Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

PALAZZOLO *v.* RHODE ISLAND ET AL.

CERTIORARI TO THE SUPREME COURT OF RHODE ISLAND

No. 99–2047. Argued February 26, 2001– Decided June 28, 2001

In order to acquire the waterfront parcel of Rhode Island land that is here at issue, petitioner and associates formed Shore Gardens, Inc. (SGI), in 1959. After SGI purchased the property petitioner bought out his associates and became the sole shareholder. Most of the property was then, and is now, salt marsh subject to tidal flooding. The wet ground and permeable soil would require considerable fill before significant structures could be built. Over the years, SGI's intermittent applications to develop the property were rejected by various government agencies. After 1966, no further applications were made for over a decade. Two intervening events, however, become important to the issues presented. First, in 1971, the State created respondent Rhode Island Coastal Resources Management Council (Council) and charged it with protecting the State's coastal properties. The Council's regulations, known as the Rhode Island Coastal Resources Management Program (CRMP), designated salt marshes like those on SGI's property as protected "coastal wetlands" on which development is greatly limited. Second, in 1978 SGI's corporate charter was revoked, and title to the property passed to petitioner as the corporation's sole shareholder. In 1983 petitioner applied to the Council for permission to construct a wooden bulkhead and fill his entire marsh land area. The Council rejected the application, concluding, *inter alia*, that it would conflict with the CRMP. In 1985 petitioner filed a new application with the Council, seeking permission to fill 11 of the property's 18 wetland acres in order to build a private beach club. The Council rejected this application as well, ruling that the proposal did not satisfy the standards for obtaining a "special exception" to fill salt marsh, whereby the proposed activity must serve a compelling public purpose. Subsequently, petitioner filed an inverse condemnation action in Rhode Island Superior Court, asserting

Syllabus

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. The suit alleged the Council's action deprived him of "all economically beneficial use" of his property, resulting in a total taking requiring compensation under *Lucas* v. *South Carolina Coastal Council,* 505 U. S. 1003, and sought $3,150,000 in damages, a figure derived from an appraiser's estimate as to the value of a 74-lot residential subdivision on the property. The court ruled against petitioner, and the State Supreme Court affirmed, holding that (1) petitioner's takings claim was not ripe; (2) he had no right to challenge regulations predating 1978, when he succeeded to legal ownership of the property; (3) he could not assert a takings claim based on the denial of all economic use of his property in light of undisputed evidence that he had $200,000 in development value remaining on an upland parcel of the property; and (4) because the regulation at issue predated his acquisition of title, he could have had no reasonable investment-backed expectation that he could develop his property, and, therefore, he could not recover under *Penn Central Transp. Co.* v. *New York City,* 438 U. S. 104, 124

Held:

1. This case is ripe for review. Pp. 8–16.

(a) A takings claim challenging application of land-use regulations is not ripe unless the agency charged with implementing the regulations has reached a final decision regarding their application to the property at issue. *Williamson County Regional Planning Comm'n* v. *Hamilton Bank of Johnson City,* 473 U. S. 172, 186. A final decision does not occur until the responsible agency determines the extent of permitted development on the land. *MacDonald, Sommer & Frates* v. *Yolo County,* 477 U. S. 340, 351. Petitioner obtained such a final decision when the Council denied his 1983 and 1985 applications. The State Supreme Court erred in ruling that, notwithstanding those denials, doubt remained as to the extent of development the Council would allow on petitioner's parcel due to his failure to explore other uses for the property that would involve filling substantially less 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. The CRMP permits the Council to grant a special exception to engage in a prohibited use only where a "compelling public purpose" is served. 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 the proposed club

occupied a smaller surface area. To the contrary, it ruled that the proposed activity was not a "compelling public purpose." Although a landowner may not establish a taking before the land-use authority has the opportunity, using its own reasonable procedures, to decide and explain the reach of a challenged regulation, *e.g.*, *MacDonald, supra,* at 342, once it becomes clear that the permissible uses of the property are known to a reasonable degree of certainty, a takings claim is likely to have ripened. Here, the Council's decisions make plain that it interpreted its regulations to bar petitioner from engaging in any filling or development on the wetlands. Further permit applications were not necessary to establish this point. Pp. 8–12.

