Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

TAHOE-SIERRA PRESERVATION COUNCIL, INC., ET AL. *v.* TAHOE REGIONAL PLANNING AGENCY ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 00–1167. Argued January 7, 2002—Decided April 23, 2002

Respondent Tahoe Regional Planning Agency (TRPA) imposed two moratoria, totaling 32 months, on development in the Lake Tahoe Basin while formulating a comprehensive land-use plan for the area. Petitioners, real estate owners affected by the moratoria and an association representing such owners, filed parallel suits, later consolidated, claiming that TRPA's actions constituted a taking of their property without just compensation. The District Court found that TRPA had not effected a "partial taking" under the analysis set out in *Penn Central Transp. Co.* v. *New York City,* 438 U. S. 104; however, it concluded that the moratoria did constitute a taking under the categorical rule announced in *Lucas* v. *South Carolina Coastal Council,* 505 U. S. 1003, because TRPA temporarily deprived petitioners of all economically viable use of their land. On appeal, TRPA successfully challenged the District Court's takings determination. Finding that the only question in this facial challenge was whether *Lucas*' rule applied, the Ninth Circuit held that because the regulations had only a temporary impact on petitioners' fee interest, no categorical taking had occurred; that *Lucas* applied to the relatively rare case in which a regulation permanently denies all productive use of an entire parcel, whereas the moratoria involved only a temporal slice of the fee interest; and that *First English Evangelical Lutheran Church of Glendale* v. *County of Los Angeles,* 482 U. S. 304, concerned the question whether compensation is an appropriate remedy for a temporary taking, not whether or when such a taking has occurred. The court also concluded that *Penn Central*'s ad hoc balancing approach was the proper framework for analyzing whether a taking had occurred, but that petitioners had not chal-

lenged the District Court's conclusion that they could not make out a claim under *Penn Central*'s factors.

Held: The moratoria ordered by TRPA are not *per se* takings of property requiring compensation under the Takings Clause. Pp. 16–39.

(a) Although this Court's physical takings jurisprudence, for the most part, involves the straightforward application of *per se* rules, its regulatory takings jurisprudence is characterized by "essentially ad hoc, factual inquiries," *Penn Central,* 438 U. S., at 124, designed to allow "careful examination and weighing of all the relevant circumstances," *Palazzolo* v. *Rhode Island,* 533 U. S. 606, 636 (O'CONNOR, J., concurring). The longstanding distinction between physical and regulatory takings makes it inappropriate to treat precedent from one as controlling on the other. Petitioners rely on *First English* and *Lucas*—both regulatory takings cases—to argue for a categorical rule that whenever the government imposes a deprivation of all economically viable use of property, no matter how brief, it effects a taking. In *First English,* 482 U. S., at 315, 318, 321, the Court addressed the separate remedial question of how compensation is measured once a regulatory taking is established, but not the different and prior question whether the temporary regulation was in fact a taking. To the extent that the Court referenced that antecedent question, it recognized that a regulation temporarily denying an owner all use of her property might not constitute a taking if the denial was part of the State's authority to enact safety regulations, or if it were one of the normal delays in obtaining building permits, changes in zoning ordinances, variances, and the like. Thus, *First English* did not approve, and implicitly rejected, petitioners' categorical approach. Nor is *Lucas* dispositive of the question presented. Its categorical rule—requiring compensation when a regulation permanently deprives an owner of "*all* economically beneficial uses" of his land, 505 U. S., at 1019—does not answer the question whether a regulation prohibiting any economic use of land for 32 months must be compensated. Petitioners attempt to bring this case under the rule in *Lucas* by focusing exclusively on the property during the moratoria is unavailing. This Court has consistently rejected such an approach to the "denominator" question. See, *e.g., Keystone Bituminous Coal Assn.* v. *DeBenedictis,* 480 U. S. 470, 497. To sever a 32-month segment from the remainder of each fee simple estate and then ask whether that segment has been taken in its entirety would ignore *Penn Central*'s admonition to focus on "the parcel as a whole," 438 U. S., at 130–131. Both dimensions of a real property interest—the metes and bounds describing its geographic dimensions and the term of years describing its temporal aspect—must be considered when viewing the interest in its entirety. A permanent deprivation of all use is a taking of the parcel as a whole, but a temporary restriction causing a diminution

in value is not, for the property will recover value when the prohibition is lifted. *Lucas* was carved out for the "extraordinary case" in which a regulation permanently deprives property of all use; the default rule remains that a fact specific inquiry is required in the regulatory taking context. Nevertheless, the Court will consider petitioners' argument that the interest in protecting property owners from bearing public burdens "which, in all fairness and justice, should be borne by the public as a whole," *Armstrong* v. *United States,* 364 U. S. 40, 49, justifies creating a new categorical rule. Pp. 17–29.

(b) "Fairness and justice" will not be better served by a categorical rule that any deprivation of all economic use, no matter how brief, constitutes a compensable taking. That rule would apply to numerous normal delays in obtaining, *e.g.,* building permits, and would require changes in practices that have long been considered permissible exercises of the police power. Such an important change in the law should be the product of legislative rulemaking not adjudication. More importantly, for the reasons set out in JUSTICE O'CONNOR's concurring opinion in *Palazzolo,* 533 U. S., at 636, the better approach to a temporary regulatory taking claim requires careful examination and weighing of all the relevant circumstances—only one of which is the length of the delay. A narrower rule excluding normal delays in processing permits, or covering only delays of more than a year, would have a less severe impact on prevailing practices, but would still impose serious constraints on the planning process. Moratoria are an essential tool of successful development. The interest in informed decisionmaking counsels against adopting a *per se* rule that would treat such interim measures as takings regardless of the planners' good faith, the landowners' reasonable expectations, or the moratorium's actual impact on property values. The financial constraints of compensating property owners during a moratorium may force officials to rush through the planning process or abandon the practice altogether. And the interest in protecting the decisional process is even stronger when an agency is developing a regional plan than when it is considering a permit for a single parcel. Here, TRPA obtained the benefit of comments and criticisms from interested parties during its deliberations, but a categorical rule tied to the deliberations' length would likely create added pressure on decisionmakers to quickly resolve land-use questions, disadvantaging landowners and interest groups less organized or familiar with the planning process. Moreover, with a temporary development ban, there is less risk that individual landowners will be singled out to bear a special burden that should be shared by the public as a whole. It may be true that a moratorium lasting more than one year should be viewed with special skepticism, but the District Court found that the instant de-

lay was not unreasonable. The restriction's duration is one factor for a court to consider in appraising regulatory takings claims, but with respect to that factor, the temptation to adopt *per se* rules in either direction must be resisted. Pp. 28–39.

216 F. 3d 764, affirmed.

STEVENS, J., delivered the opinion of the Court, in which O'CONNOR, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. REHNQUIST, C. J., filed a dissenting opinion, in which SCALIA, J., and THOMAS, J., joined. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined.