Stop Agenda 21

Action Kit

Shattered Dreams: The Victims of Agenda 21

Produced by
American Policy Center
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SUSTAINABLE DEVELOPMENT, SMART GROWTH AND KELO:

Organized Theft By Any Name

By Tom DeWeese

Editors note: I wrote this article in 2005 after the Supreme Court shocked the nation by ruling in the KELO Decision that it was OK for local government to take private land to be used for other private development. The fact is this ruling was necessary for the implementation of Agenda21. The United States had signed on to accept and implement Sustainable policy which, at its root, is anti-private property. How to enforce such policy in a nation built on protection of private property rights? Our Supreme Court, packed with members who now say they must look at international law to make their decisions, did just that to destroy 200 years of precedence in private property protection. From the day that ruling was made, Americans began to understand the evil they were facing. I view the Kelo Decision as the first shot that started the growing opposition to Agenda 21. TAD

Put yourself in the homeowner's shoes. You buy a home for your family. Perhaps it's even handed down from your father or grandfather. It's a place you can afford in a neighborhood you like. The children have made friends. You intend to stay for the rest of your life.

As you plant your garden, landscape the yard, put up a swing set for the kids, and mold your land into a home, unknown to you, certain city officials are meeting around a table with developers. In front of them are maps, plats and photographs – of your home. They talk of dollars – big dollars. Tax revenues for the city, huge profits for the developer. A shopping center with all the trimmings begins to take shape. You're not asked for input or permission. You're not even notified until the whole project is finalized and the only minor detail is to get rid of you.

Then the pressure begins. A notice comes in the mail telling you that the city intends to take your land. An offer of compensation is made, usually below the market price you could get if you sold it yourself. The explanation given is that, since the government is going to take the land, it's not worth the old market price. Some neighbors begin to sell and move away. With the loss of each one, the pressure mounts on you to sell. Visits from government agents become routine. Newspaper articles depict you as unreasonably holding up community progress. They call you greedy. Finally, the bulldozers move in on the properties already sold. The neighborhood becomes unlivable. It looks like a war zone.

As if attacked by a conquering army, you are finally surrounded, with no place to run, but the courts. However, you're certain of victory. The United States was built on the very premise of the protection of private property rights. How can a government possibly be allowed to take anyone's home for private gain?

Under any circumstances this should be considered criminal behavior. It used to be. If city officials were caught padding their own pockets or those of their friends it was considered graft. That's why RICO laws were created.
Finally, five black robes named Stevens, Souter, Ginsburg, Kennedy, and Breyer shock the nation by ruling that officials who have behaved like Tony Soprano are in the right and you have to vacate your property.

These four men and one woman have ruled that the United States Constitution is truly meaningless. Their ruling in the Kelo case declared that Americans own nothing. After declaring that all property is subject to the whim of a government official, it's just a short trip to declaring that government can now confiscate anything we own; anything we create; or ban anything we believe.

Astonishing. The members of the Supreme Court have nothing to do but defend the Constitution and keep it the pure document the Founding Fathers created to recognize and protect the rights with which we were born. They sit in their lofty ivory tower, never worrying about job security with their life-time appointments. And yet, they have obviously missed finding a copy of the Federalist Papers, which were written by many of the Founders to explain to the American people how they envisioned the new government would work. They have missed the collected writings of James Madison, Thomas Jefferson, John Adams and George Washington, just to mention a very few. It's obvious because otherwise, there is simply no way they could have reached this decision – unless implementing another agenda was their purpose.

I don't have the benefit of the Justices' grand staffs or generous government salaries. But just a little research has turned up pretty much everything Stevens, Souter, Ginsburg, Kennedy, and Breyer would have needed to reach a logical conclusion that protection of private property rights are the most important rights, vital to the very foundation of a free society.

Our Founding Fathers left no doubt in their writings, their deeds, or their governing documents as to where they stood on the vital importance of private property. John Locke, one of the main influences whom the Founders followed as they created this nation said, "Government has no other end than the preservation of property." John Adams said, "The moment the idea is admitted into society that property is not as sacred as the laws of God; and there is not a force of law and public justice to protect it, anarchy and tyranny commence."

One would be hard pressed to find a single word in the writings of the Founding Fathers to support the premise that it's okay to take private property for economic development. To the contrary, they believed that the root of economic prosperity is the protection of private property.

So how did Stevens, Souter, Ginsburg, Kennedy, and Breyer miss such a rock solid foundation of American law? Perhaps they didn't. Perhaps they chose to ignore it in favor of another agenda. Specifically, Agenda 21.
For several years, certain members of the Supreme Court have been discussing the need to review international law and foreign court decisions to determine U.S. Supreme Court rulings. Justice Breyer has been the most outspoken for this policy, saying, "We face an increasing number of domestic legal questions that directly implicate foreign or international law."

What international laws are these? In general, the most pervasive are a series of UN international treaties, including several that address issues of climate, resource use, biological diversity, and community development. Specifically, Agenda 21, signed for the United States by President George H.W. Bush at the UN's Earth Summit in 1992, calls for implementing what former Vice President Al Gore called a "wrenching transformation" of our nation, through a policy called Sustainable Development. Sustainable Development is the official policy of the United States and almost every single city and small burg in the nation.

Sustainable Development is top-down control, a ruling principle that affects nearly every aspect of our lives, including; the kind of homes we may live in; water policy that dictates the amount each American may use in a day; drastic reductions of energy use; the imposition of public transportation; even the number of inhabitants that may be allowed inside city borders. Most Americans have heard of a small part of this policy operating under the name Smart Growth. Agenda 21 outlines specific goals and a tight timetable for implementation. In June, 2005, the UN held a major gathering in San Francisco where the mayors of cities from across the nation and around the world gathered to pledge to impose Sustainable polices.

In order to meet such goals, federal, state and local governments are scrambling to impose strict policies on development and land use. The use of Eminent Domain has become a favorite tool. Sustainable Development calls for partnerships between the public sector (your local government) and private businesses.

Now, as the public/private partnerships move to enforce Sustainable Development in local communities, an unholy alliance is also forming, allowing corrupt politicians to line their pockets and gain power as they partner with select businesses and developers to build personal wealth and power. They plot to take land that isn't theirs for personal gain, while claiming it's for the "public good." That's all the excuse they've needed to hide their true intent.

However, things have been changing as such brutal, organized theft has spread across the nation in the name of community development and environmental protections. American have started to fight back to protect their property. In Oregon, people wentto the ballot box and shocked lawmakers by passing Measure 37, which says the government must either pay full price for any land taken, or waive the regulation and leave the property owner alone. In Wisconsin, the state legislature passed a bill to stop Smart Growth policies that are destroying property owners. In Michigan, the state Supreme Court overturned the precedent-setting ruling it made more than 20 years ago that allowed the use of Eminent Domain in taking property for private use. In fact, it was that original ruling that had been used by communities across the nation to justify their own Eminent Domain takings.

Clearly, the nation has started to rise up to stop this assault on private property. Without the power to grab property at will, the ability for communities to enforce Sustainable Development has come into question.

Those forces behind the implementation of Sustainable Development and Agenda 21 needed something big to put things back on track. The Supreme Court, which had already stated that it must look to international laws and treaties to decide American law, provided the answer. Stevens, Souter, Ginsburg, Kennedy, and Breyer chose Sustainable Development and Agenda 21 over the Constitution of the United States.

However, the effort began to backfire on the Sustainablists as the nation reacted in force to protect property rights. State legislatures and the U.S. Congress rushed to produce legislation to restore property rights protections. Senator John Cornyn (R-TX) moved quickly to introduce the Property Rights Protection Act (S.1313) and it gained strong support in the U.S. Senate. Even Americans who had rarely uttered a political thought suddenly became feverish with zeal for the Fifth Amendment. Americans started to learn all over again what the Founding Fathers knew -- that the right to own and control private property is the most important right. It appeared that America was about to experience a major swing toward protection of property fights.

But the zeal for property rights in Congress was quickly extinguished after the Property Rights Protection Act was placed in the Senate Judiciary Committee, under the firm control of Committee Chairman Arlen Specter (then a Republican from Pennsylvania). Specter quickly joined forces with the National Conference of Mayors and the National League of Cities. These organizations started a delaying action to hold up the bill, calling on Congress to take no further action to “alter the rules governing eminent domain…” Specter dutifully held up any further action on S.1313 until it died an ultimate legislative death. These groups, of course, are full participants and supporters of Sustainable Development and fully supported the Supreme Court’s Kelo decision giving them the power to take any private property they desired – all for the public good, of course.

In this day of Agenda 21, to save the right of private property ownership and control, Americans must do much more than just get upset. They need to get behind legislative efforts at every level of government to assure passage of laws to protect them against predators like the National Conference of Mayors and other government organizations that pretend to represent the people. Concerned Americans must dig in at the local level to foil efforts by their mayors and city councils to impose Eminent Domain against their neighbors. They must run this organized theft (now masquerading as the “common good”) out of town on a rail. And don’t forget to leave room on that rail for Stevens, Souter, Ginsburg, Kennedy, and Breyer.

Conservation Easements and the Urge to Rule

By Tom DeWeese

Conservation easements. The Green Mafia tells us this is the only way to save the family farm. Without its tax credits and restrictions on development rights, America will be paved over and Astroturf will replace sod. We’re in crisis, they tell us. However, as H.L Mencken once warned, “A plan to save humanity is almost always a false front for the urge to rule.”

There’s no question that the family farm is under assault. Taxes, international trade agreements, inflation, and government regulations are eating away at the ability to keep the farm operating. I’ve never met a farmer who wanted to give up and stop working the land that perhaps his ancestors first acquired. In most cases it’s agony for a farmer to decide to sell his property. On the other hand, the land is his main asset. To provide a good life for the family, selling the land, many times to developers is necessary for survival.

However, there is now a much more lethal threat facing small farmers, and the outrageous fact is, this threat is being disguised as a way to help them. The real threat is the green solution - “conservation easements.” And farmers are falling into its trap across the country.

Conservation easements are promoted by land trusts and environmental groups. Tax breaks are promoted. Even cash is offered those farmers willing to sell their development rights, under the argument that this will drive away the temptation to sell the land to nasty developers, thus keeping it farm land The clever slogan, “farm land lost is farm land lost forever” helps sell the case for easements.

The promoters of such ideas are very good with the sales pitch. If it were politically correct to do so, one could actually hear “God Bless America” playing in the background as the promises to save the family farm roll off the pitchman’s tongue.

Say proponents, "A conservation easement is a voluntary perpetual agreement that restricts non-agricultural uses such as mining and large scale residential and commercial development." They boldly promote the easements by promising that "the landowner continues to own, live on and use the land." They even promise that the land can be passed down to heirs, along with generous tax credits. What's not to like? Desperate farmers are flocking to the pitchman's wagon to buy his life-saving potion.

Of course, as another famous pitchman, P.T Barnum, once said, "there's a sucker born every minute." Farmers beware the slick talker who has the answers to your woes. His answers may well be your demise – and your farm's. It's wise to read the fine print of a conservation easement agreement. Here are some facts.

The facts about conservation easements

In a typical conservation easement, a private Land Trust organization purchases some or all of the "bundle" of a property owners rights. The bundle includes development rights for the property; the ability to overrule the owner's choice of how to use the property, including adding more buildings or renovating or rebuilding existing buildings; in the case of farmers, it may include decisions on which fields to use for planting , or even which crops to grow and the technique to be used. All of these things come under the command of the easement. And all of it may become the decision of the Land Trust, because once the conservation easement agreement is signed the owner's rights are legally subservient to his new partner, the Trust.

True, in exchange, the property owner receives charitable deductions on federal taxes based on the difference between the values of the land before and after granting the easement. The property owner receives relief from federal estate or inheritance taxes. Many states provide income tax credits and property tax relief. And the owner receives a payment for his development rights.

In the beginning it all sounds good. Money in the pocket; the farm safe from development; and the ability to practice the beloved tradition of farming. Well, maybe.

The fact is, under the easement, the owner has sold his property rights and therefore no longer has controlling interest in his property. Through the restrictions outlined in the easement, property usage is now strictly controlled, including everyday decisions on running the farm. In many cases, the Conservation group that controls the easement demands strict adherence to "sustainable" farming practices." That means strict controls on how much energy or water can be used in the farming process, access to streams for the livestock, use of fertilizer, etc, are all under the direction of the Land Trust. And there's more. Certain details weren't revealed to the land owner as he signed on the dotted line. For example:

Trusts often re-sell the easement to other conservation groups. They sell and resell them like commodities. The farmer may not know who holds the control over his land. For these groups, the easements become a significant profit center as they rake in fees for each new easement they sign up.

Worse, the conservation group may work directly with government agencies, helping to establish new regulations which alter best management practices, driving up compliance costs. Eventually these cost increases can force owners to sell their land at a reduced price.

This is especially effective when trying to dislodge a land owner who has refused to sell his land to the government or sign a conservation easement. The Nature Conservancy is a master at this trick, creating millions of dollars of income for the group. Its favorite practice is to tell the land owner that the government intends to take the land, but if they sell to the Conservancy then it will guarantee that the land will stay in private hands. But of course, since the government intends to take the land it is now worth much less. So they get the landowner to sell at a reduced rate. Then the Conservancy calls the government agency to tell them the good news that they have the land. And the agency pays the Conservancy full market value. They call that "Capitalism with a heart!!"

Because ownership rights are muddled between taxes, restrictions and best practices requirements, it can be difficult to find a buyer willing to pay a fair market price for the land. In a sense, once the easement is signed, the owner has just rendered his land worthless on the open market.

Conservation Easement deeds use broad language that expands the trust's control but very specific lan-

guage that limits the landowner's rights.

When productive land is taken off the tax rolls, a revenue shortage is created that has to be made up by other tax payers, causing rate hikes in property taxes and other tricks the government can come up with.

Some are more equal that others

All of the combined dangers from conservation easements, and all of the combined powerful forces of land trusts and governments seemed to land on the head of one innocent, lovely lady named Martha Boneta. Her story made national headlines last year and led to a colossal battle in the Virginia state legislature – a battle that continues to rage today without resolution.

In Fauquier County, Virginia, where Martha (and I) reside, the chief "conservation" group is a behemoth called the Piedmont Environmental Council (PEC). They have managed to work there way into every nook and cranny of the county, specifically in the county government. PEC people have bored deeply into the county development office and other country agencies; they converge on farmers to pressure the establishment of conservation easement, and they make a ton of money from them. It's good to be king.

In fact, PEC holds sway over nine Virginia counties and they brag that they have succeeded in "helping citizens protect nearly 350,000 acres" of land with "voluntary conservation easements." PEC calls it one of the most dramatic private land conservation successes in the nation. It is interesting to note that those nine counties, in particular Fauquier County, are the main center of the famous Virginia horse country where, throughout Virginia history, the rich landed gentry have had the pleasure of riding their horses across vast open land in organized fox hunts. These horsy people are rich and powerful with vast estates in the country side. Many have contributed to the PEC land conservation effort as a way to keep open space available for their fox hunting pursuits.

It is also interesting to note the comments and attitudes often expressed by these people concerning newcomers to the county. Say the horsy gentry, there must be a way to curtail new people from coming into the county and buying or developing property. That's because, they charge, these newcomers have no understanding or respect for the age old tradition of riding their horses over the land that now gets fenced in or blocked by these unwanted intruders. How dare they do that to their own land! The answer to their desire to stop it – the PEC.

At a January, 2013 meeting of the Fauquier County planning commission, it was revealed that 96,600 acres of county land is in conservation easements (or 23% of the total land mass of the county). A little research revealed an interesting detail. It seems that, as the conservation easements are sold to the public as a way to save the small family farm, in reality, of the 23% of the land in easements, only 2% of it is actually small family farms. The rest is basically the vast estates of the landed gentry who have found a way to not only keep the land open for their fox hunts – but to also reduce their property taxes.

Martha's plight

Into this atmosphere, enter Martha Boneta. If one were to write down all of the requirements as expressed by the Greens for their idea of the perfect small farmer, Martha Boneta would be their poster child. Martha just wanted to farm. She loves it. And she is very creative about it. It was her dream come-true when she found the small farm in Paris, Virginia. It had been on the market for at least six years. And so she was able to purchase it at a very reduced price from the Piedmont Environmental Council.

Everything was looking great for a lady anxious to get her hands in the dirt. She is into organic farming – just like the PEC advocates in their publications, web site and bumper stickers – "Buy Fresh, Buy Local." Martha made the farm a haven for rescued animals. She restored the heavily deteriorated barn and turned it into a small farm store to sell her products – items produced right there on the farm.

Oh yes, there was just one small detail brought up during the negotiations for the sale of the property. The Piedmont Environmental Council slipped in a conservation easement on the property. This specific easement did not pay any cash to Martha nor did it provide any tax credits. All the benefits went to PEC. Martha signed the document because she had been told conservation easements were a way to protect the farm from being developed. She was for that.

But there is one major aspect of Martha's value system that doesn't fit the PEC profile for the perfect small farmer. She believes in private property rights. And that's when the trouble started. Space does not allow a full description of the battles Martha has faced over her attempts to farm her land. Here is the "Cliff notes" version:

Martha does not live on the farm, she owns a home in another location. The conservation easement she signed said she could have a small 1600 square foot residence on the property. She never used the facility as a residence.

The Fauquier County planning board suddenly issued notice that Martha would be fined for selling items that were not produced on her farm, something she never actually did, and that she needed another permit in order to use the facility for events.

She was immediately threatened with fines of $5000 for each violation brought by the County. The evidence used against her by the county was a photo of a children's birthday party that Martha had posted on her face book page, allegedly proving that she had rented out the barn for a party. in fact, it was a private party for friends. No money exchanged hands for the facility. But the battle was on.

Martha began to learn what a powerful weapon conservation easements can be in the hands of those who wanted to control her actions. The easement gave the PEC the right to occasionally inspect the property for "violations' of the easement. Suddenly Martha was informed that PEC inspectors would visit the farm to investigate the "living quarters." Rather than a random occasional or annual visit, PEC came back again and again; demanding to look into her private closets; even banning her right to video tape the inspections on her own property.

The PEC found fault with a simple water nozzle Martha had purchased to use in washing her animals. Somehow that was a violation. There is an old cemetery on the property dating back to 1832. In it are buried the families of former residents of the area and black slaves. To keep the farm animals from walking though the cemetery, Martha installed a simple fence. "Violation," said PEC, "It damages the view shed." On and on went the harassment over such idiotic claims. Along with it came thousands of dollars of legal expenses as Martha fought to defend herself.

Eventually, as a result of non-stop pressure and the threat of fines from the County, plus the pressure from PEC, Martha was forced to close her farm store, seriously damaging a major part of her ability to earn income from the farm.

What was her real crime? She had challenged county planning restrictions. And in doing so, she had become a threat to their authority and that of the PEC, which is the driving force behind county controls over private property.

Non-Governmental Control = Government Corruption

Every American, especially farmers, should learn this lesson from Martha's story: conservation easements, comprehensive planning, and controls over private property, while always sold as a way to help, are actually Trojan Horse of corruption.

If there is a poster child in this story it is the government of Fauquier County. Corruption begins with the absolute influence and power unleashed by a non-governmental organization like the Piedmont Environmental Council. It is aided by an elite few who seek to use government power for their own personal gains. And it is enforced by a compliant county Board of Supervisors that will use that power as a weapon to crush anyone who dares stand up against them.

Unfortunately, Martha's story is not unique. That very agenda of power, and the corruption it brings, is now showing itself in community after community – all under the over-used and unsubstantiated excuses of environmental protection and "local planning."

Putting Bicycles Ahead of People

Pressure groups and government officials are seizing property – with no accountability

by Tom DeWeese

This is a story of raw power, collusion and government corruption. A story that is taking place in countless towns all over America. A story of "reinvented" government, where self-proclaimed private "stakeholders" and pressure groups set the rules, local elected officials rubber stamp them, and non-elected regional governments enforce them, sometimes with an iron fist – all with no input from citizens, and apparently no rights for private citizens and property owners to stop them or even have a say.

