



City of Woodland

REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR
AND CITY COUNCIL

DATE: September 2, 2008

SUBJECT: Approval of an Agreement with Yolo County Regarding Application
of Development Impact fees

Report in Brief

Yolo County and the cities within the county have been working since 2006 on an agreement regarding the application of development impact fees. The proposed agreement would formally grant the authority to the County for collecting the development impact fees that the County has been collecting since 1991 for development projects within each of the four incorporated cities. More importantly, the agreement mandates a process for the future adjustment of the County's fees that provides the cities with oversight they do not currently have. This oversight will be assured through a Technical Advisory Committee (TAC) composed of the city managers from each city and the County Administrator.

This Agreement was considered by the City Council on January 22, 2008. The Council identified concerns associated with the County's current application of development impact fees for infill projects and concerns about the need for periodic Council review. As a result, the Council directed staff to address those issues prior to further Council consideration. City and County staff have addressed those issues.

Staff recommends that the City Council approve the Agreement regarding application of Development Impact Fees collected by Yolo County for development projects located within incorporated cities and direct staff to evaluate the implementation of the Agreement after each fee update/adjustment and report the results to the City Council.

Background

Yolo County adopted development impact fees in 1991 based on the authority of AB 1600 and other statutory law. These fees were applied to development projects within each of the incorporated cities as well as the County's jurisdictional area. The fees addressed impacts to County-wide facilities, including the jail, health and human services and open space areas. In accordance with state law, the

County completed a nexus study required to update the fees every five years. Updated nexus studies were completed by the County in 1995, 2000 and 2005 in order to increase and adjust the fees. The 2005 fee study generated a proposal to adjust the fees that was presented to the city managers of each city in November 2005. In response to the concerns expressed by the city managers, additional discussion of the fees was facilitated by the County through each city's 2x2 meetings. The concerns expressed by the elected officials and city staff included the following issues:

- Authority of the County to impose the fees
- Magnitude of the proposed fee increase
- Methodology applied to the calculation of the fees

Prior to the expression of concern by the cities, the County intended to increase the existing fees and add two new impact fees: Parks and Open Space, and Traffic. In response to the concerns expressed by the cities, the County limited the adjustment to an increase of the existing fees and began negotiations with the cities regarding a process for considering new fees and future adjustments.

Discussions between the city managers and County Administrator began in 2006 and focused on addressing the issues described above. After several in depth discussions and the involvement of the respective legal staff of all agencies, an agreement was completed in 2007. The Agreement is included as an attachment to this report. In order to proceed with the Agreement, the cities and the County committed to scheduling consideration of the document by their elected councils and board in late 2007 or early 2008. The County Board of Supervisors approved the Agreement on December 11 followed by the West Sacramento City Council on December 12, the Winters City Council on December 18 and the Davis City Council on January 22.

Woodland staff presented the Agreement to the City Council on January 22. At that time, the City Council identified two concerns and directed staff to follow up on the issues prior to bringing the Agreement back for consideration. The first issue was how the County applied development impact fees for infill projects. The second issue was the need to periodically review the agreement to make sure it is being applied in a manner that meets the interests of all parties. These issues took longer to address than expected as the respective Woodland and Yolo County staff were engaged in developing very challenging FY09 budgets following the January meeting. The issues were resolved over the summer and the agreement has been prepared for reconsideration by the City Council.

Discussion

The proposed agreement addresses the most critical issues expressed by the cities when the County proposed the development impact fees increase in late 2005. These issues are summarized as follows.

Magnitude of the Proposed County Fees. The Agreement does not propose any new or increased fees. Instead, it establishes a process for increasing the existing fees or establishing

new fees. This condition enables the County to conduct the required nexus study in a manner that allows the cities to actively participate and provide some degree of oversight.

