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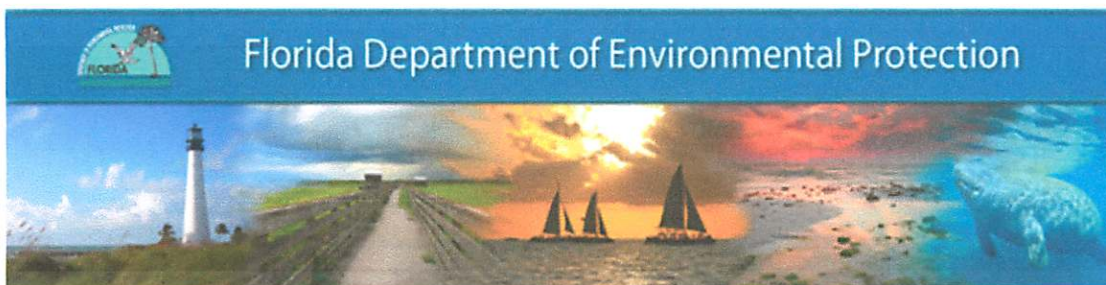
**From:** Diane Salz <disalz@yahoo.com>  
**To:** Richard Owen <richardowen@wrwsa.org>  
**Cc:** Nancy Smith <nsmithnhs@aol.com>  
**Subject:** Fwd: STATEMENT FROM DEP SECRETARY HERSCHEL T. VINYARD JR. REGARDING EPA ACTION TODAY ON NUMERIC NUTRIENT CRITERIA  
**Date:** Fri, Jun 28, 2013 5:51 pm

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Sent from my iPhone

Begin forwarded message:

**From:** "Florida Department of Environmental Protection" <[FloridaDEP@public.govdelivery.com](mailto:FloridaDEP@public.govdelivery.com)>  
**Date:** June 28, 2013, 5:33:34 PM EDT  
**To:** [disalz@yahoo.com](mailto:disalz@yahoo.com)  
**Subject:** STATEMENT FROM DEP SECRETARY HERSCHEL T. VINYARD JR. REGARDING EPA ACTION TODAY ON NUMERIC NUTRIENT CRITERIA  
**Reply-To:** [FloridaDEP@public.govdelivery.com](mailto:FloridaDEP@public.govdelivery.com)



**FOR IMMEDIATE RELEASE: June 28, 2013**

**CONTACT:** DEP Press Office, 850.245.2112, [DEPNews@dep.state.fl.us](mailto:DEPNews@dep.state.fl.us)

## **STATEMENT FROM DEP SECRETARY HERSCHEL T. VINYARD JR. REGARDING EPA ACTION TODAY ON NUMERIC NUTRIENT CRITERIA**

**TALLAHASSEE**– Today, DEP's implementation plan for Florida's nutrient criteria were approved by the U.S. Environmental Protection Agency. EPA also filed a motion in the federal court to amend the Consent Decree to reflect its determination that further federal rulemaking is unnecessary given DEP's rulemaking efforts.

Florida continues to fulfill the obligations reached in the path forward agreement in March to eliminate the need for continued dual rulemaking and secure the foundation for a singular, state-led solution for the state of Florida. The Department continues to set numeric nutrient criteria for virtually all waterbodies in the State furthering our position as a national leader in the adoption of these important standards.

We are gratified by the EPA's actions today which set us on a path to having effective, comprehensive numeric limits for our state waters. This action marks a significant step forward in protecting and restoring water quality across the state.

It is important to move past the rulemaking and into implementation because that is when change occurs to address our nutrient challenge in the state. DEP, especially our dedicated staff scientists, and EPA have been working diligently to position us as



the only state in nation with comprehensive criteria set for all rivers, streams, lakes, springs, estuaries, and coastal waters. I am very proud of their efforts.

This is another example of how the environment wins when the hard work of scientists at DEP and EPA -- and not costly litigation -- improves Florida's water.

**Background:**

In March 2013, the Florida Department of Environmental Protection and the U.S. Environmental Protection Agency reached an agreement to continue the protection of Florida's waterways from excess nitrogen and phosphorus pollution. This agreement, once implemented and completed, will be coupled with EPA's prior approval in November of the Department's adopted water quality standards. The result will be Florida having numeric nutrient standards for lakes, streams springs, estuaries and coastal waters, and all but nearly 1 percent of these waterways in the state.

In November 2012, EPA approved Florida's numeric nutrient criteria for lakes, rivers, streams and springs, as well as estuaries from Clearwater Harbor to Biscayne Bay and the Florida Keys.

Late last year DEP adopted numeric nutrient criteria for Panhandle estuaries.

Earlier this month, the Environmental Regulation Commission unanimously approved numeric nutrient criteria for an additional 18 estuaries and 448 miles of open coastal waters, which includes the Loxahatchee River, Lake Worth Lagoon, Halifax River, Guana River/Tolomato River/Matanzas River, Nassau River, Suwannee River, Waccasassa River, Withlacoochee River, and Springs Coast (Crystal River to Anclote River). The action means the Florida Department of Environmental Protection has set rigorous nutrient criteria for more than 3,900 of the state's estimated 4,290 coastal miles of estuaries, or 91 percent coverage.

State legislation also required under this agreement was recently signed into law by Governor Rick Scott. This legislation requires the Department to complete its nutrient criteria rulemaking for remaining estuaries and coastal waters by Dec. 1, 2014, and establishes interim nutrient standards for those remaining waters until then. The legislation further provides that state criteria will go into full effect when EPA withdraws all federal nutrient criteria rulemaking in Florida.

Data collection and analysis continues for the remaining nine percent of the estuaries, mostly in the Big Bend area of the state.

Florida taxpayers have invested millions of dollars to create the nation's most comprehensive rules controlling nutrients. These rules account for the diversity and complexity of Florida's waters and afford local communities and private interests the tools essential to cleaning up and protecting rivers, lakes, estuaries, and springs. The Department is committed to working with affected stakeholders to finish the job.

For a copy of EPA's court filings, visit:

<http://www.dep.state.fl.us/secretary/news/2013/06/424main.pdf>

For more information, visit <http://www.dep.state.fl.us/water/wqssp/nutrients>.

**From:** Diane Salz <disalz@yahoo.com>

**To:** Richard Owen <richardowen@wrwsa.org>

**Cc:** Nancy Smith <nsmithnhs@aol.com>

**Subject:** Fwd: GOVERNOR SCOTT SIGNS AGREEMENT WITH THE GULF CONSORTIUM TO IMPLEMENT RESTORE FUNDING

**Date:** Fri, Jun 28, 2013 11:54 am

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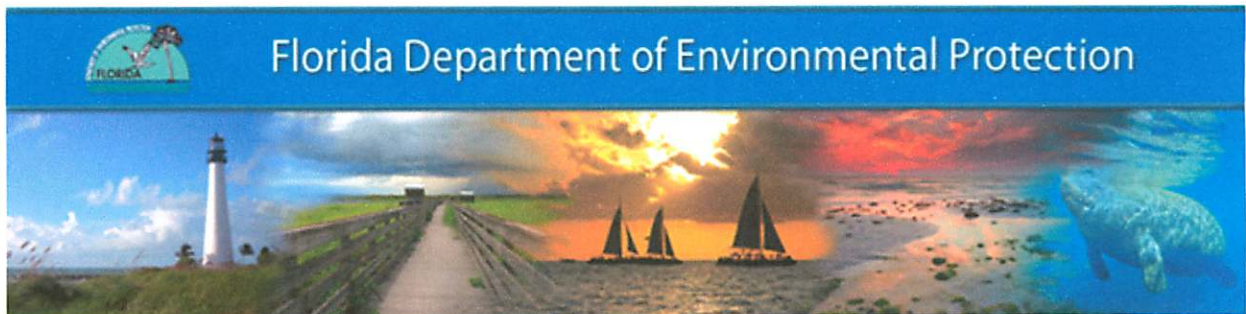
**From:** "Florida Department of Environmental Protection" <[FloridaDEP@public.govdelivery.com](mailto:FloridaDEP@public.govdelivery.com)>

**Date:** June 28, 2013, 11:11:02 AM EDT

**To:** [disalz@yahoo.com](mailto:disalz@yahoo.com)

**Subject:** GOVERNOR SCOTT SIGNS AGREEMENT WITH THE GULF CONSORTIUM TO IMPLEMENT RESTORE FUNDING

**Reply-To:** [FloridaDEP@public.govdelivery.com](mailto:FloridaDEP@public.govdelivery.com)



**FOR IMMEDIATE RELEASE: June 28, 2013**

**CONTACT:** [media@eog.myflorida.com](mailto:media@eog.myflorida.com) 850.717.9282

## **GOVERNOR SCOTT SIGNS AGREEMENT WITH THE GULF CONSORTIUM TO IMPLEMENT RESTORE FUNDING**

~The agreement marks significant progress in maximizing funds coming to Florida~

**TALLAHASSEE** –Governor Rick Scott today announced that he has signed a Memorandum of Understanding with the Gulf Consortium to create a process to develop Florida’s State Expenditure Plan for RESTORE funding.

Governor Scott said, “We need to do everything in our power to make Florida communities impacted by the BP oil spill whole again – and I’m pleased to work with the Gulf Consortium to develop projects for the State Expenditure Plan. Development of a comprehensive and thoughtful plan will ensure that Florida moves towards environmental and economic recovery of the Gulf.”

"This agreement with the Governor provides us with the opportunity to fully coordinate the collective efforts of all levels of government to restore and protect



Florida's gulf waters," said Grover Robinson, Escambia County Commissioner and Gulf Consortium Chairman. "The Gulf Consortium is ready to get to work on a transparent plan that will best enhance the economic and environmental recovery of our coastal communities and the state of Florida."

The agreement lays the groundwork for the Gulf Consortium to work with Governor Scott to ensure that funding sources related to the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) are maximized when developing a long term restoration plan for Florida. Key provisions of the Agreement established a streamlined process for review, certification by the Governor, and ultimate submission of projects and programs included in the State Expenditure Plan to the Gulf Coast Ecosystem Restoration Council.

The RESTORE Act, which was passed by Congress on June 29, 2012, creates the Gulf Coast Ecosystem Restoration Council, and establishes various funding categories. The RESTORE Act will be funded by Clean Water Act civil and administrative penalties paid by responsible parties from the Deepwater Horizon oil spill. The Council is comprised of the five Gulf State Governors and six federal agencies. In Florida the 23 Gulf Coast Counties (Gulf Consortium) are tasked with creating the State Expenditure Plan, which can include both economic and environmental restoration projects

#### About the Florida Department of Environmental Protection

The Florida Department of Environmental Protection is the state's principal environmental agency, created to protect, conserve and manage Florida's environment and natural resources. The Department enforces federal and state environmental laws, protects Florida's air and water quality, cleans up pollution, regulates solid waste management, promotes pollution prevention and acquires environmentally-sensitive lands for preservation. The agency also maintains a statewide system of parks, trails and aquatic preserves. To view the Department's website log on to [www.dep.state.fl.us](http://www.dep.state.fl.us).

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SWFWMD RESTORE Act Proposals - Summary Table

Project Title	Region	County	Description	Project Manager	Funding Requested
Coral Creek Ecosystem Restoration on the Cape Haze Peninsula, Florida	Charlotte Harbor	Charlotte	Phase II of this project encompasses a ~400 acre portion of the site which will involve the restoration and/or enhancement of historic wetland hydroperiods, removal of exotic plant species, and the creation of palustrine wetlands.	Stephanie Powers	\$ 900,000
Lemon Bay Habitat Restoration Project In Englewood, Florida	Charlotte Harbor	Charlotte	Design, permitting, and construction of a habitat restoration project at the 80-acre Wildflower Preserve in Charlotte County. Purpose is to improve natural systems and water quality.	Stephanie Powers	\$ 500,000
Alligator Creek Habitat Restoration Project Phase III In Punta Gorda, Florida	Charlotte Harbor	Charlotte	Hydrologic restoration of approximately 677 acres of freshwater and saltwater wetland and saltwater areas. The Alligator Creek project is located on a 1,600-acre site that is owned by the Florida Department of Environmental Protection (FDEP) and is located south of Punta Gorda abutting Charlotte Harbor. Restoration is being performed in phases based on available funds. The current phase, Phase III, includes construction of Projects 5, 6, 8, 13 and 14, which were identified in an overall site feasibility study completed in 2000. The current project phase will restore approximately 77 acres of coastal ecosystems through hydrologic restoration of mosquito ditches and removal of exotic plant species.	Stephanie Powers	\$ 500,000
Chassahowitzka Spring Dredging Restoration Phases I and II	Springs Coast	Citrus	Dredge and fill activities in the 1960's in the Chassahowitzka area caused excessive sediment transport from residential canals to the headsprings. Central sewer has been provided to alleviate nutrients to the system from Phase I of the restoration project consists of the suction dredge removal of 3,800 cy for the Chassahowitzka Headsprings complex. Phase II consists of the suction dredge removal of 1,500 cy or sediment from an upstream turn basin. Removal of sediments in the turn basin will keep the sediments from entering the springs and the turn basin will serve to act as a sediment sump to capture and hold sediments thereby eliminating the possibility that they are transported to the springs.	Veronica Crow	\$ 1,247,800
Hunter Springs Water Quality Improvement Project	Springs Coast	Citrus	The purpose of this project is to expand an existing water quality treatment area at the intersection of NE 2 <sup>nd</sup> Street and NE 3 <sup>rd</sup> Avenue in Crystal River and to dredge and remove accumulated sediment adjacent to the outfall. The proposed project would relocate the force main and expand the pond to the maximum size possible on the site. The expansion equates to a 40% increase in volume, which represents a significant increase in treatment capacity. The dredging project will remove accumulated sediment adjacent to the outfall pipe from the water quality treatment area.	Veronica Crow	\$ 354,083
City of Crystal River to Progress Energy Reclaimed Water Project	Springs Coast	Citrus	This multi-year project includes the construction of transmission mains, storage and pumping infrastructure necessary to provide treated wastewater effluent to the Progress Energy Power-Generation Complex in Citrus County, in lieu of using potable quality groundwater within that system. The project includes a 16-inch transmission pipeline approximately 42,000 feet to transport reclaimed water from the City's current spray-field operation located on County Road 495 to the boundary line of the PE complex, located west of Highway 19. This project will offset 750,000 Gallons Per Day of groundwater.	Veronica Crow	\$ 6,233,884
Homosassa Springs Aquatic Ecosystem Restoration	Springs Coast	Citrus	The restoration work entails a two phase restoration project. Phase I- removal of accumulated organic sediments from the spring run within the Homosassa Springs Wildlife State Park (the Park), the Blue Waters area of the Homosassa River, and Mitten Cove. The accumulated sediments reduce water clarity and water quality when disturbed and do not provide a suitable substrate for the establishment and regeneration of desirable submerged aquatic vegetation (SAV). Additionally, manatees are hindered from accessing of the spring run during low water conditions. Phase II- establishment of SAV communities by replanting vegetative mats throughout Mitten Cove. After planting, Mitten Cove will be fenced off for two years to allow for growth of SAV mats. The Park has made considerable accomplishments in eliminating the sources of sediments accumulating in the spring run. Over 2000 feet of lime rock and gravel walkways in the floodplain of the spring run have been removed, and replaced with elevated walkways. Low berms and native vegetation have been established along the banks of the spring run to capture and attenuate stormwater run-off from the park.	Veronica Crow	\$ 862,447