It's the story of the destruction of private property rights in America. Of injustice and tyranny. Of unaccountable government run amok. We need to take action! (See below, in blue, for what you can do.)
Jennie Granato is a tax-paying citizen of Montgomery County, Ohio. She and her family own a 165-year-old historic house and farm just outside of Dayton. They've lived there forty years. On July 31, Jennie's front yard was demolished – thanks to local, county and planning commission bureaucrats!

The Miami Valley Regional Planning Commission (MVRPC) has begun seizing people's private property for its latest "essential" project – a $5-million bike path extension! It has seized almost all of Jennie's front lawn. The bike path will come within just a few feet of her front door!

Jennie and her family tried for over a year to negotiate and reason with this unelected planning commission. Unfortunately, the family was advised by lawyers not to say anything publicly about the pending land grab, so the media viewed it as a non-story. The county and its appraisers kept stalling, saying they wanted a meeting with Jennie, even as they ignored her pleas and offered a pittance for taking her front yard, and likely driving the value of her home down by tens of thousands of dollars.

The meeting never came – and officials didn't even allow Jennie's uncle to speak at a hearing. But the bulldozers certainly came! Last week, with no warning, they just started demolishing trees. Jennie and her family still own the property – BUT the county has barged in, torn out their trees and destroyed their front yard! They will never be able to walk out their front door again, without worrying that they will be run over by bicyclists roaring by at 10 or 20 miles per hour, just inches from their bottom step.

The government trucks and bulldozers also precipitated an even worse tragedy. Jennie's 85 year old mother became so upset over seeing the government's heavy machinery destroying her yard and favorite trees that she suffered a heart attack and died.

Of course the government refuses to accept any responsibility for this tragedy. It was just promoting the "public welfare" of the private "stakeholders" and pressure groups it works with.

That too has become far too common. The government and these groups want more and more control over our lives, more power to tell us what we can and cannot do with our property and lives. But they accept no transparency and no accountability, responsibility or liability when their actions hurt … or even kill … someone – or when they destroy the property values, peace and integrity of a home.

The MVRPC is an unelected regional government force driven by federal Sustainable Development grant money. It never faces voters over its actions or positions of seemingly unbridled power. It simply deals with other government agencies – local, state and federal – and with private groups like the American Planning Association, ICLEI Local Governments for Sustainability, and a hoard of other organizations that represent faux "conservation and environmental" interests whose real motivation is money, and the power to control our lives.

They are "stakeholders" only in the sense that they want something – and are holding the stakes that their government friends are driving through the heart of our constitutional rights.

With the assistance of Federal and State grant programs and willing politicians, who see another way to build their own power and get elected over and over, they rule over us like unaccountable dictators. It's the same story in nearly every community in our nation.

Neither Jennie nor any of her neighbors voted to institute the agency or its policies.

- There was no vote for this bike path.

- There was no referendum on the ballot to approve this project or the spending of their tax dollars.

- Yet the MVRPC imposed itself on privately owned property, giving the owner no say in the matter and giving her a pittance in exchange for the land it is taking away. Soon, strangers on bikes will be crossing her land, passing within seven feet of her front door. And she fears there is nothing she can do about it.

How does she secure her home? How can she ever hope to sell it? Who will compensate her for the loss of value, now that her once lovely and private front lawn is gone? Certainly not the MVRPC.

My American Policy Center has warned Americans over and over about the dangers of this fraud called "Sustainable Development" – and the enforcement of top-down control through non-elected boards and regional governments. Here is that reality, in all of its outrageous raw power.

Jennie's neighbors, property rights activists and Tea Party leaders are joining forces to support her fight to stop this outrage. They have gathered at the property, to protest and take the issue to the news media – and will do so again. To its credit, the media are finally starting to notice what is happening. But if that is the extent of it, you know full well that these government officials will simply laugh, ignore the protests and news stories, wait for the attention to go away, and then grab someone else's property.

That's why concerned citizens across the nation need to join this fight and put power behind this effort to stop these bureaucrats from taking Jennie's property. Freedom fighters need to build a huge protest fire and turn this into a national property rights issue.

Corrupt government officials use taxpayers as doormats, pawns, bank accounts and land holders for their agendas and power plays. If we continue doing nothing to stem the rising tide of government tyranny and corruption, we will watch our rights and property disappear, one by one.

Here's what you can do to help

As the local Dayton area residents do all they can with sign waving, demonstrations and protests to call attention to this blatant property theft, outraged Americans from across the country can bring an avalanche of phone calls and emails on the perpetrators – the scoundrels who think they can prey on any citizen without consequences. Make them feel heat for their actions!!

Find the full list of officials, their names, phone numbers and emails of the Montgomery County, Ohio Commissioners, the Washington Township Board, and the members of the Miami Valley Regional Planning Commission on page 6. Then call them and let them know what you think!

Americans concerned for their own liberties need to bury these officials in calls and emails of protest. We need to make these dictators and thieves aware that what they are doing is unacceptable and will not be tolerated. We need to inform them that We the People have rights, and will fight for them.

Let them know they have overstepped their bounds. Destroying a family's home, property, civil rights, peace of mind, and a woman's life – for something as unnecessary as a bike path – is an outrage.

But, as you make these calls – BE RESPECTFUL. There is still a hope that some official or judge will listen and take the proper action to stop this theft and destruction of Jennie's land.

If we can win this fight for Jennie in Ohio, we will have the strength and momentum to help the next victims of government overreach. And make no mistake, there will be one. So don't wait. Call them now.

1) The “construction limits” stake in this photo is less than 5 ft from the front wall of the Granato home. The “essential” bike path is just a foot from the sign, where the front yard used to be.

3) The plastic shows where the bike path will go – right up to the bottom step of the Granato home.

2) Heavy equipment tearing out the trees in front of the Granato home.

4) The magnolia and other trees largely gone. This is where the crew stopped briefly after Jennie Granato's mother died of a heart attack.

Mississippi Tries to Take African-American Land for Auto Manufacturer Parking Lot

Lonzo Archie is a diabetic African-American in his late 60s whose land was condemned by the state of Mississippi to make way for a new Nissan Motor Company parking lot.

Archie has lived on the property most of his life and does not want to move.
In November 2000, the Mississippi state legislature reached a deal with the Nissan Motor Company to build an auto plant in Archie's hometown of Canton. Nissan's planners hoped to build a parking lot on land belonging to Archie.

Although a state official told The New York Times that Archie's property was not necessary to complete the Nissan project, state officials nonetheless moved forward with plans to condemn Archie's property to turn it over to Nissan. Mississippi's apparent motive: make it clear to the business community that Mississippi has a business-friendly environment.

James Burns, Jr., executive director of the Mississippi Development Authority, was quoted as saying, "It's not that Nissan is going to leave if we don't get the land. What's important is the message it would send to other companies if we are unable to do what we said we would do."

Archie, with the help of the Institute for Justice (IJ), argued against using government authority to transfer his private property to a private company. IJ appealed to the Mississippi Supreme Court, which decided to stay the condemnation in September 2001. This temporarily blocked the eminent domain proceedings until the Court could review the constitutionality of the situation. In April 2002, the state decided to reverse its position and said Nissan would redesign its truck manufacturing facility so Archie could remain on his land.

Source: Institute for Justice

New Yorkers, Beware

William Minnich's business produces beautiful handcrafted furniture and cabinets, some of which have appeared in New York City's Metropolitan Museum of Art. State authorities, however, apparently have no use for Minnich's talents. The state wants to turn the building housing Minnich's business into a Home Depot parking lot.

The East Harlem building has been in Minnich's family since 1927. He purchased it in 1981, and spent over $250,000 improving the structure. In September 1999, the Empire State Development Corporation, a state agency, issued a Determination and Finding to take Minnich's property under New York's eminent domain law. The land acquired under eminent domain rules is supposed to be used for a public project, such as schools, roads or parks. In this case, the government was seeking to take the land to aid another business.

New York's eminent domain laws as currently written and enforced essentially keep property owners in the dark until they've lost their chance to argue against proposed takings of land. Government officials are only required to publish a notice in the legal ads section of the local newspaper to notify property owners of their intent to condemn property. All other states, with the exception of Indiana, require a notice be sent directly to the property owner. From the date of the newspaper publication, the unsuspecting property owner has only 30 days to make an appeal.

If property owners fail to see the notice, they've lost their chance to appeal the decision. The Minnichs missed their deadline to challenge the condemnation of their property. Although they tried to follow the process, they did not realize they needed to file an appeal within 30 days after seeing the newspaper notice. Nowhere in the newspaper notices does it inform owners of their right to appeal.

On October 4, 2000, on behalf of the Minnichs, the Institute for Justice filed a federal lawsuit in the U.S. District Court for the Southern District of New York to fight New York's eminent domain procedure law. The Institute's lawsuit claimed that New York's eminent domain procedure violates due process "by failing to give owners proper notice and a hearing, thereby depriving them of the right to challenge the condemnation of their property."

On September 19, 2001 Federal District Court Judge Harold Baer, Jr. dismissed the lawsuit, saying Minnich did not have "standing" — the right to file a lawsuit. New York law operates under the assumption that clients know everything their lawyers do. Therefore, Judge Baer ruled, Minnich could not argue he did not understand New York's eminent domain proceedings because he had previously consulted a lawyer. But Judge Baer also ruled that "the rationale for [the Court's] decision has no bearing on the very serious underlying issue of what constitutes adequate notice under New York State's condemnation proceedings."

During the course of litigating the case, Minnich's wife died and his nephew experienced severe health problems. These developments prompted Minnich to settle the case out of court and sell his property. In light of Judge Baer's statements, the Institute's attorney, Dana Berliner, said that their group will file another lawsuit challenging New York's eminent domain laws representing different owners.

Sources: Institute for Justice, TheJournalNews.com, The New York Post

Church Condemned; Has No Right to Appeal

St. Luke's Church in North Hempstead, New York provides more than church services to the community. The church also helps members of the community with heating oil, rent money and drug counseling.

Unfortunately for the church and those it serves, however, the North Hempstead Community Development Agency (NHCDA) thinks its definition of urban renewal can do more for the community than can St. Luke's. NHCDA has decided to condemn the property on which the church stands for an urban renewal project, although the NHCDA's specific plans are still — to this point — unknown.

The trouble started in 1994, three years before St. Luke's bought its property in 1997 on Prospect Avenue. This is when the NHCDA added the land to the area's redevelopment plan, which made the property eligible for condemnation by the government under its power of eminent domain.

New York law does not require that the titles to properties state if land has been so designated. The previous owner mentioned nothing, and the title said nothing, so the church was unaware of the designation when it bought the property.

In 2000, the NHCDA decided it was going to take the church's land through the power of eminent domain. Unfortunately, the church had lost the right to appeal the condemnation in 1994 — before it bought the property.

Currently, church members, and others in the community who appreciate St. Luke's good works, are awaiting the NHCDA's specific plans.

Source: Institute for Justice

Brake Shop Faces Competition from Hardware Store and the Government Takes Sides

Bailey's Brake Service is a successful family-owned business that has been at the corner of Country Club Drive and Main Street in Mesa, Arizona for the 31 years. It may soon be gone. Mesa may force owner Randy Bailey to sell the city the property at a price it determines so the city can sell the land to another private owner.

Bailey's shop is surrounded by open land and empty buildings, prompting Mesa's redevelopment director, Greg Marek, to declare the area "blighted." The city government is seeking to redevelop the nearby downtown area. As Marek told the Arizona Business Gazette: "One of our goals is to eliminate unsightly, substandard and obsolete uses

that can't be rehabilitated."

But Bailey claims that Ken Lenhart, the owner of an Ace Hardware store in Mesa, wrote to the Mesa City Council to ask it to take Bailey's property through the power of eminent domain so Lenhart could buy it and relocate his store there. Soon after receiving the letter, the City Council approved a measure to expand the redevelopment zone to include Bailey's property. Since then, Lenhart has purchased numerous parcels of land surrounding Bailey's Brake Service.

On April 29, 2002, Maricopa County Superior Court Judge Robert Myers ruled the city had the right to take the Bailey property, but stayed his own ruling two days later and prevented the city from taking the property until a special action was filed with the Court of Appeals. Bailey challenged Judge Myers' ruling. On May 31, 2002, the Arizona Court of Appeals extended the period in which Bailey's property would remain untouched until after the appeals court issues its decision.

Legal experts working with Bailey point out that eminent domain powers allow the government to take property for the public good, but not to sell to another individual for that individual's private gain.

Sources: Institute for Justice – Arizona Chapter, Arizona Business Gazette, Randy Bailey, Tim Keller

New York City Museum to Couple: We Want Your House

For 14 years, Lou & Mimi Holtzman have been living next to the Lower East Side Tenement Museum at 97 Orchard Street in New York City. The museum, chartered in 1988, illuminates how New York City's immigrant families lived circa 1863-1935. It attracts about 90,000 visitors a year.

According to museum president Ruth J. Abram, the museum needs more space.

She'd like Lou and Mimi Holtzman's building at 99 Orchard Street to provide the space. She'd also like the taxpayers to pay for it.

The Holtzmans, however, do not want to sell. Lou's family has lived in the building since the early 1900s.
The reasons Abram wants the space are many and varied. She'd like space for classrooms to teach English to immigrants. She'd like to have room for programs to teach local residents about the history of their neighborhood. She'd like "state of the art" storage space. She'd like to install an elevator. She'd like more room for "immigrant artists" who are "searching for places to express their experiences."

Abrams says these things must be done in the Holtzmans' building "because it is a sister building and shares a party wall." But storage and classroom space don't need shared walls. And the elevator is necessary only because the museum doesn't want to widen doorways (for wheelchair access) at its present facility, because doing so would alter the "configuration and fabric of the building."
Abrams also would like to have room for more visitors, who currently pay $7-9 per person for tours during the museum's limited tour hours.

Ironically, Abrams also would like more space so the Museum can hold programs that "promote tolerance and teach citizenship skills," even though both those values must be violated if the space is to be obtained against the will of the owners and at taxpayers' expense.

Abrams even cites the September 11 terrorist attacks as a reason to expand the museum, because the museum is comforting to visitors.

Not taking the Holtzmans' "no" for an answer, the museum has asked the Empire State Development Corporation (ESDC), a state agency, to condemn the Holtzmans' property and acquire it for the museum through eminent domain provisions. These provisions allow governments to condemn private property for the greater public good. When property is taken through eminent domain, building owners are to be compensated by the taxpayers.

Newspaper accounts report the museum originally sought to buy the building for $1.35 million and spend over $2.3 million to renovate it. The Holtzmans, however, believe the building alone is worth between $7 and $9 million — particularly since they and a partner have just completed a multi-million dollar renovation of the 15 apartments and a restaurant in the building. The typical rent for a 375-square-foot apartment in their building is $1,600 per month.

The Holtzmans have the support of the local community board and several state assemblymen, but the ESDC has not yet ruled on whether to proceed with eminent domain proceedings.

Sources: The New York Times, The New York Post, Lou Holtzman, The Tenement Museum

Government Takes Developer's Land for One Percent of Its Value, Sells It to Rival Developer

Developer Moshe Tal submitted plans in 1995 to develop 1.4 acres of property he owned in downtown Oklahoma City, Oklahoma into retail shops, restaurants and entertainment facilities.

The City Council condemned his land in 1997, saying it was needed for parks, recreational facilities and parking. An appraisal and sales of adjacent property in 1997 and 1998 led Tal to believe his land was worth $5 million. The city offered him just $50,000.

Tal sued the city, but a trial court judge ruled that the city had a right to condemn property for "public use" under its powers of eminent domain. In 1998 the city announced plans to sell the former Tal property to a rival developer for $165,000. This new developer proposed to build restaurants, retail shops and other facilities similar to those in Tal's original plans. Tal went back to court, arguing that the city had misrepresented its intended use for the land. A trial court dismissed Tal's challenge. The Oklahoma Court of Civil Appeals and the Oklahoma Supreme Court also ruled in favor of Oklahoma City, ignoring the constitutional issues Tal brought up, such as his right to just compensation and due process.

In April 2002, the U.S. Supreme Court chose not to accept Tal's case for review, exhausting his ability to appeal his case further.

Tal has since filed conspiracy charges against the developer and seven affiliated corporations for $210 million. The American Association of Property Owners and the Atlantic Legal Foundation will represent Tal in federal court as the case proceeds.

Source: American Association of Small Property Owners, Moshe Tal

State Refuses Full Compensation After Taking Elderly Woman s Front Yard for Highway

Charlene Coffee, an 80-year-old grandmother in DeKalb County, Tennessee, can no longer look at her front yard without crying. What used to be a nice yard with chestnut trees will soon become part of a major highway.

The state of Tennessee, through a $20.6 million project, is widening a five-mile section of Highway 70 in DeKalb County to ease traffic congestion. The state took a portion of Coffee's property for construction of the road through its power of eminent domain. The state has refused to buy her home, which she claims is now ruined because there will be approximately ten feet between the road and her house once the project is complete.

Coffee fears that such a short distance between her home and the road is an accident waiting to happen. "I'd be afraid to go to bed every night... I can't do that."

Coffee doesn't want to live in fear, and — since the state refused to buy her home after condemning part of her

property — she wants to sell it. She doubts she will be able to find a willing buyer for the home, where she has lived in since 1947, because it is so close to the proposed road. The state offered Coffee $26,000 for the property it took, which is approximately 30 percent of the home's estimated value. That amount of money is not enough for her to move.

Source: WKRN - Nashville

City Tries to Seize Church Property for Discount Store's Use

Cottonwood Christian Church bought 18 acres of property in Cypress, California in 1999 for $13 million, intending to build a larger worship center there. The church must now turn people away from services every week because there is not enough room for all the parishioners.

The church suffered a setback in May 2002, when the Cypress City Council voted to condemn the church's property so that a Costco retail store could be built on the land. The city argued that the tax revenue created from the Costco justified using the government's power of eminent domain to take the property from the church. Community Developer Director David Belmer was quoted in The Washington Times saying, "We do not view the church use as consistent with the goals and objectives for development of this key piece of property." The Wall Street Journal editorial page questioned the legality of the city's actions, writing, "But the whole point of property rights is that bureaucrats don't get to pick and choose who owns what."

Cottonwood Church, with help of The Beckett Fund, a public interest law firm, argued in U.S. District Court that the city's proposed taking was unjustified. Judge David Carter agreed with the church, and ruled against the city's plan to take away the church's property. He ruled that even if the city had a compelling reason to take the land, it should have done so in a less restrictive manner. Carter characterized the city's actions as using a sledgehammer to kill an ant.

Sources: The Washington Times, The Wall Street Journal, The Beckett Fund

New York Times Says Jump, New York Government Says How High?

Executives at The New York Times began to rumble that the newspaper would begin moving its workers to offices outside the city if the Times could not find a new building. In response, in December 2001, city and state authorities gave the newspaper a giant property located at the outskirts of Times Square for a new 52-story headquarters. Many consider it a "sweetheart deal" to keep the newspaper happy.

However, neither the city nor the state own the land they gave away. It is privately- owned: 11 buildings on the site house approximately 30 businesses. Officials are using the power of eminent domain to evict the current tenants in an action that contradicts the Fifth Amendment to the U.S. Constitution, which allows the use of eminent domain only for "public use" with "just compensation."

Specifically, on December 13, 2001, New York Governor George Pataki announced that the Empire State Development Corporation (ESDC) would condemn land on Eighth Avenue between 40th and 41st Streets for the Times' new building. The paper is set to pay $85.6 million for it; a price that Massachusetts Institute of Technology real estate professor W. Tod McGrath says is "at least a 25 percent discount." Sidney Orbach, the co-owner of one of the buildings slated to be condemned, backs up this estimate. He points out that a smaller building across from his recently sold for $111 million.

