

Koontz v. St. Johns Water Management District: The Unconstitutional Conditions Rule Bares Its Teeth



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Inverse Condemnation: General Principles

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Inverse Condemnation – an action or actions by a governmental body – without the formal exercise of the eminent domain power – which constitute a taking without just compensation in violation of the Fifth and Fourteenth Amendments.

Inverse Condemnation: General Principles

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Inverse Condemnation Can Occur as a Result of:

- Physical Invasion:
 - *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982). The Supreme Court invalidated a New York law requiring apartment building owners to permit cable companies to install lines and boxes.
- Land Use Regulation

Inverse Condemnation: General Principles

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Land Use Regulation constitutes a taking without just compensation if it:

- “Goes too far” and deprives the owner of all substantial, beneficial use of the property.
 - *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). The Supreme Court ruled that the redesignation of a property into a coastal “Critical Area” to bar any construction of residential units constituted a taking if the owner had a right to build prior to the redesignation.

Inverse Condemnation: General Principles

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Land Use Regulation (cont'd).

- Lacks a logical nexus to a legitimate governmental purpose
 - There must be an “Essential Nexus” between a legitimate governmental interest and the permit condition exacted.
 - ✦ *Nollan v. California Coastal Comm’n*, 483 U.S. 825 (1987). The Supreme Court found no logical connection between blockage of the view of the Pacific Ocean from U.S. Route 1 and the required dedication of lateral access along the beach.

Inverse Condemnation: General Principles

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Land Use Regulation (cont'd).

- The Government must demonstrate “rough proportionality” between the degree of the exaction and the impact of the proposed development.
 - ✦ *Dolan v. City of Tigard*, 512 U.S. 374 (1994). The government failed to establish rough proportionality for the dedication of a green way and bike path.
 - ✦ *JJM v. Howard County*, 301 Md. 256 (1984). A dedication and construction requirement imposed as part of the land use approval process must be reasonably related to the proposed subdivision. Thus, a requirement that the developer reserve land for a regional State road (Md. Route 175) was unconstitutional.

Koontz Facts

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- Koontz owned a 14.9 acre property near Orlando, Florida near the intersection of two major highways.
- The property was bisected by a high voltage transmission line right of way, and Koontz sought to develop the northern 3.7 acre section.
- The property was impacted by wetlands and required a permit from the Water Management District.
- Koontz proposed extensive SWM improvements to the northern section and to foreclose any possible future development of the 11.2 acre southern section by deeding a conservation easement to the District.

Koontz Facts

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- The District responded by proposing two alternative solutions:
 - Reduce the size of the development to 1 acre and deed a conservation easement over the remaining 13.9 acres to the District.
 - Proceed with development of the 3.7 acres and deed an easement over the remaining 11.2 acres, plus **pay** to replace culverts or fill in ditches on a separate District parcel to enhance approximately 50 acres of wetlands or propose something equivalent.

Koontz

Florida State Court Decisions

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- Trial Court ruled after trial that any further mitigation after dedicating the 11.2 acres lacked the essential nexus and lacked rough proportionality.
- Florida Supreme Court reversed on grounds that:
 - The District denied Koontz's application; thus no taking occurred.
 - A monetary exaction is not subject to scrutiny under *Nollan/Dolan*.

Issues Reviewed By The Supreme Court in Koontz

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- Does the *Nollan/Dolan* Rule apply when the government exercises its discretion to deny a permit to develop a property in a certain way?
- Does the *Nollan/Dolan* Rule apply to monetary exactions?

Short Answers

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- Yes. The Unconstitutional Conditions Rule prohibits a government from conditioning a discretionary approval on an exaction that violates *Nollan/Dolan*.
- The *Nollan/Dolan* Rule applies to the monetary exaction imposed on an individualized and discretionary basis which were at issue in *Koontz*.

Koontz

Unconstitutional Conditions Rule

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- The government cannot deny a benefit to a person because he or she exercises a constitutional right.
- Conditioning a discretionary land use approval on an unconstitutional exaction constitutes a taking, regardless of whether the permit is denied or granted.

Unconstitutional Conditions Rule

- There are two “realities” of the land use regulation process:
 - The first is that land-use permit applicants are especially vulnerable to the type of coercion that the unconstitutional conditions doctrine prohibits because the government often has broad discretion to deny a permit that is worth far more than property it would like to take. By conditioning a building permit on the owner’s deeding over a public right-of-way, for example, the **government can pressure** an owner into voluntarily giving up property for which the Fifth Amendment would otherwise require just compensation. ... So long as the building permit is more valuable than any just compensation the owner could hope to receive for the right-of-way, the owner is likely to accede to the government’s demand, no matter how unreasonable. **Extortionate demands** of this sort frustrate the Fifth Amendment right to just compensation, and the unconstitutional conditions doctrine prohibits them.

