

SECTION 4.8

COST OF DEVELOPMENT ELEMENT

The Cost of Development Element of the *Pinetop-Lakeside/Navajo County Regional Plan* is presented in the following sections:

- 4.8.1 Introduction
- 4.8.2 Existing Setting
- 4.8.3 Mechanisms Available to Finance Public Service Expansions
- 4.8.4 Legal Issues Involving the Financing of Public Services
- 4.8.5 Cost of Development Goals, Objectives, Evaluation Measures, Policies, and Programs
- 4.8.6 Cost of Development Implementation Program

The introduction will examine the purpose of the Cost of Development Element. The existing setting will explore the implications that the proposed land use pattern, future population growth and the elements of the Regional Plan will have on Cost of Development Element. Prior to an overview of the Cost of Development Implementation Program, the cost of development goals, objectives, evaluation measures, policies and programs will be highlighted. Hence, the adoption of the recommendations within this element are mandated for Navajo County.

4.8.1 INTRODUCTION

The Cost of Development Element is one of four new elements required for municipalities larger than 2,500 and counties larger than 200,000 under the new Growing Smarter legislation adopted in 1998 and maintained in the Growing Smarter Plus legislation adopted in 2000. As a result of these thresholds, the Town will be required to prepare a Cost of Development Element after the completion of the 2000 census, while the County will not be required to prepare this element.

In some ways, given the controversy surrounding new development throughout the state and its impact on the provision municipal services and local taxes, the Cost of Development Element may well be the most important element in the Regional Plan. Although this element should not be interpreted as the sole policy guide for the adoption of impact fees or other revenue mechanisms by either the Town or County, it is meant to provide the preliminary basis for a future detailed study of existing and potential revenue sources and public costs. Further studies should carefully consider the legal limitations of establishing new revenue mechanisms as well as the practical policy implications.

Certainly, the Cost of Development Element can lay the foundation for a thorough evaluation of existing development fees to determine if it is necessary to raise or implement new fees to finance municipal and county services. The Arizona Revised Statutes establishes what services municipalities and counties may provide. Currently, municipal governments are free to provide a wide range of essential and secondary urban

services while counties are much more restricted. (Note: A complete review of services provided by the Town and County is provided in Section 4.)

The Cost of Development Element should be used in conjunction with the other elements of the Regional Plan to guide the physical development of the Town and Study Area through the Year 2020 and to ensure that new development pays its fair share of infrastructure development and public service provision. According to the “Growing Smarter Plus” legislation, the Cost of Development Element must identify policies and strategies that the municipality will use to require development to pay its “fair share” compensation toward the cost of additional public service needs generated by new development. The current Arizona Revised Statutes do not define “fair share” and instead allow local governments to determine the criteria for “fair share” contributions by developers. Specifically, the “full-cost” of all infrastructure and services necessary to serve the development or a lesser proportionate or “fair share” amount as determined by the local government. The Cost of Development element shall include:

- A component that identifies various mechanisms allowed by law that can be used to fund and finance additional public services necessary to serve the development, including bonding, special taxing districts, development fees, in lieu fees, facility construction, dedications, and service privatization.
- A component that identifies policies to ensure that any mechanisms that are adopted by the municipality under this element result in a beneficial use to the development bear a reasonable relationship to the burden imposed on the municipality to provide additional necessary public services to the development and otherwise are imposed according to law.

Because the Cost of Development Element is mandatory for the Town of Pinetop-Lakeside and optional for Navajo County, the predominant focus of this section will be on the Town and its financial situation as it relates to statutory requirements outlined under the new Growing Smarter Plus legislation.

4.8.2 EXISTING SETTING

In preparing the Cost of Development Element, a number of factors need to be evaluated. First, the existing sources of municipal revenues and expenditures need to be identified and examined. Next, the existing and projected types of services provided by the Town of Pinetop-Lakeside has to be considered. After that, the infrastructure and public service demands of prospective developments needs to be evaluated against these variables. The final aspect of the analysis involves estimating the cost of providing the additional services needed to provide the infrastructure and public services to meet the needs of the Town’s growth and determining how to finance these costs.

Before proceeding, it should be noted that it is difficult to compare the Pinetop-Lakeside budget to other communities due to the unusual mix of and limited amount of services

provided by the Town. Many of the basic community services, such as sanitary sewer and water, are provided by other government agencies or private corporations.

