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.
“Reality Continues to Ruin My Life”

Look at this! This is the biggest snowball in the world!

Ha ha! I can't wait to plaster somebody with it!

How are you going to pick it up?

Reality continues to ruin my life. Maybe you could put it someplace where someone will walk into it.