

U.S. Supreme Court

LUCAS v. SOUTH CAROLINA COASTAL COUNCIL, 505 U.S. 1003 (1992)

JUSTICE SCALIA delivered the opinion of the Court.

In 1986, petitioner David H. Lucas paid \$975,000 for two residential lots on the Isle of Palms in Charleston County, [505 U.S. 1003, 1007] South Carolina, on which he intended to build single-family homes. In 1988, however, the South Carolina Legislature enacted the Beachfront Management Act, S.C.Code Ann. 48-39250 et seq. (Supp. 1990), which had the direct effect of barring petitioner from erecting any permanent habitable structures on his two parcels. See 48-39-290(A). A state trial court found that this prohibition rendered Lucas' parcels "valueless." App. to Pet. for Cert. 37. This case requires us to decide whether the Act's dramatic effect on the economic value of Lucas' lots accomplished a taking of private property under the Fifth and Fourteenth Amendments requiring the payment of "just compensation." U.S. Const., Amdt. 5.

I

A

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, 86 Stat. 1280, as amended, 16 U.S.C. 1451 et seq., the legislature enacted a Coastal Zone Management Act of its own. See S.C.Code Ann. 4839-10 et seq. (1987). In its original form, the South Carolina Act required owners of coastal zone land that qualified as a "critical area" (defined in the legislation to include beaches and immediately adjacent sand dunes, [505 U.S. 1003, 1008] 439-10(J)) to obtain a permit from the newly created South Carolina Coastal (Council) (respondent here) prior to committing the land to a "use other than the use the critical area was devoted to on [September 28, 1977]." 48-39-130(A).

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. Toward the close of the development cycle for one residential subdivision known as "Beachwood East," Lucas, in 1986, purchased the two lots at issue in this litigation for his own account. 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.

The Beachfront Management Act brought Lucas' plans to an abrupt end. Under that 1988 legislation, the Council was directed to establish a "baseline" connecting the landward-most "point[s] of erosion . . . during the past forty years" in the region of the Isle of Palms that includes Lucas' lots. S.C.Code Ann. 48-39-280(A)(2) (Supp. 1988). 1 In action not challenged here, the Council fixed this baseline landward of Lucas' parcels. That was significant, for under the Act, [505 U.S. 1003, 1009] construction of occupable improvements 2 was flatly prohibited seaward of a line drawn 20 feet landward of, and parallel to, the baseline. 48-39-290(A). The Act provided no exceptions.

B

Lucas promptly filed suit in the South Carolina Court of Common Pleas, contending that the Beachfront Management Act's construction bar effected a taking of his property without just compensation. Lucas did not take issue with the validity of the Act as a lawful exercise of South Carolina's police power, but contended that the Act's complete extinguishment of his property's value entitled him to compensation regardless of whether the legislature had acted in furtherance of legitimate police power objectives. Following a bench trial, the court agreed. Among its factual determinations was the finding that, at the time Lucas purchased the two lots, both were zoned for single-family residential construction and . . . there were no restrictions imposed upon such use of the property by either the State of South Carolina, the County of Charleston, or the

Town of the Isle of Palms. App. to Pet. for Cert. 36. The trial court further found that the Beachfront Management Act decreed a permanent ban on construction insofar as Lucas' lots were concerned, and that this prohibition deprive[d] Lucas of any reasonable economic use of the lots, . . . eliminated the unrestricted right of use, and render[ed] them valueless. Id., at 37. The court thus concluded that Lucas' properties had been "taken" by operation of the Act, and it ordered respondent to pay "just compensation" in the amount of \$1,232,387.50. Id., at 40. The Supreme Court of South Carolina reversed. It found dispositive what it described as Lucas' concession "that the [505 U.S. 1003, 1010] Beachfront Management Act [was] properly and validly designed to preserve . . . South Carolina's beaches." 304 S.C. 376, 379, 404 S.E.2d 895, 896 (1991). Failing an attack on the validity of the statute as such, the court believed itself bound to accept the "uncontested . . . findings" of the South Carolina Legislature that new construction in the coastal zone - such as petitioner intended - threatened this public resource. Id., at 383, 404 S.E.2d, at 898. The court ruled that, when a regulation respecting the use of property is designed "to prevent serious public harm," id., at 383, 404 S.E.2d, at 899 (citing, inter alia, *Mugler v. Kansas*, [123 U.S. 623](#) (1887)), no compensation is owing under the Takings Clause regardless of the regulation's effect on the property's value.

