

1 (c) Establishes provisions for agricultural conservation
2 easements granted in perpetuity as a means of mitigating
3 loss of agricultural land.

4 (d) Mitigation is achieved by requiring the permanent
5 protection of agricultural land based on a 2:1 ratio to
6 the amount of agricultural land converted to a non-
7 agricultural use.

8 (e) The intent of this ordinance is to establish
9 standards for the acquisition and long-term oversight of
10 agricultural conservation easements.

11 **35-52 Applicability.**

12 (a) Areas of the County where the Agriculture Mitigation
13 Ordinance would be applicable:

14 (1) Areas designated Agriculture by the Butte County
15 General Plan.

16 (b) Areas of the County where the Agriculture Mitigation
17 Ordinance would not be applicable:

18 (1) Areas designated and zoned Agriculture by the
19 Butte County General Plan but identified as a
20 "Specific Plan to be Developed" under the General
21 Plan 2030 Land Use Map, adopted November 6, 2012.

22 (c) Activities subject to this article:

23 (1) A General Plan Amendment and Rezone from the
24 Agriculture General Plan designation to a non-
25 agricultural General Plan designation and/or zone
26 (e.g., Commercial, Industrial or Residential).

27 (d) Activities not subject to this article:

1 (1) Subdivision of agricultural land consistent with
2 the minimum parcel size imposed by the Agriculture
3 Zone (e.g., AG-20, AG-40, AG-80, and AG-160)

4 (2) Ministerial Permits consistent with the
5 Agriculture Zone

6 (3) Uses under the zoning ordinance, both permitted
7 and conditional, that are consistent with the
8 Agriculture Zone

9 (4) A change from one Agriculture Zone to a
10 different Agriculture Zone (e.g., AG-160 rezone to
11 AG-20)

12 (5) Habitat conservation that does not require a
13 General Plan Amendment.

14 **35-53 Definitions.**

15 Except where the context otherwise requires, the following
16 definitions shall govern the construction of this article. The
17 definition of a word or phrase applies to any of that word's or
18 phrase's variants.

19 (a) **Accessory Use:** A use that is incidental, related,
20 appropriate, and clearly subordinate to the primary use
21 of the parcel or zone, which does not alter the primary
22 use of such parcel or zone, nor serve property other
23 than the parcel of land on which the primary use is
24 located.

25 (b) **Agricultural land:** Those land areas of the
26 Unincorporated Planning Area of Butte County designated
27 by the General Plan and zoned 'Agriculture'.

1 (c) **Agricultural mitigation land:** Agricultural land
2 encumbered by an agricultural conservation easement or
3 other conservation mechanism acceptable to the County.

4 (d) **Agricultural use:** Those primary and accessory uses
5 and structures, and conditional uses listed in the Butte
6 County General Plan and Zoning Ordinance.

7 (e) **Agricultural conservation easement:** An easement over
8 agricultural land for the purpose of restricting its use
9 to agriculture consistent with these guidelines. The
10 interest granted pursuant to an agricultural
11 conservation easement is an interest in land, which is
12 less than fee simple. Agricultural conservation
13 easements acquired in accordance with these guidelines
14 shall be established in perpetuity.

15 (f) **Building envelope:** An area delineated by the
16 agricultural conservation easement within which existing
17 structures may remain or future structures may be
18 permitted to be built.

19 (g) **Development interest:** The property owner, developer,
20 proponent, and/or sponsor of an agricultural conversion
21 project subject to these guidelines.

22 (h) **Qualifying entity:** A nonprofit public benefit 501(c)
23 (3) corporation operating within the State of
24 California for the purpose of conserving and
25 protecting land in agriculture. The County will
26 consider the following criteria when considering the
27 Qualifying Entity for these purposes, and when

1 monitoring the performance of qualifying entities
2 over time:

3 (1) Whether the entity is a non-profit organization
4 that is either based locally, is statewide, or is a
5 regional branch of a national non-profit
6 organization whose principal purpose is holding and
7 administering agricultural conservation easements
8 for the purposes of conserving and maintaining lands
9 in agricultural production.