Very little revenue is generated from the few services provided by the town: law enforcement, zoning and code enforcement, street maintenance, and parks and recreation. With the exception of plan review and building permit fees, the town does not charge user fees and must exist on other revenues. The revenue for the town budget is composed of a local 2.5% sales tax, as well as a variety of tax allocated funds. Other miscellaneous revenues are generated through various state grants.

Table 4.8-1, *Revenues: Fiscal Year 1998 – 1999*, shows revenues that constitute the Town of Pinetop-Lakeside’s most recent annual budget. Revenues received from the State of Arizona through the Highway Users Revenue Fund (HURF) comprised almost eight percent of the total revenues, while CDBG funds and other grants made up about four percent each. The most important funding source is the General Fund, while totaled almost half of the total revenues received.

**Table 4.8-1
Revenues: Fiscal Year 1998 – 1999**

Town of Pinetop-Lakeside		
Fund	Amount	Percentage of Total
General Fund	\$3,399,300	48.7
Highway User Revenue Fund (HURF)	\$548,000	7.9
Local Transportation Assistance Fund (LTAF)	\$21,600	.3
Community Development Block Grant (CDBG)	\$276,000	4.0
Grants Fund	\$264,000	3.8
Tourism and Promotion Fund	\$2,471,000	35.4
TOTAL	\$6,979,900	100%

Source: Town of Pinetop-Lakeside, 1999

The General Fund is comprised of many different funding sources, as illustrated in Table 4.8-2, *General Fund Revenues, Fiscal Year 1998-1999*. By far the largest contributor to the fund is the local sales tax, which generates more than 60 percent of the total revenue in the General Fund. Other important revenue sources include the state sales tax and the state income tax, which comprise 17 percent of the General Fund.

**Table 4.8-2
General Fund Revenues: Fiscal Year 1998 – 1999**

Town of Pinetop-Lakeside		
Source	Amount	Percentage of Total
State Sales Tax	\$248,300	7.3

State Income Tax	\$329,900	9.7
Local Sales Tax	\$1,876,000	55.2
Local Sales Tax – Contingency	\$200,000	5.9
Police Grants	\$87,000	2.6
Remainder	\$658,100	19.3
TOTAL	\$3,399,300	100%

Source: Town of Pinetop-Lakeside, 1999

Table 4.8-3, *Retail Sales: Pinetop-Lakeside and Show Low, 1992-1996*, provide an overview of the recent growth rate of the sales tax for both the Town of Pinetop-Lakeside and the City of Show Low. One clear trend is that revenues generated by sales taxes in both communities have been increasing. However, the rate of growth has been sporadic. For instance, the rate of growth increased dramatically in Pinetop-Lakeside between 1994 and 1995, jumping almost five million dollars. The next year, the rate of growth was less than half of that, resulting in a base increase of over two million dollars.

Table 4.8-3

Retail Sales: Pinetop-Lakeside and Show Low 1992 – 1996					
Year	Pinetop-Lakeside	Rate of Growth	Show Low	Rate of Growth	Combined Retail Sales
1992	\$27,382,400		\$94,426,000		\$121,808,400
1993	\$28,510,280	4.1%	\$102,485,150	8.5%	\$130,995,430
1994	\$29,814,560	4.6%	\$115,704,650	12.9%	\$145,519,210
1995	\$34,190,960	14.7%	\$133,272,450	15.2%	\$167,463,410
1996	\$36,393,440	6.4%	\$143,897,000	8.0%	\$180,290,440

Source: Town of Pinetop-Lakeside, 1999

Table 4.8-4, *Expenditures: Fiscal Year 1998-99*, depicts the Town of Pinetop-Lakeside's expenditures during the 1998-99 Fiscal Year. Public safety, particularly in the form of Police services, is a major component of the Town's budget. Another major expenditures item is streets and roads, which constituted more than ten percent of the total Town budget. Two special projects (the Library and the Commerce Park) accounted for \$1,500,000 in expenditures and more than 20 percent of the budget. Parks and recreation, together with the budget for Woodland Lake Park, constituted three percent of the 1998-99 budget.

Currently, there appears to be a disproportionate share of funds spent on streets and roads. This is because the town assumed the county's road system, which was in poor condition, in many areas. There is a deficit in the level of service and will take a long time to get the entire road system up to acceptable standards. The town is also playing catch up in the areas of neighborhood parks, the need for a new collector road system, planning codes and procedures, administration facilities, cultural facilities, and drainage systems. Another important point is that the town is currently spending money to provide

services for people living beyond the town boundaries. This includes Parks and Recreation and library services.

