

## **Attachment 4B. OAK Exhibit A. CLEAN**

### **Section 26-040-020. Definitions.**

#### ***Section 26-04-020 (L)***

Removed.

#### ***Section 26-04-020 (N)***

Native Oak Tree. A native oak tree to Sonoma County of the genus *Quercus*, that is classified as any one of the following: blue oak (*Q. douglasii*), interior live oak (*Q. wislizenii*), coast live oak (*Q. agrifolia*), canyon live oak (*Q. chrysolepis*), Oregon oak (*Q. garryana*), California black oak (*Q. kelloggii*), valley oak (*Q. lobata*), Shreve oak (*Q. parvula* var. *shrevei*), or naturally occurring hybrids of two or more of the preceding listed trees.

Natural Community Conservation Plan. A plan that meets the definition of "Natural community conservation plan," codified at California Fish and Game Code Section 2805(h).

#### ***Section 26-04-020 (O)***

Oak Woodland. A contiguous stand of trees dominated by Native Oak Trees with at least one-half (0.5) acre of cover. For purposes of this definition, "contiguous stand" means a stand where all individual oak trees with diameter at breast height (dbh) equal to or greater than 6 inches have canopies located within 200 feet of one another on a parcel. Oak Woodland includes lands that supported native oak trees as indicated in the 2013 Sonoma VegMap. This term is inclusive of both oak woodlands and savannas, where canopy gaps may be more present, and oak forests, where canopy gaps are less present. Oak woodland is inclusive of associated vegetative strata including canopy, subcanopy, and shrubs.

Oak Woodland Conservation Plan. A site-specific plan developed by a qualified professional knowledgeable in Oak Woodland conservation, which describes the conditions, qualities, and capabilities of a property's Oak Woodland resources, describes conservation objectives, identifies existing and intended use of the property, and identifies recommended or potential resource improvement projects.

#### ***Section 26-04-020 (T)***

Type Conversion. The removal of the capacity of the land to grow oak trees or Oak Woodlands by a person. This includes but is not limited to, clearing, grading, or otherwise modifying land for roads, driveways, buildings or building pads, utility easements, and Agricultural Crop Cultivation within an Oak Woodland. Maintenance such as pruning and removing dead branches from living oak resources is not included, provided that the maintenance does not include crown reduction resulting in death or conversion of the oak resource.

#### ***Section 26-04-020 (W)***

Woodland Impact. Any activity which results in the removal or death of Native Oak Trees within an Oak Woodland.

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### **Article 67. OAK Oak Woodland Combining District and VOH Valley Oak Habitat Combining District.**

#### **Sec. 26-67-010. Purpose.**

The purpose of this article is to advance the protection, preservation, and enhancement of oak trees and Oak Woodlands in Sonoma County for the benefit of present and future generations and to implement Sonoma County General Plan Policies OSRC-7l, related to Oak Woodlands, and OSRC-7m, related to valley oak habitat. This article achieves these purposes by prohibiting the removal of oaks within Oak Woodlands, with limited exceptions for certain listed land uses that the County has determined promote public, health, safety, and welfare, including uses related to hazard reduction or removal, conservation, agriculture, pest control, and residential maintenance. Where proposed valley oak or Oak Woodland removal is subject to a discretionary permit process, mitigation measures to address loss of trees would apply, such as measures to ensure no net loss of Oak Woodlands or, for the highest quality woodlands, would provide a unique public benefit equal to or greater than the value associated with removed oaks.