SWFWMD RESTORE Act Proposals - Summary Table

Project Title	Region	County	Description	Project Manager	Funding Requested
Kings Bay Park Lagoon Restoration	Spring Coast	Citrus	This pilot project includes removal of accumulated sediments/algae and replanting of native aquatic vegetation in a lagoon adjacent to King's Bay Park. Currently, the lagoon is heavily impacted by accumulated organic detritus and filamentous algae and has little to no submerged aquatic vegetation. The lagoon is directly connected to King's Bay – an Outstanding Florida Water. Due to the close proximity between the lagoon and the publicly owned park, the high profile of the park and the ability to restrict access to the lagoon without impeding navigation, this is an ideal location for a pilot natural systems restoration project. Upon conclusion of sediment/algae removal, a fence will be installed to exclude manatees and the restored lagoon will be revegetated with native submerged and emergent plant species. The exclusion will be maintained for 2 years to ensure survival and colonization of the lagoon by the restored vegetation. If successful, these methods could be applied to larger restoration areas in other parts of Kings Bay.	Veronica Craw	\$ 708,125
Homosassa Springs-Pepper Creek Restoration	Spring Coast	Citrus	The restoration work will address water quality degradation of Pepper Creek, a tributary of the Homosassa River. The degraded water quality of Pepper Creek is the result of untreated stormwater entering the Creek from residential and commercial development in the contributing watershed. The project will include a feasibility and alternatives analysis to identify several stormwater retrofit projects to address untreated stormwater entering the Creek. The alternatives analysis will be followed by design and environmental permitting and construction of several stormwater retrofit projects. The projects will be prioritized based on those that have the highest contribution of nutrients and other pollutants to the Creek.	Veronica Craw	\$ 375,000
Project COAST-Water Quality Monitoring (Hernando, Citrus, Levy & Pasco Counties)	Spring Coast	Pasco, Hernando, Citrus, and Levy	Project COAST - North began in 1996 and involves a monitoring program extending from the Withlacoochee River to the Weeki Wachee River. This project represents an extension of an existing water quality monitoring program for the Spring Coast region that provides information on the health of the coastal springs, rivers and estuary. Earlier agreements provided for monitoring from 1996 - 2011. Because historical data for the coastal areas of Pasco County were lacking, Project COAST was expanded southward along the coast of Pasco County in FY2000. This project uses all data that have been collected over the life of Project COAST to examine the status and trends in water quality throughout the coastal areas of Citrus, Hernando, Levy, and Pasco counties. The University of Florida will collect monthly samples at a total of ninety fixed stations in the nearshore waters along the coasts of Weeki Wachee, Chassahowitzka, Homosassa, Crystal, Withlacoochee Rivers and Pasco County for total nitrogen, total phosphorus, total chlorophyll, Secchi depth, light attenuation, color, temperature, dissolved oxygen, and salinity.	Veronica Craw	\$ 2,267,992
Spring Coast Seagrass Mapping Project	Spring Coast	Citrus, Hernando, Levy	The objective of this project is to map seagrass using a combination of aerial photography and on the ground verification. Aerial photography was acquired in 2007 and 2012 with plans to re-acquire in 2016/2017. In 2011, the coverage area was approximately 1,304 square miles and produced 1,454 digital photographs. This project creates an invaluable tool that will (a) quantify existing conditions, (b) track long-term ecological changes in seagrass distribution, and (c) accurately assess impacts due to natural and man-made disasters such as hurricanes and oil spills. Deliverables for this project include: one-foot digital orthophotos, a seamless mosaic of all frames, seagrass map shape files, and a change analysis comparing the 2007 map with the 2012 map. Release date of the 2012 seagrass map will be in early 2013.	Veronica Craw	\$ 1,000,000
Three Sisters Springs Wetland Treatment Project	Spring Coast	Citrus	Construction and management of a stormwater treatment wetland to be constructed on the Three Sisters Springs property. The treatment wetland will intercept stormwater from more than 100 acres of commercial and residential land within the City of Crystal River, improving the water quality of these waters before they discharge into Kings Bay. The Three Sisters property is co-owned by the District and the City of Crystal River, and will be managed by the US Fish and Wildlife Service. In addition to the treatment wetland, the property will also be used for recreation, education, and the protection of endangered manatees.	Veronica Craw	\$ 862,624
Weeki Wachee Springs State Park Canoe Launch Road stabilization and expansion	Spring Coast	Hernando	Removal of existing limestone/shell base road and construction of a 16' wide by 300' in length, porous paver road with a turnabout lane. Current roadway is susceptible to erosion and subsequent deposition of sediments directly into the spring head.	Veronica Craw	\$ 165,760

