IN THE SUPREME COURT OF FLORIDA

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT,
Petitioner,

vs.

CASE NO. SC09-713
L.T. CASE NO. 5D06-1116, 94-CA-5673

COY A. KOONTZ, ETC.
Respondent.
_____/

BRIEF OF AMICI CURIAE FLORIDA ASSOCIATION OF COUNTIES, INC., AND FLORIDA LEAGUE OF CITIES, INC., ON BEHALF OF ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

On Discretionary Review from a Decision of the Fifth District Court of Appeal

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COUNSEL FOR AMICI CURIAE

HARRY MORRISON, JR.
Florida Bar No. 339695
KRAIG A. CONN
Florida Bar No. 0793264
Florida League of Cities, Inc.
301 S. Bronough St., Ste. 300
Tallahassee, FL 32301
(850) 222-9684

VIRGINIA SAUNDERS DELEGAL
Florida Bar No. 989932
Florida Association of Counties, Inc.
100 S. Monroe St.
Tallahassee, FL 32301
(850) 922-4300

SPECIAL COUNSEL FOR AMICI CURIAE

JOHN D. ECHEVERRIA
Professor of Law
Vermont Law School
P.O. Box 96
South Royalton, VT 05068
(802) 831-1386

MARK A. FENSTER
Professor of Law and
Samuel T. Dell Research Scholar
University of Florida Levin College of Law
376 Spessard Holland Hall
Gainesville, FL 32611-7625
(352) 273-0962

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IDENTITY AND INTEREST OF AMICI

The Florida Association of Counties and the Florida League of Cities respectfully submit this brief amici curiae in support of the appeal by Petitioner St. Johns River Water Management District. The decision below threatens local governments' efforts to use their constitutional and statutory authority to protect the public welfare. Unless reversed, it will undermine their authority to review and pass on development applications in order to advance important community land use objectives. Because the decision below fundamentally misunderstood the well-settled logic and mechanics of the Takings Clause, amici seek to assist the Court by clarifying the federal constitutional law of "exactions," conditions placed on property owners who receive regulatory approvals to intensify use of their property.

SUMMARY OF ARGUMENT

The decision of the court below should be reversed. In denying Respondent Koontz's permit application, Petitioner St. Johns River Water Management District did not impose an "exaction" subject to the U.S. Supreme Court's holdings, under the Fifth Amendment's Takings Clause, in Nollan v. California Coastal Commission, 483 U.S. 825 (1987), and Dolan v. City of Tigard, 512 U.S. 374 (1994). Petitioner exercised its valid regulatory authority, imposed no condition on Respondent, and took no property from him. Any other conclusion would grossly

misread the plain text of the Takings Clause and confuse the basic doctrine of current regulatory takings law. By misunderstanding the law, the majority in the court below incorrectly categorized this case as an "exactions" taking. As a matter of constitutional takings law, the agency's regulatory action must be reviewed under the deferential standard of Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978), not under the intermediate scrutiny of the "exactions" decisions.

Because state and local regulatory agencies throughout Florida issue or deny thousands of permits annually, an affirmance in this case would vastly expand their takings liability and have a chilling effect on their willingness and ability to protect the public welfare—in this case, protecting vulnerable wetlands, and in the case of municipal land use regulations, protecting the public from harm and aiding in the rational development of Florida's metropolitan, suburban, and rural areas. Amici urge this Court to consider and adopt the conclusion and reasoning of Judge Griffin's dissent in the decision below, which accurately explained regulatory takings law, correctly applied it to Respondent's claim, and astutely recognized the grave consequences that the Fifth District Court of Appeal's decision will have on government agencies and longstanding regulatory programs. This Court should reverse the District Court of Appeal's decision and enter judgment for Petitioner.

ARGUMENT

I. THE NOLLAN AND DOLAN TESTS APPLY ONLY WITHIN THE "SPECIAL CONTEXT" OF EXACTIONS, AND DO NOT APPLY TO A REGULATORY DECISION THAT DOES NOT IMPOSE AN EXACTION.

A. Nollan and Dolan apply only in the "special context" of exactions, which occurs only when the government issues conditional land use approvals that require the dedication or transfer of property for which compensation would otherwise be due.

