SUPREME COURT OF THE UNITED STATES

No. 97–1235

CITY OF MONTEREY, PETITIONER *v.* DEL MONTE DUNES AT MONTEREY, LTD., AND MONTEREY-DEL MONTE DUNES CORPORATION

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

[May 24, 1999]

JUSTICE KENNEDY delivered the opinion of the Court, except as to Part IV–A–2.

This case began with attempts by the respondent, Del Monte Dunes, and its predecessor in interest to develop a parcel of land within the jurisdiction of the petitioner, the city of Monterey. The city, in a series of repeated rejections, denied proposals to develop the property, each time imposing more rigorous demands on the developers. Del Monte Dunes brought suit in the United States District Court for the Northern District of California, under Rev. Stat. §1979, 42 U. S. C. §1983. After protracted litigation, the case was submitted to the jury on Del Monte Dunes' theory that the city effected a regulatory taking or otherwise injured the property by unlawful acts, without paying compensation or providing an adequate postdeprivation remedy for the loss. The jury found for Del Monte Dunes, and the Court of Appeals affirmed.

The petitioner contends that the regulatory takings claim should not have been decided by the jury and that the Court of Appeals adopted an erroneous standard for regulatory takings liability. We need not decide all of the

questions presented by the petitioner, nor need we examine each of the points given by the Court of Appeals in its decision to affirm. The controlling question is whether, given the city's apparent concession that the instructions were a correct statement of the law, the matter was properly submitted to the jury. We conclude that it was, and that the judgment of the Court of Appeals should be affirmed.

I

A

The property which respondent and its predecessor in interest (landowners) sought to develop was a 37.6 acre ocean-front parcel located in the city of Monterey, at or near the city's boundary to the north, where Highway 1 enters. With the exception of the ocean and a state park located to the northeast, the parcel was virtually surrounded by a railroad right-of-way and properties devoted to industrial, commercial, and multifamily residential uses. The parcel itself was zoned for multifamily residential use under the city's general zoning ordinance.

The parcel had not been untouched by its urban and industrial proximities. A sewer line housed in 15-foot man-made dunes covered with jute matting and surrounded by snow fencing traversed the property. Trash, dumped in violation of the law, had accumulated on the premises. The parcel had been used for many years by an oil company as a terminal and tank farm where large quantities of oil were delivered, stored, and reshipped. When the company stopped using the site, it had removed its oil tanks but left behind tank pads, an industrial complex, pieces of pipe, broken concrete, and oil-soaked sand. The company had introduced nonnative ice plant to prevent erosion and to control soil conditions around the oil tanks. Ice plant secretes a substance that forces out other plants and is not compatible with the parcel's natural

flora. By the time the landowners sought to develop the property, ice plant had spread to some 25 percent of the parcel, and, absent human intervention, would continue to advance, endangering and perhaps eliminating the parcel's remaining natural vegetation.

The natural flora the ice plant encroached upon included buckwheat, the natural habitat of the endangered Smith's Blue Butterfly. The butterfly lives for one week, travels a maximum of 200 feet, and must land on a mature, flowering buckwheat plant to survive. Searches for the butterfly from 1981 through 1985 yielded but a single larva, discovered in 1984. No other specimens had been found on the property, and the parcel was quite isolated from other possible habitats of the butterfly.

B

In 1981 the landowners submitted an application to develop the property in conformance with the city's zoning and general plan requirements. Although the zoning requirements permitted the development of up to 29 housing units per acre, or more than 1,000 units for the entire parcel, the landowners' proposal was limited to 344 residential units. In 1982 the city's planning commission denied the application but stated that a proposal for 264 units would receive favorable consideration. In keeping with the suggestion, the landowners submitted a revised proposal for 264 units. In late 1983, however, the planning commission again denied the application. The commission once more requested a reduction in the scale of the development, this time saying a plan for 224 units would be received with favor. The landowners returned to the drawing board and prepared a proposal for 224 units, which, its previous statements notwithstanding, the planning commission denied in 1984. The landowners appealed to the city council, which overruled the planning commission's denial and referred the project back to the commission, with instructions to consider a proposal for 190 units.

The landowners once again reduced the scope of their development proposal to comply with the city's request, and submitted four specific, detailed site plans, each for a total of 190 units for the whole parcel. Even so, the planning commission rejected the landowners' proposal later in 1984. Once more the landowners appealed to the city council. The council again overruled the commission, finding the proposal conceptually satisfactory and in conformance with the city's previous decisions regarding, *inter alia*, density, number of units, location on the property, and access. The council then approved one of the site plans, subject to various specific conditions, and granted an 18-month conditional use permit for the proposed development.

The landowners spent most of the next year revising their proposal and taking other steps to fulfill the city's conditions. Their final plan, submitted in 1985, devoted 17.9 of the 37.6 acres to public open space (including a public beach and areas for the restoration and preservation of the buckwheat habitat), 7.9 acres to open, landscaped areas, and 6.7 acres to public and private streets (including public parking and access to the beach). Only 5.1 acres were allocated to buildings and patios. The plan was designed, in accordance with the city's demands, to provide the public with a beach, a buffer zone between the development and the adjoining state park, and view corridors so the buildings would not be visible to motorists on the nearby highway; the proposal also called for restoring and preserving as much of the sand dune structure and buckwheat habitat as possible consistent with development and the city's requirements.

After detailed review of the proposed buildings, roads, and parking facilities, the city's architectural review committee approved the plan. Following hearings before the planning commission, the commission's professional staff

found the final plan addressed and substantially satisfied the city's conditions. It proposed the planning commission make specific findings to this effect and recommended the plan be approved.

In January 1986, less than two months before the landowners' conditional use permit was to expire, the planning commission rejected the recommendation of its staff and denied the development plan. The landowners appealed to the city council, also requesting a 12-month extension of their permit to allow them time to attempt to comply with any additional requirements the council might impose. The permit was extended until a hearing could be held before the city council in June 1986. After the hearing, the city council denied the final plan, not only declining to specify measures the landowners could take to satisfy the concerns raised by the council but also refusing to extend the conditional use permit to allow time to address those concerns. The council's decision, moreover, came at a time when a sewer moratorium issued by another agency would have prevented or at least delayed development based on a new plan.

