

Supreme Court Backs Landowner in Major Takings Case

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The Supreme Court yesterday expanded private property rights in a major takings case that arose from the Florida state courts. The Court held in *Koontz v. St. Johns River Water Management District* that not only does the Constitution's Takings Clause apply to situations where a project is approved with "extortionate" conditions but it also applies where a project is denied because the owner refuses to accede to coercive property demands of the government.

And the Court further held that the Takings Clause protection applies to monetary exactions as well as real property exactions.

Koontz had sought permission to develop a small portion of a 15-acre tract in the Orlando area. Because of wetlands on the site, Koontz offered to convey 11 of his acres as a conservation easement over to the District. In the back-and-forth negotiation, the District made clear it would only approve the project if Koontz also paid to enhance a 50-acre wetland owned by the District several miles away.

Believing the government's mitigation demands excessive given the environmental impact of his building proposal, Koontz filed suit in state court. He claimed a taking under the Supreme Court's *Nollan* (1987) and *Dolan* (1994) decisions. In those cases, however, the Court was dealing with project approvals, not denials, in which conditions that went "too far" were attached to the approvals. And the conditions involved real property easements; they did not also involve monetary exactions. The *Nollan/Dolan* rule basically says that a condition attached to a project approval must have an essential "nexus" and "rough proportionality" between the government's demand and the project's impact on the public.

The Supreme Court has now extended the *Nollan/Dolan per se* takings rule to cover projects that are turned aside because an owner refuses to be forced to accept unconstitutional conditions in order to receive its applied for land use approval. And the Court has made clear that property is property, be it real estate or money. After all, in the real world, a land use exaction is a land use exaction regardless of the form it takes.

The author of this alert was deeply involved in the *Nollan* case on behalf of the owners at the Supreme Court level. It has taken 26 years for the Court to say what many thought back in 1987, and now the lower courts have clear direction as to the proper application of the Constitution's Takings

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Clause in the land use exactions context.

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