

**'Takings' Snapshots Volume 9**  
**June 9, 1998**

1. **Seldovia Native Assn v. United States**, 1998 WL 239337 (Fed. Cir. May 14, 1998) (dismissing certain takings claims asserted by Alaskan Indian village corporation as time -barred; dismissing other claims on the merits because Department of Interiors redefinition of the lands in Alaska available for selection by Indian village corporation did not effect a compensable taking, given that the initial selection process did not create vested property rights in the lands at issue).

2. **Garneau v. City of Seattle**, 1998 WL 214579 (9th Cir. May 4, 1998) (in a case with three separate opinions, court of appeals ruled, 2 to 1, that Portland, Oregon tenant relocation assistance ordinance, which requires landlords to make payments to tenants they intend to displace by redeveloping their property, did not effect a taking; one judge said *Dolan* is limited to unconstitutional conditions context and therefore is inapplicable to this case, and plaintiffs failure to show any economic injury was fatal to takings claim; one judge concurred in the result, but concluded that the allegations presented a claim under the due process clause rather than the takings clause; the third judge dissented on the ground that the ordinance, in effect, resulted in an unconstitutional physical occupation).

3. **Hidden Oaks Limited v. City of Austin**, 138 F.3rd 1036 (5th Cir. 1998) (affirming dismissal on ripeness grounds of takings claim based on city's refusal to provide utility service to building determined to be in violation of building code, where plaintiff failed to pursue appeal to challenge citation under code; affirming entry of judgment for city on state inverse condemnation claim because code served legitimate and important public purposes).

4. **Landgate, Inc. v. California Coastal Commission**, 73 Cal. Rptr. 841 (Cal. 1998) (in a 4-3 decision, the California Supreme Court ruled that delay in the issuance of a development permit as a result of mistaken assertion of jurisdiction by coastal commission over subdivision of land did not result in a taking but is a type of normal delay within the meaning of the Supreme Courts *First English* decision; the court reserved the question whether an *ultra vires* action can ever provide the basis for a taking).

5. **Mission Springs, Inc v. City of Spokane**, 954 P.2d 250 (Wash. 1998) (city managers arbitrary and capricious denial of grading permit does not state a claim for just compensation under the Takings Clause, but states a claim for a damages for a due process violation under section 1983).

6. **Smith Investment Co. v. Sandy City**, 1998 WL 227780 (Utah App. April 30, 1998) (rejecting facial takings challenge to rezoning of property from commercial to residential, where change resulted in a 43% reduction in value, and property retained some economically viable use and value).

7. **Bellon v. Monroe County**, 1998 WL 199907 (Iowa App. February 25, 1998) ( affirming district courts denial of a writ of mandamus to compel payment of just compensation based on county's refusal to upgrade public road providing access to plaintiffs land, because road was unimproved at the time owner purchased the property, relying on Iowa Supreme Court decision in *Hunziker*).

8. **Staubes v. City of Folly Beach**, 1998 WL 211752 (S.C. App. 1998) (where city improperly revoked permit to repair building damaged by hurricane, city's action was not within the exception for temporary takings liability based on normal delays established in *First English*, but city's action did not effect a taking because it did not deny all economic use of the property).

9. **Pacific National Cellular v. United States**, 1998 LWL 214259 (Ct.Cl. April 28, 1998) (in a case raising issues related to issues raised by *Landgate* and *Del Monte Dunes*, the Court of

Federal Claims granted summary judgment for United States on claim that FCC took plaintiffs property interests in contracts providing financing for cellular radio telephone systems, because FCCs processing of applications for construction of systems was delayed by 4 years by FCCs acknowledged violation of Paperwork Reduction Act; court rejected takings claims because contract rights were merely frustrated and not taken, and because plaintiff voluntarily entered into a business subject to pervasive federal regulation; court did not address implicit issue whether there could be a taking for public use in these circumstances).

10. **Maritrans v. United States**, 1998 WL 214268 (Ct.Cl. April 24, 1998) (in a limited ruling, the court rejected argument that plaintiffs had no property interests in ships required by federal law to be fitted with double hulls on the ground that the ships were personality, and also rejected claim that plaintiffs voluntary involvement in a heavily regulated business precluded a takings claim; court intends to later address issues of economic impact and character of the government action).

11. **WJF Realty Corp. v. State of New York**, 1998 WL 249100 (N.Y.Sup. April 22, 1998) (rejecting apparently facial takings challenge to New York Long Island Pine Barrens Protection Act, including TDR provision, concluding that value of TDRs are relevant to takings liability issue and in any event TDRs may serve as compensation in the event of a taking).