The council did not base its decision on the landowners' failure to meet any of the specific conditions earlier prescribed by the city. Rather, the council made general findings that the landowners had not provided adequate access for the development (even though the landowners had twice changed the specific access plans to comply with the city's demands and maintained they could satisfy the city's new objections if granted an extension), that the plan's layout would damage the environment (even though the location of the development on the property was necessitated by the city's demands for a public beach, view corridors, and a buffer zone next to the state park), and that the plan would disrupt the habitat of the Smith's Blue Butterfly (even though the plan would remove the encroaching ice plant and preserve or restore buckwheat

habitat on almost half of the property, and even though only one larva had ever been found on the property).

C

After five years, five formal decisions, and 19 different site plans, 10 Tr. 1294–1295 (Feb. 9, 1994), respondent Del Monte Dunes decided the city would not permit development of the property under any circumstances. Del Monte Dunes commenced suit against the city in the United States District Court for the Northern District of California under 42 U. S. C. §1983, alleging, *inter alia*, that denial of the final development proposal was a violation of the Due Process and Equal Protection provisions of the Fourteenth Amendment and an uncompensated, and so unconstitutional, regulatory taking.

The District Court dismissed the claims as unripe under *Williamson County Regional Planning Comm'n* v. *Hamilton Bank of Johnson City*, 473 U. S. 172 (1985), on the grounds that Del Monte Dunes had neither obtained a definitive decision as to the development the city would allow nor sought just compensation in state court. The Court of Appeals reversed. 920 F. 2d 1496 (CA9 1990). After reviewing at some length the history of attempts to develop the property, the court found that to require additional proposals would implicate the concerns about repetitive and unfair procedures expressed in *MacDonald, Sommer & Frates* v. *Yolo County*, 477 U. S. 340, 350, n. 7 (1986), and that the city's decision was sufficiently final to render Del Monte Dunes' claim ripe for review. 920 F. 2d, at 1501–1506. The court also found that because the State of California had not provided a compensatory remedy for temporary regulatory takings when the city issued its final denial, see *First English Evangelical Lutheran Church of Glendale* v. *County of Los Angeles*, 482 U. S. 304 (1987), Del Monte Dunes was not required to pursue relief in state court as a precondition to federal relief. See 920 F. 2d, at 1506–1507.

On remand, the District Court determined, over the city's objections, to submit Del Monte Dunes' takings and equal protection claims to a jury but to reserve the substantive due process claim for decision by the court. Del Monte Dunes argued to the jury that, although the city had a right to regulate its property, the combined effect of the city's various demands– that the development be invisible from the highway, that a buffer be provided between the development and the state park, and that the public be provided with a beach– was to force development into the "bowl" area of the parcel. As a result, Del Monte Dunes argued, the city's subsequent decision that the bowl contained sensitive buckwheat habitat which could not be disturbed blocked the development of any portion of the property. See 10 Tr. 1288–1294, 1299–1302, 1317 (Feb. 9, 1994). While conceding the legitimacy of the city's stated regulatory purposes, Del Monte Dunes emphasized the tortuous and protracted history of attempts to develop the property, as well as the shifting and sometimes inconsistent positions taken by the city throughout the process, and argued that it had been treated in an unfair and irrational manner. Del Monte Dunes also submitted evidence designed to undermine the validity of the asserted factual premises for the city's denial of the final proposal and to suggest that the city had considered buying, or inducing the State to buy, the property for public use as early as 1979, reserving some money for this purpose but delaying or abandoning its plans for financial reasons. See *id.*, at 1303–1306. The State of California's purchase of the property during the pendency of the litigation may have bolstered the credibility of Del Monte Dunes' position.

At the close of argument, the District Court instructed the jury it should find for Del Monte Dunes if it found either that Del Monte Dunes had been denied all economically viable use of its property or that "the city's decision

to reject the plaintiff's 190 unit development proposal did not substantially advance a legitimate public purpose." App. 303. With respect to the first inquiry, the jury was instructed, in relevant part, as follows:

> "For the purpose of a taking claim, you will find that the plaintiff has been denied all economically viable use of its property, if, as the result of the city's regulatory decision there remains no permissible or beneficial use for that property. In proving whether the plaintiff has been denied all economically viable use of its property, it is not enough that the plaintiff show that after the challenged action by the city the property diminished in value or that it would suffer a serious economic loss as the result of the city's actions." *Ibid.*

With respect to the second inquiry, the jury received the following instruction:

> "Public bodies, such as the city, have the authority to take actions which substantially advance legitimate public interest[s] and legitimate public interest[s] can include protecting the environment, preserving open space agriculture, protecting the health and safety of its citizens, and regulating the quality of the community by looking at development. So one of your jobs as jurors is to decide if the city's decision here substantially advanced any such legitimate public purpose.
>
> "The regulatory actions of the city or any agency substantially advanc[e] a legitimate public purpose if the action bears a reasonable relationship to that objective.
>
> "Now, if the preponderance of the evidence establishes that there was no reasonable relationship between the city's denial of the . . . proposal and legiti-

> mate public purpose, you should find in favor of the plaintiff. If you find that there existed a reasonable relationship between the city's decision and a legitimate public purpose, you should find in favor of the city. As long as the regulatory action by the city substantially advances their legitimate public purpose, . . . its underlying motives and reasons are not to be inquired into." *Id.*, at 304.

The essence of these instructions was proposed by the city. See Tr. 11 (June 17, 1994).

The jury delivered a general verdict for Del Monte Dunes on its takings claim, a separate verdict for Del Monte Dunes on its equal protection claim, and a damages award of $1.45 million. Tr. 2 (Feb. 17, 1994). After the jury's verdict, the District Court ruled for the city on the substantive due process claim, stating that its ruling was not inconsistent with the jury's verdict on the equal protection or the takings claim. App. to Pet. for Cert. A–39. The court later denied the city's motions for a new trial or for judgment as a matter of law.

