

An excerpt from the Yolo County Code zoning regulations (see <http://www.yolocounty.org/community-development/planning-public-works/planning-division/2014-zoning-code>):

## **Sec. 8-2.405 In-Lieu Agricultural Mitigation Fee**

### **(a) Purpose**

This Section establishes certain fees that, pursuant to Section 8-2.404, are required to be paid by new development that converts less than five (5) acres of agricultural lands to nonagricultural uses. The fees established by this Section are estimated to be equal to the cost of conserving one acre of agricultural land for every acre developed. Specifically, this Section establishes and sets forth regulations relating to the imposition, collection, and use of fees for the conservation of agricultural lands through purchase of conservation easements.

### **(b) In-Lieu Agricultural Mitigation Fee**

- (1) Section 8-2.404, the Agricultural Conservation and Mitigation Program, sets forth the details and requirements of the Program. The Program requires agricultural mitigation for the conversion or change from agricultural use to a predominantly non-agricultural use prior to, or concurrent with, approval of a permit or other land use entitlement or approval, including but not limited to zone change, by the County.
- (2) The Agricultural Conservation and Mitigation Program specifies that development projects that result in the conversion of less than five (5) acres of agricultural land shall be required to pay an in-lieu fee, based on a per acre calculation of the conversion amount.
- (3) The formula for determining the amount of the per-acre in-lieu fee to be paid shall be as follows, and as updated according to Subsection (5), below:

**Table 1  
In-Lieu Agricultural Mitigation Fee**

Cost Component	Per Acre Fee
Easement Acquisition Cost	\$8,400
Transaction Cost	\$420
Monitoring Endowment	\$880
Administrative Costs	\$280
Contingency	\$115
Total (rounded)	\$10,100

Source: Table 7, Yolo County Agricultural Mitigation Fee Analysis, Economic and Planning Systems, August 7, 2007

- (4) The fees collected pursuant to this ordinance shall be used to pay the costs associated with acquiring and maintaining agricultural conservation easements, including the specific costs identified in Table 1, above.
- (5) The In-Lieu Agricultural Mitigation Fee may be updated quarterly based on two separate indices. The non-acquisition related costs may be updated based on changes in the Consumer Price Index (CPI), a typical measure of inflation. The acquisition costs may be updated based on changes in the Office of Federal Housing Enterprise Oversight (OFHEO) housing price index for the Sacramento Metropolitan Statistical Area, which is proxy for land costs. This index is published four times a year, in early December, March, June, and September.

**(c) Payment of Fees**

For any development project subject to this ordinance, fees levied hereunder shall be paid to the County of Yolo prior to the acceptance of any final subdivision map, issuance of a conditional use permit or approval of a site plan, or issuance of building permit(s), or such other ministerial or discretionary approval that triggers the fee requirement, whichever occurs first. The Planning, Public Works and Environmental Services Department shall not accept any final subdivision map, issue any conditional use permit or approve any site plan, or issue any building permit(s) or any other ministerial or discretionary approval to any development subject to this ordinance without first receiving payment of the required fees from the applicant.

**(d) Accounting and Register of Payment**

- (1) The fees collected pursuant to this ordinance shall be placed by the Planning, Public Works and Environmental Services Department in a separate interest bearing account for the In-Lieu Agricultural Fee Program, as further described in Subsection (f), below.
- (2) The Planning, Public Works and Environmental Services Department shall maintain a register for each account indicating the date of payment of each fee, the amount paid, Assessor's Parcel Number and the name of the payor.
- (3) Pursuant to Government Code section 66006(b)(1), within 180 days after the last day of each fiscal year, the Planning, Public Works and Environmental Services Department shall prepare an accounting of all fees paid into and withdrawn from the account during the prior fiscal year. This accounting shall include all of the information required by subdivision (b)(1) of section 66006, including but not limited to the source and amounts collected, the beginning and ending balance of the account, the interest earned during the prior fiscal year, the amounts expended from the account, and the projects for which such expenditures were made.

**(e) Independent Fee Calculations**

- (1) Following a request made by an affected party, if in the judgment of the Director of the Planning, Public Works and Environmental Services Department ("Director") none of the fee amounts set forth in the schedule in Table 1, above, appears to accurately correspond with the impacts resulting from issuance of the requested building permit (or certificate of occupancy if no building permit is

required), the applicant shall provide to the Planning, Public Works and Environmental Services Department for its review and evaluation an independent fee calculation, prepared by a consultant approved by the Director. The independent fee calculation shall show the basis upon which it was made and shall include, at a minimum, the costs of recent easement transactions in Yolo County. The Director may require, as a condition of the issuance of the requested permit, payment of an alternative impact fee based on this calculation. With the independent fee calculation, the applicant shall pay to the Planning, Public Works and Environmental Services Department an administrative processing fee of seven hundred and sixty eight (\$768) dollars per calculation or such amount that may be set in the County's Master Fee Resolution in effect at the time the project is submitted.

- (2) While there is a presumption that the calculation set forth in the In-Lieu Agricultural Mitigation Fee study (as may be adjusted from time to time in accordance with this ordinance) is correct, the Director shall consider the documentation submitted by the applicant. The Director is not required to accept as true the facts contained in such documentation. If the Director reasonably deems the facts in such documentation to be inaccurate or not reliable, he or she may require the applicant to submit additional or different documentation or, alternatively, refuse to accept any further documentation and apply the formula set forth in Subsection (b), above, to the development at issue. The Director is authorized to adjust the fee on a case-by-case basis based on the independent fee calculations or the specific characteristics of the permit (or certificate of occupancy if no building permit is required), provided the amount of the adjusted fee is consistent with the criteria set forth in Government Code section 66001(a)-(b) and other applicable legal requirements.

