**LUCAS V.SOUTH CAROLINA COASTAL**

 **COUNCIL**

Supreme Court of the United States, 1992

 112 S. Ct. 2886

Justice Scalia delivered the opinion of the Court.

In 1986, David H. Lucas paid $ 975,000 for two residential lots on the Isle of Palms … South Carolina, on which he intended to build single-family homes. In 1988, however, the South Carolina Legislature enacted the Beachfront Management Act, which had the direct effect of barring [him] from erecting any permanent habitable structures on his two parcels…  This case requires us to decide whether the Act's dramatic effect on the economic value of Lucas's lots accomplished a taking of private property under the Fifth and Fourteenth Amendments requiring the payment of "just compensation.’’

South Carolina's expressed interest in intensively managing development activities in the so-called "coastal zone" dates from 1977 when, in the aftermath of Congress's passage of the federal Coastal Zone Management Act of 1972, the legislature enacted a Coastal Zone Management Act of its own. [This law] required owners of coastal zone land that qualified as a "critical area" (defined in the legislation to include beaches and immediately adjacent sand dunes, to obtain a permit from the newly created South Carolina Coastal Council prior to committing the land to a [new use].

In the late 1970's, Lucas and others began extensive residential development of the Isle of Palms, a barrier island situated eastward of the city of Charleston… Lucas in 1986 purchased the two lots at issue in this litigation... No portion of the lots, which were located approximately 300 feet from the beach, qualified as a "critical area" under the 1977 Act; accordingly, at the time Lucas acquired these parcels, he was not legally obliged to obtain a permit from the Council in advance of any development activity. His intention with respect to the lots was to do what the owners of the immediately adjacent parcels had already done: erect single-family residences. He commissioned architectural drawings for this purpose.

[But in 1988 new legislation directed the council to create a line beyond which no “occupiable improvements” could be built. When this “baseline” was drawn, Lucas found he was prohibited from building on his land.]

[In Pennsylvania Coal Co. v. Mahon (1922), Justice Holmes recognized] that …if … the uses of private property were subject to unbridled, uncompensated qualification under the police power, “the natural tendency of human nature [would be] to extend the qualification more and more until at last private property disappear[ed].” These considerations gave birth in that case to the oft-cited maxim that, “while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.”

[The court explains that in the 70 years since the Mahon case, it has avoided the use of any “set formula” for determining “how far is too far,” instead examining the specific facts of each case.]

 We have, however, described at least two discrete categories of regulatory action as compensable without case-specific inquiry into the public interest advanced in support of the restraint. The first encompasses regulations that compel the property owner to suffer a physical "invasion" of his property. In general (at least with regard to permanent invasions), no matter how minute the intrusion, and no matter how weighty the public purpose behind it, we have required compensation. For example, in Loretto v. Teleprompter Manhattan CATV Corp. (1982), we determined that New York’s law requiring landlords to allow television cable companies to emplace cable facilities in their apartment buildings constituted a taking, even though the facilities occupied at most only 1 ½ cubic feet of the landlord’s property.

The second situation… is where regulation denies all economically beneficial or productive use of land…

[R]egulations that leave the owner of land without economically beneficial or productive options fot its use---typically, as here, by requiring land to be left substantially in its natural state---carry with them a heightened risk that private property is being pressed into some form of public service under the guise of mitigating serious public harm…

We think, in short, that there are good reasons for our frequently expressed belief that when the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking…

[There are many precedent cases establishing that government may halt a use of property that is harmful to the public without paying compensation to the owner. However, Scalia argues, since none of those precedents involve d regulations that completely removed all economic value from the land, that principle does not apply to the case before him. In Lucas like situations, he reasons, the regulation must count as a taking-----unless it simply forbids a use already forbidden under the common law.]

 On this analysis, the owner of a lake bed, for example, would not be entitled to compensation when he is denied the requisite permit to engage in a landfilling operation that would have the effect of flooding others' land. Nor the corporate owner of a nuclear generating plant, when it is directed to remove all improvements from its land upon discovery that the plant sits astride an earthquake fault. Such regulatory action may well have the effect of eliminating the land's only economically productive use, but it does not proscribe a productive use that was previously permissible under relevant property and nuisance principles. The use of these properties for what are now expressly prohibited purposes was always unlawful, and… it was open to the State at any point to make the implication of those background principles of nuisance and property law explicit…When, however, a regulation that declares "off-limits" all economically productive or beneficial uses of land goes beyond what the relevant background principles would dictate, compensation must be paid to sustain it.

The "total taking" inquiry we require today will ordinarily entail (as the application of state nuisance law ordinarily entails) 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, the social value of the claimant's activities and their suitability to the locality in question,  and the relative ease with which the alleged harm can be avoided through measures taken by the claimant and the government (or adjacent private landowners) alike. The fact that a particular use has long been engaged in by similarly situated owners ordinarily imports a lack of any common-law prohibition (though changed circumstances or new knowledge may make what was previously permissible no longer so).  So also does the fact that other landowners, similarly situated, are permitted to continue the use denied to the claimant.

[Judgment against Lucas is reversed. The case goes back to the state courts to determine if common law principles would prevent him from building on his property. If not, he must be compensated for the environment al restriction.]

