

# POST-KOONTZ EXACTIONS

**Land Use Planning Conference  
March 26, 2015**

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*Koontz v. Johns River Water Management District*, 570 U.S. \_\_\_\_, 133 S. Ct. 2586 (2013)

- Whether *Nollan/Dolan* exactions requirements must be satisfied when a government demands property from a land-use permit applicant when (1) the permit is denied and, hence, no property is taken through an exaction, or (2) money is demanded as a condition of development approval, rather than a requirement to dedicate real property.
- Court answered both questions in the affirmative.

## Foundational Principles

- “[N]or shall private property be taken for public use, without just compensation.” U.S. Const. amend. V (the Federal Takings Clause).
- “No person’s property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person....” Tex. Const. art. I, § 17.

## Overview of Takings Claims



There are three basic categories of takings claims recognized by the U.S. Supreme Court and the Texas :

1. Physical occupations;
2. Compelled dedications or exactions; and
3. Regulatory takings.

## Physical Occupations

- The United States Supreme Court has determined that the first category, a physical invasion or a regulatory activity that produces a physical invasion, will support a takings claim without regard to the public interest advanced by the regulation or the economic impact upon the landowner.
- Categorical rule.



## Compelled Dedications - Exactions

- The second category of takings claims is found where an exaction, such as a required dedication of land, is made a condition of development approval.
- Non-categorical rules.
- Involves measurements of means and ends, *i.e.*, “essential nexus” and “rough proportionality.”

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First appeared as part of the conference materials for the  
19<sup>th</sup> Annual The Land Use Conference session  
"Post-Koontz Exactions"