**(f) Establishment of In-Lieu Fee Account**

- (1) An interest-bearing account shall be established for the fees collected pursuant to this ordinance and shall be entitled "In-Lieu Agricultural Mitigation Fee Account". Impact fees shall be earmarked specifically and deposited in this account and shall be prudently invested in a manner consistent with the investment policies of the County. Funds withdrawn from this account shall be used in accordance with the provisions of this ordinance. Interest earned on impact fees shall be retained in the account and expended for the purpose for which the impact fees were collected.
- (2) On an annual basis, the Director shall provide a report to the Board of Supervisors on the account showing the source and amount of all moneys collected, earned, or received, and system improvements that were financed in whole or in part by impact fees. This report may be identical in format and content with the report or other document prepared pursuant to Subsection (d)(3), above, and Government Code Section 66006(b)(1).
- (3) In accordance with Government Code section 66001(d), for the fifth fiscal year following the first deposit of fees into the account and every five years thereafter, if some or all of the collected fees have not been expended, the Board of Supervisors shall make the findings set forth in Government Code Section 66001(d) or take other measures provided in Subdivisions (d) and (e) of Section

66001, including a refund of any unexpended moneys pursuant to Subsection (g), below.

**(g) Refunds**

- (1) Except where the Board of Supervisors has timely made the findings set forth in Government Code Section 66001(d), upon application of the property owner made pursuant to (3) through (5) of this subsection (g), the County shall refund that portion of any impact fee which has been on deposit over five years, whether committed or uncommitted. The refund shall be made to the then-current owner or owners of lots or units of the development project or projects, as reflected on the last equalized assessment roll.
- (2) The County may refund by direct payment, by offsetting the refund against other impact fees due for development projects by the owner on the same or other property, or otherwise by agreement with the owner. A person who receives a refund under this provision shall not commence construction of the land development for which the refund was made without repaying the required fees.
- (3) If the County fails to expend the fees within five years of payment, or where appropriate findings have been made, such other time periods pursuant to Section 66000 et seq. of the Government Code, the current owner of the property for which impact fees have been paid may receive a refund of the remaining amount of the fee payment. In determining whether fees have been expended, impact fees shall be considered expended on a first in, first out basis.
- (4) The County shall notify potential claimants by first class mail deposited with the United States Postal Service at the last known address of such claimants.
- (5) Property owners seeking a refund of impact fees must submit a written request for a refund of the fees to the Director of Planning, Public Works and Environmental Services within one year of the date that the right to claim the refund arises or the date the notice described in Subsection (4) of this Section is given, whichever is later.
- (6) Any impact fees for which no application for a refund has been made within the one year period shall be retained by the County and expended on the appropriate purchases of easements.
- (7) Refunds of impact fees under this ordinance shall include any interest earned on the impact fees by the County.
- (8) When the County terminates the impact fee program established by this ordinance, all unexpended and unencumbered funds, including interest earned, shall be refunded pursuant to this ordinance. The County shall publish notice of the determination and the availability of refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first class mail to the last known address of the claimants. All funds available for refund shall be retained for a period of one year after the second publication. At the end of one year, any remaining funds shall be retained by the County, but must be

expended for the appropriate public facilities. This notice requirement shall not apply if there are not unexpended or unencumbered balances within the account.

- (9) The County shall also refund the impact fee paid plus interest to the current owner of property for which the impact fee had been paid if the development was never completed or occupied; provided, that if the County expended or encumbered the impact fee in good faith prior to the application for a refund, the Director may decline to provide the refund. If within a period of three years, the same or subsequent owner of the property proceeds with the same or substantially similar development, the owner can petition the Director for an offset against the fees previously paid to, and expended or encumbered by, the County. The petitioner shall provide receipts of impact fees previously paid for a development of the same or substantially similar nature on the same property or some portion thereof.

**(h) Use of Funds**

- (1) The fees collected pursuant to this ordinance may be spent for the conservation of agricultural lands through purchase of conservation easements, including any related administrative, monitoring, stewardship, and legal costs.
- (2) It is the intent of the County to transfer most, if not all, of the fees that are collected to a qualifying entity, that will purchase and maintain easements.
- (3) In-Lieu fees may be used to recoup costs for conservation easement purchases previously incurred by the County, provided the costs recouped by the County were incurred in connection with the Agricultural Conservation and Mitigation Program.
- (4) In the event that bonds or similar debt instruments are or have been issued for the advanced purchase of conservation easements, In-Lieu fees may be used to pay debt service on such bonds or similar debt instruments to the extent that purchases are consistent with the Agricultural Conservation and Mitigation Program and this Section.

**(i) Protests and Appeals**

Protests shall be filed in accordance with Sections 66020 and 66021 of the Government Code. At the time any fees are imposed pursuant to this ordinance, County staff shall provide the project applicant written notice of the imposition of the fees, a statement of the amount of the fees, and notification of the commencement of the ninety (90) day period for filing a protest under Government Code section 66020(d)(1).