**Justice Kennedy, concurring in the judgment.**

The rights conferred by the Takings Clause and the police power of the State may coexist without conflict. Property is bought and sold; investments are made, subject to the State's power to regulate. Where a taking is alleged from regulations which deprive the property of all value, the test must be whether the deprivation is contrary to reasonable, investment-backed expectations…

In my view, reasonable expectations must be understood in light of the whole of our legal tradition. The common law of nuisance is too narrow a confine for the exercise of regulatory power in a complex and interdependent society.

**JUSTICE BLACKMUN, dissenting.**

Today the court launches a missile to kill a mouse.

 The State of South Carolina prohibited petitioner Lucas from building a permanent structure on his property from 1988 to 1990. Relying on an unreviewed (and implausible) state trial court finding that this restriction left Lucas' property valueless, this Court granted review to determine whether compensation must be paid in cases where the State prohibits all economic use of real estate…

I, like the court, will give far greater attention to this case than its narrow scope suggest----- not because I can intercept the Court’s missile, or save the targeted mouse, but because I hope perhaps to limit the collateral damage.

 In 1972 Congress passed the Coastal Zone Management Act. The Act was designated to provide States with money and incentives to carry out congress’ goal of protecting the public from shoreline erosion and coastal hazards. In the 1980 Amendments to the Act, Congress directed States to enhance their coastal programs by “[p]reventing or significantly reducing threats to life and the destruction of property by eliminating development and redevelopment in high-hazard areas.”

South Carolina began implementing the congressional directive by enacting the South Carolina Coastal Zone Management Act of 1977. Under the 1977 Act, any construction activity in what was designated the “critical area” required a permit from the Council, and the construction of any habitable structure was prohibited. The 1977 critical area was relatively narrow.

 This effort did not stop the loss of shoreline.

  In October, 1986, the Council appointed a "Blue Ribbon Committee on Beachfront Management" to investigate beach erosion and propose land-use restrictions. In response, South Carolina enacted the Beachfront Management Act on July 1, 1988. The 1988 Act did not change the uses permitted within the designated critical areas. Rather, it enlarged those areas to encompass the distance from the mean high watermark to a setback line established on the basis of "the best scientific and historical data" available.

Petitioner Lucas is a contractor, manager, and part owner of the Wild Dune development on the Isle of Palms. He has lived there since 1978. In December, 1986, he purchased two of the last four pieces of vacant property in the development. The area is notoriously unstable. In roughly half of the last 40 years, all of part of petitioner's property was part of the beach or flooded twice daily by the ebb and flow of the tide. Between 1957 and 1963, petitioner's property was under water. Between 1981 and 1983, the Isle of Palms issued 12 emergency orders for sandbagging to protect property in the Wild Dune development. Determining that local habitable structures were in imminent danger of collapse, the Council issued permits for two rock revetments to protect condominium developments near petitioner's property from erosion; one of the revetments extends more than half-way onto one of his lots…

The court creates new takings jurisprudence based on the trial court’s finding that the property had lost all economic value. This finding is almost certainly erroneous. [Lucas] can still enjoy other attributes of ownership, such as the right to excluded others, “one of the most essential sticks in the bundle of rights that are commonly characterized as property.” [Lucas] can picnic, swim, camp in a tent or live on the property in a moveable trailer…. Petitioner also retains the right to [sell] the land, which would have value for neighbors and for those prepared to enjoy proximity to the ocean without a house….

 The Court… takes the opportunity to create a new scheme for regulations that eliminate all economic value. From now on, there is a categorical rule finding these regulations to be a taking unless the use they prohibit is a background common-law nuisance….

I first question the Court's rationale in creating a category that obviates a "case-specific inquiry into the public interest advanced," if all economic value has been lost. If one fact about the Court's taking jurisprudence can be stated without contradiction, it is that "the particular circumstances of each case" determine whether a specific restriction will be rendered invalid by the government's failure to pay compensation. This is so because… the ultimate conclusion "necessarily requires a weighing of private and public interests." When the government regulation prevents the owner from any economically valuable use of his property, the private interest is unquestionably substantial, but we have never before held that no public interest can outweigh it….

This Court repeatedly has recognized the ability of government, in certain circumstances, to regulate property without compensation, no matter how adverse the financial effect on the owner may be. More than a century ago, the Court explicitly upheld the right of States to prohibit uses of property injurious to public health, safety, or welfare without paying compensation…… (Mugler v. Kansas (1987). On this basis, the Court upheld an ordinance effectively prohibiting operation of a previously lawful brewery, although the "establishments will become of no value as property." Mugler was only the beginning in a long line of cases… In Miller v. Schoene (1928), the court held that the Fifth Amendment did not require Virginia to pay compensation to the owner of cedar trees ordered destroyed to prevent a disease from spreading to nearby apple orchards….

In none of the cases did the court suggest that the right of a state to prohibit certain activities without paying compensation turned on the availability of some residual valuable use. Instead, the cases depended on whether the government interest was sufficient to prohibit the activity, given the significant private cost….

[t]he Court seems to treat history as a grab-bag of principles, to be adopted where they support the Court’s theory, and ignored where they do not.