The facts in this case are quite simple. Petitioner denied a permit application that the Respondent property owner had submitted to intensify the use of his land. St. Johns River Water Management Dist. v. Koontz, 5 So.3d 8, 10 (Fla. 5th DCA 2009). It did so on the grounds that the proposed use "would adversely impact Riparian Habitat Protection Zone fish and wildlife." Id. Prior to the denial, the parties had discussed measures Petitioner would consider adequate to mitigate the effects of Respondent's planned development, but Respondent rejected them. Id. at 9. As the certified question before this Court states and all parties agree, the permit denial did not result in the confiscation of Respondent's property, and did not deprive him of all or substantially all economically viable use of his property. Nevertheless, the District Court of Appeal not only affirmed the Circuit Court's finding that the permit denial was unreasonable, it also affirmed the trial court's decision to award Respondent compensation for a temporary taking of his land for

the period in which the permit had been denied. Id. at 10-11; St. Johns River Water Management Dist. v. Koontz, 861 So.2d 1267, 1268 (Fla. 5th DCA 2003).

This Court must decide which of the U.S. Supreme Court's constitutional tests for alleged takings applies when a property owner challenges a decision to deny him a permit that results in no change to his property. As the U.S. Supreme Court has explained, application of the Takings Clause involves a two-step inquiry. First, courts must decide whether the claimant possesses "property" within the meaning of the Takings Clause. Phillips v. Washington Legal Foundation, 524 U.S. 156, 164 (1998). Thus, if a claimant cannot properly claim ownership of an alleged property interest, or if the claimant's alleged interest in the property is restricted by "background principles" of property law, see Lucas v. South Carolina Coastal Commission, 505 U.S. 1003, 1026-27 (1992), the takings claim fails at the threshold.

Second, assuming the claimant possesses property, the courts must identify what takings test to apply based on the type of governmental action involved. The Supreme Court has identified "two categories of regulatory action that generally will be deemed per se takings for Fifth Amendment purposes." Lingle v. Chevron U.S.A., Inc., 544 U.S. 528, 528 (2005). If a challenged action falls within one of these narrow categories—if it deprives an owner of "all economically beneficial use" of a fee interest in real property (the so-called Lucas rule, from Lucas v. South

Carolina Coastal Commission, 505 U.S. 1003 (1992)), or if it requires an owner to suffer a permanent physical occupation of his property (associated most closely with Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982))—a finding of a per se taking will virtually automatically follow. If, however, the regulatory effect falls outside these categories, then the court must apply the more deferential level of scrutiny articulated in what is known generally as the Penn Central balancing test. Lingle, 544 U.S., at 538-40 (citing Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978)).

In its Nollan and Dolan decisions, the Supreme Court also recognized a separate inquiry unique to land-use exactions, conditions placed on a development permit approval requiring the dedication of land. Lingle, 544 U.S. at 546 (citing Dolan v. City of Tigard, 512 U.S. 374, 379-80 (1994); Nollan v. California Coastal Commission, 483 U.S. 825, 828 (1987)). The distinct approach to exactions exists, the Court has explained, because government can impose a condition that, if imposed in isolation, would amount to a taking, but that nonetheless requires no compensation if the exaction is qualitatively and quantitatively related to the anticipated consequences of the regulatory approval. Lingle, 544 U.S., at 546-47 (explaining Nollan's "essential nexus" requirement and Dolan's "rough proportionality" requirement).

The Court has consistently repeated that the "special context" to which Nollan and Dolan apply is quite narrow and fact-specific, Lingle, 544 U.S., at 538, and that those decisions' intermediate level of scrutiny has never been extended "beyond the special context of exactions." Id. at 547; City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 702 (1999). Nollan and Dolan, and the intermediate level of scrutiny they impose, thus apply only to a closed, tightly circumscribed universe of factual circumstances. If a takings claim falls outside of the special context of exactions, either the narrow, strict scrutiny categories apply or a court must apply the Penn Central balancing test. Lingle, 544 U.S., at 538.