Koontz

Unconstitutional Conditions Rule

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- A second reality of the permitting process is that many proposed land uses threaten to impose costs on the public that dedications of property can offset. Where a building proposal would substantially increase traffic congestion, for example, officials might condition permit approval on the owner's agreement to deed over the land needed to widen a public road.

Unconstitutional Conditions Rule Holdings:

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- *Nollan* and *Dolan* accommodate both realities by allowing the government to condition approval of a permit on the dedication of property to the public so long as there is a “nexus” and “rough proportionality” between the property that the government demands and the social costs of the applicant’s proposal. ... Our precedents thus enable permitting authorities to insist that applicants bear the full costs of their proposals while still forbidding the government from engaging in “out-and-out ... extortion” that would thwart the Fifth Amendment right to just compensation.

Unconstitutional Conditions Rule Holdings:

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- The principles that undergird our decisions in *Nollan* and *Dolan* do not change depending on whether the government *approves* a permit on the condition that the applicant turn over property or *denies* a permit because the applicant refuses to do so. We have often concluded that denials of governmental benefits were impermissible under the unconstitutional conditions doctrine. ... In so holding, we have recognized that regardless of whether the government ultimately succeeds in pressuring someone into forfeiting a constitutional right, the unconstitutional conditions doctrine forbids burdening the Constitution's enumerated rights by coercively withholding benefits from those who exercise them.

Unconstitutional Conditions Rule Holdings:

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- “Nor does it make a difference, as respondent suggests, that the government might have been able to deny petitioner’s application outright without giving him the option of securing a permit by agreeing to spend money to improve public lands. ... Virtually all of our unconstitutional conditions cases involve a gratuitous governmental benefit of some kind. ... Yet we have repeatedly rejected the argument that if the government need not confer a benefit at all, it can withhold the benefit because someone refuses to give up constitutional rights.”

Unconstitutional Conditions Rule Holdings:

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- Accordingly, the Supreme Court flatly rejected the argument that government's frequently make that any level of exaction can be imposed provided that the developer agrees to it.
- Thus, even if the context of enhanced density or permitted land uses authorized by a PUD ordinance (which the government does not have to grant), the exactions must satisfy *Nollan/Dolan*.

Room to Maneuver Under the Unconstitutional Conditions Rule

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- “We agree with respondent that, so long as a permitting authority offers the landowner at least one alternative that would satisfy *Nollan* and *Dolan*, the landowner has not been subjected to an unconstitutional condition.”

Room to Maneuver Under the Unconstitutional Conditions Rule

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Meredith v. Talbot County, 80 Md. App. 174 (1989)

- Meredith filed an application to subdivide a farm into 10 waterfront lots in the Miles River in Talbot County.
- Pursuant to the Interim Funding Requirement in the Critical Area Law, the County denied subdivision approval for four of the lots on grounds that a Bald Eagle nest was located on the farm and no development activity could occur within 100 feet of it.
- This denial was not a taking because the developer was not deprived of all the beneficial uses of the whole property.

Room to Maneuver Under the Unconstitutional Conditions Rule

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Meredith (cont'd)

- For tax reasons, Meredith requested the County to grant subdivision approval subject to a restriction that the lots were unbuildable so that he could donate them to the Nature Conservancy.
- Meredith then attempted to sue on grounds that the restrictions on the subdivided lots constituted taking.
- The Circuit Court and the Court of Special Appeals ruled that the denial of subdivision approval did not constitute a taking because the property owner had voluntarily agreed to the restriction after a constitutional restriction had been imposed.

Room to Maneuver Under the Unconstitutional Conditions Rule

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Charles County Landfill Case

- In a 1972 PUD ordinance, St. Charles, the developer of the St. Charles Communities PUD in Charles County agreed to establish a landfill prior to the issuance of 600 building permits and to provide for the solid waste disposal needs of the PUD throughout the life of the community.
- St. Charles was unable to establish a permitted landfill site by the time the 600 building permits were issued and requested the County to amend the PUD ordinance to permit it to satisfy its landfill obligation by dedicating a fully permitted, 100 acre landfill site to the County at no cost. The landfill was to be used to serve the entire County as a replacement for the existing landfill.

Room to Maneuver Under the Unconstitutional Conditions Rule

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Charles County Landfill Case (cont'd)

- St. Charles proceeded to obtain the required permits for a 100 acre site and then refused to dedicate the site to the County on grounds that the exaction was not roughly proportional to the impact of the St. Charles PUD.
- The Court of Special Appeals rejected the argument on grounds that the original landfill requirement was roughly proportional and St. Charles voluntarily agreed to the modification.

The Application of *Nollan/Dolan* to Monetary Exactions

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Supreme Court ruled that the *Nollan/Dolan* rule applied to the monetary exaction imposed by the Water Management District.

