

AN ORDINANCE OF THE COUNTY OF BUTTE

ADDING ARTICLE I, ENTITLED "RESTRICTIONS ON CULTIVATION OF MEDICAL MARIJUANA," OF CHAPTER 34A, ENTITLED "MEDICAL MARIJUANA CULTIVATION," OF THE BUTTE COUNTY CODE

The Board of Supervisors of the County of Butte ordains as follows:

Section 1. Chapter 34A is added to the Butte County Code as follows:

CHAPTER 34A MEDICAL MARIJUANA CULTIVATION REGULATION

34A-1 Authority and Title. Pursuant to the authority granted by Article XI, section 7 of the California Constitution, Health and Safety Code sections 11362.83 and 11362.768(f), and Government Code section 25845, the Board of Supervisors does enact this Chapter, which shall be known and may be cited as the "Butte County Medical Marijuana Cultivation Ordinance."

34A-2 Findings and Purpose.

(a) In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996").

1 (b) The intent of Proposition 215 was to enable persons who
2 are in need of marijuana for medical purposes to use it without
3 fear of criminal prosecution under limited, specified
4 circumstances. The Proposition further provides that "nothing
5 in this section shall be construed to supersede legislation
6 prohibiting persons from engaging in conduct that endangers
7 others, or to condone the diversion of marijuana for non-medical
8 purposes." The ballot arguments supporting Proposition 215
9 expressly acknowledged that "Proposition 215 does not allow
10 unlimited quantities of marijuana to be grown anywhere."

11 (c) In 2004, the Legislature enacted Senate Bill 420 (codified
12 as California Health and Safety Code sections 11362.7 et seq.)
13 to clarify the scope of Proposition 215, and to provide
14 qualifying patients and primary caregivers who collectively or
15 cooperatively cultivate marijuana for medical purposes with a
16 limited defense to certain specified State criminal statutes.

17 (d) Health and Safety Code section 11362.83 expressly allows
18 Cities and Counties to adopt and enforce ordinances that are
19 consistent with Senate Bill 420.

20 (e) The Federal Controlled Substances Act, 21 U.S.C. §§ 801 et
21 seq., classifies marijuana as a Schedule I Drug, which is
22 defined as a drug or other substance that has a high potential
23 for abuse, that has no currently accepted medical use in
24 treatment in the United States, and that has not been accepted
25 as safe for use under medical supervision. The Federal

1 Controlled Substances Act makes it unlawful, under federal law,
2 for any person to cultivate, manufacture, distribute or
3 dispense, or possess with intent to manufacture, distribute or
4 dispense, marijuana. The Federal Controlled Substances Act
5 contains no exemption for the cultivation, manufacture,
6 distribution, dispensation, or possession of marijuana for
7 medical purposes.

8 (f) The County's geographic and climatic conditions, which
9 include dense forested areas receiving substantial
10 precipitation, along with the sparse population in many areas of
11 the County, provide conditions that are favorable to outdoor
12 marijuana cultivation. Outdoor marijuana growers can achieve a
13 high per-plant yield because of the County's favorable growing
14 conditions. The federal Drug Enforcement Administration reports
15 that various types of marijuana plants under various planting
16 conditions may yield averages of 236 grams, or about one-half
17 pound, to 846 grams, or nearly two pounds. Based on Butte
18 County Sheriff's seizures, yields in Butte County have tended to
19 be beyond this range with three to four pounds of dried "bud"
20 per plant being common. The "street value" of a single cannabis
21 plant is substantial. Pound prices for domestically produced
22 high-grade cannabis sold illegally within Northern California
23 can range between \$1,500 to \$3,000. A single marijuana plant
24 cultivated within the County can thus easily yield \$4,000 or
25 more in salable marijuana.

1 (g) Proposition 215 and Senate Bill 420 primarily address the
2 criminal law, providing qualifying patients and primary
3 caregivers with limited immunity from state criminal prosecution
4 under certain identified statutes. Neither Proposition 215 nor
5 Senate Bill 420, nor the Attorney General's August 2008
6 *Guidelines for the Security and Non-Diversion of Marijuana Grown*
7 *for Medical Use* adopted pursuant to Senate Bill 420, provides
8 comprehensive civil regulation of premises used for marijuana
9 cultivation. The unregulated cultivation of marijuana in the
10 unincorporated area of Butte County can adversely affect the
11 health, safety, and well-being of the County, its residents and
12 environment. Comprehensive civil regulation of premises used
13 for marijuana cultivation is proper and necessary to avoid the
14 risks of criminal activity, degradation of the natural
15 environment, malodorous smells, and indoor electrical fire
16 hazards that may result from unregulated marijuana cultivation,
17 and that are especially significant if the amount of marijuana
18 cultivated on a single premises is not regulated and substantial
19 amounts of marijuana are thereby allowed to be concentrated in
20 one place.

21 (h) Cultivation of marijuana at locations or premises within
22 six hundred (600) feet of school bus stops or one thousand
23 (1,000) feet of schools, school evacuation sites, churches,
24 parks, child care centers, or youth-oriented facilities creates
25 unique risks that the marijuana plants may be observed by

1 juveniles, and therefore be especially vulnerable to theft or
2 recreational consumption by juveniles. Further, the potential
3 for criminal activities associated with marijuana cultivation in
4 such locations poses heightened risks that juveniles will be
5 involved or endangered, therefore, cultivation of any amount of
6 marijuana in such locations or premises is especially hazardous
7 to public safety and welfare, and to the protection of children
8 and the person(s) cultivating the marijuana plants.

9 (i) Public meetings regarding previous cultivation ordinances
10 were well-attended by hundreds of Butte County residents. The
11 majority of those present spoke out against the adoption of the
12 proposed ordinance, Ordinance 4029. However, many residents who
13 live on smaller parcels in more densely populated areas
14 indicated that during the marijuana cultivation season, the
15 overpowering unpleasant smell of marijuana resulted in their
16 inability to use their yards and required them to keep windows
17 and doors shut in the stifling summer heat. Residents stated
18 that they could not invite friends to their home to visit,
19 barbecue outdoors or even allow their children to play in the
20 backyard. Other residents indicated that the use of a swamp
21 cooler during the summer months would actually result in the
22 stench of marijuana being sucked into the residence. Adults and
23 children with respiratory problems were particularly affected.
24 Residents reported that marijuana grown in residential backyards
25 results in an invitation to criminal activity for persons who

1 would steal marijuana plants out of backyards. Some marijuana
2 growers would live in a tent in their backyard, carrying
3 firearms and utilizing guard dogs to protect their marijuana
4 plants. Residents reported they were uncomfortable allowing
5 their children to play outside in their neighborhood due to such
6 dangerous activity. Cultivators of medical marijuana stated
7 that they would not grow medical marijuana at their own
8 residence to protect their children. For this reason, the
9 growth of medical marijuana on smaller parcels is especially
10 dangerous to the community, particularly children.

