interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." [697]

At issue in *Penn Central* was the City's landmarks preservation law, as applied to deny approval to construct a 53-story office building atop Grand Central Terminal. The Court upheld the landmarks law against Penn Central's takings claim through application of the principles set forth above. The economic impact on Penn Central was considered: the Company could still make a "reasonable return" on its investment by continuing to use the facility as a rail terminal with office rentals and concessions, and the City specifically permitted owners of landmark sites to transfer to other sites the right to develop those sites beyond the otherwise permissible zoning restrictions, a valuable right that mitigated the burden otherwise to be suffered by the owner. As for the character of the governmental regulation, the Court found the landmarks law to be an economic regulation rather than a governmental appropriation of property, the preservation of historic sites being a permissible goal and one that served the public interest.[698]

Justice Holmes began his analysis in *Mahon* with the observation that "[g]overnment hardly could go on if to some extent values incident to property could not be diminished without paying for every . . . change in the general law," [699] and *Penn Central's* economic impact standard also leaves ample room for recognition of this principle. Thus, the Court can easily hold that a mere permit requirement does not amount to a taking,[700] nor does a simple recordation requirement.[701] The tests become more useful, however, when compliance with regulation becomes more onerous.

Several times the Court has relied on the concept of "distinct [or, in most later cases, 'reasonable'] investment-backed expectations" first introduced in *Penn Central*. In *Ruckelshaus v. Monsanto Co.*,[702] the Court used the concept to determine whether a taking had resulted from the government's disclosure of trade secret information submitted with applications for pesticide registrations. Disclosure of data that had been submitted from 1972 to 1978, a pe-

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[697] 438 U.S. at 124 (citations omitted).

[698] 438 U.S. at 124–28, 135–38.

[699] 260 U.S. at 413.

[700] United States v. Riverside Bayview Homes, 474 U.S. 121 (1985) (requirement that permit be obtained for filling privately-owned wetlands is not a taking, although permit denial resulting in prevention of economically viable use of land may be).

[701] Texaco v. Short, 454 U.S. 516 (1982) (state statute deeming mineral claims lapsed upon failure of putative owners to take prescribed steps is not a taking); United States v. Locke, 471 U.S. 84 (1985) (reasonable regulation of recordation of mining claim is not a taking).

[702] 467 U.S. 986 (1984).