

Opinion of the Court

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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 Kennedy delivered the opinion of the Court.

Petitioner Anthony Palazzolo owns a waterfront parcel of land in the town of Westerly, Rhode Island. Almost all of the property is designated as coastal wetlands under Rhode Island law. After petitioner’s development proposals were rejected by respondent Rhode Island Coastal Resources Management Council (Council), he sued in state court, asserting the Council’s application of its wetlands regulations took the property without compensation in violation of the Takings Clause of the [Fifth Amendment](#), binding upon the State through the Due Process Clause of the [Fourteenth Amendment](#). Petitioner sought review in this Court, contending the Supreme Court of Rhode Island erred in rejecting his takings claim. We granted certiorari. [531 U.S. 923](#) (2000).

I

The town of Westerly is on an edge of the Rhode Island coastline. The town’s western border is the Pawcatuck River, which at that point is the boundary between Rhode Island and Connecticut. Situated on land purchased from the Narragansett Indian Tribe, the town was incorporated in 1669 and had a precarious, though colorful, early history. Both Connecticut and Massachusetts contested the boundaries—and indeed the validity—of Rhode Island’s royal charter; and Westerly’s proximity to Connecticut invited encroachments during these jurisdictional squabbles. See M. Best, *The Town that Saved a State—Westerly* 60—83 (1943); see also W. McLaughlin, *Rhode Island: A Bicentennial History* 39—57 (1978). When the borders of the Rhode Island Colony were settled by compact in 1728, the town’s development was more orderly, and with some historical distinction. For instance, Watch Hill Point, the peninsula at the southwestern tip of the town, was of strategic importance in the Revolutionary War and the War of 1812. See Best, *supra*, at 190; F. Denison, *Westerly and its Witnesses* 118—119 (1878).

In later times Westerly's coastal location had a new significance: It became a popular vacation and seaside destination. One of the town's historians gave this happy account:

“After the Civil War the rapid growth of manufacture and expansion of trade had created a spending class on pleasure bent, and Westerly had superior attractions to offer, surf bathing on ocean beaches, quieter bathing in salt and fresh water ponds, fishing, annual sail and later motor boat races. The broad beaches of clean white sand dip gently toward the sea; there are no odorous marshes at low tide, no railroad belches smoke, and the climate is unrivalled on the coast, that of Newport only excepted. In the phenomenal heat wave of 1881 ocean resorts from northern New England to southern New Jersey sweltered as the thermometer climbed to 95 and 104 degrees, while Watch Hill enjoyed a comfortable 80. When Providence to the north runs a temperature of 90, the mercury in this favored spot remains at 77.” Best, *supra*, at 192.

Westerly today has about 20,000 year-round residents, and thousands of summer visitors come to enjoy its beaches and coastal advantages.

One of the more popular attractions is Misquamicut State Beach, a lengthy expanse of coastline facing Block Island Sound and beyond to the Atlantic Ocean. The primary point of access to the beach is Atlantic Avenue, a well-traveled 3-mile stretch of road running along the coastline within the town's limits. At its western end, Atlantic Avenue is something of a commercial strip, with restaurants, hotels, arcades, and other typical seashore businesses. The pattern of development becomes more residential as the road winds eastward onto a narrow spine of land bordered to the south by the beach and the ocean, and to the north by Winnapaug Pond, an intertidal inlet often used by residents for boating, fishing, and shellfishing.

In 1959 petitioner, a lifelong Westerly resident, decided to invest in three undeveloped, adjoining parcels along this eastern stretch of Atlantic Avenue. To the north, the property faces, and borders upon, Winnapaug Pond; the south of the property faces Atlantic Avenue and the beachfront homes abutting it on the other side, and beyond that the dunes and the beach. To purchase and hold the property, petitioner and associates formed Shore Gardens, Inc. (SGI). After SGI purchased the property petitioner bought out his associates and became the sole shareholder. In the first decade of SGI's ownership of the property the corporation submitted a plat to the town subdividing the property into 80 lots; and it engaged in various transactions that left it with 74 lots, which together encompassed about 20 acres. During the same period SGI also made initial attempts to develop the property and submitted intermittent applications to state agencies to fill substantial portions of the parcel. Most of the property was then, as it is now, salt marsh subject to tidal flooding. The wet ground and permeable soil would require considerable fill—as much as six feet in some places—before significant structures could be built. SGI's proposal, submitted in 1962 to the Rhode Island Division of Harbors and Rivers (DHR), sought to dredge from Winnapaug Pond and fill the entire property. The application was denied for lack of essential information. A second, similar proposal followed a year later. A third application, submitted in 1966 while the second application was pending, proposed more limited filling of the land for use as a private beach club. These latter two

applications were referred to the Rhode Island Department of Natural Resources, which indicated initial assent. The agency later withdrew approval, however, citing adverse environmental impacts. SGI did not contest the ruling.

