

1 **Permanent Post-Fire Recovery Regulations, 2019**

2 **Title 14 California Code of Regulations**

3 **Division 1.5, Chapter 4**

4 **Subchapter 7, Article 2**

5 **Amend §§ 1038, 1038.1, 1038.2**

6 **Repeal § 1038.5**

7 **§895.1**

8

9 "Approved and Legally Permitted Structure" means, ~~for the purposes of 14 CCR § 1038(c)(1)-(5),~~ only
10 structures that are designed for human occupancy and garages, barns, stables, and structures used to
11 enclose fuel tanks.

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13 Note: Authority cited: Sections 4551, 4551.5, 4553, 4561, 4561.5, 4561.6, 4562, 4562.5, 4562.7 and
14 4591.1, Public Resources Code. Reference: Sections 4511, 4512, 4512.5, 4513, 4521.3, 4523, 4524,
15 4525, 4525.3, 4525.5, 4525.7, 4526, 4526.5, 4527, 4527.5, 4528, 4551, 4551.5, 4561, 4562, 4562.5,
16 4562.7, 4583.2, 4584, 4591.1 4597.1, 21001(f), 21080.5, 21083.2 and 21084.1, Public Resources Code;
17 CEQA Guidelines Appendix K (printed following Section 15387 of Title 14 Cal. Code of Regulations),
18 Laupheimer v. State (1988) 200 Cal.App.3d 440; 246 Cal.Rptr. 82; and Joy Road Area Forest and
19 Watershed Association, v. California Department of Forestry & Fire Protection, Sonoma County Superior
20 Court No. SCV 229850.

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22 **§ 1038. Exemption.**

23 Timber Operations conducted pursuant to this section are exempt from the Plan preparation and
24 submission requirements (PRC § 4581) and from the completion report and Stocking report
25 requirements (PRC §§ 4585 and 4587) of the FPA. Timber Operations conducted under any notice of

1 exemption described herein shall be limited to one (1) year from the date of receipt by the Director, and
2 shall comply with all operational provisions of the FPA and District Forest Practices Rules applicable to
3 "Timber Harvest Plan", "THP", and "Plan" definitions per 14 CCR § 895.1. In-lieu practices within WLPZs
4 as specified under Article 6 of these Rules, exceptions to the Rules, and alternative practices are not
5 allowed. The following types of Timber Operations are exempt:

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7 (g) Harvesting dead or Dying Trees to facilitate the removal of hazardous material or the reconstruction
8 or construction of Approved and Legally Permitted Structures that were damaged or destroyed by
9 wildfire. The provisions of a notice of exemption submitted pursuant to this subsection supersede the
10 provisions of any other notices of exemption that are submitted in the same Harvest Area. The following
11 conditions apply:

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

14 **GEOGRAPHIC APPLICABILITY OPTION #1**

15 (2) The proposed harvesting activities must be consistent with, and within the geographic scope
16 of an existing valid and effective gubernatorial proclamation of a state of emergency or
17 executive order. The timberland owner shall submit a copy of the valid and effective
18 gubernatorial proclamation of a state of emergency or executive order with the notice of
19 exemption described within 14 CCR § 1038.1.

20 **GEOGRAPHIC APPLICABILITY OPTION #2**

21 (2) Any trees which are proposed for harvest must be dead or Dying as a result of a wildfire
22 which had occurred no more than three (3) years from the date of submittal of the notice of
23 exemption as described within 14 CCR § 1038.1. The timberland owner shall submit certification
24 that all proposed Timber Operations are necessary in order to facilitate the removal of
25 hazardous material or the reconstruction or construction of Approved and Legally Permitted

Commented [EH1]: Reliant upon Governor action

Commented [EH2]: Reliant upon wildfire w/o a need for Governor action

Commented [EH3]: SB 1772 (2018) extends the amount of time a home or business owner has to rebuild an insured property from two to three years after a declared wildfire emergency and receive the full replacement costs to which they are entitled. SB 894 (2018) allows consumers facing a total loss to generally have three years to utilize their Additional Living Expenses coverage. Utilizing a 3 year time period here seems to be consistent with legislative efforts in defining an appropriate period for recovery.