11 (j) As recognized by the Attorney General's August 2008
12 *Guidelines for the Security and Non-Diversion of Marijuana Grown*
13 *for Medical Use*, the cultivation or other concentration of
14 marijuana in any location or premises without adequate security
15 increases the risk that surrounding homes or businesses may be
16 negatively impacted by nuisance activity such as loitering or
17 crime. The Butte County District Attorney's Office has
18 indicated that there has been an increase in crime/felonies
19 involving marijuana. The Butte County Sheriff's Office has
20 indicated that over 150 calls for service in the past year have
21 involved marijuana, including assaults and an attempted
22 homicide.

23 (k) It is the purpose and intent of this Chapter to implement
24 State law by providing a means for regulating the cultivation of
25 medical marijuana in a manner that is consistent with State law

1 and which balances the needs of medical patients and their
2 caregivers and promotes the health, safety, and welfare of the
3 residents and businesses within the unincorporated territory of
4 the County of Butte. This Chapter is intended to be consistent
5 with Proposition 215 and Senate Bill 420, and towards that end,
6 is not intended to prohibit persons from individually,
7 collectively, or cooperatively exercising any right otherwise
8 granted by State law. Rather, the intent and purpose of this
9 Chapter is to establish reasonable regulations upon the manner
10 in which marijuana may be cultivated, including restrictions on
11 the amount of marijuana that may be individually, collectively,
12 or cooperatively cultivated in any location or premises, in
13 order to protect the public health, safety, welfare and
14 environment in Butte County.

15 (l) The limited right of qualified patients and their primary
16 caregivers under State law to cultivate marijuana plants for
17 medical purposes does not confer the right to create or maintain
18 a public nuisance. By adopting the regulations contained in
19 this Chapter, the County will achieve a significant reduction in
20 the aforementioned harms caused or threatened by the unregulated
21 cultivation of marijuana in the unincorporated area of Butte
22 County.

23 (m) The purpose of this Ordinance is to provide a structure for
24 a complaint-driven civil process to remedy nuisances related to
25 medical marijuana cultivation.

1 (n) The Board of Supervisors adopted Ordinance 4029 on May 24,
2 2011. A successful referendum campaign was conducted against
3 Ordinance 4029, which resulted in Ordinance 4029 being placed on
4 the ballot for the regular County election held on June 5, 2012.
5 At the election, Butte County voters failed to approve Ordinance
6 4029. By adopting this Chapter, the Board of Supervisors
7 intends to reach a compromise between the interests of qualified
8 patients who need access to medical marijuana and those who are
9 adversely affected by its cultivation.

10 (o) Nothing in this Chapter shall be construed to allow the use
11 of marijuana for non-medical purposes, or allow any activity
12 relating to the cultivation, distribution, or consumption of
13 marijuana that is otherwise illegal under State or federal law.
14 No provision of this Chapter shall be deemed a defense or
15 immunity to any action brought against any person by the Butte
16 County District Attorney, the Attorney General of State of
17 California, or the United States of America.

18 **34A-3 Definitions.**

19 Except where the context otherwise requires, the following
20 definitions shall govern the construction of this Chapter:

21 (a) "Child Care Center" means any licensed child care center,
22 daycare center, or childcare home, or any preschool.

23 (b) "Church" means a structure or leased portion of a structure,
24 which is used primarily for religious worship and related
25 religious activities.

1 (c) "Code Enforcement Officer" means any person employed by the
2 County of Butte and appointed to the position of code
3 enforcement officer, as established by Butte County Ordinance
4 Number 2652.

5 (d) "Cultivation" means the planting and growing of one or more
6 marijuana plants or any part thereof in any location, indoor or
7 outdoor, including from within a fully enclosed and secure
8 building.

9 (e) "Enforcing Officer" means the Code Enforcement Officer or
10 his or her authorized deputies or designees, each of whom is
11 independently authorized to enforce this Chapter.

12 (f) "Fence" means a wall or a barrier connected by boards,
13 masonry, rails, panels, wire or any other materials approved by
14 the Department of Development Services for the purpose of
15 enclosing space or separating parcels of land. The term "fence"
16 does not include retaining walls.

17 (g) "Harvest" means the drying, processing, or storage of
18 marijuana which may only occur in a fully enclosed and secure
19 building.

20 (h) "Indoors" means within one (1) fully enclosed and secure
21 detached structure that complies with the California Building
22 Standards Code (Title 24 California Code of Regulations), as
23 adopted by the County of Butte. The detached structure must be
24 secure against unauthorized entry, accessible only through one
25 or more lockable doors and may be constructed of any approved

1 building materials, including glass, as long as the marijuana
2 being cultivated cannot be seen from any public right-of-way.
3 Any detached, fully-enclosed and secure structure used for the
4 cultivation of marijuana must have a ventilation and filtration
5 system installed that shall prevent marijuana plant odors from
6 exiting the interior of the structure. Such structure shall be
7 located in the rear yard area of a legal parcel or premises,
8 maintain the setbacks set forth in section 34A-8 and the area
9 surrounding the structure or back yard must be enclosed by a
10 solid fence at least six (6) feet in height. When this Chapter
11 requires that cultivation of marijuana occur indoors, the
12 harvest of such marijuana shall also be accomplished indoors.

13 (i) "Legal parcel" means any parcel of real property that may be
14 separately sold in compliance with the Subdivision Map Act
15 (Division 2 (commencing with Section 66410) of Title 7 of the
16 Government Code).

17 (j) "Marijuana plant" means any mature or immature marijuana
18 plant, or any marijuana seedling, unless otherwise specifically
19 provided herein. A "mature" marijuana plant is one whose sex
20 can be determined by visual inspection.

