

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

1 and monetary value of property. The California Oaks Program of
2 the California Wildlife Foundation (formerly the California Oaks
3 Foundation) estimated that trees of the genus Quercus, within
4 Oak Woodlands and oak forests in Butte County, account for
5 approximately 6.9 million metric tons of sequestered carbon.
6 Oak Woodlands contribute to the overall health and wellbeing of
7 Butte County through the sequestration of atmospheric carbon.
8 Oak Woodlands are one of the defining physical features of the
9 Butte County area. They provide scenic beauty, shade, and
10 recreational areas to residents and visitors. Oak Woodlands are
11 common locally and regionally; however, native oak trees and
12 woodland habitats are declining statewide because of
13 development, disease, fire, and land management practices. Land
14 use practices can result in further reduction of Oak Woodland
15 acreage according to the Butte County Oak Woodlands Management
16 Plan, adopted by Board of Supervisors Resolution 07-084.

17 **53-3 Purpose.** The purpose of this chapter includes the following:

18 A. Streamline the evaluation of impacts to native Oak
19 Woodlands through the establishment of a threshold of
20 significance (CEQA Guidelines 15064.7) and mitigation
21 standards for Oak Canopy removal on Discretionary Projects.

22 B. Implement goals, policies and actions of the Butte
23 County General Plan Conservation and Open Space Element
24 pertaining to Oak Woodland habitat by setting forth standards
25 for Oak Canopy retention and establishing an in-lieu payment

1 methodology for Oak Canopy removal for Discretionary
2 Projects.

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

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

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

- 13 1. The County finds it necessary in the interest of
14 public health, safety and welfare.
- 15 2. Oak Woodlands provide habitat for over 300 vertebrate
16 species and more than 5,000 species of insects.
- 17 3. Oak Woodlands stabilize the soil, improve drainage
18 conditions, and provide aesthetic beauty and screening
19 for privacy.

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

23 **53-4 Relationship to Other Laws, Regulations and Ordinances.** This
24 ordinance only applies to the effects on oaks and Oak Woodlands.
25 Discretionary Projects that are consistent with this ordinance

1 are considered to have less than significant impacts with
2 respect to the removal of Oak Canopy pursuant to the California
3 Environmental Quality Act (CEQA). The ordinance does not replace
4 any other CEQA analysis with respect to impacts to Oak
5 Woodlands, such as habitat loss or carbon sequestration.

6 **53-5 Alternate Project Design and Review.** Projects that do not
7 meet the requirements of this ordinance are required to do CEQA
8 analysis with respect to the removal of Oak Canopy and may
9 propose an alternate approach to the ordinance except for
10 Section 53-19, Premature Removal, that will apply to any CEQA
11 analysis of the removal of Oak Canopy. Any alternate project
12 proposal shall include standard methods of evaluation, impact
13 identification and mitigation strategies prepared by a Qualified
14 Professional. The applicant shall provide a plan for review that
15 proposes equivalent or better mitigation than this ordinance
16 would otherwise provide. The Decision-Making Authority may
17 consider the proposed alternate methods in its environmental
18 determination and in its decision to approve, deny or modify
19 the project. Projects approved under this section shall include
20 additional conditions of approval as mitigation measures.

21 **53-6 Applicability.** The provisions of this ordinance shall apply
22 to Discretionary Projects that result in the removal of Oak
23 Canopy including disturbance to the Critical Root Zone (CRZ).

24
25 **53-7 Definitions.**

1 A. Critical Root Zone (CRZ). A circle on the ground around
2 a tree that generally corresponds to the drip line of the
3 tree.

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

8 C. Department. The Department of Development Services.

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

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

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

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

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

24 I. Oak Canopy. The surface area directly under the live
25 branches of oak trees.

1 J. Oak tree. A native tree species in the genus Quercus,
2 not designated as Group A or Group B commercial species
3 pursuant to regulations adopted by the State Board of Forestry
4 and Fire Protection pursuant to Public Resources Code Section
5 4526, and that is 5 inches or more in Diameter at Breast
6 Height.

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

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

- 16 1. Oak Woodland Condition, Intact: In this condition roads
17 and buildings are rare across the site. Trees, both dead
18 and alive, dominate the landscape and the site is capable
19 of natural regeneration of oaks and other plant species.
20 The site allows for movement of wildlife and the existing
21 development is localized and limited to a small number
22 of residences with service buildings or barns. The site
23 is relatively undisturbed and is recognized as Intact.
- 24 2. Oak Woodland Condition, Moderately Degraded: The site
25 has been changed in one or more ways that has reduced

1 its potential for providing ecological and socially
2 important services. For example, it may have been
3 partially developed resulting in the net loss of trees;
4 the canopy or understory may have been reduced or
5 eliminated over all or part of the site; past grazing or
6 soil disturbance may have impaired regeneration in some
7 areas.

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

17 M. Oak Woodland Technical Manual. The Oak Woodland
18 Technical Manual is a companion document to the Butte County
19 Oak Woodland Mitigation Ordinance that outlines the process
20 of managing construction projects on Oak Woodlands in detail
21 and implementing other portions of the Ordinance. The Oak
22 Woodland Technical Manual is separate from the ordinance as
23 a document prepared and maintained by the Department of
24 Development Services.