The Court of Appeals affirmed. 95 F. 3d 1422 (CA9 1996). The court first ruled that the District Court did not err in allowing Del Monte Dunes' regulatory takings claim to be tried to a jury, *id.*, at 1428, because Del Monte Dunes had a right to a jury trial under §1983, *id.*, at 1426–1427, and whether Del Monte Dunes had been denied all economically viable use of the property and whether the city's denial of the final proposal substantially advanced legitimate public interests were, on the facts of this case, questions suitable for the jury, *id.*, at 1430. The court ruled that sufficient evidence had been presented to the jury from which it reasonably could have decided each of these questions in Del Monte Dunes' favor. *Id.*, at 1430–1434. Because upholding the verdict on the regulatory takings claim was sufficient to support the award of damages, the

court did not address the equal protection claim. *Id.*, at 1426.

The questions presented in the city's petition for certiorari were (1) whether issues of liability were properly submitted to the jury on Del Monte Dunes' regulatory takings claim, (2) whether the Court of Appeals impermissibly based its decision on a standard that allowed the jury to reweigh the reasonableness of the city's land-use decision, and (3) whether the Court of Appeals erred in assuming that the rough-proportionality standard of *Dolan* v. *City of Tigard*, 512 U. S. 374 (1994), applied to this case. We granted certiorari, 523 U. S. 1045 (1998), and now address these questions in reverse order.

II

In the course of holding a reasonable jury could have found the city's denial of the final proposal not substantially related to legitimate public interests, the Court of Appeals stated: "[e]ven if the City had a legitimate interest in denying Del Monte's development application, its action must be 'roughly proportional' to furthering that interest. . . . That is, the City's denial must be related 'both in nature and extent to the impact of the proposed development.'" 95 F. 3d, at 1430, quoting *Dolan*, *supra*, at 391.

Although in a general sense concerns for proportionality animate the Takings Clause, see *Armstrong* v. *United States*, 364 U. S. 40, 49 (1960) ("The Fifth Amendment's guarantee . . . was designed to bar the Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole"), we have not extended the rough-proportionality test of *Dolan* beyond the special context of exactions—land-use decisions conditioning approval of development on the dedication of property to public use. See *Dolan*, *supra*, at 385; *Nollan* v. *California Coastal Comm'n*, 483 U. S. 825, 841 (1987). The rule applied in *Dolan* considers

841 (1987). The rule applied in *Dolan* considers whether dedications demanded as conditions of development are proportional to the development's anticipated impacts. It was not designed to address, and is not readily applicable to, the much different questions arising where, as here, the landowner's challenge is based not on excessive exactions but on denial of development. We believe, accordingly, that the rough-proportionality test of *Dolan* is inapposite to a case such as this one.

The instructions given to the jury, however, did not mention proportionality, let alone require it to find for Del Monte Dunes unless the city's actions were roughly proportional to its asserted interests. The Court of Appeals' discussion of rough proportionality, we conclude, was unnecessary to its decision to sustain the jury's verdict. Although the court stated that "[s]ignificant evidence supports Del Monte's claim that the City's actions were disproportional to both the nature and extent of the impact of the proposed development," 95 F. 3d, at 1432, it did so only after holding that

> "Del Monte provided evidence sufficient to rebut each of these reasons [for denying the final proposal]. Taken together, Del Monte argued that the City's reasons for denying their application were invalid and that it unfairly intended to forestall any reasonable development of the Dunes. In light of the evidence proffered by Del Monte, the City has incorrectly argued that no rational juror could conclude that the City's denial of Del Monte's application lacked a sufficient nexus with its stated objectives." *Id.*, at 1431–1432.

Given this holding, it was unnecessary for the Court of Appeals to discuss rough proportionality. That it did so is irrelevant to our disposition of the case.

III

The city challenges the Court of Appeals' holding that the jury could have found the city's denial of the final development plan not reasonably related to legitimate public interests. Although somewhat obscure, the city's argument is not cast as a challenge to the sufficiency of the evidence; rather, the city maintains that the Court of Appeals adopted a legal standard for regulatory takings liability that allows juries to second-guess public land-use policy.

As the city itself proposed the essence of the instructions given to the jury, it cannot now contend that the instructions did not provide an accurate statement of the law. In any event, although this Court has provided neither a definitive statement of the elements of a claim for a temporary regulatory taking nor a thorough explanation of the nature or applicability of the requirement that a regulation substantially advance legitimate public interests outside the context of required dedications or exactions, cf., *e.g.*, *Nollan*, *supra*, at 834–835, n. 3, we note that the trial court's instructions are consistent with our previous general discussions of regulatory takings liability. See *Dolan*, *supra*, at 385; *Lucas* v. *South Carolina Coastal Council*, 505 U. S. 1003, 1016 (1992); *Yee* v. *Escondido*, 503 U. S. 519, 534 (1992); *Nollan*, *supra*, at 834; *Keystone Bituminous Coal Assn.* v. *DeBenedictis*, 480 U. S. 470, 485 (1987); *United States* v. *Riverside Bayview Homes, Inc.*, 474 U. S. 121, 126 (1985); *Agins* v. *City of Tiburon*, 447 U. S. 255, 260 (1980). The city did not challenge below the applicability or continued viability of the general test for regulatory takings liability recited by these authorities and upon which the jury instructions appear to have been modeled. Given the posture of the case before us, we decline the suggestions of *amici* to revisit these precedents.

To the extent the city contends the judgment sustained by the Court of Appeals was based upon a jury determination of the reasonableness of its general zoning laws or land-use policies, its argument can be squared neither with the instructions given to the jury nor the theory on which the case was tried. The instructions did not ask the jury whether the city's zoning ordinances or policies were unreasonable but only whether "the City's decision to reject the plaintiff's 190 unit development proposal did not substantially advance a legitimate public purpose," App. 303, that is, whether "there was no reasonable relationship between the city's denial of the . . . proposal and legitimate public purpose." *Id.*, at 304. Furthermore, Del Monte Dunes' lawyers were explicit in conceding that "[t]his case is not about the right of a city, in this case the city of Monterey, to regulate land." 10 Tr. 1286 (Feb. 9, 1994). See also *id.*, at 1287 (proposals were made "keeping in mind various regulations and requirements, heights, setbacks, and densities and all that. That's not what this case is about"); *id.*, at 1287–1288 ("They have the right to set height limits. They have the right to talk about where they want access. That's not what this case is about. We all accept that in today's society, cities and counties can tell a land owner what to do to some reasonable extent with their property"). Though not presented for review, Del Monte Dunes' equal protection argument that it had received treatment inconsistent with zoning decisions made in favor of owners of similar properties, and the jury's verdict for Del Monte Dunes on this claim, confirm the understanding of the jury and Del Monte Dunes that the complaint was not about general laws or ordinances but about a particular zoning decision.