1 Structures that were damaged or destroyed by such a wildfire, as well as certification by an RPF
2 that all trees proposed for harvest are dead or Dying as a result of such a wildfire.

3 **GEOGRAPHIC APPLICABILITY OPTION #3**

4 (2) Timber Operations conducted pursuant to this subsection may be permitted if:

5 (a) They are consistent with, and within the geographic scope of, an existing valid and
6 effective gubernatorial proclamation of a state of emergency or executive order. If the
7 poposed Timber Operations are consistent with, and within the geopgraphic scope of
8 such a proclamation or order, the timberland owner shall submit a copy of the valid and
9 effective gubernatorial proclamation of a state of emergency or executive order with the
10 notice of exemption described within 14 CCR § 1038.1; or

11 (b) If no gubernatorial proclamation of a state of emergency or executive order exists
12 such as described in subparagraph (a) above, but the proposed Timber Operations are
13 necessary to facilitate the removal of hazardous materials or the reconstruction or
14 construction of Approved and Legally Permitted Structures that were damaged or
15 destroyed by a wildfire no more than three (3) years prior to the submission of a notice
16 of exemption as described within 14 CCR § 1038.1. In such an instance, the timberland
17 owner shall submit certification that all proposed Timber Operations are necessary in
18 order to facilitate the removal of hazardous material or the reconstruction or construction
19 of Approved and Legally Permitted Structures that were damaged or destroyed by such
20 a wildfire, as well as certification by an RPF that all trees proposed for harvest are dead
21 or Dying as a result of such a wildfire.

22 (3) Timber Operations conducted under this subsection shall conform to applicable city or
23 county general plans, city or county implementing ordinances, and city or county zoning
24 ordinances within which the Harvest Area is located. The Timber Operator or timberland owner
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Commented [EH4]: Can use either governor action or private justification

1 shall certify that the city or county has been contacted and the Timber Operations conducted
2 under the notice of exemption conforms with all city or county regulatory requirements.

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

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

12
13 **ALTERNATIVE**

14 (g) Harvesting trees which are dead or Dying as a result of wildfire within within three-hundred (300) feet
15 from any point of an Approved and Legally Permitted Structure. The provisions of a notice of exemption
16 submitted pursuant to this subsection supersede the provisions of any other notices of exemption that
17 are submitted in the same Harvest Area. The following conditions apply:

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

20 **GEOGRAPHIC APPLICABILITY OPTION #1**

21 (2) The proposed harvesting activities must be consistent with, and within the geographic scope
22 of, an existing valid and effective gubernatorial proclamation of a state of emergency or
23 executive order. The timberland owner shall submit a copy of the valid and effective
24 gubernatorial proclamation of a state of emergency or executive order with the notice of
25 exemption described within 14 CCR § 1038.1.

Commented [EH5]: Alternative to permit the harvesting of wildfire damaged trees around any structure, not only those structures which are damaged or destroyed by wildfire.

1 **GEOGRAPHIC APPLICABILITY OPTION #2**

2 (2) Any trees which are proposed for harvest must be dead or dying as a result of a wildfire
3 which had occurred no more than three (3) years from the date of submittal of the notice of
4 exemption as described within 14 CCR § 1038.1. The timberland owner shall submit certification
5 by an RPF certification by an RPF that all trees proposed for harvest are dead or Dying as a
6 result of such a wildfire.

7 **GEOGRAPHIC APPLICABILITY OPTION #3**

8 (2) Timber Operations conducted pursuant to this subsection may be permitted if:

9 (a) They are consistent with, and within the geographic scope of, an existing valid and
10 effective gubernatorial proclamation of a state of emergency or executive order. If the
11 proposed Timber Operations are consistent with, and within the geographic scope of
12 such a proclamation or order, the timberland owner shall submit a copy of the valid and
13 effective gubernatorial proclamation of a state of emergency or executive order with the
14 notice of exemption described within 14 CCR § 1038.1; or

15 (b) If no gubernatorial proclamation of a state of emergency or executive order exists
16 such as described in subparagraph (a) above, but the proposed Timber Operations are
17 necessary to remove trees which were damaged or destroyed by a wildfire no more than
18 three (3) years prior to the submission of a notice of exemption as described within 14
19 CCR § 1038.1. In such an instance, the timberland owner shall submit certification by an
20 RPF that all trees proposed for harvest are dead or Dying as a result of such a wildfire.

