

1 **Permanent Post-Fire Recovery Exemption**

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 & 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 three-hundred
18 (300) feet from any point of an Approved and Legally Permitted Structure or an
19 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 or an Approved and Legally Permitted
7 Structure that was damaged or destroyed by wildfire shall be removed,
8 chipped, or piled and burned.

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

18
19 Note: Authority cited: Sections 4551, 4553 and 4584, Public Resources Code.

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

23
24 **§ 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), and (f) , <u>and (g)</u>
14 CCR § 1038.1(c)(15)	14 CCR § 1038 (a), (b), (c), (d), and (e) , <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), (c) , 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.

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

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

1 **REPEAL: § 1038.5 Post-Fire Recovery Exemption.**

2 ~~Persons who conduct the following types of Timber Operations are exempt from the~~
3 ~~Plan preparation and submission requirements (PRC § 4581) and from the completion~~
4 ~~report and Stocking report requirements (PRC §§ 4585 and 4587) of the FPA with the~~
5 ~~following exceptions and requirements:~~

6 ~~(1) no tree that existed before 1800 A.D. and is greater than sixty (60) inches in~~
7 ~~diameter at stump height for Sierra or Coastal Redwoods, and forty-eight (48) inches in~~
8 ~~diameter at stump height for all other tree species shall be harvested unless done so~~
9 ~~under the conditions or criteria set forth in subsection 1038.5(d).~~

10 ~~(a) Harvesting dead or Dying Trees of any size to facilitate the removal of hazardous~~
11 ~~material and the reconstruction or construction of Approved and Legally Permitted~~
12 ~~Structures that were damaged or destroyed by wildfire in the Counties of Lake,~~
13 ~~Siskiyou, Mendocino, Shasta, Trinity, and Napa during 2018. The provisions of a notice~~
14 ~~of exemption submitted pursuant to this subsection supersede the provisions of any~~
15 ~~other notices of exemption that are submitted in the same Harvest Area. In addition to~~
16 ~~compliance with 14 CCR §§1038.1(c)(5) through (12) inclusive and 1038.3(p), the~~
17 ~~following apply:~~

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

21 ~~(2) The notice of exemption shall include:~~

22 ~~(A) the total acreage of the Harvest Area;~~

23 ~~(B) an enlarged seven and one-half (7 1/2) minute USGS quadrangle map, or its~~
24 ~~equivalent, that is not less than one (1) inch equals one thousand (1,000) feet showing~~
25 ~~the location of the boundaries of the Harvest Area;~~

1 ~~(C) a certification of ownership signed by the Timberland owner and;~~

2 ~~(D) the tentative commencement date of Timber Operations.~~

3 ~~(3) Timber Operations conducted under this subsection shall conform to applicable city~~
4 ~~or county general plans, city or county implementing ordinances, and city or county~~
5 ~~zoning ordinances within which the Harvest Area is located. The Timber Operator or~~
6 ~~Timberland owner shall certify that the city or county has been contacted and the~~
7 ~~Timber Operations conducted under the notice of exemption conforms with all city or~~
8 ~~county regulatory requirements.~~

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

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

20 ~~(6) Except where necessary for safety, retain an average for the Harvest Area of not~~
21 ~~less than one (1) Decadent and Deformed Tree of Value to Wildlife, Snag, or Dying~~
22 ~~Tree per acre that is greater than sixteen (16) inches dbh and twenty (20) feet tall. This~~
23 ~~provision does not apply within one hundred fifty (150) feet of Approved and Legally~~
24 ~~Permitted Structures, roads, fire suppression ridges and infrastructure facilities such as~~
25 ~~transmission lines and towers, or water conveyance and storage facilities.~~

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

11 ~~(A) Timber Operations may not be conducted without a copy of the accepted notice of~~
12 ~~exemption at the operating site, except where the Director has failed to act within the~~
13 ~~five (5) working day review period.~~

14 ~~(b) A Person conducting Timber Operations under an exemption as described in this~~
15 ~~section shall:~~

16 ~~(1) be limited to one year from the date of receipt by the Department, and;~~

17 ~~(2) shall comply with all operational provisions of the Forest Practice Act and Rules~~
18 ~~applicable to "Timber Harvesting Plan", "THP", and "Plan".~~

19 ~~(3) Before beginning Timber Operations, the Timber Operator shall notify the~~
20 ~~Department of the actual commencement date of operations. The notification, by~~
21 ~~telephone, mail, or email, shall be directed to the appropriate CAL FIRE Unit~~
22 ~~Headquarters, Forest Practice Inspector or other designated personnel. If the~~
23 ~~notification is provided by mail, Timber Operations may not commence until three (3)~~
24 ~~days after the postmark date of notification.~~

1 ~~(c) In-lieu practices of Watercourse and Lake Protection Zones as specified under~~
2 ~~Article 6 of these Rules, exceptions to Rules, and alternative practices are not allowed.~~

3 ~~(d) Harvesting of large old trees shall only occur when:~~

4 ~~(1) the tree is not critical for the maintenance of a Late Successional Stand and~~

