

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D2025-0660

KEY HAVEN ASSOCIATED
ENTERPRISES, INC.,

Appellant,

v.

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION
and FLORIDA DEPARTMENT OF
ECONOMIC OPPORTUNITY,

Appellees.

On appeal from the Circuit Court for Leon County.
Jonathan Sjostrom, Judge.

August 26, 2026

OSTERHAUS, C.J.

After the Florida Legislature passed landmark environmental and water management legislation in the early 1970s, state environmental authorities ordered Key Haven Associated Enterprises to halt a dredge-and-fill residential development of submerged lots in the Florida Keys. Less than ten years before, the state had approved of Key Haven's residential development plans and sold it the submerged land. But state law and policy reversed course and, as of January 1, 1973, the State barred Key Haven from finishing the project. Key Haven didn't challenge the order

halting its residential development. Rather, it waited until 2018 to file a new application to dredge and fill five of the unfinished lots from the original plan. When the Florida Department of Environmental Protection denied its permit application for these five lots, Key Haven filed suit in circuit court alleging a categorical regulatory taking under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). The trial court, however, entered summary judgment for the State Appellees on statute of limitations grounds. We affirm that order.

I.

In the mid-1960s Arthur and Betty Lujan purchased approximately 122 acres of submerged land in the Florida Keys from the Trustees of the Internal Improvement Fund of the State of Florida.¹ The Lujans conveyed a portion of this property to their wholly owned corporation, Key Haven Associated Enterprises, Inc. in 1966. Key Haven received plat approval to subdivide the land into 151 residential lots, known as the Key Haven Tenth Addition, and commenced dredging canals, filling submerged lands, and constructing roadways and homes within the subdivision. By the end of 1972, most of the Tenth Addition lots were filled, improved, and sold for a profit. But before Key Haven could fully finish the development, the Florida Legislature enacted new environmental and water management laws aimed at protecting and preserving coastal areas. As a result, state environmental authorities halted Key Haven's dredge and fill work as of January 1, 1973, with only 19 residential lots left undeveloped in the Tenth Addition. Key Haven stopped its dredge-and-fill work and didn't challenge the State's prohibition on completing remaining lots in the project in the Tenth Addition until about 50 years later.

In 2018, Key Haven sought permits with the Department of Environmental Protection (DEP) to dredge and fill five of the

¹ Now known as the Board of Trustees of the Internal Improvement Trust Fund consisting of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. § 253.02(1), Fla. Stat.

remaining Tenth Addition lots.² DEP denied the permits. Key Haven requested and received an administrative hearing leading to an order by an administrative law judge recommending denial of Key Haven's application. DEP subsequently entered a final order denying the permits sought by Key Haven.

Key Haven proceeded to file a complaint for declaratory relief and inverse condemnation in circuit court. Its second amended complaint claimed that it sought to develop the five lots "consistently with the development previously permitted by both the State and Monroe County." With the denial of Key Haven's 2018 application, it alleged an as-applied, total regulatory taking by inverse condemnation because it "lost all economic beneficial use and value of each of the Subject Property lots."

The parties ultimately filed competing summary judgment motions in the trial court, with the State Appellees asserting a statute of limitations bar to Key Haven's inverse condemnation case. The trial court agreed with the State Appellees. It granted their summary judgment motion and denied Key Haven's motion, concluding that the inverse condemnation claim was time-barred. It explained that the applicable four-year statute of limitations to challenge the State's development prohibition began running in the early 1970s or 1980s, when state environmental legislation and Monroe County's revised comprehensive plan blocked Key Haven from finishing its dredge-and-fill work in the Tenth Addition. Key Haven appealed.

II.

Key Haven alleges that it suffered a categorical regulatory taking of five lots in the Florida Keys because of Appellees' permit

² Nine of the unfilled lots were subsequently encumbered by a 2007 conservation easement granted by Key Haven to the South Florida Water Management District as mitigation for additional fill needed to develop nearby property. The five lots subject to this litigation are among ten unfilled lots in the Tenth Addition that are not subject to the conservation easement.

denial, which stripped its property of all economic beneficial use and value.

Both the United States Constitution and the Florida Constitution prohibit the government from taking private property without just compensation. Amend. V, U.S. Const.; Art. X, § 6(a), Fla. Const.³ “[W]hen 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.” *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992). In such instances the taking is “categorical” and is “compensable without case-specific inquiry into the public interest advanced in support of the restraint.” *Id.* at 1015; *see also Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 330 (2002) (“The categorical rule that we applied in *Lucas* states that compensation is required when a regulation deprives an owner of ‘*all* economically beneficial uses’ of his land.”).

In the trial court, this case turned on the question of when the four-year statute of limitations applicable to Key Haven’s inverse condemnation claim began to run. *See* § 95.11(3)(o), Fla. Stat. Statutes of limitations begin to run when the cause of action accrues. *Smith v. Bruster*, 151 So. 3d 511, 514 (Fla. 1st DCA 2014). And “[a] cause of action accrues when the last element constituting the cause of action occurs.” § 95.031(1), Fla. Stat.