Two justices dissented. They acknowledged that our *Mugler* line of cases recognizes governmental power to prohibit "noxious" uses of property - i.e., uses of property akin to "public nuisances" - without having to pay compensation. But they would not have characterized the Beachfront Management Act's "primary purpose [as] the prevention of a nuisance." 304 S.C., at 395, 404 S.E.2d, at 906 (Harwell, J., dissenting). To the dissenters, the chief purposes of the legislation, among them the promotion of tourism and the creation of a "habitat for indigenous flora and fauna," could not fairly be compared to nuisance abatement. Id., at 396, 404 S.E.2d, at 906. As a consequence, they would have affirmed the trial court's conclusion that the Act's obliteration of the value of petitioner's lots accomplished a taking. We granted certiorari. [502 U.S. 966](#) (1991).

II

As a threshold matter, we must briefly address the Council's suggestion that this case is inappropriate for plenary review. After briefing and argument before the South Carolina Supreme Court, but prior to issuance of that court's opinion, the Beachfront Management Act was amended to [505 U.S. 1003, 1011] authorize the Council, in certain circumstances, to issue "special permits" for the construction or reconstruction of habitable structures seaward of the baseline. See S.C.Code Ann. 48-39-290(D)(1) (Supp. 1991). According to the Council, this amendment renders Lucas' claim of a permanent deprivation unripe, as Lucas may yet be able to secure permission to build on his property. "[The Court's] cases," we are reminded, uniformly

reflect an insistence on knowing the nature and extent of permitted development before adjudicating the constitutionality of the regulations that purport to limit it. *MacDonald, Sommer & Frates v. Yolo County*, [477 U.S. 340, 351](#) (1986). See also *Agins v. City of Tiburon*, [447 U.S. 255, 260](#) (1980). Because petitioner "has not yet obtained a final decision regarding how [he] will be allowed to develop [his] property," *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, [473 U.S. 172, 190](#) (1985), the Council argues that he is not yet entitled to definitive adjudication of his takings claim in this Court.

We think these considerations would preclude review had the South Carolina Supreme Court rested its judgment on ripeness grounds, as it was (essentially) invited to do by the Council. See Brief for Respondent 9, n. 3. The South Carolina Supreme Court shrugged off the possibility of further administrative and trial proceedings, however, preferring to dispose of Lucas' takings claim on the merits. C. e.g., *San Diego Gas & Electric Co. v. City of San Diego*, [450 U.S. 621, 631](#) -632 (1981). This unusual disposition does not preclude Lucas from applying for a permit under the 1990 amendment for future construction, and challenging, on takings grounds, any denial. But it does preclude, both practically and legally, any takings claim with respect to Lucas' past deprivation, i.e., for his having been denied construction rights during the period before the 1990 amendment. See generally *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, [482 U.S. 304](#) (1987) (holding that [\[505 U.S. 1003, 1012\]](#) temporary deprivations of use are compensable under the Takings Clause). Without even so much as commenting upon the consequences of the South Carolina Supreme Court's judgment in this respect, the Council insists that permitting Lucas to press his claim of a past deprivation on this appeal would be improper, since "the issues of whether and to what extent [Lucas] has incurred a temporary taking . . . have simply never been addressed." Brief for Respondent 11. Yet Lucas had no reason to proceed on a "temporary taking" theory at trial, or even to seek remand for that purpose prior to submission of the case to the South Carolina Supreme Court, since, as the Act then read, the taking was unconditional and permanent. Moreover, given the breadth of the South Carolina Supreme Court's holding and judgment, Lucas would plainly be unable (absent our intervention now) to obtain further state court adjudication with respect to the 1988-1990 period. In these circumstances, we think it would not accord with sound process to insist that Lucas pursue the late-created "special permit" procedure before his takings claim can be considered ripe. Lucas has properly alleged Article III injury in fact in this case, with respect to both the pre-1990 and post-1990 constraints placed on the use of his parcels by the Beachfront Management Act. [3](#) That there is a discretionary [\[505 U.S. 1003, 1013\]](#) "special permit" procedure by which he may regain - for the future, at least - beneficial use of his land goes only to the prudential "ripeness" of Lucas' challenge, and for the reasons discussed, we do not think it prudent to apply that prudential requirement here. See *Esposito v. South Carolina Coastal Council*, 939 F.2d 165, 168 (CA4 1991), cert. denied, [505 U.S. 1219](#). [4](#) We leave for decision on remand, of course, the questions left unaddressed by the South [\[505 U.S. 1003, 1014\]](#) Carolina Supreme Court as a consequence of its categorical disposition. [5](#)

III

A

Prior to Justice Holmes' exposition in *Pennsylvania Coal Co. v. Mahon*, [260 U.S. 393](#) (1922), it was generally thought that the Takings Clause reached only a "direct appropriation" of property, *Legal Tender Cases*, 12 Wall. 457, 551 (1871), or the functional equivalent of a "practical ouster of [the owner's] possession." *Transportation Co. v. Chicago*, [99 U.S. 635, 642](#) (1879). See also

Gibson v. United States, [166 U.S. 269, 275](#) -276 (1897). Justice Holmes recognized in Mahon, however, that, if the protection against physical appropriations of private property was to be meaningfully enforced, the government's power to redefine the range of interests included in the ownership of property was necessarily constrained by constitutional limits. [260 U.S., at 414 - 415](#). If, instead, 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]. *Id.*, at 415. 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." *Ibid.* [\[505 U.S. 1003, 1015\]](#)

Nevertheless, our decision in Mahon offered little insight into when, and under what circumstances, a given regulation would be seen as going "too far" for purposes of the Fifth Amendment. In 70-odd years of succeeding "regulatory takings" jurisprudence, we have generally eschewed any "set formula" for determining how far is too far, preferring to "engag[e] in . . . essentially ad hoc, factual inquiries." *Penn Central Transportation Co. v. New York City*, [438 U.S. 104, 124](#) (1978) (quoting *Goldblatt v. Hempstead*, [369 U.S. 590, 594](#) (1962)). See Epstein, *Takings: Descent and Resurrection*, 1987 S.Ct. Rev. 1, 4. 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.*, [458 U.S. 419](#) (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, *id.*, at 435-440, even though the facilities occupied, at most, only 1 1/2 cubic feet of the landlords' property, see *id.*, at 438, n. 16. See also *United States v. Causby*, [328 U.S. 256, 265](#), and n. 10 (1946) (physical invasions of airspace); cf. *Kaiser Aetna v. United States*, [444 U.S. 164](#) (1979) (imposition of navigational servitude upon private marina).

The second situation in which we have found categorical treatment appropriate is where regulation denies all economically beneficial or productive use of land. See *Agins*, [447 U.S., at 260](#); see also *Nollan v. California Coastal Comm'n*, [483 U.S. 825, 834](#) (1987); *Keystone Bituminous Coal Assn. v. DeBenedictis*, [480 U.S. 470, 495](#) (1987); *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 [\[505 U.S. 1003, 1016\]](#) U.S. 264, 295-296 (1981). [6](#) As we have said on numerous occasions, the Fifth Amendment is violated when land use regulation "does not substantially advance legitimate state interests or denies an owner economically viable use of his land." *Agins*, *supra*, at 260 (citations omitted) (emphasis added). [7](#) [\[505 U.S. 1003, 1017\]](#) We have never set forth the justification for this rule. Perhaps it is simply, as Justice Brennan suggested, that total deprivation of beneficial use is, from the landowner's point of view, the equivalent of a physical appropriation. See *San Diego Gas & Electric Co. v. San Diego*, [450 U.S., at 652](#) (dissenting opinion). "[F]or what is the land but the profit thereof[?]" 1 E. Coke, *Institutes*, ch. 1, 1 (1st Am. ed. 1812). Surely, at least, in the extraordinary circumstance when no productive or economically beneficial use of land is permitted, it is less realistic to indulge our usual assumption that the legislature is simply "adjusting the benefits and burdens of economic life," *Penn Central Transportation Co.*, 438 [\[505 U.S. 1003, 1018\]](#) U.S., at 124, in a manner that secures an "average reciprocity of advantage" to everyone concerned. *Pennsylvania Coal Co. v. Mahon*, [260 U.S., at 415](#). And the functional basis for permitting the government, by regulation,