#### **Sec. 26-67-020. Applicability.**

- 1) The provisions of this article shall be liberally construed to effectuate the purpose of this article. Where a provision of this article conflicts with another provision of this chapter or this code, the more restrictive provision shall prevail.
- 2) Location. This article applies to the entirety of each parcel that intersects the Valley Oak Habitat Combining Zone and the entirety of each parcel containing at least 0.5 acre of the Oak Woodland Combining District.
- 3) Prohibition. No person shall cause a Woodland Impact or Type Conversion of Oak Woodlands as defined herein, located wholly or partially within the unincorporated County unless expressly permitted by this chapter and where any applicable permit(s) are first secured, and requirements of this chapter are met. Compliance with this article does not alleviate the need to comply with other local, state, or federal rules or regulations which may also be applicable to tree removal.
- 4) VOH Combining District. Valley Oak tree removal in the VOH combining district that does not meet the definition of Woodland Impact or Type Conversion remains subject to the provisions of this chapter that apply to the VOH combining district.
- 5) Other laws. Compliance with this chapter does not alleviate the need to comply with other local, state, or federal rules, or regulations which may also be applicable to tree removal, including but not limited to the California Professional Forester's Law (commencing at California Public Resources Code section 750). Oak tree removal that does not impact oak woodlands, or that is not otherwise subject to this chapter, may still be subject to other provisions of this code, or state or federal law.
- 6) Preemption. This article shall apply except to the extent preempted by state or federal law.
- 7) Utility Line Maintenance. Oak tree removal associated with maintenance, by a public utility company regulated by the California Public Utilities Commission, of existing public utility lines and related infrastructure that causes Type Conversion of Oak Woodland within the boundaries of an applicable utility easement, right of way, or other property interest held by the utility, is exempt from this article.
- 8) Timber Harvest. Tree removal authorized under a Timber Harvest Plan or other harvesting permit issued by the California Department of Forestry and Fire Protection is exempt from this article.
- 9) By-right housing. By-right housing in an urban service area is exempt from this article.
- 10) Forestry. Certain uses and activities regulated by this article may constitute "forestry" as defined in the Professional Forester's Law (California Public Resources Code Sections 750-783). Where actions or

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requirements of this ordinance meet this definition, the applicable requirements in the Professional Forester's Law shall apply in addition to this code. See subsection 5) of this Section.

- 11) This section shall not be applied in a manner that would reduce allowable density lower than that permitted by applicable state laws or regulations or by other county ordinances, or that would render a property undevelopable or uninhabitable. The Director may waive standards that are otherwise applicable to an application under this section upon findings that such waiver is necessary to comply with this subsection.
- 12) Determination of Woodland Boundaries. The designated Oak Woodland Combining Zone represents the approximate location of Oak Woodlands. Actual Oak Woodland boundaries, or existence thereof, shall be determined by a qualified professional or qualified County staff using on the ground observations and based on at least 1.5x the distance between trunk and outer extent of canopy of existing native oak trees.

Where Oak Woodland was present as of the 2013 VegMap data but native oak trees are no longer present due to factors such as wildfire, satellite imagery or other remote sensing data shall be used to approximate the historical dripline of trees to determine the area of historically occurring woodlands.

- 13) Determination of Oak Ecological Categories. Unless exempted by this article, all discretionary applications for conversion of Oak Woodland must identify and classify Oak Woodland habitat present on the parcel(s), including Oak Woodlands or portions thereof where removal is not proposed. To satisfy this requirement, an application must include a written report identifying Oak Woodland ecological categories as determined by a qualified professional, whose determination shall be based on the quality of the Oak Woodland and its ecological services, sensitivity to disturbance, rarity, and potential to be adequately compensated for by mitigation and consistent with the categories described below in subsection (a.) – (c.), and County guidelines maintained by the Permit and Resource Management Department. As an alternative and in lieu of submitting an Oak Woodland ecological categories report and determination by a qualified professional, an applicant may elect to have all Oak Woodland present on the parcel(s) treated as Superior Oak Habitat, as described in subsection (c.) below. Notwithstanding this paragraph, where an Oak Woodland has been degraded or destroyed without prior authorization, the Oak Woodland shall be considered Superior Oak Habitat, unless the applicant demonstrates by a preponderance of the evidence to the satisfaction of the Department that it is more likely than not that a different category applies based on information including, but not limited to, adjacent vegetation, aerial photographs, vegetation maps, on-site inspections prior to disturbance, previous stand or plant community characterization, or other evidence.

