

Board of Forestry and Fire Protection

**Notice of Proposed Emergency Action,
(pursuant to GOV § 11346.1(b))**

“Emergency Rulemaking to Facilitate Post-Fire Recovery Efforts within the County of Butte”

Notice Date: January 25, 2019

The Board of Forestry and Fire Protection (hereafter “Board”) has adopted an emergency regulation to provide an exemption from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the Forest Practice Act, to person(s) engaging in specified forest management activities, including the cutting or removal of dead or dying trees when within 300 feet of an Approved and Legally Permitted Structure that was damaged or destroyed by wildfire during the 2018 northern California wildfires in the counties of Butte. This action is being taken in accordance with GOV §§ 11346.1, 11346.5 (2) through (6) inclusive, and 11349.6. The Board adopted the emergency regulation at their regular meeting scheduled on January 23, 2019.

If you wish to comment on the adopted emergency regulations, you must submit the comment directly to the Office of Administrative Law (hereafter “OAL”) within **five (5) calendar days** of OAL’s posting of the proposed emergency regulations on the OAL web site. You may submit comments on the adopted emergency regulations to:

Mail:

OAL Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, California 95814

Fax:

(916) 323-6826

E-mail:

staff@oal.ca.gov.

OAL will accept all comments submitted by the specified deadline.

When you submit a comment to OAL, you must also submit a copy of your comment to the rulemaking agency’s specified contact person provided below.

Mail:

Eric Hedge
Regulations Coordinator
Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 944244-2460

Fax:

(916) 653-0989

E-mail:

publiccomments@BOF.ca.gov

This regulation will likely be submitted to the Office of Administrative Law on February 4, 2019. **If the regulation is submitted to OAL on that date, the public comment period closes on February 9, 2019.**

OAL will confirm that the agency has received the comment. Pursuant to Title 1, California Code of Regulations, §§ 55(b)(1) through (4), the comment must state that it is about an emergency regulation and include the topic of the emergency.

The Board is not required and, in this instance, not likely to respond to comments submitted. However, should the Board choose to respond, it must submit its response to OAL within **eight (8) calendar days** following the date of submission of the proposed emergency regulation to OAL, unless specific exceptions are applicable. [Title 1 CCR § 55].

Pursuant to **GOV § 11346.1(a)(2)(A)**, the specific rule text associated with the proposed action immediately follows this notice.

Pursuant to **GOV § 11346.1(b)(2)**, following is a description of the facts demonstrating the existence of an emergency and the need for immediate action, and demonstrating, by substantial evidence, the need for the proposed regulation to effectuate the statute being implemented, interpreted, or made specific and to address only the demonstrated emergency.

Beginning on November 08, 2018, the Camp Wildfire Incident ignited within Butte County, moving at an unprecedented rate of spread through the communities of Paradise, Concow, Magalia, Pulga and many others. This fire was enormously destructive and expensive, and as of this date is the most destructive fire in state history. Due to the severe rate and spread of the fire, on the same day Acting Governor Gavin Newsome declared both a State of Emergency for Butte County, and a "Request for Presidential Emergency Declaration" through the Regional Administrator of the Federal Emergency Management Agency (FEMA).

On November 14th, 2018, Governor issued executive order B-57-18, with the intent to streamline recovery efforts in communities impacted by devastating wildfires across portions of California, which included Butte County. The document orders "The document orders "State statutes, rules, regulations and requirements are hereby

suspended to the extent they apply to the following activities: (a) removal, storage, transportation, and disposal of hazardous and non-hazardous solid waste and debris resulting from the wildfires that have burned and continue to burn in areas that are subject to the jurisdiction of agencies within the California Environmental Protection Agency and the California Natural Resources Agency; and (b) necessary restoration and rehabilitation of timberland, streams, rivers, and other waterways. Such statutes, rules, regulations and requirements are hereby suspended only to the extent necessary for expediting the removal and cleanup of debris from the wildfires, and for implementing any restoration plan. Individuals who desire to conduct activities under this suspension of statutes, rules, regulations, and requirements shall first request that the appropriate Agency Secretary, or his delegate, make a determination that the proposed activities are eligible to be conducted under this suspension. The Secretary for the California Environmental Protection Agency and the Secretary for the California Natural Resources Agency shall use sound discretion in applying this Executive Order to ensure that the suspension serves the purpose of accelerating cleanup and recovery, while at the same time protecting public health and the environment. This order shall apply to but is not necessarily limited to: solid waste facility permits; waste discharge requirements for storage and disposal; emergency timber harvesting; emergency construction activities; and waste discharge requirements and/or Water Quality Certification for discharges of fill material or pollutants. To the extent it is within their administrative authority, the boards, departments and offices within the California Environmental Protection Agency and the California Natural Resources Agency shall expedite the granting of other authorizations, waivers or permits necessary for the removal, storage, transportation, and disposal of hazardous and non-hazardous debris resulting from the wildfires, and for other actions necessary for the protection of public health and the environment.”