to affect property values without compensation - that 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, *id.*, at 413 - does not apply to the relatively rare situations where the government has deprived a landowner of all economically beneficial uses.

On the other side of the balance, affirmatively supporting a compensation requirement, is the fact that regulations that leave the owner of land without economically beneficial or productive options for 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. See, e.g., *Annicelli v. South Kingstown*, 463 A.2d 133, 140-141 (R.I. 1983) (prohibition on construction adjacent to beach justified on twin grounds of safety and "conservation of open space"); *Morris County Land Improvement Co. v. Parsippany-Troy Hills Township*, 40 N.J. 539, 552-553, 193 A.2d 232, 240 (1963) (prohibition on filling marshlands imposed in order to preserve region as water detention basin and create wildlife refuge). As Justice Brennan explained: From the government's point of view, the benefits flowing to the public from preservation of open space through regulation may be equally great as from creating a wildlife refuge through formal condemnation or increasing electricity production through a dam project that floods private property. *San Diego Gas & Elec. Co.*, *supra*, at 652 (dissenting opinion). The many statutes on the books, both state and federal, that [505 U.S. 1003, 1019] provide for the use of eminent domain to impose servitudes on private scenic lands preventing developmental uses, or to acquire such lands altogether, suggest the practical equivalence in this setting of negative regulation and appropriation. See, e.g., 16 U.S.C. 410ff-1(a) (authorizing acquisition of "lands, waters, or interests [within Channel Islands National Park] (including but not limited to scenic easements)"); 460aa-2(a) (authorizing acquisition of "any lands, or lesser interests therein, including mineral interests and scenic easements" within Sawtooth National Recreation Area); 39213923 (authorizing acquisition of wetlands); N.C. Gen.Stat. 113A-38 (1990) (authorizing acquisition of, inter alia, "scenic easements" within the North Carolina natural and scenic rivers system); Tenn. Code Ann. 15-101 to 11-15-108 (1987) (authorizing acquisition of "protective easements" and other rights in real property adjacent to State's historic, architectural, archaeological, or cultural resources). 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. 8 [505 U.S. 1003, 1020]

B

The trial court found Lucas' two beachfront lots to have been rendered valueless by respondent's enforcement of the coastal-zone construction ban. 9 Under Lucas' theory of the case, which rested upon our "no economically viable use" statements, that finding entitled him to compensation. Lucas believed it unnecessary to take issue with either the purposes behind the Beachfront Management Act or the means chosen by the South Carolina Legislature to effectuate those purposes. The South Carolina Supreme Court, however, thought otherwise. In its view, the Beachfront Management Act was no ordinary enactment, but involved an exercise of South Carolina's "police powers" to mitigate the harm to the public interest that petitioner's use of his [505 U.S. 1003, 1021] land might occasion. 304 S.C., at 384, 404 S.E.2d, at 899. By neglecting to dispute the findings enumerated in the Act 10 or otherwise to challenge the legislature's purposes, [505 U.S. 1003, 1022] petitioner concede[d] that the beach/dune area of South Carolina's shores is an extremely valuable public resource; that the erection of new construction, inter alia,