In both Nollan and Dolan, regulatory agencies had commanded property owners to dedicate easements to the public, and the property owners challenged the exactions after their imposition as approval conditions. Dolan, 512 U.S., at 379 ("The City Planning Commission granted petitioner's permit application subject to conditions imposed by the [City Development Code]."); Nollan, 483 U.S., at 828 ("[T]he [Coastal] Commission . . . granted the permit subject to [the Nollans'] recordation of a deed restriction granting the easement."); see also Lingle, 544 U.S., at 546 (describing the Nollan and Dolan tests as applicable to permits whose issuance was conditioned on the dedication of land). Because the conditions attached to the government approvals in Nollan and Dolan required the dedication of public easements and therefore forced the property owners to forfeit their right

to exclude the public from their land, the conditions would clearly have required compensation under the Loretto test if imposed unilaterally and outside of the narrow context of exactions. Dolan, 512 U.S., at 385-86 (characterizing exactions as a "requirement that [the owner] deed portions of the property to the city," for which she would otherwise be due just compensation); Nollan, 483 U.S., at 831 ("Had California simply required the Nollans to make an easement across their beachfront available to the public on a permanent basis in order to increase public access to the beach . . . we have no doubt there would have been a taking.").

Thus, to claim a taking under Nollan and Dolan, a property owner must identify two facts. First, there must be an "exaction." Second, this exaction must include a "taking" of property for which compensation would be due if the government imposed the requirement unilaterally.

Respondent in this case can identify neither of these facts. As all parties agree and the court below conceded, Petitioner denied Respondent's application for a permit. No condition was imposed on Respondent and no property was taken from him. His claim therefore does not fall within the "special context" of exactions. Rather, this case closely resembles Penn Central and clearly falls within the category of regulatory takings that case represents. See Lingle, 544 U.S., at 538 (explaining that Penn Central applies to the majority of takings claims, when the other narrow categories do not apply). Like the Respondent, the property owner in

Penn Central was denied a permit to intensify the existing use of his land, but was left with property that continued to have economic value and viable use. Penn Central Transportation Co. v. New York City, 438 U.S. 104, 116-17 (1978). Nollan's "nexus" and Dolan's "rough proportionality" tests require a court to evaluate a condition that would, in isolation, amount to an actual taking. Because no exaction occurred here, a court must apply the far more appropriate Penn Central test, which considers, among other things, "the magnitude of a regulation's economic impact and the degree to which it interferes with legitimate property interests." Lingle, 544 U.S., at 540.

B. The decision below to extend the "special context" of exactions to the mere denial of a permit contradicts the plain text of the Takings Clause and the logic and purpose of the Supreme Court's regulatory takings jurisprudence.

The decision below contradicts the plain language of both the Fifth Amendment's Takings Clause, which states that "nor shall private property be taken for public use, without just compensation," U.S. CONST AMEND. V, and Article X of the Florida Constitution, which states that "[n]o private property shall be taken except for a public purpose and with full compensation therefore." FL. CONST. ART. X, § 6(a).[1] If, as all parties agree, Respondent cannot claim that

[1] This Court has always applied federal constitutional precedent to claims arising under Florida's Takings Clause, implying that at least for purposes of alleged regulatory takings, the constitutional provisions are coextensive. See, e.g.,Tampa-Hillsborough County Expressway Authority v. A.G.W.S. Corp., 640 So.2d 54, 57-58 (Fla. 1994); Graham v. Estuary Properties, Inc., 399 So.2d 1374, 1381-82 (Fla. 1981).

"private property" was actually "taken for public use," then he cannot state a takings claim. Both constitutional texts make plain that they do not protect against mere unfairness, but against a taking of property.

