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1. Town of Flower Mound v. Stafford Estates Limited Partnership, 2004 WL 1048331 (Tex., May 7, 2004) (applying Nollan/Dolan standards, the Texas Supreme Court ruled that the municipality failed to carry its burden of demonstrating that a requirement that the developer of a 247-unit residential project rebuild a public roadway abutting the development was roughly proportional to the impacts of the development and, therefore, affirmed the trial court finding that the requirement effected a taking under the Texas Constitution; the Texas Supreme Court rejected the argument that exactions covered by the Nollan/Dolan test are limited to "dedicatory" exactions," i.e., conditions requiring the actual transfer of a property interest; the Court also rejected the argument that any exaction imposed pursuant to a general legislative mandate is necessarily exempt from review under Nollan/Dolan; finally, the Court rejected plaintiff's request for attorneys' fees under 42 USC 1988 on the ground that the plaintiff had recovered under the Texas Constitution and therefore had no federal claim upon which to base a request for fees under section 1988).

2. Garvie v. City of Ft. Walton Beach, 2004 WL 834171 (11th Cir., April 20, 2004) (in an interesting and unusual case, the Fifth Circuit affirmed a district court decision rejecting constitutional claims against the city based on allegations that certain city officials had improperly paved over a portion of plaintiffs' property to convert it into a street (allegedly for the exclusive benefit of certain other private landowners); the court first questioned whether the plaintiffs presented a valid section 1983 action against the city, given that they identified no relevant municipal custom or policy; on the merits of the takings issue, the court rejected the plaintiffs' claim that the alleged taking violated the "public use" requirement of the Takings Clause, which the court said was governed by a rational basis standard; the court also rejected the argument that plaintiffs had been denied their seventh amendment rights to a jury, on the ground that the city was entitled to judgment as a matter of law on the question of whether the alleged taking actually furthered a public purpose; finally, the court rejected a substantive Due Process claim on the same grounds and using the same standards that it used to reject the public-use taking claim).

3. Seiber v. United States, 364 F.3d 1356 (Fed Cir., April 19, 2004) (the U.S. Court of Appeals for the Federal Circuit affirmed the Court of Federal Claims' rejection of a taking claim based on restrictions imposed for several years under the Endangered Species Act on the commercial logging of 40 acres of claimants' 200-acre property; the restrictions protected a nesting site for an endangered spotted owl; rejecting the reasoning of the claims court, the Federal Circuit ruled that claimants presented a ripe claim based on the federal government's denial of an "incidental take permit;" on the merits, however, the Federal Circuit affirmed rejection of the taking claim, ruling (1) that the restrictions did not effect a physical occupation, (2) that the regulation substantially advanced a legitimate government interest (making it unnecessary to decide whether this is a valid takings test at all), (3) that the Lucas claim failed, in light of the parcel as a whole rule, and (4) the Penn Central claim failed because claimants failed to prove that they suffered any economic injury while the regulation was in place).

4. San Remo Hotel, LP v. San Francisco City and County, 364 F.3d 1088 (9th Cir., April 14, 2004) (the Ninth Circuit, following its governing precedent in Dodd v. Hood River County, and disagreeing with the recent Second Circuit decision in Santini v. Conn. Hazardous Waste Management Serv., ruled that the California Supreme Court's prior resolution of the plaintiff's "substantially advance" takings challenge to a San Francisco housing ordinance created issue preclusion barring relitigation of an essentially equivalent claim under the federal Takings Clause in federal court).

5. Air Pegasus of D.C., Inc. v. United States, 2004 WL 944762 (Ct.Fed.Cls, April 17, 2004) (in a fascinating case, the Court of Federal Claims rejected a taking claim brought by a leaseholder whose heliport operation south of the US Capitol was closed by order of the FAA following September 11; because the lease specified that the property could only be used for a heliport, plaintiff alleged that shutting down the heliport resulted in a Lucas taking; the court rejected the claim on the ground that the navigable airspace of the United States is analogous to US navigable waters, and no owner can claim a vested right to the use of the navigable airspace;

though emphasizing that the leaseholder started the heliport business voluntarily knowing that use of the airspace over DC is subject to heavy federal regulation, the court declined to rely on the theory that plaintiff lacked sufficient investment expectations to support the taking claim, citing the Federal Circuit's decision in Palm Beach Isles).

6. Moden v. United States, 60 Fed.Cl. 275 (Ct. Fed. Cls. April 9, 2004) (in a comprehensive and learned opinion (per Bush, J.), the Court of Federal Claims dismissed for lack of subject matter jurisdiction a taking claim based on underground water contamination allegedly caused by waste disposal practices at a nearby U.S. military base; the court ruled that the claim sounded in tort, not takings, and therefore was not within the jurisdiction of the Court of Federal Claims under the Tucker Act; the court described a two-part test, both parts of which must be satisfied to establish a taking in this type of case: (1) that the property damage is the direct, natural, or probable result of some intentional government action, and (2) that the invasion is substantial and frequent; the court ruled that the plaintiffs could not satisfy the first prong of this test).

7. Members of Peanut Quota Holders Association, Inc. v. United States, 2004 WL 944761 (Ct. Fed. Cls. April 30, 2004) (the Court of Federal Claims rejected a taking claim based on congressional repeal of a federal subsidy program for peanut growers, ruling that plaintiffs could not claim a vested property right to the continuation of a gratuitous government benefit; the court also indicated that, if the plaintiffs had a vested property right, the taking claim would still fail, since the plaintiffs had no reasonable investment-backed expectations to the continuation of the subsidy program and could not demonstrate the "requisite economic impact" to establish a taking).