21 (3) Timber Operations conducted under this subsection shall conform to applicable city or
22 county general plans, city or county implementing ordinances, and city or county zoning
23 ordinances within which the Harvest Area is located. The Timber Operator or timberland owner
24 shall certify that the city or county has been contacted and the Timber Operations conducted
25 under the notice of exemption conforms with all city or county regulatory requirements.

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

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

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11 Note: Authority cited: Sections 4551, 4553 and 4584, Public Resources Code. Reference: Sections
12 4290, 4291, 4516, 4527, 4584, 4584.1, and 4597, Public Resources Code; and *EPIC v. California*
13 *Department of Forestry and Fire Protection and Board of Forestry* (1996) 43 Cal. App.4th 1011.(b) §

14
15 **1038.1. Additional Exceptions or Requirements**

16 Preparation or submittal of a notice of exemption described in 14 CCR § 1038, or Timber Operation
17 thereunder, shall comply with the additional exceptions or requirements as described.

18 (a) A notice of exemption, pursuant to 14 CCR § 1038, shall be submitted to the Director, on a
19 form provided by the Department, prior to the commencement of Timber Operations. The
20 form shall contain the following information:

- 21 (1) The type of exemption.
22 (2) Name(s), address, and telephone number(s) of the Timber Owner(s), timberland
23 owner(s), and Timber Operator.
24 (3) Name, address, and telephone number and license number of the RPF, if applicable.
25 (4) Legal description of the location of the Timber Operation.

1 (5) The tentative date of commencement of Timber Operations.

2 (6) A signature of the landowner certifying that they are the landowner and have read and
3 understand the information contained within the notice of exemption.

4 (b) For notices of exemption pursuant to 14 CCR § 1038, the additional requirements apply:

5 (1) All Timber Operations conducted in the Lake Tahoe Region must have a valid Tahoe
6 Basin Tree Removal Permit, as defined by TRPA, or shall be conducted under a valid
7 TRPA Memorandum of Understanding, when such a permit is required by TRPA.

8 (2) The Department shall provide the appropriate RWQCB, CDFW, and CGS with copies of
9 the submitted notice of exemption prior to the tentative date of commencement of
10 Timber Operations.

11 (3) No helicopter yarding shall be allowed.

12 (c) The following additional exceptions or requirements apply to prepared, submitted, or a
13 Timber Operation conducted under a notice of exemption as provided in Table 1 below.

14 **Table 1: Additional Exceptions or Requirements**

Applicable Exceptions or Requirements	Notice of Exemption Type(s)
14 CCR § 1038.1(c)(1)	14 CCR § 1038(c)(6), (d), (e), and (f)
14 CCR § 1038.1(c)(2)	14 CCR § 1038 (e) and (f)
14 CCR § 1038.1(c)(3)	Applies to all notices of exemption pursuant to 14 CCR § 1038
14 CCR § 1038.1(c)(4)(A)	14 CCR § 1038 (d)
14 CCR § 1038.1 (c)(4)(B)	14 CCR § 1038 (e) and (f)
14 CCR § 1038.1(c)(5) through (14)	14 CCR § 1038 (b), (c), (d), (e), and (f) , and (g)