21 (k) "Medical marijuana collective" means qualified patients,
22 persons with valid identification cards, and the designated
23 primary caregivers of qualified patients who associate by
24 agreement, or form a cooperative in accordance with Section
25 12300 of the Corporations Code within the unincorporated area of

1 the County in order to collectively or cooperatively cultivate
2 marijuana for medical purposes, as provided in Health and Safety
3 Code Section 11362.775. The term collective shall include
4 "cooperative" unless the context clearly indicates otherwise.

5 (l) "Outdoors" means any location that is not "indoors" within a
6 fully enclosed and secure structure as defined herein.

7 (m) "Parcel" means a "legal parcel" as defined herein.

8 (n) "Premises" means a single, legal parcel of property. Where
9 contiguous legal parcels are under common control or ownership,
10 cultivation will only be permitted on parcels that have a legal
11 residence and have met the requirements of Section 34A-6 and
12 34A-7.

13 (o) "Primary caregiver" means a "primary caregiver" as defined
14 in Health and Safety Code Section 11362.7(d).

15 (p) "Qualified patient" means a "qualified patient" as defined
16 in Health and Safety Code Section 11362.7(f).

17 (q) "Residential treatment facility" means a facility providing
18 for treatment of drug and alcohol dependency, including any
19 "sober living facility" run by treatment providers for the
20 benefit of transitional living.

21 (r) "School" means an institution of learning for minors,
22 whether public or private, offering a regular course of
23 instruction required by the California Education Code, or any
24 child or day care facility. This definition includes a nursery
25 school, kindergarten, elementary school, middle or junior high

1 school, senior high school, or any special institution of
2 education, but it does not include a vocational or professional
3 institution of higher education, including a community or junior
4 college, college or university.

5 (s) "School Bus Stop" means any location designated in
6 accordance with California Code of Regulations, Title 13,
7 section 1238, to receive school buses, as defined in California
8 Vehicle Code section 233, or school pupil activity buses, as
9 defined in Vehicle Code section 546.

10 (t) "School Evacuation Site" means any location designated by
11 formal action of the governing body, Superintendent, or
12 principal of any school as a location to which juveniles are to
13 be evacuated to, or are to assemble at, in the event of an
14 emergency or other incident at the school.

15 (u) "Youth-oriented facility" means elementary school, middle
16 school, junior high school, high school, public park, and any
17 establishment that advertises in a manner that identifies the
18 establishment as catering to or providing services primarily
19 intended for minors, or the individuals who regularly patronize,
20 congregate or assemble at the establishment are predominantly
21 minors. This shall not include a day care or preschool facility.

22 **34A-4 Nuisance Declared; Cultivation Restrictions.**

23 (a) The cultivation of more than the following total number of
24 marijuana plants, on any premises is hereby declared to be
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1 unlawful and a public nuisance that may be abated in accordance
2 with this Chapter:

3 (1) If the premises is one-half (0.5) of an acre in size or
4 less, plants may be cultivated on the premises indoors only in a
5 detached structure no larger than one hundred twenty (120)
6 square feet in size;

7 (2) If the premises is greater than one-half (0.5) of an
8 acre in size but less than one and a half (1.5) acres in size,
9 no more than six (6) mature marijuana plants or twelve (12)
10 immature plants shall be cultivated on the premises. If both
11 mature and immature marijuana plants are cultivated on the
12 premises, there shall be no more than six (6) mature marijuana
13 plants and no more than twelve (12) total marijuana plants.
14 Plants may be cultivated indoors, outdoors or a combination of
15 both;

16 (3) If the premises is equal to or greater than one and a
17 half (1.5) acres in size but less than three (3) acres in size,
18 no more than eighteen (18) mature marijuana plants or thirty-six
19 (36) immature marijuana plants shall be cultivated on the
20 premises. If both mature and immature marijuana plants are
21 cultivated on the premises, there shall be no more than eighteen
22 (18) mature marijuana plants and no more than thirty-six (36)
23 total marijuana plants. Plants may be cultivated indoors,
24 outdoors or a combination of both;

25

1 (4) If the premises is equal to or greater than three (3)
2 acres in size but less than five (5) acres in size, no more than
3 twenty-four (24) mature marijuana plants or forty-eight (48)
4 immature marijuana plants shall be cultivated on the premises.
5 If both mature and immature marijuana plants are cultivated on
6 the premises, there shall be no more than twenty-four (24)
7 mature marijuana plants and no more than forty-eight (48) total
8 marijuana plants. Plants may be cultivated indoors, outdoors or
9 a combination of both;

10 (5) If the premises is equal to or greater than five (5)
11 acres in size but less than ten (10) acres in size, no more than
12 forty-eight (48) mature marijuana plants or ninety-six (96)
13 immature marijuana plants shall be cultivated on the premises.
14 If both mature and immature marijuana plants are cultivated on
15 the premises, there shall be no more than forty-eight (48)
16 mature marijuana plants and no more than ninety-six (96) total
17 marijuana plants. Plants may be cultivated indoors, outdoors or
18 a combination of both;

19 (6) If the premises is equal to or greater than ten (10)
20 acres in size but less than twenty (20) acres in size, no more
21 than sixty-six (66) mature marijuana plants or ninety-nine (99)
22 immature marijuana plants shall be cultivated on the premises.
23 If both mature and immature marijuana plants are cultivated on
24 the premises, there shall be no more than sixty-six (66) mature
25 marijuana plants and no more than ninety-nine (99) total

1 marijuana plants. Plants may be cultivated indoors, outdoors or
2 a combination of both;

3 (7) If the premises is equal to or greater than twenty (20)
4 acres in size but less than forty (40) acres in size, no more
5 than seventy-two (72) mature marijuana plants or ninety-nine
6 (99) immature marijuana plants shall be cultivated on the
7 premises. If both mature and immature marijuana plants are
8 cultivated on the premises, there shall be no more than seventy-
9 two (72) mature marijuana plants and no more than ninety-nine
10 (99) total marijuana plants. Plants may be cultivated indoors,
11 outdoors, or a combination of both;

12 (8) If the premises is equal to or greater than forty (40)
13 acres in size, no more than ninety-nine (99) plants, whether
14 mature or immature, may be cultivated on the premises. Plants
15 may be cultivated indoors, outdoors, or a combination of both.

