A REVIEW OF *DEL MONTE DUNES V. CITY OF MONTEREY* AND ITS IMPLICATIONS FOR LOCAL GOVERNMENT EXACTIONS

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I. INTRODUCTION

On May 24, 1999, the United States Supreme Court issued a long-awaited opinion in *Del Monte Dunes v. City of Monterey*,[1] which recognized for the first time a right to a jury trial in a regulatory taking case. The 5-4 decision, authored by Justice Kennedy, upheld a $1.45 million jury award to a landowner under narrowly defined circumstances. The decision provides some guidance to future regulatory taking controversies but also raises some new uncertainties. One issue unresolved by *Del Monte Dunes* is the extent to which the "rough proportionality" test established by the Supreme Court in *Dolan v. City of Tigard*[2] and found not applicable in *Del Monte Dunes*, will be applied to land-use exactions other than land dedications.

II. FACTS[3]

Del Monte Dunes involves undeveloped beach property north of Monterey, California, which had been zoned for multi-family residential use since the early 1970s. The 37.6-acre parcel had been used as an oil company terminal and tank farm. The parcel included fifteen foot manmade dunes covered with jute matting, a sewer line, tank pads, an industrial complex, and various debris including pipe, concrete, and oil-soaked sand. The oil company had introduced a non-native ice plant to the property to prevent soil erosion; however, the ice plant spread to approximately 25% of the parcel and threatened the remaining natural vegetation. The parcel was also considered environmentally sensitive and important for its native flora and fauna, including the buckwheat plant, which is the only known habitat for the endangered Smith's Blue Butterfly. Additionally, much of the property included sand dunes "that are among the largest and best preserved in any of the Central California dune systems."[4] A state park adjoined the property to the northeast.

Ponderosa Homes ("Ponderosa") owned the property prior to its sale to Del Monte Dunes at Monterey, Ltd. ("Del Monte"). Beginning in 1981, Ponderosa made successive applications to develop the property for residences. The first application proposed a planned unit development for 344 residential units, well within the residential density permitted by the city's zoning code and general plan. The planning commission denied this proposal, advising that a proposal for 264 units would be received favorably. The planning commission later denied the revised, 264-unit project and then suggested that a plan with 224 units would be received favorably. When the revised 224-unit proposal was denied by the planning commission, Ponderosa appealed to the city council. The city council overruled the planning commission and requested it to consider a 190-unit development. The planning commission later denied

the revised 190-unit proposal which, on appeal, the city council approved. The approval granted an eighteen month conditional use permit with fifteen conditions, including protection of rare plants and approval of butterfly habitat preservation measures by the California Department of Fish and Game and the U.S. Fish and Wildlife Service.[5]

Shortly after the conditional approval in September, 1984, Del Monte purchased the property for approximately $3.7 million. Del Monte prepared a detailed site plan and a restoration plan.[6] The planning commission, acting against the planning staff recommendation, denied approval for the final development plan. With two months remaining on the expiration of the conditional use permit, Del Monte appealed this decision to the city council and sought a further twelve month extension. The city council approved the extension but, thereafter, denied the final development plan in June, 1986.

At the time of the plan denial, the plan devoted 17.9 of the 37.6 acres to public open space (including a public beach) and incorporated a buffer zone between the development and adjoining state park, view corridors, and restoration and preservation of "as much of the sand dune structure and buckwheat habitat as possible consistent with development and the city's requirements."[7] The city council's denial raised several concerns, including the adequacy of access and potential damage to the environment and, specifically, the disruption to the Smith's Blue Butterfly habitat.

After the June, 1986 denial, Del Monte filed suit against the City, alleging violations of due process and equal protection and a regulatory taking under 42 U.S.C. § 1983. The federal district court dismissed the claims as not ripe, and in 1990, the Ninth Circuit Court of Appeals reversed. As part of its decision, the Ninth Circuit found that at the time the City issued its final denial, California did not provide a compensatory remedy for a temporary regulatory taking, and thus, Del Monte was not required to pursue relief in state court as a pre-condition to federal relief. During the litigation, Del Monte sold the property to California for $4.5 million.

On remand, the district court reserved the substantive due process claim, finding that "the City did not violate Del Monte's substantive due process rights because the City asserted valid regulatory reasons for denying Del Monte's development application"[8] and, over the City's objections, submitted the taking and equal protection claims to a jury. The jury delivered a general verdict for Del Monte on its taking claims, a separate verdict on the equal protection claim, and awarded temporary taking damages of $1.45 million.

The City appealed. The Ninth Circuit Court of Appeals determined that the inverse condemnation claim was triable to a jury and upheld the verdict. Characterizing the issue of whether the City's action advanced a legitimate public purpose as "largely a reasonableness inquiry,"[9] the court of appeals, citing to *Dolan*, 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."[10] The Ninth Circuit also determined that the jury could reasonably have found that the City denied Del Monte all economically viable use of its property, because the City progressively denied the use of various portions of the dune until no part remained available for use other than in its natural state. Furthermore,

the court held that, even though the state bought the property for $800,000 more than Del Monte paid, the evidence was that the property was no longer commercially marketable and thus was not economically viable.

The City petitioned the Supreme Court for certiorari on the following questions: 1) whether the court of appeals erred in applying the rough-proportionality standard of *Dolan*; 2) whether the court of appeals impermissibly based its opinion on a standard that allowed the jury to re-weigh the reasonableness of the City's land-use decision; and 3) whether issues of regulatory taking liability were properly submitted to the jury.

III. THE SUPREME COURT OPINION

Typical of the current Court, the Justices issued a split decision in *Del Monte Dunes*. All the Justices joined in deciding that the rough-proportionality test of *Dolan* did not apply in this case. On the issues of the proper regulatory taking liability standard and whether the matter was properly submitted to a jury, Justices Kennedy, Rehnquist, Stevens, and Thomas concluded that, in this narrow circumstance, the Seventh Amendment to the Constitution provided the right to a jury trial. Justice Scalia concurred in an opinion that departs from the plurality to broadly find a right to a jury trial in all section 1983 actions. Justice Souter, joined by Justices O'Connor, Ginsberg, and Breyer, dissented on the basis that the Seventh Amendment provides no right to a jury trial for section 1983 regulatory taking claims.

A. Rough Proportionality

The Court confirmed that *Dolan* established a requirement that when dedications are demanded as a condition of development, they must be roughly proportional to the development's anticipated impacts.[11] The Court firmly refused to extend the *Dolan* requirement to *Del Monte Dunes*, explaining that *Dolan* was "not designed to address, and . . . 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."[12] Notably, the Court described narrowly defined "exactions" as "land-use decisions conditioning approval of development on the dedication of property to public use."[13] The dissent also rejected the use of the *Dolan* standard "for reviewing land-use regulations generally."[14]

B. The Regulatory Taking Liability Standard

The City argued that allowing the jury to determine if the denial was reasonably related to a legitimate public purpose improperly allowed the jury to second-guess public land use policy.[15] The meaning of the "substantially advance," or "means-ends" test enunciated in *Agins v. City of Tiburon*[16] as the first of a two-prong regulatory taking test, has been the subject of great debate and uncertainty.[17] The Court explicitly refused to address the nature or applicability of the means-ends test, admitting that the test had not provided a definitive statement of the elements of a taking claim, nor a thorough explanation of the test outside the context of required dedications or exactions.[18] However, the Court noted that

the jury's instructions were consistent with its previous general discussions of regulatory taking liability and that, because "the city itself proposed the essence of the instructions given to the jury," the City could not now contend that they were inaccurate.[19]

The Court characterized the jury question as "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."[20] The Court took pains to describe what the instructions did *not* ask. The instructions did not ask whether the City's zoning ordinances or policies were unreasonable; instead, the jury was "instructed, in unmistakable terms, that the various purposes asserted by the city were legitimate public interests."[21] Nor did the instructions "allow the jury to consider the reasonableness, *per se*, of the customized, ad hoc conditions imposed on the property's development . . ."[22] The Court concluded that its decision does not allow a "wholesale interference by judge or jury with municipal land-use policies, laws or routine regulatory decisions."[23]

C. The Right to a Jury Trial

The Court clearly stated that "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."[24] The Court rejected the Ninth Circuit's analysis finding the right to a jury trial directly in 42 U. S.C. § 1983, because neither the statute's language nor history grants such a right.[25] Rather, the Court determined that the right can be found in the Seventh Amendment, which preserves the right to a jury trial in all actions at common law that were triable at the time of the amendment's adoption.[26] The Court decided that a regulatory taking is analogous to a tort seeking monetary relief, which was triable at common law in 1791.[27] While Justice Scalia concluded that *all* section 1983 actions are analogous to tort actions for recovery of damages for personal injuries,[28] the plurality concluded that a section 1983 regulatory taking is analogous to an action for interference with property interests.[29] The dissent rejected any tort analogy, finding the proper analogy to be to direct condemnation actions in which liability questions are not decided by a jury.[30]

Justices Kennedy and Souter extensively debated the differences between direct and inverse condemnation actions. Justice Kennedy explained that unlike direct condemnation, litigation of inverse condemnation essentially involves proof of liability, is generally more onerous to the landowner, and provides the owner a forum for compensation.[31] The plurality and the dissent also disagreed regarding the distinctions between inverse condemnation and tort actions.[32] Justice Kennedy explained that although the government's interference with property is lawful when properly authorized, the action becomes tortious when the government refuses to pay just compensation.[33] This analysis appears to severely limit jury determinations in future section 1983 cases, as this remedy has been available in all states since the decision in *First English Evangelical Lutheran Church v. County of Los Angeles*.[34]

Finally, the Court characterized the liability decision in this case as essentially fact-bound, that is, "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."[35] The Court emphasized that its holding does not extend either to a broad challenge to the constitutionality of the City's general land use ordinances or policies, or to the reasonableness of general regulations as applied to the property.[36] Thus, the boundaries of the jury's role regarding the reasonableness question remain substantially undefined. Furthermore, the Court held that the issue of whether property has been deprived of all economically viable use is clearly a jury question.[37] The dissent disagreed on all points, indicating the similarity in the analysis of taking liability to substantive due process liability, which is routinely decided by a judge, as it was in this case, and not by a jury.[38]

IV. APPLICATION TO EXACTIONS

An important question raised in *Del Monte Dunes* is to what extent does *Dolan's* "rough proportionality" requirement apply to exactions that are not land dedications, such as impact fees. Kennedy's opinion states:

> [W]e 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. 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.[39]

From this terse statement, it is difficult to tell whether the majority considers exactions to include only dedications of property, that is, the transfer of title to real property. The sentence structure in the opinion suggests that the Court views exactions and dedications to be one and the same. Indeed, *Dolan*, which originated the test, involved the required dedication of a bike path and flood plain easements to the city.[40] The Court itself in this paragraph describes *Dolan* as a dedication case.[41]

Since the *Dolan* decision, some courts have refused to apply *Dolan* to cases which do not involve land dedication.[42] For example, in *McCarthy v. City of Leawood*,[43] the Kansas Supreme Court read *Dolan* to apply only to land dedications and upheld a traffic impact fee ordinance under the "reasonable relationship" due process test.[44] *In Pringle v. City of Wichita*,[45] the court declined to apply *Dolan* to the City of Wichita's decision to close a portion of a street pending completion of an expressway, in part because plaintiffs were not required to deed property to the city.[46] Similarly, the Arizona Supreme Court rejected the application of *Dolan* to a water resource development fee in *Home Builders Association of Central Arizona v. Scottsdale*,[47] distinguishing a fee as a "more benign form of regulation" than land dedication.[48]

Both the Fifth and Tenth Circuits have explained the *Dolan* test as being limited to land dedication cases.

[49] *In Clajon Production Corporation v. Petera*,[50] the Tenth Circuit concluded that *Dolan* is limited to "development exactions where there is a physical taking or its equivalent."[51] Within the circuit, in *Harris v. Wichita*,[52] the district court found that airport overlay zoning regulations were not reviewable under the *Dolan* rough proportionality test, as they do not impose an obligation to deed portions of land to the local government.[53] Likewise, *Marshall v. Board of County Commissioners*, [54] *citing Dolan*, found that subdivision regulations requiring minimum five acre lots and certain improvement restrictions were not reviewable because they did not involve dedication requirements.[55] The Fifth Circuit, in *Texas Manufactured Housing Association v. Nederland*,[56] determined that an ordinance regulating the location of manufactured homes was not reviewable under *Dolan* because it did not extract benefits in the sense of requiring dedication of property to the city.[57]

Other cases decided after *Dolan* have not limited the rough proportionality test to land dedication. The case of *Ehrlich v. City of Culver City*,[58] in particular, captured early attention. Prior to the *Dolan* decision, a California court of appeal in *Ehrlich* upheld the city's condition of development that the developer pay a recreational fee and a fee in lieu of participating in the city's art in public places program.[59] The United States Supreme Court accepted certiorari of the case and, a day after deciding *Dolan*, vacated the California court of appeal's opinion and remanded it for further consideration in light of *Dolan*.[60] Upon further reconsideration, the California court of appeal applied *Dolan* to once again uphold the recreational mitigation fee but found that the public art fee was not reviewable under *Dolan* because it was a legislative determination applicable to all large development projects.[61] The California Supreme Court agreed that *Dolan* was not limited to land dedications and remanded the case to the trial court to determine if the recreational fee was roughly proportional to the impact caused by the proposed development.[62]

The United States Supreme Court's treatment of *Ehrlich* was read by some to indicate that *Dolan* should be read expansively to include exactions.[63] Indeed, in the courts, *Dolan* has been cited to strike down subdivision drainage requirements,[64] expanded to strike rent control provisions,[65] and used to find a taking resulting from the state construction of a beachfront boat ramp and jetty.[66] Dolan has also been applied to uphold parkland fees in Washington,[67] transportation impact fees in Illinois,[68] and street improvements as a condition to subdivision approval in Michigan[69] and Oregon.[70]

Del Monte Dunes should give more pause to this expansive reading, and initial reactions by the courts to the case suggest that a more limited application of the "rough proportionality" test is in order. For example, the New York high court, after broadly applying *Dolan* to land use controls, most recently held that *Del Monte Dunes* clarifies that rough proportionality only applies in exactions cases. In *Bonnie Briar Syndicate, Inc. v. Town of Mamaroneck*, the court applied a reasonable relationship test to uphold the rezoning of golf course property from residential to recreational use zoning.[71] As another example, in *Lambert v. City & County of San Francisco*,[72] the California appellate court refused to find a taking from the denial of a hotel use permit after applicants refused to comply with the condition of a monetary payment.[73] The state supreme court initially granted review, but after *Del Monte Dunes* was decided,

the court dismissed the appeal as improvidently granted.[74] The dismissal was perhaps in response to the limitations expressed in *Del Monte Dunes*. Similarly, in *Benchmark Land Corp. v. City of Battle Ground*,[75] a Washington appellate court struck down a subdivision platting condition that required street improvements on the basis that the requirement did not meet *Dolan's* rough proportionality test.[76] The Washington Supreme Court granted certiorari of the case but vacated the appellate court ruling after *Del Monte Dunes* was decided and remanded the case for further consideration in light of the Supreme Court's opinion.[77]

V. CONCLUSION

The Court's split decision and narrow holding in *Del Monte Dunes* portends that there will be few, if any, future section 1983 taking cases to be decided by a federal jury. Importantly, however, the decision has confirmed the necessity of first applying to state court for a just compensation remedy, as a pre-condition to a section 1983 regulatory taking claim. Additionally, the persuasiveness of "bad facts," such as repeated denials, cannot be underestimated. Indeed, the acceptance of certiorari by the Supreme Court of *Olech v. Village of Willowbrook*,[78] finding an equal protection violation based on the village's alleged ill-will toward a landowner who applied for a well permit, signals the Court's continuing concern about perceived government mistreatment in land-use actions.

The Court's analysis in *Del Monte Dunes* also leaves open a number of unresolved questions, such as: if a plaintiff must first take a taking claim to state court, whether an effective federal taking claim will remain and, if so, how it will be preserved; whether the *Agins* means-ends test has continuing viability in a regulatory taking context; and whether certain substantive due process liability claims have a right to a jury trial under the Seventh Amendment. These and other uncertainties await future cases and commentary.

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[1] 119 S. Ct. 1624 (1999).Return to text.

[2] 114 S. Ct. 2309 (1994). Return to text.

[3] This description of the facts is taken from the Supreme Court opinion, the parties' briefs, and earlier decisions. Parties' briefs can be found at 1998 WL 297462 (Petitioner), 1998 WL 457674 (Respondents), and 1998 WL 596784 (Petitioner's Reply). Earlier decisions are located at 920 F.2d 1496 (9th Cir. 1990) and 95 F.3d 1422 (9th Cir. 1996). Return to text.

[4] Petitioner's Brief, 1998 WL 297462, at *5. Return to text.

[5] Additionally, "[t]he [conditional use approval] expressly provided that, if it appeared that the final restoration plan would not adequately mitigate the environmental impacts. . . the developer would be required to modify and resubmit its site plan." *Id.* at *6-*7. Return to text.

[6] According to the City of Monterey ("City"), the U.S. Fish and Wildlife Service concluded that this "restoration plan had little chance for long term success," and the California Department of Fish and Game advised the City that it had problems with the proposed restoration plan. *Id.* at *8. The Ninth Circuit reported that the U.S. Fish and Wildlife Service indicated that it had no objection to the manner in which the habitat was preserved. *See Del Monte Dunes*, 920 F.2d at 1506. Return to text.

[7] *Del Monte Dunes*, 119 S. Ct. at 1632. Return to text.

[8] *Del Monte Dunes*, 95 F.3d at 1425. The parties did not appeal this finding. Return to text.

[9] *Id.* at 1430. Return to text.

[10] *Id.* at 1432. Return to text.

[11] *See Del Monte Dunes*, 119 S. Ct. at 1635. Return to text.

[12] *Id.* Return to text.

[13] *Id.*; *see also infra* notes 39-76 and accompanying text. Return to text.

[14] *Id.* at 1650. Return to text.

[15] *See id.* at 1635. Return to text.

[16] 100 S. Ct. 2138 (1980). *Agins* requires that to find a regulatory taking, the regulation must fail to 1) substantially advance a legitimate state interest, or 2) deny the landowner all or substantially all economically viable use of his property. *See id.* Return to text.

[17] *See, e.g.*, Thomas E. Roberts et al., *Land-Use Litigation: Doctrinal Confusion Under the Fifth and Fourteenth Amendments*, 28 URB. LAW. 765 (1996); Karena C. Anderson, *Strategic Litigating In Land Use Cases*, Del Monte Dunes v. City of Monterey, 25 ECOLOGY L.Q. 465 (1998). Return to text.

[18] *See Del Monte Dunes*, 119 S. Ct. at 1635; *see also Del Monte Dunes*, 119 S. Ct. at 1649 (Scalia, J., dissenting and refusing to express his view of the test's propriety). The dissent also refuses to decide

whether *Agins* properly assumes that the means-ends test is a part of a taking analysis. *See id.* at 1660. Return to text.

[19] *Id.* at 1636. Return to text.

[20] *Id.* at 1637. Return to text.

[21] *Id.* Return to text.

[22] *Id.* at 1636 (emphasis added). Return to text.

[23] *Del Monte Dunes*, 119 S. Ct. at 1637. This obvious intent to narrow the scope of the matters at issue may reflect the Court's discomfort in upholding the takings claim while the judge below found that substantive due process had not been violated. One Justice at oral argument admitted that "[i]t seems a little odd to me . . . that the judge would find as a matter of law that the planning action was substantively reasonable under due process but then submit the takings issue to a jury. That does seem to me somewhat inconsistent." 1998 WL 721087, at * 34-35 (U.S. Oral Argument). This inconsistency is further complicated by the return by the jury of a general verdict, which can be upheld only if the evidence supports each theory of liability. *See Del Monte Dunes*, 95 F.3d at 1428. Return to text.