Table 4.8-4
Expenditures: Fiscal Year 1998 – 1999

Town of Pinetop-Lakeside		
Expense	Amount	Percentage of Total
Administration	\$274,500	3.9
Finance	\$108,900	1.6
Planning & Zoning	\$192,900	2.8
Magistrate	\$52,100	.1
Legal	\$48,000	.1
Engineering	\$71,800	.1
Police	\$966,900	13.6
Grant: Governor's Highway Safety	\$42,000	.1
Grant: Safe Drug Free Schools	\$35,000	.1
Grant: Criminal Justice Enhancement	\$43,000	.1
Grant: Arizona Criminal Justice	\$55,000	.1
Library	\$98,500	1.4
Parks & Recreation	\$117,000	1.7
Woodland Lake Park	\$114,000	1.6
Facilities Maintenance	\$165,700	2.4
Economic Development	\$30,000	.04
Commerce Park	\$1,000,000	14.3
Advertising and Promotion	\$332,000	4.8
Animal Control	\$41,700	.1
Streets & Roads	\$569,600	8.2
Street Rehabilitation Projects	\$250,000	3.6
Main Street Program	\$30,000	.04
Transfer Station and Landfill	\$58,600	.1
Community Development Block Grant	\$276,000	4.0
Library	\$500,000	7.2
Acquisition & Development	\$339,000	4.9
Acquisition/Development Carry Forward	\$300,000	4.3
Grant: Telecom/Info Infrastructure Assistance	\$86,000	1.2
Other	\$781,700	11.2
TOTAL	\$6,979,900	100%

Source: Town of Pinetop-Lakeside, 1999

Assessment

- Starting in the early 1990's the Town began to benefit increased sales tax revenues. Recent data from 1998 and 1999 indicate a slowing trend in overall sales tax. Since the Town's primary source of income is from the local sales tax, a slower economic cycle in the future could drastically affect the net revenue collected by Town. Because the town's revenue source is based upon this cyclical source of revenue, it is extremely difficult for the town to plan and budget improvements for the future.

- In addition, this visioning process found that the citizens want to have a number of new community facilities, such as a community center, library, trails and landscape improvements, and transportation and road improvements. These are costly needs. It will be difficult, if not impossible for the town to pay for these improvements with its current cash flow and revenue sources. Alternative revenue sources will be necessary to fund these needs.

4.8.3 FUNDING MECHANISMS

Under Arizona statutes, there are a number of options available to communities and counties to fund the infrastructure and public facilities necessary to service new development. A brief overview of these mechanisms is provided in the following section.

General Obligation Bonds

General Obligation Bonds, which are backed by the full faith and credit of the jurisdiction issuing the bonds, may be issued by a municipality or county for any lawful or necessary purpose (A.R.S. 34-451). This often includes cost intensive capital improvements such as roads, parks, water and sanitary sewer facilities, and equipment. Each municipality and county has a constitutionally set debt cap, which limits the bond issuance capacity. Prior to issuing general obligation bonds, the municipality or county must receive authorization by a majority vote of qualified electors at an election.

General obligation bonds are a flexible financing mechanism for local governments, which can use the bond proceeds for almost any purpose and to spread the benefits and burdens of the funds uniformly throughout the community. General obligation bonds are somewhat restrictive however because voter approval is required to authorize the issuance of bonds. This can be time-consuming and costly. Additionally, because costs are spread uniformly throughout the community, infrastructure to support new development may be unfairly subsidized by existing development.

Revenue Bonds

Revenue Bonds are issued by the municipality or county and backed by a dedicated revenue stream. Improvements to existing sewer and water facilities are often made utilizing revenue bonds because there is a steady revenue stream from the utility users to

attract bond buyers. Revenue bonds do not require voter approval and the constitutional debt cap does not apply to the issuance of revenue bonds. Municipalities with a population of 75,000 or less may issue revenue bonds for utilities and recreational facilities, which includes swimming pools, parks, playgrounds, municipal golf courses, and ball parks (A.R.S. 9-521,522). However, municipalities with populations greater than 75,000 are limited by state statutes to the issuance of revenue bonds only for utilities. Counties may also assume limited building projects through the issuance of bonds (A.R.S. 11-271).