County Authority for Imposition of the Fee. The Mitigation Fee Act (AB 1600) prescribes certain findings that must be made when a jurisdiction imposes development impact fees. These findings are typically established through completion of a nexus study. However, the Mitigation Fee Act does not, by itself, provide the authority for the imposition of the fees. Instead, the authority to impose the fees is derived from the police power granted to local governments by the California Constitution. The Mitigation Fee Act does not independently provide authority to counties to impose fees within incorporated cities. In fact, the Act limits the imposition of the fees to the jurisdiction approving the development project.

Countywide fee programs that require development within the cities to pay impact fees are typically implemented through individual agreements between each city and the county. While Yolo County has implemented and collected development impact fees for projects within the incorporated city limits of all four cities for sixteen years without such an agreement, many city managers and advocates of city government throughout the country believe the cooperation of cities is required before county fees can be imposed or collected within incorporated areas. The proposed Agreement is a cooperative agreement that would grant the County the ability to collect county development impact fees for development projects within Woodland. Additionally, the proposed Agreement allows the City of Woodland to revoke this permission by withdrawing with six months written notice. Staff believes the formal granting of authority to collect fees and the ability to revoke this authority provides a higher degree of leverage to maintain a fair and appropriate process.

Method of Calculating the Fee. Cities raised concerns in 2005 because of the approach taken by the County in the nexus study that justified the Parks and Open Space, and Traffic Fees. While the agreement does not specifically address approaches to calculating fees, it establishes the Technical Advisory Committee (TAC) composed of the city managers from each city and the County Administrator. The TAC will provide guidance and transparency to the process at a significantly higher level than the present situation.

In addition to the issues described above, the Woodland City Council expressed concerns on January 22 regarding the application of development impact fees for infill projects and the need to periodically review the Agreement in order to evaluate its impact on all parties. The specific issues identified by the City Council are addressed as follows:

Application of Fees for Infill Projects. Attachment No. 1 is a letter from Assistant County Administrator Pat Leary stating the County policy on this matter and referencing the appropriate sections of the county code. It must be noted that there is not a specific code section that addresses infill projects; however, multiple related sections are interpreted by County staff to apply the fees in a manner “to charge only for increased impacts (if any) of infill development”. Ms. Leary also notes that the county code allows “recognition of credit to be given for prior uses, and charging fees on the basis of increases in impacts.” Staff

believes this application of development impact fees for infill projects addresses the Council concerns that such fees are applied in an appropriately fair manner.

Periodic Review of the Agreement. Following the January 22 meeting, staff discussed this issue with the other county city managers and the County Administrator. All of the managers stated that developing a new condition as part of the Agreement which would require some form of mandatory periodic review by all parties was unworkable at this point. The managers believe that the general theme of the Agreement is collaboration between the parties and the condition which allows the cities to opt out of the Agreement provides appropriate protection from potentially unfair actions. If one of the cities desires to periodically review the Agreement, there is nothing to prevent such an evaluation from occurring at any time. Therefore, staff believes that an internal procedure needs to be established wherein the Agreement must be evaluated for the City Council's review after each update/adjustment of the development impact fees. This procedure is included as part of the recommendation to approve the Agreement in order to meet the Council's desire for active oversight.

The proposed Agreement formally authorizes collection of the existing County impact fees and establishes the framework for oversight by the cities in a manner that currently does not exist. As an example, the proposed Agreement requires the County to provide annual reports to the cities summarizing the total amount of fees collected from each of the categories, annual expenditures and justification associated with the expenditure. In addition and most importantly, the Agreement would provide a formal, consistent process for implementing additional fees and adjusting the existing fees through the formation of the TAC. While the proposed Agreement cannot guarantee absolute harmony between the City of Woodland and Yolo County with respect to the implementation of development impact fees, staff believes it is a positive step and represents an improvement over the current arrangement. The proposed Agreement also fosters regional collaboration among all local governments in Yolo County.

Fiscal Impact

There is no financial impact to the City of Woodland associated with the proposed Agreement. The City Council's approval of the proposed Agreement will not increase the County's development impact fees. However, the proposed Agreement does provide the process for adjusting/increasing the County's development impact fees and establishing new fees. As stated previously herein, the process includes the involvement of each city.