[24] *Del Monte Dunes*, 119 S. Ct. at 1631. Return to text.

[25] *See id.* at 1637-38. Return to text.

[26] *See id.* at 1638. Return to text.

[27] *See id.* Return to text.

[28] *See id.* at 1658-59. Return to text.

[29] *See Del Monte Dunes*, 119 S. Ct. at 1637-38. Return to text.

[30] According to Justice Souter, this analogy is also "intuitively sensible" given the common source of direct and inverse condemnation suits in the Fifth Amendment and the link to the sovereign's power of eminent domain. *See id.* at 1650. The dissent explains that condemnation proceedings carried no uniform and established right to a common law jury trial in England or in the colonies in 1791 and are not accorded a jury trial based on well-established precedent. *See id.* at 1651. Therefore, inverse condemnation actions should not be accorded a jury trial. *See id.* Return to text.

[31] *Compare Del Monte Dunes*, 119 S. Ct. at 1639-42, *with Del Monte Dunes*, 119 S. Ct. at 1650-53.

Return to text.

[32] *Compare Del Monte Dunes*, 119 S. Ct. at 1641, *with Del Monte Dunes*, 119 S. Ct. at 1651. Return to text.

[33] *See id.* at 1641. In this case, Del Monte was denied compensation because, at the time of the taking, the state court did not provide a compensation remedy. Return to text.

[34] 107 S. Ct. 2378 (1987). Return to text.

[35] *Del Monte Dunes*, 119 S. Ct. at 1644. Return to text.

[36] *See id.* Return to text.

[37] *See id.* Return to text.

[38] *See id.* at 1659-60. Return to text.

[39] *Id.* at 1635 (citations omitted). Return to text.

[40] *See Dolan*, 114 S. Ct. at 2314. Return to text.

[41] *See Del Monte Dunes*, 119 S. Ct. at 1635. Return to text.

[42] *See* Nancy E. Stroud & Susan L. Trevarthen, *Defensible Exactions* After Nollan v. California Coastal Commission *and* Dolan v. City of Tigard, 25 STETSON L. REV. 719 (1996) (discussing the earliest cases addressing application of *Dolan*); s*ee also* Jonathan Davidson & Adam U. Lindgren, *Exactions and Impact Fees* - Nollan/Dolan*: Show Me the Findings!*, 29 URB. LAW. 427 (1997).Return to text.

[43] 894 P.2d 836 (Kan. 1995). Return to text.

[44] *See id.* Return to text.

[45] 917 P.2d 1351 (Kan. App. 1996). Return to text.

[46] *See id.* Return to text.

[47] 930 P.2d 993, (Ariz. 1997), *cert. denied*, 117 S. Ct. 2512 (1997).Return to text.

[48] *Id.* at 1000. *Compare* Third & Catalina Assocs. v. City of Phoenix, 895 P.2d 115, 120 (Ariz. App. 1995) (fire sprinkler retrofitting requirement distinguished from situation in *Dolan* where private property is pressed into public service).Return to text.

[49] *See infra* notes 50-57 and accompanying text. Return to text.

[50] 70 F.3d 1566 (10th Cir. 1995). Return to text.

[51] *Id.* at 1578. Return to text.

[52] 862 F. Supp. 287 (D. Kan. 1994), *aff'd*, 74 F.3d 1249 (10th Cir. 1996). Return to text.

[53] *See id.* at 294. Return to text.

[54] 912 F. Supp. 1456 (D. Wyo. 1996). Return to text.

[55] *See id.* Return to text.

[56] 101 F.3d 1095 (5th Cir. 1996), *cert. denied*, 117 S. Ct. 2497 (1997).Return to text.

[57] *See id.* at 1105. Return to text.

