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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the July 2013 issue of *Ocean and Coastal Case Alert*.

The Case Alert is a monthly newsletter highlighting recent court decisions impacting ocean and coastal resource management.

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U.S. SUPREME COURT

***Koontz v. St. Johns River Water Mgmt. Dist.*, 11-1447, 2013 WL 3184628 (U.S. June 25, 2013).**

The U.S. Supreme Court ruled that monetary exactions must meet the *Nollan v. California Coastal Comm'n* and *Dolan v. City of Tigard* tests, which set limits on the extent that land use regulations may impair private property. Essentially, the tests require that the government's "demand" have a nexus and rough proportionality to the projected use of the property. Prior to this ruling, the *Nollan* and *Dolan* tests had been applied only to permit conditions, not instances in which the government requires applicants to pay money. The case arose when a property owner, Coy Koontz, requested permits from St. Johns River Water Management District (District) to build on wetlands on his property, offering to mitigate the project's environmental impact through a conservation easement on three-quarters of his property. The District denied Koontz's permits and offered approval if he agreed to either reduce his development plans and deed the remainder of his property to the District or hire contractors to mitigate the District's nearby wetlands. Koontz refused and filed a takings claim. The trial court (and later an appellate court) found the District's requirements unlawful under the *Nollan* and *Dolan* tests, which the Florida Supreme Court reversed, holding that since the District rejected the application, the demand for money did not provoke the *Nollan* and *Dolan* tests. On certiorari, the U.S. Supreme Court reversed the Florida State Supreme Court in a 5-4 decision allowing *Nollan* and *Dolan* to apply to monetary exactions.

http://www.supremecourt.gov/opinions/12pdf/11-1447_4e46.pdf



FIRST CIRCUIT

New Hampshire

***Appeal of Lake Sunapee Protective Ass'n*, 2012-255, 2013 WL 3287651 (N.H. June 28, 2013); *Town of Newbury v. New Hampshire Fish & Game Dep't*, 2012-705, 2013 WL 3286192 (N.H. June 28, 2013).**

In June, the New Hampshire Supreme Court issued two decisions in a long-running battle over the construction of a two-ramp public boat launch with parking on the state's "Wild Goose Property" on Lake Sunapee. First, the court upheld a shoreland impact permit that would allow the state Department of Fish and Game to construct the boat launch. In a separate decision, the court overturned a lower court's decision finding that the New Hampshire council on Resources and Development lacked authority to approve the boat launch. The court remanded the case, instructing the judge to decide on challenges to the design of the boat launch.

<http://www.courts.state.nh.us/supreme/opinions/2013/2013048lakesunapee.pdf>

<http://www.courts.state.nh.us/supreme/opinions/2013/2013050townnewbury.pdf>



SECOND CIRCUIT

New Jersey

***Borough of Harvey Cedars v. Karan*, A-120 SEPT. TERM 2011, 2013 WL 3368225 (N.J. July 8, 2013).**

The New Jersey Supreme Court overturned a lower court decision awarding a Long Island couple \$375,000 for the loss of their view due to a sand dune constructed as part of a beach-restoration and storm-protection project. After the couple rejected compensation offered for an easement that would allow construction of the dune, they sought a jury trial. The lower courts agreed that the couple was entitled to compensation for the loss of the view and determined that storm protection provided by the dune was inadmissible in the compensation calculation since it provided a "general benefit" to the neighborhood and not a "special benefit" for the property owners. The New Jersey Supreme Court disagreed, finding "...that when a public project requires the partial taking of property, 'just compensation' to the owner must be based on a consideration of all relevant, reasonably calculable, and non-conjectural factors that either decrease or increase the value of the remaining property."

<http://www.judiciary.state.nj.us/opinions/supreme/A12011HarveyCedarsvKaran.pdf>

Vermont

***Vermont Agency of Natural Resources v. Persons*, No. 2012-274, 2013 WL 3242457 (Vt. June 28, 2013).**

The Vermont Supreme Court affirmed a lower court decision imposing fines on a landowner who had excavated and cleared protected wetlands. The landowner argued that he did not know nor should he have been expected to know that he was working in protected wetlands. The state supreme court disagreed, finding that the defendants should have known that the wetlands were on the property or at the very least should have consulted the Agency of Natural Resources. The court also rejected the property owner's contention that the \$14,000 fine imposed by the lower court was unreasonable.