An advantage of revenue bonds is that the people who use the facilities pay for the facilities. The disadvantages are that only municipalities with a population of 75,000 or less have express authority to utilize revenue bonds to finance recreational facilities, and it may be difficult to assess a user fee for open space recreation areas in order to back the revenue bonds.

Municipal Property Corporations

A so-called 63-20 Municipal Property Corporation (named after the IRS Ruling Number 63-20) is a non-profit corporation, the obligations of which are treated as issued on behalf of a political subdivision. Bonds issued by the corporation do not have to be voted on by the people, and the bonds are not considered “debt” for purposes of the debt limitations set by statute for counties. To ensure that the corporation complies with the requirements of the revenue ruling and that the bonds maintain their tax-exempt status, several requirements must be met:

- ❑ The corporation must engage in activities that are essentially “public” in nature
- ❑ The corporation may not be one organized for profit (except to the extent of retiring indebtedness)
- ❑ The corporate income must not inure to any private person
- ❑ The political subdivision must have a beneficial interest in the corporation while the indebtedness remains outstanding and it must obtain full legal title to the property of the corporation with respect to which the indebtedness was incurred upon the retirement of such indebtedness
- ❑ The corporation and the specific obligations issued by the corporation must have been approved of by the political subdivision.

Certificates of Participation (COPs)

Under this method of financing, private parties purchase COPs, which are the equivalent of tax-exempt bonds, and which represent an ownership interest in property belonging to a local government. The property is then leased back to the local government, which makes “lease” payments to the COP holders to cover the bond program.

The advantage to this financing mechanism is that the local government receives cash up front from the sale of the COPs, which may be used for other purposes, such as open

space recreation improvements. The disadvantages are that the transaction costs are substantial, the local government must come up with an annual stream of revenue to pay to the COP holders, and the COPs may be difficult to sell if the property is not seen as essential to the local government (which could choose to default on its lease payments if the property was not essential to the local government).

Transaction Privilege (Sales) Tax

As the Arizona Department of Revenue notes, the Arizona transaction privilege tax is commonly referred to as a sales tax, however, the tax is on the privilege of doing business in Arizona and is not a true sales tax. Aside from the state tax rate, a municipality may impose a transaction privilege or sales tax within its jurisdiction to fund the costs of a variety of public services. The Town currently has a sales tax rate of 2.5%. Counties may not impose a countywide transaction privilege without legislative authorization. Like an increased property tax, a transaction privilege tax would provide a secure funding source and spread the burden equally among all residents.

Property Tax

A property tax is a tax levied on land and improvements on a specific parcel of land. For many communities, it is their primary source of revenue. While Navajo County levies a property tax, which may be used to fund operating expenses, the Town of Pinetop-Lakeside does not. Cities and towns may levy primary property taxes to fund maintenance and operation of municipal government services. Primary property taxes may not exceed the municipality's levy limit. Costs associated with public infrastructure funding are funded by secondary property taxes, which are levied back to general obligation bonds issued by a municipality. Secondary property taxes are not subject to the levy limit. However, the municipality may not issue general obligation bonds in excess of its constitutionally set debt cap. Thus, while municipalities may not set a primary property tax or create a new property tax over its levy limit, it can, once it receives voter authorization to issue general obligation bonds, levy property taxes that are not subject to the levy limit as necessary to cover the bond obligation.

Specialty Industry Tax

Specialty Industry taxes, such as bed taxes and rental car taxes, have been used to fund a variety public services and facilities around the State of Arizona. Examples include the Maricopa County Stadium District (rental car tax) and tourism promotion (hotel bed tax). Cities do not need legislative authorization or voter approval to enact a specialty industry tax, while counties must have legislative authorization.

Advantages to a specialty industry tax are that the local residents do not pay the tax and voter ratification is not required.

Excise Tax

Any kind of tax which is not directly on property or the rents or incomes of real estate. It is imposed directly and without assessment and is measured by the amount of business done, income received, etc. Excise taxes are commonly used by counties to support and enhance county services. Mohave and Pima counties are the only Arizona counties that do not have county excise taxes. County excise taxes apply to any transactions that are subject to the state's transaction privilege tax.

Improvement Districts

While counties may form an improvement district to establish and maintain a park or recreational area for the benefit of the property within the district, the statutory list of improvements financed and constructed by a municipal improvement district does not include recreational facilities.