Pursuant to PRC § 4551.5, the rules and regulations that the Board is authorized to adopt include measures for fire prevention, recovery and control and for prevention and control of damage by wildfire, forest insects, pests, and disease.

Additionally, PRC § 4584(c) authorizes the Board to adopt regulation to provide an exemption, from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the Forest Practice Act, to a person engaging in specified forest management activities, including, the cutting or removal of dead, dying, or diseased trees of any size.

Promulgation of these regulations is immediate and necessary to provide a person engaging in the cutting or removal of dead or dying trees an exemption from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the Forest Practice Act, to facilitate the removal of hazardous materials and the re-building and recovery from the catastrophic 2018 Camp Wildfire Incident in Butte County when specific requirements are met. The following is a list of evidences of the immediate and necessary need for emergency regulations to address the 2018 Camp Wildfire Incident in Butte County:

One: The Acting Governor issued a Proclamation of State of Emergency for the County of Butte :

The Governor proclaimed a State of Emergency to exist in certain areas severely affected by the 2018 Camp Wildfire Incident in Butte County. The rapid fire spread, in addition to extraordinary weather events, destroyed critical infrastructure, homes and residential areas. This action was considered prudent by the Governor's office to help the affected areas stabilize, recover and rebuild with the assistance of emergency expenditures, streamlining of regulations to assist in the timely recovery of these wildfire affected areas, and for the allowance of FEMA assistance.

Two: Acting Governor Newsom requests, through the regional FEMA Administrator, submits a "Request for Presidential Emergency Declaration" to the President of the United States Donald J. Trump. This request was granted expeditiously thereafter. This declaration is described per the FEMA as, "**Emergency Declarations:** The President can declare an emergency for any occasion or instance when the President determines federal assistance is needed. Emergency declarations supplement State and local or Indian tribal government efforts in providing emergency services, such as the protection of lives, property, public health, and safety, or to lessen or avert the threat of a catastrophe in any part of the United States. The total amount of assistance provided for in a single emergency may not exceed \$5 million. The President shall report to Congress if this amount is exceeded."

Per the Office of the President of the United States website: "Today, President Donald J. Trump declared that an emergency exists in the State of California and ordered Federal assistance to supplement State, tribal, and local response efforts due to the emergency conditions resulting from wildfires beginning on November 8, 2018, and continuing. The President's action authorizes the Department of Homeland Security, Federal Emergency Management Agency (FEMA), to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the counties of Butte, Los Angeles, and Ventura. Specifically, FEMA is authorized to identify, mobilize, and provide at its discretion, equipment and resources necessary to alleviate the impacts of the emergency. Emergency protective measures, limited to direct Federal assistance, will be provided at 75 percent Federal funding."

Three: Data from the California Department of Forestry and Fire Protection (CAL FIRE):

According to figures published by CAL FIRE, the Camp Fire burned approximately 153,336 acres and was responsible for the death of 85 citizens.

CAL FIRE also estimates (with preliminary data) the following figures for structure loss and damage associated with each fire event:

INCIDENT	DESTROYED	DAMAGED	TOTAL
Camp (Butte County)	18,793	564	19,357

Four: Public outreach to the Board for assistance with this emergency issue:

The Board has been contacted via telephone by affected landowners requesting regulatory relief to facilitate reconstruction efforts. Promulgation of these regulations is immediate and necessary in order to expeditiously remove hazards to life and safety presented by dead and dying trees so that landowners are able to mitigate the significant affects that the 2018 Camp Wildfire Incident has had on their lives.