Speaking on how the condemnation destroys his investment, Orbach told Reason magazine: "I would have said this couldn't happen in the United States. [My building] used to be a factory building, and we totally converted it to an

office building. It became a very, very desirable place. We just want to keep the building. We've put a lot of money, energy and sweat into this. I am now sitting with a tremendous amount of vacancy because no one wants to rent space that has a good chance of being condemned." Worse, Scripps-Howard columnist Deroy Murdock has reported that the ESDC told tenants in August that they should send their rent payments to the state rather than landlords like Orbach from now on — making it hard for the owners to meet mortgage payments because the lack of rental income.

Among those businesses likely to be displaced is Arnold Hatters, which has been on the block since 1960. Mark Rubin, whose father began the business that he now manages, said: "As far as I can remember, this has always been our family's breadbasket. I think it's atrocious that, for the sake of a private corporation like The New York Times, somebody has the right to take it away from us."

Sources: Reason Magazine, The Village Voice, Scripps-Howard Columnist Deroy Murdock

The New Fifth Amendment: Nor Shall Private Property be Taken for Public Use... Unless We Say So

Pittsburgh Mayor Tom Murphy created a plan to bring national retail stores to his city. He was going to hand over property to a private developer — the Chicago-based Urban Retail Properties — in order to entice national chain stores such as The Gap, Tiffany's and FAO Schwartz to build stores in the Fifth and Forbes neighborhood of Pittsburgh.

Murphy's plan would have required using the city's power of eminent domain to take private property and turn it over to Urban Retail Properties. The plan would have condemned over 60 buildings, housing nearly 125 businesses, some of which had been family-owned for generations.

Bonnie and Aaron Klein, for example, own a small building that houses their camera shop and three other tenants. The Kleins have a college-age son and need the camera store's revenue for his tuition. However, as the Kleins' property was slated to be taken by the government as a part of Murphy's development plan, their income would be lost.

Fortunately, things have worked out for the Kleins so far, as the mayor's retail dreams were delayed. The Seattle-based Nordstrom department store decided in November 2000 that it would not build a store in the in the Fifth and Forbes area. This decision and other factors, including legal action and a public relations effort on behalf of the small businesses by the Institute for Justice, prompted Murphy to halt eminent domain proceedings.

As reported in the Pittsburgh Tribune-Review, Murphy subsequently and repeatedly promised that further redevelopment efforts for the area would not include the "tool" of eminent domain.
Two years later, however, he had weakened his promise, saying only that eminent domain would be used only as a "last resort."

As George Harris, who is trying to save his 101-year-old Harris Brothers flower shop founded by his immigrant father and uncles, noted, "Of course eminent domain is a last resort. In all threats of force, the actual use of it is the last resort. 'Do as I say... or else,' is the criminal's creed."

As Harris wrote in the Pittsburgh Post-Gazette in May 2002: "I watched my father serve Pittsburgh patrons until he retired at age 94, and I have given 50 years of my own life to the flower shop. It is more than just a business, more than just an income – it is the very lifeblood that runs through my veins. I am not interested in holding out for a better price, for there is no price. I just don't want to sell. I want to keep my family business."

Harris may not succeed.

As columnist J.H. Huebert wrote in the Tribune-Review, "Even though the Founding Fathers only intended that land may be taken for truly public projects, such as roads, courthouses and city halls — and not for private commercial developments – the present day activist courts have generally let city governments slide with anything they can remotely justify as a 'public purpose.' So Mayor Murphy might just be able to condemn the property with impunity."

Sources: Institute for Justice, Pittsburgh Tribune-Review, Pittsburgh Post-Gazette

Snowy Plover Habitat Designation Protects Small Bird, But Kills 1,000 Jobs

The U.S. Fish and Wildlife Service (FWS) listed the snowy plover, a small shorebird, as a threatened species in 1993. In 1999, the FWS designated 28 areas along the West Coast as critical habitat for the plover. The habitat covered approximately 20,000 acres — over 200 miles — of coastline in Washington, Oregon and California.

The declared habitat areas include beach areas that are off-limits to camping, walking, jogging, picnicking, horse-back riding, kite flying, sunbathing, beach cleaning and livestock grazing. These restrictions closed large swaths of beaches in Coos County, Oregon, blocking tourist access and taking away much-needed tourism revenue. The FWS did an economic analysis of the impact of listing the Oregon Dunes National Recreation Area as part of the critical habitat in 1999. Its analysis concluded that the listing of the snowy plover could impact the economy of the region and noted that the Dunes contribute $20 million annually to the economy as well as 1,000 jobs and $19 million in household income for the area.

In spite of this, the FWS determined that the critical habitat designation would impose no additional hardship on the area beyond those already associated with listing the plover as threatened in 1993. Coos County Commissioners, however, asked the Pacific Legal Foundation to represent the county in court, arguing that the FWS did not properly take into account the economic impact of its decision as required by federal law. Lawyers for Coos County will cite the ruling of the Tenth U.S. Circuit Court of Appeals in Denver, which stated in May 2001 that the FWS had not properly considered economic impacts of critical habitat designation in New Mexico for the southwestern willow flycatcher. The federal government has indicated it wants to keep the habitat designation in place while it studies the economic impact of the designation — something that lawyers for the county say they will fight.

Source: Pacific Legal Foundation

Landowner Convicted of Killing Prairie Dogs, But Are Any Dogs Dead?

In 1995, Lin Drake bought property near Enoch, Utah, intending to build a subdivision of affordable homes. He hired an engineer later that year to determine if there was a prairie dog colony on his property. A colony was found west of his land but no prairie dogs were found.

Responding to an anonymous tip that prairie dogs were on Drake's land, state wildlife officials as well as employees of the U.S. Fish and Wildlife Service (FWS) arrived to determine how many prairie dogs were on Drake's land. They claimed to have seen between 74 and 78 prairie dogs. Drake asked them to re-visit his property so he could show them an old inactive prairie dog colony and prove to them it had been abandoned for a colony farther west. FWS employees made several trips to his property in 1995 and 1996 and found no habitat or holes made by prairie dogs. One FWS employee claimed he saw two prairie dogs on the property, but was unable to prove he saw them there. He claimed the dogs moved too quickly to be caught on film.

Nonetheless, Drake was fined $15,000 in 1998 for "harming" prairie dogs and disturbing their habitat in violation of the U.S. Endangered Species Act. He requested a hearing before an administrative law judge, seeking proof that 1) prairie dogs had lived on this property, and 2) that he had caused "death or injury" to these prairie dogs. The only evidence provided on the first charge was the testimony of one FWS employee, who had no documentation. No evidence was provided of the second charge.

Nonetheless, Drake was found guilty. The judge relied upon the FWS employee's testimony in the first instance because, the judge said, federal employees have no reason to lie. No evidence apparently was required to convict Drake of the alleged killing.

At the time, there was a disease common among prairie dogs in the region. If any prairie dogs had died on the

land — note that no corpses ever were found, and no evidence of any deaths ever was provided — disease was a possible culprit. Drake, then, is being held legally responsible even if the alleged prairie dogs did exist and died of a disease Drake had no ability to control.

The Mountain States Legal Foundation is representing Drake in his appeal to the U.S. Department of Interior's Office of Hearings and Appeal. It has yet to hear his case. Until that time Drake does not have to pay the fine. Should he lose in his appeal, he then can take his case to district court.

Source: Mountain States Legal Foundation

In New Mexico, Support for the Endangered Species Act is Drying Up

"What will we do when there is not enough water for our kids?" Albuquerque Mayor Martin Chavez wonders. "What will we say when they ask why we let our homes, our industries and our cities take a back seat to a well-meaning but outdated federal statute?"

For years, Endangered Species Act (ESA) enforcement has killed jobs in New Mexico. Now environmentalist lawsuits filed under the ESA to protect the Rio Grande silvery minnow may cut the amount of water available to New Mexico's metropolitan areas as well as to its farmers.

Local residents say this would be a disaster for local residents. If so, it would be just one more endangered species-related blow to this hart-hit state.

Albuquerque's Mayor Chavez isn't the only prominent New Mexican who believes the ESA is making life harder.

As the Albuquerque Journal reports, Santa Fe Mayor Larry Delgado worries that lawsuits by environmentalists over the Mexican spotted owl could hinder a forest thinning project designed to reduce fire and flood in his part of the state.

Danny Fryar, county manager in New Mexico's Catron County, located 200 miles southwest of Albuquerque, told the Journal, "They started closing down logging in the national forest in 1989 and by 1992 it was all over. Environmental lawsuits just about destroyed us and they haven't quit yet."

Alex Thal, a professor at Western New Mexico University, says of the situation in Reserve, Catron County's county seat: "When the sawmill in Reserve closed in 1992, it reduced the economy in that area by about $8.6 million a year, counting direct, indirect and induced income."

Because of financial pressures, Reserve's population has declined a whopping 25 percent. Businesses have gone under. As the public school system has been de-populated, public school classes have been cut back to just four days a week.

"There's a whole host of things that go wrong in a community when this happens. You read about divorces, substance abuse, domestic violence, truancy, suicide indicators of a social system breaking down," Howard Hutchinson, a local resident and executive director of the Coalition of Arizona/New Mexico Counties, told the Journal. "We've had increases in every one of those areas. If what happened here with the unemployment situation were to happen in Albuquerque, 100,000 people would suddenly be out of a job."

Northern New Mexico is likewise affected. Alberto Baros, an assistant county planner in Rio Arriba County, north of Santa Fe, believes some environmental activists are abusing the ESA. "The Act brings [people] to a point that they won't recover. They'll be out of business soon. And for some of those people it's a loss of custom and culture."

"Basically, we're in a straitjacket," Antonio "Ike" DeVargas of La Madera, a town in Rio Arriba County, has told the paper. "[Environmentalists] don't want us to have cows, they don't want us to cut wood, they don't want us to mine. They just want to set everything aside so nobody can use it."

Environmentalists have filed least 134 lawsuits in New Mexico since 1995 seeking greater enforcement of endangered species regulations.

In the minnow case, a federal court has ruled that the law gives minnows the greatest right to the water. Following a joint appeal by the city of Albuquerque and the state of New Mexico, in October 2002, implementation of this order was delayed, pending a full appeal of the order in January 2003.
In a September 2002 Albuquerque Journal poll, two-thirds of New Mexico's registered voters said they believe the ESA goes too far. Should the city and state lose their appeal in the water case, this number is likely to go much higher.

Sources: Albuquerque Journal, United Press International

Federal Government Forbids Sale of Lawfully-Acquired Property

In November 1999, undercover U.S. Fish and Wildlife Service agent Ivar Husby, claiming to be a Norwegian collector interested in Indian artifacts, went to Timothy Kornwolf 's home in Stillwater, Minnesota and persuaded Kornwolf to sell him two items containing golden eagle feathers. Husby negotiated the sale of Kornwolf 's Indian dance shield and headdress for $12,000, gave Kornwolf $7,000 in cash for the shield, and wired the remaining amount. The headdress was seized after a search warrant was issued.
Kornwolf's sale of his artifacts was said to violate the Bald and Golden Eagle Protection Act of 1962 and the Migratory Bird Treaty Act of 1918 — together commonly called the "Feather Act." The laws prohibit the sale of eagles or their parts, nests, or eggs.

In the U.S. District Court of Minnesota, Kornwolf proved that the artifacts had been family property since 1904, before passage of the laws. As such, Kornwolf believes the Feather Act is unconstitutional in his case because it denies him the right to sell legally- acquired property. The court, however, disagreed.
Kornwolf chose to plead guilty to four of the eight counts for which he was indicted, reserving the right to withdraw his plea if the acts were later found unconstitutional in his situation. The District Court sentenced Kornwolf to three years of probation with 180 days in a home detention program that included electronic monitoring, a $2,000 fine, and a special assessment of $400. Kornwolf was allowed him to keep the $12,000, pending an appeal.

In November 2001, Kornwolf appealed to the U.S. Court of Appeals for the Eighth Circuit, asserting that denying him the right to sell his legally-acquired artifacts is an unconstitutional "taking" of his property without compensation. In early 2002, the Eighth Circuit Court of Appeals upheld the lower court's ruling against Kornwolf.

In April 2002, Kornwolf petitioned the U.S. Supreme Court to hear his case but, on October 8, 2002, the court declined.

Sources: Mountain States Legal Foundation, Eighth Circuit Court of Appeals

Klamath Basin Area Struggles On One Year After Federal Government Shut Off Water

In the spring of 2001, federal authorities shut off water to 1,500 farmers and over 200,000 acres of the Upper Klamath Lake region of Oregon and northern California in order to save two endangered species: the sucker fish and the coho salmon. The federal agencies took this step in response to lawsuits filed by environmental groups that claimed the government had not adequately protected these endangered species since a 1991 drought.

With no water for irrigation, farmers lost their crops. Businesses lost revenue, as farmers had no money to spend. Other wildlife that depended on plentiful waters, such as waterfowl, suffered, but were deemed less important than

the endangered fish.

Residents complained to the federal government, and the case received national attention, but the irrigation canals remained dry.

In early 2002, the National Research Council released an interim report on scientific issues relating to the water shutoff. According to the report, there is "no clear connection between water levels in Upper Klamath Lake and conditions that are adverse to suckers. In fact, the highest recorded increase in the number of adult suckers occurred in a year when water levels were low." Because of this report, the Department of Interior released water for irrigating crops in 2002.

Many area farmers, however, did not make it through the dry summer of 2001 and had to sell equipment, livestock and, in some cases, the farms themselves.

Steve Kandra, whose family has farmed in the basin for nearly a century, said, "We are on our last run and 2002 will make or break 92 years of farming for my family." Kandra typically had been able to produce about 140 bushels of wheat per acre on irrigated land. Last year, on un-irrigated land, his yield was only six bushels per acre.

Farmers are not the only victims of the federal decision to keep water in Klamath Lake for endangered fish. Wetlands were also cut off. Wildlife that depended on the water in Klamath wetlands — such as bald eagles and ducks — disappeared.
Local businesses that depend on farmers as customers also were hurt. Bob Gasser, who runs Basin Fertilizer in Merrill, Oregon, said, "People who have paid me for 27 years have been unable to settle their bills. Do I tell them no this year? I can't."

Land in the region that was valued at $2,500 per acre is now valued at $50 per acre. Even at this bargain price, there are few willing buyers. No one will buy farmland where the future availability of water is uncertain.

Sources: Oregon Dept. of Agriculture, The Wall Street Journal

Man Forced From Home to Accommodate Bats

Grant Griffin just can't sleep in his home anymore. His one-bedroom apartment in Bradenton, Florida has had some unwelcome company — a colony of bats. During the day, bats can often be found in his sink or other areas around his home. At night, the bats' incessant noisemaking keeps Griffin awake.
Besides being a nuisance, the bats are dangerous. Griffin and his girlfriend have both discovered small bites on their bodies.

The seemingly simple solution: have the bats exterminated. The bats, however, are classified as "native wildlife" by the state of Florida and cannot be poisoned or trapped. So Griffin is forced to live with the bats in his home. "I'm about as freaked out as I can get... I feel like there are things crawling all over me," Griffin told the Sarasota Herald Tribune.

If the bats were rabid, Griffin could have the colony exterminated. This is not a likely solution to Griffin's problems, however, as less than one-half of one percent of all bats are rabid. Until it can be determined if the bats are rabid, Griffin has been spending the night at friends' homes to avoid dealing with his unwelcome housemates.

Griffin's landlord offered to put screens over the holes where the bats enter and exit his home to collect food, but this posed another problem. During the summer, at the peak of the bat mating season, blocking the entrances and exits the bats use would cause the babies to die for lack of food and create an unbearable stench in the house. Griffin has another more permanent solution in mind for dealing with the bat problem in his house. He has made plans to move.

Sources: Sarasota Herald Tribune, Florida Fish and Wildlife Commission

$200,000 Fine If Your Cats Eat Threatened Mouse

Homeowners in the Pine Creek subdivision of northern Colorado Springs, Colorado are not allowed to let their cats roam outside. The rule is not out of concern for the cats, but because the cats might eat a mouse, in particular, the Preble's meadow jumping mouse. This mouse was listed as an endangered species in 1998 and has been seen in the area.

If a cat were to eat the endangered mouse and it is determined that the Endangered Species Act was knowingly violated, the U.S. Fish and Wildlife Service (FWS) could fine the cat's owner $200,000.
The FWS has proposed designating 60,000 acres in Colorado and Wyoming as critical habitat for the mouse with kangaroo-like hind legs.

As Robert Hoff, a Colorado Springs realtor, said, "There's not a shred of evidence that this mouse is even threatened. They ought to be spending more time on protecting the real threatened species, not the phony ones."

Source: The Gazette-Montreal

Six Flies Could Cost Town $35 Million in Tax Revenue; Government Says Fly Protection is Not A Question of Specific Numbers

The Delhi Sands flower-loving fly was officially listed as an endangered species by the U.S. Fish and Wildlife Service (FWS) in 1993. Since then, the fly has caused problems with several southern California construction projects. Recently, the construction of a $12 million sports complex was put on hold after the discovery of a half-dozen of the protected insects.

The FWS is now in the midst of a study of the Delhi Sand Dunes to determine the exact habitat of the endangered fly. So far — besides the construction of the sports complex that is indefinitely on hold — appearances of the fly have caused delays and changes in the construction of a school, a wing to a hospital and sewer and flood-control projects in Colton, California.

Regarding the habitat of the Delhi Sands flower-loving fly and its relationship with mankind, FWS, official Jane Hendron told The Washington Times that "it's not a question of specific numbers" of the flies found near construction sites. "What we are dealing with in the case of this particular species is a dramatic reduction of what was once its historic habitat."

Colton Town Manager Daryl Parrish is concerned that an expected $35 million in taxes will be lost if the developer of the sports complex pulls out of the project. He's also concerned that designated habitat that is now illegally used as a dumping ground will never be rehabilitated. Parrish said: "It's very frustrating to us. This particular project provides economic and recreation opportunities to this community. Not only that, but the proposed property is very, very blighted with dirt, weeds and trash."

Source: The Washington Times

Marines Less Prepared for Combat Thanks to Endangered Species Restrictions

Marines at Camp Pendleton in California may not be as prepared for action as they should be because of environmental regulations have been imposed on their training.

The 125,000-acre Camp Pendleton is home to three Marine Expeditionary Units, including more than 100,000 soldiers, their families and civilian employees. Eighteen plant and animal species the government considers endangered or threatened also are found there. As a result, the U.S. Fish and Wildlife Service (FWS) has tried to make over 70,000 acres of the base, more than half, off-limits to soldiers in the name of protecting endangered habitat.

According to Colonel Bennett W. Saylor, chief of staff of the 1st Marine Division, “There are certain standards in our training and readiness manuals that we cannot conduct… To be able to come from the sea, cross the beach and occupy firing positions adjacent to a beachhead, unopposed, and to go to firing positions inland is important to us.” Local FWS representative Jane Hendron counters, “We understand that the U.S. Marine Corps has a mission, but our service has a mission, too — preserving endangered species.”

Because of the endangered species regulations, amphibious landings at Camp Pendleton are made at only a few locations and soldiers are limited to a few authorized roads during training for fear of disrupting protected habitats and incurring $50,000 fines and other penalties. These restrictions on combat training concern military leaders. Artillery rarely practice high-angle firing or “shoot and move” exercises due to the lack of necessary firing range sizes because of the Arroyo Southwestern Toad. A 1999 amphibious assault was reduced from 2,400 participants to 800 because of the presence of the Tidewater Goby, an endangered fish.

Camp Pendleton has received several exemptions from normal regulations, but an environmental organization has sued the FWS as a result. Andrea Durbin of Greenpeace says, “We need the military to protect the nation… which means protecting the environment as well.”