Development (Impact) Fees

Municipalities and counties may impose development fees on landowners in a "benefit area" to pay for a proportionate share of the public facilities required to serve a development. The county development fee statute defines public facilities to include only neighborhood parks intended to serve development within a one-half mile radius, but excludes regional parks. The statute applicable to municipalities allows development fees to be assessed for necessary public services, which has been interpreted to include parks and open space areas. A "benefit area" is a geographic area in which public facilities are of direct benefit to development within the area. Courts typically apply a "rational nexus test" when evaluating the constitutionality of development fees. For a development fee to be imposed, three standards must be met:

- ❑ There must be a reasonable relationship between the cost of the public facilities for which the development fee is assessed and the service demands of the benefit area
- ❑ The development fees assessed must not exceed a proportionate share of the costs incurred or to be incurred in providing a public facility
- ❑ Development fees must be used and expended for the benefit of the area that pays the development fee.

Due to these requirements, and because development fees are assessed at the time of issuance of building permits, if the open space or park planned is not located near any proposed development (e.g., if the community already exists), then development fees will not be a viable mechanism to fund open space acquisition and maintenance because no fees will be collected. In addition, even in a growth area, the new development only has to pay its fair share. If other development inside or outside the area will use the facilities, then the development does not have to pay more than its proportionate share. The development fee option probably is not viable for use by a county because the open space recreation areas would not be considered "neighborhood parks that serve development

within a one-half mile radius.” But each municipality could establish a development fee program for their growth areas.

User Fees

User fees are assessed for the specific use of a service or activity. An example is a fee charged for admission to a state or county park. Another example is a toll assessed for using a bridge or roadway. A user fee can be employed to defray a portion or the entire cost of a project. The advantage of a user fee is that the charge is incurred by the person using the specific service.

Dedications

A dedication is a conveyance of land by a private owner in the nature of a gift or grant and the acceptance of that land by a public entity. Streets in a subdivided development are usually acquired by local governments through a dedication to the public of the property comprising the streets. Other dedications may be required that require land for parks and recreational facilities, school sites, bike paths, or local transit facilities.

Advantages of this technique include the equity of development helping to finance the open space which it threatens. Weaknesses include the difficulty of calculating fair fees for dedications, the substantial amount of staff time needed to craft and review dedication and exaction requirements, and ensuring that all of the legal requirements are met. Also, opposition from the development community can usually be anticipated, which often prefers property taxes, public bond issues, and other traditional sources of funding to provide for infrastructure. Finally, dedications will increase the cost of new housing.

Exactions

An exaction is a payment or dedication made by a developer for the right to proceed with a project requiring government approval. They can be in the form of a fee, the dedication of public land, the construction or maintenance of public infrastructure, or the provision of public services. As noted previously, the purpose of the exaction must directly relate to the need created by the development. In addition, its amount must be proportional to the cost of the improvement.

Advantages of this technique include the equity of development helping to finance the open space, which it threatens. Weaknesses include the difficulty of calculating fair fees or dedications, the substantial amount of staff time needed to craft and review dedication and exaction requirements, and ensuring that all of the legal requirements are met. Also, opposition from the development community can usually be anticipated, which might prefer property taxes, public bond issues, and other traditional sources of funding to provide for infrastructure. Finally, dedications and exactions will increase the cost of new housing.

Capital Improvements Programming

A strong relationship has been shown between the presence of infrastructure and development of the land. Capital improvements such as roads, drainage facilities, sewer and water lines, treatment plants, and transit lines are the framework that supports development. Their availability plays an important part in determining the pattern of land uses within the community, as well as the direction and intensity of growth. Local governments can effectively discourage the development of undeveloped areas by not planning for or budgeting for water or sewer lines or roads in the area, and by discouraging the creation of special districts to finance those elements of infrastructure in environmentally sensitive areas.

Concurrency Requirements (Adequate Public Facilities)

The pressures of growth and concern about urban sprawl has encouraged some communities to adopt “concurrency” ordinances. Concurrency ordinances are intended to ensure that growth cannot occur in an area unless adequate public facilities are either in place, planned, or occur concurrent with proposed development. These programs have been adopted to prevent unacceptable declines in the provision of urban services to existing residents and to meet the demands of new residents. A key point is that, in its pure form, concurrency does not require that new development be paid for by developers, only that the required improvements be made prior to or concurrent with the development. The question of financing the improvements is related to impact fees and other funding mechanisms.

