

ClientAlert

Environmental | Litigation

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Koontz v. St. Johns River Water Management District

No. 11-1447, 570 U.S. __ (2013)

On June 25, 2013, the US Supreme Court issued a decision clarifying the limitations the constitution places on the power of governments to exact concessions from property owners when issuing development permits. It confirmed that its prior holdings in *Nollan v. California Coastal Comm'n*¹ and *Dolan v. City of Tigard*², which held that a government entity may not condition the approval of a land use permit on the owner's relinquishment of a portion of his property unless there is a "nexus" and "rough proportionality" between the government's demand and the effects of the proposed land use, also apply (i) where the government denies the permit and (ii) even when the government gives the property owner the option of making a monetary payment in lieu of the relinquishment of property. *Koontz v. St. Johns River Management District*, 570 U.S. __ (2013), No. 11-1447, 2013 WL ____ (US January 15, 2013). A significant win for property owners, the Court's decision will require permitting authorities to be more measured in the restrictions they impose, including financial exactions, if their development permits—and decisions to deny development permits—are to survive constitutional scrutiny.

Background

Petitioner owns a 14.9-acre tract of land in central Florida that is bisected by a drainage ditch and that is classified by the state as wetlands.³ He sought to develop the 3.7-acre northern portion of the tract to make it suitable for a building, and in 1994 applied to the local water management district for two permits necessary for construction on wetlands.⁴ As mitigation, Petitioner offered the District a conservation easement on the southern portion of the property.⁵ The District informed Petitioner that it would approve construction only if he agreed to one of two concessions: either reducing the size of his development to one acre and deeding a conservation easement to the District for the remaining 13.9 acres, or proceeding as planned with construction on 3.7 acres, but also agreeing to hire contractors to make improvements to District-owned lands several miles away. Believing both of the



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¹ 483 US 825 (1987)

² 512 US 374 (1994)

³ *Koontz*, slip op. at 2.

⁴ *Id.* at 3. The required permits are (1) a Management and Storage of Surface Water (MSSW) permit, which may impose "such reasonable conditions" on the permit as are "necessary to assure" that construction will "not be harmful to the water resources of the district," and (2) a Wetlands Resource Management (WRM) permit, which requires applicants to provide "reasonable assurance" that proposed construction on wetlands is "not contrary to the public interest."

⁵ *Id.* at 4.

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District's demands for mitigation to be excessive, Petitioner filed suit in Florida state court, seeking monetary damages under Section 373.617(2), Florida Statutes, which allows owners to recover "monetary damages" if a state agency's action is "an unreasonable exercise of the state's police power constituting a taking without just compensation."⁶

After a two-day bench trial, the trial court held the District's actions unlawful under the *Nollan/Dolan* standard.⁷ The Florida District Court of Appeals affirmed, but the Florida Supreme Court reversed, distinguishing the *Nollan/Dolan* standard on two grounds.⁸ First, it held that, unlike in *Nollan* and *Dolan*, the District did not approve petitioner's application on the condition that petitioner accede to its demands, but rather denied the application.⁹ Second, the majority held that a demand for money cannot give rise to a claim under the *Nollan/Dolan* standard.¹⁰ Recognizing that the majority opinion rested on a question of federal constitutional law on which the lower courts were divided, the US Supreme Court granted certiorari.

The Supreme Court's Ruling

In a 5 – 4 decision, the Court reversed the Florida Supreme Court, holding that the government's permit conditions affecting the property must satisfy the requirements of *Nollan* and *Dolan* even when the government denies the permit and even when its permit condition requires a monetary payment.¹¹

Writing for the majority, Justice Alito explained that the unconstitutional conditions doctrine enforces the Constitution's enumerated rights by preventing the government from coercing people into giving them up.¹² *Nollan* and *Dolan* represent a special application of this doctrine that protects the Fifth Amendment right

to just compensation for property the government takes when owners apply for land-use permits.¹³ The *Nollan/Dolan* standard—which requires a "nexus" and "rough proportionality" between the property the government demands and the social costs of the applicant's proposal—balances the danger of governmental coercion and overreaching against government's legitimate need to offset the public costs of development through land exactions.¹⁴ These principles remain the same whether the government approves a permit on the condition that the applicant turn over property or denies a permit because the applicant refuses to do so, as both forms of coercion may burden constitutionally enumerated rights.¹⁵ A contrary rule would create a loophole that governments could employ to evade *Nollan* and *Dolan*'s limitations.¹⁶ The Court did not reach the question, however, of what remedy might be available for the *Nollan/Dolan* unconstitutional conditions violation in this case.¹⁷

The Court also concluded that simply because the District gave Petitioner an option to spend money on a District environmental project rather than give up an easement on his land was not a valid reason to avoid the application of the *Nollan/Dolan* standard.¹⁸ It reasoned that a monetary exaction, which the permitting authority may make equal in value to the easement it wishes to take, is functionally equivalent to other types of land-use exactions.¹⁹ Because the District's proposed monetary obligation burdened Petitioner's ownership of a specific parcel of land, it constitutes a *per se* taking and not a regulatory taking.²⁰ The Court explained that this taking was distinguishable from a tax or user fee because the District considered Petitioner's payment of money to be a substitute for his deeding to the public a conservation easement on a larger parcel of undeveloped land.²¹

6 *Id.* at 4-5.

7 *Id.* at 5.

8 *Id.*

9 *Id.*

10 *Id.* at 5-6.

11 *Id.* at 22.

12 Chief Justice Roberts, Justice Scalia, Justice Kennedy and Justice Thomas joined the Court's opinion.

13 *Id.* at 6-7.

14 *Id.* at 7-8.

15 *Id.* at 9.

16 *Id.*

17 *Id.* at 11.

18 *Id.* at 14.

19 *Id.* at 15.

20 *Id.* at 16.

21 *Id.* at 18-20.

Justice Kagan filed a dissenting opinion²² in which she expressed agreement with the majority's conclusion that the *Nollan/Dolan* standard applies when the government denies a permit unless the owner meets the condition.²³ But the dissenters disagreed with the majority's extension of *Nollan* and *Dolan* to cases in which the government conditions a permit on the payment or expenditure of money.²⁴ They warned that the boundaries of the majority's new rule are uncertain, and threaten to subject a vast array of land-use regulations to heightened constitutional scrutiny that may undermine local efforts to regulate land use.²⁵

Significance of the Koontz Decision

This decision is a victory for property-owners, as it expands the rule of *Nollan* and *Dolan*. It does not, however, preclude government entities from requiring a permit recipient to pay a sum to offset impacts associated with the permit, or denying the permit when the applicant refuses to do so. But there must be a significant nexus and rough proportionality for such a condition to survive constitutional scrutiny. States and local governments must recognize that the Constitution requires heightened scrutiny when the government commands the relinquishment of funds linked to a specific, identifiable property interest. The Supreme Court's decision also enhances the ability of property owners to challenge permit conditions that are not sufficiently related to the development's impacts.

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²² The Dissent was joined by Justice Ginsburg, Justice Breyer and Justice Sotomayor.

²³ *Koontz*, slip op. at 1 (Kagan, J., dissenting).

²⁴ *Id.* at 2.

²⁵ *Id.*