Pursuant to **GOV § 11342.545**, this situation calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare. The situation presents a significant challenge to the construction and reconstruction of many Approved and Legally Permitted Structures as thousands of dead and dying trees must be removed to facilitate re-building and revitalization of these areas, as well as to alleviate falling hazards of structurally weakened trees that have contributed to the scale of damage associated with these wildfires. The Board was compelled to respond to the evidence, as described above, from fire damaged and weakened trees. These regulations are immediate and necessary to, in part, facilitate appropriate tree removal for commercial and residential construction and reduce the falling hazard associated with deteriorating trees. Appropriate dead and dying tree harvesting can:

- Reduce the risk of fire to timberlands.
- Reduce large, damaging wildfires.
- Decrease losses of homes and structures that have survived the wildfires or have salvageable properties due to these wildfire events, or decrease losses of new construction or recovery efforts.
- Enhance worker or citizen safety.
- Increase public safety.
- Increase forest vigor and vitality of surviving stands of trees through the reduction of insect populations colonizing wildfire-stricken trees, stands of trees, or forest conditions.

The Board has not yet determined if they are going to pursue permanent rulemaking. However, the timeline associated with regular rulemaking would not allow this exemption to be available during the 2019 calendar year, pursuant to PRC § 4554.5, which specifies the Board's rules shall become effective on the next January 1 that is not less than 30 days from the date of approval of those rules or regulations by the Office of Administrative Law. This time lag is not congruent with making this regulation effective as soon as possible.

The Board is proposing action to adopt 14 CCR § 1038(n).

Pursuant to **GOV § 11346.1(b)(2)**, following are the list of each technical, theoretical and empirical study, report, or similar document, if any, upon which the Board relied to make the “emergency” finding:

Governor issued Proclamation of State of Emergency issued on 11/08/18.

“Request for Presidential Emergency Declaration” submitted through the regional FEMA Administrator by Acting Governor on 11/08/18.

Governor issued Executive Order “B-57-18” issued 11/14/18.

CAL FIRE, California Geologic Survey, US Forest Service, “Camp Fire: Watershed Emergency Response Team Report, CA-BTU-016737”, 11/29/18.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(2)** (the reference to the authority(s) under which the regulation is proposed and a reference(s) to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific).

14 CCR § 1038 Note: Authority cited: Sections 4551, 4553, and 4584 Public Resources Code. Reference: Sections 4290, 4291, 4516, 4527, 4584, and 4597, Public Resources Code; and EPIC v. California Department of Forestry and Fire Protection and Board of Forestry (1996) 43 Cal. App.4th 1011.

Pursuant to **1 CCR § 20(c)(1)**, no documents are incorporated by reference in these regulations.

The Board had available the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office in Sacramento, California.

Pursuant to **1 CCR § 48**, the notice required by Government Code section 11346.1(a) shall contain the following or substantially similar statement:

“Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.”

Pursuant to **1 CCR §50(a)(5)(A)** and **GOV § 11346.1(a)(2)** the Board provided a five working-day notice. The proposed action was, at a minimum, posted on the Board’s website (pursuant to **GOV § 11346.4(a)(6)**), sent to the Board mailing list (pursuant to **GOV § 11346.4(a)**) and

widely distributed via email (pursuant to **GOV § 11340.85**) at least five working days prior to being submitted to the Office of Administrative Law.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(3)**

INFORMATIVE DIGEST

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973, PRC § 4511, et seq. the Board is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

Pursuant to PRC §4584 the Board is authorized to exempt a person engaged in specific forest management activities, upon determining that the exemption is consistent with the purposes of CHAPTER 8. Z'berg-Nejedly Forest Practice Act of 1973 (FPA), from the FPA, or portions of the FPA,

Specifically, PRC § 4584(c), authorizes the Board to adopt regulation to provide an exemption, from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the FPA, to a person engaging in specified forest management activities, including, the cutting or removal of dead, dying, or diseased trees of any size.

Additionally, pursuant to PRC § 4551.5, the rules and regulations that the Board is authorized to adopt includes measures for fire prevention and control and for prevention and control of damage by forest insects, pests, and disease.

Pursuant to this statutory authority, the Board amended 14 CCR § 1038, by adopting a new subsection (m), in accordance with the provisions of the statute.

The effect of the proposed action is to provide an exemption from portions of FPA to allow the harvesting of dead or dying trees around damaged or destroyed Approved and Legally Permitted Structures in order to facilitate the removal of hazardous materials from and assist in the reconstruction and revitalization of areas directly affected by the 2018 Camp Wildfire Incident in Butte County, California. The proposed action will provide exemption from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the FPA when specific requirements are met.

The primary benefit of the proposed action is the reduction in risk to life, property and the environment posed by dead and dying trees through streamlining their harvest and removal, therefore enabling landowners to successfully recover from the destructive wildfire events in the fall of 2018.

The proposed action does not differ substantially from an existing comparable federal regulation or statute.

