

A purchaser bought land in the mountain foothills just outside a resort town and planned to build a housing development there. Soon thereafter, the county in which the land was located unexpectedly adopted a regulation that, for the first time, prohibited all construction in several foothill and mountain areas, including the area of the purchaser's property. The purpose of the county's regulation was "to conserve for future generations the unique natural wildlife and plant habitats" in the mountain areas. Since the adoption of the regulation, the purchaser has been unable to lease or sell the property at any price. Several realtors have advised the purchaser that his property is now worthless.

The purchaser has sued the county, claiming that the regulation has effected a taking of the purchaser's property and that the county therefore owes the purchaser just compensation.

Is the court likely to rule in favor of the purchaser?

- A. No, because the county did not take title to the property from the purchaser.
- B. No, because the regulation has not caused or authorized any uninvited physical invasion or intrusion onto the property.
- C. Yes, because the conservation objective of the county ordinance is not sufficiently compelling to justify the substantial diminution in the property value.
- D. Yes, because the effect of the county's regulation is to deny the purchaser's investment-backed expectation and essentially all economically beneficial use of the property.

## Explanation:

### Fifth Amendment takings

Type	Attributes
Physical	<ul style="list-style-type: none"><li>• Possession or permanent physical invasion of property</li></ul>
Regulatory	<ul style="list-style-type: none"><li>• Deprivation of all economically beneficial uses</li><li>• Restricts use under totality of circumstances:<ul style="list-style-type: none"><li>– character of government action</li><li>– economic impact</li><li>– reasonable investment-back expectations</li></ul></li></ul>
Exaction	<ul style="list-style-type: none"><li>• Condition to obtain building/development permit</li></ul>
Destruction	<ul style="list-style-type: none"><li>• Destruction of property or property interest (eg, easements, liens)</li></ul>

A **taking** occurs when the government:

- **physically possesses or invades** private property (ie, physical taking) *or*
- **deprives** the owner of **all economically beneficial use** of the property but the **owner retains possession** (ie, regulatory taking) **(Choices A & B)**.

And under the Fifth Amendment—as applied to the states through the Fourteenth Amendment—a taking must be for a public use, and the government must justly compensate the owner for the property's fair market value.

Here, the county's regulation prohibits all construction on the purchaser's land. This amounted to a regulatory taking because it denied the purchaser (1) his investment-backed expectation for the planned housing development and (2) essentially all economically beneficial use of the property. And since the property was rendered worthless, the court will likely rule that the purchaser is entitled to just compensation.

**(Choice C)** The ordinance's objective to conserve natural wildlife and plant habitats may be compelling. But the county can only justify the substantial diminution in the purchaser's property value by providing him just compensation.

### Educational objective:

A Fifth Amendment taking occurs when (1) the government physically possesses or invades private property or (2) the owner retains possession but loses all economically beneficial use of the property due to government action.

### References

- Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1019 (1992) (holding that a deprivation of all economically beneficial uses of property constitutes a taking).
- 26 Am Jur. 2d Eminent Domain § 12 (2019) (explaining a deprivation of all economically beneficial uses of property).

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