contributes to the erosion and destruction of this public resource; and that discouraging new construction in close proximity to the beach/ dune area is necessary to prevent a great public harm. *Id.*, at 382-383, 404 S.E.2d, at 898. In the court's view, these concessions brought petitioner's challenge within a long line of this Court's cases sustaining against Due Process and Takings Clause challenges the State's use of its "police powers" to enjoin a property owner from activities akin to public nuisances. See *Mugler v. Kansas*, [123 U.S. 623](#) (1887) (law prohibiting manufacture of alcoholic beverages); *Hadacheck v. Sebastian*, [239 U.S. 394](#) (1915) (law barring operation of brick mill in residential area); *Miller v. Schoene*, [276 U.S. 272](#) (1928) (order to destroy diseased cedar trees to prevent infection of nearby orchards); *Goldblatt v. Hempstead*, [369 U.S. 590](#) (1962) (law effectively preventing continued operation of quarry in residential area).

It is correct that many of our prior opinions have suggested that "harmful or noxious uses" of property may be proscribed by government regulation without the requirement of compensation. For a number of reasons, however, we think the South Carolina Supreme Court was too quick to conclude that that principle decides the present case. The "harmful or noxious uses" principle was the Court's early attempt to describe in theoretical terms why government [\[505 U.S. 1003, 1023\]](#) may, consistent with the Takings Clause, affect property values by regulation without incurring an obligation to compensate - a reality we nowadays acknowledge explicitly with respect to the full scope of the State's police power. See, e.g., *Penn Central Transportation Co.*, [438 U.S., at 125](#) (where State "reasonably conclude[s] that 'the health, safety, morals, or general welfare' would be promoted by prohibiting particular contemplated uses of land," compensation need not accompany prohibition); see also *Nollan v. California Coastal Comm.*, [483 U.S., at 834](#)-835 ("Our cases have not elaborated on the standards for determining what constitutes a 'legitimate state interest[.]' [but] [t]hey have made clear . . . that a broad range of governmental purposes and regulations satisfy these requirements"). We made this very point in *Penn Central Transportation Co.*, where, in the course of sustaining New York City's landmarks preservation program against a takings challenge, we rejected the petitioner's suggestion that *Mugler* and the cases following it were premised on, and thus limited by, some objective conception of "noxiousness":

"[T]he uses in issue in *Hadacheck*, *Miller*, and *Goldblatt* were perfectly lawful in themselves. They involved no blameworthiness, . . . moral wrongdoing or conscious act of dangerous risk-taking which induce[d] society to shift the cost to a particular individual. *Sax, Takings and the Police Power*, 74 *Yale L.J.* 36, 50 (1964). These cases are better understood as resting not on any supposed "noxious" quality of the prohibited uses, but rather on the ground that the restrictions were reasonably related to the implementation of a policy - not unlike historic preservation - expected to produce a widespread public benefit and applicable to all similarly situated property. [438 U.S., at 133](#) -134, n. 30.

"Harmful or noxious use" analysis was, in other words, simply the progenitor of our more contemporary statements that [\[505 U.S. 1003, 1024\]](#) "land use regulation does not effect a taking if it 'substantially advance[s] legitimate state interests'. . . ." *Nollan*, supra, [483 U.S., at 834](#), (quoting *Agins v. Tiburon*, [447 U.S., at 260](#)); see also *Penn Central Transportation Co.*, supra, [438 U.S., at 127](#); *Euclid v. Ambler Realty Co.*, [272 U.S. 365, 387](#)-388 (1926).

The transition from our early focus on control of "noxious" uses to our contemporary understanding of the broad realm within which government may regulate without compensation was an easy one, since the distinction between "harm-preventing" and "benefit-conferring" regulation is often in the eye of the beholder. It is quite possible, for example, to describe in either fashion the ecological, economic, and esthetic concerns that inspired the South Carolina

