In the development approval process, governments commonly require a dedication of real property to mitigate adverse impacts. But what if the request is for cash or for services? What if the request is unreasonable, and the landowner cannot use the property?

Land use lawyers and urban planners wonder whether these questions will be answered now that the United States Supreme Court has granted review of *Koontz v. St. Johns River Water Management District,* No. 11-1447 (cert. granted Oct. 5, 2012). In what could be the most important land use decision in years, *Koontz* questions common bargaining practices that governments use when negotiating development permits.

An exaction is a government requirement to donate something in exchange for the right to develop property. Generally, the government cannot force landowners to give up the right to exclude others from property in return for the ability to develop it. It can, however, require mitigation of adverse development impacts.

Koontz could draw into question common bargaining practices by governments when negotiating development permits.

If the mitigation involves access to real property, there must be an "essential nexus" and a "rough proportionality" between the exaction and the interest that the exaction is advancing. *Dolan v. Tigard,* 512 U.S. 374, 391 (2005); *Nollan v. Cal. Coastal Com.,* 483 U.S. 825, 837 (1987). Otherwise, the government must pay just compensation because the landowner has lost the ability to exclude others from the property.

In *Koontz*, the government agreed to issue a permit if the landowner would work on government-owned culverts and canals seven miles away. The landowner refused, and the government denied the permit. When the landowner brought an inverse condemnation suit, the trial court and the Fifth DCA found the exaction illegal. The Florida

Continued on page 43

FLORIDA ONCE AGAIN ON THE FOREFRONT OF TAKINGS LAW

Continued from page 42

Supreme Court reversed, holding that the Nollan-Dolan test applied only to exactions of real property, where a permit was actually issued imposing the onerous exaction. *St. Johns River Water Management District v. Koontz,* 77 So. 3d 1220 (Fla. 2011).

Now, the landowner asks the United States Supreme Court if exactions law applies beyond real property. That is, can the government make unreasonable requests for money and for work, when it cannot for property? Second, the landowner asks whether a taking can occur when a permit is denied because an applicant rejects an illegal exaction. In other words, does the landowner have to accede to an unreasonable exaction in order to challenge it? This latter question is the more problematic for governments because it could increase their exposure to takings litigation and limit a lucrative funding source.

These days, Florida is a hotbed of property rights litigation. Three years ago, Florida was defending its beach renourishment program before the United States Supreme Court. *Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection,* 130 S. Ct. 2592 (2010). That case broke new ground when a plurality of justices acknowledged that a court can take property, just as the legislative and executive branches can. Will Florida again be on the forefront of takings law?

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LEADERSHIP INSTITUTE

The 2012-2013 HCBA Leadership Institute kicked off the year with a boat tour of the Port of Tampa on October 10, 2012. The institute's first module was led by Major Sherri Ohr, co-chair of the Leadership Institute. HCBA Board Liaison Carter Andersen and Jeff Armstrong of The Bank of Tampa, the institute sponsor, also participated.

PAST PRESIDENTS LUNCHEON

The HCBA held its annual luncheon for its past presidents on Tuesday, December 11, 2012, at the Chester H. Ferguson Law Center. Twenty-one past presidents and current HCBA President Bob Nader attended.