SWFWMD RESTORE Act Proposals - Summary Table

Project Title	Region	County	Description	Project Manager	Funding Requested
Weeki Wachee Springs Stormwater Catchment and Capture	Springs Coast	Hernando	Phase I- Construction of a stormwater catchment area and an under drain system to capture silt laden runoff, ensure adequate infiltration and prevent deposition of runoff into the springhead. Phase II- Downspout and gutter installation and redirection to rainbarrels for landscape irrigation.	Veronica Craw	\$ 81,180
Rock Ponds Ecosystem Restoration Project	Tampa Bay	Hillsborough	The Rock Ponds Ecosystem Restoration Project is a collaborative effort between the SWIM Program of the SWFWMD and the Hillsborough County Resource Management Section of their Parks, Recreation, and Conservation Department. This project will be the largest single coastal ecosystem project ever performed for Tampa Bay: the creation/restoration/enhancement of 1043 acres of various estuarine, freshwater, and upland habitats. The project emphasizes low salinity habitats, sheetflow restoration, freshwater wetlands, and various coastal uplands. In addition, some stormwater treatment will result in improvements in water quality for the bay.	Brandt F. Henningsen	\$ 7,158,211
Palm River Restoration Project Phase II, East McKay Bay in Tampa, Florida	Tampa Bay	Hillsborough	This multi-year project is a SWIM Program initiative consisting of habitat restoration, water quality improvement, and mitigation of erosion along the Palm River at the mouth of McKay Bay. A feasibility study was conducted on the land surrounding the Palm River to identify sites for habitat restoration and stormwater treatment project implementation. Currently, two sites on property owned by the District have been selected. The first site, the Spoil Disposal Cell Area (Phase I), has been completed. The East McKay Bay sites (Phase II) focus on water quality improvement and upland and wetland enhancement.	Stephanie Powers	\$ 500,000
Hillsborough River Water Quality Improvement Project in Tampa, Florida	Tampa Bay	Hillsborough	This project consists of the hydrologic and habitat restoration of impacted wetland and upland habitat along the Hillsborough River on property owned and managed by the City of Tampa (City). The project area is approximately 150 acres within the boundaries of an active municipal golf course. Proposed water quality improvements include deepening existing water features on the site and incorporating littoral shelves within the course's water features, which will increase residence time and thus decrease the nitrogen load discharging into the Hillsborough River. Within the site's upland habitats, extensive turf and exotic plant species removal is anticipated to improve habitat quality on the site and to decrease the amount of fertilizer and irrigation needed to maintain the golf course grounds.	Stephanie Powers	\$ 1,000,000
Terra Ceia Ecosystem Restoration - Phase 2	Tampa Bay	Manatee	Phase 2 encompasses two parcels, owned by the SWFWMD, known as the Huber and Frog Creek Borrow Pit parcels. The total acreage of the two parcels is approximately 400 acres. This Phase will involve the enhancement, restoration and/or creation of coastal ecosystems habitats, and potential water quality improvements in the southeastern reaches of Tampa Bay in an area known as Terra Ceia/Bishop Harbor.	Lizanne Garcia	\$ 4,750,000
Robles Park Water Quality Improvement Project	Tampa Bay	Hillsborough	The project will increase the depth of the existing Robles Park pond and install baffle boxes at inflow pipes into the pond to provide significant treatment of nutrients, sediments, and trash. The project will also improve habitat by stabilizing the banks and planting emergent vegetation.	Matt Preston	\$ 1,250,000



# A summary of the Koontz decision

by Paul Beard II

June 25, 2013

As reported earlier, the United States Supreme Court handed property owners across the country a major victory in *Koontz v. St. Johns River Water Management District*. The decision's positive impact on individuals who seek to make use of their properties—e.g., landowners, homeowners, businesses, etc.—cannot be overstated. Here's a summary, in layman's terms, of what the Court decided. But first, some background.

In 1987, the Supreme Court decided another important property rights case (also argued by PLF attorneys): *Nollan v. California Coastal Commission*. In *Nollan*, the permitting agency had *approved a permit* to remodel a home, but only on the condition that the owner first dedicate to the State an easement that would allow the public to walk freely across his backyard. There was absolutely no connection between the owner's remodel project and the easement demand. The agency simply wanted something—a valuable interest in Nollan's land—without having to pay for it, and it used the permit process to coerce him into complying with its wish.

PLF sued the agency on behalf of the Nollan family, taking the case all the way up to the Supreme Court. The Court held that the government may not approve a land-use permit with conditions that bear no "essential nexus"—no fundamental relationship—to the impact of the project. In other words, if an owner seeks to make use of his land in a way that would produce some public harm, then the government may require him to mitigate for that harm. But unless the government demonstrates a connection between the mitigation and the impact of the owner's use, the condition is nothing more than (in the Court's words) "an out-and-out plan of extortion." Since the Nollans' home remodel created no adverse impacts to public access that could justify a taking of an easement in their land, the easement demand was unconstitutional. With the Court's decision, the Nollan family was able to remodel its home without the offending condition.