The instructions regarding the city's decision also did not allow the jury to consider the reasonableness, *per se*, of the customized, ad hoc conditions imposed on the property's development, and Del Monte Dunes did not suggest

otherwise. On the contrary, Del Monte Dunes disclaimed this theory of the case in express terms: "Del Monte Dunes partnership did not file this lawsuit because they were complaining about giving the public the beach, keeping it [the development] out of the view shed, devoting and [giving] to the State all this habitat area. One-third [of the] property is going to be given away for the public use forever. That's not what we filed the lawsuit about." *Id.*, at 1288; see also *id.*, at 1288–1289 (conceding that the city may "ask an owner to give away a third of the property without getting a dime in compensation for it and providing parking lots for the public and habitats for the butterfly, and boardwalks").

Rather, the jury was instructed to consider whether the city's denial of the final proposal was reasonably related to a legitimate public purpose. Even with regard to this issue, however, the jury was not given free rein to second-guess the city's land-use policies. Rather, the jury was instructed, in unmistakable terms, that the various purposes asserted by the city were legitimate public interests. See App. 304.

The jury, furthermore, was not asked to evaluate the city's decision in isolation but rather in context, and, in particular, in light of the tortuous and protracted history of attempts to develop the property. See, *e.g.*, 10 Tr. 1294–1295 (Feb. 9, 1994). Although Del Monte Dunes was allowed to introduce evidence challenging the asserted factual bases for the city's decision, it also highlighted the shifting nature of the city's demands and the inconsistency of its decision with the recommendation of its professional staff, as well as with its previous decisions. See, *e.g.*, *id.*, at 1300. Del Monte Dunes also introduced evidence of the city's longstanding interest in acquiring the property for public use. See, *e.g.*, *id.*, at 1303–1306.

In short, the question submitted to the jury on this issue was confined to whether, in light of all the history and the

context of the case, the city's particular decision to deny Del Monte Dunes' final development proposal was reasonably related to the city's proffered justifications. This question was couched, moreover, in an instruction that had been proposed in essence by the city, and as to which the city made no objection.

Thus, despite the protests of the city and its *amici*, it is clear that the Court of Appeals did not adopt a rule of takings law allowing wholesale interference by judge or jury with municipal land-use policies, laws, or routine regulatory decisions. To the extent the city argues that, as a matter of law, its land-use decisions are immune from judicial scrutiny under all circumstances, its position is contrary to settled regulatory takings principles. We reject this claim of error.

IV

We next address whether it was proper for the District Court to submit the question of liability on Del Monte Dunes' regulatory takings claim to the jury. (Before the District Court, the city agreed it was proper for the jury to assess damages. See Supplemental Memorandum of Petitioner Re: Court/Jury Trial Issues in No. C86–5042 (ND Cal.), p. 2, Record, Doc. No. 111.) As the Court of Appeals recognized, the answer depends on whether Del Monte Dunes had a statutory or constitutional right to a jury trial, and, if it did, the nature and extent of the right. Del Monte Dunes asserts the right to a jury trial is conferred by §1983 and by the Seventh Amendment.

Under our precedents, "[b]efore inquiring into the applicability of the Seventh Amendment, we must first ascertain whether a construction of the statute is fairly possible by which the [constitutional] question may be avoided.'" *Feltner* v. *Columbia Pictures Television, Inc.*, 523 U. S. 340, 345 (1998) (quoting *Tull* v. *United States*, 481 U. S.

412, 417, n. 3 (1987)); accord *Curtis* v. *Loether*, 415 U. S. 189, 192, n. 6 (1974).

The character of §1983 is vital to our Seventh Amendment analysis, but the statute does not itself confer the jury right. See *Feltner*, *supra*, at 345 (quoting *Tull*, *supra*, at, 417, n. 3) ("[W]e cannot discern 'any congressional intent to grant . . . the right to a jury trial'"). Section 1983 authorizes a party who has been deprived of a federal right under the color of state law to seek relief through "an action at law, suit in equity, or other proper proceeding for redress." Del Monte Dunes contends that the phrase "action at law" is a term of art implying a right to a jury trial. We disagree, for this is not a necessary implication.

In *Lorillard* v. *Pons*, 434 U. S. 575, 583 (1978), we found a statutory right to a jury trial in part because the statute authorized "legal . . . relief." Our decision, however, did not rest solely on the statute's use of the phrase but relied as well on the statute's explicit incorporation of the procedures of the Fair Labor Standards Act, which had been interpreted to guarantee trial by jury in private actions. *Id.*, at 580. We decline, accordingly, to find a statutory jury right under §1983 based solely on the authorization of "an action at law."

As a consequence, we must reach the constitutional question. The Seventh Amendment provides that "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . . ." Consistent with the textual mandate that the jury right be preserved, our interpretation of the Amendment has been guided by historical analysis comprising two principal inquiries. "[W]e ask, first, whether we are dealing with a cause of action that either was tried at law at the time of the founding or is at least analogous to one that was." *Markman* v. *Westview Instruments, Inc.*, 517 U. S. 370, 376 (1996). "If the action in question belongs in the law category, we then ask whether the par-

ticular trial decision must fall to the jury in order to preserve the substance of the common-law right as it existed in 1791." *Ibid.*

A

With respect to the first inquiry, we have recognized that "suits at common law" include "not merely suits, which the *common* law recognized among its old and settled proceedings, but [also] suits in which *legal* rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized, and equitable remedies were administered." *Parsons* v. *Bedford*, 3 Pet. 433, 447 (1830). The Seventh Amendment thus applies not only to common-law causes of action but also to statutory causes of action "'analogous to common-law causes of action ordinarily decided in English law courts in the late 18th century, as opposed to those customarily heard by courts of equity or admiralty.'" *Feltner*, *supra*, at 348 (quoting *Granfinanciera, S. A.* v. *Nordberg*, 492 U. S. 33, 42 (1989)); accord *Curtis*, *supra*, at 193.