10 (2) Whether the entity has a long-term proven and
11 established record for holding and administering
12 easements for the purposes of conserving and
13 maintaining lands in agricultural production.

14 (3) Whether the entity is accredited by the Land
15 Trust Alliance.

16 (4) Any other information that the County finds
17 relevant under the circumstances.

18 **35-54 Mitigation Requirements.**

19 (a) Agricultural mitigation shall be required prior to,
20 or concurrent with, approval of a General Plan Amendment
21 and/or a rezone from Agriculture to a non-agricultural
22 designation and/or zone. A minimum of two (2) acres of
23 agricultural land shall be preserved for each acre of
24 agricultural land changed to a non-agricultural zoning
25 classification (2:1 ratio). Mitigation shall be
26 completed on a like-for-like basis (e.g., loss of prime
27 farmland must be mitigated by placing an agricultural

1 conservation easement on prime farmland; loss of non-
2 prime or grazing land would be mitigated by placing an
3 agricultural conservation easement on non-prime or
4 grazing land). Agricultural land mitigation at a 2:1
5 ratio shall be satisfied by using one of the following
6 techniques:

7 (1) **Easement Acquisition or Mitigation Bank**

8 **Purchase.** Agricultural land mitigation shall be
9 satisfied by: 1) direct acquisition of an
10 agricultural conservation easement or, 2) purchase
11 of banked mitigation credits as set forth by these
12 guidelines.

13 (2) **In-Lieu Fee.** Where the total land area subject
14 to a General Plan Amendment and zone change is less
15 than 5-acres in size payment of an in-lieu
16 mitigation fee may be authorized by the Board of
17 Supervisors. In-lieu fees may be authorized for
18 parcels 5-acres or greater in size, or to make-up
19 the difference in available agricultural
20 conservation easement land and the total required
21 under this ordinance, when the development interest
22 can demonstrate to the Board of Supervisors that a
23 diligent effort to obtain an agricultural
24 conservation easement or banked mitigation credits
25 has been made without success. The in-lieu fee, paid
26 to the Qualifying Entity, shall be used for
27 agricultural mitigation purposes only (i.e.,

1 purchases of agricultural conservation easements and
2 related administrative, monitoring and enforcement
3 costs). Facts the Board may want to consider in
4 making a decision regarding a request for payment of
5 an in-lieu fee include, but are not limited to a
6 showing of multiple good faith offers to purchase an
7 agricultural easement or banked mitigation credit
8 having been declined by seller(s).

9 **35-55 Methods of Mitigation.**

10 (a) **Direct Acquisition of Conservation Easement** (In-Kind
11 Acquisition):

12 (1) The location and characteristics of the
13 agricultural mitigation land shall comply with the
14 provisions of these guidelines, as set forth under
15 Section 35-56 Eligible Lands.

16 (2) It shall be the development interest's sole
17 responsibility to obtain the required agricultural
18 conservation easement.

19 (3) An agricultural conservation easement shall be
20 required prior to, or concurrent with, approval of a
21 General Plan Amendment and/or a rezone from
22 Agriculture to a non-agricultural designation and/or
23 zone.

24 (b) **In-Lieu Fees:** The payment of an in-lieu fee shall be
25 subject to the following provisions:

26 (1) Purpose - The purpose of establishing a method
27 of providing an in-lieu fee for smaller conversion

1 projects is to equalize the imbalance between
2 agricultural land suitable, and available, for
3 purchase of agricultural conservation easements and
4 the amount of acreage required to meet a 2:1 ratio.

5 (2) The amount of the in-lieu fee shall be
6 determined case-by-case in consultation with the
7 Qualifying Entity(s) approved by the Board of
8 Supervisors. In no case shall the in-lieu fee be
9 less than 35% of the average per acre price for five
10 (5) comparable land sales in Butte County, or the
11 average price per acre offered at a Mitigation Bank.
12 The factored per acre price determined under this
13 method shall then be applied at a 2:1 ratio to
14 determine the final in-lieu fee.