No further attempts to develop the property were made for over a decade. Two intervening events, however, become important to the issues presented. First, in 1971, Rhode Island enacted legislation creating the Council, an agency charged with the duty of protecting the State's coastal properties. 1971 R. I. Pub. Laws ch. 279, §1 *et seq.* Regulations promulgated by the Council designated salt marshes like those on SGI's property as protected "coastal wetlands," Rhode Island Coastal Resources Management Program (CRMP) §210.3 (as amended, June 28, 1983) (lodged with the Clerk of this Court), on which development is limited to a great extent. Second, in 1978 SGI's corporate charter was revoked for failure to pay corporate income taxes; and title to the property passed, by operation of state law, to petitioner as the corporation's sole shareholder.

In 1983 petitioner, now the owner, renewed the efforts to develop the property. An application to the Council, resembling the 1962 submission, requested permission to construct a wooden bulkhead along the shore of Winnapaug Pond and to fill the entire marsh land area. The Council rejected the application, noting it was "vague and inadequate for a project of this size and nature." App. 16. The agency also found that "the proposed activities will have significant impacts upon the waters and wetlands of Winnapaug Pond," and concluded that "the proposed alteration ... will conflict with the Coastal Resources Management Plan presently in effect." *Id.*, at 17. Petitioner did not appeal the agency's determination.

Petitioner went back to the drawing board, this time hiring counsel and preparing a more specific and limited proposal for use of the property. The new application, submitted to the Council in 1985, echoed the 1966 request to build a private beach club. The details do not tend to inspire the reader with an idyllic coastal image, for the proposal was to fill 11 acres of the property with gravel to accommodate "50 cars with boat trailers, a dumpster, port-a-johns, picnic tables, barbecue pits of concrete, and other trash receptacles." *Id.*, at 25.

The application fared no better with the Council than previous ones. Under the agency's regulations, a landowner wishing to fill salt marsh on Winnapaug Pond needed a "special exception" from the Council. CRMP §130. In a short opinion the Council said the beach club proposal conflicted with the regulatory standard for a special exception. See App. 27. To secure a special exception the proposed activity must serve "a compelling public purpose which provides benefits to the public as a whole as opposed to individual or private interests." CRMP §130A(1). This time petitioner appealed the decision to the Rhode Island courts, challenging the Council's conclusion as contrary to principles of state administrative law. The Council's decision was affirmed. See App. 31—42.

Petitioner filed an inverse condemnation action in Rhode Island Superior Court, asserting that the State’s wetlands regulations, as applied by the Council to his parcel, had taken the property without compensation in violation of the Fifth and [Fourteenth Amendments](#). See App. 45. The suit alleged the Council’s action deprived him of “all economically beneficial use” of his property, *ibid.*, resulting in a total taking requiring compensation under *Lucas v. South Carolina Coastal Council*, [505 U.S. 1003](#) (1992). He sought damages in the amount of \$3,150,000, a figure derived from an appraiser’s estimate as to the value of a 74-lot residential subdivision. The State countered with a host of defenses. After a bench trial, a justice of the Superior Court ruled against petitioner, accepting some of the State’s theories. App. to Pet. for Cert. B—1 to B—13.

The Rhode Island Supreme Court affirmed. 746 A. 2d 707 (2000). Like the Superior Court, the State Supreme Court recited multiple grounds for rejecting petitioner’s suit. The court held, first, that petitioner’s takings claim was not ripe, *id.*, at 712—715; second, that petitioner had no right to challenge regulations predating 1978, when he succeeded to legal ownership of the property from SGI, *id.*, at 716; and third, that the claim of deprivation of all economically beneficial use was contradicted by undisputed evidence that he had \$200,000 in development value remaining on an upland parcel of the property, *id.*, at 715. In addition to holding petitioner could not assert a takings claim based on the denial of all economic use the court concluded he could not recover under the more general test of *Penn Central Transp. Co. v. New York City*, [438 U.S. 104](#) (1978). On this claim, too, the date of acquisition of the parcel was found determinative, and the court held he could have had “no reasonable investment-backed expectations that were affected by this regulation” because it predated his ownership, 746 A. 2d, at 717; see also *Penn Central*, *supra*, at 124.