<http://info.libraries.vermont.gov/supct/current/op2012-274.html>



NINTH CIRCUIT

John v. United States, 09-36122, 2013 WL 3357880 (9th Cir. July 5, 2013).

The Ninth Circuit recently upheld 1999 Final Rules implementing part of the Alaska National Interest Lands Conservation Act (Act). The rules designated which navigable waters within Alaska constituted "public lands" subject to the federal rural subsistence policy that gives Alaska residents priority for subsistence hunting and fishing. Environmental organizations and the State of Alaska challenged the rules, arguing that the rules were too narrow and too broad, respectively. A federal district court upheld the rules. On appeal, the Ninth Circuit affirmed the lower court's decision, agreeing that waters within and adjacent to federal reservations should be included in the rural subsistence priority. The appellate court also held that the federal agencies promulgating the rules appropriately used notice-and-comment rule-making to identify which waters are "public lands" for the purpose of the rural subsistence policy. Finally, the court found that the agencies reasonably decided to determine reserved water rights for Alaska Native Settlement allotments on a case-by-case basis.

<http://cdn.ca9.uscourts.gov/datastore/opinions/2013/07/05/09-36122.pdf>

California

City of Dana Point v. California Coastal Comm'n, D060260, 2013 WL 2934682 (Cal. Ct. App. June 17, 2013).

The City of Dana Point enacted a nuisance abatement ordinance, which allowed gates and limited hours of operation for access to public beach trails. The California Coastal Commission claimed that the city's actions required a coastal development permit and ordered the city to remove the gates and cease limiting hours of operation. The city filed suit, claiming the Coastal Commission did not have jurisdiction to review its nuisance ordinance. The trial court agreed and ruled in favor of the city. At the same time, an environmental organization filed suit claiming the city overstepped its authority in enacting the ordinance. In that instance, the trial court agreed with the organization and invalidated the ordinance. In a consolidated appeal, the appellate court agreed that the trial court properly invalidated Commission's requirement of a permit; however, the court ruled that the trial court erred in restricting the Coastal Commission from exercising jurisdiction without establishing whether Dana Point was acting within the scope of its nuisance abatement powers pursuant to the California Coastal Act. The court remanded the case to the trial court, which will consider whether the city has exercised its nuisance abatement powers in good faith.

<http://www.courts.ca.gov/opinions/documents/D060260.PDF>

Hawaii

Kauai Beach Villas-Phase II, LLC v. Cnty. of Kauai, CIV. 12-00483 LEK, 2013 WL 3305803 (D. Haw. June 28, 2013).

After the county of Kauai adopted a charter amendment limiting the number of visitor accommodation units, essentially reducing tourism, a property owner filed suit, alleging that the amendment violated substantive due process, the state Zoning Enabling Act, and the county's requirement that a ballot question contain an objective summary on the measure. The U.S. District Court for the District of Hawaii issued a summary judgment ruling on the latter two claims. The court found that the amendment did violate the Zoning Enabling Act, citing a prior case finding that the Act prohibits local governments from enacting a zoning ordinance by the initiative process. The court also found that it could not require application of the "objective summary" requirement to Charter amendments.

<https://ecf.hid.uscourts.gov/doc1/06111865632>



D.C. CIRCUIT

In re Polar Bear Endangered Species Act Listing & Section 4(d) Rule Litig.-MDL No.1993, 11-5353, 2013 WL 2991027 (D.C. Cir. June 18, 2013).

A number of hunting organizations challenged the U.S. Fish and Wildlife Service's moratorium on the importation of polar bear trophies due to the listing of the animal as a threatened species. The organizations asserted issues of statutory interpretation and procedural challenges including: the effect of designating the polar bear as a depleted species through the Endangered Species Act's (ESA) classification of the species on the endangered species list, whether the ESA's classification prompted a ban on importation of polar bear trophies, and whether the ban applied to polar bears imported before the ban was instated. The D.C. Circuit Court of Appeals rejected all of the organizations' arguments and upheld the district court's grant of summary judgment.

[http://www.cadc.uscourts.gov/internet/opinions.nsf/22D8BE8EE871822B85257B8E004F70C9/\\$file/11-5353-1441735.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/22D8BE8EE871822B85257B8E004F70C9/$file/11-5353-1441735.pdf)



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