15 (3) The in-lieu fee shall include the costs of
16 managing the easement, including the cost of a
17 stewardship endowment used to administer, monitor
18 and enforce the agricultural conservation easement,
19 and the payment of the estimated transaction costs
20 associated with acquiring the easement. The costs
21 shall be approved by the Board of Supervisors based
22 on information relating to the costs provided by the
23 Qualifying Entity.

24 (4) The Planning Commission shall review the final
25 in-lieu fee proposal for consistency with these
26 guidelines prior to approval by the Board of
27 Supervisors. The Commission shall make a formal

1 recommendation to the Board for consideration.

2 (5) The Board of Supervisors shall approve the final
3 amount and other terms of the in-lieu fee.

4 (6) Use of In-lieu Fees - In-lieu fees shall be
5 administered by the Qualifying Entity in fulfillment
6 of its programmatic responsibilities. These
7 responsibilities cover, without exception, ensuring
8 that in-lieu fees are held in an endowment account
9 adequate to cover the cost of inflation for
10 acquiring the agricultural conservation easement and
11 administering, monitoring and enforcing their long
12 term use for agricultural land mitigation purposes.

13 (7) Records - All participating Qualifying Entities
14 shall provide the Department of Development Services
15 a record for each transaction that demonstrates the
16 amount of the in-lieu fee collected for the
17 particular transaction, the total of in-lieu fees
18 collected to date, and how the fees will be managed.

19 (b) **Mitigation Credit Banking:** Mitigation credits may be
20 purchased from a mitigation bank and utilized in
21 accordance with the following provisions:

22 (1) Process - Any project requiring the acquisition
23 of an agricultural conservation easement in
24 accordance with these guidelines may be approved by
25 the Board of Supervisors to purchase mitigation
26 credits from a Qualifying Entity (mitigation bank)
27 on the acreage equal to the 2:1 ratio required for

1 mitigation of the original conversion project.

2 (2) Credit Value - Each acre in excess of the
3 required 2:1 ratio for mitigation may be utilized to
4 satisfy the mitigation requirements of another
5 conversion project.

6 (3) Negotiations - Negotiations to purchase
7 mitigation credits shall not involve the County, and
8 shall be subject to free market values. The sale of
9 banked agricultural credits shall not alter the
10 terms of the original agricultural conservation
11 easement which generated the credits.

12 (4) Responsibility - It shall be the development
13 interest's sole responsibility to obtain the
14 required mitigation credits from a Qualifying
15 Entity.

16 (5) Authorization - The County shall approve
17 purchased credits upon receipt of a sales agreement.

18 (6) Records - All participating Qualifying Entities
19 shall provide the Department of Development Services
20 a record for each transaction that demonstrates the
21 balance between purchased credits and banked credits
22 remaining.

23 **35-56 Eligible Lands.**

24 Land shall meet all of the following criteria in sub-
25 sections (a) through (h), below, to qualify for an Agricultural
26 Conservation Easement.

27 (a) Agricultural conservation easements resulting from

1 this program shall be acquired from willing sellers.

2 (b) Current California Farmland Mapping and Monitoring
3 Program land classification shall be equivalent to, or
4 better than, the land which is being converted to a non-
5 agricultural designation and/or zone.

6 (c) Location - Agricultural mitigation land shall be:

7 (1) Located in Butte County.

8 (2) Designated Agriculture by the Land Use Element
9 of the General Plan and zoned Agriculture by the
10 Zoning Ordinance.

11 (3) Located outside of the Biggs-Gridley Area of
12 Concern as adopted by the Butte Local Agency
13 Formation Commission (LAFCO).

14 (4) Located outside of any "Specific Plans to be
15 Developed" areas as shown on the General Plan 2030
16 Land Use Map adopted November 6, 2012.

