AN ORDINANCE OF THE COUNTY OF BUTTE

ADDING CHAPTER 53, ENTITLED "DEVELOPMENT MITIGATION,"

AND ARTICLE I, ENTITLED "OAK WOODLAND MITIGATION,"

TO THE BUTTE COUNTY CODE

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

Section 1. Chapter 53 is added to the Butte County Code as follows:

CHAPTER 53 Development Mitigation

Article I. Oak Woodland Mitigation

53-1 Title. This article may be known and may be cited as the Butte County Oak Woodland Mitigation Ordinance.

53-2 Findings. In Butte County, oak woodland biological community types include valley oak woodland, blue oak woodland and blue oak-foothill pine which contains a variety of species. Oak Woodlands are scattered throughout the county, but are concentrated in the transition area between the lower valley and higher mountainous areas of the county, between the elevations of 200 feet and 3000 feet. Oak Woodlands support a rich wildlife community by providing food, shelter, nesting and resting areas for mammals, birds, reptiles, amphibians and insects. Oak Woodlands moderate temperature extremes, reduce soil erosion, sustain water quality and increase the ecological
and monetary value of property. The California Oaks Program of
the California Wildlife Foundation (formerly the California Oaks
Foundation) estimated that trees of the genus *Quercus*, within
Oak Woodlands and oak forests in Butte County, account for
approximately 6.9 million metric tons of sequestered carbon.
Oak Woodlands contribute to the overall health and wellbeing of
Butte County through the sequestration of atmospheric carbon.
Oak Woodlands are one of the defining physical features of the
Butte County area. They provide scenic beauty, shade, and
recreational areas to residents and visitors. Oak Woodlands are
common locally and regionally; however, native oak trees and
woodland habitats are declining statewide because of
development, disease, fire, and land management practices. Land
use practices can result in further reduction of Oak Woodland
acreage according to the Butte County Oak Woodlands Management
Plan, adopted by Board of Supervisors Resolution 07-084.

53-3 Purpose. The purpose of this chapter includes the following:
A. Streamline the evaluation of impacts to native Oak
Woodlands through the establishment of a threshold of
significance (CEQA Guidelines 15064.7) and mitigation
standards for Oak Canopy removal on Discretionary Projects.
B. Implement goals, policies and actions of the Butte
County General Plan Conservation and Open Space Element
pertaining to Oak Woodland habitat by setting forth standards
for Oak Canopy retention and establishing an in-lieu payment
methodology for Oak Canopy removal for Discretionary Projects.

C. Address direct, indirect and cumulative impacts to Oak Woodlands.

D. Satisfy the provisions of California Public Resources Code Section 21083.4, including other mitigation measures developed by the County.

E. Evaluate oak trees on private property where discretionary applications have been filed by controlling Oak Canopy removal while allowing for reasonable enjoyment of private property rights and property development for the following reasons:

1. The County finds it necessary in the interest of public health, safety and welfare.

2. Oak Woodlands provide habitat for over 300 vertebrate species and more than 5,000 species of insects.

3. Oak Woodlands stabilize the soil, improve drainage conditions, and provide aesthetic beauty and screening for privacy.

F. The County finds that this ordinance provides a clear, defensible, feasible, and reasonable approach to managing impacts to Oak Woodlands.

53-4 Relationship to Other Laws, Regulations and Ordinances. This ordinance only applies to the effects on oaks and Oak Woodlands. Discretionary Projects that are consistent with this ordinance
are considered to have less than significant impacts with respect to the removal of Oak Canopy pursuant to the California Environmental Quality Act (CEQA). The ordinance does not replace any other CEQA analysis with respect to impacts to Oak Woodlands, such as habitat loss or carbon sequestration.

53-5 Alternate Project Design and Review. Projects that do not meet the requirements of this ordinance are required to do CEQA analysis with respect to the removal of Oak Canopy and may propose an alternate approach to the ordinance except for Section 53-19, Premature Removal, that will apply to any CEQA analysis of the removal of Oak Canopy. Any alternate project proposal shall include standard methods of evaluation, impact identification and mitigation strategies prepared by a Qualified Professional. The applicant shall provide a plan for review that proposes equivalent or better mitigation than this ordinance would otherwise provide. The Decision-Making Authority may consider the proposed alternate methods in its environmental determination and in its decision to approve, deny or modify the project. Projects approved under this section shall include additional conditions of approval as mitigation measures.

