

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 § 1038.6**

7 **§895.1**

8 .....

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

12 .....

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

22  
23 **§ 1038. Exemption.**

24 Timber Operations conducted pursuant to this section are exempt from the Plan  
25 preparation and submission requirements (PRC § 4581) and from the completion

1 report and Stocking report requirements (PRC §§ 4585 and 4587) of the FPA. Timber  
2 Operations conducted under any notice of exemption described herein shall be limited  
3 to one (1) year from the date of receipt by the Director, and shall comply with all  
4 operational provisions of the FPA and District Forest Practices Rules applicable to  
5 “Timber Harvest Plan”, “THP”, and “Plan” definitions per 14 CCR § 895.1. In-lieu  
6 practices within WLPZs as specified under Article 6 of these Rules, exceptions to the  
7 Rules, and alternative practices are not allowed. The following types of Timber  
8 Operations are exempt:

9 .....

10 (f) The cutting or removal of trees that eliminates the vertical continuity of vegetative  
11 fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable  
12 materials and maintaining a Fuelbreak. An exemption pursuant to this subdivision shall  
13 be known as the Small Timberland Owner Exemption. The cutting or removal of trees  
14 in compliance with this subdivision shall be subject to all of the following conditions:

15 .....

16 (12) This subsection will expire five (5) years after February 19, 2019.

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

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

1 (2) Timber Operations conducted pursuant to this subsection shall be  
2 permitted if either:

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

11 (b) Timber Operations are necessary to remove trees which are dead or  
12 dying as a result of a wildfire which occurred no more than three (3)  
13 years prior to the submission of a notice of exemption as described  
14 within 14 CCR § 1038.1, but such Timber Operations are not  
15 consistent with, or within the geographic scope of, an existing valid  
16 and effective gubernatorial proclamation of a state of emergency or  
17 executive order. In such an instance, the timberland owner shall  
18 submit, to the Director, certification by an RPF that all trees proposed  
19 for harvest are dead or Dying as a result of such a wildfire. This  
20 certification shall be included with the submitted notice of exemption  
21 as described within 14 CCR § 1038.1.

22 (3) Timber Operations conducted under this subsection shall conform to  
23 applicable city or county general plans, city or county implementing  
24 ordinances, and city or county zoning ordinances within which the  
25 Harvest Area is located. The Timber Operator or timberland owner shall

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

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

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

16  
17 Note: Authority cited: Sections 4551, 4553 and 4584, Public Resources Code.

18 Reference: Sections 4290, 4291, 4516, 4527, 4584, 4584.1, and 4597, Public  
19 Resources Code; and *EPIC v. California Department of Forestry and Fire Protection*  
20 *and Board of Forestry* (1996) 43 Cal. App.4th 1011.(b) §

21  
22 **1038.1. Additional Exceptions or Requirements**

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

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

7 (1) The type of exemption.

8 (2) Name(s), address, and telephone number(s) of the Timber Owner(s),  
9 timberland owner(s), and Timber Operator.

10 (3) Name, address, and telephone number and license number of the RPF, if  
11 applicable.

12 (4) Legal description of the location of the Timber Operation.

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

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

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

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

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

(3) No helicopter yarding shall be allowed.

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

**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), <del>and (f)</del> , <u>and (g)</u>
14 CCR § 1038.1(c)(15)	14 CCR § 1038 (a), (b), (c), (d), <del>and (e)</del> , <u>and (g)</u>

(1) The notice of exemption shall be prepared, signed, and submitted to the Department by an 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

1 Director and the RPF shall send a copy of the notice of exemption to Native  
2 Americans as defined in 14 CCR § 895.1.

3 (3) No Timber Operations on any site that satisfies the criteria listed in 14 CCR §  
4 895.1 for a Significant Archaeological or Historical Site (information on some  
5 of these sites may be available from the Information Centers of the California  
6 Historical Resources Information System within the Department of Parks and  
7 Recreation), except under the following conditions:

8 (A) If a Significant Archaeological or Historical Site is identified by  
9 the RPF preparing the notice of exemption within the project  
10 boundary, the site may be preserved in place by capping or  
11 covering with a layer of soil prior to submission.

12 (B) If a site has been preserved in place, the RPF preparing the  
13 notice of exemption shall obtain written concurrence from a  
14 Department archeologist prior to submission indicating  
15 operations will not cause damage to a Significant  
16 Archaeological or Historical Site.

17 (C) The written concurrence from a Department archeologist shall  
18 be submitted with the notice of exemption.

19 (4) Fuel treatments as follows:

20 (A) Slash within the Harvest Area shall be treated to achieve a maximum  
21 post-harvest depth of thirty (30) inches above the ground. All Slash  
22 shall be lopped, removed, chipped, piled for burning, or otherwise  
23 treated, within one (1) year from the date of the Director receiving the  
24 notice except for burning. Burning shall be completed within two (2)  
25 years from the date of the Director receiving the notice.

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

8 (5) No tractor or heavy equipment operations on slopes greater than fifty (50)  
9 percent. No construction of new tractor roads on slopes greater than forty  
10 (40) percent.