Camp Pendleton employs 65 people and spends between $20 and $40 million specifically for environmental management and conservation programs on the base. General Richard Myers, the chairman of the Joint Chiefs of Staff, recently told a congressional panel that “Environmental concerns are… very important and we take those seriously. But we must be able to strike a balance with readiness requirements.”

Sources: Fox News, North County Times

Man Charged With Crime for Protecting His Sheep

Houston Lasater, a Colorado rancher and the owner of Lasater Sheep, Inc., holds the rights to a grazing permit in the San Juan National Forest near Durango, Colorado. In August 2000, a sheep herder employed by Lasater was injured and required medical treatment. While helping his worker obtain treatment, Lasater hired a temporary herder to watch his sheep while he was away. When Lasater returned to check on his sheep, the temporary herder — a member of the Navajo Indian tribe — said he had killed a “maii” (Navajo for bobcat). The herder killed the bobcat because it attacked and killed one of Lasater’s lambs.

Weeks later, the U.S. Fish and Wildlife Service (FWS) notified Lasater that it had found a lynx that had been shot and killed on his grazing allotment. An FWS agent came to the property to discuss the killing with Lasater. He introduced the FWS agent to the Navajo herder, but no charges were filed regarding the situation.

Almost 18 months later, FWS sought a civil penalty against Lasater, charging that the animal killed was a lynx protected under the Endangered Species Act (ESA). If convicted, Lasater could face a fine of up to $25,000. FWS claimed Lasater had violated the ESA, which says it is unlawful to “solicit another to commit, or to cause [an ESA violation] to be committed.” The charges were later dropped, however, at the request of the Colorado Department of Natural Resources. The Colorado legislature has also called on the FWS to re-designate the lynx introduction plan “experimental.” This change, if adopted by the FWS, would allow residents to protect their livestock against the animals without fear of prosecution.

Source: Mountain States Legal Foundation

Mine Closed, Lest Snakes Worry

Jay Montfort's Sour Mountain Realty is a family-owned New York company that has had a tough time with New York State's Department of Environmental Conservation (DEC).

The story begins early in the last decade, when owner Jay Montfort decided to operate a surface mine. Immediately after he filed the required permit application to the DEC, Montfort found himself bogged down in a complicated and time-consuming process. First, the DEC did not issue its decision within the legally-required time frame, and Montfort's permitting costs soared to over $2 million. Then, when the DEC finally approved his application, it suddenly reversed itself, saying that the mine could adversely affect a den of timber rattlesnakes located about 260 feet away from Montfort's property.

Amazingly, state officials were concerned not that the mine would kill or physically harm the rattlesnakes, but that the mine might "worry" them.

Montfort believed the company could operate the mine without harming the rattlesnakes. It built a snake-proof fence around the property keep the snakes out of harm's way.
This solution was not satisfactory to the DEC, which made Montfort tear down the fence. The DEC claimed that since the fence would prevent snakes from accessing certain snake habitats, the fence as well as the mine violated a unique feature of New York endangered species law that prohibits not only killing or harming species, but also lesser acts such as "disturbing, harrying, or worrying" a protected species.

The Pacific Legal Foundation (PLF) unsuccessfully argued in New York's Intermediate Court of Appeals that "disturbing, harrying, or worrying" a species is not prohibited under law unless it harms the species. PLF then appealed to New York's highest court to allow the mining project to continue, but the motion was denied.

Montfort was unable to operate his mine. Meanwhile, the snakes are sleeping well.

Sources: Pacific Legal Foundation, Ken Gobetz, Carol LaGrasse, "The Property Owner's Experience"

Swim At Your Own Risk: Government Regulations in Effect

Jesse Arbogast, an eight-year-old boy from Ocean Springs, Mississippi, was attacked by a seven-foot, 250-pound bull shark while swimming in knee-deep water off the coast of Pensacola, Florida in July 2001. The shark bit through Arbogast's right arm and ripped into his right thigh. The boy almost bled to death on the way to Baptist Hospital, and had no pulse or blood pressure when he arrived. A team of doctors working for over 12 hours, however, was able to save the boy's life.

In 2001, the United States experienced 55 shark attacks like the one that almost killed young Arbogast. There were three known fatalities related to shark attacks that year, which is more than the total number recorded throughout all of the 1990s.

In 1992, the state of Florida banned commercial shark fishing and severely limited recreational shark fishing. Recreational fishing was banned within three miles of the coast on the Atlantic side, and the fishing ban extended nine miles into the Gulf of Mexico. This effectively created a shark sanctuary in waters closest to shore. This also happens to be the waters where shark encounters with humans are most likely to occur.

Opponents of shark fishing dismiss a likely link between the increased number of attacks and the fishing ban, arguing, for instance, that 2001's shark attack rate was, statistically speaking, very similar to 2000's.
This is true, but there were an unusually high number of attacks both years. In 1993, there were eight shark attacks in Florida and 21 nationwide. In 2001, Florida experienced 37 attacks while the nation as a whole suffered 55. The 55 attacks topped the record set in 2000, which was 54.
Opponents of shark fishing say a key reason for the increased shark attacks is that a greater number of people are

swimming on the affected beaches. This argument is valid. However, just as an increase in the number of available shark targets (humans) tends to increase the number of attacks, an increase in the number of predators (sharks) also will tend to increase the number of attacks.

Thus, a ban on shark fishing cannot be ruled out as a contributing factor to an increased number of shark attacks, particularly over time.

Shark protectors also note that it takes years for a ban on shark fishing to result in an increase in shark populations — particularly of sharks mature enough to attack humans.

In the short run, this is reassuring. For the long run, it is not.

Sources: ABC News, Insight Magazine, Competitive Enterprise Institute, Florida Museum of Natural Histor

Court Upholds EPA s Vast Control of Water Runoff

Guido and Betty Pronsolino purchased 800 acres of heavily-logged timberland along the Garcia River in Mendocino County, California in 1960. Over the next four decades, they spent significant time and money to manage, restore and replant the land. In 1998, the Pronsolinos obtained a permit from the California Department of Forestry to harvest 1.5 million board feet of lumber over the next 15 years. In March of 1998, however, the U.S. Environmental Protection Agency (EPA) imposed limits on sediment runoff into the Garcia River that severely restricted the Pronsolinos' ability to continue timber harvesting.

The EPA has claimed it has the authority to regulate timber harvesting on the Pronsolinos' ranch under the auspices of the Clean Water Act, which requires states to submit to it a list of "impaired water segments." California did not include the Garcia River on its list because the river only fails to meet EPA standards due to runoff from "non-point" sources such as agricultural runoff, timber harvesting and construction sites. The EPA overruled the state and mandated control of non-point agricultural activities in the Garcia River watershed and established a total maximum daily load (TMDL) for sediment in the river. TMDL is the maximum amount of a pollutant that a water segment can receive without a violation of water quality standards.

The Pronsolinos sued the EPA, claiming its regulatory actions were unlawful since the Clean Water Act reserves for the states the authority to regulate agricultural activities. They were joined in the suit by the American Farm Bureau Federation and the state and local farm bureaus. The Pronsolinos asked the federal district court to overturn the EPA's decision to regulate the Garcia River. The federal court upheld the EPA's authority and the Ninth Circuit Court of Appeals upheld the lower court's decision in May 2002, ruling that federal limits on water pollution called TMDLs apply to non-point sources of pollution including agriculture. The Pronsolinos and the American Farm Bureau Federation have filed a petition seeking a rehearing of the case before the full Ninth Circuit Court of Appeals.

Sources: Environment News, American Farm Bureau Federation, EPA

Federal Government Keeps Public Safe... From Old Tires

John Tarkowski, a 75-year-old disabled building contractor, lives on 16 acres of land in the northwest suburbs of Chicago. In the 1960s, he built the stone house on the property where he lives today. But Tarkowski has faced harassment from the Environmental Protection Agency (EPA) for over 20 years.
Tarkowski's property is full of old barrels, tires, wooden pallets and other junk. The EPA has questioned whether the property poses an environmental hazard. The EPA has tested and re-tested the land in a failed effort to prove Tarkowski's junk has been or could be an environmental hazard.

Despite a lack of evidence, the EPA continued to harass Tarkowski until he finally told the agency it could no longer test his land. The EPA then sued Tarkowski, demanding the right to continue using his land for testing and — if necessary — to haul away the debris.

After losing its initial case, the EPA appealed to the Seventh Circuit Court of Appeals in Chicago. Attorneys for Tarkowski proved that in 20 years of testing, the EPA had only been able to detect trace amounts of lead near the area where Tarkowski does his welding. Federal Judge Richard Posner ruled that the amount of lead found was "consistent with household use." Petroleum residue had also been found, but no more so than if someone had been sloppy while filling a gas tank on a lawnmower.

Posner ruled in favor of Tarkowski, saying that the EPA wanted to "go onto Tarkowski's property and destroy the value of the property, regardless of how trivial the contamination that its test disclosed."

Source: Fox News

They Said I Was Going To Prison

Suddenly and without warning, 21 heavily-armed federal U.S. Environmental Protection Agency (EPA) agents stormed a small Massachusetts manufacturing company that has produced plastic-coated steel wire mesh used for lobster traps and erosion control for 20 years.

During the November 7, 1997 EPA raid, frightened employees were harassed, photographed and videotaped. Later that night, some were interrogated in their homes. James M. Knott, Sr., the company's owner, was indicted on felony charges and threatened with six years in prison and $1.5 million in fines.
Knott's crime? A harmless violation of an obscure technical provision in an EPA Clean Water Act regulation.

After a grueling two-year legal battle that cost Knott and his company hundreds of thousands of dollars, the charges were dropped after it was discovered that the EPA agents had altered critical evidence. U.S. District Court Judge Nathaniel Gorton characterized the EPA agents in the raid on Knott's company as a "virtual SWAT team" that harassed the employees, "causing [them] great distress and discomfort."
Judge Gorton also noted that Knott, a Harvard alumnus who is a recipient of the Massachusetts Governor's Award for developing pollution control technology, had suffered "humiliation" from EPA's "clearly vexatious" prosecution.

Knott sued the EPA in federal court under the Hyde Amendment, which gives defendants the right to file for a recovery of legal costs. The U.S. District Court in Massachusetts awarded Knott a reimbursement for his legal fees of $68,726 — far less than the total amount he spent. The U.S. Court of Appeals overturned the decision after the federal government appealed. Knott appealed the case to the U.S. Supreme Court, which declined to hear his case in February 2002.

Knott has continued the court battle by filing a suit against the EPA and individual investigators, saying that the Federal Tort Claims Act protects him against malicious prosecution and violations of his constitutional rights. "We are just one of many companies who are finding we must defend ourselves against overzealous bureaucrats who act without merit to create enormous difficulties and unnecessary financial losses for our businesses and families," says Knott.

Source: James Knott, Washington Legal Foundation

OSHA Violates Laws of Physics, But Blames Businessman

The Strand Galvanizing Line of the Riverdale Mills Corporation in Northbridge, Massachusetts won factory owner James Knott the 1999 Governor's Prize for the best compliance with the state's Toxic Use Reduction Act. The production line galvanizes single strands of steel wire that the company then makes into a wire mesh for use in lobster traps, crab traps, animal cages and high-security fences. The line won the state award in part because it eliminated the use of hydrochloric and sulfuric acid while reducing energy costs by 50 percent.

This award-winning device, however, got Knott in trouble with the Occupational Safety and Health Administration (OSHA) less than a year later, in the spring of 2000. The line includes an airtight chamber 40 feet long which, while in use, is full of nitrogen and hydrogen gasses. As part of the process, workers must enter this chamber to thread wires through it. The chamber is opened prior to their entry to allow the gasses to escape. Two OSHA inspectors claimed Knott's employees could still be asphyxiated, due to lack of oxygen, when entering the chamber. Workers explained to the OSHA officials that, to the contrary, the nitrogen and hydrogen immediately dissipate when the covers are removed from the chamber and are quickly replaced with fresh air.

Knott took OSHA's non-compliance case before an administrative law judge (ALJ). OSHA officials continued to argue that hydrogen is heavier than air, even though Webster's Dictionary defines hydrogen as "a nonmetallic element that is the simplest and lightest of the elements," and the gas is well known as the lifting agent for pre-World War II dirigibles such as the Hindenburg. Despite this and other expert testimony, the ALJ agreed with OSHA. Knott is continuing to contest the case.

Source: James Knott, Lexington Institute

OSHA Targets Screen Door Company with Good History

Yvonne Hannemann and Penny Young are partners in the New England Screen Door Company, Inc., which they've owned for 16 years. They have two employees who make the old-fashioned screen doors we remember from our youth — the kind that make the nostalgic slapping sound when they close.
In August 2002, an Occupational Safety and Health Administration (OSHA) inspector arrived to tell Young and her employees, "You've been targeted for a visit."

When Young confronted him about being "targeted," the inspector said that OSHA was inspecting all woodworking shops in Maine. Among the items he cited as violations were ungrounded box fans being used to circulate the air in the mid-August heat (they are sold ungrounded, and people use them in their homes this way). He issued another citation for having a drill press without a "guard" on it (to comply with the citation, Hannemann and Young had to have a "guard" specially made because no manufacturer sells guards for drill presses).

In total, OSHA fined Hannemann and Young $1,050 and issued six citations for items that must be fixed. OSHA offered to reduce the fine 50 percent if Hannemann and Young would agree not to contest it. After discussing the fines with an attorney, they agreed to the reduction in the fine, but sent a letter to their congressman and senators complaining about the "intimidating storm-trooper" treatment.
Shortly afterward, OSHA called and further reduced the fine to $300 because of the company's "good history."
One of the changes Hannemann and Young were still required to make was adding signs in the workshop that read, "in case of fire, go outside."

Source: Small Business Administration's Regulatory Fairness Board, Penny Young

Shattered Dreams: The Victims of Agenda 21

Arkansas Woman Arrested Because Home has Anti-Burglar Bars

Little Rock, Arkansas resident Betty Deislinger's home has anti-burglar bars on the windows to protect her from criminals, but nothing could protect her from local authorities.
Her crime? Violating the sensibilities of the local historic preservation commission. The 70-year-old church choir director and organist was arrested and fingerprinted because she refused to remove the bars.

The McArthur Historic District of Little Rock has a crime problem. A failed liquor store robbery a few years back resulted in one of the robbers dying of gunshot wounds on a porch near Deislinger's house. At the time she bought her home, prostitutes were illegally using the abandoned structure for their business.
Deislinger was arrested while attending a meeting of the city's historic preservation commission. She was unaware that a neighbor of hers and commission administrator, Anne Guthrie, had filed a complaint that resulted in the issuance of an arrest warrant. City attorney Tom Carpenter told the Dallas Morning News, "She was dealing with the commission, and we knew the warrant was there. It's not uncommon to arrest someone when you know they are present and have a warrant." He defended the commission's actions, saying, "You don't want a neon pink sign next to [a historic] mansion."

Deislinger's burglar bars were not neon pink, and she says they were already there when she purchased the house in 1998. She challenged, "And if I can find some more, I will put them up on the rest of the windows." Besides the bars, the commission was also opposed to Deislinger replacing the wooden window frames with vinyl ones and having an air conditioning unit that was visible from the street.
"I think this is power out of control," said Deislinger. "I'd rather have a house with bars on the windows next to me than a bunch of prostitutes living there."

Sources: Dallas Morning News, The Liberator Online

So-Called Negro Defendants Must Fight Government to Keep Land Family Purchased in 1874

Willie Williams wanted simply to walk on his land, plant a garden and do some hunting on 40 acres of open land his great-grandfather purchased in 1874. Until a recent injunction by Alabama Governor Don Siegelman, Williams was unable to do these things because the state wrongfully took the land from him.
In 1964, the Alabama State Lands Division (SLD) sent the Williams family a letter stating that, in its opinion and the opinion of the U.S. Bureau of Land Management, the Williamses' 40 acres belonged to the state. The letter claimed that the land in question had been designated swampland by the federal government back in 1906, and that the land should therefore be given to the state of Alabama. At that time, Circuit Court Judge Emmett Hildreth signed a decree awarding ownership to the state.

Ever since, the Williams family has pleaded with the state for the return of its land. The SLD has monitored the case, but has done so in a prejudiced manner. Memos and letters from the SLD's files that relate to the case made numerous references to the Williamses' race, calling them, among other things, "the negro defendants." The SLD file did acknowledge that the family could trace ownership of the land back to 1874.

After 35 years, Governor Siegelman acknowledged a "severe injustice" and signed a land grant giving ownership of the property in dispute back to the Williams family in the summer of 2002.

Source: Associated Press

Shrubbery Violation Leads to Potential Jail Time

Kay Leibrand is a 61-year-old software engineer suffering from breast cancer who is facing up to six months in jail and a fine of up to $1,000 because she didn't properly trim the bushes in her yard.
Government officials in Palo Alto, California started a "Visibility Project" in January 2002 to increase awareness of the health and safety of pedestrians, bicyclists and drivers in the northern California city.

Part of the project is a Palo Alto Municipal Code stating that shrubs and bushes located in the small strip of property located between the street and sidewalk — the "parkway" — must be shorter than two feet or they will be deemed a public nuisance. Leibrand is the first person to face criminal charges for violations of this code.

Leibrand's shrubbery is over two feet tall — some of her shrubs measure up to six feet. But she maintains that she has substantially pruned the shrubbery to address safety concerns, and is confident that no injuries or accidents have ever been caused by her shrubs, which were planted over thirty years ago. She also notes that, if the City Council is displeased with the height of property owners' shrubbery, the city has the right to cut the bushes to the required levels and bill the owner for the work done.

Instead of trimming the shrubs and charging her for it, the Palo Alto Attorney's Office filed a criminal complaint against Leibrand on March 29, 2002. Ironically, according to Leibrand, as of February 11, 2002, four of the City Council's members had bushes on their own property that were also in violation of the parkway ordinance.

Leibrand has pleaded not guilty to the violation and had a pretrial conference in August 2002. She is scheduled to go to trial in Santa Clara County Superior Court on February 10, 2003.

Source: Kay Leibrand, City of Palo Alto, Palo Alto Weekly, Insight magazine

Man Loses Land Without Compensation Because Indians Consider it Sacred

In 1990, Dale McKinnon began leasing (and later bought) Woodruff Butte, a pyramid-shaped plateau rising out of the Arizona desert. This parcel of land is a source of very high quality aggregate, a type of gravel used to make concrete. McKinnon purchased this property intending to use the aggregate in highway projects in which his company, Cholla Ready Mix, Inc., was a contractor.

Indians of the Zuni, Hopi, and Navajo Tribes made a claim on McKinnon's property. They have repeatedly urged the Arizona Department of Transportation (ADOT) to prevent McKinnon and Cholla from mining on what they allege is sacred land.

In 1998, McKinnon contracted with Vasco, Inc. to work on a federal highway. The Hopi Tribe sued McKinnon, the U.S. Department of Transportation and the ADOT, claiming that Woodruff Butte is sacred and that the government must obtain the tribe's permission to use the aggregate found on McKinnon's land. After filing the lawsuit, the Hope tribe withdrew it. According to Mountain States Legal Foundation, McKinnon's legal representative, McKinnon offered to protect sacred shrines. However, he could not reach a compromise with the tribe because tribal leaders would not list the specific areas they believe require protection.

Throughout the 1990s the ADOT modified its standard specifications for road and bridge construction in order to respect Native American religious concerns. In particular, the new regulations caused existing commercial source permits — which allowed McKinnon to use his aggregate in construction bids — to expire at the end of 1999. To get a new permit, the regulations required an environmental assessment of adverse impacts "on cultural or historic resources." Even though McKinnon hired an environmental consultant who conducted the required assessment when he sought a new permit in 2000, the ADOT demanded that McKinnon's environmental consultant conduct a revised assessment that also considered historic preservation. After several further revisions, the final assessment stated that "continued mining... will have an adverse effect on historic properties, namely the butte itself."