The Board performed a search of existing regulations and concluded that the proposed regulation is not inconsistent or incompatible with existing state regulations.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 1346.5(a)(4)**. There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(5)**. The Board finds that the proposed regulation does not impose a mandate on local agencies or school districts.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 1346.5(a)(6)**. No costs or savings to any State agency are expected.

The proposed regulation does not impose a reimbursable cost to any local agency or school district (under Part 7 (commencing with Section 17500 of Division 4)). There are no other nondiscretionary costs or savings imposed on local agencies. There are no costs or savings in federal funding to the State.

The Board took action to authorize emergency rulemaking based on the findings provided pursuant to GOV § 11346.1(b)(2). The problem that the Board has addressed in the proposed action is described in the findings provided pursuant to GOV § 11346.1(b)(2). The fundamental problem is that the November 2018 wildfires caused unprecedented damage and destruction throughout the county of Butte. The large number of trees that have been damaged and weakened as a result of these fires will hamper rebuilding and reconstruction of the fire-damaged areas. Additionally, dead and dying trees represent a potential hazard to life or property as they deteriorate and ultimately collapse.

The purpose of the proposed action is to provide a person engaging in the cutting or removal of dead or dying trees an exemption, from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the Forest Practice Act, when specific requirements are met.

Adopt 14 CCR § 1038(m)

The purpose of this subsection is to establish the scope of this exemption. It states the activities for which the exemption is provided and the geographic area in which the exemption can be utilized.

The subsection also allows for the provisions of this exemption to supersede the provisions of any other Notices of Exemptions within the same area as to provide landowners immediate relief from the hardships created by specific catastrophic wildfires.

Finally, the subsection identifies that 14 CCR § 1038.1 (the effective period is one year, all operational provisions of the FPA and District Forest Practice Rules applicable to "Timber Harvest Plan", "THP", and "Plan" must be followed and in-lieu practices for watercourse and lake protection zones, exceptions to rules, and alternative practices are not allowed) and the limitations listed in 1038(b)(1)-(10) are required and is necessary for clarity to establish the parameters of this exemption.

Adopt 14 CCR § 1038(m)(1)

The aim of this exemption is to assist in the rebuilding of Approved and Legally Permitted Structure that existed prior to the wildfire event and, to that end, this provision limits the harvest activities allowable under the exemption to areas within 300 feet of Approved and Legally Permitted Structures that have been damaged or destroyed by wildfires. The distance of 300 feet, as a threshold for harvest surrounding Approved and Legally Permitted Structures and certain forms of infrastructure, was selected by the Board based upon input from representatives from Cal Fire, California Department of Fish and Wildlife, and Board of Forestry and Fire Protection technical staff. The board determined that 300 feet was an appropriate regulatory distance to strike a balance between public safety and limiting harvest areas to only what is necessary for construction and reconstruction. This provision is necessary to provide clarity for the geographic limitations of this exemption.

Adopt 14 CCR § 1038(m)(2)

This paragraph lists information that must be provided in the Notice of Exemption and includes the requirements 14 CCR § 1038.2(a)-(c). The Board deemed it necessary to require this information be provided to the Department to enable enforcement. The total acreage of the exemption harvest area is necessary to facilitate the ability to track the area treated. Map scale and type are necessary to provide sufficient detail to the Department to enable enforcement, without creating additional mapping burdens on the landowner.

Adopt 14 CCR § 1038(m)(2)(D)

A certification signature from the timberland landowner is required in this paragraph and is necessary to provide official endorsement that the timberland landowner is aware of the proposed timber harvesting activities.

Adopt 14 CCR § 1038(m)(3)

This provision is intended to ensure that landowners utilizing this exemption are operating under all appropriate regulatory standards, including county and city requirements, and is necessary so that congruency of standards may be achieved.

Adopt 14 CCR § 1038(m)(4)

This provision states that certain types of slash and woody debris generated by use of this exemption must be treated and is necessary for clarity. Similar requirements for the treatment of Slash and Woody Debris greater than one inch but less than eight inches in diameter exist within 14 CCR § 917.2 [937.2, 957.2], and the Board has concluded that these requirements have been successful in achieving the goals of reduction in risk to life, property and the environment in 14 CCR § 917.2 [937.2, 957.2] and that it would be suitable and appropriate to apply these

requirements to accomplish the similar goals of this provision. This provision varies from 100 feet treatment distance within 14 CCR § 917.2 [937.2, 957.2] to 150 feet of treatment distance within adopted 14 CCR § 1038(n) as the Board determined that construction and reconstruction activities addressed by 14 CCR § 1038(n) will require an increased footprint in order to accommodate the safety of workers who may be adjacent to structures. This applicable distance and treatment level was informed by Cal Fire and the Department of Fish and Wildlife.