1

Del Monte Dunes brought this suit pursuant to §1983 to vindicate its constitutional rights. We hold that a §1983 suit seeking legal relief is an action at law within the meaning of the Seventh Amendment. JUSTICE SCALIA's concurring opinion presents a comprehensive and convincing analysis of the historical and constitutional reasons for this conclusion. We agree with his analysis and conclusion.

It is undisputed that when the Seventh Amendment was adopted there was no action equivalent to §1983, framed in specific terms for vindicating constitutional rights. It is settled law, however, that the Seventh Amendment jury guarantee extends to statutory claims unknown to the common law, so long as the claims can be said to "soun[d]

basically in tort," and seek legal relief. *Curtis*, 415 U. S., at 195–196.

As JUSTICE SCALIA explains, see *post*, at 5–8, there can be no doubt that claims brought pursuant to §1983 sound in tort. Just as common-law tort actions provide redress for interference with protected personal or property interests, §1983 provides relief for invasions of rights protected under federal law. Recognizing the essential character of the statute, "[w]e have repeatedly noted that 42 U. S. C. §1983 creates a species of tort liability,'" *Heck* v. *Humphrey*, 512 U. S. 477, 483 (1994) (quoting *Memphis Community School Dist.* v. *Stachura*, 477 U. S. 299, 305 (1986)), and have interpreted the statute in light of the "background of tort liability," *Monroe* v. *Pape*, 365 U. S. 167, 187 (1961) (overruled on other grounds, *Monell* v. *New York City Dept. of Social Servs.*, 436 U. S. 658 (1978)); accord *Heck*, *supra*, at 483. Our settled understanding of §1983 and the Seventh Amendment thus compel the conclusion that a suit for legal relief brought under the statute is an action at law.

Here Del Monte Dunes sought legal relief. It was entitled to proceed in federal court under §1983 because, at the time of the city's actions, the State of California did not provide a compensatory remedy for temporary regulatory takings. See *First English* 482 U. S., at 308–311. The constitutional injury alleged, therefore, is not that property was taken but that it was taken without just compensation. Had the city paid for the property or had an adequate postdeprivation remedy been available, Del Monte Dunes would have suffered no constitutional injury from the taking alone. See *Williamson*, 473 U. S., at 194–195. Because its statutory action did not accrue until it was denied just compensation, in a strict sense Del Monte Dunes sought not just compensation *per se* but rather damages for the unconstitutional denial of such compensa-

tion. Damages for a constitutional violation are a legal remedy. See, *e.g.*, *Teamsters* v. *Terry*, 494 U. S. 558, 570 (1990) ("Generally, an action for money damages was 'the traditional form of relief offered in the courts of law'") (quoting *Curtis*, *supra*, at 196).

Even when viewed as a simple suit for just compensation, we believe Del Monte Dunes' action sought essentially legal relief. "We have recognized the 'general rule' that monetary relief is legal." *Feltner*, 523 U. S., at 352 (quoting *Teamsters* v. *Terry*, *supra*, at 570). Just compensation, moreover, differs from equitable restitution and other monetary remedies available in equity, for in determining just compensation, "the question is what has the owner lost, not what has the taker gained." *Boston Chamber of Commerce* v. *Boston*, 217 U. S. 189, 195 (1910). As its name suggests, then, just compensation is, like ordinary money damages, a compensatory remedy. The Court has recognized that compensation is a purpose "traditionally associated with legal relief." *Feltner*, *supra*, at 352. Because Del Monte Dunes' statutory suit sounded in tort and sought legal relief, it was an action at law.

2

In attempt to avoid the force of this conclusion, the city urges us to look not to the statutory basis of Del Monte Dunes' claim but rather to the underlying constitutional right asserted. At the very least, the city asks us to create an exception to the general Seventh Amendment rule governing §1983 actions for claims alleging violations of the Takings Clause of the Fifth Amendment. See *New Port Largo, Inc.* v. *Monroe County*, 95 F. 3d 1084 (CA11 1996) (finding, in tension with the Ninth Circuit's decision in this case, that there is no right to a jury trial on a takings claim brought under §1983). Because the jury's role in estimating just compensation in condemnation proceedings was inconsistent and unclear at the time the

Seventh Amendment was adopted, this Court has said "that there is no constitutional right to a jury in eminent domain proceedings." *United States* v. *Reynolds*, 397 U. S. 14, 18 (1970); accord, *Bauman* v. *Ross*, 167 U. S. 548, 593 (1897). The city submits that the analogy to formal condemnation proceedings is controlling, so that there is no jury right here.

As JUSTICE SCALIA notes, see *post*, at 3–5, we have declined in other contexts to classify §1983 actions based on the nature of the underlying right asserted, and the city provides no persuasive justification for adopting a different rule for Seventh Amendment purposes. Even when analyzed not as a §1983 action *simpliciter*, however, but as a §1983 action seeking redress for an uncompensated taking, Del Monte Dunes's suit remains an action at law.

Although condemnation proceedings spring from the same Fifth Amendment right to compensation which, as incorporated by the Fourteenth Amendment, is applicable here, see *First English*, *supra*, at 315 (citing *Jacobs* v. *United States*, 290 U. S. 13, 16 (1933)), a condemnation action differs in important respects from a §1983 action to redress an uncompensated taking. Most important, when the government initiates condemnation proceedings, it concedes the landowner's right to receive just compensation and seeks a mere determination of the amount of compensation due. Liability simply is not an issue. As a result, even if condemnation proceedings were an appropriate analogy, condemnation practice would provide little guidance on the specific question whether Del Monte Dunes was entitled to a jury determination of liability.

