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U.S. Supreme Court Holds That Monetary Exactions are Subject to Nexus and Rough Proportionality Requirements

In a 5-4 decision, the United States Supreme Court expanded the reach of the requirement that there be a "nexus" and "rough proportionality" between the impacts of a proposed development and governmental conditions imposed on the development. [Koontz v. St. Johns River Water Management District](#), 570 U.S. ____ (2013). The Court held that these requirements apply: (1) when a government agency denies a permit application because an applicant refuses to make requested concessions and (2) when a government agency demands money, rather than a real property interest, from the applicant. In *Koontz*, a property owner sued a Florida water management district that denied his application to develop a property containing wetlands. He had sought permits to develop 3.7 acres of his 14.9-acre property while offering a conservation easement over the remaining acreage. In response, the water district at least suggested, and perhaps demanded, that the applicant either reduce his development to one acre and impose a conservation easement on the remaining 13.9 acres, or develop the 3.7 acres as proposed, but also fund enhancements to off-site wetlands owned by the district. The owner refused to make either concession, and the district denied his application. The owner then brought suit, but lost in the Florida Supreme Court, which held that the property owner's claims were barred because his application had been denied (and therefore no actual "taking" occurred) and because one of the district's alleged demands was for money rather than property. The Supreme Court reversed and remanded the case to the Florida courts, holding that the leading decisions [Nollan v. California Coastal Commission](#), 483 U.S. 825 (1987), and [Dolan v. City of Tigard](#), 512 U.S. 374 (1994), applied to the case. These precedents allow government to require mitigation of impacts from a proposed development, but do not permit the government to "leverage its legitimate interest in mitigation to pursue governmental ends that lack an essential nexus and rough proportionality to those impacts." *Koontz*, slip op. at 8. All nine Justices agreed that the *Nollan/Dolan* rule applies regardless of whether the government approves a permit on the condition that the applicant turn over property (the typical situation, as presented in *Nollan* and *Dolan*) or denies a permit because the applicant refuses to do so (the situation presented by this case). The primary disagreement among the Justices arose from the district's request for money rather than property. The Court's majority applied the requirements of nexus and rough proportionality to the district's request for in-lieu funding for off-site wetland improvements. It rejected the argument that government demands for money, rather than an interest in real property, were not subject to *Nollan/Dolan* analysis, observing that such a rule would allow governments to evade the *Nollan/Dolan* limitations simply by giving the owner a choice of either surrendering an easement or making an in lieu payment equal to the easement's value. The dissenting Justices asserted that the Court's decision would extend federal takings jurisprudence deep into local land use regulation and service delivery, with potential chilling effects on the willingness of government employees to discuss potential conditions of approval with applicants rather than deny their applications outright. The dissenters also opined that the property owner was unlikely actually to recover any damages under Florida law, and would have made that decision themselves rather than remand the case to the Florida courts for further proceedings. Although it is unclear whether the property owner in this case will ultimately prevail, the *Koontz* decision likely will encourage greater resistance by applicants to governmental impositions of monetary exactions that the applicants believe are unjustified.

Authors