Additionally, the adopted provision does not allow the lopping of slash (which is allowable under 14 CCR § 917.2 [937.2, 957.2]), as the Board determined that lopping may not accommodate the safety of the public and workers who may be adjacent to Approved and Legally Permitted Structures during construction or reconstruction activities.

Adopt 14 CCR § 1038(m)(5)

This provision states that certain types of slash and woody debris generated by use of this exemption must be treated. This provision also mandates deadlines for when this slash must be treated and is necessary for clarity. Similar requirements for the treatment of Slash and Woody Debris and the timing of those requirements exist within 14 CCR § 917.2 [937.2, 957.2], and the Board has concluded that these requirements have been successful in achieving the goals of reduction in risk to life, property and the environment in 14 CCR § 917.2 [937.2, 957.2] and that it would be suitable and appropriate to apply these requirements to accomplish the similar goals of this provision.

Additionally, the adopted provision of 14 CCR § 1038(n)(5) requires a treatment requirement distance of between 150 and 300 feet as the Board determined that this distance was appropriate in order to reduce the risk to life, property and the safety of workers posed by slash surrounding Legally Approved and Permitted Structures during construction or reconstruction activities. This applicable distance and treatment level was informed by Cal Fire and the Department of Fish and Wildlife.

Adopt 14 CCR § 1038(m)(6)

This provision states that, except where necessary eliminate a striking hazard, an average of at least one (1) tree that is considered valuable to wildlife must be retained for wildlife habitat under certain conditions and is necessary for clarity. Similar requirements for the retention of decadent and deformed trees of value to wildlife (as defined in 14 CCR § 895.1), snags, or dying trees exist within 14 CCR § 1038(k), and the Board has concluded that these requirements have been successful in achieving the goals of 14 CCR § 1038(k) and that it would be suitable and appropriate to apply these similar requirements to accomplish the similar goals of this provision. This provision varies from 100 feet where the provision does not apply within 14 CCR § 1038(k) to 150 feet where the provision does not apply within adopted 14 CCR § 1038(n) as the construction and reconstruction activities addressed by 14 CCR § 1038(n) will require an increased footprint in order to accommodate the safety of workers who may be adjacent to structures. Additionally, the size of the wildlife structure (greater than sixteen (16) inches DBH (diameter breast height) and twenty (20) feet tall) were utilized from existing regulations 14 CCR § 912.9 [932.9, 952.9] Technical Rule Addendum No. 2, in which snags of greatest value are described as >16" DBH and 20 ft. in height. The Board has determined that this size was suitable

and appropriate for this provision. These applicable distance, retention level, and retention characteristics were informed by Cal Fire and the Department of Fish and Wildlife.

Furthermore, the last sentence of the paragraph describes that within 150 feet of habitable structures, roads, fire suppression ridges, and infrastructure facilities such as transmission lines and towers, or water conveyance and storage facilities, the retention standard does not apply because it was deemed that the value of this infrastructure, that could be compromised by retention of wildlife structures that may fall or carry fire, outweighed the value that these structures provide wildlife in these areas. This provision is necessary for clarity.

Adopt 14 CCR § 1038(m)(7).

This provision makes specific the timeline and details between the Director's receipt of the Notice of Exemption and commencement of timber operations. Similar requirements for the commencement of Timber Operations exist within similar regulations 14 CCR §§ 1038 (k) and 1052, and the Board has concluded that these requirements have been successful in achieving tracking and enforcement of Timber Operations and that it would be suitable and appropriate to apply these requirements to accomplish the similar goals of this provision. This provision is necessary for enforcement and tracking purposes.

Adopt 14 CCR § 1038(m)(7)(A).

This provision is required to ensure that the Licensed Timber Operator retain a copy of the accepted Notice of Exemption, except in those cases where the Director has failed to act within the specified review period, and is necessary to ensure clarity and operational compliance.

1 Board of Forestry and Fire Protection

2 Emergency Rulemaking to Facilitate Post-Fire Recovery Efforts within the County

3 of Butte

4 Title 14 of the California Code of Regulations (CCR),

5 Division 1.5, Chapter 4,

6 Subchapter 7, Article 2

7
8 Amend:

9 **§ 1038. Exemption.**

10 ...