We disagree with the Supreme Court of Rhode Island as to the first two of these conclusions; and, we hold, the court was correct to conclude that the owner is not deprived of all economic use of his property because the value of upland portions is substantial. We remand for further consideration of the claim under the principles set forth in *Penn Central*.

II

The Takings Clause of the [Fifth Amendment](#), applicable to the States through the [Fourteenth Amendment](#), *Chicago, B. & Q. R. Co. v. Chicago*, [166 U.S. 226](#) (1897), prohibits the government from taking private property for public use without just compensation. The clearest sort of taking occurs when the government encroaches upon or occupies private land for its own proposed use. Our cases establish that even a minimal “permanent physical occupation of real property” requires compensation under the Clause. *Loretto v. Teleprompter Manhattan CATV Corp.*, [458 U.S. 419](#), 427 (1982). In *Pennsylvania Coal Co. v. Mahon*, [260 U.S. 393](#) (1922), the Court recognized that there will be instances when government actions do not encroach upon or occupy the property yet still affect and limit its use to such an extent that a taking occurs. In Justice Holmes’ well-known, if less than self-defining, formulation, “while property may be regulated to a certain extent, if a regulation goes too far it will be recognized as a taking.” *Id.*, at 415.

Since *Mahon*, we have given some, but not too specific, guidance to courts confronted with deciding whether a particular government action goes too far and effects a regulatory taking. First, we have observed, with certain qualifications, see *infra* at 19—21, that a regulation which “denies all economically beneficial or productive use of land” will require compensation under the Takings Clause. *Lucas*, 505 U.S., at 1015; see also *id.*, at 1035 (Kennedy, J., concurring); *Agins v. City of Tiburon*, [447 U.S. 255](#), 261 (1980). Where a regulation places limitations on land that fall short of eliminating all economically beneficial use, a taking nonetheless may have occurred, depending on a complex of factors including the regulation’s economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action. *Penn Central*, *supra*, at 124. These inquiries are informed by the purpose of the Takings Clause, which is to prevent the government from “forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong v. United States*, [364 U.S. 40](#), 49 (1960).

Petitioner seeks compensation under these principles. At the outset, however, we face the two threshold considerations invoked by the state court to bar the claim: ripeness, and acquisition which postdates the regulation.

A

In *Williamson County Regional Planning Comm’n v. Hamilton Bank of Johnson City*, [473 U.S. 172](#) (1985), the Court explained the requirement that a takings claim must be ripe. The Court held that a takings claim challenging the application of land-use regulations is not ripe unless “the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue.” *Id.*, at 186. A final decision by the responsible state agency informs the constitutional determination whether a regulation has deprived a landowner of “all economically beneficial use” of the property, see *Lucas*, *supra*, at 1015, or defeated the reasonable investment-backed expectations of the landowner to the extent that a taking has occurred, see *Penn Central*, *supra*, at 124. These matters cannot be resolved in definitive terms until a court knows “the extent of permitted development” on the land in question. *MacDonald, Sommer & Frates v. Yolo County*, [477 U.S. 340](#), 351 (1986). Drawing on these principles, the Rhode Island Supreme Court held that petitioner had not taken the necessary steps to ripen his takings claim.

The central question in resolving the ripeness issue, under *Williamson County* and other relevant decisions, is whether petitioner obtained a final decision from the Council determining the permitted use for the land. As we have noted, SGI’s early applications to fill had been granted at one point, though that assent was later revoked. Petitioner then submitted two proposals: the 1983 proposal to fill the entire parcel, and the 1985 proposal to fill 11 of the property’s 18 wetland acres for construction of the beach club. The court reasoned that, notwithstanding the Council’s denials of the applications, doubt remained as to the extent of development the Council would allow on petitioner’s parcel. We cannot agree.