53-6 Applicability. The provisions of this ordinance shall apply to Discretionary Projects that result in the removal of Oak Canopy including disturbance to the Critical Root Zone (CRZ).

53-7 Definitions.
A. Critical Root Zone (CRZ). A circle on the ground around a tree that generally corresponds to the drip line of the tree.

B. Decision-Making Authority. The public hearing authority to make a decision on a discretionary project. This includes the Zoning Administrator, Planning Commission or Board of Supervisors.

C. Department. The Department of Development Services.

D. Diameter at Breast Height (DBH): The diameter of the tree trunk or trunks at 4.5 feet above natural grade level.

E. Director. Director of the Department of Development Services or designee.

F. Discretionary Project. A project that requires the exercise of judgment or deliberation when the Decision-Making Authority approves or denies a particular activity.

G. Hazardous Tree. A tree that possesses a structural defect which poses imminent risk if the tree or part of the tree falls on someone or something of value. Structural defect means any structural weakness or deformity of a tree or its parts.

H. Letter to Proceed. A letter, email or other written documentation from the Department of Development Services stating that the applicant may proceed with the project.

I. Oak Canopy. The surface area directly under the live branches of oak trees.
J. Oak tree. A native tree species in the genus Quercus, not designated as Group A or Group B commercial species pursuant to regulations adopted by the State Board of Forestry and Fire Protection pursuant to Public Resources Code Section 4526, and that is 5 inches or more in Diameter at Breast Height.

K. Oak Woodland. For purposes of this ordinance, an Oak Woodland is considered to be any oak tree or group of oak trees.

L. Oak Woodland Condition. A description of the condition of Oak Woodland prepared by a qualified professional based on a variety of factors. Methodologies to determine this include but are not limited to the University of California Oak Woodland Impact Decision Matrix. Oak Woodland Condition is further defined as follows:

1. Oak Woodland Condition, Intact: In this condition roads and buildings are rare across the site. Trees, both dead and alive, dominate the landscape and the site is capable of natural regeneration of oaks and other plant species. The site allows for movement of wildlife and the existing development is localized and limited to a small number of residences with service buildings or barns. The site is relatively undisturbed and is recognized as Intact.

2. Oak Woodland Condition, Moderately Degraded: The site has been changed in one or more ways that has reduced
its potential for providing ecological and socially important services. For example, it may have been partially developed resulting in the net loss of trees; the canopy or understory may have been reduced or eliminated over all or part of the site; past grazing or soil disturbance may have impaired regeneration in some areas.

3. Oak Woodland Condition, Severely Degraded: Site has been dramatically altered and is currently in a condition where very few oak trees remain; it is being managed in such a way that natural regeneration is not possible or practical; the soil is compacted or contaminated; and/or the site has been used for residential, commercial or industrial purposes. Roads and stream crossings are commonplace and fencing and other obstructions limit wildlife access and movement.

M. Oak Woodland Technical Manual. The Oak Woodland Technical Manual is a companion document to the Butte County Oak Woodland Mitigation Ordinance that outlines the process of managing construction projects on Oak Woodlands in detail and implementing other portions of the Ordinance. The Oak Woodland Technical Manual is separate from the ordinance as a document prepared and maintained by the Department of Development Services.
N. Project Site. A parcel or parcels of land on which a Discretionary Project is proposed.

O. Qualified Professional. A professional having experience in California Oak Woodlands and including the following:

1. **Certified Arborist** is a person certified by the International Society of Arboriculture (ISA), American Society of Consulting Arborists (ASCA), or other recognized professional organization of arborists that provides professional advice and licenses professionals to do physical work on trees; or

2. **Qualified Wildlife Biologist** is a professional with a BA or BS or advanced degree in biological sciences or other degree specializing in the natural sciences; professional or academic experience as a biological field investigator, with a background in field sampling design and field methods; taxonomic experience and knowledge of plant and animal ecology; familiarity with plants and animals of the area, including the species of concern; and familiarity with the appropriate county, state, and federal policies and protocols related to special status species and biological surveys; or

3. **Registered Professional Forester (RPF)** is a person licensed by the State of California to perform professional services that require the application of
forestry principles and techniques to the management of forested landscapes. RPFs have an understanding of forest growth, development, and regeneration; forest health; wildfire; soils, geology, and hydrology; wildlife and fisheries biology; and other forest resources.