Because of state enabling legislation, Florida has been a national leader in the field of concurrency ordinances, although communities in the State of Washington have also employed this technique to manage growth. Orlando has a concurrency program that begins with the establishment of basic levels of urban services. Of course, this requires that the standards are realistic and obtainable. The next step is using the Capital Improvements Program (CIP) to identify capital projects and their funding sources. Proposed development projects undergo a review procedure requiring a “certificate of concurrency” after an analysis of the project’s impacts. After development, the city monitors service levels to ensure that public facilities are keeping pace with the new growth.

An advantage of concurrency ordinances is that they reduce or eliminate leapfrog development and the high cost of infrastructure expansion. It incorporates the CIP into the planning process and directs development to areas where the delivery of services is the most cost-effective. Disadvantages include requiring regional cooperation and coordination of planning. Without an effective regional planning framework or intergovernmental agreements supporting the endeavor, a single community’s efforts while probably fail. The adoption and implementation of a concurrency ordinance program will also require a significant amount of staff time and expertise and, if not fairly administered, will be subject to legal challenges. Finally, while concurrency ordinances may offer short-term protection of some environmentally sensitive lands that are far

removed from existing infrastructure, it does not offer long-term, permanent protection for these areas.

Development Agreements and Development Rights Plans

Development Agreements are permitted under A.R.S. 9-500.5 for municipalities and A.R.S. 11-1101 for counties. Development agreements permit contractual arrangements between local jurisdictions and property owner(s) regulating the permitted uses, density, maximum height, and other aspects of the land subject to the agreement. More specifically, state statutes enable a municipality to enter into a development agreement containing “provisions for reservation or dedication of land for public purposes and provisions to protect environmentally sensitive lands” and for the preservation and restoration of historic structures.

Advantages of development agreements is that they are voluntary and, therefore, mutually-agreeable to all parties involved in the negotiations. Also, they can enable jurisdictions to attain planning goals at minimal or without costs. Another strength is that, coupled with annexation, they can be used for land outside of the incorporated area of a municipality. Weaknesses include the fact that the agreements are voluntary, so a landowner is not obligated to enter into an agreement.

Similar to municipalities, counties may also approve development right plans under A.R.S 11-1201, which may be in the form of Planned Unit Development (PUD) plans, subdivision plans, or other development proposals with binding restrictions for both parties. This process provides protection for the developer in the much the same means as a development agreement.

4.8.4 LEGAL ISSUES INVOLVING THE FINANCING OF PUBLIC SERVICES

One of the crucial issues confronting the Town and County, as well as other communities around the state and the country, is to what extent they can pass on fees and engage in the regulation of private property without violating constitutional guarantees. This issue was particularly troubling to the State Legislature who stipulated that a component of the Cost of Development Element identify policies to ensure that any funding mechanism adopted by the municipality under this element:

- ❑ Result in a beneficial use to the development
- ❑ Bear a reasonable relationship to the burden imposed on the municipality to provide additional necessary public services to the development
- ❑ Are imposed according to law

This subsection will examine these issues in greater detail.

Enabling Legislation

The classic statement on the limitation of municipal powers was made by John F. Dillon and is now well known as Dillon's rule:

It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others; first, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared object and purposes of the corporation – not simply convenient, but indispensable.

Consequently, any regulation proposed by the Town or County should be founded on powers, which have already been granted. In this context, state planning enabling legislation is critically important, as are provisions in state statutes governing intergovernmental agreements, annexation, extra-territorial jurisdiction, and subdivision regulation, to name just a few.

Due Process - Procedural and Substantive

Another legal hurdle to be overcome when determining how to finance new development involves issues of procedural and substantive due process. Procedural due process relates to the mechanisms by which local government adopts the regulation in question. The three most important elements of procedural due process are:

- ❑ The kind of notice required to be given to the public.
- ❑ The type of a hearing required.
- ❑ Principles guiding the decision-making process to ensure that it is fair and informed.

Substantive due process involves the rationality of the proposed decision and requires that the regulation be rationally related to the goal that the community wants to achieve. A key issue often addressed during substantive due process arguments is whether the ordinance in question is vague or ambiguous. Consequently, crafters of legislation need to ensure that legislation is clear, precise, and provides reasonable review standards.

Takings through Exactions

A final constitutional issue relating to takings involves the practice of requiring that land be dedicated or that money be paid as a condition of development approval. An exaction may be ruled illegal if it goes beyond the authority of the local government or fails other constitutional tests. While the law in this area continues to evolve, the general rule holds that there must be a reasonable relationship between the required land dedications or cash payments and an actual impact created by a project. Furthermore, the land dedication requirement needs to be roughly proportional to the need created by a development.