Because no property was taken, no "just compensation" can be awarded. It is well established that the federal Takings Clause "is designed not to limit the governmental interference with property rights per se, but rather to secure compensation in the event of otherwise proper interference amounting to a taking." First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304, 315 (1987). When the government is deemed to have taken property, it is necessary to identify the property interest actually taken from the owner that the government will receive in exchange for its payment of just compensation. In an exactions case, if a court determines that the Nollan and Dolan tests have not been met, the exacted property is deemed "taken" and the government is required to pay compensation for the property interest it has exacted. See, e.g., Nollan, 483 U.S., at 841-42 (holding that if government "wants an easement," and the forced dedication is deemed to be unconstitutional, government "must pay for it"). However, when the government simply considers approving a conditional permit with an exaction but decides instead to deny the permit application without

imposing a condition, there is no identifiable property interest for which government could logically be required to pay compensation.[2]

The logic and purpose behind the Nollan and Dolan tests command this conclusion. Nollan and Dolan rest on the premise that the government always has the option to restrict use of property in order to protect the health and safety of the public rather than attempt to mitigate the effects of proposed development through an exaction. When government chooses to deny, courts apply the traditional, deferential regulatory takings doctrine; when government chooses to approve with conditions, courts apply intermediate scrutiny. Thus, the heightened, but not per se or strict, takings standard of Nollan and Dolan reflects the fact that an exaction is more intrusive than mere regulation of property use, but that the government also could have rejected the development application, rather than approving it with exactions. Nollan and Dolan presume that the government always has the option under its police power authority to reject the development application, rather than approving it with an exaction attached. It logically follows that when, as in this case, the government has in fact decided to act in a traditional regulatory mode

[2] Tellingly, even Justice Scalia's dissent from a denial of certiorari, on which the majority in the court below bases much of its argument, recognized that it was "far from clear" how the takings analysis of Nollan and Dolan could apply to the situation where the government considered imposing, but ultimately did not impose, an exaction. Lambert v. City & County of San Francisco, 529 U.S. 1045, 120 S.Ct. 1549, 1551 (2000) (Scalia, J., dissenting), denying cert. to 67 Cal. Rptr. 2d 562 (Cal. Ct. App. 1997).

rather than to impose an exaction, traditional regulatory takings analysis must apply.

Indeed, the logic of the Court's entire categorical approach to the Takings Clause requires that the government has in fact taken property for Nollan and Dolan to apply. As the Court explained in 2005 in its unanimous Lingle decision, each category in its regulatory takings analysis "aims to identify regulatory actions that are functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner from his domain." Lingle, 544 U.S. at 539 (emphasis added). That is, a taking occurs either when something has been confiscated or when a regulation's effect is the functional equivalence of a confiscation. In Lucas, the Court held that the "total" taking of the use and value of the property was "the equivalent of a physical appropriation." Lucas, 505 U.S., at 1017. Similarly, a permanent physical invasion "eviscerate[s] the owner's right to exclude others . . . [which is] perhaps the most fundamental of all property interests." Lingle, 544 U.S., at 539. And in Nollan and Dolan, the appropriation of an easement as part of the issuance of a development permit "would have been a per se physical taking" if the government had simply confiscated it. Id. at 546. Lingle made clear that the fundamental predicate required for the Takings Clause to apply is a government act that confiscates or approximates the confiscation of privately owned land. Offers, negotiations, or even threats to take land do not

create a constitutionally mandated compensation requirement. As Judge Griffin stated in her dissent below, "[i]t is not the making of an offer to which unconditional conditions are attached in violation of the limitations of Nollan/Dolan that gives rise to a taking; it is the receipt of some tangible benefit under such coercive circumstances that gives rise to the taking." See Koontz, 5 So.3d at 20 (Griffin, J., dissenting) (citing Lingle, 544 U.S. at 539-40).

C. Precedent does not support extending the "special context" of exactions to include a claim where nothing was exacted.

The majority in the court below cited no Supreme Court decision that applied Nollan and Dolan without a regulatory approval imposing an exaction that would have required compensation if imposed unilaterally. Instead, Judge Torpy's majority decision and Judge Orfinger's concurrence rest on the wholly incorrect and illogical assertion that Dolan somehow settled the issue before this Court by applying intermediate scrutiny in a case like this one, where no exaction was imposed and no property was taken when a permit was denied. Koontz, 5 So.3d, at 11 (majority opinion); id. at 14 (Orfinger, J., concurring). Their argument assumes that because one dissenting justice in Dolan misstated the Dolan facts by asserting that the government had not yet acquired the owner's property, and the majority did not respond to the dissent's misstatement, then the misstatement must in fact have been part of the majority's decision. Id. (citing Dolan, 512 U.S., at 408 (Stevens, J., dissenting)). This assertion contradicts all judicial accounts of the

facts in Dolan, including those of the U.S. and Oregon Supreme Courts, both of which state clearly that the property owner received a conditional regulatory approval requiring the dedication of land. Dolan, 512 U.S., at 379; Dolan v. City of Tigard, 854 P.2d 437, 439 (Or. 1993). The majority and concurrence in the court below thus offer the novel argument that a dissenting judge's claim, if unanswered by the majority, becomes part of the decision's holding. This argument has no basis in either the facts of Dolan or in any conventional understanding of precedent. Dolan cannot support the decision in the court below.