53-8 Exemptions. The following types of actions are exempt from this ordinance:

A. Projects undertaken pursuant to an approved Natural Community Conservation Plan or approved subarea plan within an approved Natural Community Conservation Plan that includes oaks as a covered species or that conserves oak habitat through natural community conservation preserve designation and implementation, and mitigation measures that are consistent with Public Resources Code Section 21083.4.

B. Affordable housing projects for lower income households, as defined pursuant to Section 50079.5 of the Health and Safety Code, that are located within an urbanized area, or within a sphere of influence as defined pursuant to Section 56076 of the Government Code.

C. Conversion of Oak Woodlands on agricultural land, with a zoning designation of Agriculture (AG) or Agriculture Services (AS) that includes land that is used to produce or process plant and animal products for commercial purposes
unless a discretionary action is required under Section 13-14(c) of Butte County Code Chapter 13, Grading, to be heard by the Planning Commission.

D. Projects undertaken pursuant to Section 21080.5 of the Public Resources Code as a State Secretary of Resources Agency certified regulatory program.

E. Hazardous Tree Removal – The removal of trees with structural defects that indicate pending failure as determined by a Qualified Professional.

F. Operations subject to the State Forest Practice Act or State Forest Practice Rules including tree removal resulting from a Timber Harvest Plan or Timber Harvest Plan Exemption approved by CAL FIRE.

G. Vegetation removal required to comply with defensible space requirements set forth in Public Resources Code Section 4290 (Fire Safety Regulations).

H. Removal of Oak Canopy through the utilization of State and local fuel reduction programs such as those managed by local Fire Safe Councils and similar organizations.

I. Requirements under Butte County Code Chapter 38A (Fire Prevention and Protection).

J. Public Road and Public Utility Projects – Oak Canopy removal necessary to complete County road projects when the new alignment is dependent on the existing alignment. This exemption applies to road widening and realignments which are
necessary to increase capacity, to protect the public’s health, and to improve the safe movement of people and goods in existing public road rights-of-way, as well as acquired rights-of-way necessary to complete the project. This exemption shall also apply to removal of Oak Canopy necessary to comply with the safety regulations of the Public Utilities Commission and necessary to maintain a safe operation of utility facilities. The following are excluded from this exemption:

1. Lands owned by public utilities and used for administrative purposes or uses unrelated to the public service provided by the utility.

2. New roads or utility installation that serve the Discretionary Project, or to internal circulation roads within the Discretionary Project.

K. Permitted uses and administrative permitted uses under Butte County Code Chapter 24, Zoning, and including the issuance of building permits for those uses.

53-9 Oak Woodland Evaluation Plan. An Oak Woodland Evaluation Plan shall be required for applicable Discretionary Projects that result in the removal of Oak Canopy including disturbance to the CRZ consistent with the following requirements.
A. An Oak Woodland Evaluation Plan shall be required in conjunction with an application for the required Discretionary Projects to document the Oak Woodland and proposed extent of impact. The Oak Woodland Evaluation Plan shall include but not be limited to the following:

1. Site location and site plan.

2. Description of Oak Woodland including an evaluation of its Oak Woodland Condition including whether it qualifies as intact, moderately degraded or severely degraded.

3. Measurement of total Oak Canopy area; location and area of proposed Oak Canopy removal and calculation of percentage removal.

4. Oak Woodland to remain. The project shall be designed such that the Oak Woodland that is to remain will be of intact condition including: when located along waterways and/or wildlife corridors including deer migration corridors; when connected with Oak Woodland on adjacent lands including public lands; and, when there are other factors determined by the Department of Development Services.

5. The location of required tree protection fencing and signage.

6. Proposed mitigation consistent with the requirements in sections 53-10 through 53-14.
B. The Oak Woodland Evaluation Plan shall be prepared by a Qualified Professional. Exceptions to the requirement for a Qualified Professional may be considered by the Director based on limited scale of the project or other factors.

C. The Zoning Administrator shall review the Oak Woodland Evaluation Plan in order to determine its completeness and distribute it together with the project environmental document.

D. The Decision-Making Authority shall review the Oak Woodland Evaluation Plan in its action on the project. When deciding to approve the project, the Decision-Making Authority shall make findings that the project is consistent with the requirements of this ordinance and shall apply any required conditions of approval.

