

Board of Forestry and Fire Protection

Management Committee

February 27, 2019

Staff Memo: Potential Adoption of Permanent Statewide Post-Fire Recover Exemption

In January of 2018, the Board adopted geographically-limited emergency regulations to provide regulatory relief to the victims of the 2017 North Bay Wildfires in the form of an exemption for timber harvesting to facilitate post-fire construction or reconstruction of fire damaged residential structures. Since then, the Board has adopted two additional sets of emergency regulations aimed at providing similar regulatory relief to landowners affected by wildfire with specific geographic and temporal limitations.

During consideration of adoption of the second set of these emergency regulations in September of 2018, the Board also identified a need to evaluate the potential necessity of permanent regulations to provide post-fire recovery relief to forest landowners who may be affected by future wildfires. To date, all of the Post-Fire Recovery Exemptions have been utilized a total of 17 times (3 in Butte Co., 4 in Napa Co, and 10 in Sonoma Co.) to aide landowners who have suffered loss as a result of wildfires.

Permanent Post-Fire Recovery Regulatory Structure

Due to the re-structuring of 14 CCR §§ 1038, 1038.1, and 1038.2 within the emergency regulations adopted by the Board on January 23, 2019, and filed with the Secretary of State on February 19, 2019, the existing Post-Fire Recovery Exemptions have been moved to unique sections in order to avoid any substantive modifications and preserve their requirements and conditions. Any permanent Post-Fire Recovery exemptions should fit within the restructured 14 CCR §§ 1038, 1038.1, and 1038.2. Please see the attached Draft regulatory text for comments related to this restructuring.

Additional Substantive Changes to the Post-Fire Recovery Exemption

Approved and Legally Permitted Structures

The application of the Post-Fire Recovery Exemption is restricted to areas within 300 feet of “Approved and Legally Permitted Structures”. This term is defined within 14 CCR § 895.1 to mean “... for the purposes of 14 CCR § 1038(c)(1)-(5), only structures that are designed for human occupancy and garages, barns, stables, and structures used to enclose fuel tanks.” This term is used to convey this defined meaning within the Post-Fire Recovery Exemption with the exception of the restriction of applicability within 14 CCR § 1038(c)(1)-(5). This use is not exclusive to the Post-Fire Recovery Exemption and can be found within the following provisions of the Forest Practice Rules:

- Definition of Community Fuelbreak Areas (§ 895.1)
 - Special Prescriptions: Fuelbreak/Defensible Space (§ 913.4[933.4, 953.4](c))
- Protection and Restoration of the Beneficial Functions of the Riparian Zone in Watersheds with Listed Anadromous Salmonids: Chanel Zone Requirements (§ 916.9 [936.9, 956.9](e)(1)(C))
- Forest Fire Prevention Exemption: Fuel Treatment Requirements (§ 1038.3(d)(1)&(2))
- Emergency Notice for Fuel Hazard Reduction: Geographic area for permitted operations (§ 1052.4(c)(1))

Given the widespread use of this term not exclusive to 14 CCR § 1038(c)(1)-(5), staff recommends removing this restriction on the applicability of the defined term to promote clarity throughout the Forest Practice Rules.

Decision Point: Conditions for Utilization of the Post-Fire Recovery Exemption

Previously, the Post-Fire Recovery Exemptions had been restricted to specific counties that had been affected by either specific wildfire events, or wildfire events within a specific temporal frame (i.e. 2018). For a permanent Post-Fire Recovery Exemption, the Board must determine conditions necessary for a landowner to qualify for utilization the exemption, including any geographic, temporal, or other limitations on its use which may be appropriate and necessary in order to facilitate the removal of hazardous materials and the reconstruction or construction of wildfire damaged structures.

Decision Point: Certification of Qualification for Utilization of the Post-Fire Recovery Exemption

A certification that a landowner satisfies the requirements of any geography, temporal, or other limitations on the use of the Post-Fire Recovery Exemption may promote proper implementation of the regulations by the public, as well as ensure proper enforcement of the regulations by the Department.

Retention of Decadent and Deformed Trees of Value to Wildlife, Snags, or Dying Trees

Previously, Post-Fire Recovery Exemptions have required the retention of not less than one Decadent and Deformed Tree of Value to Wildlife, Snag, or Dying Tree per acre that is greater than sixteen (16) inches dbh and twenty (20) feet tall (though this retention requirement did not apply to the area within 150 feet of the Approved and Legally Permitted Structure). Currently, all other exemptions pursuant to 14 CCR § 1038 (with the exception of the Small Timberland Owner exemption of 14 CCR § 1038(f)) contain restrictions on the harvesting of large old trees, with specific exceptions which must be identified by an RPF. In order to promote simplicity and consistency within the restructured exemptions, staff would recommend that these requirements be made applicable with a permanent Post-Fire Recovery Exemptions to supersede the other retention requirements.