In order to classify the property as historically valuable, the ADOT had earlier claimed that the property was eligible for the National Register of Historic Places (NRHP), which the National Park Service considers "the nation's official list of cultural resources worthy of preservation." By claiming that the land was eligible for the National Register, the ADOT was able to apply Section 106 of the National Historic Preservation Act to deny McKinnon's permit application. The ADOT justified its claim that the land was culturally and historically valuable by pointing to the butte's religious significance to the Indians. Consequently, it now restricts the butte's use solely to religious purposes rather than for its alleged historic value.

In June 2002, McKinnon filed suit in the Northern District Court of Arizona, alleging that the ADOT had unconstitutionally restricted McKinnon's use of his land. The ADOT's regulations violate prohibitions against the establishment of religion and the application of special laws, which deny his right to equal protection under the law. Although Woodruff Butte is not listed in the NRHP, the ADOT has restricted its use based on Indian claims to its religious significance. McKinnon's attorney, Stephen Gilmartin, asserts that the ADOT's regulations were "worded generally but specifically design[ed] to shut [McKinnon] down."

Sources: Mountain States Legal Foundation, Stephen Gilmartin, National Park Service

Colorado Town Finds Itself in Real-Life Hitchcock Movie

As if they were living in the famous Alfred Hitchcock film "The Birds," the residents of the Mapleton Mobile Home Park in Boulder, Colorado are under siege by a flock of nearly 4,000 European starlings. What's worse than anything Hitchcock could have imagined, however, is that the city government is not allowing the residents to fight back.

Over the past decade, four months out of the year, the starlings roost in a stand of cottonwood trees that tower over the city-owned mobile home park. Officially called Sturnus vulgaris, the Audubon Society describes European starlings as "messy, quarrelsome, aggressive and noisy."

In Boulder, the starlings have been seen chasing animals as large as deer and foxes from the Mapleton property. But it's not only the hostile nature of the birds that angers residents. The average bird excretes 1.5 inches of droppings on Mapleton per night. Some droppings fall from as high as eight stories, and the bird dung corrodes car paint, destroys patios and decks, ruins gardens and generally causes the area to smell horribly.

Rick Hernandez, a Mapleton resident who is awaiting a lung transplant, told the Los Angeles Times that he keeps three air-filtration machines running constantly, burns incense, regularly pours bleach on his deck and uses a personal oxygen tank to help him breathe amidst the dried dung and feathers left by the starlings. Mary Becker, a 78-year- old handicapped diabetic, calls herself "a prisoner in my own home" because she can no longer use her home's wheelchair ramp due to the accumulated bird excrement on it.
Despite previous attempts to scare off the birds with fireworks and other noisemakers, city officials are now prohibiting the 200 residents of Mapleton from trying to move the birds themselves. Boulder Assistant Director of Housing John Pollak explains: "We are certainly not going to kill the birds. No one is interested in cutting down the trees. We are exploring options for encouraging the birds to move." City officials are also exploring the possibility of making the entire city of Boulder a bird sanctuary — something that would leave residents at the mercy of the birds (Boulder already mandates that pet owners be reclassified as "pet guardians").

Mapleton resident Debbie Feustel disputes the logic behind the proposal, saying, "The city talks about a bird sanctuary, but what about us having a sanctuary in our own homes?"

Source: The Seattle Times

U.S. Court Makes It Official:
Rancher Right, Federal Agencies Wrong

In 1978, Wayne Hage and his late wife, Jean, began operating a Nevada cattle-ranch with 2,000 head of cattle. Over the next 12 years, the U.S. Forest Service and Bureau of Land Management accused them of violations that included having their cattle in impermissible areas and not maintaining their fences.
Refuting government claims, Hage provided eyewitnesses who saw Forest Service employees move the Hages' cattle into impermissible areas, and pointed out that the fence that the Forest Service said wasn't properly maintained was missing a single staple. The government later dropped the charges of illegal grazing.

By 1991, the Hages' grazing permits had either been cancelled, shortened or suspended by the government to the point that they were forced out of the cattle business. Hage filed a claim in the U.S. Court of Federal Claims asserting that the government had created a "taking" by denying him the use of his property. Jean Hage passed away after suffering a heart attack and two strokes that Wayne attributes to the stress of the legal battle.

In January 2002, Senior Judge Loren Smith issued his "Findings of Fact" with respect to the property rights aspect of the case. He concluded that Hage, who is now married to former U.S. Representative Helen Chenoweth-Hage, owned extensive water rights on federal grazing allotments adjacent to his privately-owned land. In addition, Judge Smith ruled that Hage owned the ditch right-of-ways and the land for 50 feet on either side of the ditches, so his cattle could graze there. In his ruling, Judge Smith said, "The government cannot cancel a grazing permit and then prohibit the plaintiffs from accessing the water to redirect it to another place of valid beneficial use. The plaintiffs have a right to go onto the land and divert the water."

While this constitutes a major victory for Western ranchers, Hage must still prove that government action took away his rights. If he proves that, a judge must determine how much compensation Hage is due.

Source: Stewards of the Range, McQuaid, Metzler, Bedford & VanZandt, LLP

Monastery Gives the Government an Inch, So It Tries to Take A Mile

In 1923, the Franciscan Friars of the Atonement near Garrison, New York agreed to allow the federal government to run the Maine-to-Georgia Appalachian Trail through a portion of their Greymoor Monastery. But, given an inch, the government then wanted to take a mile, and the friars may have regretted their generosity.

In 1984, the National Park Service (NPS) purchased a 58-acre easement around the trail that prevents development along the monastery's segment. The NPS demanded an additional 18 acres of the monastery's land in 2000, with the threat that the land could be condemned and taken under the government's power of eminent domain if necessary. During the busiest of times, an estimated five to eight hikers traverse the Graymoor Monastery's property a day. Graymoor Monastery is well known among hikers as the "Hilton of the Appalachian Trail" because the friars allow the few hikers that traverse the property to camp there and offer free meals, showers and overnight lodging. Beyond kindness to the occasional hiker, the friars' ministry also includes a homeless shelter, a drug and alcohol rehabilitation center, an AIDS program and a retreat center serving an estimated 1,000 people per year.

Citing concern over the monastery's construction of a sewage treatment pump house that accidentally encroached on the government's easement, NPS representative Edie Shean-Hammond told the Associated Press that taking the additional 18 acres was a necessity: "We want to guarantee that this property will be preserved in perpetuity. Our job is to protect that corridor. The way it is now, townhouses could be built within 50 feet of the trail." Minister General Reverend Arthur Johnson noted that the monastery might choose to expand in the future, but added "The trail is [as] important to us as it is to the Park Service... [The government is acting like] a weekend guest who claims squatter's right(s) on Monday morning."

After negotiations between the friars and the government that included the participation of U.S. Senator Charles Schumer (D-NY) and U.S. Representative Sue Kelly (R-NY), in March 2001 the friars agreed to give the government over 7.5 acres of Graymoor Monastery property and the right to augment the trail in exchange for $25,680. They also were given back almost two acres set aside in the 1984 agreement.

Little Darby Creek Escapes Designation as a Wildlife Refuge For Now

About 30 miles northwest of Columbus, Ohio lie the Big and Little Darby Creeks and the farmland they traverse. The area is approximately 100 miles long, 35 miles wide and covers eight counties. The U.S. Fish and Wildlife Service (FWS) proposed buying about 57,000 acres in the area in 1997 for the purpose of creating a wildlife refuge and to protect Little Darby Creek.

Landowners, many of them farmers, were opposed to selling their land for a refuge. They claim Founding Father George Washington gave the land to veterans of the Revolutionary War as part of the Proclamation of Virginia Military Land Grants. The Proclamation granted homesteads to "the Revolutionary War Veterans, their heirs and assigns in perpetuity" and included land along the Darby Creeks.

A group called Stewards of the Darby (SOD) was formed to oppose the refuge. The SOD claims the refuge would displace 7,500 people, 4,000 of them taxpayers. SOD spokeswoman Julie Smithson claims the FWS, in cooperation with The Nature Conservancy, The Audubon Society and Rivers Unlimited, "identified a need for 166,000 more additional acres for mid-migration for an estimated 25.7 million ducks."

SOD rallied against the FWS's plan, conducted local hearings and received federal congressional attention, after which the FWS withdrew their refuge proposal in October 2002. In doing so, the FWS praised the "conservation minded farmers" for their practices, which a spokesman said protected the natural heritage of the area.

Sources: Julie Smithson, Stewards of the Darby

Government Repeatedly Forces Family of Five to Walk Home

Property owner Jack McFarland must travel by foot over three miles through the snow to get to his home near West Glacier, Montana because of National Park Service (NPS) restrictions.

In 1999, McFarland, his wife and their three young children moved onto their 2.75 acre parcel of land, which is located in the Big Prairie area of Glacier National Park. Before the year was out, the NPS had barred the family from using the only road to their property. McFarland's property is blocked by the Flathead River, and Glacier Route 7 provides the only way to get across it.

The NPS began regulating the road in November 1999 by denying the McFarland family and other inholders — those whose own land is surrounded by federal government land — motorized access after the first significant snowfall. The NPS also prohibits plowing the road during winter. NPS officials justified these restrictions by asserting that the use of motorized vehicles and snowplows in the Big Prairie area threatens wildlife and non-motorized users such as cross-country skiers. Consequently, access to the road is denied for at least five months out of the year.

McFarland initially made a deal with the NPS to use the road, but the government quickly went back on the compromise, telling him that he would have to travel the 3.2 miles to his property on foot. As a result, McFarland and his family have had to use sleds and skis to travel to and from their property. McFarland is unable to use a snowmobile to access his property because of a 1975 ban on snowmobiles in Glacier National Park.

In February 2000, McFarland sued the NPS in the U.S. District Court for the District of Montana. He asserted that the NPS violated Federal Statute 2477 and several state laws that provide McFarland with a right of access to his land, which was granted to his family in 1916 under the Homestead Act. Opening briefs were filed in August 2002. A date for oral arguments has yet to be announced.

Sources: Mountain States Legal Foundation, Bill Thode, billingsgazette.com

National Park Service is Eliminating Orick, California

The California town of Orick, located about 60 miles south of the California- Oregon border at the south end of Redwood National Park, is well on its way to becoming a modern-day ghost town.

When the national park was created in 1968, Congress promised that local communities would be protected. Nonetheless, government actions are slowly chipping away at the small town's ability to survive economically.

When the park was created, loggers lost work and left the area. Lately, commercial fishermen and wood gatherers have had their permits eliminated or made non- transferable so that existing tradesmen cannot pass them onto their children. In 1999, Redwood National Park eliminated wood gathering in the park altogether — an action that devastated local burl wood shops.

Ed Salsedo, co-chairman of the Save Orick Committee, said, "We had a thriving community of 1,500 inhabitants in 1968 — since then we have dwindled to a mere 300." Judith Schmidt, a local resident who is president of the Orick School Board, has seen school enrollment drop from 250 to only 50 students. Schmidt claims the National Park Service did not comply with regulations to conduct economic and social impact studies before considering a 1999 proposal to close overnight parking in an area near Orick.

Furthermore, a charge for overnight camping was imposed in 2001, which resulted in a significant decrease in tourism. Schmidt says many businesses have closed and those remaining open have seen a decline in business of 25 to 30 percent. Now, a plan has been proposed to make the beach a "day-use only" beach, which would further damage the town's ability to maintain one of its few remaining commercial enterprises — tourism.

Sources: Off the Road Network, Judith Schmidt

National Park Service Tries to Restrict Rancher's Grazing Rights

Tim Mantle owns a ranch, complete with grazing rights, near Hells Canyon, Colorado. Mantle's father homesteaded the property with federally-guaranteed grazing rights in 1919.

Congress designated the area surrounding the ranch as part of the Dinosaur National Monument in 1960. In 1961, the monument's park superintendent made a promise: "the grazing of domestic stock will be administered in a fair and unbiased manner."

Despite this promise, the National Park Service (NPS) has manipulated regulations regarding Mantle's land use in an attempt to compel Mantle, in his view, to become a "willing seller."

One NPS regulation prohibited anyone except family members from using the road to the Mantle Ranch. According to Mantle, at one point a former park superintendent even forbade family members from using the road, saying that they instead could use a helicopter.

NPS officials have tried to get the Mantles to violate their grazing permit by creating situations in which violations could easily occur. For example, the NPS has claimed there were pastures and fences that did not exist, hoping to prove that cattle were trespassing on federal land not included in Mantle's grazing allotment.

According to Mantle, NPS employees also released antelope on the Mantle Ranch in an attempt to prove that he had too many animals grazing on his allotment. If the trespass or overgrazing charges had been proven, the NPS could have taken away his grazing permit. Without it, Mantle's ranch would lose value.

In 1994, the Mantles filed suit against the NPS for "denial of due process; temporary taking [through grazing and access restrictions]; and violation of the Administrative Procedures Act" and spent $400,000 and four years in U.S. District Court in Colorado. In November1996, Judge John Kane, Jr. found that NPS officials had "unlawfully removed [a] spring box and pipes leading from it," which Mantle had set up to divert water for his cattle. According to the judge, "evidence and inspection [of the Mantle Ranch]... reveals Mantle's historic access to water sources." Judge Kane further stated, "Unless remedied, [the government's removal of the spring box and pipes] will cause irreparable harm" to Mantle's historic grazing rights.

In November 1997, Judge Kane further ruled that "if the intent of Congress is to restore [Dinosaur National Monument] and the adjacent properties belonging to Mantle... it must do so by budgeting the necessary funds to condemn such properties, rather than taking the property rights by a process of regulatory whittling."

The next month a settlement agreement was drawn up that required both sides to develop a grazing Allotment Management Plan (AMP). Until this plan could be developed, Mantle was allowed to graze a specific number of cattle on a certain amount of land. The agreement also gave the Mantle Ranch water access to maintain its water systems based on its historical use of certain springs. Mantle resumed grazing under the conditions of the settlement. However, the NPS never negotiated an AMP as agreed in the settlement, and, in 2001, the new park superintendent refused to sign another permit based on the stocking levels agreed to in the settlement. After many delays in the permit process, Mantle finally obtained a permit in April 2002. Although the Mantles continue to graze their cattle, NPS restrictions still afflict them. For example, Mantle is now prohibited from shooting a firearm on his own land.

Sources: CNSNews, Tim Mantle

If the Government Prohibits You From Visiting Your Land, Do You Really Own It?

Raymond and Nancy Fitzgerald have spent the last 14 years in court trying to defend the right to access their own land.

In 1983, the Fitzgeralds bought a ranch in Holbrook, Arizona. The ranch is completely surrounded by the Apache-Sitgreaves National Forest and can only be accessed by using a federally-owned road. In 1986, the U.S. Forest Service said that in order to use the road, the Fitzgeralds must sign a special use permit. The Fitzgeralds, who believe that any restriction on their right to access the property is unlawful, refused to sign the permit. Raymond's son Michael told The National Center for Public Policy Research, "If you have no access, you don't own the property." Since the Fitzgeralds refused to sign the permit, the Forest Supervisor completely closed the road in 1988, and USFS employees put up signs to prevent any access. In order to reach the property, Michael Fitzgerald was forced to drive an all-terrain vehicle (ATV) across national forest land. He traveled approximately 100 miles a day on a three-wheeled ATV to check on the cattle and ensure that the gates for the cattle pastures were secure. The Fitzgeralds appealed the road closure to Forest Service Chief F. Dale Robertson, but their appeal was denied in 1993.

In March 1994, the Fitzgeralds filed a complaint in the U.S. District Court of Arizona, claiming that common law grants them a right-of-way access to their land. In 1996, however, the federal court ruled in favor of the Forest Service. In 1997, the Fitzgeralds took their case to the Ninth Circuit Court of Appeals, which dismissed the case because the special use permit had expired.

In August 2000, the Forest Service again told the Fitzgeralds that they had to sign a special use permit to access the road and informed them that permit could not be appealed. The Fitzgeralds refused to sign and filed a second complaint with the U.S. District Court of Arizona in January 2002. They are seeking to establish that inholders — people who own land inside the boundary of a national park — have the right to access their own land without a permit. Currently, road closure signs do not prevent the Fitzgeralds from accessing their property, thanks to an agreement to allow access during litigation.

Sources: Mountain States Legal Foundation, Bill Thode, Michael Fitzgerald

Environmentalist Lawsuits Ruin Ranch

Dave Fisher is a third-generation cattle rancher at Ord Mountain, near Barstow, California. His property, which has been in his family for 75 years, is located within the area designated as the California Desert Conservation Area. The Bureau of Land Management (BLM) has granted Fisher permits, called allotments, which allow him to graze his cattle on government-owned land in addition to his own land. Fisher's livelihood depends on these grazing allotments. In 2000, the Center for Biological Diversity, the Sierra Club and Public Employees for Environmental Responsibility filed a lawsuit in the U.S. District Court of Northern California questioning the BLM's protection of endangered species in Southern California. BLM settled the case out of court, and without notifying any of the inholders (landowners, like Fisher, whose property is surrounded by government owned land) declared that BLM lands and those lands under private ownership in affected areas were critical habitat for the desert tortoise under the Endangered Species Act.

Although grazing was not specifically mentioned in the lawsuit, the merits of grazing were discussed in the settlement. Classifying land as a critical habitat lowered by 44 percent the number of days which cattle could graze on the BLM land. This led the BLM to present Fisher with a nearly impossible task — removing his cattle from the 154,848-acre allotment he leases from the BLM in 48 hours. If his cattle were to stray into the restricted areas, Fisher could have been charged with trespassing. He could also possibly could have lost his grazing privileges altogether. No fences separate the closed areas from his own, making it almost impossible for Fisher to prevent his livestock from straying into the restricted areas.

Miraculously, Fisher was able to remove his cattle from government land in the required 48 hours, but his allotted grazing time was reduced.

Fisher is currently involved in a lawsuit against the BLM in an attempt to restore his grazing privileges to what they were before the suit was filed by the three environmental groups.

Ironically, some believe grazing could benefit the tortoise since cattle tend to distribute grasses upon which the tortoises forage.

Source: Bonner Cohen, Capital Research Center, Karen Budd Falen

Should Private Property Be Taken For Public Use, Without Just Compensation?

When the Missouri, Kansas and Texas (MKT) Railroad decided to abandon a rail line that passed through Jayne and Maurice Glosemeyer's 240-acre family farm near Marthasville, Missouri, the Glosemeyers expected to recover the 12 acres of land that had been used by the railroad.

In 1889, Maurice Glosemeyer's great uncle signed an agreement that allowed the railroad to use this land, but only for railroad purposes. Missouri state law says that once a right to use someone's property for a specific purpose is abandoned, the landowner regains the right to use his property. Therefore, the Glosemeyers claim, the land used for the abandoned rail line should revert back to the family.

After the Interstate Commerce Commission authorized MKT's abandonment of its rail line, however, the MKT sold its land interests to the Missouri Department of Natural Resources for the creation of a recreational bike trail. This action was authorized by the federal Rails-to-Trails Act of 1983. Soon after, the Katy Trail, which passed through the Glosemeyers' property on the site of the old rail line, was established. When hikers travel along the 100-foot wide trail, they pose a risk to themselves and the Glosemeyers' animals if they play with or bother the animals.
Jayne Glosemeyer recalls one incident in which a little girl chased a piglet while her mother looked on approvingly. "The sow could have attacked her... and we could easily have been sued," noted Mrs. Glosemeyer. Furthermore, the Glosemeyers felt insecure about leaving their farm, even for a weekend, because of the people using a trail traversing their property.

In March 1993, the Glosemeyers filed suit for just compensation for the taking of their property in the U.S. Court of Federal Claims. The case was put on hold until a similar case, Presault v. State of Vermont, could be resolved in federal court. After Presault was decided (see the following story for details of that case), the Glosemeyers' case was allowed to proceed. In January 2000, Judge Eric Bruggink denied the government's claim that the trail serves a railroad purpose. MKT had shown no evidence that it would ever restore the land for later use as a rail line, but did show that it had completely abandoned its use of the Glosemeyers' property.

