



## Supreme Court Decision Limits Ability of Government Agencies to Impose ‘Extortionate’ Permit Conditions on Landowners

On June 25<sup>th</sup>, the U.S. Supreme Court issued an important Takings Clause decision with far-reaching implications for real estate developers and others who rely on federal or state permits. In *Koontz v. St. Johns River Water Management District*, the Court extended the doctrine of “unconstitutional conditions” established in the Court’s *Nollan* and *Dolan* cases.<sup>1</sup> Under that doctrine, when a permitting authority conditions the issuance of a development or other permit on dedication of some property to a public use (for example, by requiring a playground, a bike path, or an easement for beach access), the condition must both have a “logical nexus” to the permit (per *Nollan*) and be “roughly proportional” to the scope of the development or other activity authorized by the permit (per *Dolan*). A land use authority cannot, for example, condition a permit to build a single family home on the construction of a football stadium across town.

In the typical *Nollan/Dolan* case, the property owner accepts the permit condition, constructs the bike path or playground, and then, if the condition is overly onerous, sues to recover just compensation for the value of the property that the permitting authority “improperly” required the property owner to dedicate to a public use. In *Koontz*, however, the condition demanded by the state agency was so onerous that Mr. Koontz refused to accept the condition, and the development permit he sought was therefore denied. In return for a wetlands fill permit needed to develop about 3.7 acres he owned, the agency demanded that Mr. Koontz spend money to enhance approximately 50 acres of state-owned wetlands. Mr. Koontz had offered lesser wetlands mitigation with his permit application, but he balked at

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<sup>1</sup> *Nollan v. California Coastal Comm’n*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

the agency's demand that he hire a contractor to enhance 50 acres of offsite wetlands. When the agency therefore denied Mr. Koontz's permit application, he sued for a taking of his property, claiming that the excessive condition demanded by the agency was an unconstitutional condition under *Nollan* and *Dolan*.

The Supreme Court ruled in Koontz's favor. It held that the *Nollan/Dolan* logical nexus/rough proportionality test limits the types of conditions that a permitting authority can impose, even in cases like *Koontz* where the property owner ultimately rejects the condition and the permit is therefore denied. The Court explained that this limit on governmental power was necessary, whether the permit was ultimately granted or denied, to discourage permitting authorities from making "unconstitutionally extortionate demands" for property during the course of the permitting process. The Court also held that it made no difference that Mr. Koontz was not asked to dedicate his own property to a public use in return for a permit, but only to spend money mitigating other, state-owned wetlands. So long as the permit condition being demanded by the state agency violated the *Nollan/Dolan* test, it constituted an unconstitutional condition that the agency was precluded from imposing.

Because the issues that the Court addressed in *Koontz* arose in a peculiar procedural context, the decision leaves open a number of questions concerning what remedy is available to Mr. Koontz and others who similarly face permit denials after refusing to accede to "extortionate" demands by state or federal permitting authorities. Because on the facts of *Koontz* no property was actually "taken," the Court questioned whether the appropriate remedy was payment of damages under Florida law as opposed to just compensation for a taking. Nonetheless, by declaring that the Takings Clause in the U.S. Constitution requires permitting authorities nationwide to adhere to the "logical nexus" and "rough proportionality" requirements of *Nollan* and *Dolan* -- regardless of whether a permit is ultimately granted or denied -- *Koontz* promises to help level the playing field for property owners in a wide variety of permitting contexts by limiting the ability of government agencies to impose "extortionate" permit conditions.

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A more in depth discussion of the *Koontz* decision and its implications will be offered in a webinar on July 17<sup>th</sup> at 2 p.m. EDT. Speakers will include Greenberg Traurig shareholders Jerry Stouck and Kerri Barsh as well as Paul Beard of the Pacific Legal Foundation, who argued for Mr. Koontz before the U.S. Supreme Court. For more information about the webinar and to register, click [here](#).

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