(b) Contrary to the State Supreme Court's ruling, petitioner's claim is not unripe by virtue of his failure to seek permission for a use of the property that would involve development only of its upland portion. It is true that there was uncontested testimony that an upland site would have an estimated value of $200,000 if developed. And, while the CRMP requires Council approval to develop upland property lying within 200 feet of protected waters, the strict "compelling public purpose" test does not govern proposed land uses on property in this classification. Council officials testified at trial, moreover, that they would have allowed petitioner to build a residence on the upland parcel. Nevertheless, this Court's ripeness jurisprudence requires petitioner to explore development opportunities on his upland parcel only if there is uncertainty as to the land's permitted use. The State's assertion that the uplands' value is in doubt comes too late for the litigation before this Court. It was stated in the certiorari petition that the uplands were worth an estimated $200,000. The figure not only was uncontested but also was cited as fact in the State's brief in opposition. In this circumstance ripeness cannot be contested by saying that the value of the nonwetland parcels is unknown. See *Lucas, supra,* at 1020, and n. 9. Nor is there genuine ambiguity in the record as to the extent of permitted development on petitioner's property, either on the wetlands or the uplands. Pp. 12–14.

(c) Nor is petitioner's takings claim rendered unripe, as the State Supreme Court held, by his failure to apply for permission to develop the 74-lot subdivision that was the basis for the damages sought in his inverse condemnation suit. It is difficult to see how this concern is relevant to the inquiry at issue here. The Council informed petitioner that he could not fill the wetlands; it follows of necessity that he could not fill and then build 74 single-family dwellings there. 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 the Court's ripeness decisions. Pp. 14–16.

Syllabus

2. Petitioner's acquisition of title after the regulations' effective date did not bar his takings claims. This Court rejects the State Supreme Court's sweeping rule that 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. Were the Court to accept that 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. The State's notice justification does not 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 State's rule the right to compensation may not by asserted by an heir or successor, and so may not be asserted at all. The State's rule also 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, *e.g., Webb's Fabulous Pharmacies, Inc.* v. *Beckwith,* 449 U. S. 155, 164. The 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. *Nollan* v. *California Coastal Comm'n,* 483 U. S. 825, 834, n. 2, is controlling precedent for the Court's conclusion. *Lucas, supra,* at 1029, did not overrule *Nollan,* which is based on essential Takings Clause principles. On remand the state court must address the merits of petitioner's *Penn Central* claim, which is not barred by the mere fact that his title was acquired after the effective date of the state-imposed restriction. Pp. 16–21.

3. The State Supreme Court did not err in finding that petitioner failed to establish a deprivation of all economic use, for it is undisputed that his parcel retains significant development value. Petitioner is correct that, 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 in this case, however. A regulation permitting a landowner to build a substantial residence on an 18-acre parcel does not leave the property

Syllabus

"economically idle." *Lucas, supra,* at 1019. Petitioner attempts to revive this part of his claim by arguing, 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. The Court will not explore the point here. Petitioner did not press the argument in the state courts, and the issue was not presented in his certiorari petition. The case comes to the Court on the premise that petitioner's entire parcel serves as the basis for his takings claim, and, so framed, the total deprivation argument fails. Pp. 21–23.

4. Because petitioner's claims under the *Penn Central* analysis were not examined below, the case is remanded. Pp. 7, 22.

746 A. 2d 707, affirmed in part, reversed in part, and remanded.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, and THOMAS, JJ., joined, and in which STEVENS, J., joined as to Part II–A. O'CONNOR, J., and SCALIA, J., filed concurring opinions. STEVENS, J., filed an opinion concurring in part and dissenting in part. GINSBURG, J., filed a dissenting opinion, in which SOUTER and BREYER, JJ., joined. BREYER, J., filed a dissenting opinion.