Finally, Judge Bruggink declared that a "taking" had occurred because state law had created expectations that the Glosemeyers would recover their property without any restrictions. The judge found that if the government wants to pursue a worthy cause, such as the creation of a public trail, it has to pay just compensation for any "takings" that might occur in the process. According to Jayne Glosemeyer, the family is currently negotiating with the government for attorney's fees and compensation for the taking of its land. If they cannot reach an agreed amount, the Glosemeyers could return to the U.S. Court of Federal Claims to ask a judge to determine the compensation.

Sources: Mountain States Legal Foundation, U.S. Court of Federal Claims

Vermont Couple Wins After 20 Years: The Government Took Their Land and Now Must Pay for It

As reported in The National Center for Public Policy Research's 2000 National Directory of Environmental and Regulatory Victims, Paul Presault and his wife, Pat, have been waging a battle against the city of Burlington, Vermont for 20 years to get compensation for the "taking" of part of their backyard for a bicycle trail.

When the Presaults bought their property in 1975, there was a railroad track in the backyard about 60 feet from the house. Shortly thereafter, the Vermont Railway — which owned the track — abandoned the line and pulled up the tracks. Under Vermont law, the land under the tracks reverts to the original landowner.

However, the city of Burlington wanted to convert the abandoned railroad track easement into a public bicycle trail traversing the Presaults' backyard. The Presaults filed a lawsuit in state court in 1981 to defend their right to their

property. However, the federal Rails-to-Trails Act of 1983 allows railroad easements to remain in place for use as a trail even after railway use is discontinued.

In 1986 the railroad track easement was transferred to the city of Burlington for use as a public bicycle and pedestrian path. Since then the Presaults have had to deal with cyclists, pedestrians and rollerbladers going through their backyard. The Presaults challenged the constitutionality of the Rails-to-Trails Act before the U.S. Supreme Court in 1990. The U.S. Supreme Court ruled that the city could build the trail on the abandoned railroad track easement but agreed that the Presaults' property might have been "taken for public purpose without just compensation," which meant that, to receive compensation for their loss, the Presaults had to file a claim against the U.S. government. On May 22, 2001, after 11 more years of legal arguments and court rulings, the U.S. Court of Federal Claims in Washington D.C. determined the Presaults were due $234,000 plus interest from the date of the taking (February 6, 1986). The Presaults then asked the court to reimburse them for their attorneys' fees. A year later they were awarded $894,855.60. This amount was below their request for all reasonable attorney fees and costs accrued after filing in federal court in 1990.

Sources: Mountain States Legal Foundation, Ackerson Law Group

Environmentalists Deprive Slavery Descendants of Wealth

South Carolina farmer Joe Neal's ancestors bought the land his family now farms from a plantation owner shortly after his ancestors were emancipated from slavery. Now, Neal is virtually shackled to the 92 acres because "smart growth" restrictions on urban growth may keep him from selling or subdividing the property for future development.

Black farmers in Richland County such as Neal are afraid that the county's "2020 Town and County Vision" plan will keep them from being able to sell their property at a fair price.

The plan is meant to contain the growth of Columbia, South Carolina within tight boundaries. It designates most of the county's farmland, forests and riversides as "preservation areas" that cannot be developed. Lawrence Moore, the president of the state's Rainbow/PUSH Coalition, told Insight magazine: "This is going to deprive people of economic wealth. The owners of property, folks that tended this land, are losing out on that profit from that land. All it is a transfer of ownership. Government shouldn't be in the land business."

Neal adds: "What little land we now have represents wealth and potential wealth. When you take that from us... then you've robbed them of everything they've slaved and labored for all those years... State and county governments are pushing conservation and anti-sprawl at the cost of this minority population who historically have been denied the opportunity to accumulate wealth." South Carolina Sierra Club Director Dell Isham said in response, "there are no guarantees on your investments."

However, only a few black farmers in Richland County are truly interested in selling their land for development. In these cases, farmers say they can no longer compete against larger farming operations. In Neal's case, a situation faced by many families, smart growth restrictions simply may keep him from subdividing his land so his relatives can build homes — something he has already done six times.

Source: Insight magazine

Job Growth Outpaces Home Building, Leaving Employed People Homeless

"Smart growth" urban development regulations in Fairfax County, Virginia are so restrictive that there is not enough housing available to provide for employees taking the many new jobs that have been created there.

Terry Miller is a waitress who must live in a hotel with the aid of public assistance because she cannot find or afford a place for herself and her four children within a reasonable commute to her job. Before living in the hotel, the family lived in a van parked in a grocery store parking lot. This created a problem because Miller could not enroll her children in school without a fixed address. Miller has $2,000 to spend each month, but the cost of housing in the region is such that many landlords won't rent units she can afford to a family of their size.

During the 1990s, 166,000 jobs were created in Fairfax County while only 56,000 new housing units were built. In the area where Miller hopes to live, county planners have only allowed one new home per five acres of land. In most of the county, it's a minimum of one-half acre per home. While Fairfax county is one of the most affluent counties in the United States — where many residents can easily afford the costs associated with smart growth restrictions — housing for lower-paid workers, such as blue collar and service industry workers, is harder to come by. As affordable housing activist Marlene Blum told the Washington Post, "People are doubling up and tripling up in houses or living in their cars... And, unfortunately, many of the more affluent people who go to McDonald's don't necessarily stop to wonder, 'How do these people afford to live?'"

Source: The Washington Post

Man Serves Hard Time for Cleaning Dump, Environmentalists Complain Government Has Been Too Easy on Him

The day after Thanksgiving in 1990, John Pozsgai began serving a three-year prison sentence in Pennsylvania's Allenwood Federal Prison. He wasn't convicted of burglary, armed robbery or a violent crime like murder or assault. Pozsgai was serving hard time because he violated the Clean Water Act.

Pozsgai is a first-generation immigrant who escaped communist Eastern Europe during the 1956 Hungarian Revolution and settled in Morrisville, Pennsylvania, near Trenton, New Jersey, where he and his wife raised a family. An illegal dump full of tires, cars and scrap metal, among other objects, lay adjacent to the Pozsgai residence. The dump also contained a storm water drainage system and a stormwater drainage ditch dating to 1936. The township of Morrisville was responsible for maintaining the ditch. It did not meet its responsibilities. As a result, the approximately 1,000 tires left in the ditch caused local flooding, including on the adjacent road and in the Pozsgai home, every year for 20 years.

Here's what happened next, according to testimony by Pozsgai's daughter, Victoria Pozsgai-Khoury, to the U.S. House Committee on Government Reform in 2000:

On August 21, 1986, my father signed an agreement of sale and obtained title insurance for the dump across our street. He wanted to build a twelve thousand five hundred square foot building that would expand his business and enhance the community. At the very least, an ugly eyesore of a dump would be cleaned up. He removed well over five thousand tires from this dump, approximately a thousand of which were blocking the stormwater drainage ditch. However, within months of acquiring this property, notices were sent to my father from the Army Corps of Engineers informing him of the presence of wetlands. These supposed wetlands stemmed from a "stream" that was connected to "navigable waters of the United States."

Mr. Chairman, Members of the Committee, a "stream" never ran through our newly acquired dump. From the beginning, it was a stormwater drainage ditch that was installed by the Township of Morrisville in 1936. We repeatedly told this to the Army Corps of Engineers, yet they never believed us. It was only in this past year that the Township of Morrisville recognized their responsibility for the upkeep of this stormwater drainage ditch. And then, the Township only did so after we presented it with irrefutable evidence that it had acquired the property on which the ditch lay in 1962.

Mr. Chairman, Members of the Committee, my father is the type of man who will tell you straight to your face that he doesn't like you. That may not be politically correct in today's society, but it's honest. That is because he's honest. So, when people came to our property and trespassed on it, he told them in no uncertain terms to leave. He be-

lieved that America was still a country where a man's property was his own, and the government needed a warrant before it attempted to collect evidence to use against a citizen.

My father is also a man who always believed in complying with the law. He never meant to violate it. But, when he started receiving notices, he did not fully understand some of them. Some of the notices were forwarded to our lawyer who never told us about them. (Our lawyer was reprimanded later for drunkenness in court.) Many of them actually referred to a completely different piece of property, with another tax parcel number. And, a few my father flat-out ignored because he was totally convinced there was a mix up between the pieces of property being cited. Remember, this was an illegal dump for approximately thirty years. People had deposited fill, cars and tires all over it. He never, in his wildest imaginations, thought that he would be cited for wetlands violations for cleaning up his property and adding clean fill to this dump.

In 1987, my father was informed by the Army Corps that he was being civilly sued to restore the property to its previous condition. It's important to understand that the Army Corps wanted him to reestablish the damming effect that approximately one thousand tires had in the stormwater drainage ditch. In effect, they were telling him to re-dam his property that had been an illegal dump for over thirty years.

When he was told by Army Corps that he needed a permit to build his truck repair shop, he obtained a water quality permit from Pennsylvania's Department of Environmental Resources. He did this, even though he was told by the Department of Environmental Resources that his new property, the dump, was not on the National Wetlands Inventory.

Mr. Chairman, Members of the Committee, at every point along the way my father kept asking, "How can we make this work?" When he was told by the Army Corps that he must do "mitigation" to build on his property, he thought he was being asked for a bribe. He went to the FBI to report it. He never fully understood what he was doing wrong, yet Army Corps sued him. Concurrently, Army Corps referred his case to the Environmental Protection Agency, who then referred it to the Department of Justice for criminal prosecution. And, at the same time he was being sued, the Army Corps was continually asking for more information to process his permit.

Talk about a Catch-22.

He was arrested. His house was searched for weapons by two federal EPA officers. Our family owns no weapons, besides the knives we use in our kitchen. We are still trying to figure out why our house was searched. Our family had little to no money for a lawyer as my father had invested most of it in the dump across the street from our home.

Because of Army Corps' actions, my father was civilly sued and had a judgment laid against him. My father was sentenced to three years in prison and a $202,000 fine.

The effect this had upon my family was absolutely devastating. In the end, my father was imprisoned for a year and a half, lived in a halfway house for a year and a half, and was given five years of supervised probation. My family was forced to declare bankruptcy. Our family was unable to pay the property taxes on our dump. Subsequently, the judge lowered his fine to $5,000. I lost my job as a journalist, after my editor explained to me that my father's name was too visible in the news. But, the thing that hurt the very most was scheduling my own wedding between trials and appeals.

At the time my father was sentenced, he was the "worst environmental violator" in the history of the United States. No one had gone to prison for the Exxon Valdez disaster. No one went to prison when EPA noted 22,348 pounds of toxic TRI chemicals were released into the water in Essex, New Jersey. But, John Pozsgai went to prison for Clean Water Act violations on fourteen acres of an illegal dump in Morrisville, Pennsylvania.

Pozsgai's daughter, Victoria Khoury, is seeking a presidential pardon for her father.

Pozsgai's troubles, however, have yet to end. In 2002, three environmental organizations went to federal court asking for the right to take Pozsgai to court to force him to "restore" the site. As the Philadelphia Inquirer put it in a March 2002 article, these groups believe "the U.S. Army Corps of Engineers and the U.S. Attorney's Office have not been tough enough" on Pozsgai.

Sources: Testimony of Victoria Khoury before the House Committee on Government Reform, Property Rights Foundation of America, Alliance for America, Ray Proffitt Foundation, Bucks County Courier Times, Philadelphia Inquirer, Delaware Riverkeeper Network

Regulations Increase Water Bills of Mobile Home Residents by $230 Per Month

Residents of Utah's Heartland Mobile Home Park soon may be forced to pay up to $230 more per month in water bills. The culprit? No, not drought. Not even higher taxes — at least, not directly.

No, the culprit will be new regulations to reduce the level of arsenic present in drinking water, set to take effect in 2006.

Arsenic is a naturally-occurring chemical present in soil, plants, water and animals. The Environmental Protection Agency (EPA) has mandated that arsenic levels in drinking water be reduced from the current 50 parts per billion (ppb) to ten ppb by 2006.

Although environmental groups such as the Natural Resources Defense Council (NRDC) believe that exposure to arsenic leads to an increased risk of bladder, lung and skin cancers, the National Academy of Sciences has said that "no human studies of sufficient power or scope have examined whether the consumption of arsenic in drinking water at the current [allowable] level results in the incidence of cancer or non-cancer effects."

Regulations aimed at reducing the level of arsenic in the water supply include expensive water treatment regimens. The cost will be borne by local residents. Government studies show these expensive plans will unevenly target smaller communities, thus making the per-person costs higher. A 2000 report by the U.S. Geological Survey found that the majority of large cities have average arsenic levels of only two ppb. The EPA says 97 percent of those who will be forced to adhere to new arsenic standards are residents in cities of 10,000 people or fewer.

In the Heartland Mobile Home Park, the EPA estimates, residents will face an increase of $70.01 per month on their water bills. Utah's Department of Environmental Quality believes the cost will be much higher, estimating that the monthly increase will actually be $230.37.

The NRDC filed a lawsuit in June 2001 against the EPA in the D.C. Circuit Court of Appeals to have the arsenic standards lowered even further, to three ppb. On January 14, 2002, the Competitive Enterprise Institute filed an opposing motion in the same court on behalf of small water suppliers across the country. All cases pending on this issue will be argued in the court in April 2003.

Sources: Competitive Enterprise Institute, Townhall.com, Statistical Assessment Service, Natural Rural Water Association

Corp of Engineers Pressures Homeowners to Sell by Threatening to Condemn Their Land

An 8.5 square-mile area along the eastern edge of the Everglades National Park encompasses an unincorporated community of several thousand people — mostly of Cuban descent — who live on small, family-owned farms. The community contains about 320 homes. Residents grow fruit, vegetables and flowers and raise pigs, goats, chickens and horses.

A proposed Army Corps of Engineers' levee and seepage canal would require the taking of about 100 homes and would bisect the community.

In 1989, Congress passed the Everglades National Park Protection and Expansion Act. It requires that the Corps, which controls the flow of fresh water in the Everglades area, "improve water deliveries into" the Park. If these changes adversely affect the area, the Act requires the Corps to "construct a flood protection system for that por-

tion of presently developed land within such area." The Corps' original 1992 plan sought construction of a levee on the western edge of the area. This plan would have protected all residents of the area and not condemned any homes.

In 2002, the Corps, along with the U.S. Department of Interior (DOI), decided on an alternative plan that would put the canal and levee right through the middle of the community, forcing residents out of all homes in the canal's path and north and west of the canal. The Corps pressured affected homeowners to sign "offers to sell" by asserting that the Corps had the authority to condemn their land if they did not voluntarily sell. Some homeowners, thinking they had no other choice, sold their land to the Corps.

Seven homeowners, with the support of a local organization, the 8.5 Square Mile Legal Defense Foundation, filed a lawsuit against the Corps.

On July 5, 2002, a U.S. District Court ruled that the Corps' new plan violated the 1989 Everglades Act. The ruling halted the Corps' plan to flood a portion of the area. The Corps returned to Congress to ask for the funds and authority to condemn homes there. The U.S. House of Representatives has declined to provide funding for the plan, but the Senate has added funding to an appropriations bill that must be reconciled with the House bill.

In 1999, DOI officials testified before a House Subcommittee that "acquisition of the area is not a requirement for restoration of Everglades National Park." The Corps' own Supplemental Environmental Impact Study shows the original 1992 plan meets the ecological goals of Everglades restoration at a cost of $50 million less, and with less delay than the new plan.

Area resident Madeleine Fortin, says, "Congress ordered the Corps of Engineers to provide my community with flood protection but it looks like Congress is no longer in control of its federal agencies. There is no environmental benefit to be derived by the destruction of my community."

Sources: MadelineFortin,Hunton&Williams,TheWashingtonTimes

Rancher Fined By EPA for Replacing Levees on His Ranch

In 1994 and 1995, state and federal agencies — including the U.S. Forest Service, Bureau of Land Management and Oregon Department of Fish & Wildlife — put $3.2 million worth of logs in a creek upstream from Leonard Zylstra's ranch near Medford, Oregon for the purpose of enhancing fish habitat.

Waters in the creek reached a 20-year high point in 1997. This tore the logs loose, causing them to gush downstream with debris, overflowing the creek and washing away bridges and two homes. The overflow went into Zylstra's pasture, destroying 29 acres of hay and removing topsoil to a depth of five feet.

After the water subsided, Zylstra got a permit from the Oregon Department of State Lands to re-sculpt his land, re-build levees, lower the creek bed to its original depth and use that dirt to replace the soil he lost. He did not get a permit from the U.S. Army Corps of Engineers because Oregon state law does not require agriculture activities to get a "fill and remove" permit.

However, the U.S. Environmental Protection Agency (EPA) claimed Zylstra violated the Clean Water Act, and threatened him with fines up to $43,500 per day followed by property forfeiture unless he returned his property to a "native and natural state."

Under the EPA-approved mitigation plan, Zylstra would be required to plant specific flora, fence off the creek from his cows and lower the levees that have existed for 100 years. Because he cannot afford to challenge the EPA in court, Zylstra has put his ranch up for sale and plans to move to Florida. He is refusing to cooperate with what he calls "bureau rats," especially after the EPA attorney demanded the past four years of his tax returns during the course of the EPA investigation.

Source: Leonard Zylstra

Farmers Only Allowed to Use Water Five Out of Ten Years

Due to a regional drought, the U.S. Forest Service in 1999 suspended the federal permits of Methow River irrigators in the Pacific Northwest. This action, which stopped farmers from irrigating their crops, was implemented to protect endangered or threatened salmon and steelhead species in the river.

The water cutoff has harmed farmers in Okanogan County, Washington, who rely on water from the river for their livelihood. Farms and fields in the area went dry in 2000. Steve Durbin of Early Winters Ditch Company notes, "We want to find a balanced solution that protects fish and people, but NMFS [the National Marine Fisheries Service] doesn't seem to care about the people." The federal government has determined that farmers cannot irrigate out of the Methow if water flows fall below what they were when people first starting taking water from the river 100 years ago.

Farmers in the county contend that this will prevent them from having access to water five out of every ten years. Okanogan County officials, farmers and ranchers sued the Forest Service, the NMFS, and the U.S. Fish and Wildlife Service in 2001, claiming that the federal government illegally used the Endangered Species Act to cut off their irrigation water. The plaintiffs maintain that they attempted to compromise with the federal government to no avail. "We have tried to reach a reasonable agreement over water use, but it has become clear that the federal government doesn't want to be reasonable," said Okanogan County Commissioner Craig Vejraska. The county also claims that water use in the Methow River should be a state issue, not a federal matter.

In 2002, U.S. District Court Judge Robert Whaley dismissed the lawsuit, ruling that the Forest Service had the authority to close the ditches in order to provide water for endangered fish. The case is currently being appealed to the Ninth Circuit Court of Appeals by the county. In the meantime, farmers go without irrigation water, as they have for the past three years.

Sources: Associated Press, Alliance for America

Father and Son Do Hard Time for Filling a Dry Ditch

Ocie Mills bought two lots in Escombia Bay, Florida in 1986. He planned to build a dream home for his son, Carey. The father and son brought in 19 loads of clean building sand, cleared a dry ditch and began filling that ditch with sand to level the ground for a foundation. Shortly after the work began, Ocie Mills received a notice from the U.S. Army Corps of Engineers demanding that he immediately stop placing fill in the ditch because the Corps considered it a wetland.

When Ocie Mills tried to contact the Corps, he unknowingly spoke with someone who worked for the Florida Department of Environmental Regulation (DER). The Corps was temporarily sharing office space with the DER at that time. The DER official came to the Millses' property to determine if the property contained wetlands. Flags placed on the property by the DER showed that most of the land, including the ditch, was not a wetland. The Millses resumed dumping fill. The Corps, however, disagreed with the judgement of the DER and sent U.S. Marshals to arrest Ocie and Carey Mills.

