

Opinion of Stevens, J.
SUPREME COURT OF THE UNITED STATES

No. 99—2047

**ANTHONY PALAZZOLO, PETITIONER v.
RHODE ISLAND et al.**

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF RHODE ISLAND

[June 28, 2001]

Justice Stevens, concurring in part and dissenting in part.

In an admirable effort to frame its inquiries in broadly significant terms, the majority offers six pages of commentary on the issue of whether an owner of property can challenge regulations adopted prior to her acquisition of that property without ever discussing the particular facts or legal claims at issue in this case. See *ante*, at 16—21. While I agree with some of what the Court has to say on this issue, an examination of the issue in the context of the facts of this case convinces me that the Court has oversimplified a complex calculus and conflated two separate questions. Therefore, while I join Part II—A of the opinion, I dissent from the judgment and, in particular, from Part II—B.

I

Though States and local governments have broad power to adopt regulations limiting land usage, those powers are constrained by the Constitution and by other provisions of state law. In adopting land-use restrictions, local authorities must follow legally valid and constitutionally sufficient procedures and must adhere to whatever substantive requirements are imposed by the Constitution and supervening law. If a regulating body fails to adhere to its procedural or substantive obligations in developing land-use restrictions, anyone adversely impacted by the restrictions may challenge their validity in an injunctive action. If the application of such restriction to a property owner would cause her a “direct and substantial injury,” *e.g.*, *Chicago v. Atchison, T. & S. F. R. Co.*, [357 U.S. 77](#), 83 (1958), I have no doubt that she has standing to challenge the restriction’s validity whether she acquired title to the property before or after the regulation was adopted. For, as the Court correctly observes, even future generations “have a right to challenge unreasonable limitations on the use and value of land.” *Ante*, at 18.

It by no means follows, however, that, as the Court assumes, a succeeding owner may obtain compensation for a taking of property from her predecessor in interest. A taking is a discrete event, a governmental acquisition of private property for which the state is required to provide just compensation. Like other transfers of property, it occurs at a

particular time, that time being the moment when the relevant property interest is alienated from its owner.¹

Precise specification of the moment a taking occurred and of the nature of the property interest taken is necessary in order to determine an appropriately compensatory remedy. For example, the amount of the award is measured by the value of the property at the time of taking, not the value at some later date. Similarly, interest on the award runs from that date. Most importantly for our purposes today, it is the person who owned the property at the time of the taking that is entitled to the recovery. See, e.g., *Danforth v. United States*, [308 U.S. 271](#), 284 (1939) (“For the reason that compensation is due at the time of taking, the owner at that time, not the owner at an earlier or later date, receives the payment”). The rationale behind that rule is true whether the transfer of ownership is the result of an arm’s-length negotiation, an inheritance, or the dissolution of a bankrupt debtor. Cf. *United States v. Dow*, [357 U.S. 17](#), 20—21 (1958).²

II

Much of the difficulty of this case stems from genuine confusion as to when the taking Palazzolo alleges actually occurred. According to Palazzolo’s theory of the case, the owners of his Westerly, Rhode Island, property possessed the right to fill the wetland portion of the property at some point in the not-too-distant past.³ In 1971, the State of Rhode Island passed a statute creating the Rhode Island Coastal Resources Management Council (Council) and delegating the Council the authority to promulgate regulations restricting the usage of coastal land. See 1971 R. I. Pub. Laws, ch. 279, §1 *et seq.* The Council promptly adopted regulations that, *inter alia*, effectively foreclosed petitioner from filling his wetlands. See *ante*, at 4; cf. App. to Brief for Respondents 11—22 (current version of regulations). As the regulations nonetheless provided for a process through which petitioner might seek permission to fill the wetlands, he filed two applications for such permission during the 1980s, both of which were denied. See *ante*, at 4—5.

The most natural reading of petitioner’s complaint is that the regulations in and of themselves precluded him from filling the wetlands, and that their adoption therefore constituted the alleged taking. This reading is consistent with the Court’s analysis in Part II—A of its opinion (which I join) in which the Court explains that petitioner’s takings claims are ripe for decision because respondents’ wetlands regulations unequivocally provide that there can be “no fill for any likely or foreseeable use.” *Ante*, at 11.⁴ If it is the regulations themselves of which petitioner complains, and if they did, in fact, diminish the value of his property, they did so when they were adopted.

To the extent that the adoption of the regulations constitute the challenged taking, petitioner is simply the wrong party to be bringing this action. If the regulations imposed a compensable injury on anyone, it was on the owner of the property at the moment the regulations were adopted. Given the trial court’s finding that petitioner did not own the property at that time,⁵ in my judgment it is pellucidly clear that he has no standing to

claim that the promulgation of the regulations constituted a taking of any part of the property that he subsequently acquired.