The court based its holding in part upon petitioner's failure to explore "any other use for the property that would involve filling substantially less wetlands." 746 A. 2d, at 714. It relied upon this Court's observations that the final decision requirement is not satisfied when a developer submits, and a land use authority denies, a grandiose development proposal, leaving open the possibility that lesser uses of the property might be permitted. See *MacDonald*, *supra*, at 353, n. 9. The suggestion is that while the Council rejected petitioner's effort to fill all of the wetlands, and then rejected his proposal to fill 11 of the wetland acres, perhaps an application to fill (for instance) 5 acres would have been approved. Thus, the reasoning goes, we cannot know for sure the extent of permitted development on petitioner's wetlands.

This is belied by the unequivocal nature of the wetland regulations at issue and by the Council's application of the regulations to the subject property. Winnapaug Pond is classified under the CRMP as a Type 2 body of water. See CRMP §200.2. A landowner, as a general rule, is prohibited from filling or building residential structures on wetlands adjacent to Type 2 waters, see *id.*, Table 1, p. 22, and §210.3(C)(4), but may seek a special exception from the Council to engage in a prohibited use, see *id.*, §130. The Council is permitted to allow the exception, however, only where a "compelling public purpose" is served. *Id.*, §130A(2). The proposal to fill the entire property was not accepted under Council regulations and did not qualify for the special exception. The Council determined the use proposed in the second application (the beach club) did not satisfy the "compelling public purpose" standard. There is no indication the Council would have accepted the application had petitioner's proposed beach club occupied a smaller surface area. To the contrary, it ruled that the proposed activity was not a "compelling public purpose." App. 27; cf. *id.*, at 17 (1983 application to fill wetlands proposed an "activity" conflicting with the CRMP).

Williamson County's final decision requirement "responds to the high degree of discretion characteristically possessed by land-use boards in softening the strictures of the general regulations they administer." *Suitum v. Tahoe Regional Planning Agency*, [520 U.S. 725](#), 738 (1997). While a landowner must give a land-use authority an opportunity to exercise its discretion, once it becomes clear that the agency lacks the discretion to permit any development, or the permissible uses of the property are known to a reasonable degree of certainty, a takings claim is likely to have ripened. The case is quite unlike those upon which respondents place principal reliance, which arose when an owner challenged a land-use authority's denial of a substantial project, leaving doubt whether a more modest submission or an application for a variance would be accepted. See *MacDonald*, *supra*, at 342 (denial of 159-home residential subdivision); *Williamson County*, 473 U.S., at 182 (476-unit subdivision); cf. *Agins v. City of Tiburon*, [447 U.S. 255](#) (1980) (case not ripe because no plan to develop was submitted).

These cases stand for the important principle that a landowner may not establish a taking before a land-use authority has the opportunity, using its own reasonable procedures, to decide and explain the reach of a challenged regulation. Under our ripeness rules a takings claim based on a law or regulation which is alleged to go too far in burdening property depends upon the landowner's first having followed reasonable

and necessary steps to allow regulatory agencies to exercise their full discretion in considering development plans for the property, including the opportunity to grant any variances or waivers allowed by law. As a general rule, until these ordinary processes have been followed the extent of the restriction on property is not known and a regulatory taking has not yet been established. See *Suitum, supra*, at 736, and n. 10 (noting difficulty of demonstrating that “mere enactment” of regulations restricting land use effects a taking). Government authorities, of course, may not burden property by imposition of repetitive or unfair land-use procedures in order to avoid a final decision. *Monterey v. Del Monte Dunes at Monterey, Ltd.*, [526 U.S. 687](#), 698 (1999).

With respect to the wetlands on petitioner’s property, the Council’s decisions make plain that the agency interpreted its regulations to bar petitioner from engaging in any filling or development activity on the wetlands, a fact reinforced by the Attorney General’s forthright responses to our questioning during oral argument in this case. See Tr. of Oral Arg. 26, 31. The rulings of the Council interpreting the regulations at issue, and the briefs, arguments, and candid statements by counsel for both sides, leave no doubt on this point: On the wetlands there can be no fill for any ordinary land use. There can be no fill for its own sake; no fill for a beach club, either rustic or upscale; no fill for a subdivision; no fill for any likely or foreseeable use. And with no fill there can be no structures and no development on the wetlands. Further permit applications were not necessary to establish this point.