16 (b) The limitations of section 34A-4(a) shall be imposed
17 regardless of the number of qualified patients or primary
18 caregivers residing at the premises or participating directly or
19 indirectly in the cultivation. Further, such limitations shall
20 be imposed notwithstanding any assertion that the persons(s)
21 cultivating marijuana are the primary caregiver(s) for qualified
22 patients or that such persons(s) are collectively or
23 cooperatively cultivating marijuana. And further, all person(s)
24 cultivating marijuana on the premises or participating directly
25 or indirectly in the cultivation must be Butte County residents.

1 **34A-5. Complaints.**

2 Any person making a complaint relating to this Chapter must (a)
3 provide their name and address and (b) reside within one
4 thousand five hundred (1,500) feet of the property that is the
5 subject of the complaint (which shall be established at any
6 hearing authorized by this ordinance and kept confidential by in
7 camera disclosure). Exceptions to the residency requirement in
8 this section will be made for school administrators, church
9 pastors, public park administrators, business owners and
10 landlords when a complaint relates to a facility under their
11 control.

12 **34A-6. Residency requirements.**

13 (a) Persons engaging in cultivation of medical marijuana shall
14 meet the following requirements:

15 (1) Such person shall have resided in Butte County for at least
16 one (1) year prior to cultivating medical marijuana in Butte
17 County;

18 (2) As to the premises relating to the cultivation of medical
19 marijuana, such persons shall either (A) own the premises or (B)
20 have entered into a written lease with the actual owner of the
21 premises.

22 (b) Persons who are members of a medical marijuana collective
23 must be:

24 (1) a Butte County resident; or
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1 (2) an immediate family member or primary caregiver of a Butte
2 County resident. If a medical marijuana collective member is
3 directly involved in the cultivation of medical marijuana, such
4 member must be a resident of Butte County or an immediate family
5 member or primary caregiver of a Butte County resident.

6 **34A-7 Environmental requirements.**

7 (a) All persons engaging in the cultivation of medical
8 marijuana shall (1) have a legal water source on the premises,
9 (2) not engage in unlawful or unpermitted surface drawing of
10 water for such cultivation and (3) not permit illegal discharges
11 of water from the premises.

12 (b) The premises where the cultivation of medical marijuana
13 takes place shall either be hooked up to a municipalities' sewer
14 system or have a Butte County inspected and approved sewage
15 disposal system.

16 (c) Persons engaging in the cultivation and/or harvest of
17 medical marijuana shall use, dispose and store chemicals used in
18 such cultivation and/or harvest pursuant to applicable laws.

19 **34A-8. Setbacks; Other Restrictions.**

20 (a) Each detached structure or outdoor area in which the
21 marijuana is cultivated shall be set back from the boundaries of
22 the premises as follows:

23 (1) If the premises is one-half (0.5) of an acre in size or
24 less, each detached structure shall be set back at least fifteen
25 (15) feet from all boundaries of the premises.

1 (2) If the premises is greater than one-half (0.5) of an acre
2 in size but less than one and a half (1.5) acres in size, each
3 detached structure or outdoor area shall be set back at least
4 fifteen (15) feet from all boundaries of the premises, unless
5 the Director of the Department of Development Services or his or
6 her designee reduces or waives this requirement based upon an
7 irregular lot shape making it difficult to comply with such
8 setback requirements. Such cultivation area shall be measured
9 from the outer edge of the marijuana plant and not the stalk.
10 Owners of parcels adjacent to such premises shall be notified in
11 writing of any exercise of such discretion under this section.

12 (3) If the premises is equal to or greater than one and one
13 half (1.5) acres in size but less than three (3) acres in size,
14 each detached structure or outdoor area shall be set back at
15 least twenty (20) feet from all boundaries of the premises,
16 unless the Director of the Department of Development Services or
17 his or her designee reduces or waives this requirement based
18 upon an irregular lot shape making it difficult to comply with
19 such setback requirements. Owners of parcels adjacent to such
20 premises shall be notified in writing of any exercise of such
21 discretion under this section.

22 (4) If the premises is equal to or greater than three (3) acres
23 in size but less than five (5) acres in size, each detached
24 structure or outdoor area shall be set back at least twenty-five
25 (25) feet from all boundaries of the premises, unless the

1 Director of the Department of Development Services or his or her
2 designee reduces or waives this requirement based upon an
3 irregular lot shape making it difficult to comply with such
4 setback requirements. Owners of parcels adjacent to such
5 premises shall be notified in writing of any exercise of such
6 discretion under this section.

7 (5) If the premises is equal to or greater than five (5) acres
8 in size but less than ten (10) acres in size, each detached
9 structure or outdoor area shall be set back at least fifty (50)
10 feet from all boundaries of the premises, unless the Director of
11 the Department of Development Services or his or her designee
12 reduces or waives this requirement based upon an irregular lot
13 shape making it difficult to comply with such setback
14 requirements. Owners of parcels adjacent to such premises shall
15 be notified in writing of any exercise of such discretion under
16 this section.

17 (6) If the premises is equal to or greater than ten (10) acres
18 in size but less than twenty (20) acres in size, each detached
19 structure or outdoor area shall be set back at least seventy-
20 five (75) feet from all boundaries of the premises, unless the
21 Director of the Department of Development Services or his or her
22 designee reduces or waives this requirement based upon an
23 irregular lot shape making it difficult to comply with such
24 setback requirements. Owners of parcels adjacent to such
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1 premises shall be notified in writing of any exercise of such
2 discretion under this section.

3 (7) If the premises is equal to or greater than twenty (20)
4 acres in size but less than forty (40) acres in size, each
5 detached structure or outdoor area shall be set back at least
6 one hundred (100) feet from all boundaries of the premises,
7 unless the Director of the Department of Development Services or
8 his or her designee reduces or waives this requirement based
9 upon an irregular lot shape making it difficult to comply with
10 such setback requirements. Owners of parcels adjacent to such
11 premises shall be notified in writing of any exercise of such
12 discretion under this section.

13 (8) If the premises is equal to or greater than forty (40)
14 acres in size, each detached structure or outdoor area shall be
15 set back at least one hundred (100) feet from all boundaries of
16 the premises, unless the Director of Development Services or his
17 or her designee reduces or waives this requirement based upon an
18 irregular lot shape making it difficult to comply with such
19 setback requirements. Owners of parcels adjacent to such
20 premises shall be notified in writing of any exercise of such
21 discretion under this section.

