

IMPLICATIONS OF KOONTZ V. ST. JOHNS RIVER WATER MANAGEMENT DISTRICT TO FLOODPLAIN AND WETLAND MANAGERS



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Wetland Conditions Potentially Impacted

- Conditioning wetland permits upon compliance with federal and state water quality standards including the “non degradation” goal.
- Conditioning wetland regulatory permits upon wetland restoration, creation, or preservation to achieve a no net loss goal.
- Conditioning wetland permits upon payment of fees in lieu of restoration, creation, or preservation.
- Conditioning wetland permits upon compliance with water quality standards including the “non degradation” goal.
- Conditioning wetland regulatory permits upon protection of endangered species.
- Conditioning wetland regulatory permits upon protection of historical, archaeological, and religious sites.
- Conditioning wetland regulatory permits upon measures to reduce climate change.

Floodplain Conditions Potentially Impacted

- Conditioning floodplain regulatory permits upon protection of floodways.
- Conditioning floodplain regulatory permits upon payment of stormwater fees.
- Conditioning floodplain regulatory permits upon landowners agreement to elevate structures.
- Conditioning floodplain regulatory permits upon landowners agreeing to construct dikes dams, levees.
- Conditioning floodplain regulatory permits upon landowners agreeing to establish flood and erosion set-backs.
- Conditioning water quality permits upon installation of pollution control facilities.

Conditioning floodplain regulatory permits upon provision of adequate access during flooding.

Implications of the Decision

The decision will likely

- Cause a great deal of confusion amongst the regulator and regulated community.
- Increase regulator outright denial or outright, unconditional issuance of permits.
- Slow regulator approval and increase backlog of permits because regulatory agencies may now require more time to provide the factual base necessary to demonstrate an “essential nexus” and “rough proportionality”.
- Reduce the willingness of agencies to let developers reduce project impacts through mitigation or monetary contributions.
- Reduce the willingness of agencies to negotiate on permit applications.
- Reduce the use of “fees in lieu” because such fees will now be subject to demonstration of a “essential nexus” and rough “proportionality”.
- Reduce the use of mitigation banks because compensation ratios will now be subject to demonstration of “essential nexus” and “rough proportionality”.

Measures To Reduce Potential Legal Problems

- Educate staff with regard to the content and requirements of Koontz.
- Treat permits as even-handedly as possible. Courts are sensitive to discrimination and are more likely to hold a regulation a taking if there is a hint of discrimination.
- Develop and adopt blanket conditions with clear “nexus” and “rough proportionality” to regulatory goals rather than depend fully upon case by case establishment of conditions.
- Adopt and implement a “no net loss” regulatory standard for wetlands and a “no adverse impact” standard for floodplain regulations.
- Require that landowners and their consultants suggest to the regulatory agency, at least on a preliminary basis, what conditions would have an “essential nexus” to regulatory goals and would represent a “rough proportionality” in achieving a no net loss goal or no adverse impact goal.

Thanks!
MANY UNCERTAINTIES REMAIN



“Reality Continues to Ruin My Life”

