

Christopher J. Petrini  
cpetrini@petrinilaw.com

Barbara J. Saint André  
bsaintandre@petrinilaw.com

372 Union Avenue | Framingham, MA 01702  
(Tel) 508-665-4310 | (Fax) 508-665-4313  
www.petrinilaw.com

Peter L. Mello  
pmello@petrinilaw.com

Heather C. White  
hwhite@petrinilaw.com

Christopher L. Brown  
cbrown@petrinilaw.com

July, 2013

**RE: P&A CLIENT ADVISORY (2013:01)**  
**Koontz v. St. Johns River Water Management District, xx U.S. xxx (2013)**

We are writing to advise our public sector clients of Koontz v. St. Johns River Water Management District, 133 S. Ct. 2586 (2013), a recent decision of the United States Supreme Court that overturns a prior decision of the Florida Supreme Court on two issues of takings jurisprudence in the context of local discretionary permits. This blockbuster decision held that exaction of monetary fees as a condition to issuance of such a permit may constitute a taking under the test established in the landmark cases of Nollan v. California Coastal Commission, 483 U.S. 825 (1987), and Dolan v. City of Tigard, 512 U.S. 374 (1994), and that the permitting decision may be subject to such test even if the permit is ultimately denied because the applicant would not agree to negotiate conditions. The Nollan and Dolan cases held that a condition attached to a special permit will be deemed a taking if there is no essential nexus or rough proportionality between the conditions and the projected effects of the proposed development.

At issue in Koontz was a property owner's application to a Florida water management district to fill more than three acres of wetlands to build a shopping center. During the application process, the district indicated that it would grant the permit if the applicant reduced the size of the development or funded a variety of off-site wetlands restoration projects to offset the impacts of the development. The applicant declined to negotiate such conditions, and the permit was denied.

On the applicant's appeal the Florida court ruled that only approvals with conditions, and not outright denials, are subject to the Nollan and Dolan test. Further, the Florida court held that only certain types of conditions are subject to such analysis, namely conditions that invade an interest in some tangible property, such as a requirement to grant an easement as a condition to approval of a development. The United States Supreme Court reversed on both issues, holding that for purposes of the takings analysis there is no meaningful distinction between a decision finding that an application is "allowed if" as opposed to "denied until" conditions are met. The holding shifts the burden to the government to demonstrate a nexus between the monetary exaction and the projected effects of the proposed development.

July, 2013

P&A Client Advisory (2013: 01)

Page 2

This decision will have a significant impact on municipal permitting decisions. For example, a condition requiring a monetary contribution to a wetlands mitigation bank or to fund road improvements will only be permissible if the municipality can demonstrate nexus and proportionality. Municipalities should expect developers to rely on the Koontz decision in challenging any permitting decision that includes a condition requiring payment of fees for the purpose of off-site mitigation. Even outright denials can be subject to such challenges if the permitting authority indicated or attempted to negotiate such fees with the applicant during the hearing process.

Please contact Christopher Petrini or any of the other attorneys at P&A should you have any questions regarding the Koontz decision or the legality of discretionary permit conditions or denials.

Thank you.