22 (9) With respect to subsections 34A-8(a)(2-8), such setback
23 distance shall be measured in a straight line from the building
24 in which the marijuana is cultivated or if the marijuana is
25

1 cultivated in an outdoor area, from the fence required by
2 section 34A-10, to the boundary line of the premises.

3 (b) Notwithstanding the requirements of subsection 34A-4(a)
4 above, the cultivation of marijuana, whether grown collectively
5 or individually, in any amount or quantity, shall not be allowed
6 in the following areas:

7 (1) Within one thousand (1,000) feet of a youth-oriented
8 facility, a school, a park, or any church or residential
9 treatment facility as defined herein.

10 (2) Within six hundred (600) feet from a school bus stop.

11 (3) Outdoors within one hundred (100) feet of any occupied
12 residential structure located on a separate legal parcel,
13 provided, however, that any person cultivating no more than 6
14 mature or 12 immature marijuana plants (or 12 marijuana plants
15 total with no more than six (6) mature plants in such
16 combination) shall not grow outdoors within thirty (30) feet of
17 any occupied residential structure located on a separate legal
18 parcel.

19 (4) In any location where the marijuana plants are visible
20 from the public right of way or publicly traveled privately
21 maintained roads.

22 (5) In any location in the following zones:

23 (A) Commercial Zones (GC (General Commercial), NC
24 (Neighborhood Commercial), CC (Community Commercial), REC

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1 (Recreation Commercial), SE (Sports and Entertainment), MU
2 (Mixed Use));

3 (B) Industrial Zones (LI (Limited Industrial), GI (General
4 Industrial), HI (Heavy Industrial)); and(C) Special Purpose
5 Zones (PB (Public), AIR (Airport), RBP (Research/Business Park),
6 PD (Planned Development)).

7 (c) The distance between the above-listed uses in Section
8 (b)(1) and marijuana that is being cultivated shall be measured
9 in a straight line from the nearest point of the fence required
10 in section 34A-10, or if the marijuana is cultivated indoors,
11 from the nearest exterior wall of the building in which the
12 marijuana is cultivated to the nearest boundary line of the
13 property on which the facility, building, or structure, or
14 portion of the facility, building, or structure in which the
15 above-listed use occurs is located. The distance in Section
16 (b)(2) shall be measured from the fence required in Section 34A-
17 10 to the nearest exterior wall of the residential structure.

18 (d) No person owning, leasing, occupying, or having charge or
19 possession of any premises within the County shall cause, allow,
20 suffer, or permit such premises to be used for the outdoor or
21 indoor cultivation of marijuana plants in violation of this
22 chapter.

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1 **34A-9 Permission of Property Owner.**

2 If the person(s) cultivating and/or harvesting marijuana on any
3 legal parcel is/are not the legal owner(s) of the parcel, such
4 person(s) shall obtain the written permission (including
5 notarized signatures) of the legal owner(s) consenting to the
6 cultivation and/or harvesting of marijuana on the parcel.

7 **34A-10 Fencing.**

8 All marijuana grown outside of any building must be fully
9 enclosed by a solid and opaque fence (of approved materials by
10 the Department of Development Services) at least six (6) feet in
11 height or a height sufficient to conceal the marijuana from
12 view, whichever is higher, provided, however, that such fence
13 shall not be required for marijuana grown on premises of five
14 (5) acres or more when such marijuana is grown out of sight from
15 public view. The Director of the Department of Development
16 Services or his or her designee shall have discretion to
17 determine whether the plants are grown out of sight from public
18 view. Should the marijuana plant(s) grow higher than the fence,
19 either (1) the plants shall be cut so as to not extend higher
20 than such fence or (2) the person growing marijuana plants shall
21 install a fence sufficient to conceal the marijuana plants from
22 public view and comply with all applicable Butte County permit
23 requirements. The fence must be adequately secure to prevent
24 unauthorized entry. Bushes or hedgerows may constitute an
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1 adequate fence under this Chapter on parcels five (5) acres and
2 above in size.

3 **34A-11 Public Nuisance; Violations.**

4 A violation of any provision of this Chapter shall be deemed to
5 be a public nuisance and subject to the enforcement process as
6 set forth in sections 34A-12 through 34A-17 of this Chapter.

7 **34A-12 Enforcement.**

8 (a) The County may, in its discretion, abate the violation of
9 this Chapter by the prosecution of a civil action, including an
10 action for injunctive relief without first going through the
11 administrative procedures set forth herein. The remedy of
12 injunctive relief may take the form of a court order,
13 enforceable through civil contempt proceedings, prohibiting the
14 maintenance of the violation of this Chapter or requiring
15 compliance with other terms.

16 (b) The County may also abate the violation of this Chapter
17 through the abatement process established by Government Code
18 Section 25845.

19 **34A-13 Abatement procedures.**

20 (a) Whenever the Director of Development Services, or his or
21 her designee determines that a public nuisance (as defined in
22 this Chapter) exists, he or she, or his or her designee, shall
23 request in writing that the public nuisance be abated within
24 seventy-two (72) hours. If the nuisance continues beyond that
25 seventy-two (72) hour period, the Director of Development

1 Services, or his or her designee, may set the matter for
2 hearing. If the matter is set for hearing, the Director of
3 Development Services or his or her designee, shall post the
4 property upon which the public nuisance exists and shall mail,
5 with a proof of service, notices to those persons known to be in
6 possession of the property, if any, and to persons shown on the
7 latest County tax roll to be the owners of the property at least
8 ten (10) days prior to the hearing, unless thirty (30) days or
9 other notice is required by Health and Safety Code section 17980
10 or other state law. Both the mailed and posted notice shall be
11 in substantially the following form:

12 **NOTICE OF NUISANCE ABATEMENT HEARING**

13
14 The owner(s) and occupant(s) of real property
15 described on the latest equalized Butte County tax
16 roll as A.P. No. _____ and having a street
17 address of _____ is (are) hereby notified to
18 appear before a Hearing Officer of the County of Butte
19 at _____ on _____, 20_____, at
20 the hour of _____ o'clock _____ m., to
21 show cause, if any there be, why the use of said real
22 property should not be found to be a public nuisance
23 and abated pursuant to the Butte County Code Chapter
24 34A. The Department of Development Services has
25 determined that conditions exist on the above property