The decision below rested on other, equally attenuated readings of precedent and non-binding judicial statements, all of which are either irrelevant or fail to support its conclusion. The decision relies in great part on Justice Scalia's dissent from a nearly decade-old dissent from a denial of certiorari in Lambert v. City & County of San Francisco, 529 U.S. 1045, 120 S.Ct. 1549 (2000) (Scalia, J., dissenting), denying cert. to 67 Cal. Rptr. 2d 562 (Cal. Ct. App. 1997). This dissent from a petition that the Supreme Court rejected has absolutely no precedential value—indeed, it is the very definition of obiter dicta, a statement that could not even persuade the Court to accept jurisdiction, much less extend the "special context" of Nollan and Dolan. Moreover, Justice Scalia conceded that it was "far from clear" that Nollan and Dolan could apply to a permit denial, or that compensation could be due when "there is neither a taking nor a threatened

taking." Id. at 1551. Thus, in a statement that failed to persuade his colleagues to grant certiorari, even the Supreme Court justice most amenable to the conclusion of the court below expressed doubts as to the logic of applying Nollan and Dolan where no exaction has occurred. As Judge Griffin rightly stated in her dissent below, Justice Scalia's dissent to the denial of a petition for certiorari in Lambert in fact demonstrates the opposite of what the majority in the court below claimed. The Supreme Court has never adopted the majority's approach, and the majority's bizarre reading of Dolan could not possibly be correct, or else Justice Scalia would have had no reason to dissent from the denial of certiorari. Koontz, 5 So.3d, at 20 (Griffin, J., dissenting).

Nor could the court below find any lower federal or state court that has applied Nollan and Dolan to an analogous permit denial, despite its best efforts to do so. Koontz, 5 So.3d, at 11-12 (claiming four state and lower federal court decisions as support). The Texas Supreme Court decision that the majority cited concerned permit approvals with attached conditions. See Town of Flower Mound v. Stafford Estates Ltd. Partnership, 135 S.W.3d 620, 623-24 (Tex. 2004) (concerning a property owner's challenge to conditions placed on a regulatory approval). Two other decisions that the majority cited are entirely inapposite. Parks v. Watson, 716 F.2d 646 (9th Cir. 1983), was decided before Nollan and Dolan, and therefore could not answer the question of whether those later decisions apply

to a permit approval. In addition, Parks uses terms and levels of scrutiny that the Court explicitly rejected in its later decisions, and confuses Due Process and Takings Clause analysis. Id. at 652 (requiring condition to be "rationally related to the benefit conferred"); id. at 650 (requiring plaintiff "to show that the City's condition must amount to a taking of property without due process of law") (emphasis added). Both the U.S. Supreme Court and this Court have forcefully rejected the approach taken in Parks that mixed the two constitutional doctrines indiscriminately. See Lingle, 544 U.S., at 540 (declaring that due process analysis "has no place in our takings jurisprudence"); Tampa-Hillsborough County Expressway Authority v. A.G.W.S. Corp., 640 So.2d 54, 57-58 (Fla. 1994) ("the analysis under due process is different from the analysis under just compensation"). Perhaps most egregiously, Salt Lake County v. Board of Education of Granite School District, 808 P.2d 1056 (Utah 1991), was decided solely on state law grounds, and did not mention either Nollan or the Fifth Amendment.