53-10 Oak Canopy Removal. Discretionary Projects are subject to the following standards regarding removal of Oak Canopy:

A. Thresholds of Significance. The following thresholds of significance are applicable.

1. Less than significant impact, no mitigation required. Oak Canopy mitigation shall not be required for projects that meet the following standards:
   a. Ten percent or less of the Oak Canopy is removed;
   b. Where the Oak Woodland is of a severely degraded condition, then up to 10 oak trees, regardless of
whether the number exceeds the ten percent in Section 53-10(A)(1)(a), may be removed without a replacement requirement. A Qualified Professional is to determine whether an Oak Woodland is severely degraded.

2. Less than significant impact with mitigation required. Removal of Oak Canopy exceeding the thresholds in Section 53-10(A)(1) is reduced to a level of less than significant through Oak Canopy Mitigation under Section 53-11. Mitigation shall be required for removal of over ten percent and up to 70 percent total Oak Canopy cover.

3. Independent Evaluation Required. If the total removal of Oak Canopy exceeds 70 percent, except as provided in Section 53-10(A)(1)(b), alternative analysis under Section 53-5 Alternative Project and Design is required to determine if the impact can be reduced to a level of less than significant.

B. Additional requirement. Notwithstanding Section 53-10(A)(1), the removal of any Oak tree within the less than significant canopy removal threshold that is 24 inches DBH or greater shall be replaced at a ratio of 2:1 for the Oak Canopy removed.
53-11 Oak Canopy Mitigation. The mitigation of Oak Canopy impacts shall take place within Butte County. Mitigation shall be of a similar species mix, density of Oak Canopy, and viability as would be found in a naturally occurring and healthy Oak Woodland. Mitigation shall be of the type of Oak Woodland found on the Project Site. The project shall include one or a combination of the following measures as mitigation for area required in Section 53-13 Calculation of Oak Canopy Mitigation to the satisfaction of the County:

A. Conservation easement: Proof of the creation of a conservation easement recognized by a State resource agency or trustee agency as suitable for Oak Woodland that accommodates the replacement of equivalent canopy area.

B. Payment to mitigation bank: Proof of payment for replacement of equivalent canopy area within a mitigation bank.

C. Payment to accredited land trust: Proof of payment for replacement of equivalent canopy area to an accredited land trust.

D. Payment to the State Oak Woodlands Conservation Fund. An in-lieu payment may be made to the State Oak Woodlands Conservation Fund calculated through one or a combination of the following subsections. Funds from this program are to be spent on Oak Woodland conservation within Butte County. The
calculation of the fee is subject to review and acceptance by the Director. Proof of payment shall be provided to the Director within six months of the Director’s acceptance of the payment amount calculation.

1. Appraised Value of Land. Calculate the value of the land of the area where the Oak Canopy is proposed for removal. Use a qualified property appraiser who has met the educational requirements for General Certification pursuant to the Appraisal Qualifications Board of the Appraisal Foundation and who holds a designation from a recognized professional appraisal organization. The appraiser should be familiar with Oak Woodland land valuation and should follow best practice guidelines. The Director may consider alternate methods for valuing the land for limited scale projects.

2. Value of Trees. The International Society of Arboriculture (ISA) method for valuing trees may be used as an alternative to the method above (53-11(D)(1)). Oak trees may be counted within the Oak Canopy proposed for removal and the amount calculated consistent with the ISA standards for valuing trees of different sizes.

53-12 Oak Canopy Replacement Ratio.
A. A 2:1 replacement ratio shall apply to the removal of more than 10% and up to 50% of the total Oak Canopy. Also see Section 53-10(B).

B. A 3:1 replacement ratio shall apply to removal that exceeds 50% and up to 70% of the total Oak Canopy. The 3:1 replacement ratio shall only apply to the portion of the removal that exceeds 50%.

C. Replacement ratios for Oak Canopy removal exceeding 70%. Under Section 53-10(A)(3), removal of greater than 70% of Oak Canopy requires an alternative analysis to be addressed under Section 53-5, Alternative Project and Design.

D. Replanting within the project site does not count toward the replacement ratio requirements. Replanting outside of the project site and within a County approved conservation easement, mitigation bank or accredited land trust as specified in 53-11(A) through (C) qualifies for up to the total replacement.

