



# PLANNING AND BUILDING DEPARTMENT

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**Date:** October 17, 2019

**From:** Tiffany Schmid, Director, Planning and Building Department

**Subject:** Director Interpretation – Zoning Ordinance Section 130.39.050.I  
Exemption for oak tree impacts due to natural incidents and inclusion of  
Heritage Trees in this exemption and for exemption of Dead, Dying, or  
Diseased Trees (Section 130.39.050.I)

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**INTERPRETATION:**

Oak trees that might be alive, but have fallen or sustained damage due to thunderstorms, windstorms, floods, earthquakes, fires, or other natural disasters or incidents are exempted from the mitigation requirements in Chapter 130.39 – Oak Resources Conservation of Title 130 (Zoning Ordinance). Photographic evidence, documentation from an insurance company, or a field inspection by County staff may be required.

**DISCUSSION:**

Chapter 130.39, Section 130.39.050 (Exemption and Mitigation Reductions) contains provisions for dead, dying, or diseased trees:

130.39.050.I Dead, Dying, or Diseased Trees. Individual native oak tree removal (including individual valley oak trees and valley oak trees within valley oak woodlands) is exempted from the mitigation requirements included in this Chapter when:

1. The tree is dead, dying, or diseased, as documented in writing by a Certified Arborist or Registered Professional Forester; and/or
2. The tree exhibits high failure potential with the potential to injure persons or damage property, as documented in writing by a Certified Arborist or Registered Professional Forester.

However, there is no provision in Section 130.39.050 (Exemption and Mitigation Reductions) for trees that might be alive, but have fallen or sustained damage due to thunderstorms, windstorms, floods, earthquakes, fires, or other natural disasters or incidents.

A recent ministerial permit application has demonstrated the need to provide more flexibility within this Section. A tree that wasn't technically dead, as reported by a Certified Arborist, fell on a structure, but the tree's root ball was still intact. The property owner submitted a claim to their homeowner's insurance company, which accepted the claim with photographs of the fallen tree. Under Section 130.39.050, the property owner would have to hire a Certified Arborist or Registered Professional Forester to examine the tree in question. If the tree isn't technically dead, the property owner would have to apply for a permit to remove the tree and potentially be required to mitigate Oak Resource impacts.

Based on this discussion and rationale, I am making the interpretation that oak trees that might be alive, but have fallen or sustained damage due to natural disasters or incidents (e.g., thunderstorms, windstorms, floods, earthquakes, fires, etc.) are exempted from the mitigation requirements in Chapter 130.39 – Oak Resources Conservation of Title 130 (Zoning Ordinance). Photographic evidence and/or documentation from an insurance company of the fallen tree will suffice, and the property owner shall not be required to hire a Certified Arborist or Registered Professional Forester.

In addition, I am also making the interpretation that Heritage Trees are also exempted from the mitigation requirements of Chapter 130.39 in accordance with Section 130.39.050.I (Dead, Dying, or Diseased Trees) which applies to individual native oak trees, individual valley oak trees and valley oak trees within valley oak woodlands.