1 N. Project Site. A parcel or parcels of land on which a
2 Discretionary Project is proposed.

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

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

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

23 3. Registered Professional Forester (RPF) is a person
24 licensed by the State of California to perform
25 professional services that require the application of

1 forestry principles and techniques to the management of
2 forested landscapes. RPFs have an understanding of
3 forest growth, development, and regeneration; forest
4 health; wildfire; soils, geology, and hydrology;
5 wildlife and fisheries biology; and other forest
6 resources.

7
8 **53-8 Exemptions.** The following types of actions are exempt from
9 this ordinance:

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

17 B. Affordable housing projects for lower income households,
18 as defined pursuant to Section 50079.5 of the Health and
19 Safety Code, that are located within an urbanized area, or
20 within a sphere of influence as defined pursuant to Section
21 56076 of the Government Code.

22 C. Conversion of Oak Woodlands on agricultural land, with
23 a zoning designation of Agriculture (AG) or Agriculture
24 Services (AS) that includes land that is used to produce or
25 process plant and animal products for commercial purposes

1 unless a discretionary action is required under Section 13-
2 14(c) of Butte County Code Chapter 13, Grading, to be heard
3 by the Planning Commission.

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

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

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

14 G. Vegetation removal required to comply with defensible
15 space requirements set forth in Public Resources Code Section
16 4290 (Fire Safety Regulations).

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

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

22 J. Public Road and Public Utility Projects - Oak Canopy
23 removal necessary to complete County road projects when the
24 new alignment is dependent on the existing alignment. This
25 exemption applies to road widening and realignments which are

1 necessary to increase capacity, to protect the public's
2 health, and to improve the safe movement of people and goods
3 in existing public road rights-of-way, as well as acquired
4 rights-of-way necessary to complete the project. This
5 exemption shall also apply to removal of Oak Canopy necessary
6 to comply with the safety regulations of the Public Utilities
7 Commission and necessary to maintain a safe operation of
8 utility facilities. The following are excluded from this
9 exemption:

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

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

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

19
20 **53-9 Oak Woodland Evaluation Plan.** An Oak Woodland Evaluation
21 Plan shall be required for applicable Discretionary Projects
22 that result in the removal of Oak Canopy including disturbance
23 to the CRZ consistent with the following requirements.
24
25

1 A. An Oak Woodland Evaluation Plan shall be required in
2 conjunction with an application for the required
3 Discretionary Projects to document the Oak Woodland and
4 proposed extent of impact. The Oak Woodland Evaluation Plan
5 shall include but not be limited to the following:

- 6 1. Site location and site plan.
- 7 2. Description of Oak Woodland including an evaluation of
8 its Oak Woodland Condition including whether it
9 qualifies as intact, moderately degraded or severely
10 degraded.
- 11 3. Measurement of total Oak Canopy area; location and area
12 of proposed Oak Canopy removal and calculation of
13 percentage removal.
- 14 4. Oak Woodland to remain. The project shall be designed
15 such that the Oak Woodland that is to remain will be of
16 intact condition including: when located along waterways
17 and/or wildlife corridors including deer migration
18 corridors; when connected with Oak Woodland on adjacent
19 lands including public lands; and, when there are other
20 factors determined by the Department of Development
21 Services.
- 22 5. The location of required tree protection fencing and
23 signage.
- 24 6. Proposed mitigation consistent with the requirements in
25 sections 53-10 through 53-14.

1 B. The Oak Woodland Evaluation Plan shall be prepared by a
2 Qualified Professional. Exceptions to the requirement for a
3 Qualified Professional may be considered by the Director
4 based on limited scale of the project or other factors.

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

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

15
16 **53-10 Oak Canopy Removal.** Discretionary Projects are subject
17 to the following standards regarding removal of Oak Canopy:

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

20 1. Less than significant impact, no mitigation required.
21 Oak Canopy mitigation shall not be required for projects
22 that meet the following standards:

23 a. Ten percent or less of the Oak Canopy is removed;

24 b. Where the Oak Woodland is of a severely degraded
25 condition, then up to 10 oak trees, regardless of

1 whether the number exceeds the ten percent in Section
2 53-10(A)(1)(a), may be removed without a replacement
3 requirement. A Qualified Professional is to
4 determine whether an Oak Woodland is severely
5 degraded.

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

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

19 B. Additional requirement. Notwithstanding Section 53-
20 10(A)(1), the removal of any Oak tree within the less than
21 significant canopy removal threshold that is 24 inches DBH or
22 greater shall be replaced at a ratio of 2:1 for the Oak Canopy
23 removed.