1 which constitute a public nuisance and violate Butte
2 County Code section(s) _____, as follows:
3 _____ . After hearing, if a violation is found
4 to exist, the cost of abating such violation,
5 including, but not limited to, the cost of the Hearing
6 Officer, the cost of prior time and expenses
7 associated with bringing the matter to hearing,
8 attorneys' fees, the cost associated with any appeals
9 from the decision of the Hearing Officer, the cost of
10 judicially abating the violation, the cost of labor
11 and material necessary to physically abate the
12 violation, and the cost of securing expert and other
13 witnesses may become a lien against the subject
14 property and may also be assessed against the property
15 in the same manner as taxes. If an abatement lien is
16 recorded, it will have the same force and effect as an
17 abstract of judgment which is recorded as a money
18 judgment obtained in a court of law. If you fail to
19 appear at the hearing or if you fail to raise any
20 defense or assert any relevant point at the time of
21 hearing, the County will assert, in later judicial
22 proceedings to enforce an order of abatement, that you
23 have waived all rights to assert such defenses or such
24 points.
25

1 In preparing for such hearing, you should be aware
2 that if an initial showing is made by the County,
3 sufficient to persuade the Hearing Officer that a
4 public nuisance exists on your property, you will then
5 have the burden of proving that no public nuisance
6 exists on your property. Therefore, you should be
7 prepared to introduce oral and documentary evidence
8 proving why, in your opinion, your use of the property
9 is not a public nuisance as defined in this Chapter. A
10 copy of the Butte County Code Chapter 34A relating to
11 Medical Marijuana Cultivation nuisance abatement
12 hearings is enclosed to assist you in the preparation
13 of your presentation.

14 If an initial showing sufficient to persuade the
15 Hearing Officer that a public nuisance exists on your
16 property is made by the Code Enforcement Officer, your
17 failure to sustain the burden of showing that no
18 public nuisance exists on the property may result in
19 an administrative decision ordering the abatement of
20 uses or conditions on your property which are found to
21 be a public nuisance and may also result in a later
22 judicial order to the same effect.

23 Further, if the Hearing Officer finds that a public
24 nuisance exists on your property and you fail to abate
25 the nuisance promptly, the County may abate the

1 nuisance. If the County abates the nuisance, you may
2 be responsible for the actual costs of the abatement,
3 including the costs to the County of the
4 administrative hearing and attorneys' fees, and such
5 costs may be specially assessed against your parcel by
6 the Auditor-Controller's Office and added to the your
7 tax bill as a special assessment. Such special
8 assessments have the same priority, for collection
9 purposes, as other county taxes and, if not paid, may
10 result in a forced sale of your property. You are also
11 hereby notified that the County will seek recovery of
12 attorneys' fees incurred in any abatement hearing and
13 that attorneys' fees may be recovered by the
14 prevailing party.

15 Finally, if the Hearing Officer finds that a public
16 nuisance exists on your property, a violation of the
17 Butte County Code Chapter 34A, the County will contend
18 that you are bound by such finding at any subsequent
19 judicial action to enforce the Hearing Officer's
20 order.

21 IMPORTANT: READ THIS NOTICE CAREFULLY. FAILURE TO
22 APPEAR AND RESPOND AT THE TIME SET FORTH IN THIS
23 NOTICE WILL LIKELY RESULT IN ADMINISTRATIVE AND/OR
24 JUDICIAL ABATEMENT AND TERMINATION OF USES OF OR
25 CONDITIONS ON YOUR PROPERTY WHICH THE DIRECTOR OF

1 DEVELOPMENT SERVICES CONTENDS ARE IN VIOLATION OF THE
2 BUTTE COUNTY CODE.

3 Dated: _____/_____/_____

4 BUTTE COUNTY DIRECTOR OF DEVELOPMENT SERVICES

5 By: _____

6 Enclosure: Butte County Code Chapter 34A
7
8

9 (b) All hearings conducted under this Chapter shall be held
10 before a Hearing Officer designated pursuant to the protocol set
11 forth in that document entitled the "Butte County Administrative
12 Hearing Officer Program." The Program is based upon an
13 alphabetical rotation through attorneys currently under contract
14 through the Program.

15 (c) At the time and place set for the hearing, the Hearing
16 Officer shall review the Director of Development Services'
17 decision ordering cessation of the alleged public nuisance to
18 determine whether such decision conforms to law and is supported
19 by substantial evidence. The Hearing Officer shall hear
20 testimony and receive written and/or documentary evidence
21 relating to the alleged violation. Additional procedural rules
22 may be adopted by resolution of the Board of Supervisors. The
23 Hearing Officer shall tape record the hearing or engage the
24 services of a certified court reporter to record the hearing and
25 shall preserve the record of the hearing and all photographs and

1 demonstrative and documentary evidence introduced at the time of
2 the hearing for a period of three (3) years.

3 (d) Within five (5) days after the hearing is closed, the
4 Hearing Officer shall render his or her written decision
5 relating to the existence or nonexistence of the alleged public
6 nuisance. If a violation is found to exist, the decision shall
7 include a statement of the Abatement and Administrative Costs
8 incurred by the County or estimated costs to abate the violation
9 and shall also order that the owner of the property, or persons
10 known to be in possession of the property, abate the violation
11 within a reasonable time, not to exceed twenty (20) days. The
12 decision shall contain findings of fact and conclusions of law.
13 A copy of the decision shall be mailed by certified mail, return
14 receipt requested, to the person or persons shown on the last
15 County tax roll to be the owners of the property which is the
16 subject of the hearing and the occupant of such parcel, if any.
17 All other persons noticed pursuant to this section shall be
18 mailed a copy of the decision by first class mail, postage
19 prepaid.

20 (e) The decision of the Hearing Officer shall be final and
21 conclusive on the date the certified mail set forth in
22 subsection (d) above, is deposited in the mail.

23 (f) (1) Notwithstanding any other provisions of this Code, if a
24 final decision of the Hearing Officer finds that a violation
25

1 exists and the public nuisance is not voluntarily abated within
2 twenty (20) days of said decision, the Director of Development
3 Services or his or her designee may abate the public nuisance
4 pursuant to a warrant issued by a court of competent
5 jurisdiction. The owner of the property shall be responsible for
6 paying all of the County's Abatement Costs and Administrative
7 Costs, including but not limited to, those cost items set forth
8 in the notice required by subsection (a) above. The Director of
9 Development Services or his or her designee shall keep an
10 accounting of the Abatement and Administrative Costs to perform
11 each abatement. Upon completion of the abatement, the Director
12 of Development Services or his or her designee shall post the
13 property and send a bill to the owner, and any persons known to
14 be in possession of the property, requesting payment of the
15 County's Abatement and Administrative Costs. The bill shall also
16 state that failure to pay the Abatement and Administrative Costs
17 within fifteen (15) days from service of the bill may result in
18 the recording of a lien and the placement of a special
19 assessment against the property.