Public Contact

Posting of the City Council agenda. A copy of the agenda and report was provided to the County Administrator.

Alternative Courses of Action

1. Approve the Agreement regarding application of Development Impact Fees collected by Yolo County for development projects located within incorporated cities and direct staff to evaluate the implementation of the Agreement after each fee update/adjustment and report the results to the City Council.
2. Cease further consideration of the proposed Agreement.

Recommendation for Action

Staff recommends that the City Council approve Alternative No. 1.

Mark G. Deven
City Manager

Attachments: August 13, 2008 Letter from Assistant County Administrator Pat Leary
Proposed Agreement



COUNTY OF YOLO

Office of the County Administrator

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August 13, 2008

Mark Deven
City Manager
City of Woodland
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Dear Mark:

In response to your request for additional information about how infill projects are treated in connection with payment of development impact fees, I am attaching copies of our county code which contain those provisions. I should note that to date we have discussed "infill" in the context of replacement of existing structures. To the extent that projects are currently greenfields with no structures, they would be subject to the same fees as other new development unless they qualified for exemptions or waivers. The pertinent sections are found in pages 30 through 40.

As we have discussed, the manner in which the code is written refers in several places to new projects replacing older development (infill) but does not contain a single specific section detailing all of the requirements. As a result, I apologize for the jumble of sections I will refer to, but taken together they constitute the policy and practice of the county regarding infill projects, which is to charge only for increased impacts (if any) of infill development.

The following sections are relevant (emphasis mine):

Sec. 3-14.02. Definitions.

(c) "Commercial improvement" shall mean new construction or alteration of, or an addition to, a structure which occurs after the effective date of Yolo County Ordinance No. 1119 **and** which results in a net increase of five hundred (500) or more gross square feet (taking into account square footage which is lost, including demolition under Section 3-142.04(d) of enclosed space suitable and intended for office/service, retail, wholesale or manufacturing use

(h) "Residential project" shall mean construction of one or more dwelling units (including mobile homes) and alteration or addition of an existing unit or units which creates one or more **net additional units**.

Sec. 3-14.04. Terms of payment to obtain authorization.

(c) *Appeal.*

(1) A person or entity who proposes to construct an impacting development and has received a preliminary estimate of the fee due under this chapter, or received certification by a city pursuant to Section 3-14.05(b), may file a written appeal requesting a fee reduction. The appeal shall be filed with the County Community Development Agency within thirty (30) days after filing the building permit application. The fee reduction may be requested on the grounds that: (A) the development has been inappropriately classified in determining the fee amount; or (B) the development's impact on population, employment or use of facilities will, as a result of exceptional circumstances not taken into account in adopting the fee, be less than the impact projected for the use category in which the impacting development falls. The burden of proof in establishing these grounds shall be on the person filing the request.

(d) *Demolition or destruction offset.* Where a building permit to construct an impacting development is issued within two (2) years after demolition on the same lot, or where new construction replaces a structure on the same lot which was damaged or destroyed by fire, earthquake or other causes similarly beyond the owner's control, the amount of new construction taken into account under this chapter shall be reduced by the number of dwelling units (in the case of construction of a residential project) or square feet (in the case of construction of commercial improvements) which were demolished or destroyed.

(h) *Change of use fee.* The fee where a change of use of an existing structure has occurred shall be determined by subtracting the fee that would be charged for the previous use under subsection (b), above from the fee that would be charged for the new use under that subsection. If the result is zero or a negative number, no fee shall be charged. No change of use shall be considered to have occurred for a structure to which a Business Park fee was previously applied if the new and old uses are both uses described in Section 3-14.02, "Business park," of this chapter.

