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## LAW ALERT

### U.S. SUPREME COURT HEIGHTENS CONSTITUTIONAL SCRUTINY OF PROJECT DENIALS BASED ON DEMANDS FOR MONEY

On June 25, 2013, in *Koontz v. St. Johns River Water Management District*, the United States Supreme Court held in a 5-4 decision that a landowner could challenge a project denial based on a government's unconstitutional demands for either money or property and that, to satisfy constitutional requirements, there must be an "essential nexus" and "rough proportionality" between the government's demands and the impacts of the development.

Koontz sought permits from the Water Management District to develop his property, most of which was classified as wetlands. The District and Koontz could not reach agreement on the extent of mitigation needed for the development, and the District asked Koontz to either dedicate more property for wetlands or pay for off-site mitigation. It also invited him to propose other mitigation. Koontz refused to change his initial proposal, and the District denied his application.

The Supreme Court agreed unanimously that if a government agency denies a permit because an owner will not agree to an unconstitutional condition, the owner is entitled to have the condition removed and may be entitled to damages under State law. The justices also agreed that such a denial would not constitute a 'taking' because nothing had been taken from the owner. The five-member majority held, however, that whether or not the project is approved, a

government's demand for *either* property or money from a land-use permit applicant must be evaluated to determine whether it has an "essential nexus" and is "roughly proportional" to the impact of the project, standards established in *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*. Before *Koontz*, the Court had not applied the *Nollan-Dolan* test to demands for money.

#### Implications in California

In California, *Koontz* does not change existing law regarding land use conditions and fees that are imposed individually on a particular development and not based on a generally applicable fee program. In 1996 the California Supreme Court held in *Ehrlich v. Culver City* that "essential nexus" and "rough proportionality" were required to justify both payments of money and dedications of land when they were imposed individually on projects.

What is not resolved is how the courts will treat generally applicable fees, such as traffic impact fees. In California, such fees have traditionally been upheld if they bear a "reasonable relationship" to a development's impact in the "generality or great majority of cases." The *Koontz* majority, however, points favorably to three cases reviewing generally applicable fees that place the burden of proof on the local agency and impose a stricter standard than the "reasonable relationship"

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test. While the methodology actually used in most California impact fee studies meets the standards of "essential nexus" and "rough proportionality," *Koontz* can be expected to result in more litigation regarding fees and other local agency conditions, creating uncertainty regarding agencies' ability to mitigate development impacts and the standards applicable to impact fees.

In addition, the Court's decision may chill discussions between local government and applicants. *Koontz* was allowed to present a claim that "unconstitutional conditions" had been demanded based on suggestions for modifications to a project that was ultimately

denied. If the Water District had simply denied the project outright for failure to meet the District's requirements and had never suggested possible mitigations, its decision would have been reviewed under less exacting legal standards. The Florida courts may still decide that mere suggestions for project changes do not amount to unconstitutional conditions, but cities and counties will understandably be more cautious in offering alternatives to developers.

If you have questions about this case, please feel free to contact Barbara Kautz or any other attorney at Goldfarb & Lipman LLP for more information.



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