14 CCR § 1038.1(c)(15)

14 CCR § 1038 (a), (b), (c), (d), ~~and (e)~~,
and (g)

- (1) The notice of exemption shall be prepared, signed, and submitted to the Department by a RPF.
- (2) Upon submission of the notice of exemption, a Confidential Archaeological Letter pursuant to 14 CCR § 929.1 [949.1; 969.1] must be provided to the Director and the RPF shall send a copy of the notice of exemption to Native Americans as defined in 14 CCR § 895.1.
- (3) No Timber Operations on any site that satisfies the criteria listed in 14 CCR § 895.1 for a Significant Archaeological or Historical Site (information on some of these sites may be available from the Information Centers of the California Historical Resources Information System within the Department of Parks and Recreation), except under the following conditions:
- (A) If a Significant Archaeological or Historical Site is identified by the RPF preparing the notice of exemption within the project boundary, the site may be preserved in place by capping or covering with a layer of soil prior to submission.
 - (B) If a site has been preserved in place, the RPF preparing the notice of exemption shall obtain written concurrence from a Department archeologist prior to submission indicating operations will not cause damage to a Significant Archaeological or Historical Site.
 - (C) The written concurrence from a Department archeologist shall be submitted with the notice of exemption.
- (4) Fuel treatments as follows:
- (A) Slash within the Harvest Area shall be treated to achieve a maximum post-harvest depth of thirty (30) inches above the ground. All Slash shall be lopped, removed,

1 chipped, piled for burning, or otherwise treated, within one (1) year from the date of
2 the Director receiving the notice except for burning. Burning shall be completed
3 within two (2) years from the date of the Director receiving the notice.

4 (B) Slash shall be treated to achieve a maximum post-harvest depth of eighteen (18)
5 inches above the ground on at least eighty (80) percent of the Harvest Area. All
6 Slash shall be lopped, removed, chipped, piled for burning, or otherwise treated,
7 within one (1) year from the date of the Director receiving the notice except for
8 burning. Burning shall be completed within two (2) years from the date of the
9 Director receiving the notice.

10 (5) No tractor or heavy equipment operations on slopes greater than fifty (50) percent.

11 No construction of new tractor roads on slopes greater than forty (40) percent.

12 (6) Timber Operations within any Special Treatment Area shall comply with the rules associated
13 with that Special Treatment Area.

14 (7) No tractor or heavy equipment operations on known Unstable Areas.

15 (8) No new road construction or reconstruction, as defined in 14 CCR § 895.1.

16 (9) No heavy equipment operations within the standard width of a WLPZ, as defined in 14 CCR
17 § 916.4 [936.4, 956.4] (b), except for maintenance of roads and Drainage Facilities or
18 structures.

19 (10) No known sites of rare, threatened or endangered plants or animals will be disturbed,
20 threatened or damaged.

21 (11) No Timber Operations within the buffer zone of a Sensitive Species.

22 (12) No timber harvesting within the standard width of a WLPZ, as defined in 14 CCR § 916.4

23 [936.4, 956.4] (b), except sanitation-salvage harvesting, as defined in 14 CCR § 913.3

24 [933.3, 953.3], where immediately after completion of operations, the area shall meet the

25 Stocking Standards of 14 CCR § 912.7 [932.7, 952.7] (b)(2), or, except the removal of dead

1 or dying trees where consistent with 14 CCR § 916.4 [936.4, 956.4] (b). Trees to be
2 harvested shall be marked by, or under the supervision of, an RPF prior to Timber
3 Operations.

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

14 (A) Timber Operations may not be conducted without a copy of the Director's notice of
15 acceptance of the notice of exemption at the operating site, except where the
16 Director has failed to act within the five (5) working-day review period.

17 (14) Before beginning Timber Operations, the LTO, RPF, or person responsible for submittal of
18 the notice of exemption shall notify CAL FIRE of the actual commencement date of
19 operations. The notification, by telephone, mail, or email, shall be directed to the appropriate
20 CAL FIRE Unit Headquarters, Forest Practice Inspector or other designated personnel. If the
21 notification is provided by mail, Timber Operations may not commence until three (3) days
22 after the postmark date of notification. The provisions of this paragraph do not supersede the
23 requirements of paragraph (13) above.

24 (15) No large old trees, defined as a tree that existed before 1800 AD and is greater than sixty
25 (60) inches in diameter at stump height for Sierra or Coast Redwoods, and forty-eight (48)

1 inches in diameter at stump height for all other tree species, or Decadent and Deformed

2 Trees with Value to Wildlife shall be harvested unless the following apply:

3 (A) The tree is not critical for the maintenance of a Late Successional Stand.