This difference renders the analogy to condemnation proceedings not only unhelpful but also inapposite. When the government takes property without initiating condemnation proceedings, it "shifts to the landowner the burden to discover the encroachment and to take affirmative

action to recover just compensation." *United States* v. *Clarke*, 445 U. S. 253, 257 (1980). Even when the government does not dispute its seizure of the property or its obligation to pay for it, the mere "shifting of the initiative from the condemning authority to the condemnee" can place the landowner "at a significant disadvantage." *Id.*, at 258; cf. *id.*, at 255 ("There are important legal and practical differences between an inverse condemnation suit and a condemnation proceeding"); 84 Stat. 1906, §304, 42 U. S. C. §4654 (recognizing, at least implicitly, the added burden by providing for recovery of attorney's fees in cases where the government seizes property without initiating condemnation proceedings but not in ordinary condemnation cases). Where, as here, the government not only denies liability but fails to provide an adequate post-deprivation remedy (thus refusing to submit the question of liability to an impartial arbiter), the disadvantage to the owner becomes all the greater. At least in these circumstances, the analogy to ordinary condemnation procedures is simply untenable.

Our conclusion is confirmed by precedent. Early authority finding no jury right in a condemnation proceeding did so on the ground that condemnation did not involve the determination of legal rights because liability was undisputed:

> "We are therefore of opinion that the trial by jury is preserved inviolate in the sense of the constitution, when in all criminal cases, and in civil cases when a right is in controversy in a court of law, it is secured to each party. In cases of this description [condemnation proceedings], the right to take, and the right to compensation, are admitted; the only question is the amount, which may be submitted to any impartial tribunal the legislature may designate." *Bonaparte* v. *Camden & Amboy Railroad Co.*, 3 F. Cas. 821, 829

(No. 1, 617) (CCD N. J. 1830) (Baldwin, Circuit Justice).

(Although JUSTICE SOUTER's dissenting opinion takes issue with this distinction, its arguments are unpersuasive. First, it correctly notes that when the government initiates formal condemnation procedures, a landowner may question whether the proposed taking is for public use. The landowner who raises this issue, however, seeks not to establish the government's liability for damages, but to prevent the government from taking his property at all. As the dissent recognizes, the relief desired by a landowner making this contention is analogous not to damages but to an injunction; it should be no surprise, then, that the landowner is not entitled to a jury trial on his entitlement to a remedy that sounds not in law but in equity. Second, the dissent refers to "the diversity of rationales underlying early state cases in which the right of a direct condemnee to a jury trial was considered and decided." *Post,* at 10-11. The dissent mentions only the rationale that because the government is immune from suit for damages, it can qualify any remedy it provides by dispensing with the right to a jury trial. The cases cited for this proposition– two state-court cases antedating the adoption of the Fourteenth Amendment and an off-point federal case– do not implicate the Fifth Amendment. Even if the sovereign immunity rationale retains its vitality in cases where this Amendment is applicable, cf. *First English,* 482 U. S., at 316, n. 9, it is neither limited to nor coextensive with takings claims. Rather, it would apply to all constitutional suits against the Federal Government or the States, but not to constitutional suits such as this one against municipalities like the city of Monterey. Third, the dissent contends that the distinction we have drawn is absent from our condemnation cases. Even if this were true– and it is not obvious that it is– equally absent from

those decisions is any analysis or principle that would extend beyond the narrow context of direct condemnation suits to actions such as this one. Rather, as apparent even from the passages quoted by the dissent, see *post*, at 4–7 and n. 1, these cases rely only on the Court's perception of historical English and Colonial practice in direct condemnation cases. Nothing in these cases detracts from the authorities cited in this opinion that do support the distinction we draw between direct condemnation and a suit like this one. Finally, the existence of a different historical practice distinguishes direct condemnation from an ordinary tort case in which the defendant concedes liability. See *post,* at 11, n. 5.)

Condemnation proceedings differ from the instant cause of action in another fundamental respect as well. When the government condemns property for public use, it provides the landowner a forum for seeking just compensation, as is required by the Constitution. See *First English*, *supra,* at 316. If the condemnation proceedings do not, in fact, deny the landowner just compensation, the government's actions are neither unconstitutional nor unlawful. See *Williamson,* 473 U. S., at 194 ("The Fifth Amendment does not proscribe the taking of property; it proscribes taking without just compensation"). Even when the government takes property without initiating condemnation proceedings, there is no constitutional violation "'unless or until the state fails to provide an adequate postdeprivation remedy for the property loss.'" *Id.*, at 195 (quoting *Hudson* v. *Palmer,* 468 U. S. 517, 532, n. 12 (1984)). In this case, however, Del Monte Dunes was denied not only its property but also just compensation or even an adequate forum for seeking it. That is the gravamen of the §1983 claim.

In these circumstances, we conclude the cause of action sounds in tort and is most analogous to the various actions that lay at common law to recover damages for interfer-

ence with property interests. Our conclusion is consistent with the original understanding of the Takings Clause and with historical practice.

Early opinions, nearly contemporaneous with the adoption of the Bill of Rights, suggested that when the government took property but failed to provide a means for obtaining just compensation, an action to recover damages for the government's actions would sound in tort. See, *e.g.*, *Lindsay* v. *Commissioners*, 2 Bay 38, 61 (S. C. 1796) (opinion of Waties, J.) ("But suppose they could sue, what would be the nature of the action? It could not be founded on contract, for there was none. It must then be on a *tort*; it must be an action of trespass, in which the jury would give a reparation *in damages*. Is not this acknowledging that the act of the legislature [in authorizing uncompensated takings] is a tortious act?") (emphases in original); *Gardner* v. *Village of Newburgh*, 2 Johns. Ch. 162, 164, 166 (N. Y. 1816) (Kent, Ch.) (uncompensated governmental interference with property right would support a tort action at law for nuisance).