As you can see by the code sections, a specific section on infill is lacking, but a common thread throughout is a recognition of credit to be given for prior uses, and charging fees on the basis of increases in impacts. Exemptions and reductions are also allowed on a case by case basis on appeal. Although I have not included the specific references here, there is also an explicit waiver of fees for specified affordable housing projects which frequently might be developed as infill projects.

I hope that this information answers any remaining questions you may have. If I can provide any additional information, please don't hesitate to call.

Thank you,

Pat Leary
Assistant County Administrator

Attachment: County code

AGREEMENT NO. __-__

**Agreement Regarding Application of County Development Impact Fees to Projects Located
Within Incorporated Cities**

THIS AGREEMENT is made this __ day of _____, by and between the County of Yolo (“County”), the City of Davis, the City of West Sacramento, the City of Woodland, and the City of Winters (hereinafter collectively called the “Cities”).

RECITALS

WHEREAS, the County and the Cities share a unique and cooperative relationship which values the preservation of agriculture and open space to separate our distinctive communities; and

WHEREAS, the countywide collection of development impacts fees is a model of cooperation and recognition of the impacts of development outside of jurisdictional boundaries; and

WHEREAS, the County and the Cities wish to maintain effective community planning by, among other things, establishing an appropriate framework to address some of the financial burdens resulting from the impact of growth on County public facilities; and

WHEREAS, growth within the Cities contributes to the demand for and impacts on County facilities, including but not limited to facilities for public protection, health and human services, libraries, sheriff patrol and investigation services, traffic, parks and open space, county administration, information technology, planning and public works, and facility planning; and

WHEREAS, on or before the date of this Agreement, the County adopted certain fees (“Development Impact Fees”) pursuant to the Mitigation Fee Act, Government Code §§ 66000 *et seq.*, to help defray costs associated with public facilities needed to serve the types of development projects on which the fees are to be imposed; and

WHEREAS, these fees have been collected by the County for development within incorporated areas since the fees were established or, in the case of West Sacramento, collected by the City on behalf of the County, and

WHEREAS, this Agreement seeks to improve future updates of the existing fees and the establishment of any new fees, and

WHEREAS, subject to the terms and conditions of this Agreement, the Cities consent to the County’s imposition of the Development Impact Fees identified below on development projects located within the incorporated area of each of the Cities; and

WHEREAS, the purpose of this Agreement is to provide a means for the County to impose certain Development Impact Fees on development projects located within the incorporated area of each of the Cities to help ensure that the County can adequately meet the facility needs of those who live and work at such projects;

NOW, THEREFORE, the parties hereby agree as follows:

AGREEMENT

I. COUNTY FEES. Subject to the limited exemption set forth in Section IV, below, and the remaining terms and conditions of this Agreement, the Cities agree that the County may impose the Development Impact Fees contained in Chapter 14, Title 3 of the Yolo County Code and the County's Master Fee Resolution on all development projects located within their boundaries. For the purposes of this Agreement, the fees that may properly be charged by the County include all County fees in effect on or before the date of this Agreement, as well as those new or increased fees that subsequently become effective pursuant to this Agreement. A list of all County fees that are presently in effect (or that have been adopted and will become effective within 60 days of this Agreement) is attached hereto as Exhibit A, which is incorporated herein by this reference.

II. COLLECTION OF COUNTY FEES. The Cities agree to facilitate the collection of the County Development Impact Fees covered by this Agreement by implementing either of the methods set forth in Section 3-14.05(a) and (c) of the Yolo County Code, which alternatively provide for the addition of conditions to building permits or other land use entitlements requiring payment of County fees (subsection (a)), or authorize City collection and remittance to County of County fees (subsection (c)). Except as otherwise provided in Government Code § 66007(a) or Section IV, below, all Development Impact Fees shall be paid at the time building permits are issued.

III. SOLE AND EXCLUSIVE METHOD. The County agrees that this Agreement shall be the sole and exclusive method for imposing and adjusting County Development Impact Fees within the incorporated area of each City. The County shall not attempt to impose or collect any Development Impact Fees within the incorporated area of each City except in accordance with the terms and provisions of this Agreement. The provisions of this Agreement shall supersede any previous agreements between the parties on the subjects addressed herein.