Legislature in the present case. One could say that imposing a servitude on Lucas' land is necessary in order to prevent his use of it from "harming" South Carolina's ecological resources; or, instead, in order to achieve the "benefits" of an ecological preserve. [11](#) Compare, e.g., *Claridge v. New Hampshire* [[505 U.S. 1003, 1025](#)] Wetlands Board, 125 N.H. 745, 752, 485 A.2d 287, 292 (1984) (owner may, without compensation, be barred from filling wetlands because landfilling would deprive adjacent coastal habitats and marine fisheries of ecological support), with, e.g., *Bartlett v. Zoning Comm'n of Old Lyme*, 161 Conn. 24, 30, 282 A.2d 907, 910 (1971) (owner barred from filling tidal marshland must be compensated, despite municipality's "laudable" goal of "preserv[ing] marshlands from encroachment or destruction"). Whether one or the other of the competing characterizations will come to one's lips in a particular case depends primarily upon one's evaluation of the worth of competing uses of real estate. See Restatement (Second) of Torts 822, Comment 9, p. 112 (1979) ("[P]ractically all human activities unless carried on in a wilderness interfere to some extent with others or involve some risk of interference"). A given restraint will be seen as mitigating "harm" to the adjacent parcels or securing a "benefit" for them, depending upon the observer's evaluation of the relative importance of the use that the restraint favors. See Sax, *Takings and the Police Power*, 74 *Yale L.J.* 36, 49 (1964) ("[T]he problem [in this area] is not one of noxiousness or harm-creating activity at all; rather, it is a problem of inconsistency between perfectly innocent and independently desirable uses."). Whether Lucas' construction of single-family residences on his parcels should be described as bringing "harm" to South Carolina's adjacent ecological resources thus depends principally upon whether the describer believes that the State's use interest in nurturing those resources is so important that any competing adjacent use must yield. [12](#) [[505 U.S. 1003, 1026](#)] When it is understood that "prevention of harmful use" was merely our early formulation of the police power justification necessary to sustain (without compensation) any regulatory diminution in value; and that the distinction between regulation that "prevents harmful use" and that which "confers benefits" is difficult, if not impossible, to discern on an objective, value-free basis; it becomes self-evident that noxious-use logic cannot serve as a touchstone to distinguish regulatory "takings" - which require compensation - from regulatory deprivations that do not require compensation. A fortiori, the legislature's recitation of a noxious-use justification cannot be the basis for departing from our categorical rule that total regulatory takings must be compensated. If it were, departure would virtually always be allowed. The South Carolina Supreme Court's approach would essentially nullify Mahon's affirmation of limits to the noncompensable exercise of the police power. Our cases provide no support for this: none of them that employed the logic of "harmful use" prevention to sustain a regulation involved an allegation that the regulation wholly eliminated the value of the claimant's land. See *Keystone Bituminous Coal Assn.*, [480 U.S.](#), at [513](#) -514 (REHNQUIST, C.J., dissenting). [13](#) [[505 U.S. 1003, 1027](#)]

Where the State seeks to sustain regulation that deprives land of all economically beneficial use, we think it may resist compensation only if the logically antecedent inquiry into the nature of the owner's estate shows that the proscribed use interests were not part of his title to begin with. [14](#) This accords, we think, with our "takings" jurisprudence, which has traditionally been guided by the understandings of our citizens regarding the content of, and the State's power over, the "bundle of rights" that they acquire when they obtain title to property. It seems to us that the property owner necessarily expects the uses of his property to be restricted, from time to time, by various measures newly enacted by the State in legitimate exercise of its police powers; "[a]s long recognized, some values are enjoyed under an implied limitation, and must yield to the police power." *Pennsylvania Coal Co. v. Mahon*, [260 U.S.](#), at [413](#). And in the case of personal

property, by reason of the State's traditionally high degree of control over commercial dealings, he ought to be aware of the possibility that new regulation might even render [505 U.S. 1003, 1028] his property economically worthless (at least if the property's only economically productive use is sale or manufacture for sale). See *Andrus v. Allard*, [444 U.S. 51, 66](#) -67 (1979) (prohibition on sale of eagle feathers). In the case of land, however, we think the notion pressed by the Council that title is somehow held subject to the "implied limitation" that the State may subsequently eliminate all economically valuable use is inconsistent with the historical compact recorded in the Takings Clause that has become part of our constitutional culture. [15](#)