Oak Woodland ecological categories are described for purposes of this Article as follows:

- a. Class III or Limited Quality Oak Habitat Category is an Oak Woodland type that is seriously degraded, marginally capable of supporting Oak Woodlands, or has a reasonable potential for regaining the capability of supporting and maintaining a balanced, integrated, adaptive community having a species composition, diversity, and organization characteristic of that type of Oak Woodland. Limited Quality Oak Habitat Category has one or more of the following characteristics:
  - i. Minimal to fair wildlife functions, values, or ecological services;
  - ii. Does not provide or may provide minimal habitat or critical habitat for threatened or endangered species or contain rare, threatened, or endangered species; or
  - iii. May be typified by some, or all, of the following qualities: isolation, low species diversity, herbaceous cover without any native California grass or forb species; no significant habitat or wildlife use; or limited potential to achieve beneficial ecological services, e.g., water storage, carbon sequestration, or similar benefits.
- b. Class II or Oak Habitat Category is an Oak Woodland type that is capable of supporting and maintaining a balanced, integrated, adaptive community having a species composition, diversity, and functional organization characteristic of that type of Oak Woodland. Oak Habitat Category has one or more of the following characteristics:
  - i. Moderate to good functions, values, or ecological services;

- ii. Stand(s) that include valley oak (*quercus lobata*), blue oak (*quercus douglasii*), Oregon oak (*quercus garryana*), or black oak (*quercus kelloggii*). Stands without these species may still qualify as Class II if other qualifying characteristics are present.
  - iii. Oak habitat that typically provides habitat for native plant or animal species but general without the presence of habitat or critical habitat for threatened or endangered species or contain rare, threatened, or endangered species; or
  - iv. May be typified by some or all of the following: good connectivity, good species diversity, herbaceous cover usually with native California grass or forb species; moderate to significant habitat or wildlife use; or full potential to achieve beneficial ecological services.
- c. Class I or Superior Oak Habitat Category is an Oak Woodland type that is capable of supporting and maintaining a high quality balanced, integrated, and adaptive community having a species composition, diversity, and functional organization characteristic of the best examples of that type of Oak Woodland. Superior Oak Habitat have one or more of the following characteristics:
- i. high to very high functions, values, or ecological services;
  - ii. Species composition includes more than 50% valley oak (*quercus lobata*), blue oak (*quercus douglasii*), Oregon oak (*quercus garryana*), or black oak (*quercus kelloggii*). Stands without these species may still qualify as Class 1 if other qualifying characteristics are present.
  - iii. Provide high quality habitat for native plant or animal species and often with the presence of habitat or critical habitat for threatened or endangered species, or contain rare, threatened or endangered species; or
  - iv. Typified by some, or all, of the following: high connectivity, high species diversity, herbaceous cover usually with 30% or more cover of native California grass or forb species; significant habitat or wildlife use; or high potential to achieve beneficial ecological services.

**Sec. 26-67-030. OAK Summary of Allowed and Permitted Uses.**

Table 1 identifies the allowed uses and permit requirements for the OAK Combining District. Note that all uses may be subject to additional standards as described in this section.

Key of symbols for Table 1:

E = Exempt Use

ZP = Permitted Use, subject to Zoning Permit

ZP\* = Zoning Permit may be required in certain circumstances

CUP = Conditional Use, subject to Conditional Use Permit

Table 1:

Allowed Uses in the OAK Combining District

Use Category	Permit Level
Fire Risk Reduction	E
Emergency Operations	E
Hazardous, Dead, Dying, or Diseased Tree Removal	E/ZP*
Stewardship or Resource Management Activities	E
Forest Management Activities	E
Property Maintenance	E

Pest Control	E
Agricultural Crop Maintenance	E
Individual Tree Removal Outside OAK	E
One Time Limited Conversion	ZP
Other Uses not listed above that result in Woodland Impact or Type Conversion	CUP

**26-67-040. OAK Uses exempt from oak woodland permit requirements.**

Unless otherwise provided by this Article, the following uses that could remove native oak trees are exempt from oak woodland permit requirements under this chapter, provided they do not result in Type Conversion of an Oak Woodland:

- 1) Health and Safety
  - i. Fire Risk Reduction. These activities include:
    1. Native oak tree removal that is no more than necessary to comply with fire safety laws and regulations, including tree removal required to comply with state or local defensible space requirements, including Sonoma County Code Chapter 13A. and California Public Resources Code Section 4291 .
    2. Native oak tree removal that is no more than necessary to obtain or maintain property insurance coverage, when required by an insurance company that insures an occupied dwelling or occupied structure, and when in accordance with the requirements and restrictions of state law, including Public Resources Code section 4291.
    3. Fire risk reduction activities that may result in native oak tree removal when the activity or tree removal is documented to be directed, ordered, overseen, recommended, or approved by the County, CAL FIRE, or other public agency. This includes prescribed or cultural burning projects. Nothing in this section is intended to modify the applicability of Section 26-02-070 of Chapter 26, related to applicability of Chapter 26 to governmental units.
    4. Fire risk reduction activities that may result in native oak tree removal when the activity or tree removal is undertaken by the County, CAL FIRE, or other public agencies. This includes prescribed or cultural burning projects. Nothing in this section is intended to modify the applicability of Section 26-02-070 of Chapter 26, related to applicability of Chapter 26 to governmental units.
  - ii. Emergency Operations. Native oak tree removal or activities that may result in tree removal undertaken by public agencies during emergency operations or in post-disaster remediation. Nothing in this section is intended to modify the applicability of Section 26-02-070 of Chapter 26, related to applicability of Chapter 26 to governmental units.
  - iii. Hazardous, Dead, Dying, or Diseased Trees.
    1. Removal of hazardous, dead, dying, or diseased native oak trees is exempt from this Article if either of the following criteria are met:
      - a. The removal of the hazardous, dead, dying, or diseased native oak tree occurs inside the defensible space zone of a structure, as defined by



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- iii. Forestry Activities. The tree removal occurs as part of activities defined in California Public Resources Code Sections 750 through 781 as forestry conducted on forested landscapes overseen by a Registered Professional Forester.
- 4) Pest Control. Selective vegetation removal as part of an integrated pest management program administered by a state licensed Pest Control Advisor.
  - 5) Property Maintenance
    - i. Residential maintenance activities. Native oak tree removal no more than necessary for residential maintenance activities associated with a legally established residential structure or residential use, including maintenance of residential structures, fences, residential well and septic systems, and outdoor spaces used in conjunction with a residence, such as yards, gardens, and landscaping.
    - ii. Nuisance trees. Removal of a native oak tree if it is or creates a nuisance. For the purpose of this exemption, nuisance means causing damage to improvements, such as but not limited to building foundations, retaining walls, roadways/driveways, patios, sidewalks and decks, pipes, utility conduits, or otherwise interfering with the operation, repair, replacement or maintenance of public or private utilities.
    - iii. Septic. Native oak tree removal to allow an existing on-site sewage disposal system that poses a threat to human health or safety to be repaired or replaced, so long as no alternative option exists that would both cure the threat to human health and safety and avoid the native oak tree removal.
  - 6) Agriculture Crop Maintenance.
    - i. Removal of native oak trees no more than necessary to maintain an existing cultivated agricultural crop area, as follows: (1) maintenance of existing access roads; (2) maintenance of drainage or drainage infrastructure; (3) maintenance of irrigation or irrigation infrastructure; (4) activities necessary to maintain commercial agricultural use of the existing agricultural crop cultivation area, including planting, seeding, fertilizing, weeding, tree trimming, and harvesting.
    - ii. Native oak tree removal is not exempt from permit requirements if it is for the expansion of existing cultivation areas or the establishment of new cultivation areas into land not used for commercial agricultural crop cultivation at the time this provision became effective, and no other exemption applies.
  - 7) Individual Tree Removal. Oak tree removal that is not located within an Oak Woodland is exempt from the Oak Woodland Combining District but may be subject to other provisions of this Code, including but not limited to the Section 26-88-080(M) Tree Protection Ordinance) or Valley Oak Habitat Combining District. Individual Native Oak Tree removal within an Oak Woodland is subject to this ordinance, unless otherwise exempt by this section. The removal of other protected tree species may be subject to the Tree Protection Ordinance.