Consistent with this understanding, and as a matter of historical practice, when the government has taken property without providing an adequate means for obtaining redress, suits to recover just compensation have been framed as common-law tort actions. See, *e.g., Richards* v. *Washington Terminal Co.*, 233 U. S. 546 (1914) (nuisance); *Pumpelly* v. *Green Bay Co.*, 13 Wall. 166 (1872) (trespass on the case); *Barron ex rel. Tiernan* v. *Mayor of Baltimore*, 7 Pet. 243 (1833) (unspecified tort); *Bradshaw* v. *Rodgers*, 20 Johns. 103 (N. Y. 1822) (trespass). Tort actions of these descriptions lay at common law, 3 W. Blackstone, Commentaries on the Laws of England, ch. 12 (1768) (trespass; trespass on the case); *id.*, ch. 13 (trespass on the case for nuisance), and in these actions, as in other suits at common law, there was a right to trial by jury, see, *e.g., Felt-*

ner, 523 U. S., at 349 ("Actions on the case, like other actions at law, were tried before juries").

(JUSTICE SOUTER's criticism of our reliance on these early authorities misses the point of our analysis. We do not contend that the landowners were always successful. As the dissent makes clear, prior to the adoption of the Fourteenth Amendment and the concomitant incorporation of the Takings Clause against the States, a variety of obstacles– including various traditional immunities, the lack of a constitutional right, and the resulting possibility of legislative justification– stood in the way of the landowner who sought redress for an uncompensated taking. Rather, our point is that the suits were attempted and were understood to sound in tort. It is therefore ironic that the dissent invokes a law review article discussing such suits entitled "The First Constitutional Tort: The Remedial Revolution in Nineteenth-Century State Just Compensation Law." *Post*, at 15-16 (citing Brauneis, 52 Vand. L. Rev. 57 (1999)). It is true, as the dissenting opinion observes, that claims for just compensation were sometimes brought in quasi contract rather than tort. See, *e.g.*, *United States* v. *Lynah*, 188 U. S. 445, 458–465 (1903) (overruled on other grounds, *United States* v. *Chicago, M., St. P. & P. R. Co.*, 312 U. S. 592 (1941)) (comparing claims for just compensation brought in quasi-contract with just-compensation claims brought in tort). The historical existence of quasi contract suits for just compensation does nothing to undermine our Seventh Amendment analysis, however, since quasi contract was frequently available to the victim of a tort who elected to waive the tort and proceed instead in quasi contract. See, *e.g.*, W. Prosser, Law of Torts §110 (1941). In any event, quasi contract was itself an action at law. See, *e.g.*, 1 G. Palmer, Restitution §§1.2, 2.2–2.3 (1978); F. Woodward, Quasi Contracts §6 (1913).)

The city argues that because the Constitution allows the government to take property for public use, a taking for that purpose cannot be tortious or unlawful. We reject this conclusion. Although the government acts lawfully when, pursuant to proper authorization, it takes property and provides just compensation, the government's action is lawful solely because it assumes a duty, imposed by the Constitution, to provide just compensation. See *First English*, 482 U. S., at 315 (citing *Jacobs*, 290 U. S., at 16). When the government repudiates this duty, either by denying just compensation in fact or by refusing to provide procedures through which compensation may be sought, it violates the Constitution. In those circumstances the government's actions are not only unconstitutional but unlawful and tortious as well. See *Gardner* v. *Village of Newburgh*, *supra*, at 166, 168 ("[T]o render the exercise of the [eminent domain] power valid," the government must provide landowner "fair compensation"; "[u]ntil, then, some provision be made for affording him compensation, it would be unjust, and contrary to the first principles of government" to deprive plaintiff of his property rights; absent such a provision, the plaintiff "would be entitled to his action at law for the interruption of his right"); *Beatty* v. *United States*, 203 F. 620, 626 (CA4 1913) ("The taking of property by condemnation under the power of eminent domain is compulsory. The party is deprived of his property against his will. It is in effect a lawful trespass committed by the sovereign, and lawful only on the condition that the damages inflicted by the trespass are paid to the injured party. The analogy to a suit at common law for trespass is close and complete").

(The argument that an uncompensated taking is not tortious because the landowner seeks just compensation rather than additional damages for the deprivation of a remedy reveals the same misunderstanding. Simply put, there is no constitutional or tortious injury until the land-

owner is denied just compensation. That the damages to which the landowner is entitled for this injury are measured by the just compensation he has been denied is neither surprising nor significant.)

B

Having decided Del Monte Dunes' §1983 suit was an action at law, we must determine whether the particular issues of liability were proper for determination by the jury. See *Markman* v. *Westview Instruments, Inc.*, 517 U. S. 370 (1996). In actions at law, issues that are proper for the jury must be submitted to it "to preserve the right to a jury's resolution of the ultimate dispute," as guaranteed by the Seventh Amendment. *Id.*, at 377. We determine whether issues are proper for the jury, when possible, "by using the historical method, much as we do in characterizing the suits and actions within which [the issues] arise." *Id.*, at 378. We look to history to determine whether the particular issues, or analogous ones, were decided by judge or by jury in suits at common law at the time the Seventh Amendment was adopted. Where history does not provide a clear answer, we look to precedent and functional considerations. *Id.*, at 384.

1

Just as no exact analogue of Del Monte Dunes' §1983 suit can be identified at common law, so also can we find no precise analogue for the specific test of liability submitted to the jury in this case. We do know that in suits sounding in tort for money damages, questions of liability were decided by the jury, rather than the judge, in most cases. This allocation preserved the jury's role in resolving what was often the heart of the dispute between plaintiff and defendant. Although these general observations provide some guidance on the proper allocation between judge and jury of the liability issues in this case, they do not establish a definitive answer.