In cases like this one, involving whether government regulations have effected a taking of a property interest, a claim ripens when “the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue.” *Williamson Cnty. Regional Plan. Comm’n v. Hamilton Bank*, 473 U.S. 172, 186 (1985). “Any analysis in an as-applied regulatory taking claim must start with the threshold question of ripeness.” *Alachua Land Investors, LLC v. City of Gainesville*, 107 So. 3d 1154, 1158 (Fla. 1st DCA 2013) (quoting *Riviera Beach v. Shillingburg*, 659 So. 2d

³ “Generally, the analysis under state and federal takings jurisprudence is the same.” *D’Arcy v. Fla. Gaming Cont. Comm’n*, 361 So. 3d 935, 937 n.1 (Fla. 1st DCA 2023).

1174, 1180 (Fla. 4th DCA 1995)). “Ordinarily, a claim will not be ripe unless the claimant has made at least one ‘meaningful [development] application.’” *Id.* (quoting *MacDonald, Sommer & Frates v. Yolo Cnty.*, 477 U.S. 340, 352-53 n.8 (1986)). But the ripeness doctrine does not require landowners to file a meaningless, futile application with the government before alleging a regulatory taking. *Id.* Rather, landowners must only “take ‘reasonable and necessary steps to allow regulatory agencies to exercise their full discretion in considering the development plans for the property, including the opportunity to grant any variances or waivers allowed by law.’” *Id.* (quoting *Palazzolo v. Rhode Island*, 533 U.S. 606, 620-21 (2001)). “[O]nly if there is uncertainty as to the land’s permitted use” is a petitioner required to explore development opportunities. *Palazzolo*, 533 U.S. at 622.

In this case, there has been no question for decades about how Florida law and local regulations apply to Key Haven’s Tenth Addition development. A total prohibition on dredge-and-fill development has restricted development on the five Tenth Addition lots at issue here since the early 1970s. Key Haven obtained necessary government approvals in the 1960s to dredge, fill, and create these residential lots. But the State stopped their development cold in the early 1970s due to the enactment of new laws and the reversal of environmental policies affecting the Florida Keys. The summary judgment evidence demonstrated that Key Haven was ordered to stop dredging and filling in the Tenth Addition by 1973, before completing these five lots. And then in 1986, amendments to the Monroe County Comprehensive Plan added a further total prohibition of development on these lots because of the presence of mangroves: “No density . . . for any land designated as mangroves on the Existing Conditions Map.” Under the Plan, land submerged by water required an open space ration of 1.0, meaning that no development was allowed.

At that point in the 1970s and 1980s, no uncertainty remained as to whether state and local officials could or would permit Key Haven’s dredge-and-fill development on these five uncompleted lots. It couldn’t be done. The deposition evidence confirms that Key Haven understood in 1972 that it was barred from further developing the lots when the State halted its work. In turn, Key Haven’s cause of action accrued in that same era and its takings

claim ripened because state and local governments made final decisions to prohibit the dredging and filling of these lots. Accordingly, we see no error in the trial court's conclusion that Key Haven's current inverse condemnation claim is barred by the statute of limitations.

We understand Key Haven's counterargument that the statute of limitations doesn't apply and that futility couldn't attach until it had filed at least one meaningful application to develop the property, which it didn't attempt until 2018. *See, e.g., Glisson v. Alachua County*, 558 So. 2d 1030, 1036 (Fla. 1st DCA 1990) ("[F]utility is not established until at least one meaningful application has been filed."). The problem with this argument, however, is that it doesn't account for the decisive governmental action already taken on Key Haven's development of these lots decades before. According to Key Haven's complaint, the very Tenth Addition lots that it applied to dredge-and-fill in 2018, were previously permitted by the State and Monroe County in the 1960s, before that work was halted by state order in the 1970s. At that point, decades ago, everyone understood that Key Haven could not complete its residential development project as to these five lots. Revisions to Monroe County's comprehensive plan in 1986 only strengthened the 1970's prohibition. And so, having been directly blocked by the State from completing dredge-and-fill work on the five lots, Key Haven had a "final decision" on developing them long before it filed the application to develop these same lots in 2018. *See Williamson Cnty. Regional Plan. Comm'n v. Hamilton Bank*, 473 U.S. at 186 (describing that a takings claim ripens when the government entity charged with implementing the regulations reaches a final decision regarding the application of the regulations to the property at issue). We thus reject Key Haven's argument that its takings claim on the five lots only accrued and ripened when the Department of Environmental Protection denied its 2018 application.

III.

For the foregoing reasons, the final summary judgment is AFFIRMED. Because Key Haven's inverse condemnation claim is stale, we needn't address whether the trial court correctly decided

the substantive merits of Key Haven's *Lucas*-style takings claim argument.

NORDBY and NEFF, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

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