As noted above, however, not all of petitioner’s parcel constitutes protected wetlands. The trial court accepted uncontested testimony that an upland site located at the eastern end of the property would have an estimated value of \$200,000 if developed. App. to Pet. for Cert. B—5. While Council approval is required to develop upland property which lies within 200 feet of protected waters, see CRMP §100.1(A), the strict “compelling public purpose” test does not govern proposed land uses on property in this classification, see *id.*, §110, Table 1A, §120. Council officials testified at trial, moreover, that they would have allowed petitioner to build a residence on the upland parcel. App. to Pet. for Cert. B—5. The State Supreme Court found petitioner’s claim unripe for the further reason that he “has not sought permission for any . . . use of the property that would involve . . . development only of the upland portion of the parcel.” 746 A. 2d, at 714.

In assessing the significance of petitioner’s failure to submit applications to develop the upland area it is important to bear in mind the purpose that the final decision requirement serves. Our ripeness jurisprudence imposes obligations on landowners because “[a] court cannot determine whether a regulation goes ‘too far’ unless it knows how far the regulation goes.” *MacDonald*, 477 U.S., at 348. Ripeness doctrine does not require a landowner to submit applications for their own sake. Petitioner is required to explore development opportunities on his upland parcel only if there is uncertainty as to the land’s permitted use.

The State asserts the value of the uplands is in doubt. It relies in part on a comment in the opinion of the Rhode Island Supreme Court that “it would be possible to build at least one single-family home on the upland portion of the parcel.” 746 A. 2d, at 714. It argues

that the qualification “at least” indicates that additional development beyond the single dwelling was possible. The attempt to interject ambiguity as to the value or use of the uplands, however, comes too late in the day for purposes of litigation before this Court. It was stated in the petition for certiorari that the uplands on petitioner’s property had an estimated worth of \$200,000. See Pet. for Cert. 21. The figure not only was uncontested but also was cited as fact in the State’s brief in opposition. See Brief in Opposition 4, 19. In this circumstance ripeness cannot be contested by saying that the value of the nonwetland parcels is unknown. See *Lucas*, 505 U.S., at 1020, and n. 9.

The State’s prior willingness to accept the \$200,000 figure, furthermore, is well founded. The only reference to upland property in the trial court’s opinion is to a single parcel worth an estimated \$200,000. See App. to Pet. for Cert B—5. There was, it must be acknowledged, testimony at trial suggesting the existence of an additional upland parcel elsewhere on the property. See Tr. 190—191, 199—200 (testimony of Dr. Grover Fugate, Council Executive Director); see also *id.* at 610 (testimony of Mr. Steven Clarke). The testimony indicated, however, that the potential, second upland parcel was on an “island” which required construction of a road across wetlands, *id.*, at 610, 623—624 (testimony of Mr. Clarke)—and, as discussed above, the filling of wetlands for such a purpose would not justify a special exception under Council regulations. See *supra*, at 10—11; see also Brief for Respondents 10 (“Residential construction is not the basis of such a ‘special exception’ ”). Perhaps for this reason, the State did not maintain in the trial court that additional uplands could have been developed. To the contrary, its post-trial memorandum identified only the single parcel that petitioner concedes retains a development value of \$200,000. See State’s Post-Trial Memorandum in No. 88—0297 (Super. Ct. R. I.), 25, 81. The trial court accepted the figure. So there is no genuine ambiguity in the record as to the extent of permitted development on petitioner’s property, either on the wetlands or the uplands.

Nonetheless, there is some suggestion that the use permitted on the uplands is not known, because the State accepted the \$200,000 value for the upland parcel on the premise that only a *Lucas* claim was raised in the pleadings in the state trial court. See Brief of Respondents 29—30. Since a *Penn Central* argument was not pressed at trial, it is argued, the State had no reason to assert with vigor that more than a single-family residence might be placed on the uplands. We disagree; the State was aware of the applicability of *Penn Central*. The issue whether the Council’s decisions amounted to a taking under *Penn Central* was discussed in the trial court, App. to Pet. for Cert. B—7, the State Supreme Court, 746 A. 2d, at 717, and the State’s own post-trial submissions, see State’s Post-Trial Supplemental Memorandum 7—10. The state court opinions cannot be read as indicating that a *Penn Central* claim was not properly presented from the outset of this litigation.

A final ripeness issue remains. In concluding that *Williamson County*’s final decision requirement was not satisfied the State Supreme Court placed emphasis on petitioner’s failure to “appl[y] for permission to develop [the] seventy-four-lot subdivision” that was the basis for the damages sought in his inverse condemnation suit. 746 A. 2d, at 714. The court did not explain why it thought this fact significant, but respondents and *amici*

defend the ruling. The Council's practice, they assert, is to consider a proposal only if the applicant has satisfied all other regulatory preconditions for the use envisioned in the application. The subdivision proposal that was the basis for petitioner's takings claim, they add, could not have proceeded before the Council without, at minimum, zoning approval from the town of Westerly and a permit from the Rhode Island Department of Environmental Management allowing the installation of individual sewage disposal systems on the property. Petitioner is accused of employing a hide the ball strategy of submitting applications for more modest uses to the Council, only to assert later a takings action predicated on the purported inability to build a much larger project. Brief for the National Wildlife Federation et al. as *Amici Curiae* 9.

It is difficult to see how this concern is relevant to the inquiry at issue here. Petitioner was informed by the Council that he could not fill the wetlands; it follows of necessity that he could not fill and then build 74 single-family dwellings upon it. Petitioner's submission of this proposal would not have clarified the extent of development permitted by the wetlands regulations, which is the inquiry required under our ripeness decisions. The State's concern may be that landowners could demand damages for a taking based on a project that could not have been constructed under other, valid zoning restrictions quite apart from the regulation being challenged. This, of course, is a valid concern in inverse condemnation cases alleging injury from wrongful refusal to permit development. The instant case does not require us to pass upon the authority of a state to insist in such cases that landowners follow normal planning procedures or to enact rules to control damage awards based on hypothetical uses that should have been reviewed in the normal course, and we do not intend to cast doubt upon such rules here. The mere allegation of entitlement to the value of an intensive use will not avail the landowner if the project would not have been allowed under other existing, legitimate land use limitations. When a taking has occurred, under accepted condemnation principles the owner's damages will be based upon the property's fair market value, see, e.g., *Olson v. United States*, [292 U.S. 246](#), 255 (1934); 4 J. Sackman, Nichols on Eminent Domain §12.01 (rev. 3d ed. 2000)—an inquiry which will turn, in part, on restrictions on use imposed by legitimate zoning or other regulatory limitations, see *id.*, at §12C.03[1].

The state court, however, did not rely upon state law ripeness or exhaustion principles in holding that petitioner's takings claim was barred by virtue of his failure to apply for a 74-lot subdivision; it relied on *Williamson County*. As we have explained, *Williamson County* and our other ripeness decisions do not impose further obligations on petitioner, for the limitations the wetland regulations imposed were clear from the Council's denial of his applications, and there is no indication that any use involving any substantial structures or improvements would have been allowed. Where the state agency charged with enforcing a challenged land use regulation entertains an application from an owner and its denial of the application makes clear the extent of development permitted, and neither the agency nor a reviewing state court has cited non-compliance with reasonable state law exhaustion or pre-permit processes, see *Felder v. Casey*, [487 U.S. 131](#), 150—151 (1988), federal ripeness rules do not require the submission of further and futile applications with other agencies.

B

We turn to the second asserted basis for declining to address petitioner's takings claim on the merits. When the Council promulgated its wetlands regulations, the disputed parcel was owned not by petitioner but by the corporation of which he was sole shareholder. When title was transferred to petitioner by operation of law, the wetlands regulations were in force. The state court held the postregulation acquisition of title was fatal to the claim for deprivation of all economic use, 746 A. 2d, at 716, and to the *Penn Central* claim, *id.*, at 717. While the first holding was couched in terms of background principles of state property law, see *Lucas*, 505 U.S., at 1015, and the second in terms of petitioner's reasonable investment-backed expectations, see *Penn Central*, 438 U.S., at 124, the two holdings together amount to a single, sweeping, rule: A purchaser or a successive title holder like petitioner is deemed to have notice of an earlier-enacted restriction and is barred from claiming that it effects a taking.

The theory underlying the argument that post-enactment purchasers cannot challenge a regulation under the Takings Clause seems to run on these lines: Property rights are created by the State. See, *e.g.*, *Phillips v. Washington Legal Foundation*, [524 U.S. 156](#), 163 (1998). So, the argument goes, by prospective legislation the State can shape and define property rights and reasonable investment-backed expectations, and subsequent owners cannot claim any injury from lost value. After all, they purchased or took title with notice of the limitation.