The majority cites one federal court decision that mistakenly applied Nollan and Dolan to a permit denial. See Goss v. City of Little Rock, 151 F.3d 861 (8th Cir. 1998). The difficulty that court faced in applying Nollan and Dolan to a permit denial demonstrates that the Eighth Circuit misapplied those precedents and makes clear why no court has followed it in the nearly dozen years since the decision was

issued. The court affirmed a trial court's ruling that a taking had occurred when the city of Little Rock denied a rezoning application in the face of the property owner's refusal to dedicate part of his property for a highway extension.[3] At the same time, however, the court was forced to concede that no remedy was available under the Fifth Amendment because no dedication actually occurred, and as a result it affirmed the trial court's refusal to award compensation to the property owner. Id.[4] Put another way, the property owner suffered no damages that were cognizable under the Fifth Amendment. In sum, under Goss's reasoning, the property owner may have had a right, but he had no remedy, leaving him with a "purely Pyrrhic victory." Id. Even the one court that has extended the "special context" of exactions to include permit denials, then, was forced to concede that no property was taken in a permit denial and that no compensation was due under the Takings Clause. The Eighth Circuit's bizarre gyrations in Goss explain why it stands alone as the sole case in which a court has applied Nollan and Dolan to a

[3] At least the required dedication of land challenged in Goss resembles those the Supreme Court considered in Nollan and Dolan, unlike the off-site mitigation fees that the Respondent in this case challenged.

[4] In addition to rejecting an award of compensation, the Eighth Circuit panel also refused to order the city to rezone the property, reasoning that because the city had "a legitimate interest" in Goss's application, it could still deny the rezoning application "outright." Id. at 864 (citing Nollan, 483 U.S. at 835-36). Conceding that Nollan and Dolan only restricted the ability of the city to condition the rezoning on a dedication, the court recognized that the Takings Clause could not be used to order the government to approve a rezoning request that it could deny under its statutory authority.

regulatory denial rather than to a conditional approval, and why the Supreme Court wisely denied even considering the issue in Lambert.

In sum, the court below rested its entire decision on illusory and faulty precedent. Its decision represents an expansion of the "special context" of exactions beyond the Fifth Amendment's plain text and the Supreme Court's approach to regulatory takings, one that the Supreme Court has rejected. This expansion is not only unsupported and unwarranted, it directly contradicts the Court's most recent discussion of Nollan and Dolan in Lingle, which quite narrowly confined its exactions decisions as applying only when government's regulatory action is functionally equivalent to a per se confiscation. Lingle, 544 U.S., at 546. This quite limited "special context" explains why no court, besides the District Court of Appeal in its decision below, has extended Nollan and Dolan to permit denials since the Supreme Court decided Lingle.

II. THE DECISION BELOW WILL VASTLY EXPAND GOVERNMENT AGENCIES' TAKINGS LIABILITY, STIFLE THE REGULATORY PROCESS, AND ALLOW PROPERTY OWNERS TO AVOID THE ADMINISTRATIVE REVIEW PROCESS.

Judge Griffin's well-reasoned dissent notes the grave adverse consequences of the decision below. As "compensation" for a permit denial when the government ultimately took no private property, Respondent received an extraordinary remedy—a compensation award based on the rental value of the entire parcel of

property for the period, along with the permit that Petitioner had originally denied under its statutory authority. See Koontz, 5 So.3d at 16 (Griffin, J., dissenting). Two consequences from this decision pose grave issues for Florida's local governments, and indeed all its government agencies, if this Court affirms.

First, if Koontz is upheld, government agencies will be unable to discuss or negotiate mitigation measures with property owners without fear that such discussions or negotiations will serve as the basis of a constitutional claim for compensation. As Judge Griffin noted regarding the consequences of the Fifth District Court of Appeal's decision, "[i]t will be too risky for a governmental agency to make offers for conditional permit approvals or to offer a trade of benefits out of fear that the offer might be rejected and the condition later found to have lacked adequate nexus or proportionality." Koontz, 5 So.3d at 21 (Griffin, J., dissenting). In this regard, property owners may ultimately be harmed, as wary government agencies simply deny permits and face lower scrutiny under the Penn Central test rather than discuss mitigation measures as conditions for approval and face heightened scrutiny under Nollan and Dolan. This is the worst possible result: government agencies cannot negotiate adequate, workable mitigation measures with property owners; property owners are more likely to be denied discretionary approvals from wary government agencies; and the entire regulatory process

becomes more rigid and mechanical, resulting in a larger proportion of denials and fewer negotiated solutions to pressing environmental and planning conflicts.