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

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

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

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

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

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

21 (12) No timber harvesting within the standard width of a WLPZ, as defined in  
22 14 CCR § 916.4 [936.4, 956.4] (b), except sanitation-salvage harvesting, as  
23 defined in 14 CCR § 913.3 [933.3, 953.3], where immediately after  
24 completion of operations, the area shall meet the Stocking Standards of 14  
25 CCR § 912.7 [932.7, 952.7] (b)(2), or, except the removal of dead or dying



1 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  
3 Timber Operations.

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

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

20 (14) Before beginning Timber Operations, the LTO, RPF, or person  
21 responsible for submittal of the notice of exemption shall notify CAL FIRE of  
22 the actual commencement date of operations. The notification, by telephone,  
23 mail, or email, shall be directed to the appropriate CAL FIRE Unit  
24 Headquarters, Forest Practice Inspector or other designated personnel. If the  
25 notification is provided by mail, Timber Operations may not commence until

1 three (3) days after the postmark date of notification. The provisions of this  
2 paragraph do not supersede the requirements of paragraph (13) above.

3 (15) No large old trees, defined as a tree that existed before 1800 AD and is  
4 greater than sixty (60) inches in diameter at stump height for Sierra or Coast  
5 Redwoods, and forty-eight (48) inches in diameter at stump height for all  
6 other tree species, or Decadent and Deformed Trees with Value to Wildlife  
7 shall be harvested unless the following apply:

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

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

13 1. The tree is a hazard to safety or property.

14 2. The removal of the tree is necessary for the construction  
15 of a building as approved by the appropriate local  
16 jurisdiction and shown on the county or city approved site  
17 plan, which shall be attached to the submitted notice of  
18 exemption.

19 3. The tree is dead or likely to die within one (1) year of the  
20 date of the proposed removal, as determined by an RPF.

21 (C) An RPF's written explanation or justification need not be attached to  
22 the submitted notice of exemption if an approved Habitat  
23 Conservation Plan, Sustained Yield Plan, or Plan addresses large old  
24 tree retention for the area in which the large old tree is proposed for

1 removal and the removal is in compliance with the retention standards  
2 of that document.

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

4 Reference: Sections 4527, 4584, and 4584.1, Public Resources Code.

5  
6 **§ 1038.2. Mapping Standards for Notices of Exemption.**

7 A submitted notice of exemption shall include a seven-and-one-half (7½) minute USGS  
8 quadrangle map, or its equivalent, depicting the information as required in Table 1  
9 below. Additional maps, which may be topographic or planimetric, may be used to  
10 provide additional information, to show specific details, and to improve map clarity. A  
11 larger scale map such as an assessor parcel map showing the location of the Timber  
12 Operations shall be included for exemptions conducted under 14 CCR § 1038 (c). The  
13 Appurtenant Roads included within the Logging Area pursuant to subsection (b) below  
14 may be shown on a map which may be planimetric with a scale as small as one-half  
15 inch equals one mile. Color coding shall not be used. A legend shall be included  
16 indicating the meaning of the symbols used. The submitted notice of exemption shall  
17 indicate if more than one Yarding system is to be used and identify the systems (if  
18 more than one is used).

19  
20 **Table 1: Mapping Requirements**

21

Applicable Mapping Requirements	Notice of Exemption Type(s)
14 CCR § 1038.2 (a)	14 CCR § 1038 (a), <del>(c)</del> , and (g)
14 CCR § 1038.2 (b), (c), (k)	14 CCR § 1038 (b), (c)(6), (d), (e), and (f)

14 CCR § 1038.2 (d) through (f)	14 CCR § 1038(c)(6) through (f)
14 CCR § 1038.2 (g), (h), and (j)	14 CCR § 1038 (c)(6), (e), and (f)
14 CCR § 1038.2 (i)	14 CCR § 1038 (b) through (f)
14 CCR § 1038.2 (l)	14 CCR § 1038(f)

- 1 (a) Boundaries of the Harvest Area.
- 2 (b) Boundaries of the Logging Area.
- 3 (c) Location of all Roads to be used for, or potentially impacted by, Timber
- 4 Operations.
- 5 (d) The classification of all Roads as Permanent Roads, Seasonal Roads, or
- 6 Temporary Roads.
- 7 (e) Road(s) and Landing(s) located in a Watercourse, Lake, WLPZ, Meadows and
- 8 Wet Areas other than at road Watercourse crossings.
- 9 (f) Location of water drafting sites.
- 10 (g) Public Roads within one-quarter (¼) mile of the Harvest Area.
- 11 (h) Location of portions of the Harvest Area with an Extreme Erosion Hazard
- 12 Rating.
- 13 (i) Location of all Watercourses and Lakes with Class I, II, III or IV waters.
- 14 (j) Location of known Unstable Areas.
- 15 (k) Location of any Special Treatment Areas.
- 16 (l) Location of boundaries of timber-site classes needed for determination of
- 17 Stocking Standards to be applied, down to at least a twenty (20) acre minimum
- 18 or as specified in District Forest Practice Rules.

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

21 Reference: Sections 4527, 4584, and 4584.1, Public Resources Code.

1

2 **§ 1038.6. Butte County Post-Fire Recovery Exemption.**

3 **\*\*Repeal in entirety.\***

4