The State may not put so potent a Hobbesian stick into the Lockean bundle. The right to improve property, of course, is subject to the reasonable exercise of state authority, including the enforcement of valid zoning and land-use restrictions. See *Pennsylvania Coal Co.*, 260 U.S., at 413 ("Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law"). The Takings Clause, however, in certain circumstances allows a landowner to assert that a particular exercise of the State's regulatory power is so unreasonable or onerous as to compel compensation. Just as a prospective enactment, such as a new zoning ordinance, can limit the value of land without effecting a taking because it can be understood as reasonable by all concerned, other enactments are unreasonable and do not become less so through passage of time or title. Were we to accept the State's rule, the postenactment transfer of title would absolve the State of its obligation to defend any action restricting land use, no matter how extreme or unreasonable. A State would be allowed, in effect, to put an expiration date on the Takings Clause. This ought not to be the rule. Future generations, too, have a right to challenge unreasonable limitations on the use and value of land.

Nor does the justification of notice take into account the effect on owners at the time of enactment, who are prejudiced as well. Should an owner attempt to challenge a new regulation, but not survive the process of ripening his or her claim (which, as this case demonstrates, will often take years), under the proposed rule the right to compensation may not be asserted by an heir or successor, and so may not be asserted at all. The State's rule would work a critical alteration to the nature of property, as the newly regulated

landowner is stripped of the ability to transfer the interest which was possessed prior to the regulation. The State may not by this means secure a windfall for itself. See *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, [449 U.S. 155](#), 164 (1980) (“[A] State, by *ipse dixit*, may not transform private property into public property without compensation”); cf. Ellickson, *Property in Land*, 102 *Yale L. J.* 1315, 1368—1369 (1993) (right to transfer interest in land is a defining characteristic of the fee simple estate). The proposed rule is, furthermore, capricious in effect. The young owner contrasted with the older owner, the owner with the resources to hold contrasted with the owner with the need to sell, would be in different positions. The Takings Clause is not so quixotic. A blanket rule that purchasers with notice have no compensation right when a claim becomes ripe is too blunt an instrument to accord with the duty to compensate for what is taken.

Direct condemnation, by invocation of the State’s power of eminent domain, presents different considerations than cases alleging a taking based on a burdensome regulation. In a direct condemnation action, or when a State has physically invaded the property without filing suit, the fact and extent of the taking are known. In such an instance, it is a general rule of the law of eminent domain that any award goes to the owner at the time of the taking, and that the right to compensation is not passed to a subsequent purchaser. See *Danforth v. United States*, [308 U.S. 271](#), 284 (1939); 2 Sackman, *Eminent Domain*, at §5.01[5][d][i] (“It is well settled that when there is a taking of property by eminent domain in compliance with the law, it is the owner of the property *at the time of the taking* who is entitled to compensation”). A challenge to the application of a land-use regulation, by contrast, does not mature until ripeness requirements have been satisfied, under principles we have discussed; until this point an inverse condemnation claim alleging a regulatory taking cannot be maintained. It would be illogical, and unfair, to bar a regulatory takings claim because of the post-enactment transfer of ownership where the steps necessary to make the claim ripe were not taken, or could not have been taken, by a previous owner.

There is controlling precedent for our conclusion. *Nollan v. California Coastal Comm’n*, [483 U.S. 825](#) (1987), presented the question whether it was consistent with the Takings Clause for a state regulatory agency to require oceanfront landowners to provide lateral beach access to the public as the condition for a development permit. The principal dissenting opinion observed it was a policy of the California Coastal Commission to require the condition, and that the Nollans, who purchased their home after the policy went into effect, were “on notice that new developments would be approved only if provisions were made for lateral beach access.” *Id.*, at 860 (Brennan, J., dissenting). A majority of the Court rejected the proposition. “So long as the Commission could not have deprived the prior owners of the easement without compensating them,” the Court reasoned, “the prior owners must be understood to have transferred their full property rights in conveying the lot.” *Id.*, at 834, n. 2.

It is argued that *Nollan*’s holding was limited by the later decision in *Lucas v. South Carolina Coastal Council*, [505 U.S. 1003](#) (1992). In *Lucas* the Court observed that a landowner’s ability to recover for a government deprivation of all economically beneficial use of property is not absolute but instead is confined by limitations on the use

of land which “inhere in the title itself.” *Id.*, at 1029. This is so, the Court reasoned, because the landowner is constrained by those “restrictions that background principles of the State’s law of property and nuisance already place upon land ownership.” *Id.*, at 1029. It is asserted here that *Lucas* stands for the proposition that any new regulation, once enacted, becomes a background principle of property law which cannot be challenged by those who acquire title after the enactment.