### **Sec. 26-67-050. OAK Combining District Allowed Uses with a Zoning Permit**

1. The one-time Woodland Impact or Type Conversion of up to 0.5 acres of Oak Woodland on a parcel to accommodate a use permitted by the underlying zoning district shall be permitted with a zoning permit, once per parcel, subject to the below conditions. Subsequent Woodland Impact or Type Conversion of Oak Woodlands shall be subject to discretionary review. This section shall not be applied in a manner that would reduce allowable density lower than that permitted by the underlying zoning. To achieve this end, adjustments may be made to accommodate the minimum disturbance necessary to achieve allowable densities.
2. A ministerial Type Conversion shall be subject to the following standards and requirements:

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- a) All Woodland Impact or Type Conversion activities shall be completed within two years of approval of the zoning permit.
  - b) No sites of rare, threatened or endangered plants or animals shall be disturbed, threatened or damaged, as determined by a qualified professional.
  - c) The project shall not impact significant historical or archeological sites, as determined by a cultural resources study. If project has potential to impact historical or archaeological sites, as determined by a cultural resources study, avoidance measures shall be recommended and incorporated into project design or project shall be redesigned to avoid impacts.
  - d) No ministerial Oak Woodland conversion shall include the cutting or removal of any native oaks greater than 36" DBH unless a registered professional forester or arborist certifies in writing that the tree poses a serious danger to persons or property.
  - e) No conversion activities shall be conducted during the wet weather period or during wet conditions.
  - f) No ministerial Oak Woodland conversion shall be conducted without a valid on-site copy of the zoning permit issued for the conversion.
  - g) The Department may develop policies and procedures related to this section including requirements to provide notice to subsequent purchasers which may include recordation of notice.
3. The applicant shall submit any other information that the Director deems necessary to make a decision on the application. Such information may include grading permits, building permits, design drawings, forest inventories, and other material.

### **Sec. 26-67-060. OAK Combining District Use Permit Requirements**

Any Oak Woodland Impact or Type Conversion that is not exempt from the requirement to obtain an Oak Woodland permit for an allowed use specified in this ordinance, or that would not qualify for a ministerial permit under Section 26-67-050, requires a discretionary permit under this section, subject to the following requirements:

- 1) A Use Permit and associated permit fee shall be required.
- 2) Application Materials. The application shall include the items specified in the application and application checklist on file with the Permit and Resource Management Department.
- 3) Notice. Notice shall be provided to all properties within 300 feet of the subject property, including those parties which have requested notification of all Oak Woodland permits.
- 4) Oak Ecological Categories. The application shall include a determination of the ecological category of the Oak Woodland, as defined in this ordinance.
- 5) Alternatives Analysis. A sequenced alternatives analysis review shall be provided by the applicant. The review shall consist of an examination, in the following order, of avoidance, minimization, and mitigation.
- 6) Mitigation: The application shall include an Oak Woodland Conservation Plan, including mitigations at ratios consistent with the determined Oak Woodland Ecological Category and as necessary to offset the impacts identified through review of the application. The following conditions or mitigation measures may be imposed through the discretionary permit process:
  - a) Conservation Easement: An executed and recorded conservation easement for double the mitigation ratios specified for replanting. Areas under easement must be located in Sonoma County, must contain woodland of equal or greater Oak Woodland Ecological Category, and must contain similar species composition.
  - b) Replanting: Replanting of woodland on-site or within Sonoma County consistent with replacement ratios specified below. Replanting shall include replanting of associated vegetative strata of the converted area including canopy, subcanopy, shrub, herb and bryophyte. Replanting shall have a planning horizon for the establishment of the woodland within 25 years, or other timeline if recommended by a qualified



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professional and approved by the applicable decision-maker. An annual report shall be prepared and submitted by the applicant to the Department. Any mortality that occurs during the reporting period shall be replaced.