20 (2) If the County's Abatement and Administrative Costs are
21 not paid within fifteen (15) days from service of the bill, the
22 Director of Development Services shall render an itemized report
23 to the Clerk of the Board of Supervisors for submittal to the
24 Board of Supervisors for hearing and consideration regarding the
25 proposed lien and special assessment. The report shall include

1 the names and addresses of the owner of record and any persons
2 known to be in possession of the property. The report shall also
3 include the date the abatement was ordered, the work performed,
4 the date the abatement was completed, a description of the
5 property subject to the lien and special assessment, and an
6 itemized account of the County's Abatement and Administrative
7 Costs. At least fifteen (15) days prior to said hearing, the
8 Clerk of the Board of Supervisors shall give notice, with an
9 affidavit of service, of said hearing to all persons named in
10 the Director of Development Services' report and the Director of
11 Development Services or his or her designee shall post the
12 property with a copy of the notice. The notice shall describe
13 the property by assessor's parcel number and street number or
14 other description sufficient to enable identification of the
15 property and contain a statement of the amount of the proposed
16 lien and special assessment. The notice shall also contain a
17 statement that the Board will hear and consider objections and
18 protests to the proposed lien and special assessment at the
19 designated time and place.

20 (g) At the time and place fixed in the notice, the Board of
21 Supervisors shall hear and consider the proposed lien and
22 special assessment together with objections and protests
23 thereto. At the conclusion of the hearing, the Board of
24 Supervisors may make such modifications and revisions to the
25 proposed lien and special assessment as it deems just and may

1 order that the proposed lien and special assessment be recorded
2 by the Director of Development Services and specially assessed
3 against the property by the Auditor-Controller's Office. The
4 lien shall have the same force, priority and effect as a
5 judgment lien and the special assessment shall have the same
6 priority as other County taxes.

7 (h) The notice of abatement lien shall, at a minimum, identify
8 the record owner or possessor of the property, set forth the
9 date upon which abatement of the nuisance was ordered or deemed
10 ordered by the Board of Supervisors, describe the real property
11 subject to the lien, set forth the amount of the Abatement Costs
12 and Administrative Costs incurred to date and, if applicable,
13 the date upon which the abatement was completed. If the
14 abatement has not yet been completed, the notice shall so state
15 and shall also indicate that the lien is a partial lien and that
16 additional Abatement Costs will be incurred in the future.

17 It is the intent of the Board of Supervisors that Abatement
18 Costs and Administrative Costs incurred after the filing of the
19 notice of abatement lien relate back to the date upon which the
20 lien was recorded for purposes of priority; however, in order to
21 preserve its rights, after all Abatement Costs and
22 Administrative Costs have been incurred and the abatement is
23 complete, the Department of Development Services shall cause a
24 supplemental notice of abatement lien to be recorded. The
25 supplemental notice shall contain all of the information

1 required for the original notice and shall also refer to the
2 recordation date and the recorder's document number of the
3 original notice.

4 (i) The decision of the Hearing Officer or Board of Supervisors
5 may be recorded by the Director of Development Services. In the
6 event of such recordation and in the further event that the
7 violation is corrected, a notice of such correction shall be
8 recorded. The Director of Development Services is authorized to
9 prepare and record a notice of correction. Correction of the
10 violation shall not excuse the property owner's liability for
11 costs incurred during the administrative abatement process
12 (Abatement Costs and Administrative Costs as defined in section
13 34A-14 of this Chapter). If the property owner has not fully
14 compensated the County for costs incurred during the
15 administrative abatement process, a notice of correction shall
16 not be recorded unless the fee specified in section 41-9 of
17 Chapter 41 has been paid. Payment of the fee specified in
18 section 41-9 of Chapter 41 does not excuse the property owner's
19 liability for costs incurred during the administrative abatement
20 process (Abatement Costs and Administrative Costs as defined in
21 section 34A-14 of this chapter).

22 **34A-14 Abatement costs; Administrative costs.**

23 (a) The term "Abatement Costs" means any costs or expenses
24 reasonably related to the abatement of conditions which violate
25

1 the Butte County Code, and shall include, but not be limited to,
2 enforcement, investigation, attorneys' fees, collection and
3 administrative costs, and the costs associated with the removal
4 or correction of the violation.

5 (b) The term "Administrative Costs," shall include the cost of
6 County staff time reasonably related to enforcement, for items
7 including, but not limited to, site inspections, travel time,
8 investigations, telephone contacts and time spent preparing
9 summaries, reports, notices, correspondence, warrants and
10 hearing packets. The time expended by Development Services and
11 Auditor-Controller staff, to calculate the above costs and
12 prepare itemized invoices, may also be recovered.

13 (c) In any action, administrative proceeding, or special
14 proceeding to abate a nuisance, attorneys' fees may be recovered
15 by the prevailing party. In no action, administrative
16 proceeding, or special proceeding shall an award of attorneys'
17 fees to a prevailing party exceed the amount of reasonable
18 attorneys' fees incurred by the County in the action or
19 proceeding.

20 **34A-15 Non-exclusive remedy.**

21 This Chapter is cumulative to all other remedies now or
22 hereafter available to abate or otherwise regulate or prevent
23 public nuisances.
24
25

1 **34A-16 Administrative Civil Penalties.**

2 In addition to any other remedies provided by County Code or
3 State Law, there is hereby imposed the following civil penalty
4 for each violation of this Chapter, as imposed by the Code
5 Enforcement Officer:

6 (a) No less than twenty-five dollars (\$25.00) per day and no
7 more than one hundred dollars (\$100.00) per day for the first
8 violation; no less than one hundred dollars (\$100.00) per day
9 and no more than two hundred dollars (\$200.00) per day for a
10 second violation of this Chapter within one (1) year; and no
11 less than two hundred dollars (\$200.00) per day and no more than
12 five hundred dollars (\$500.00) per day for each additional
13 violation of this Chapter within one (1) year for each day that
14 the violation exists after the date of mailing of the notice of
15 violation through to its abatement by whatever means.