4 (B) A RPF attached to the submitted notice of exemption a written explanation
5 and justification for the harvest of the tree based on the RPF's finding of any of
6 the following:

- 7 1. The tree is a hazard to safety or property.
- 8 2. The removal of the tree is necessary for the construction of a building
9 as approved by the appropriate local jurisdiction and shown on the
10 county or city approved site plan, which shall be attached to the
11 submitted notice of exemption.
- 12 3. The tree is dead or likely to die within one (1) year of the date of the
13 proposed removal, as determined by a RPF.

14 (C) An RPF's written explanation or justification need not be attached to the
15 submitted notice of exemption if an approved Habitat Conservation Plan,
16 Sustained Yield Plan, or Plan addresses large old tree retention for the area in
17 which the large old tree is proposed for removal and the removal is in
18 compliance with the retention standards of that document.

19 Note: Authority cited: Sections 4551, 4553, and 4584, Public Resources Code. Reference: Sections
20 4527, 4584, and 4584.1, Public Resources Code.

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22 **§ 1038.2. Mapping Standards for Notices of Exemption.**

23 A submitted notice of exemption shall include a seven-and-one-half (7½) minute USGS quadrangle map,
24 or its equivalent, depicting the information as required in Table 1 below. Additional maps, which may be
25 topographic or planimetric, may be used to provide additional information, to show specific details, and

1 to improve map clarity. A larger scale map such as an assessor parcel map showing the location of the
 2 Timber Operations shall be included for exemptions conducted under 14 CCR § 1038 (c). The
 3 Appurtenant Roads included within the Logging Area pursuant to subsection (b) below may be shown on
 4 a map which may be planimetric with a scale as small as one-half inch equals one mile. Color coding
 5 shall not be used. A legend shall be included indicating the meaning of the symbols used. The submitted
 6 notice of exemption shall indicate if more than one Yarding system is to be used and identify the
 7 systems (if more than one is used).

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 9 **Table 1: Mapping Requirements**

10 Applicable Mapping Requirements	10 Notice of Exemption Type(s)
11 14 CCR § 1038.2 (a)	14 CCR § 1038 (a), (c), and (g)
12 14 CCR § 1038.2 (b), (c), (k)	14 CCR § 1038 (b), (c)(6), (d), (e), and (f)
13 14 CCR § 1038.2 (d) through (f)	14 CCR § 1038(c)(6) through (f)
14 14 CCR § 1038.2 (g), (h), and (j)	14 CCR § 1038 (c)(6), (e), and (f)
15 14 CCR § 1038.2 (i)	14 CCR § 1038 (b) through (f)
16 14 CCR § 1038.2 (l)	14 CCR § 1038(f)

- 18 (a) Boundaries of the Harvest Area.
- 19 (b) Boundaries of the Logging Area.
- 20 (c) Location of all Roads to be used for, or potentially impacted by, Timber Operations.
- 21 (d) The classification of all Roads as Permanent Roads, Seasonal Roads, or Temporary Roads.
- 22 (e) Road(s) and Landing(s) located in a Watercourse, Lake, WLPZ, Meadows and Wet Areas other
 23 than at road Watercourse crossings.
- 24 (f) Location of water drafting sites.
- 25 (g) Public Roads within one-quarter (¼) mile of the Harvest Area.

- 1 (h) Location of portions of the Harvest Area with an Extreme Erosion Hazard Rating.
- 2 (i) Location of all Watercourses and Lakes with Class I, II, III or IV waters.
- 3 (j) Location of known Unstable Areas.
- 4 (k) Location of any Special Treatment Areas.
- 5 (l) Location of boundaries of timber-site classes needed for determination of Stocking Standards to
- 6 be applied, down to at least a twenty (20) acre minimum or as specified in District Forest
- 7 Practice Rules.

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9 Note: Authority cited: Sections 4551, 4553, and 4584, Public Resources Code. Reference: Sections
10 4527, 4584, and 4584.1, Public Resources Code.

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