Oak Woodland Ecological Category	Mitigation Ratio (in acres)
Class I (Superior Oak Habitat)	3:1
Class II (Oak Habitat)	2:1
Class III (Limited Quality Oak Habitat)	1:1

- c) Alternative equivalent mitigation may be considered if it will achieve equal or greater benefit than other mitigation measures.
  - d) Payment of replacement in-lieu fees may be permitted by the County if replacement or mitigation is infeasible as determined by the County for physical, ecological, legal, or economic reasons. Replacement fees, if applicable, shall be valued using the most recent version of Council of Tree and Landscape Appraisers' Guide for Plant Appraisal. In-lieu fees may be used to acquire and protect stands of native oak trees in-fee title or through conservation easements; or place and maintain native oak trees and associated woodland vegetation on lands within the County of Sonoma.
  - e) Any other condition or measure that the Director deems necessary to meet the objectives of this chapter.
- 7) An Applicant shall submit all information the Director deems necessary to make a decision on the application or any required associated environmental review. Such information may include biological studies, cultural resource studies, forest inventories, and other material.

**Sec. 26-67-070. OAK Combining District Findings for Approval**

Findings for Approval. Discretionary permits for Oak Woodland conversion shall not be approved unless the following findings are made:

- i) There is no feasible less environmentally damaging alternative;
- ii) Any proposed Oak Woodland to be removed will not result in the creation of two (2) or more separate Oak Woodlands as defined by this chapter; and
- iii) If Class I Oak Woodlands are proposed for conversion, the conversion provides a clear public need that outweighs the loss of the Oak Woodland.

**Sec. 26-67-080. VOH Combing District Permitted Uses.**

All uses permitted within the respective district with which the VOH district is combined shall be permitted in the VOH district, subject to the provisions of this article.

**Sec. 26-67-090. VOH Combining District Mitigation required—Exceptions.**

- (a) Except as provided in subsection (b), when any person cuts down or removes any valley oak over 6" DBH-on any property within the VOH district, a zoning permit shall be required and such person shall mitigate the resulting valley oak loss by one of the following measures: (1) planting replacement valley oaks on the subject property or on another site in the county having the geographic, soil, and other conditions necessary to sustain a viable population of valley oaks at mitigation ratios specified in the Tree Protection Ordinance (26-88-10M(e)) multiplied by a factor of 1.5, (2) paying an in-lieu fee payment amount determined using a methodology for tree replacement cost contained in the most recent version of "Guide for Plant Appraisal" published by the Council of Tree and Landscape Appraisers or an alternative methodology of common practice acceptable to the applicable decision maker issuing the permit. Appraisal of cost shall be conducted

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by a qualified professional certified or licensed to make such determinations. In-lieu payments shall be used exclusively for valley oak planting programs in the county. Such person shall have the sole discretion to determine which mitigation measure to use to mitigate the valley oak loss. The selected mitigation measure shall be undertaken and completed within one (1) year after the valley oak or valley oaks are cut down or removed in accordance with guidelines established by resolution or ordinance of the board of supervisors. The removal of valley oak trees with a single stem over 36" DBH shall require a use permit, per the Tree Protection Ordinance (26-88-10M(e)).

- (b) This section shall not apply to the cutting down or removal of any valley oak within the VOH district that is (1) determined necessary by emergency personnel engaged in emergency procedures, (2) dead or irretrievably damaged or destroyed by causes beyond the property owner's control, including, without limitation, fire, flood, wind, lightning, or earth movement, or (3) part of a development project subject to the provisions of Section 26-67-100.

**Sec. 26-67-100. VOH Combining District Design review approval.**

Where any development project within the VOH district is subject to design review pursuant to another provision of this chapter, the design review approval shall include measures to protect and enhance valley oaks on the project site in accordance with guidelines adopted by resolution or ordinance of the board of supervisors. Such measures shall include, but not be limited to, a requirement that valley oaks shall comprise a minimum of fifty percent (50%) of the required landscape trees for the development project.

**Sec. 26-67-110. Penalty for violation of article.**

Any person who knowingly fails to comply with the mitigation or design review requirements of this article shall be required to mitigate any valley oak or Oak Woodland loss at five (5) times the rate otherwise required by this article. If calculating the penalty under this section, the in-lieu fee shall be used. This provision does not preclude pursuit of any other remedy, including those in Chapter 1.