apparently the first Federal Circuit decision granting an award of compensation under the Penn Central test, the Federal Circuit, reversing the court of federal claims, ruled that a federal statute preventing developers of low-income housing from prepaying their mortgages, and thereby escaping their commitment to rent their properties to low-income tenants, constituted a taking; the court applied a relatively free-form version of the Penn Central three-factor analysis (character of government action, economic impact, and reasonable investment-backed expectations) to support the conclusion that a taking had occurred; the decision follows prior Federal Circuit decisions in this same case rejecting challenges to the same statute on a contract theory and under a per se physical-occupation theory.)

3. Chancellor Manor v. United States, 2003 WL 21356428 (Fed. Cir. June 12, 2003) (in a decision issued the same day as the decision in Cienega Gardens, a

different panel of the Federal Circuit in a case involving the same claims based on the same statute, vacated a trial court decision rejecting the taking claim; in contrast to the panel in Cienega Gardens, however, the second panel declined to conclude that a taking had occurred and indicated that the government might be able to defend itself against a Penn Central claim on remand.)

4. Carpinteria Valley Farms, Ltd. v. County of Santa Barbara, 2003 WL 21461520 (9th Cir., June 25, 2003) (in an illustration of the tendency of some courts to see takings claims under every rock, a federal district court dismissed first amendment, equal protection, and due process claims on the ground that they were, in substance, as applied takings claims, which were not ripe for judicial review under Williamson County; the Ninth Circuit reversed, ruling that the plaintiffs had asserted a number of discrete constitutional violations not covered by the Takings Clause and, therefore, Williamson County did not apply).

5. Gavlak v. Town of Somers, 2003 WL 21382469 (D. Ct., June 13, 2003) (property owner who operated "spring water business" on his property alleged that municipal zoning board illegally sought to block him from continuing to operate his business, which he alleged was a vested nonconforming use under Connecticut law; the plaintiff alleged that town officials took action against him because he declined an offer by a municipal official to join him in this business venture; on a motion to dismiss, the court ruled that the taking claim failed because the plaintiff had not exhausted available state compensation remedies, but ruled that the plaintiff had asserted ripe, viable substantive due process, procedural due process, and equal protection claims.)

6. Lindquist v. Buckingham Township, 2003 WL 21356409 (3d Cir., May 26, 2003) (unpublished decision) (US Court of Appeals for the Third Circuit (Becker, C.J.) affirmed rejection of takings and due process challenges to municipal actions which allegedly delayed and ultimately prevented development of plaintiffs' property; the court ruled that the taking claim was not ripe because the plaintiffs had not availed themselves of state compensation procedures, the court ruled that the due

process claims failed because a due process claim requires a showing that the defendant's conduct "shocked the conscience" and the plaintiffs in this case "do not even come close" to meeting this standard.)

7. Franklin Savings Corp. v. United States, http://www.uscfc.uscourts.gov (Fed. Cls. June 16, 2003) (Court of Federal Claims (Block, J.) denied rehearing of rejection of a claim that federal banking officials effected a per se taking by seizing and liquidating savings and loan assets during the S & L crisis of the late 1980's; the court ruled that the U.S. Supreme Court decision in Palozzolo v. Rhode Island did not overturn prior Federal Circuit precedent rejecting takings claims based on the enforcement of banking regulations.)

8. Edmonds Shopping Center Associates v. City of Edmonds, 2003 WL 21466697 (Wash. Ct. App., June 23, 2003) (in a takings challenge to a municipal ordinance banning card room gambling activity, the Washington Court of Appeals, applying Washington State's sui generis takings test, as described in the Guimont decision, concluded that no taking had occurred, "because the ordinance protects the public health, safety, and welfare and neither destroys a fundamental attribute of ownership nor imposes a private burden for a public benefit.")