[58] 19 Cal. Rptr. 2d 468 (Cal. App. 1993), *cert. granted*, 114 S. Ct. 2731 (1994), *amended by* 911 P.2d 429 (Cal.), *cert denied*, 117 S. Ct. 299 (1996). Return to text.

[59] *See Ehrlich*, 19 Cal. Rptr. 2d at 468. Return to text.

[60] *See Ehrlich*, 114 S. Ct. at 2731.Return to text.

[61] *See* Ehrlich, 911 P.2d at 436. The distinction between legislative and adjudicative determinations of exactions in applying *Dolan* has wide currency. *See, e.g.*, Stroud & Trevarthen, *supra* note 42, at 802-806; *Scottsdale*, 930 P.2d at 999-1000; Arcadia Dev. Corp. v. City of Bloomington, 552 N.W.2d 281, 286 (Minn. Ct. App. 1996). *But see* Parking Ass'n of Ga., Inc. v. City of Atlanta, 115 S. Ct. 2268 (1995) (Thomas, J., dissenting to a denial of a petition for a writ of certiorari).Return to text.

[62] *See Ehrlich*, 911 P.2d at 433. Return to text.

[63] For the interpretation that *Dolan* applies to exactions other than land dedications, see, for example,

David L. Callies, *Regulatory Takings and the Supreme Court: How Perspectives on Property Rights Have Changed from* Penn Central *to* Dolan, *and What State and Federal Courts Are Doing About It*, 28 STETSON L. REV. 523, 571-76 (1999); Matthew S. Watson, *The Scope of the Supreme Court's Heightened Scrutiny Takings Doctrine and Its Impact on Development Exactions*, 20 WHITTIER L. REV. 181, 204-209 (1998) (concluding that heightened scrutiny applies to monetary exactions). Return to text.

[64] *See* Christopher Lake Dev. Co. v. St. Louis County, 35 F.3d 1269 (8th Cir. 1994). Return to text.

[65] *See* Manocherian v. Lenox Hill Hosp., 643 N.E.2d 479 (N.Y. 1994), *cert. denied*, 115 S. Ct. 1961 (1995). The New York court reversed course, however, in *Bonnie Briar Syndicate, Inc. v. Town of Mamaroneck*, 1999 N.Y. Lexis 3739 (N.Y. Nov. 23, 1999). *See infra* text accompanying note 71. Return to text.

[66] *See* Peterman v. Department of Natural Resources, 521 N.W.2d 499 (Mich. 1994). Return to text.

[67] *See* Trimen Dev. Co. v. King County, 877 P.2d 187 (Wash. 1994). Return to text.

[68] *See* Northern Illinois Home Builders Ass'n v. County of DuPage, 649 N.E.2d 384 (Ill. 1995). Return to text.

[69] *See* Dowerk v. Charter Township of Oxford, 592 N.W.2d 724 (Mich. Ct. App. 1998). Return to text.

[70] *See* J.C. Reeves Corp. v. Clackamas County, 887 P.2d 360 (Or. Ct. App. 1994). Return to text.

[71] *See* 1999 N.Y. Lexis 3739 (N.Y. Nov. 23, 1999). Return to text.

[72] 67 Cal. Rptr. 2d 562 (Cal. App. 1997), *rev. granted*, 950 P.2d 59 (Cal. 1998), *dismissed*, 981 P.2d 59 (Cal. 1999). Return to text.

[73] *See Lambert*, 67 Cal. Rptr. 2d at 562. Return to text.

[74] *See Lambert*, 981 P.2d 41 (Cal. 1999), *denying cert. to* 950 P.2d 59 (Cal. 1998). Return to text.

[75] 972 P.2d 944 (Wash. Ct. App. 1999). Return to text.

[76] *See id.* at 944. Return to text.

[77] *See* Benchmark Land Corp. v. City of Battle Ground, 138 Wash. 2d 1008 (Wash. 1999). Return to text.

[78] 160 F.3d 386 (7th Cir. 1998), *cert. granted*, 120 S. Ct. 10 (1999). Return to text.