In *Nollan v. the California Coastal Commission*, the Court ruled that conditioning the approval of their request to replace a small bungalow on a beachfront lot with a larger house upon the granting of an easement to cross the Nollan's beach was unconstitutional.

The public purpose enunciated by the Coastal Commission as a rationale for its action was that of visual access to the ocean. While the Court concluded that protecting visual access to the ocean constituted a legitimate public purpose, “the Coastal Commission’s regulatory authority was set completely adrift from its constitutional moorings when it claimed that a nexus existed between visual access to the ocean and a permit condition requiring lateral public access along the Nollan’s beachfront lot.”

Another landmark case in this area of law is *Dolan v. City of Tigard*, 114 S. Ct. 2309 (1994). While *Nollan* advanced the doctrine of having an essential nexus between the governmental regulation and the stated public purpose, the Supreme Court’s decision in *Dolan* attempted to adjudicate the required degree of connection between the exactions imposed by the city and the projected impacts of the proposed development.

In *Dolan*, the owner of a hardware store wanted to expand the store. The City of Tigard imposed a requirement that the store dedicate land for a storm drainage ditch and a trail along the ditch. Although the Court explicitly upheld the legality of planning to prevent floods and ensure adequate transportation, it noted that, as part of a site-specific requirement, the city needed to make an individual determination that the required land dedications were “roughly proportional” to the store’s impact on storm drainage and transportation. If the expansion of the store would directly or indirectly create additional road and trail traffic sufficient to justify construction of a trail to alleviate congestion, the trail would be legal. Although the City of Tigard had made the determination that the bicycle pathway system “could offset some of the traffic demand,” the Court ruled that, while “no precise mathematical calculation is required...the city must make some effort to quantify its findings in support of the dedication for the pedestrian/bicycle pathway beyond the conclusory statement that it could offset some of the traffic demand generated.” Since the city had made no such determination, the Court ruled that the exaction exceeded the municipality’s authority.

4.8.5 COST OF DEVELOPMENT ELEMENT – GOALS, OBJECTIVES, EVALUATION MEASURES, POLICIES, AND PROGRAMS

Cost of Development Goal

To fairly apportion the costs of development by ensuring that development pays its “fair share” of the costs of additional public service facilities and needs generated by new development.

Objective 1

To require new development to pay its fair share of the municipal and county costs necessary to support impacts caused by the new development.

Policy: Encourage development to occur within the subdivision process or through Planned Development

Program: Pursuant to Goal 4.4.4 establish an ad hoc committee representing the Town and County to study the need and justification for impact fees on new development.

Objective 2

To encourage development that is sustainable and does not place a burden on Town or County government.

Policy: The Town and County should encourage infill development in the Study Area.

Policy: Encourage development adjacent to existing water and wastewater lines

Policy: Encourage development adjacent to roads with existing capacity.

Program: Require a fiscal impact analysis prior to construction

4.8.6 COST OF DEVELOPMENT IMPLEMENTATION PROGRAM

Assimilating cost of development factors into future development decisions by the Town and County will be complicated due to the factors provided below. These issues are addressed but cannot be resolved through the Regional Plan alone.

- **COSTS OF SERVICES.** As discussed within Section 4.4, Community Facilities and Services, the regional planning area is served by a spectrum of public and private services. A proper understanding of the cost of development will require a more thorough understanding of private costs associated with the provision of services throughout the regional planning area. The Regional Plan is limited in the level of information.
- **DEVELOPMENT AUTHORITY.** At this time the authority for development decisions does not reside entirely with the Town and County governments. Other public, semi-public, and private agencies operated in the past largely without the guidance of local government plans. The Regional Plan is intended to establish an important basis for further cooperation between all agencies but it will not resolve the problem.

As a starting basis for resolving the aforementioned issues, the following programs in Table 4.8-5, *Cost of Development Implementation Program*, are recommended.

**TABLE 4.8-5
COST OF DEVELOPMENT IMPLEMENTATION PROGRAM**

<i>Program</i>	<i>Responsible Parties</i>	<i>Timeframe- Years</i>
Establish a public-private task force to evaluate development costs.	Town and County Staff	1
Town and County revenue analysis as assessment of impact fees and other revenue sources to pay for costs of development.	Town and County	2

Establish strategic economic development plan	Town and County	3
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