such conditions on the property owner, and the impact of the property owner's proposed development on the community—at least in the context of adjudicated (rather than legislated) conditions.

Nollan and *Dolan* occasioned considerable debate over the breadth of what became known as the "heightened scrutiny" test. The stakes were plainly high in that the test, where it applies, lessens the traditional judicial deference to local police power and places the burden of proof as to rough proportionality on the government. In *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*,[740] the Court unanimously confined the *Dolan* rough proportionality test, and, by implication, the *Nollan* nexus test, to the exaction context that gave rise to those cases. Still unclear, however, was whether the Court meant to place outside *Dolan* exactions of a purely monetary nature, in contrast with the physically invasive dedication conditions involved in *Nollan* and *Dolan*.[741] The Court clarified this uncertainty in *Koontz v. St. Johns River Water Management District* by holding that monetary exactions imposed under land-use permitting were subject to essential nexus/rough proportionality analysis.[742]

The announcement following *Penn Central* of the above *per se* rules in *Loretto* (physical occupations), *Agins* and *Lucas* (total elimination of economic use), and *Nollan/Dolan* (exaction conditions) prompted speculation that the Court was replacing its ad hoc *Penn Central* approach with a more categorical takings jurisprudence. Such speculation was put to rest, however, by three decisions from 2001 to 2005 expressing distaste for categorical regulatory takings analysis. These decisions endorse *Penn Central* as the dominant mode of analysis for inverse condemnation claims, confining the Court's *per se* rules to the "relatively narrow" physical occupation and total wipeout circumstances, and the "special context" of exactions.[743]

Following the *Penn Central* decision, the Court grappled with the issue of the appropriate remedy property owners should pursue

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[740] 526 U.S. 687 (1999).

[741] A hint that monetary exactions may be outside *Nollan/Dolan* had been provided in Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 546 (2005), explaining that these decisions were grounded on the doctrine of unconstitutional conditions as applied to *easement* conditions that would have been *per se physical* takings if condemned directly.

[742] 570 U.S. ___, No. 11–1447 (2013).

[743] Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 538 (2005). The other two decisions are Palazzolo v. Rhode Island, 533 U.S. 606 (2001), and Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302 (2002).