Summary of Analysis:

- *Nollan/Dolan* rules apply to the individualized and discretionary exaction imposed in the regulatory process at issue in the case before the Court.
- *Nollan/Dolan* rules do not apply to taxation.
- The Supreme Court knows taxation when it sees it.

Tax v. Fee Distinction

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Home Builders Ass'n of Mississippi, Inc. v. City of Madison, 143 F.3d 1006, 1011 (5th Cir. 1998)

- The Fifth Circuit ruled that a \$700 per residential unit impact fee imposed by the City was a tax for purposes of the Tax Injunction Act and thus a lawsuit in federal district court challenging the impact fee must be dismissed.

Tax/Fee Distinction:

- “Distinguishing a tax from a fee often is a difficult task. Indeed, the line between a ‘tax’ and a ‘fee’ can be a blurry one. Workable distinctions emerge from the relevant case law, however: the classic tax sustains the essential flow of revenue to the government, while the classic fee is linked to some regulatory scheme. The classic tax is imposed by a state or municipal legislature, while the classic fee is imposed by an agency upon those it regulates. The classic tax is designed to provide a benefit for the entire community, while the classic fee is designed to raise money to help defray an agency’s regulatory expenses.”

Tax v. Fee Distinction

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Eastern Diversified Properties, Inc. v. Montgomery County,
319 Md. 45, 55 (1990)

- Montgomery County imposed a development impact fee for roads which was based on a formula which determined each building permit applicant's pro rata share of the capital costs of roads necessary to serve new development.
- County had broad authority to impose the impact fee as a tax, but did not rely on it. Instead, the County argued that the impact fee was a regulatory fee that the County had authority to impose as part of its power to regulate land use.
- Court of Appeals ruled that the County's impact fee was a tax and express legislative authority is required for the County to impose a tax.

Tax v. Fee Distinction

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Eastern Diversified (cont'd)

- The “purpose of the enactment governs rather than the legislative label.” Quoting *Campbell v. City of Annapolis*, 289 Md. 300, 305 (1981).

Tax v. Fee Distinction

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Eastern Diversified (cont'd)

- “A regulatory measure may produce revenue, but in such a case the amount must be reasonable and have some definite relation to the purpose of the Act. Quoting *Theatrical Corp. v. Brennan*, 180 Md. 377, 381-82 (1942).
- “A revenue measure, on the other hand, may also provide for regulation, but if the raising of revenue is the primary purpose, the amount of the tax is not reviewable by the courts.” *Id.*

Tax v. Fee Distinction

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Eastern Diversified (cont'd)

- Montgomery County Impact Fee was a tax because:
 - The “primary and predominant purpose of the enactment of the development impact fee is to raise revenue, regardless of what incidental regulatory effect the imposition of the fees may have on development in the County.” *Id.* 319 Md. At 54-55.
 - The “principal purpose [of the impact fee] is not regulation of development, but to generate revenue to build roads.” *Id.* 319 Md. At 55.

Tax v. Fee Distinction

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Waters Landing, L.P. v. Montgomery County, 337 Md. 15, 39-40 (1994)

- After the *Eastern Diversified* decision, Montgomery County sought to defend its impact fee on a different basis.
- Under Chapter 808 of the Laws of 1963, the County, with certain exceptions, was delegated general taxing power to the same extent as the State.

Tax v. Fee Distinction

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Waters Landing (cont'd)

- In Chapter 707 of the Laws of 1990, the General Assembly confirmed and ratified retroactively the County's authority to impose development impact fees as a tax.
- The Court of Appeals ruled that the County had authority to impose the impact fees.
- The Court also ruled that the *Nollan/Dolan* standard did not apply to the County's impact fees.

Tax v. Fee Distinction

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Waters Landing (cont'd)

Rationale:

- Impact fees were legislatively imposed on certain areas of the County in amounts established by the legislature and were not imposed on an adjudicative basis as part of the permit process.

Tax v. Fee Distinction

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Ehrlich v. City of Culver, 911 P.2d 429 (Cal. 1996)

- A developer sought a permit to redevelop a property used as a sports complex (swimming pools, tennis courts, racquet ball courts and fitness center) into an office complex.

Tax v. Fee Distinction

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Ehrlich (cont'd)

- A developer sued for a writ of mandate to set aside two fees imposed by the City in the regulatory process.
- Recreation Fee: A \$280,000 fee imposed on a discretionary and individualized basis to replace in part the “lost” recreational facilities.
- Art Fee: Commercial projects over \$500,000 required to provide art work or pay a fee equal to 1% of the project.

Tax v. Fee Distinction

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Ehrlich (cont'd)

The California Supreme Court ruled that the *Nollan/Dolan* rule applied to the recreation fee, but not to the art fee.

- Recreation fee was imposed on an individualized and discretionary basis by the land use regulation and thus *Nollan/Dolan* applied.
- Art fee was legislatively imposed on all commercial development at a rate of 1% and thus not subject to *Nollan/Dolan*.