Last week the U.S. Supreme Court granted review in a potentially-important regulatory takings case, bringing to two the number of Takings Clause disputes on the justices' docket this Term. The newly-granted case, *Koontz v. St. Johns River Water Management District*, No. 11-1447, involves the question of whether a government-imposed condition on its approval of a private development project is compensable under the Takings Clause.

In *Koontz*, a private landowner had sought local agency approval to develop his Florida property, a substantial portion of which constituted wetlands. District officials indicated they were willing to authorize the project, but only if Koontz agreed to fund offsite mitigation efforts in exchange for the permit. Koontz refused and instead sued the District, claiming that the demanded exaction violated his private property rights under the U.S. Supreme Court's so-called "*Nollan/Dolan*" test.

In its 1987 *Nollan v. California Coastal Commission* decision, the Court held that a government-imposed land use condition must have an "essential nexus" to the project under review–i.e., that the condition serve the same government purpose as would outright denial of the project under review. Five years later, in *Dolan v. City of Tigard*, the justices expanded upon their *Nollan* precedent to further require that the demanded exaction be "roughly proportional" to the projected, adverse impacts associated with the proposed project under review.

In *Koontz*, the Florida Supreme Court held that the landowner's *Nollan/Dolan*-based takings claim failed for two reasons: first, the claimed unconstitutional exaction was never actually imposed, inasmuch as Koontz rejected the District's demand and instead filed suit to challenge the exaction. Second, said the Florida Supreme Court, the *Nollan/Dolan* rule only applies to compelled exactions of *real* property (i.e., land), not to monetary conditions such as the District had sought from Koontz. (On this latter question, lower federal and state courts have reached contrary conclusions.) Last week the U.S. Supreme Court granted certiorari on both of those issues.

Two interesting footnotes concerning the *Koontz v. St. Johns* case: first, the landowner is represented by the Pacific Legal Foundation, a conservative public interest group that was on the winning side in the 1987 *Nollan* case, as well as in another important property rights victory handed down by the justices this past year in *Sackett v. USEPA*. Additionally, Koontz is the second regulatory takings case from the Florida Supreme Court that the justices have chosen to review in just the past two years: in 2010, the U.S. Supreme Court decided *Stop the Beach Renourishment v. Florida Department of Natural Resources*, 130 S.Ct. 2592, ultimately ruling in favor of the State of Florida and against the private beachfront property owners in that case.

A preliminary review of the lower court decisions and Supreme Court briefs at the petition stage in *Koontz* suggests that the property owner may well fare better than did his counterparts in *Stop the Beach Renourishment*. The facts from petitioner Koontz's point of view appear quite favorable; PLF can be expected to represent him vigorously and well; and this is a Court that in recent years has shown considerable sympathy to property owners asserting rights under the Takings Clause.

Also last week, the Supreme Court heard oral arguments in the other takings case on its docket this Term: *Arkansas Game and Fish Commission v. United States*, No. 11-597. The issue in that case, previously profiled here at Legal Planet, is whether frequent but intermittent flooding of downstream property by a federally-operated dam and reservoir project should be viewed as a compensable taking under the Fifth Amendment or, alternatively, as simply a common law tort actionable under the federal Tucker Act. Last week's oral arguments in the case were inconclusive, with the justices not tipping their hand as to their likely ruling. (The transcript of the October 3rd arguments in *Arkansas Game and Fish Commission* can be accessed here.)

The Rehnquist Court was focused on–some would say obsessed with–the Takings Clause, deciding an average of over one takings case a year from 1978 through 2005. Until this Term, the Roberts Court appeared relatively less enamored with the Takings Clause, preferring to decide environmental cases raising statutory rather than constitutional questions. The two property rights cases on the justices' docket this Term, however, suggest that the Court's interest in Takings Clause jurisprudence is flourishing once again.