17 (a) Allowable Uses - The uses allowed on agricultural
18 mitigation land shall be in conformance with the
19 Agriculture Zone. Any legal nonconforming use of the
20 property shall not be credited as acreage conserved
21 under a conservation easement or be allowed to expand
22 once a conservation easement has been established. The
23 type of agricultural-related activity allowed on
24 mitigation land shall be specified as part of the
25 agricultural conservation easement and shall not be less
26 restrictive than the Agriculture Zone.

27 (b) Maintenance of Agricultural Use - Farmed areas,

1 including orchards, field and row crops, and grazing
2 land, shall remain under active use in 5 out of every 7
3 years; fallowing of the agricultural use may occur in 2
4 out of every 7 years.

5 (c) Water Supply - The agricultural mitigation land
6 shall have an adequate water supply to support the
7 agricultural use of the land. The water rights on the
8 agricultural mitigation land shall be protected by the
9 agricultural conservation easement.

10 (d) Previous Encumbrances - Land already encumbered by a
11 conservation, flood, or other type of easement or deed
12 restriction that prevents converting the property to a
13 nonagricultural use is not eligible to qualify as
14 agricultural mitigation land. Habitat conservation
15 easements may be stacked onto an agricultural
16 conservation easement if they do not conflict with each
17 other (per Section 35-60, Stacking of Conservation
18 Easements).

19 **35-57 Final Approval.**

20 Agricultural mitigation (payment of an in-lieu fee, purchase
21 of a conservation easement or purchase of banked mitigation
22 credit) for any development project subject to this ordinance
23 shall be completed to the satisfaction of the County of Butte
24 prior to, ~~the recordation of any final subdivision map, issuance~~
25 ~~of a conditional use permit, issuance of building permit(s), or~~
26 ~~such other ministerial or discretionary approval, whichever~~
27 ~~occurs first. The Department of Public Works shall not record~~

1 ~~any final subdivision map, nor shall the Department of~~
2 ~~Development Services issue any conditional use permit, issue any~~
3 ~~building permit(s) or any other ministerial or discretionary~~
4 ~~approval for any development subject to this ordinance without~~
5 ~~the completion of the required agricultural mitigation, or~~
6 concurrent with, approval of a General Plan Amendment and/or a
7 rezone from Agriculture to a non-agricultural designation and/or
8 zone. The Board of Supervisors may issue a tentative approval
9 of a General Plan Amendment and/or a rezone by means of a motion
10 of intent. The final approval of a General Plan Amendment
11 and/or a rezone shall not occur until proof of agricultural
12 mitigation as set forth in this article has been provided to the
13 Department of Development Services. The Department of
14 Development Services shall report the satisfactory completion of
15 the mitigation requirement to the Board of Supervisors to allow
16 it to make the final approval.

17 **35-58 Agricultural Conservation Easement Requirements.**

18 (a) All owners of the agricultural mitigation land shall
19 execute the easement.

20 (b) The easement shall be in recordable form and include
21 a legal description of the agricultural mitigation land.
22 The easement shall be recorded.

23 (c) The easement shall prohibit any activity which may
24 potentially impair or diminish viable agricultural use
25 of the agricultural mitigation land.

26 (d) All water and mineral rights shall be intact prior
27 to easement execution, and the easement shall protect

1 and retain these rights, in full, with the agricultural
2 mitigation land in perpetuity.

3 (e) The easement shall be held in trust by the
4 Qualifying Entity and/or the County in perpetuity.

5 (f) If the Qualifying Entity ceases to exist, the duty
6 to hold, administer, monitor, and enforce the interest
7 shall pass to the County to be retained until a new
8 Qualifying Entity is located.

9 / / /

10 **35-59 Administration, Monitoring, Enforcing, and Reporting.**

11 (a) The Butte County Department of Development Services
12 is authorized to administer the Agricultural Mitigation
13 Ordinance. Development Services staff shall review all
14 development and mitigation proposals for compliance with
15 this article and shall notify applicants when the
16 requirements set forth under this article apply.

