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Powell v. County of Humboldt

Court of Appeal, First District, Division 1, California - January 16, 2014 - Cal.Rptr.3d - 2014 WL 171483

Scott and Lynn Powell challenged the constitutionality of a county general plan requirement that they provide an aircraft overflight easement as a condition for obtaining a building permit to make minor alterations to their residence. The Powells contended that the easement requirement constituted a taking of their property without payment of just compensation.

The Court of Appeal affirmed the trial court's grant to summary judgment to the County, finding that the Nollan essential nexus standard is a special application of the doctrine of unconstitutional conditions. It does not apply unless the government requires a person as a condition for receiving a discretionary government benefit to give up the constitutional right to just compensation for a taking of their property, or compels the person to pay a monetary fee equivalent to such a taking.

The overflight easement in this case did not as a matter of law effect a taking of the Powells' private property or airspace under Fifth Amendment jurisprudence or California law, and the Powells failed to come forward with evidence sufficient to either establish the practical effect of the easement was to bring about such a taking, or to demonstrate there were triable issues of material fact with respect to that question. The trial court therefore properly granted summary judgment to the County.