16 (b) The Code Enforcement Officer shall have the sole and
17 exclusive discretion to set the amount of civil penalties within
18 the ranges set forth in this Section. The Code Enforcement
19 Officer shall not impose a penalty greater than the minimum
20 amount in range of civil penalties set forth in this Section,
21 unless the Code Enforcement Officer's department has established
22 a written policy setting forth how civil penalties within the
23 ranges are determined. Such policy shall take into account the
24 facts and circumstances of the violation including, but not
25 limited to, whether or not the violation poses a threat to human

1 health, safety or to the environment; the seriousness or gravity
2 of the violation; the length of time the violation has existed;
3 the culpability of the person in violation or the willfulness of
4 the violation; the sophistication of the persons creating or
5 causing the violation; the extent of the violation and its
6 effect on adjoining properties; attempts, if any, to comply with
7 the applicable ordinances; and any other information which might
8 be relevant to the determination of penalty to be imposed by
9 this Section.

10 (c) If the penalty is imposed for violation of this Chapter
11 there shall be imposed a fine of two hundred fifty dollars
12 (\$250.00), plus the actual costs of abatement.

13 (d) At the discretion of the Code Enforcement Officer, or his
14 or her designee, or upon the appeal of the property owner, the
15 determination may be referred to a Hearing Officer of the
16 County, duly appointed to hear such matters as described in this
17 Chapter. The determination of the Hearing Officer as to the
18 amount of charges properly imposed under this Section shall be
19 final, subject only to judicial review.

20 (e) The charges imposed by this Section shall not apply if the
21 property owner establishes all of the following: (i) that, at
22 the time he or she acquired the property, a violation of this
23 code already existed on the property; (ii) the property owner
24 did not have actual or constructive notice of the existence of
25 that violation; and (iii) within thirty (30) days after the

1 mailing of notice of the existence of that violation, the
2 property owner initiates and pursues, with due diligence, good
3 faith efforts, as determined solely by the Code Enforcement
4 Officer, to meet the requirements of this code.

5 (f) In the event a property owner, in the opinion of the
6 relevant Department Head(s), abates the nuisance in a timely
7 manner after the Notice and Order to Abate has been issued, the
8 relevant Department Head(s) has (have) the authority to waive or
9 reduce the amount of penalties owed, if in his or her opinion
10 such a reduction is warranted.

11 **34A-17 Summary Abatement.**

12 Notwithstanding any other provision of this Chapter, when any
13 unlawful medical marijuana cultivation constitutes an immediate
14 threat to the public health or safety, and where the procedures
15 set forth in sections 34A-11 through 34A-14 would not result in
16 abatement of that nuisance within a short enough time period to
17 avoid that threat, the enforcing officer may direct any officer
18 or employee of the County to summarily abate the nuisance. The
19 enforcing officer shall make reasonable efforts to notify the
20 persons identified in Section 34A-13 but the formal notice and
21 hearing procedures set forth in this Chapter shall not apply. No
22 summary abatement shall occur prior to consultation with the
23 Office of County Counsel. The County may nevertheless recover
24 its costs for abating that nuisance in the manner set forth in
25 this Chapter.

1 **34A-18 No Duty to Enforce.**

2 Nothing in this Chapter shall be construed as imposing on the
3 enforcing officer or the County of Butte any duty to issue a
4 Notice to Abate Unlawful Marijuana Cultivation, nor to abate any
5 unlawful marijuana cultivation, nor to take any other action
6 with regard to any unlawful marijuana cultivation, and neither
7 the enforcing officer nor the County shall be held liable for
8 failure to issue an order to abate any unlawful marijuana
9 cultivation, nor for failure to abate any unlawful marijuana
10 cultivation, nor for failure to take any other action with
11 regard to any unlawful marijuana cultivation.

12 **34A-19 Use of Money Collected Under This Chapter.**

13 All money collected for penalties for violations of this Chapter
14 and all money collected for recovery of costs of enforcement of
15 this Chapter shall be made available to the Department
16 responsible for the enforcement action for training and further
17 code enforcement actions.

18
19 Section 2. The County finds that this Chapter is not subject to
20 the California Environmental Quality Act (CEQA) pursuant to
21 Sections 15060(c)(2) (the activity will not result in a direct
22 or reasonably foreseeable indirect physical change in the
23 environment) and 15061(b)(3) (there is no possibility the
24 activity in question may have a significant effect on the
25 environment). In addition to the foregoing general exemptions,

1 the following categorical exemptions apply: Sections 15308
2 (actions taken as authorized by local ordinance to assure
3 protection of the environment) and 15321 (action by agency for
4 enforcement of a law, general rule, standard or objective
5 administered or adopted by the agency, including by direct
6 referral to the County Counsel as appropriate for judicial
7 enforcement).

8
9 Section 3. If any provision of this Chapter or the application
10 thereof to any person or circumstance is held invalid, the
11 remainder of this Chapter, including the application of such
12 party or provision to other circumstances shall not be affected
13 thereby and shall continue in full force and effect. To this
14 end, provisions of this Chapter are severable. The Board of
15 Supervisors hereby declares that it would have passed each
16 section, subsection, subdivision, paragraph, sentence, clause,
17 or phrase hereof irrespective of the fact that any one (1) or
18 more sections, subsections, subdivisions, paragraphs, sentences,
19 clauses or phrases be held unconstitutional, invalid or
20 unenforceable.

21
22 Section 4. The Clerk of the Board will publish the Ordinance
23 codified in this Chapter as required by law. The Ordinance
24 codified in this Chapter shall take effect thirty (30) days
25 after passage."


1 PASSED AND ADOPTED by the Board of Supervisors of the County of
2 Butte, State of California, on the 26th day of February, 2013,
3 by the following vote:

4
5 AYES: Supervisors Kirk, Lambert, Teeter, and Chair Connelly

6 NOES: Supervisor Wahl

7 ABSENT: None

8 NOT VOTING: None

9
10 
11

BILL CONNELLY, Chair of the
Butte County Board of Supervisors

12 ATTEST:

13 Paul Hahn,
14 Chief Administrative Officer and
Clerk of the Board

15
16 By: 
17

Deputy