# Alert

## Supreme Court Issues Major Property Rights Ruling

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**July 11, 2013**

**United States Supreme Court Issues Major**

**Property Rights Ruling**

**(May Serve as a Potential Restraint on the Growth of Exactions and Fee-In-Lieu Programs)**

On June 26, 2013 the United States Supreme Court issued a major property rights decision in the case of *Koontz v. St. Johns River Water Management District*, Case No. 11-1447. The case clarifies the constitutional constraints on local, state, and federal agencies' ability to demand monetary exactions and fee-in-lieu payments as a condition for development approvals.

The Koontz case involved an effort to develop an approximately 15-acre property in Florida. In order to develop the property, there were unavoidable impacts to non-tidal wetlands. The developer sought the necessary approval for the wetland impacts from the St. Johns River Water Management District and offered, as mitigation, to deed a conservation easement over approximately 11 acres of the property, allowing for the development of the remaining 4 acres. The permitting agency rejected this proffer, and instead suggested to the property owner mitigation consisting of either (a) a 14 acre conservation easement (allowing for development of a 1 acre area), or alternatively (b) payment of a fee-in-lieu which would be used to enhance approximately 50 acres of wetlands on another site owned by the permitting agency. The property owner rejected this demand, and sued in Florida state court, alleging that the mitigation demands were excessive and violative of a State law allowing a property owner to seek monetary damages if the State agency's action constituted an "unreasonable exercise of the State's police power constituting a taking without just compensation."

On appeal, the United States Supreme Court considered whether the mitigation demands, and particularly demands for payment of money in lieu of on-site mitigation, were subject to a takings claim and the attendant requirement for a "nexus" with the environmental impacts caused by the development, and a "rough proportionality" of the demanded mitigation to those impacts. The St. Johns River Water Management District argued that, unlike demands for property by a government as a condition of development

approvals, the simple demand for money did not implicate the proscription against the taking of property without just compensation required by the 5th Amendment of the U.S. Constitution.

The Court rejected this argument, and expressly expanded its previous holdings in *Dolan v. City of Tigard* and *Nollan v. California Coastal Commission* to monetary exactions and fee-in-lieu programs. The Court noted that although "insisting that landowners internalize the negative externalities of their conduct is a hallmark of responsible land use policy", "land use permit applicants are especially vulnerable [to coercion] because the government often has broad discretion to deny a permit that is worth far more than the property it would like to take." Expressing concerns over "extortionate demands" by permitting authorities, the Court went on to rule that just because an agency demands a monetary payment as opposed to the dedication of real property does not circumvent the Fifth Amendment's proscription against the taking of property without just compensation.

In the wake of Koontz it is clear that a permitting agency's demand for monetary payment or a fee-in-lieu as a condition of development approval must have a "nexus" with the impacts, and that the amount of the exaction must have a "rough proportionality" to the scope of the impact. The County and State agencies charged with issuing development approvals will need to carefully consider whether their fee-in-lieu programs satisfy the minimum requirements of the 5th Amendment. Property owners and developers also have a stronger basis to push back on unreasonable or extortionate demands by permitting agencies which lack the "nexus" and "rough proportionality" required by the 5th Amendment.

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