The Millses could not afford a lawyer, and they didn't think the Corps' case would be taken seriously due to the judgement from the DER.

The case did go to trial, however. In January 1989, three federal lawyers represented the government's case against the Millses. Ocie Mills, representing himself, attempted to submit evidence showing that the DER did not agree that the ditch qualified as a wetland, since the land was completely dry. This evidence, however, was disregarded because it dealt with state law, which was superceded by federal law. Ocie and Carey Mills were both sentenced to 21 months without parole and fined $5,250 each.

The two men served their complete sentences. In 1992, they returned to U.S. District Court and a new judge in an attempt to have their convictions erased. The Millses' lawyers raised questions regarding jurisdiction over the property, a matter which was never discussed in the original trial. Since appeals can only be made based on information argued in the initial trial, Judge Roger Vinson — though sympathetic — ruled not to reverse the convictions. He did rule, however, that "the property was probably never a wetland for purposes of the Clean Water Act."

In March 1996, Quenton Wise, a juror from the original trial, informed Ocie Mills that the jury had been prejudiced against the father and son during the trial because the jury foreman had told the other jurors of a past encounter Ocie Mills had with environmental officials.

In light of allegations of a biased jury, the Millses filed a petition for the writ of error coram nobis ("error before us") on April 11, 1996. Such writs are only granted in rare circumstances if a severe injustice can be proven, but it provided a possible way for the Millses to get a new trial. Judge Vinson ruled in the Millses' favor and set an evidentiary hearing, but the Eleventh Circuit Court of Appeals in Atlanta decided the tainting of a jury pool is not severe enough to merit the writ and overturned the ruling.

In 2001, the U.S. Supreme Court declined to hear the Millses' case.

Sources: Pacific Legal Foundation, The Washington Times, WorldNetDaily.com, The Freedom Forum

Small Business Doomed by Birds Engaging in Interstate Commerce

Larry Squires, a veterinarian since 1948, owned a corporation in New Mexico that disposed of production water from oil and gas wells until the U.S. Environmental Protection Agency (EPA) took his property without compensation. Squires owns land that contains a playa lake (sinkholes that gather rainwater approximately once every one to two hundred years) ideal for the disposal of these wastes because its bed consists of thick, red clay that is impermeable to water.

A 1987 EPA determination said that the lake did not fall under the jurisdiction of the Clean Water Act. Therefore, the disposal of oil field brine (saltwater) on the property was allowed. Squires created Laguna Gatuna, Inc. thereafter, and the firm invested in the installation of pipelines from the lake to nearby oil and gas wells.

In 1992, the EPA monitored the playa for water quality. When it noticed dead birds in the area of the lake, the EPA decided that Laguna Gatuna, Inc. had violated the Clean Water Act by discharging pollutants without EPA's permission. The EPA claimed that the lake "provides a significant nesting, feeding, and loafing area for migrating birds, including shorebirds, ducks, coots, grebes, and raptors." On the rare occasion that natural rainwater accumulates in the sinkholes, the playa could be regulated by the Clean Water Act because birds landing on these puddles "are engaged in interstate commerce."

The EPA issued a cease and desist order to Laguna Gatuna, Inc. and threatened to impose a $100,000-a-day fine should the company continue to dispose of production water on the land.

The company had no choice but to shut down immediately. It asked for "just compensation" for its loss of property value, but the U.S. Federal District Court in New Mexico and the U.S. Court of Appeals held that the courts did not have the jurisdiction to pursue the case because EPA orders under the Clean Water Act are not open to judicial review.

Fortunately for Squires, in 2001 the Supreme Court struck down the Migratory Bird Rule under the Clean Water Act in SWANCC v. U.S. Army Corps of Engineers. Since then, Squires has pursued his own case for compensation, and, in September 2001, the U.S. Court of Federal Claims ruled in his favor. The court found that the Laguna Gatuna's numerous investments made in anticipation of future company progress had been destroyed by the EPA's regulatory order. Consequently, the agency's action constituted a "taking" that warranted compensation.

Because Larry Squires has cancer, he has tried to close the deal quickly by negotiating directly with the government for compensation and attorney's fees. As a result, however, the current amount of settlement is "about half what it was worth," according to Squires.

Sources: Mountain States Legal Foundation, United States Court of Federal Claims, Larry Squires

Environmentally-Sound, Economically- Useful... And Illegal?

Charlie Johnson's family has been growing cranberries on his small farm near Carver, Massachusetts since the 1920s. The federal government is now preparing to take Johnson to court, claiming that many of the cranberry bogs were created in violation of the 1972 Clean Water Act.

In 1996, the U.S. Environmental Protection Agency (EPA) asked for permission to enter Johnson's property to collect data. Johnson gave his approval, believing he had nothing to hide. He later discovered that the EPA wanted to return his land to wetlands under the assumption that wetland conditions existed on the property before Johnson's cranberry bogs were constructed. Johnson said the bogs were originally built on dry, sandy land that formerly contained a variety of forested uplands.

The EPA based its theory on a number of small aerial photos taken during spring thaws when much of the area is underwater because of melting snow. Over the past six years, the EPA and four hired consultants have entered Johnson's property to dig 56 test pits and install 53 groundwater wells and gauges. To this day, EPA officials enter his property on a weekly basis to conduct further tests.

Johnson, a 69-year-old Korean War veteran, testified before the U.S. House of Representatives Subcommittee on Water Resources and Environment in 2001, saying, "Career bureaucrats without farming experience and without personal accountability for the massive cost to the public for their decision-making have improperly distorted and characterized economically-useful, environmentally-sound, productive activities conducted by life-long caring land stewards into illegal acts."

If the government wins its case against Johnson, he will be forced to destroy his cranberry bogs and convert his property to wetlands. The case is currently in the discovery phase in U.S. District Court.

Sources: American Association of Small Property Owners, Gary Baise

Supreme Court Rules Government Can't Take Your Land Without Compensation

Tony Palazzolo bought approximately 18 acres of marshy property near Westerly, Rhode Island in 1959 intending to build homes or a recreational facility. During a 40- year span, both he and the company he owned tried to obtain permits necessary to develop the property. The State of Rhode Island repeatedly denied Palazzolo a permit, citing wetlands regulations. He was told that, at most, he could build one house on the upland area of the parcel — leaving 73 lots unusable.

Palazzolo took his case to court, asking for compensation from the state for depriving him of the economic value of his property. He lost his case in the Rhode Island Supreme Court, but he appealed his case to the U.S. Supreme Court. In 2002 the U.S. Supreme Court rejected the Rhode Island Supreme Court's decision and said that a landowner could challenge land-use regulations — even if they are in effect when the property is purchased. Associate Justice Anthony Kennedy said in the majority opinion, "Future generations, too, have a right to challenge unreasonable limitations on the use and value of land."

While the U.S. Supreme Court did not accept Palazzolo's contention that he had lost all of the economic value of his

land (because he was told that he could build one home), it sent the case back to the Rhode Island Supreme Court instructing that the case be analyzed based on the Penn Central doctrine. The Penn Central doctrine, established by a 1978 U.S. Supreme Court ruling, requires courts to take into account the economic impact of the regulation on the property owner and the owner's investment-backed expectations. This is an important victory for landowners because governments were previously only required to compensate property owners if all of the economic value of their land was "taken." The Rhode Island Supreme Court has not yet ruled on the matter so Palazzolo, now 82 years old, is still paying taxes on 73 subdivided lots on which he cannot build and for which he has not received compensation.

Source: New England Legal Foundation

Corps of Engineers Takes Use of Couple s Properly, Then Ducks Responsibility in Court with Monopoly Money Permit

Helen and William Cooley bought a 33-acre piece of land near Coon Rapids, Minnesota in 1972 with plans to put in improvements before subdividing it and selling lots for new homes. In 1989, the Cooleys asked the U.S. Army Corps of Engineers to determine if their property contained wetlands. The Corps determined their entire property was a wetland and that a permit would be required before any building projects were undertaken.

The Cooleys initially challenged the Corps' conclusion, but eventually applied for a permit. The Corps denied them a permit to build in 1993. The Cooleys then sued the Corps, arguing that the agency's denial was a "taking of their property without just compensation" in violation of the Fifth Amendment to the U.S. Constitution.

Later, in 1993, the Corps sent the Cooleys a letter suggesting they might be able to get a permit for part of their property. The Cooleys declined the offer, saying that they considered the agency's permit denial to be final. The Corps then issued a partial permit for 14 acres, saying that the partial permit reversed any prior "taking." Again, the Cooleys rejected the permit.

In 1996, just ten days before going to trial, the Corps issued the Cooleys a "provisional permit" for the entire property, but the permit contained the warning "not valid, do not begin work" — in essence, a permit worth no more than Monopoly money. The Corps then used the argument at trial that the partial permit and the provisional permit both reversed the earlier "final decision" and therefore no "taking" had occurred. The U. S. Court of Federal Claims disagreed and awarded the Cooleys over $2 million in compensation plus interest, attorney's fees and costs.
The federal government has appealed the case to the U.S. Court of Appeals.

Source: Pacific Legal Foundation

Couple Loses Right to Jury Trial Along With Use of Their Property

"For 14 years, we have not been able to use or enjoy our property. We have spent over $300,000 in legal fees and other costs while the assessed value of our property has declined from $268,000 to $20,100. Yet we have never been able to go before a jury of our peers and explain our case," says Louise Williams.

In 1986, Louise and her husband Fred bought five acres in Little Compton, Rhode Island, where they planned to build a three-bedroom home.

Before the Williamses bought the land, the Rhode Island Department of Environmental Management (DEM) conducted a perc and water table test on the property, which are used to determine if land can be classified as a wetland. The Williamses' land was not classified as a wetland. The DEM also approved a design for a septic system on the property. The Williamses renewed the septic system design in 1987 and 1988, and their builder received a building permit from the local government. In October 1988, construction began and the DEM inspected and approved

the scraped bottom of the septic system. It also approved the constructed foundation and issued a Certificate of Conformance in December of that year.

After receiving a call from one of the Williamses' neighbors, the DEM reversed itself and alleged that the foundation and septic system were on a wetland or wetland buffer zone. A cease and desist order was issued against the Williamses. The DEM also filed a notice of violation, which, in effect, put a lien on the property. All construction on the home site was stopped.

When the DEM refused to give the couple a hearing to try to resolve the problem, the Williamses went to court. In 1991, the Rhode Island Superior Court ordered the DEM to give the Williamses a hearing, and a DEM hearing officer dismissed their violation. DEM Director Louise Durfee, however, later overturned the hearing officer's ruling.

The Williamses appealed the Director's decision to the Superior Court, which ruled that the DEM could not impose a penalty without giving the couple a jury trial. During the two-year waiting period for a jury trial, the DEM ordered the Williamses to remove the previously-approved septic system and foundation and plant over 200 trees and bushes to "restore the property." They were given only 45 days to complete the work.

Because the DEM did not impose the $2,000 fine it had originally demanded, but instead required them to remove their previously-approved septic system and plant 200 trees and bushes, it evaded the court's requirement that the Williamses were due a jury trial.

Nonetheless, the Williamses did as DEM demanded.

Since this 1994 order, the Williamses have been falsely accused of having a foundation on their property and have been prohibited from mowing the grass, having a garden or even planting anything without filing a formal application and paying attendant fees to the DEM. One DEM official testified before a Rhode Island legislative hearing that "the Williamses have two buildable lots and we know where they are," but the DEM won't tell the Williamses where they are allowed to build.

As Louise Williams says, "The DEM has strung us out until the legal costs are greater than the value of the property. How does a citizen protect himself from a government agency that doesn't tell the truth, has deep pockets funded by the public and can string you out forever?"

Sources: Fred & Louise Williams, Providence Journal Bulletin, New England Legal Foundation

If an EPA Official Says It's Wetlands, It's Wetlands

Bruce Dyer and his wife bought approximately 100 acres of land along the Taunton River near Bridgewater, Massachusetts in 1994 to build a home. On the remaining acreage, they constructed a cranberry bog. To construct the bog, Dyer consulted with the Bridgewater Conservation Commission and hired a botanist to delineate any wetland areas to avoid disturbing. Between 1995 and 1998, he began to build the dikes and plant cranberry vines.

It was about that time that Dyer was contacted by the U.S. Environmental Protection Agency (EPA) and told he would have to answer eight questions for them or be subject to a fine of $137,500. After Dyer answered their questions about his cranberry bogs, EPA Region One officials requested permission to visit his property.

After several visits, EPA officials claimed Dyer had disturbed wetlands on approximately five acres of his land. More EPA visits ensued, as EPA officials continued to take soil samples in an attempt to determine if Dyer's bogs were on wetlands. EPA consultants determined that the plant vegetation were of upland species, not wetland species. The EPA official in charge of the case, according to Dyer, later fired these consultants, because their findings didn't match her conclusions.

Soon, more government consultants arrived to dig test pits and take soil borings. Dyer, his wife and three others saw an EPA official telling her consultant where to put the wetland area on the map, since the EPA official said, she

was “paying the bill.” In spite of the fact that the tests did not follow the U.S. Army Corps of Engineers Manual Study Guide of 1987 on how to delineate wetlands, Dyer was still told his bogs were on wetlands. But, encouraged by his attorney at the time, Dyer agreed to sign a Consent Decree, pay a $15,000 fine and restore 8.2 acres of his land to government-prescribed wetlands.

Dyer agreed to the decree after he spent $250,000 in legal and consultants’ fees and his wife began suffering from bouts of depression. Since then, Dyer has hired a new attorney and asked the EPA to amend the Consent Decree to exclude the restoration to wetlands. EPA officials have told him his appeal for an amendment is “meritless,” so he has asked a federal court in Massachusetts to hear his case. Meanwhile, the EPA has told him fines for not restoring the wetlands could range from $400,000 to $45 million should he choose not to comply.

Sources: Gary Baise, Bruce Dyer

Federal Agencies Target Native American Minnesota Landowner

Gary Bailey, a Native American Vietnam veteran who has been a paraplegic since 1978, has owned property near Lake of the Woods, Minnesota since 1976. Between 1996 and 1999, Bailey worked with Lake of the Woods county officials to subdivide a portion of his property into 14 residential lots. He received all of the necessary permits, including a Water Quality Certification and a Wetland Conservation Act permit from the state of Minnesota for the construction of an access road, which was deeded to the county.

After the lots had been sold and the access road had been dedicated as a public road, the U.S. Army Corps of Engineers told the county to apply for a permit for the road. The Corps then denied the permit, claiming the bulk of the subdivided property is wooded wetlands within the jurisdiction of the Corps’ regulatory powers. Corps officials have ordered Bailey to tear out the access road, in which he no longer has an ownership interest, and restore the land to its original condition.

Since then, the Environmental Protection Agency (EPA) has become involved, and has charged Bailey with “unauthorized discharges into wetlands or tributaries of the Winter Road River.” EPA officials have ordered Bailey to “submit a plan for restoring wetlands disturbed by road building, ditch digging and other activities over the past 10 years.” It also alleges he discharged pollutants into waterways since 1980 without permits.

Bailey believes he is being targeted because he owns an elk ranch where he allows hunting.

Bailey says his wife of 31 years is divorcing him because of the stress on the marriage induced by the case. He has filed suit in the federal court of claims against the Corps under the “takings” provision of the Fifth Amendment of the U.S. Constitution. He has also filed a lawsuit in district court against the Minnesota Pollution Control Agency, the Minnesota Department of Natural Resources and Lake of the Woods County, charging them with actions that are unlawful, arbitrary and an inconsistent, capricious exercise of police power.

Sources: Alan Fish, Association of Small Property Owners, Gary Bailey

Man Jailed After Zoning Officials Renege on Where He Should Plant Trees

John Thoburn owns a driving range for golfers in a Virginia suburb of Washington, DC.

To bring him into compliance with local zoning ordinances, Thoburn was ordered by Fairfax County officials to plant over 700 trees on his driving range in 1994 at a cost of over $125,000. Before he planted the trees, Thoburn asked the official Fairfax County arborist to approve the location of the trees, and received such approval.

However, the Fairfax County Zoning Administrator later determined that some of the trees were in the "wrong" location. Zoning officials subsequently demanded that Thoburn move 98 of the trees to different locations. Since he had obtained prior government approval for the placement of the trees, Thoburn refused to move them. He was consequently convicted of contempt of court and sent to jail for over three months.

According to a letter written by Thoburn during his imprisonment, he said that — even though he was being detained for the alleged landscaping violations — the zoning officials still hadn't told him exactly which trees were in the wrong location. After a lengthy court battle, evidence was presented in court that showed Thoburn's compliance with the new zoning order was both financially and physically impossible. By this time, Thoburn had already been imprisoned for 98 days and was being fined $1,000 per day. "If I can be jailed for not moving trees, do I really possess my property? There are many ways to take away property rights," said Thoburn.

The story does not end with Thoubrn's release. After allowing his release from jail, the judge granted the county's request to enter Thoburn's property and complete the planting they desired. This was done the next day, and county officials presented Thoburn with the bill — nearly $40,000, which became a lien against his property. Today, Thoburn is seeking to rezone his property in the hope of selling it to pay his legal bills.

Source: Defenders of Property Rights

County May Leave Businesses in the Dark Literally

County Supervisors in Loudoun County, Virginia are considering enacting regulations that would force residents and businesses to turn off their lights as early as 9:00 P.M. to avoid "light pollution."

Groups such as the International Dark Sky Association have successfully lobbied local governments to impose restrictions on the strength of outdoor lighting and how late certain lights can be used. In Loudoun County, a suburb of Washington, D.C., the initial policy proposal would affect all lights above 5,500 lumens. The average bulbs found in a residential home may range from 1,650 and 4,000 lumens — but those lights do not include outdoor flood lights or decorative and security lighting. The earliest restrictions would begin at 9:00 pm, and all lights, regardless of lumens, would be required to be extinguished by midnight.

These proposed lighting restrictions would have a profound economic impact on many businesses in the county. Shakir Mallick, the manager of a Taco Bell and Pizza Hut, told The Washington Times that his restaurant usually earns between $1,400 and $1,600 a night between 9:00 P.M. and 2:00 A.M. He said, "If I had to turn off my signs it would dramatically hurt my business." Likewise, the manager of a 24-hour gas station feared customers would bypass his darkened station in favor of lighted ones in the neighboring county if he could not keep his facilities lit after sundown.

Commenting on her concerns about the lighting ban affecting public safety, 37-year Loudoun County resident Rita Stefkovic said: "I've never heard of light pollution or an organization called Dark Sky or whatever it is, but what I have heard of is people coming in and breaking into houses that are not well-lit. Are they going to stand watch outside my front door and make sure no one breaks into my house?"

After a spirited opposition led by County Supervisor Eugene Delgaudio that included a costumed Darth Vader in support of the regulations and Santa Claus against them, the supervisors narrowly voted in favor of drafting lighting restrictions.

The officials who voted to adopt the restrictions promised that any approved regulations would most likely not affect holiday light displays. Since "most likely" is an enormous loophole, the promise is meaningless.
A major concern among supporters of the proposed regulations was the potential costs associated with enforcing them. The cost to local residents of having them, however, apparently was of lesser concern.

Sources: The Washington Times, Leesburg Today

County Government Uses Helicopter to Monitor Yard Debris

Eugene Mixon is an employee of the U.S. Department of Justice who lives in Fairfax County, a suburb of Washington, D.C.

By his own admission, Mixon's quarter-acre yard could use a clean-up. The yard contains construction equipment that Mixon used to fix his roof. He also has a half- dozen cars in the yard, but all of them are in compliance with state-mandated safety and emissions standards.