His lack of standing does not depend, as the Court seems to assume, on whether or not petitioner “is deemed to have notice of an earlier-enacted restriction,” *ante*, at 17. If those early regulations changed the character of the owner’s title to the property, thereby diminishing its value, petitioner acquired only the net value that remained after that diminishment occurred. Of course, if, as respondent contends, see n. 3, *supra*, even the prior owner never had any right to fill wetlands, there never was a basis for the alleged takings claim in the first place. But accepting petitioner’s theory of the case, he has no standing to complain that preacquisition events may have reduced the value of the property that he acquired. If the regulations are invalid, either because improper procedures were followed when they were adopted, or because they have somehow gone “too far,” *Pennsylvania Coal Co. v. Mahon*, [260 U.S. 393](#), 415 (1922), petitioner may seek to enjoin their enforcement, but he has no right to recover compensation for the value of property taken from someone else. A new owner may maintain an ejectment action against a trespasser who has lodged himself in the owner’s orchard but surely could not recover damages for fruit a trespasser spirited from the orchard before he acquired the property.

The Court’s holding in *Nollan v. California Coastal Comm’n*, [483 U.S. 825](#) (1987) is fully consistent with this analysis. In that case the taking occurred when the state agency compelled the petitioners to provide an easement of public access to the beach as a condition for a development permit. That event—a compelled transfer of an interest in property—occurred *after* the petitioners had become the owner of the property and unquestionably diminished the value of petitioners’ property. Even though they had notice when they bought the property that such a taking might occur, they never contended that any action taken by the State before their purchase gave rise to any right to compensation. The matter of standing to assert a claim for just compensation is determined by the impact of the event that is alleged to have amounted to a taking rather than the sort of notice that a purchaser may or may not have received when the property was transferred. Petitioners in *Nollan* owned the property at the time of the triggering event. Therefore, they and they alone could claim a right to compensation for the injury.⁶ Their successors in interest, like petitioner in this case, have no standing to bring such a claim.

III

At oral argument, petitioner contended that the taking in question occurred in 1986, when the Council denied his final application to fill the land. Tr. of Oral Arg. 16. Though this theory, to the extent that it was embraced within petitioner’s actual complaint, complicates the issue, it does not alter my conclusion that the prohibition on filling the wetlands does not take from Palazzolo any property right he ever possessed.

The title Palazzolo took by operation of law in 1978 was limited by the regulations then in place to the extent that such regulations represented a valid exercise of the police

power. For the reasons expressed above, I think the regulations barred petitioner from filling the wetlands on his property. At the very least, however, they established a rule that such lands could not be filled unless the Council exercised its authority to make exceptions to that rule under certain circumstances. Cf. App. to Brief for Respondents A—13 (laying out narrow circumstances under which the Council retains the discretion to grant a “special exception”). Under the reading of the regulations most favorable to Palazzolo, he acquired no more than the right to a discretionary determination by the Council as to whether to permit him to fill the wetlands. As his two hearings before that body attest, he was given the opportunity to make a presentation and receive such a determination. Thus, the Council properly respected whatever limited rights he may have retained with regard to filling the wetlands. Cf. *Lujan v. G & G Fire Sprinklers, Inc.*, 532 U.S. ___ (2001) (holding, in a different context, that, if a party’s only relevant property interest is a claim of entitlement to bring an action, the provision of a forum for hearing that action is all that is required to vindicate that property interest); *Lopez v. Davis*, [531 U.S. 230](#) (2001) (involving a federal statute that created an entitlement to a discretionary hearing without creating any entitlement to relief).⁷

Though the majority leaves open the possibility that the scope of today’s holding may prove limited, see *ante*, at 20—21 (discussing limitations implicit in “background principles” exception); see also *ante*, at 1—4 (O’Connor, J., concurring) (discussing importance of the timing of regulations for the evaluation of the merits of a takings claim); *ante*, at 1—2 (Breyer, J., dissenting) (same), the extension of the right to compensation to individuals other than the direct victim of an illegal taking admits of no obvious limiting principle. If the existence of valid land-use regulations does not limit the title that the first postenactment purchaser of the property inherits, then there is no reason why such regulations should limit the rights of the second, the third, or the thirtieth purchaser. Perhaps my concern is unwarranted, but today’s decision does raise the spectre of a tremendous—and tremendously capricious—one-time transfer of wealth from society at large to those individuals who happen to hold title to large tracts of land at the moment this legal question is permanently resolved.

IV

In the final analysis, the property interest at stake in this litigation is the right to fill the wetlands on the tract that petitioner owns. Whether either he or his predecessors in title ever owned such an interest, and if so, when it was acquired by the State, are questions of state law. If it is clear—as I think it is and as I think the Court’s disposition of the ripeness issue assumes—that any such taking occurred before he became the owner of the property, he has no standing to seek compensation for that taking. On the other hand, if the only viable takings claim has a different predicate that arose later, that claim is not ripe and the discussion in Part II—B of the Court’s opinion is superfluous dictum. In either event, the judgment of the Rhode Island Supreme Court should be affirmed in its entirety.