We have no occasion to consider the precise circumstances when a legislative enactment can be deemed a background principle of state law or whether those circumstances are present here. It suffices to say that a regulation that otherwise would be unconstitutional absent compensation is not transformed into a background principle of the State’s law by mere virtue of the passage of title. This relative standard would be incompatible with our description of the concept in *Lucas*, which is explained in terms of those common, shared understandings of permissible limitations derived from a State’s legal tradition, see *Lucas, supra*, at 1029—1030. A regulation or common-law rule cannot be a background principle for some owners but not for others. The determination whether an existing, general law can limit all economic use of property must turn on objective factors, such as the nature of the land use proscribed. See *Lucas, supra*, at 1030 (“The ‘total taking’ inquiry we require today will ordinarily entail ... analysis of, among other things, the degree of harm to public lands and resources, or adjacent private property, posed by the claimant’s proposed activities”). A law does not become a background principle for subsequent owners by enactment itself. *Lucas* did not overrule our holding in *Nollan*, which, as we have noted, is based on essential Takings Clause principles.

For reasons we discuss next, the state court will not find it necessary to explore these matters on remand in connection with the claim that all economic use was deprived; it must address, however, the merits of petitioner’s claim under *Penn Central*. That claim is not barred by the mere fact that title was acquired after the effective date of the state-imposed restriction.

III

As the case is ripe, and as the date of transfer of title does not bar petitioner’s takings claim, we have before us the alternative ground relied upon by the Rhode Island Supreme Court in ruling upon the merits of the takings claims. It held that all economically beneficial use was not deprived because the uplands portion of the property can still be improved. On this point, we agree with the court’s decision. Petitioner accepts the Council’s contention and the state trial court’s finding that his parcel retains \$200,000 in development value under the State’s wetlands regulations. He asserts, nonetheless, that he has suffered a total taking and contends the Council cannot sidestep the holding in *Lucas* “by the simple expedient of leaving a landowner a few crumbs of value.” Brief for Petitioner 37.

Assuming a taking is otherwise established, a State may not evade the duty to compensate on the premise that the landowner is left with a token interest. This is not the

situation of the landowner in this case, however. A regulation permitting a landowner to build a substantial residence on an 18-acre parcel does not leave the property “economically idle.” *Lucas, supra*, at 1019.

In his brief submitted to us petitioner attempts to revive this part of his claim by reframing it. He argues, for the first time, that the upland parcel is distinct from the wetlands portions, so he should be permitted to assert a deprivation limited to the latter. This contention asks us to examine the difficult, persisting question of what is the proper denominator in the takings fraction. See Michelman, Property, Utility, and Fairness: Comments on the Ethical Foundations of “Just Compensation Law,” 80 Harv. L. Rev. 1165, 1192 (1967). Some of our cases indicate that the extent of deprivation effected by a regulatory action is measured against the value of the parcel as a whole, see, *e.g.*, *Keystone Bituminous Coal Assn. v. DeBenedictis*, [480 U.S. 470](#), 497 (1987); but we have at times expressed discomfort with the logic of this rule, see *Lucas, supra*, at 1016—1017, n. 7, a sentiment echoed by some commentators, see, *e.g.*, Epstein, Takings: Descent and Resurrection, 1987 Sup. Ct. Rev. 1, 16—17 (1987); Fee, Unearthing the Denominator in Regulatory Takings Claims, 61 U. Chi. L. Rev. 1535 (1994). Whatever the merits of these criticisms, we will not explore the point here. Petitioner did not press the argument in the state courts, and the issue was not presented in the petition for certiorari. The case comes to us on the premise that petitioner’s entire parcel serves as the basis for his takings claim, and, so framed, the total deprivation argument fails.

* * *

For the reasons we have discussed, the State Supreme Court erred in finding petitioner’s claims were unripe and in ruling that acquisition of title after the effective date of the regulations barred the takings claims. The court did not err in finding that petitioner failed to establish a deprivation of all economic value, for it is undisputed that the parcel retains significant worth for construction of a residence. The claims under the *Penn Central* analysis were not examined, and for this purpose the case should be remanded.

The judgment of the Rhode Island Supreme Court is affirmed in part and reversed in part, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.