Over the next 26 years, agencies have found ways to get around the *Nollan* case. Instead of *approving a permit with conditions* that the landowner must satisfy (which is what happened in *Nollan*), some agencies decided it would instead ask the landowner to first agree to satisfy certain conditions *before* approving the permit. If the landowner refused, the agency simply would deny the permit outright. With no approved permit in hand, the theory went, there were technically no conditions—and, therefore, nothing the landowner could claim was extortionate.

Also, agencies began demanding things other than land and interests in real property (like the easement in *Nollan*). Instead, they began imposing monetary obligations—i.e., requirements that property owners pay for totally unrelated public-improvement projects as a condition of obtaining a land-use permit. Because *Nollan* involved an easement, and not a monetary obligation, agencies argued that *Nollan's* heightened scrutiny—i.e., requiring governments to demonstrate a close relationship between what they were demanding and the impact of an owner's use—did not apply.

A state land-use agency deployed these two tactics in *Koontz*. Coy Koontz, Sr., wanted to develop 3.7 acres of an approximately 15-acre lot in a developed area of Orange County, Florida. Unfortunately for him, his lot was located in an area of Orange County that was designated as wetlands. This didn't mean his lot actually had wetlands on it; it seemly meant that he would have to apply to a special state agency—St. Johns River Water Management District—and prove that his lot *didn't* have wetlands or offer mitigation if it did.



So Mr. Koontz applied for permits from the District. The District first demanded that he give up the remainder of his property to conservation as “mitigation” for his development of the 3.7 acres. This, despite the fact that there was *no evidence* that his 3.7 building site had any viable wetlands or habitat. Nevertheless, given the cost of proving otherwise and his desire to see the lot developed, Koontz reluctantly agreed to the conservation easement. But the night before the hearing on his permit applications, District staff insisted that he also pay to improve *State-owned lands located miles away*, by filling in ditches and replacing culverts at a cost of up to \$150,000.

At the hearing, Mr. Koontz refused to pay for the off-site work, and the District *denied his permits outright*. As a man of modest means, he simply could not afford to pay that sum for a public project—especially when it had no connection to the impact of his proposed use of the land (*i.e.*, the building site had no wetlands). Mr. Koontz sued in the Florida courts under, among other theories, *Nollan*. The trial court and court of appeal ruled in his favor, holding that the off-site-mitigation requirement bore no connection to his project, since the project would impact no wetlands. The Florida Supreme Court reversed, holding that *Nollan* does not apply where (1) a permit is denied (as opposed to approved with conditions), and (2) the exaction is for money. At this point, PLF took over representation and asked the Supreme Court to review the case on these two issues, which it did in October 2012.

Today’s decision by Justice Alito handed the Koontz family a victory on both points. First, it held that there’s no constitutional difference between a permit denial (following an owner’s refusal to submit to an extortionate condition) and a permit approval containing an extortionate condition. Extortion is extortion, and all such conditions should be reviewed under the heightened scrutiny provided for in *Nollan*—*i.e.*, the government must show an “essential nexus” between the condition and the impact of the proposed use of the land. Second—and perhaps more significantly—the Court held that *all* demands for property in the permit context (including monetary exactions) are subject to *Nollan* review. This is an important holding for the countless property owners across the country who face an ever-increasing number of monetary exactions imposed by agencies in the permit process.

After today’s decision, the Constitution requires that such exactions bear an essential nexus to the impact of the owner’s use of the land. The four liberal Justices dissented. Curiously, even the liberals rejected the “permit approval v. permit denial” distinction that the District advanced. They, too, agreed that it doesn’t matter how a demand for property might be couched in the permit process; if an owner is coerced into giving up property in exchange for a permit, it is subject to *Nollan* review. However, the liberals disagreed with respect to the monetary exaction issue. In their view, money is not property for purposes of *Nollan*; thus, monetary exactions—unlike land exactions—are not subject to scrutiny under that decision. To open such exactions to *Nollan* review will, in their eyes, open the floodgates to challenges to taxes, user fees, and the like. (Alito’s opinion effectively rebuts this exaggeration, noting, *inter alia*, that the holding applies in the unique land-use context). There will be more analysis of this opinion as the day goes on, so stay tuned. In the meantime, every property owner in America has a cause to celebrate today. No longer will agencies be able to skirt the important protections provided to them under the Constitution.

