

# KOONTZ V. ST. JOHNS RIVER WATER MANAGEMENT DISTRICT: WHAT HAPPENED AND WHERE DO WE GO FROM HERE?



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Association of State Wetland Managers

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# Agenda

- Introductions, Jeanne Christie, Association of State Wetland Managers
- **First Question:** What does the decision say and what does it mean? Royal C. Gardner, Stetson University College of Law and Jan Goldman-Carter, National Wildlife Federation
- **Second Question:** What action or changes in program decision-making, permitting, planning, etc. should local, state and federal governments consider pursuing as a result of the decision? Jon Kusler, Association of State Wetland Managers
- **Third Question:** In light of Koontz and other recent Supreme Court decisions, is there a shift in takings law and, if so, what does that mean for state and local government? Dan Siegel, Attorney General's Office, California
- Closing Comments

# A brief review of the law of takings

- Physical takings
- Lucas-type takings
  - No economically beneficial use
- Penn Central takings
  - Consider economic impact, interference with reasonable investment-backed expectations, character of government's action
- Nolan-Dollan unconstitutional exactions
  - Essential nexus and rough proportionality

# The factual background of Koontz

- Koontz purchased a 14.9-acre parcel in 1972.
- In 1987, .7 acres were taken by eminent domain.
- In 1994 Koontz sought permission to adversely impact 3.4 acres of wetlands for future commercial development.
- Koontz offered a conservation easement on the remaining approximately 11 acres.
- District guidelines suggested a 10:1 preservation ratio and thus additional mitigation was required.

# The factual background of Koontz

- The district suggested several methods to reduce impacts or provide sufficient offsets.
- One of the suggestions was to improve wetland functions on district land by replacing culverts and/or plugging ditches.
- Koontz declined to modify his original proposal; accordingly, the district denied the permit.
- The district's action was then characterized as an extortionate demand that Koontz “dedicate his money and labor to make improvements to 50 acres of government-owned property located miles away from the project.”

# The procedural history of Koontz

- Florida Circuit Court: finds that the district failed to “prove the necessary relationship between the condition of off-site mitigation and the effect of development.”
- Florida Fifth District Court of Appeal: affirms the trial court’s decision, 2-1.
- Florida Supreme Court: reverses, holding that Nollan-Dolan does not apply when a permit is denied (as opposed to when a permit is granted with conditions) and that Nollan-Dolan did not apply to when the condition involves the payment of money (as opposed to when the condition involves relinquishing a right in real property)

# The legal issues in Koontz before the US Supreme Court

(1) Whether a land-use agency can be held liable for a taking when it refused to issue a land-use permit on the sole basis that the permit applicant did not accede to a permit condition that, if applied, would violate the essential nexus and rough proportionality tests set out in Nollan and Dolan, and

(2) whether the nexus and proportionality tests set out in Nollan and Dolan apply to a land-use exaction that takes the form of a government demand that a permit applicant dedicate money, services, labor, or any other type of personal property to a public use.

# On the first issue ...

All nine Justices agree that the Nollan-Dolan standard applies to:

a condition subsequent (a permit is issued on the condition that the landowner convey a property interest)

AND

a condition precedent (a permit is denied until the owner satisfies the condition).



## On the second issue ...

The Court rules, 5-4, that the Nollan-Dolan standard applies to the expenditure of funds (“extortionate demands for money”).

## On the positive side ...

- The Court recognized that “many proposed land uses threaten to impose costs on the public that dedications of property can offset.”
- In the context of discussing wetland mitigation and offsets, the Court stated that the government can insist “that landowners internalize the negative externalities of their conduct” and that permitting authorities can “insist that applicants bear the full costs of their proposals[.]”
- The Court noted that the government has a “legitimate interest in [wetland] mitigation” – but the mitigation must have a nexus and rough proportionality to the development impacts.

# What the Court did not decide ...

- whether the Florida statute that Koontz sued under applies to a Nollan-Dolan claim;
- whether the district’s “demands” for property were specific enough to trigger a Nollan-Dolan claim;
- whether the district’s demands, if sufficiently definite, actually violated the Nollan-Dolan standard; and
- what remedies might be available for a successful Nollan-Dolan claim.

# So what did the Court actually hold? (And why should you care?)

- The Nollan-Dolan standard of nexus and rough proportionality applies to conditions requiring off-site mitigation.
- The Nollan-Dolan standard applies to the expenditure of funds, such as in-lieu fees.
- It appears that the connection between the mitigation and impacts will be subjected to heightened scrutiny, which could embolden landowners to challenge mitigation conditions more frequently.