IV. LIMITED EXEMPTION FOR CERTAIN PROJECTS AND VESTING; OTHER WAIVERS.

Limited Exemption and Vesting. Subject to the following limitations, the County further to vest the amount of County Development Impact Fees for future projects if a City vests its fees at the time of project approval. As used herein, the terms "vest," "vests," and "vesting" shall be understood to refer to the concept of exempting a project from any increases in County Development Impact Fees for a specified period of time. County fees shall also be vested for the same period of time as City fees, up to a maximum of two years from the date of project approval. If vested fees are not paid prior to the end of the vesting period, all County Development Impact Fees owed by the applicant shall be immediately due and payable in the full amount in place as of the expiration of the vesting period.

Alternatively, the County and the applicant may enter into a written agreement that provides for a different arrangement.

B.

Nothing in this Section IV shall prevent the County and a City from implementing an alternate methodology for fee collections in that city's incorporated area that complies with the provisions of Government Code § 66017 and that is expected to result in essentially the same amount of total revenue to the County that would have been generated by subsection IV.A, above.

C. Other Waivers. Nothing in this Agreement impairs the County's ability to waive the application of its Development Impact Fees to future projects in its sole discretion. The County agrees that to the extent any such waiver reduces the revenues that would otherwise be available to County to provide public services to the residents of a City, the County will not seek to recover such revenues from other projects that are subject to this Agreement.

V. ANNUAL COUNTY REPORTS. On an annual basis on or before the anniversary date of this Agreement, the County shall prepare and deliver an individual written report to each City that includes at least the following information about the County Development Impact Fees collected pursuant to this Agreement: (A) the total amount of fees for each category collected from development projects within that City during the previous twelve months; (B) the County's expenditures of fees collected from development projects within that City during the previous year, including information describing each project on which fees have been expended and the amount of such expenditures; and (C) to the extent the County did not fully expend all fees collected from development projects within that City in previous years, the same information required by subsection (B) regarding any expenditure of such fees, as well as the amount of any remaining surplus. The County shall annually provide a copy of all reports to each City.

The annual reporting requirement established in this Section shall apply only to fees collected after the date of this Agreement. If a city collects County Development Impacts Fees and transmits them to the County, on at least a quarterly basis, the city shall certify and transmit data to the County indicating the total amount of fees collected and transmitted by fee category, consistent with subsection V.A., above, to enable the County to satisfy its annual reporting requirement.

VI. FUTURE FEES AND FEE ADJUSTMENTS; TECHNICAL ADVISORY COMMITTEE. The County and the Cities recognize that developing consistent policies for determining development impact fees through the County provides for more orderly planning and greater uniformity and predictability for applicants. Further, the Cities recognize that, from time to time, the County may find it necessary to adjust the amount of the County Development Impact Fees covered by this Agreement and/or establish new categories of fees. For the purpose of providing appropriate technical oversight with regard to such fee adjustments and new fee categories, as further detailed below, the parties agree to form a Technical Advisory Committee ("TAC") in accordance with the following:

A. Purpose. The fundamental purpose of the TAC is to help ensure that any future adjustments to, or proposed new categories of, County Development Impact Fees are developed and imposed only after the completion of a fee study by a qualified

consultant that complies with all applicable legal requirements. Consistent with this purpose, the TAC shall provide recommendations to the County on each of the following:

1. Fee study methodology;
2. Consultant selection;
3. If applicable, projects for consideration in capital improvements plans (“CIP”) proposed by the County;
4. The content of draft fee studies; and
5. Any other issues that are relevant to the County’s adjustment or establishment of the Development Impact Fees covered by this Agreement.