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Also, agencies began demanding things other than land and interests in real property (like the easement in *Nollan*). Instead, they began imposing monetary obligations—i.e., requirements that property owners pay for totally unrelated public-improvement projects as a condition of obtaining a land-use permit. Because *Nollan* involved an easement, and not a monetary obligation, agencies argued that *Nollan's* heightened scrutiny—i.e., requiring governments to demonstrate a close relationship between what they were demanding and the impact of an owner's use—did not apply.

A state land-use agency deployed these two tactics in *Koontz*. Coy Koontz, Sr., wanted to develop 3.7 acres of an approximately 15-acre lot in a developed area of Orange County, Florida. Unfortunately for him, his lot was located in an area of Orange County that was designated as wetlands. This didn't mean his lot actually had wetlands on it; it seemly meant that he would have to apply to a special state agency—St. Johns River Water Management District—and prove that his lot *didn't* have wetlands or offer mitigation if it did.



So Mr. Koontz applied for permits from the District. The District first demanded that he give up the remainder of his property to conservation as “mitigation” for his development of the 3.7 acres. This, despite the fact that there was *no evidence* that his 3.7 building site had any viable wetlands or habitat. Nevertheless, given the cost of proving otherwise and his desire to see the lot developed, Koontz reluctantly agreed to the conservation easement. But the night before the hearing on his permit applications, District staff insisted that he also pay to improve *State-owned lands located miles away*, by filling in ditches and replacing culverts at a cost of up to \$150,000.

At the hearing, Mr. Koontz refused to pay for the off-site work, and the District *denied his permits outright*. As a man of modest means, he simply could not afford to pay that sum for a public project—especially when it had no connection to the impact of his proposed use of the land (*i.e.*, the building site had no wetlands). Mr. Koontz sued in the Florida courts under, among other theories, *Nollan*. The trial court and court of appeal ruled in his favor, holding that the off-site-mitigation requirement bore no connection to his project, since the project would impact no wetlands. The Florida Supreme Court reversed, holding that *Nollan* does not apply where (1) a permit is denied (as opposed to approved with conditions), and (2) the exaction is for money. At this point, PLF took over representation and asked the Supreme Court to review the case on these two issues, which it did in October 2012.

Today’s decision by Justice Alito handed the Koontz family a victory on both points. First, it held that there’s no constitutional difference between a permit denial (following an owner’s refusal to submit to an extortionate condition) and a permit approval containing an extortionate condition. Extortion is extortion, and all such conditions should be reviewed under the heightened scrutiny provided for in *Nollan*—*i.e.*, the government must show an “essential nexus” between the condition and the impact of the proposed use of the land. Second—and perhaps more significantly—the Court held that *all* demands for property in the permit context (including monetary exactions) are subject to *Nollan* review. This is an important holding for the countless property owners across the country who face an ever-increasing number of monetary exactions imposed by agencies in the permit process.

After today’s decision, the Constitution requires that such exactions bear an essential nexus to the impact of the owner’s use of the land. The four liberal Justices dissented. Curiously, even the liberals rejected the “permit approval v. permit denial” distinction that the District advanced. They, too, agreed that it doesn’t matter how a demand for property might be couched in the permit process; if an owner is coerced into giving up property in exchange for a permit, it is subject to *Nollan* review. However, the liberals disagreed with respect to the monetary exaction issue. In their view, money is not property for purposes of *Nollan*; thus, monetary exactions—unlike land exactions—are not subject to scrutiny under that decision. To open such exactions to *Nollan* review will, in their eyes, open the floodgates to challenges to taxes, user fees, and the like. (Alito’s opinion effectively rebuts this exaggeration, noting, *inter alia*, that the holding applies in the unique land-use context). There will be more analysis of this opinion as the day goes on, so stay tuned. In the meantime, every property owner in America has a cause to celebrate today. No longer will agencies be able to skirt the important protections provided to them under the Constitution.

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