11 (l) The cutting or removal of trees to restore and conserve California black (*Quercus*
12 *kelloggii*) or Oregon white (*Quercus garryana*) oak woodlands and associated
13 grasslands, if all the following requirements are met:

14 ...

15 (7) 14 CCR § 1038(l) shall become inoperative on January 1, 2024.

16 (m) Harvesting dead or Dying Trees of any size to facilitate the removal of hazardous
17 material and the reconstruction or construction of Approved and Legally Permitted
18 Structures that were damaged or destroyed by wildfire in the County of Butte during
19 2018. The provisions of a Notice of Exemption submitted pursuant to this subsection
20 supersede the provisions of any other Notices of Exemption that are submitted in the
21 same Harvest Area. In addition to compliance with 14 CCR §§ 1038(b)(1)-(10) and
22 1038.1, the following apply:

23 (1) Only trees within three hundred (300) feet from any point of an Approved and
24 Legally Permitted Structure that was damaged or destroyed by wildfire may be
25 harvested.

1 (2) The Notice of Exemption shall include:

2 (A) the requirements of 14 CCR § 1038.2(a)-(c);

3 (B) the total acreage of the Harvest Area;

4 (C) an enlarged 7½ minute quadrangle map, or its equivalent, that is not less
5 than one (1) inch equals 1,000 feet showing the location of the boundaries of
6 the Harvest Area;

7 (D) a certification of ownership signed by the timberland owner and;

8 (E) the tentative commencement date of Timber Operations.

9 (3) Timber Operations conducted under this subsection shall conform to
10 applicable city or county general plans, city or county implementing ordinances, and city
11 or county zoning ordinances within which the Harvest Area is located. The Timber
12 Operator or timberland owner shall certify that the city or county has been contacted
13 and the Timber Operations conducted under the Notice of Exemption conforms with all
14 city or county regulatory requirements.

15 (4) All Slash and Woody Debris greater than one (1) inch but less than eight (8)
16 inches in diameter within one-hundred-fifty (150) feet of an Approved and Legally
17 Permitted Structure that was damaged or destroyed by wildfire shall be removed,
18 chipped or piled and burned.

19 (5) All Slash created between one-hundred-fifty (150) feet and three hundred (300)
20 feet of an Approved and Legally Permitted Structure that was damaged or destroyed by
21 wildfire shall be treated by Lopping for Fire Hazard Reduction, removed, chipped or
22 piled and burned within forty-five (45) days from the start of Timber Operations; except
23 for the burning of piles, which shall be accomplished not later than April 1 of the year
24 following their creation; or for piles created on or after September 1, not later than April
25 1 of the second year following creation.

1 (6) Except where necessary to eliminate a striking hazard, retain an average for
2 the Harvest Area of not less than one (1) Decadent and Deformed Tree of Value to
3 Wildlife, Snag, or Dying Tree per acre that is greater than sixteen (16) inches DBH and
4 twenty (20) feet tall. This provision does not apply within one-hundred-fifty (150) feet of
5 Approved and Legally Permitted Structures, roads, fire suppression ridges and
6 infrastructure facilities such as transmission lines and towers, or water conveyance and
7 storage facilities.

8 (7) The Director shall notify the submitter of the date of the Director's receipt of
9 the Notice of Exemption. Timber Operations pursuant to the Notice of Exemption may
10 not commence for five (5) working days from the date of the Director's receipt of the
11 Notice of Exemption unless this delay is waived by the Director. If the Notice of
12 Exemption is not complete and accurate, the Director shall notify the submitter within
13 five (5) working days from the date of the Director's receipt, and the Timber Operations
14 may not commence. The Director shall determine whether the Notice of Exemption is
15 complete, and if so, shall send a copy of a notice of acceptance to the submitter;
16 provided, however, if the Director does not act within five (5) working days of receipt of
17 the Notice of Exemption, Timber Operations may commence.

18 (A) Timber Operations may not be conducted without a copy of the accepted
19 Notice of Exemption at the operating site, except where the Director has failed to act
20 within the five (5) working day review period.

21 ...

22 Note: Authority cited: Sections 4551, 4553 and 4584, Public Resources Code.

23 Reference: Sections 4290, 4291, 4516, 4527, 4584 and 4597, Public Resources Code;

24 and *EPIC v. California Department of Forestry and Fire Protection and Board of*

25 *Forestry* (1996) 43 Cal. App.4th 1011.

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