After neighbors complained to the county about Mixon's fence, which is two feet higher than allowed under local zoning regulations, Fairfax County zoning officials decided to inspect the property for the potential zoning infractions. When they visited Mixon's property, the 65-year-old invoked his Fourth Amendment right against unreasonable search and seizure and did not allow the officials into his yard.

Rather than obtain a search warrant after being denied access, county officials flew a county-owned police helicopter over the Mixon property to survey it from above. Fairfax zoning officials later admitted that using a helicopter to investigate a single property for a zoning violation was not only unusual, but also somewhat unsuccessful, because trees blocked much of the view.

Soon after the helicopter surveillance, the county posted a large sign in Mixon's front yard, claiming it as a junkyard. This, however, was a stretch. There is no evidence that Mixon, a full-time federal employee, has ever run such a junkyard business. All of the materials in his yard were to repair the roof on his house.

As The Washington Times editorial page wrote, "The intensity of the bureaucratic attack... is suggestive of personal animus by staff or elected county officials against Mr. Mixon."

Sources: The Washington Post, The Washington Times

California Color Cops Outlaw Yellow Homes

Melinda and Joe Bula own a five-bedroom home in El Dorado Hills, California. The El Dorado Hills Design Review Committee ruled in the spring of 2002 that their house, which was painted yellow when they bought it six years ago, does not meet the city's "covenants, conditions and restrictions." The city's rules handbook regarding homeownership restrictions states that "no primary colors — yellow, red or blue — are allowed." Only beige and tan colored homes are allowed in this Sacramento suburb. City manager Wayne Lowery told The New York Times, "If you allow yellow, then when a guy comes in and says he likes purple, where do you draw the line?"

The Bulas appealed the committee's rejection to the city board, which has subsequently assigned a task force to review the rules.

The Sacramento Bee weighed in on the Bulas' side, editorializing, "When homeowners such as Melinda Bula give our eyes a break from boring beige, they deserve three cheers and a free pass from the color cops."
Joe Bula adds: "The only thing stupider than fighting it is not fighting it."

But the Bulas may have another fight after this one is resolved. The same review committee also claims that the Bulas are violating another rule because the white picket fence around their home is made of plastic instead of wood. "First yellow, then the white picket fence," said Melinda.

Source: The New York Times

Freedom to Farm, But No Freedom to Live?

Fears of obscene gestures and rising property values delayed a housing project for six years in the rapidly-growing community of Zeeland in southwestern Michigan while the courts sorted out the validity of the concerns.

Zeeland — like many communities in that part of Michigan — is experiencing explosive growth as companies attracted by a skilled workforce and an industry-friendly environment move there and/or expand their facilities. Testament to the growth is the fact that, just four years after one of the area's largest high schools was built, a second one was built next door to handle the influx of new students.

It was only natural that developer Jim Wickstra and his partners would decide to build homes near the schools. It was equally logical that they would select land that the township's master plan — a document drawn up to manage growth and provide a degree of predictability for investors — had designated as residential.
Logic ended there, and a six-year battle to build 250 homes on 100 acres already approved for residential development began.

Farmers in the area protested the development. Among the concerns expressed by farmers in court filings: prospective homebuyers in the area "routinely 'give us the finger' or shout expletives and other comments about our use of the road [to move farm equipment]." Another complaint: property taxes were rising because development had increased the value of the farmers' property by 48 percent.

In addition, farmers said complaints by new residents about the noise, dust and odors of farming would force the farmers out of business — although Michigan's "Right to Farm" law prevents such complaints from being considered by authorities.

The local zoning board of appeals disagreed with the farmers in 1998 and allowed development to proceed, but with 29 stipulations, including wide buffer zones around the housing.

The matter then went to Michigan district court, which agreed with the zoning board of appeals. The farmers then went to the Michigan Court of Appeals, where they lost again.

Now, after six years and losing an estimated million dollars in attorney's fees and carrying costs on the land, Wickstra and his partners are finally ready to break ground.

Source: Jim Wickstra

Hotel Must Allocate Rooms to Homeless Without Full Compensation, City Says

San Francisco's Hotel Conversion Ordinance says that as of September 23, 1979, any room in a small hotel that had been occupied by the same guest for at least 32 days was re-designated as "residential" and must be set aside and rented at below-market prices for the city's indigent population. This applied to hotels such as Claude Lambert's 58-room Cornell Hotel because it historically had offered accommodations to visiting businessmen and students, who often would stay there for extended periods while conducting business or attending the university.

Claude Lambert began working as a janitor in the Cornell Hotel in 1966. After 12 years of working at the Cornell and moonlighting as a French teacher, he bought the property in 1978 and invested over $1 million to refurbish it into a charming inn. Over half of his rooms are now subject to the Hotel Conversion Ordinance. Since Lambert is unable to charge a fair market rent for "residential" rooms, he has closed many of them because it is more economical to keep them vacant than to rent them at below-market rates as "residential" rooms. If he wanted to rent these rooms to tourists, he would have to pay the city $600,000 for permission.

Lambert claimed a violation of his Fifth Amendment rights under the takings clause of the U.S. Constitution, which says "private property shall not be taken for public use without just compensation." The U.S. Supreme Court declined to hear Lambert's petition in 2001.

Source: Pacific Legal Foundation

Bureaucratic Quibbling over Paint and Light Fixtures Forces Family to Live in Moldy House

Brenda Everett, her husband Gerald and their two teenage daughters cough, suffer from chronic wheezing and have developed a nasal twang. These symptoms came after their home, located in Boulder County, Colorado, was flooded in May 1998. A private company's irrigation ditch spilled 1.6 million gallons of water onto the Everetts' property while they were on vacation.

Among other things, the spill destroyed their septic tank. With compensation for the damages tied up in court, the family needed to move out of the home because it was full of mold, mildew and effluent. Because they did not have sufficient money to move, the Everetts put down a deposit on a mobile home that they planned to locate on their property until their house was made habitable.

Unfortunately, Boulder County officials added insult to injury by needlessly complicating the family's plans. Boulder County officials made the family jump through regulatory hoops for nine months at burdensome expense in order to obtain a permit for permission to temporarily place a mobile home in the front yard of their own property. After nine months, the county still was denying the permit on the basis that files pertaining to the permit contained insufficient information on matters such as color samples and type of lighting. The county asked the Everetts to submit a new plan.

Boulder County Commissioner Todd Tucker also argued that a mobile home in the front yard would be an eyesore, and suggested placing the mobile home in the backyard. Unfortunately, it was impossible to put the home in the Everetts' backyard. The new septic system is in the front yard. Gerald Everett said that he told Tucker he couldn't hook up to the new septic system if the mobile home was in the back yard, to which, Everett says, Tucker responded, "Well you shouldn't have put it in then, should you?"

A magistrate also had ruled that the backyard was official evidence in the lawsuit against the ditch company, and as such, altering the backyard would disrupt court evidence.

Finally, the Boulder County Commissioners voted to allow the Everetts to place a mobile home in their front yard. By this time, however, the family's health had deteriorated, they were broke and they had to release their deposit on the mobile home. They were forced to live illegally in a camping trailer in their front yard.

As a result of the Everett controversy, commissioners are now calling for the creation of an ombudsman position to alert commissioners of complicated dockets within the bureaucracy.

For the Everetts, however, it was too late.

Source: Boulder Weekly

People Smoking in Their Own Home Could Have Been Fined

Residents of Montgomery County, Maryland were threatened with a fine if the smoke from cigarettes used within the bounds of their own home offended neighbors. Montgomery County Executive Douglas Duncan eventually vetoed the measure, which was approved by the Montgomery County Council in November of 2001. The measure

would have fined residents $750 for violations of the new regulation. It stated that if cigarette smoke should waft into a neighbor's home through an open window or door, neighbors could complain to Montgomery County's Department of Environmental Protection. Smokers — and, in some cases, landlords or condominium associations — that failed to provide proper ventilation could be fined $750 per occurrence.

The original attempt to control indoor air quality standards was designed so regulators could enforce complaints involving carbon monoxide, paint or glue odors and mold. If passed, this measure would have added tobacco smoke to the same classification system as asbestos, radon, molds and pesticides. County Council Member Michael Subin, who voted against the measure, said, "If this isn't Big Brother putting their nose under your tent, I don't know what is. What else are y'all going to start regulating in my home?"

Source: The Washington Post

Heart Patient Denied Garage Next to House, Forced to Trudge Through Snow to Car

Because the Adirondack Park Agency (APA) in New York will not allow him to build a roof over his exposed carport, Dick Willemin, who has a heart condition, must travel 150 feet — sometimes through extreme cold and snow — to reach his car.

The reason is simple. Willemin lives near Friends Lake in the Adirondack State Park. Sheltering his car so close to the shoreline would violate local zoning laws.

Willemin wears a pacemaker for a heart condition similar to Vice President Dick Cheney's, but Willemin's condition is considered more severe. Willemin's car is currently parked in a garage 150 feet away, across the road from his house.

Willemin has a paved parking area next to his house, but he doesn't park there because it has no roof. This is because the APA has zoning regulations in place that outlaw the building of "accessory structures" within 50 feet of the lakeshore. The roof Willemin planned to build above the parking space was determined to be an accessory structure.

Willemin applied for an exemption from the zoning rules so he could build a covered carport next to his house. Exemptions are granted in extreme circumstances, and Willemin petitioned on the grounds that he may need immediate access to his vehicle in case of a medical emergency. But the APA denied his exemption request. Last fall, however, Willemin was given permission to add an expansion to his house. This did not include permission for the carport, but he plans on asking permission to build the carport again when his current expansion project is completed.

Source: Property Rights Foundation of America

Urban Residents Must Do Without Modern Supermarket Amenities

A grocery store's alleged historic value is preventing the store's owners from serving their customers to the best of its ability.

Giant Food, a grocery store chain concentrated around the Washington, D.C. area, sought to expand one of its stores in the Cleveland Park neighborhood of Washington, D.C. from 12,000 square feet to 40,000 square feet. Planned additions included a deli, pharmacy and bakery. The expanded size and additions would allow this particular Giant location to offer more amenities and help it compete with larger suburban grocery stores.

Preservation activists claim that this Giant store is historic simply because it was the first area grocery store to an-

chor a shopping plaza. Groups citing the building's alleged historic value have forced Giant to engage in a three-year battle over renovation plans.
Giant's Vice President for Marketing Barry Scher remarked to The Washington Post that, "this building is about as historic as my two-year-old grandson." Local residents also rallied behind Giant and its plans to expand the store. Fortunately, the three-year battle to stop Giant's renovation plans was resolved when a compromise was reached between activists and Giant officials. Giant was prevented from implementing all of its planned renovations, but was able to install a pharmacy so local residents are able to enjoy some of the benefits of a 21st century supermarket. If they want all the supermarket amenities enjoyed by suburban residents, however, they still have to drive.

Source: The Washington Post

Hotel Owners Must Pay Off City in Order to Rent Rooms to Tourists

Tom & Robert Field own the San Remo Hotel in San Francisco, California, one of 500 small hotels that must set aside a percentage of their rooms for long-term, low- income residents at city-regulated, below-market prices in accordance with the city's Hotel Conversion Ordinance. Owners can avoid this regulation if they pay the city a huge one-time fee. In the Fields' case, the fee is $567,000.

The Fields claim that, in enacting the city Hotel Conversion Ordinance, the city of San Francisco revoked zoning rights the Fields acquired when they purchased the hotel in 1971. The brothers have invested over $1 million in renovating the 95-year-old building in order to attract more customers. However, they lost their case in California state court and were forced to pay the city so they could rent the restricted rooms to tourists.

Believing that private property owners should not have to foot the bill for social burdens that all taxpayers should bear, the Fields appealed the lower court's decision. A state appeals court decided in their favor, and said that the owners of small hotels like the San Remo should not be forced to subsidize housing for the homeless. One justice characterized the Hotel Conversion Ordinance as a "ransom." The California Supreme Court, however, overturned the Court of Appeals decision earlier this year. In September, the Fields decided to take the case to federal district court. City attorneys are asking that the case be dismissed.

Source: Pacific Legal Foundation

Zoning Board Denies Property Owner Full Use of Land

Frank Kottschade owns approximately 16 acres of land in Rochester, Minnesota that is zoned for single-family residences and townhomes. The city's land-use plan identifies the property as "appropriate" for high-density townhome development, so Kottschade applied to have the property rezoned to a greater density so he could build a larger number of townhomes there.

The Planning and Zoning Commission staff recommended the request be approved if Kottschade submitted a general development plan.

Kottschade submitted a plan to construct 104 townhomes on the property. However, the city's Planning and Zoning Commission had recommended nine conditions. The conditions were adopted by the city council and their adoption essentially killed the development.

According to Kottschade, the city's conditions allowed him to build only 26 townhomes instead of 104, thereby making the project economically unfeasible.

After several months of review, the city council and zoning board of appeals upheld the conditions, making just 26

townhomes possible instead of 104.

Kottschade filed suit in U.S. District Court in Minnesota arguing that the city's regulations constituted an unfair "taking" of his property and that he is due just compensation under the Fifth Amendment to the U.S. Constitution. The federal court denied Kottschade a hearing in May 2002, informing Kottschade that he must first file and be denied compensation in state court before he can claim a "taking" in federal court. Kottschade has appealed the decision to the Circuit Court of Appeals, which has not yet heard the case.

Kottschade is supported in the case by the National Association of Home Builders, which says it will, if necessary, take the case to the U.S. Supreme Court to prove that property owners have a right to bring constitutional claims in federal courts.

Source: National Association of Home Builders

San Jose Christian College Fights for Right to Move

Officials of San Jose Christian College in San Jose, California wanted to move into a defunct hospital in nearby Morgan Hill that the college had purchased in 2000. The Morgan Hill City Council said no.

Even though the facility could no longer be used as a hospital, the city council, according to a website run by the college, "voted to deny a zoning change from hospital use to education use." The college also claims the city council came to this decision despite a city study that showed the region would not need a hospital for another ten to 15 years.

The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) is designed to give religious institutions the ability to fight local governments over zoning disputes. The college's attorney claims that, under this law, cities must accommodate religious institutions when a city's zoning policy creates a substantial burden on them and their ministry. The city can be exempt from providing an accommodation if it shows a compelling interest such as protecting the health and safety of the community.

The college took the city to court, but a U.S. District Court judge ruled in favor of the city. The judge said that RLUIPA "does not grant religious institutions immunity from land use regulations." The court further ruled that the college was unable to show a substantial burden on the exercise of their religion and therefore was not protected under RLUIPA. As a result of not being able to make use of the property it purchased, college officials now fear they may have to turn away students and forego important ministries.

The Pacific Justice Institute of Citrus Heights, California is handling the case for the college, and has appealed the lower court's ruling to the Ninth Circuit Court of Appeals. An attorney for the group said, "We are hopeful that the Ninth Circuit will choose to respect the rights of religious institutions to establish themselves in locations that allow the exercise of their religions without substantial burdens."

Source: Pacific Justice Institute

Family Obtains Proper Permits to Build Home; Government Commission Stops Construction Anyway

Brian and Jody Bea decided to build a home on a family-owned parcel of land overlooking the Columbia River Gorge in Washington. After spending several years acquiring the necessary permits, the Beas received a building permit from Skamania County officials in 1997.

The Beas then applied for a permit from the Columbia River Gorge Commission, a bi-state group with responsibility

for overseeing developments in the gorge. The Commission had no objections to the Beas' plans, so the county gave them final approval to build.
Almost two years later, however, the Columbia River Gorge Commission reversed the county's decision, ordering the Beas to stop work on the nearly completed house. The Gorge Commission complained that the home was too visible in comparison to the surrounding landscape. The options presented to the Beas were: either tear down the home or re-locate it to a less visible part of the property.

The Beas took the case to state court, but in the meantime could not finish their home. They were forced to live elsewhere while making payments on the unfinished home. In 2002, the Washington State Supreme Court ruled that the Columbia River Gorge Commission had acted "without authority of law" when it overturned a valid land-use permit. However, despite the court's decision, the Beas are still not able to move into their home. The Gorge Commission continues to argue that the home should be moved. Further litigation for damages may be necessary if the negotiations do not result in a favorable outcome for the Beas.

Source: Pacific Legal Foundation

California Coastal Commission Favors Sierra Club's Wishes Over Church's Needs

The Roman Catholic Oblates of St. Joseph operate a church in Santa Cruz, California that seeks to expand its parking lot to accommodate increasing attendance at its church services and to provide parking for staff at a private school that leases space on their property. The City Council of Santa Cruz voted to allow an expansion of 17 spaces. Two scientific studies confirmed that the expansion would not harm the wintering habitat of the Monarch butterflies since there is a nearby 36-acre state park with nectaring sources for the wintering butterflies. The California Coastal Commission even affirmed the city's decision.

But neighbors of the church and the local Sierra Club protested the parking lot expansion, and appealed the city council's ruling. As a result, the California Coastal Commission reversed its position and decided to take jurisdiction away from the city council and study the situation for another year. In the end, the Commission did decide in favor of allowing the parking lot expansion to spare itself from being taken to court, but the church was denied the right to use its own property as it wished for a year.

Source: Pacific Legal Foundation

Supreme Court Denies Lake Tahoe Property Owners Compensation for the Loss of the Right to Build on Their Lots

Lying on the Nevada-California border is beautiful Lake Tahoe, justly famous for its strikingly clear water.
The water's unusual clarity stems from the absence of algae, which cannot thrive in Lake Tahoe because the lake lacks nitrogen and phosphorus, necessary to the growth of algae.

To maintain the lake's clarity and control development in the Tahoe Basin, the states of California and Nevada formed a Tahoe Regional Planning Agency (TRPA) in 1968 to "coordinate and regulate development in the Basin and conserve its natural resources."

To achieve its goals, the TRPA halted ongoing building projects in 1981 and, through a series of development moratoria, prohibited any new construction of condominiums, apartments or subdivisions. The moratoria halted development for just 32 months, but property owners have been unable to build on their properties for more than 20 years due to associated lawsuits.

Approximately 2,000 owners of improved and unimproved land in the Tahoe Basin and another 400 owners of vacant lots later formed the Tahoe Sierra Preservation Council (TSPC). They all purchased their properties before the TRPA was formed and all intended to build single-family homes for either vacation or retirement use. At the time of their purchases, such construction was authorized.

The TSPC sued in U.S. District Court, arguing that the moratoria constituted a "taking" under the Fifth Amendment. It won. The Ninth Circuit Court of Appeals reversed the ruling, and the property owners appealed to the U.S. Supreme Court.

The Supreme Court ruled that the mere enactment of a moratorium does not constitute a taking requiring compensation under the Fifth Amendment.

Because of the ruling, property owners such retiree Dorothy Cook, who paid $5,500 for a 60-by-100 foot lot 20 years ago, cannot build a retirement home. Cook paid property taxes for the last twenty years, but now her main asset — the lot — has little value.

Source: Pacific Legal Foundation

Elderly Washington Property Owner Denied Use of Most of His Property

Seventy-three-year-old Vinton Erickson owns a five-acre parcel of land in Clark County, Washington that has been in his family for over 100 years. He wants to build a house on his property. The county will not grant him a building permit unless he sets aside a 25,730 square foot section of his property (almost 12 percent of the land) for a conservation area, and agrees to maintain it in its natural state indefinitely. In addition, the county wants a "buffer enhancement area" on his property of 17,825 square feet (over 8 percent of the land), which he must "enhance" by planting 279 trees and shrubs. For up to three years, Erickson would have to water the trees and shrubs, hire a "qualified wetland professional" to supervise all maintenance, replace any dying trees and install a fence around the area so wildlife won't harm the vegetation.

Additional setback requirements on the sides of the property end up making almost 95 percent of Erickson's property unsuitable for development. He is awaiting the county's decision on his final application for development. If it is denied, Erickson plans to file a lawsuit for the regulatory "taking" of his property.

Source: Pacific Legal Foundation

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