Second, property owners could use any discussions or negotiations as a springboard for avoiding administrative appeals to permit denials, thereby bypassing the long-settled means for local governments to review and reconsider decisions and build a thorough administrative record for judicial review. Property owners must use the required administrative review procedures to challenge the propriety of a permit denial, and then file their legal challenge in the District Court of Appeal or the Circuit Court in its appellate capacity. See Key Haven Associated Enter., Inc. v. Bd. Of Trustees of the Internal Improvement Trust Fund, 427 So.2d 153, 159 (Fla. 1982); Osceola County v. Best Diversified, Inc., 936 So. 2d 55, 59 (Fla. 5th DCA 2006); Golf Club of Plantation, Inc. v. City of Plantation, 717 So.2d 166, 171-72 (Fla. 4th DCA 1998); Lee County v. Zemel, 675 So.2d 1378, 1381 (Fla. 2d DCA 1996). Government agencies are thereby able to reconsider their regulatory decisions through an orderly administrative process which will produce a record that can in turn enable efficient and accurate judicial review. Allowing property owners to avoid these longstanding, orderly administrative and judicial procedures to challenge a permit denial will merely encourage property owners to flood the courts with claims that are unripe and with complex factual disputes that

require extensive development at trial. This will in turn waste judicial and governmental resources.

The consequences in this case are grave. Allowing a property owner to challenge the denial of a permit by making the discussions between a regulatory agency and a property owner the basis of an immediate constitutional challenge will wreak havoc on the regulatory process and on judicial review. Moreover, reversing the denial of a permit is a drastic judicial act, and if repeated across the state will chill regulation. As Judge Griffin wisely stated in her dissent below, "removal of the unconstitutional condition cannot mean the applicant acquires the right to be free of any condition. Such a judicially-invented notion might not do much harm on fourteen acres in the middle of rural central Florida but in a thousand other contexts, it could be disastrous." Koontz, 5 So.3d at 21 (Griffin, J., dissenting). Amici respectfully submit that their members will face these other contexts and such disastrous consequences on a daily basis if the District Court of Appeal's decision stands.

CONCLUSION

For the reasons expressed herein, Amici respectfully request that this Court reverse the decision below and enter judgment for Petitioner.

Respectfully submitted,

HARRY MORRISON, JR.
Florida Bar No. 339695
KRAIG A. CONN
Florida Bar No. 0793264
Florida League of Cities, Inc.
301 S. Bronough St., Ste. 300
Tallahassee, FL 32301
(850) 222-9684

VIRGINIA SAUNDERS DELEGAL
Florida Bar No. 989932
Florida Association of Counties, Inc.
100 S. Monroe St.
Tallahassee, FL 32301
(850) 922-4300

JOHN D. ECHEVERRIA
Professor of Law
Vermont Law School
P.O. Box 96
South Royalton, VT 05068
(802) 831-1386

MARK A. FENSTER
Professor of Law and
Samuel T. Dell Research Scholar
University of Florida Levin College of Law
376 Spessard Holland Hall
Gainesville, FL 32611-7625
(352) 273-0962

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered via U.S. Mail this _____ day of November, 2009, to:

Michael D. Jones, Esquire
P.O. Box 196130
Winter Springs, Florida 32719-6130

Christopher V. Carlyle, Esquire
The Carlyle Appellate Law Firm
1950 Laurel Manor Drive, Suite 130
The Villages, Florida 32162

William H. Congdon, Esquire
Kathryn L. Mennella, Esquire
4049 Reid Street
Palatka, Florida 32177

_____

KRAIG A. CONN
Florida Bar No. 0793264
Florida League of Cities, Inc.
301 S. Bronough St., Ste. 300
Tallahassee, FL 32301
(850) 222-9684

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

_____

KRAIG A. CONN
Florida Bar No. 0793264
Florida League of Cities, Inc.
301 S. Bronough St., Ste. 300
Tallahassee, FL 32301
(850) 222-9684