brought in federal court. First, for an as-applied challenge, the property owner must obtain from the regulating agency a "final, definitive position" regarding how it will apply its regulation to the owner's land. Second, when suing a state or municipality, the owner must exhaust any possibilities for obtaining compensation from the state or its courts before coming to federal court. Thus, the claim in *Williamson County* was found unripe because the plaintiff had failed to seek a variance (first prong of test), and had not sought compensation from the state courts in question even though they recognized inverse condemnation claims (second prong). Similarly, in *MacDonald, Sommer & Frates v. County of Yolo*,[754] a final decision was found lacking where the landowner had been denied approval for one subdivision plan calling for intense development, but that denial had not foreclosed the possibility that a scaled-down (though still economic) version would be approved. In a somewhat different context, a taking challenge to a municipal rent control ordinance was considered "premature" in the absence of evidence that a tenant hardship provision had ever been applied to reduce what would otherwise be considered a reasonable rent increase.[755] Beginning with *Lucas* in 1992, however, the Court's ripeness determinations have displayed an impatience with formalistic reliance on the "final decision" rule, while nonetheless explicitly reaffirming it. In *Palazzolo v. Rhode Island*,[756] for example, the Court saw no point in requiring the landowner to apply for approval of a scaled-down development of his wetland, since the regulations at issue made plain that no development at all would be permitted there. "[O]nce 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."[757]

Facial challenges dispense with the *Williamson County* final decision prerequisite, though at great risk to the plaintiff in that, with-

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[754] 477 U.S. 340 (1986).

[755] Pennell v. City of San Jose, 485 U.S. 1 (1988).

[756] 533 U.S. 606 (2001).

[757] 533 U.S. at 620. *See also* Suitum v. Tahoe Regional Planning Agency, 520 U.S. 725 (1997) (taking claim ripe despite plaintiff's not having applied for sale of her transferrable development rights, because no discretion remains to agency and value of such rights is a simple issue of fact).