The TAC’s role is advisory only and, consistent with its obligation to indemnify the Cities and its sole legal responsibility for compliance with the Mitigation Fee Act (Government Code §§ 66000 *et seq.*), the County retains full discretion with respect to Development Impact Fees except as otherwise expressly provided in this Agreement. However, if the County elects not to follow the TAC’s recommendations, it shall advise each City of that decision and allow each City 30 days to respond with comments to the County.

B. TAC Structure and Membership. The TAC will include the City Manager for each of the Cities and the County Administrator, or their designees. In addition, the TAC shall also include two (2) members to be appointed from the general public by the County Administrator. The public members must reside within the County (either in an unincorporated or incorporated area), should possess knowledge relevant to or experience with Development Impact Fees, and they may not be employed by any of the local government participants during their membership term. The TAC may also contract for the services of a consultant to advise the TAC on issues within its jurisdiction. The cost of any such consultant shall be borne by the County. The County Administrator or designee shall chair the TAC, and the local government participants shall elect a vice-chair. The TAC vice-chair and public members shall each serve for two-year terms, and they may be reappointed at the conclusion of each term or they may resign at any time. Except as otherwise provided in this subsection, all members of the TAC are entitled to vote on all issues with the TAC’s jurisdiction.

C. Meetings of the TAC. The TAC shall meet on an as-needed basis, or upon request of any member, and at least six (6) months prior to each 5-year review of County Development Impact Fees. The TAC shall comply with the requirements of the Ralph M. Brown Act (Gov. Code §§ 54950 *et seq.*) to the extent it may apply.

VII. WITHDRAWAL. Any entity that is a party to this Agreement may elect to withdraw from continued participation in the arrangement established by its terms and

provisions. The entity electing to withdraw must deliver a written notice stating its intent to withdraw to each of the other remaining parties to this Agreement. Any such withdrawal shall not be effective until six months from the date of delivery of the written notice or, alternatively, until the date of withdrawal set forth in the notice, whichever is later. Any new or increased County Development Impact Fees that become effective within six months after delivery of such notice shall not apply within the jurisdictional limits of the withdrawing party. The notice shall include a statement of the basis for the decision to withdraw.

VIII. FEE ALLOCATION; EXPENDITURES.

- A. Allocation. The parties recognize that under California constitutional and statutory law, development impact fees must generally bear a reasonable relationship in both use and amount to public facility impacts associated with the type of development on which they are imposed. This general legal principle limits the County's discretion in allocating the amounts of Development Impact Fees subject to this Agreement among different types of development. However, to the extent the County may do so in a manner that is consistent with this principle and the County's financial needs, the County agrees to adhere to any allocation formula adopted by each City in imposing Development Impact Fees within the incorporated area of such City. The TAC shall advise the County on issues of allocation.
- B. Expenditures. The County's expenditure of Development Impact Fees collected from developments within the Cities is not limited or restricted in any manner by this Agreement.

IX. INDEMNIFICATION. Pursuant to Government Code section 895.4, the County agrees to defend, indemnify and hold harmless the Cities and their elected officials, officers, employees, agents and volunteers from and against any and all claims, damages, demands, losses, defense costs, expenses (including attorneys' fees) and liability of any kind or nature arising out of or alleged to arise out of the performance of this Agreement. In carrying out its obligations under this Section IX, the County may use legal counsel of its choice.

X. APPLICABLE LAW. This Agreement has been made and delivered within the State of California, and the rights and obligations of the parties hereto shall be construed and enforced in accordance with California law.

XI. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective representatives, heirs, predecessors, affiliated entities, transferees, assigns and successors in interest.

XII. ATTORNEYS' FEES AND COSTS. In the event of future litigation to enforce this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

XIII. SEVERABILITY. Should any paragraph, clause or provision of this Agreement be construed to be against public policy or determined by a court of competent jurisdiction to be void, invalid or unenforceable, such construction and decisions shall affect only those paragraphs, clauses or provisions so construed or interpreted, and shall in no event affect the remaining paragraphs, clauses or provisions of this Agreement, which shall remain in force.