17 (b) Qualifying Entity - The Department of Development
18 Services shall ensure that the Qualifying Entity (s)
19 chosen by the landowner conforms to the requirements set
20 forth under the definition of a "Qualifying Entity",
21 under Section 3, Definitions.

22 (c) Monitoring and Enforcing - The Qualifying Entity
23 shall monitor all lands and easements, mitigation bank
24 credits, and in-lieu fees acquired in accordance with
25 these guidelines and shall review and monitor the
26 implementation of all management and maintenance plans
27 for these lands and easement areas. It shall also

1 enforce compliance with the terms of the agricultural
2 conservation easement.

3 (d) Reporting by the Qualifying Entity - Annually,
4 beginning one year after the adoption of this article,
5 Qualifying Entities participating in this program shall
6 provide to the County Director of Development Services
7 an annual report delineating the activities undertaken
8 pursuant to the requirements of these guidelines and
9 assessment of these activities, including the
10 disposition of in-lieu fees. The report(s) shall
11 describe the status of all lands and easements acquired
12 in accordance with these guidelines, including a summary
13 of all enforcement actions. Mitigation banks shall
14 additionally provide a report of total available credit
15 inventory and total credits sold. The report shall
16 specify the amount of the in-lieu fees collected and how
17 they are being managed.

18 (e) The development interest shall provide a stewardship
19 endowment equal to cover the costs of administering,
20 monitoring and enforcing the agricultural conservation
21 easement. The fee amount shall be determined by the
22 Qualifying Entity.

23 **35-60 Stacking of Conservation Easements.**

24 It is the intent of this program to work in a coordinated
25 fashion with the habitat conservation objectives of the Butte
26 Regional Conservation Plan. Stacking of easements for habitat
27 conservation on top of existing agricultural easements granted

1 in accordance with these guidelines may be allowed if approved
2 by the Board of Supervisors provided the habitat needs of the
3 species addressed by the conservation easement shall not
4 restrict the active agricultural use of the land.

5 (a) The Planning Commission, with input from all other
6 easement holders in interest, and including the
7 California Department of Fish and Wildlife, shall review
8 all stacking proposals to insure the stacking will not
9 be incompatible with the maintenance and preservation of
10 economically sound and viable agricultural activities
11 and operations. The recommendation of the Commission
12 shall be considered by the Board of Supervisors.

13 **35-61 Agricultural Conservation Easements on lands subject to**
14 **Williamson Act Contracts.**

15 Agricultural Conservation Easements on lands subject to a
16 Williamson Act Contract shall be reviewed by the Butte County
17 Land Conservation Act Committee to ensure compliance with the
18 terms of the applicable Williamson Act Contract.

19 **Section 2. Severability.**

20 If any provision of this Ordinance or the application
21 thereof to any person or circumstances is for any reason held to
22 be invalid by a court of competent jurisdiction, such provision
23 shall be deemed severable, and the invalidity thereof shall not
24 affect the remaining provisions or other applications of the
25 Ordinance which can be given effect without the invalid
26 provision or application thereof.

27 **Section 3. Effective Date and Publication.**

1 This Ordinance shall take effect thirty (30) days after
2 the date of its passage. The Clerk of the Board of Supervisors
3 is authorized and directed to publish this ordinance before the
4 expiration of fifteen (15) days after its passage. This
5 Ordinance shall be published once, with the names of the members
6 of the Board of Supervisors voting for and against it, in the
7 _____, a newspaper of general circulation published in the
8 County of Butte, State of California.

9 / / /

10 PASSED AND ADOPTED by the Board of Supervisors of the County
11 of Butte, State of California, on the _____ day of
12 _____, 2014, by the following vote:

13 AYES:

14 NOES:

15 ABSENT:

16 NOT VOTING:

17 _____
18 Doug Teeter, Chair of the
19 Butte County Board of Supervisors

20 ATTEST:

21
22 Paul Hahn, Chief Administrative Officer
23 and Clerk of the Board

24
25 By _____
26 Deputy