Where "permanent physical occupation" of land is concerned, we have refused to allow the government to decree it anew (without compensation), no matter how weighty the asserted "public interests" involved, *Loretto v. Teleprompter Manhattan CATV Corp.*, [458 U.S., at 426](#) - though we assuredly would permit the government to assert a permanent easement that was a pre-existing limitation upon the landowner's [505 U.S. 1003, 1029] title. Compare *Scranton v. Wheeler*, [179 U.S. 141, 163](#) (1900) (interests of "riparian owner in the submerged lands . . . bordering on a public navigable water" held subject to Government's navigational servitude), with *Kaiser Aetna v. United States*, [444 U.S., at 178](#) -180 (imposition of navigational servitude on marina created and rendered navigable at private expense held to constitute a taking). We believe similar treatment must be accorded confiscatory regulations, i.e., regulations that prohibit all economically beneficial use of land: Any limitation so severe cannot be newly legislated or decreed (without compensation), but must inhere in the title itself, in the restrictions that background principles of the State's law of property and nuisance already place upon land ownership. A law or decree with such an effect must, in other words, do no more than duplicate the result that could have been achieved in the courts - by adjacent landowners (or other uniquely affected persons) under the State's law of private nuisance, or by the State under its complementary power to abate nuisances that affect the public generally, or otherwise. [16](#)

On this analysis, the owner of a lakebed, 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 [505 U.S. 1003, 1030] under relevant property and nuisance principles. The use of these properties for what are now expressly prohibited purposes was always unlawful, and (subject to other constitutional limitations) it was open to the State at any point to make the implication of those background principles of nuisance and property law explicit. See Michelman, *Property, Utility, and Fairness, Comments on the Ethical Foundations of "Just Compensation" Law*, 80 *Harv.L.Rev.* 1165, 1239-1241 (1967). In light of our traditional resort to "existing rules or understandings that stem from an independent source such as state law" to define the range of interests that qualify for protection as "property" under the Fifth and Fourteenth Amendments, *Board of Regents of State Colleges v. Roth*, [408 U.S. 564, 577](#) (1972); see, e.g., *Ruckelshaus v. Monsanto Co.*, [467 U.S. 986, 1011](#) -1012 (1984); *Hughes v. Washington*, [389 U.S. 290, 295](#) (1967) (Stewart, J., concurring), this recognition that the Takings Clause does not require compensation when an owner is barred from putting land to a use that is proscribed by those "existing rules or understandings" is surely unexceptional. 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. [17](#)

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, [505 U.S. 1003, 1031] posed by the claimant's proposed activities, see, e.g., Restatement (Second) of Torts 826, 827, the social value of the claimant's activities and their suitability to the locality in question, see, e.g., id., 828(a) and (b), 831, 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, see, e.g., id., 827(e), 828(c), 830. 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, id., see 827, Comment g). So also does the fact that other landowners, similarly situated, are permitted to continue the use denied to the claimant.

It seems unlikely that common law principles would have prevented the erection of any habitable or productive improvements on petitioner's land; they rarely support prohibition of the "essential use" of land, *Curtin v. Benson*, [222 U.S. 78, 86](#) (1911). The question, however, is one of state law to be dealt with on remand. We emphasize that, to win its case, South Carolina must do more than proffer the legislature's declaration that the uses Lucas desires are inconsistent with the public interest, or the conclusory assertion that they violate a common law maxim such as *sic utere tuo ut alienum non laedas*. As we have said, a "State, by ipse dixit, may not transform private property into public property without compensation. . . ." *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, [449 U.S. 155, 164](#) (1980). Instead, as it would be required to do if it sought to restrain Lucas in a common law action for public nuisance, South Carolina must identify background principles of nuisance and property law that prohibit the uses he now intends in the circumstances in which the property is presently found. Only on this showing can [505 U.S. 1003, 1032] the State fairly claim that, in proscribing all such beneficial uses, the Beachfront Management Act is taking nothing. [18](#)

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The judgment is reversed, and the case is remanded for proceedings not inconsistent with this opinion.

So ordered.