5 ~~2) an RPF attaches to the exemption an explanation and justification for the removal~~

6 ~~based on the RPF's finding that one or more of the criteria or conditions listed under~~

7 ~~subparagraphs (A), (B), or (C) are met. This requirement need not be met if an~~

8 ~~approved management document, including but not limited to a HCP, SYP, NTMP,~~

9 ~~WFMP, or PTEIR, addresses large old tree retention for the area in which the large old~~

10 ~~tree(s) are proposed for removal and the removal is in compliance with the retention~~

11 ~~standards of that document.~~

12 ~~(A) The tree(s) is a hazard to safety or property. The hazard shall be identified in~~

13 ~~writing by an RPF or professionally certified arborist;~~

14 ~~(B) The removal of the tree(s) is necessary for the construction of a building as~~

15 ~~approved by the appropriate county/city permitting process and as shown on the~~

16 ~~county/city approved site plan which shall be attached to the Notice of Exemption;~~

17 ~~(C) The tree is dead or is likely to die within one year of the date of proposed removal,~~

18 ~~as determined by an RPF or professionally certified arborist.~~

19 ~~(e) A Person submitting an exemption under 14 CCR § 1038.5 shall submit to the~~

20 ~~Director a notice of proposed Timber Operations, prior to commencement of Timber~~

21 ~~Operations, on a form provided by the Department. The form shall contain the following~~

22 ~~information:~~

23 ~~(1) Type of operation to be conducted.~~

24 ~~(2) Names, address, and telephone numbers of the Timber Owner, Timberland owners,~~

25 ~~and Timber Operator.~~

1 ~~(3) Legal description of the location of the Timber Operation.~~

2 ~~(4) A 7 1/2 minute quadrangle map or its equivalent showing the location of the Timber~~
3 ~~Operation.~~

4 ~~(5) The tentative commencement date of Timber Operations~~

5
6 Note: Authority cited: Sections 4551, 4553 and 4584, Public Resources Code.

7 Reference: Sections 4290, 4291, 4527, 4527.5, 4584 and 4597, Public Resources
8 Code.

9
10 **REPEAL: § 1038.6. Butte County Post-Fire Recovery Exemption.**

11 ~~(a) Persons who harvest dead or Dying Trees of any size to facilitate the removal of~~
12 ~~hazardous material and the reconstruction or construction of Approved and Legally~~
13 ~~Permitted Structures that were damaged or destroyed by wildfire in the County of Butte~~
14 ~~during 2018 are exempt from the Plan preparation and submission requirements (PRC~~
15 ~~§ 4581) and from the completion report and stocking report requirements (PRC §§ 4585~~
16 ~~and 4587) of the FPA with the following exceptions and requirements:~~

17 ~~(1) No tree that existed before 1800 A.D. and is greater than sixty (60) inches in~~
18 ~~diameter at stump height for Sierra or Coastal Redwoods, and forty-eight (48) inches in~~
19 ~~diameter at stump height for all other tree species shall be harvested unless done so~~
20 ~~under the conditions or criteria set forth in subsection 1038.6(a)(12).~~

21 ~~(2) The provisions of a Notice of Exemption submitted pursuant to this subsection~~
22 ~~supersede the provisions of any other Notices of Exemption that are submitted in the~~
23 ~~same Harvest Area.~~

- 1 ~~(3) Only trees within three hundred (300) feet from any point of an Approved and~~
2 ~~Legally Permitted Structure that was damaged or destroyed by wildfire may be~~
3 ~~harvested. The following conditions apply:~~
- 4 ~~(A) No tractor or heavy equipment operations on slopes greater than 50 percent.~~
5 ~~(B) No construction of new Tractor Roads on slopes greater than 40 percent.~~
6 ~~(C) Timber Operations within any Special Treatment Area, as defined in 14 CCR §~~
7 ~~895.1, shall comply with the rules associated with that Special Treatment Area.~~
8 ~~(D) No tractor or heavy equipment operations on known slides or Unstable Areas.~~
9 ~~(E) No new road construction or Reconstruction, as defined in 14 CCR § 895.1.~~
10 ~~(F) No heavy equipment operations within the standard width of a WLPZ, as determined~~
11 ~~pursuant to 14 CCR § 936.5, except for maintenance of roads and Drainage Facilities or~~
12 ~~Drainage Structures.~~
13 ~~(G) No known sites of rare, threatened or endangered plants or animals may be~~
14 ~~disturbed, threatened or damaged.~~
15 ~~(H) No Timber Operations within the Buffer Zone of a Sensitive Species, as defined in~~
16 ~~14 CCR § 895.1.~~
17 ~~(I) No timber harvesting within the standard width of a WLPZ, as determined pursuant to~~
18 ~~14 CCR § 936.5, except sanitation-salvage harvesting, as identified within 14 CCR §~~
19 ~~933.3, where immediately after completion of operations, the area shall meet the~~
20 ~~Stocking Standards of 14 CCR § 932.7(b)(2), or, except the removal of dead or dying~~
21 ~~trees where consistent with 14 CCR § 936.4(b). Trees to be harvested shall be marked~~
22 ~~by, or under the supervision of, an RPF prior to Timber Operations.~~
23 ~~(J) No Timber Operations on any site that satisfies the criteria listed in 14 CCR § 895.1~~
24 ~~for a Significant Archaeological or Historical Site.~~