8. Pharmaceutical Care Management Ass'n v. Rowe, 307 F.Supp.2d 164 (D.Maine, March 9, 2004) (federal district court entered preliminary injunction barring enforcement of Maine's Unfair Prescriptive Drug Practices Act on the ground that the act requires pharmaceutical benefits management companies to disclose various contract and financial information

which the court believed fell within the definition of "trade secrets;" the court declined to apply a per se analysis, ruling instead that plaintiffs demonstrated a likelihood of success under Penn Central; the court rejected the claim that the case was not ripe, despite the fact that the claimant had not exhausted available state compensation procedures, on the ground that the plaintiff was pursuing a facial rather than an as applied taking claim).

9. BFI Waste System of North America v. DeKalb County, 303 F.Supp,2d 1335 (N.D. Ga, January 16, 2004) (after plaintiff filed takings case in state court, and county defendant removed action to federal district court, federal court remanded takings claim to state court so that plaintiff could exhaust available state compensation remedies, indicating that plaintiff could file an England reservation in state court to preserve the opportunity to litigate the federal claim in federal court; the federal court also ordered that the federal case would remain open pending resolution of the taking claim before the state courts).

10. Hallmark Inns & Resorts, Inc. v. City of Lake Oswego, 2004 WL 788856 (Or. Ct. App, April 14, 2004) (Oregon Court of Appeals affirmed land use board of appeals decision affirming city's decision to require developer of major commercial property to provide a pedestrian pathway across the property connecting a residential area on one side of the property to a shopping center on the other side of the property; the court ruled that the city's analysis, which included "attempts to quantify" the impacts of the development on the city's circulation pattern, satisfied the requirements of Nollan and Dolan; the court said that the city was permitted to impose conditions that reflected not only the immediately projected uses of the property, but also the potential uses of the property under the development authorization issued by the city).

11. Leon County v. Gluesenkamp, 2004 WL 1058451 (Fl.Ct.Apps., May 10, 2004) (Florida Court of Appeals, reversing the judgment of the trial court, ruled that nearly two-year moratorium on development did not constitute a per se taking under Lucas nor a taking under the Penn Central multi-factor analysis).

12. Diamond B-Y Ranches v. Tooele County, 2004 WL 905956 (Utah Ct. App. April 29, 2004) (Utah Court of Appeals reversed trial court's rejection of a taking claim based on county's denial of owner's application for a conditional use permit to operate a gravel pit; the court rejected the county's argument that the taking claim failed because the owner lacked a protected property interest, ruling that the relevant property interest for the purpose of takings analysis was the land itself; the court also rejected the county's argument that the claim was not ripe, ruling that the county commission had denied the application on the merits; while the court accepted the plaintiff's allegation, for the purpose of passing on the trial court's grant of summary judgment, that the permit denial denied the owner all economically viable use of the property, it said that plaintiff's claim "strains logic" and that the plaintiff would face an "uphill battle" if it pursued the taking claim on remand).

13. Commonwealth v. Blair, 805 NE2d 1011 (Mass.Ct.App., April 2, 2004) (Massachusetts Appeals Court affirmed trial court order that landowners had violated watershed protection act by modifying the shore of their property without first obtaining a state permit; the court rejected landowner's federal and state takings challenges to this enforcement action on the ground that the owners had never availed themselves of the variance process under the act and, therefore, their claim had never become ripe).

14. Zanghi v. Board of Appeals of Bedford, 807 N.E.2d 221 (Mass.Ct.App., May 3, 2004) (Massachusetts Court of Appeals affirmed land court decision rejecting taking claim based on municipal zoning order that required one-half acre minimum lot size, no portion of which could be within a flood plain or a designated wetland, where the lot at issue was one of several lots in a larger subdivision owned by the claimant; the court rejected the Lucas claim and also rejected what it termed the "pre-Lucas" test (largely tracking the Penn Central analysis); the court rejected the takings claim notwithstanding the fact that the zoning restriction was imposed after plaintiff had purchased the property; in addition to relying on the parcel as a whole rule to support its decision, the court cited Massachusetts Supreme Judicial Court precedent

holding that the availability of economically valuable non-development uses of private property can preclude the finding of a taking).

15. Edmondson v. Pearce, 2004 WL 620170 (Okla., March 30, 2004) (the Oklahoma Supreme Court rejected a facial takings challenge to a voter-approved initiative outlawing cockfighting within the state, relying on Mugler and Lucas's distinction between government's authority to regulate personal property versus real property).

16. Scott v. Town of Monroe, 2004 WL 547202 (D. Conn., March 12, 2004) (federal district court rejected takings claim based on agreement between two municipalities that claimant's property was located in one municipality rather than the other, ruling that complaint failed as a matter of law because the plaintiff had not alleged a physical occupation or a denial of all economic use of the property).

17. Schilling v. Department of Natural Resources, 2004 WL 830480 (Wisc.Ct.App., April 13, 2004) (the Wisconsin Court of Appeals ruled that federal court ruling that suit by landowner to enforce alleged easement over Indian trust lands was barred by U.S. sovereign immunity required dismissal of takings suit against state based on various permitting actions given that, without a right of access to the property over federal trust lands, claimants could not demonstrate a taking of the property by the state in these circumstances).

18. Lamar Corp. v. City of Cambridge, 2004 WL 406071 (Oh.Ct.App., March 4, 2004) (Ohio Court of Appeals held that denial of permit to construct a new billboard within a community was not a taking).