Table 53-12-1 Oak Canopy Replacement Ratios by Percent Removal

<table>
<thead>
<tr>
<th>Percent Range</th>
<th>10%</th>
<th>20%</th>
<th>30%</th>
<th>40%</th>
<th>50%</th>
<th>60%</th>
<th>70%</th>
<th>80%</th>
<th>90%</th>
<th>100%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Replacement</td>
<td>None</td>
<td>2:1 Replacement Ratio</td>
<td>3:1 Replacement Ratio</td>
<td>See Section 53-5 additional analysis</td>
<td></td>
<td></td>
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<td></td>
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<td></td>
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<tr>
<td></td>
<td>0 to 10%</td>
<td>10.1% to 50%</td>
<td>50.1% to 70%</td>
<td>70.1% to 100%</td>
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</tbody>
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Note: the replacement ratios apply to the percentage removal of Oak Canopy within the range. As an example, at 28% canopy...
removal, the mitigation requirement is for the 18% that exceeds
the 10% less-than-significant portion of the canopy removal.

53-13 Calculation of Oak Canopy Mitigation. Section 53-9(A)(3) of the Oak Woodland Evaluation Plan identifies the total
Oak Canopy on the Project Site, the proposed Oak Canopy removal
and the percentage of removal. The total Oak Canopy area for
mitigation shall be calculated by the area of Oak Canopy
proposed for removal multiplied at the respective replacement
ratios by percent removal as required in Section 53-12 including
Table 53-12-1.

53-14 Equivalent Oak Canopy Replacement Offsite Planting
Standards. Where a County approved conservation easement,
mitigation bank or accredited land trust carries out the
mitigation through replanting, the replanting shall be similar
to the Oak Canopy removed or the following minimum replacement
planting standard whichever is greater. The minimum replacement
standard shown below is applicable to the canopy replacement
required in Section 53-12 and 53-10(B). The minimum replacement
planting standard is one or a combination of the following:
A. Replacement Trees. 200 trees (saplings one-gallon or
greater) per acre of replacement Oak Canopy.
B. Replacement Acorns. 600 acorns per acre of replacement
Oak Canopy.
53-15  **Site Preparation and Construction Impacts.** Construction activities can result in temporary impacts to remaining Oak Woodland. The Department of Development Services shall prepare and maintain a manual, referred to as the “Oak Woodland Technical Manual”, which shall contain the standard practices for temporary impacts on Oak Woodland including compaction, irrigation, dust control, pruning, fencing and avoidance of tree damage.

53-16  **Monitoring of Approved Projects.** Compensation for staff time for monitoring of the compliance with this ordinance shall be at the Department’s hourly rate shown in the Board of Supervisors adopted Master Fee Schedule for the Planning Division.

53-17  **Approval Required Prior to Removal.** Unless exempted or not applicable under this ordinance, no Oak Canopy or portion thereof shall be removed until all of the following has occurred:

A. The project is approved by the Decision-Making Authority;

B. Compliance with the applicable requirements of this chapter and as otherwise required in the conditions of
approval is confirmed by the Department of Development Services; and

C. The Department of Development Services has issued a Letter to Proceed.

53-18 Subsequent Projects. Subsequent discretionary projects applied for on a Project Site that was previously approved under this ordinance are independently subject to the thresholds in this ordinance and the prior approval shall not be used as a means to cumulatively exceed the thresholds.

53-19 Premature Removal. If the Decision-Making Authority has evidence and concludes that Oak Canopy was removed prior to development application approvals, then the requirements of this ordinance shall be applied for the Oak Canopy that was removed prior to approval of the development application. The removal of Oak Canopy up to five years prior to filing the development application is considered premature.

Section 2. Severability.
If any provision of this Ordinance or the application thereof to any person or circumstances is for any reason held to be invalid by a court of competent jurisdiction, such provision shall be deemed severable, and the invalidity thereof shall not affect the remaining provisions or other applications of the Ordinance which
can be given effect without the invalid provision or application thereof.

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

PASSED AND ADOPTED by the Board of Supervisors of the County of Butte, State of California, on the __________ day of ______________, 2018 by the following vote:

AYES:

NOES:

ABSENT:

NOT VOTING:

_________________________
STEVE LAMBERT, Chair
Butte County Board of Supervisors

ATTEST:
SHARI MCCRACKEN, Chief Administrative Officer
and Clerk of the Board