2

We look next to our existing precedents. Although this Court has decided many regulatory takings cases, none of our decisions has addressed the proper allocation of liability determinations between judge and jury in explicit terms. This is not surprising. Most of our regulatory takings decisions have reviewed suits against the United States, see, *e.g.*, *United States* v. *Riverside Bayview Homes, Inc.*, 474 U. S. 121 (1985); *Hodel* v. *Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U. S. 264 (1981), suits decided by state courts, see, *e.g.*, *Dolan* v. *City of Tigard*, 512 U. S. 374 (1994); *Lucas* v. *South Carolina Coastal Council*, 505 U. S. 1003 (1992); *Nollan* v. *California Coastal Comm'n*, 483 U. S. 825 (1987); *First English Evangelical Lutheran Church of Glendale* v. *County of Los Angeles*, 482 U. S. 304 (1987), or suits seeking only injunctive relief, see, *e.g.*, *Keystone Bituminous Coal Assn.* v. *DeBenedictis*, 480 U. S. 470 (1987). It is settled law that the Seventh Amendment does not apply in these contexts. *Lehman* v. *Nakshian*, 453 U. S. 156, 160 (1981) (suits against the United States); *Curtis*, 415 U. S., at 192, n. 6 (suits brought in state court); *Parsons*, 3 Pet., at 447 (suits seeking only equitable relief).

In *Williamson*, we did review a regulatory takings case in which the plaintiff landowner sued a county planning commission in federal court for money damages under §1983. 473 U. S., at 182. Whether the commission had denied the plaintiff all economically viable use of the property had been submitted to the jury. *Id.*, at 191, and n. 12. Although the Court did not consider the point, it assumed the propriety of this procedure. *E.g.*, *id.*, at 191 ("It is not clear whether the jury would have found that the respondent had been denied all reasonable beneficial use of the property had any of the eight objections been met through the grant of a variance. . . . Accordingly, until the Commission determines that no variances will be

granted, it is impossible for the jury to find, on this record, whether respondent 'will be unable to derive economic benefit' from the land").

Williamson is not a direct holding, however, and we must look for further guidance. We turn next to considerations of process and function.

3

In actions at law predominantly factual issues are in most cases allocated to the jury. See *Baltimore & Carolina Line, Inc.* v. *Redman,* 295 U. S. 654, 657 (1935). The allocation rests on a firm historical foundation, see, *e.g.,* 1 E. Coke, Institutes 155b (1628) *("ad quaestionem facti non respondent judices; ad quaestionem juris non respondent juratores")*, and serves "to preserve the right to a jury's resolution of the ultimate dispute," *Markman, supra,* at 377.

Almost from the inception of our regulatory takings doctrine, we have held that whether a regulation of property goes so far that "there must be an exercise of eminent domain and compensation to sustain the act . . . depends upon the particular facts." *Pennsylvania Coal Co.* v. *Mahon,* 260 U. S. 393, 413 (1922); accord *Keystone Bituminous Coal, supra,* at 473–474. Consistent with this understanding, we have described determinations of liability in regulatory takings cases as "'essentially ad hoc, factual inquiries,'" *Lucas, supra,* at 1015 (quoting *Penn Central Transp. Co.* v. *New York City,* 438 U. S. 104, 124 (1978)), requiring "complex factual assessments of the purposes and economic effects of government actions," *Yee,* 503 U. S., at 523.

In accordance with these pronouncements, we hold that the issue whether a landowner has been deprived of all economically viable use of his property is a predominantly factual question. As our implied acknowledgment of the procedure in *Williamson, supra,* suggests, in actions at

law otherwise within the purview of the Seventh Amendment, this question is for the jury.

The jury's role in determining whether a land-use decision substantially advances legitimate public interests within the meaning of our regulatory takings doctrine presents a more difficult question. Although our cases make clear that this inquiry involves an essential factual component, see *Yee*, *supra*, at 523, it no doubt has a legal aspect as well, and is probably best understood as a mixed question of fact and law.

In this case, the narrow question submitted to the jury was whether, when viewed in light of the context and protracted history of the development application process, the city's decision to reject a particular development plan bore a reasonable relationship to its proffered justifications. See Part III, *supra*. As the Court of Appeals recognized, this question was "essentially fact-bound [in] nature." 95 F. 3d, at 1430 (internal quotation marks omitted) (alteration by Court of Appeals). Under these circumstances, we hold that it was proper to submit this narrow, factbound question to the jury.

C

We note the limitations of our Seventh Amendment holding. We do not address the jury's role in an ordinary inverse condemnation suit. The action here was brought under §1983, a context in which the jury's role in vindicating constitutional rights has long been recognized by the federal courts. A federal court, moreover, cannot entertain a takings claim under §1983 unless or until the complaining landowner has been denied an adequate postdeprivation remedy. Even the State of California, where this suit arose, now provides a facially adequate procedure for obtaining just compensation for temporary takings such as this one. Our decision is also circumscribed in its conceptual reach. The posture of the case

does not present an appropriate occasion to define with precision the elements of a temporary regulatory takings claim; although the city objected to submitting issues of liability to the jury at all, it approved the instructions that were submitted to the jury and therefore has no basis to challenge them.

For these reasons, we do not attempt a precise demarcation of the respective provinces of judge and jury in determining whether a zoning decision substantially advances legitimate governmental interests. The city and its *amici* suggest that sustaining the judgment here will undermine the uniformity of the law and eviscerate state and local zoning authority by subjecting all land-use decisions to plenary, and potentially inconsistent, jury review. Our decision raises no such specter. Del Monte Dunes did not bring a broad challenge to the constitutionality of the city's general land-use ordinances or policies, and our holding does not extend to a challenge of that sort. In such a context, the determination whether the statutory purposes were legitimate, or whether the purposes, though legitimate, were furthered by the law or general policy, might well fall within the province of the judge. Nor was the gravamen of Del Monte Dunes' complaint even that the city's general regulations were unreasonable as applied to Del Monte Dunes' property; we do not address the proper trial allocation of the various questions that might arise in that context. Rather, to the extent Del Monte Dunes' challenge was premised on unreasonable governmental action, the theory argued and tried to the jury was that the city's denial of the final development permit was inconsistent not only with the city's general ordinances and policies but even with the shifting ad hoc restrictions previously imposed by the city. Del Monte Dunes' argument, in short, was not that the city had followed its zoning ordinances and policies but rather that it had not done so. As is often true in §1983 actions, the disputed ques-

tions were whether the government had denied a constitutional right in acting outside the bounds of its authority, and, if so, the extent of any resulting damages. These were questions for the jury.

V

For the reasons stated, the judgment of the Court of Appeals is affirmed.

It is so ordered.