1 **53-11 Oak Canopy Mitigation.** The mitigation of Oak Canopy

2 impacts shall take place within Butte

3 County. Mitigation shall be of a similar species mix, density
4 of Oak Canopy, and viability as would be found in a naturally
5 occurring and healthy Oak Woodland. Mitigation shall be of
6 the type of Oak Woodland found on the Project Site. The
7 project shall include one or a combination of the following
8 measures as mitigation for area required in Section 53-13
9 Calculation of Oak Canopy Mitigation to the satisfaction of
10 the County:

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

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

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

21 D. Payment to the State Oak Woodlands Conservation Fund.
22 An in-lieu payment may be made to the State Oak Woodlands
23 Conservation Fund calculated through one or a combination of
24 the following subsections. Funds from this program are to be
25 spent on Oak Woodland conservation within Butte County. The

1 calculation of the fee is subject to review and acceptance by
2 the Director. Proof of payment shall be provided to the
3 Director within six months of the Director's acceptance of
4 the payment amount calculation.

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

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

22
23 **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

	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%
Percent Range	0 to 10%	10.1% to 50%				50.1% to 70%		70.1% to 100%		
Replacement	None	2:1 Replacement Ratio				3:1 Replacement Ratio		See Section 53-5 additional analysis		

Note: the replacement ratios apply to the percentage removal of Oak Canopy within the range. As an example, at 28% canopy

1 removal, the mitigation requirement is for the 18% that exceeds
2 the 10% less-than-significant portion of the canopy removal.

3
4 **53-13 Calculation of Oak Canopy Mitigation.** Section 53-
5 9(A)(3) of the Oak Woodland Evaluation Plan identifies the total
6 Oak Canopy on the Project Site, the proposed Oak Canopy removal
7 and the percentage of removal. The total Oak Canopy area for
8 mitigation shall be calculated by the area of Oak Canopy
9 proposed for removal multiplied at the respective replacement
10 ratios by percent removal as required in Section 53-12 including
11 Table 53-12-1.

12
13 **53-14 Equivalent Oak Canopy Replacement Offsite Planting**
14 **Standards.** Where a County approved conservation easement,
15 mitigation bank or accredited land trust carries out the
16 mitigation through replanting, the replanting shall be similar
17 to the Oak Canopy removed or the following minimum replacement
18 planting standard whichever is greater. The minimum replacement
19 standard shown below is applicable to the canopy replacement
20 required in Section 53-12 and 53-10(B). The minimum replacement
21 planting standard is one or a combination of the following:

22 A. Replacement Trees. 200 trees (saplings one-gallon or
23 greater) per acre of replacement Oak Canopy.

24 B. Replacement Acorns. 600 acorns per acre of replacement
25 Oak Canopy.

1
2 **53-15 Site Preparation and Construction Impacts.** Construction
3 activities can result in temporary impacts to remaining Oak
4 Woodland. The Department of Development Services shall prepare
5 and maintain a manual, referred to as the "Oak Woodland
6 Technical Manual", which shall contain the standard practices
7 for temporary impacts on Oak Woodland including compaction,
8 irrigation, dust control, pruning, fencing and avoidance of tree
9 damage.

10
11 **53-16 Monitoring of Approved Projects.** Compensation for staff
12 time for monitoring of the compliance with this ordinance shall
13 be at the Department's hourly rate shown in the Board of
14 Supervisors adopted Master Fee Schedule for the Planning
15 Division.

16
17 **53-17 Approval Required Prior to Removal.** Unless exempted or
18 not applicable under this ordinance, no Oak Canopy or portion
19 thereof shall be removed until all of the following has
20 occurred:

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

23 B. Compliance with the applicable requirements of this
24 chapter and as otherwise required in the conditions of
25

1 approval is confirmed by the Department of Development
2 Services; and

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

5
6 **53-18 Subsequent Projects.** Subsequent discretionary projects
7 applied for on a Project Site that was previously approved under
8 this ordinance are independently subject to the thresholds in
9 this ordinance and the prior approval shall not be used as a
10 means to cumulatively exceed the thresholds.

11
12 **53-19 Premature Removal.** If the Decision-Making Authority has
13 evidence and concludes that Oak Canopy was removed prior to
14 development application approvals, then the requirements of this
15 ordinance shall be applied for the Oak Canopy that was removed
16 prior to approval of the development application. The removal
17 of Oak Canopy up to five years prior to filing the development
18 application is considered premature.

19 Section 2. Severability.

20 If any provision of this Ordinance or the application thereof
21 to any person or circumstances is for any reason held to be invalid
22 by a court of competent jurisdiction, such provision shall be
23 deemed severable, and the invalidity thereof shall not affect the
24 remaining provisions or other applications of the Ordinance which
25

1 can be given effect without the invalid provision or application
2 thereof.

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

12 **PASSED AND ADOPTED** by the Board of Supervisors of the County of
13 Butte, State of California, on the _____ day of _____, 2018 by the
14 following vote:

15
16
17 **AYES:**

18 **NOES:**

19 **ABSENT:**

20 **NOT VOTING:**

21 _____
22 **STEVE LAMBERT**, Chair
23 Butte County Board of Supervisors

24 **ATTEST:**

25 **SHARI MCCRACKEN**, Chief Administrative Officer
and Clerk of the Board

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By: _____
Deputy

Final DRAFT