1 ~~(4) A Person submitting an exemption under 14 CCR § 1038.6 shall submit to the~~
2 ~~Director a notice of proposed Timber Operations, prior to commencement of Timber~~
3 ~~Operations, on a form provided by the Department. The form shall contain the following~~
4 ~~information:~~

5 ~~(A) Type of operation to be conducted.~~

6 ~~(B) Names, address, and telephone numbers of the Timber Owner, Timberland owners,~~
7 ~~and Timber Operator.~~

8 ~~(C) Legal description of the location of the Timber Operation.~~

9 ~~(D) An enlarged 7 1/2 minute quadrangle map, or its equivalent, that is not less than one~~
10 ~~(1) inch equals 1,000 feet showing the location of the boundaries of the Harvest Area;~~

11 ~~(E) The tentative commencement date of Timber Operations;~~

12 ~~(F) The total acreage of the Harvest Area; and~~

13
14
15
16 ~~(G) A certification of ownership signed by the timberland owner.~~

17 ~~(5) Timber Operations conducted under this subsection shall conform to applicable city~~
18 ~~or county general plans, city or county implementing ordinances, and city or county~~
19 ~~zoning ordinances within which the Harvest Area is located. The Timber Operator or~~
20 ~~timberland owner shall certify that the city or county has been contacted and the Timber~~
21 ~~Operations conducted under the Notice of Exemption conforms with all city or county~~
22 ~~regulatory requirements.~~

23 ~~(6) All Slash and Woody Debris greater than one (1) inch but less than eight (8) inches~~
24 ~~in diameter within one hundred fifty (150) feet of an Approved and Legally Permitted~~

1 ~~Structure that was damaged or destroyed by wildfire shall be removed, chipped or piled~~
2 ~~and burned.~~

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

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

17 ~~(9) The Director shall notify the submitter of the date of the Director's receipt of the~~
18 ~~Notice of Exemption. Timber Operations pursuant to the Notice of Exemption may not~~
19 ~~commence for five (5) working days from the date of the Director's receipt of the Notice~~
20 ~~of Exemption unless this delay is waived by the Director. If the Notice of Exemption is~~
21 ~~not complete and accurate, the Director shall notify the submitter within five (5) working~~
22 ~~days from the date of the Director's receipt, and the Timber Operations may not~~
23 ~~commence. The Director shall determine whether the Notice of Exemption is complete,~~
24 ~~and if so, shall send a copy of a notice of acceptance to the submitter; provided,~~

1 however, if the Director does not act within five (5) working days of receipt of the Notice
2 of Exemption, Timber Operations may commence.

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

6 (10) A Person conducting Timber Operations under an exemption as described in this
7 section shall:

8 (A) Be limited to one year from the date of receipt by the Department, and;

9 (B) Shall comply with all operational provisions of the Forest Practice Act and District
10 Forest Rules applicable to "Timber Harvesting Plan", "THP", and "Plan".

11 (C) Before beginning Timber Operations, the Timber Operator shall notify the
12 Department of the actual commencement date of operations. The notification, by
13 telephone, mail, or email, shall be directed to the appropriate CAL FIRE Unit
14 Headquarters, Forest Practice Inspector or other designated personnel. If the
15 notification is provided by mail, Timber Operations may not commence until three (3)
16 days after the postmark date of notification.

17 (11) In-lieu practices of Watercourse and Lake Protection Zones as specified under
18 Article 6 of these Rules, exceptions to Rules, and alternative practices are not allowed
19 under an exemption pursuant to this section.

20 (12) Harvesting of large old trees shall only occur when:

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

22 (B) An RPF attaches to the exemption an explanation and justification for the removal
23 based on the RPF's finding that one or more of the criteria or conditions listed under
24 subprovisions 1., 2., or 3. are met. The requirements of (a)(12)(B) need not be met if an
25 approved management document, including but not limited to a HCP, SYP, NTMP,

1 ~~WFMP, or PTEIR, addresses large old tree retention for the area in which the large old~~
2 ~~tree(s) are proposed for removal and the removal is in compliance with the retention~~
3 ~~standards of that document.~~

4 ~~1. The tree(s) is a hazard to safety or property. The hazard shall be identified in writing~~
5 ~~by an RPF or professionally certified arborist;~~

6 ~~2. The removal of the tree(s) is necessary for the construction of a building as approved~~
7 ~~by the appropriate county/city permitting process and as shown on the county/city~~
8 ~~approved site plan which shall be attached to the Notice of Exemption;~~

9 ~~3. The tree is dead or is likely to die within one year of the date of proposed removal, as~~
10 ~~determined by an RPF or professionally certified arborist.~~

11

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

13 ~~Reference: Sections 4290, 4291, 4527, 4584 and 4597, Public Resources Code.~~

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