Notes

1. A regulation that goes so “far” that it violates the Takings Clause may give rise to an award of compensation or it may simply be invalidated as it would be if it violated any other constitutional principle (with the consequence that the State must choose between adopting a new regulatory scheme that provides compensation or forgoing regulation). While some recent Court opinions have focused on the former remedy, Justice Holmes appears to have had a regime focusing on the latter in mind in the opinion that began the modern preoccupation with “regulatory takings.” See *Pennsylvania Coal Co. v. Mahon*, [260 U.S. 393](#), 414 (1922) (because the statute in question takes private property without just compensation “the act cannot be sustained”).

2. The Court argues, *ante*, at 18—19, that a regulatory taking is different from a direct state appropriation of property and that the rules this Court has developed for identifying the time of the latter do not apply to the former. This is something of an odd conclusion, in that the entire rationale for allowing compensation for regulations in the first place is the somewhat dubious proposition that some regulations go so “far” as to become the functional equivalent of a direct taking. Ultimately, the Court’s regulations-are-different principle rests on the confusion of two dates: the time an injury occurs and the time a claim for compensation for that injury becomes cognizable in a judicial proceeding. That we require plaintiffs making the claim that a regulation is the equivalent of a taking to go through certain prelitigation procedures to clarify the scope of the allegedly infringing regulation does not mean that the injury did not occur before those procedures were completed. To the contrary, whenever the relevant local bodies construe their regulations, their construction is assumed to reflect “what the [regulation] meant before as well as after the decision giving rise to that construction.” *Rivers v. Roadway Express, Inc.*, [511 U.S. 298](#), 312—313 (1994).

3. This point is the subject of significant dispute, as the State of Rhode Island has presented substantial evidence that limitations on coastal development have always precluded or limited schemes such as Palazzolo’s. See Brief for Respondents 11—12, 41—46. Nonetheless, we must assume that it is true for the purposes of deciding this question. Likewise, we must assume for the purposes of deciding the discrete threshold questions before us that petitioner’s complaint states a potentially valid regulatory takings claim. Nonetheless, for the sake of clarity it is worth emphasizing that, on my view, even a newly adopted regulation that diminishes the value of property does not produce a significant Takings Clause issue if it (1) is generally applicable and (2) is directed at preventing a substantial public harm. Cf. *Lucas v. South Carolina Coastal Council*, [505 U.S. 1003](#), 1029 (1992) (owner of a powerplant astride an earthquake fault does not state a valid takings claim for regulation requiring closure of plant); *id.*, at 1035 (Kennedy, J., concurring in judgment) (explaining that the government’s power to regulate against harmful uses of property without paying compensation is not limited by the common law of nuisance because that doctrine is “too narrow a confine for the exercise of regulatory power in a complex and interdependent society”). It is quite likely that a regulation prohibiting the filling of wetlands meets those criteria.

4. At oral argument, petitioner’s counsel stated: “I think the key here is understanding that no filling of any wetland would be allowed for any reason that was lawful under the

local zoning code. No structures of any kind would be permitted by Mr. Palazzolo to construct. So we know that he cannot use his wetland.” Tr. of Oral Arg. 14.

5. See App. to Pet. for Cert. A—13 (“[T]he trial justice found that Palazzolo could not have become the owner of the property before 1978, at which time the regulations limiting his ability to fill the wetlands were already in place. The trial justice thus determined that the right to fill the wetlands was not part of Palazzolo’s estate to begin with, and that he was therefore not owed any compensation for the deprivation of that right”).

6. In cases such as *Nollan*—in which landowners have notice of a regulation when they purchase a piece of property but the regulatory event constituting the taking does not occur until after they take title to the property—I would treat the owners’ notice as relevant to the evaluation of whether the regulation goes “too far,” but not necessarily dispositive. See *ante*, at 1—4 (O’Connor, J., concurring).

7. This is not to suggest that a regulatory body can insulate all of its land-use decisions from the Takings Clause simply by referencing long-standing statutory provisions. If the determination by the regulators to reject the project involves such an unforeseeable interpretation or extension of the regulation as to amount to a change in the law, then it is appropriate to consider the decision of that body, rather than the adoption of the regulation, as the discrete event that deprived the owner of a pre-existing interest in property. But, if that is petitioner’s theory, his claim is not ripe for the reasons stated by Justice Ginsburg in her dissenting opinion, *post*, p. ___. As I read petitioner’s complaint and the Court’s disposition of the ripeness issue, it is the regulations themselves that allegedly deprived the owner of the parcel of the right to fill the wetlands.