

1 **FOREST PRACTICE COMMITTEE**

2 **March 3, 2015**

3  
4 **Board of Forestry and Fire Protection**

5 **“PROTECTION OF HABITABLE STRUCTURES EXEMPTION, 2015”**

6 **Title 14 of the California Code of Regulations, (14 CCR),**

7 **Division 1.5, Chapter 4, Subchapter 7, Article 2**

8  
9 **ADOPT:**

10 **Section 1038(c)(6) Protection of Habitable Structures Exemption**

11 **AMEND:**

12 **Section 1038.2(f) Exemption Form**

13  
14 **14 CCR § 1038:**

15 ~~\*\*\*\*\*~~(c) The cutting or removal of trees in compliance with PRCsections §§ 4290 and 4291  
16 which eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree  
17 crowns for the purpose of reducing flammable materials and maintaining a fuelbreak to reduce  
18 fire spread, duration and intensity in one of the following manners:

19 (1) One-Hundred and Fifty (150) Foot Exemption:

20 (A) ~~(4)~~ Only trees within one-hundred-fifty (150) feet from any point of an  
21 approved and legally permitted structure that complies with the California  
22 Building Code may be harvested.

23 (B) ~~(2)~~ The following silvicultural methods may not be used: clearcutting, seed  
24 tree removal step, shelterwood removal step.

25 (C) ~~(3)~~ All surface fuels created by timber operations under the exemption which

1 could promote the spread of wildfire, including logging slash and debris,  
2 deadwood, branches exceeding one (1) inch in diameter, and brush, shall be  
3 chipped, burned, or removed within forty-five (45) days from the start of  
4 timber operations.

5 (D) ~~(4)~~ In addition to the slash treatment described in ~~[44]~~ 14 CCR §  
6 1038(c)(1)(D)(e)(3), the areas of timber operations must meet the vegetation  
7 treatment standards in PRC § 4584(j)(1) to (2)~~(A)~~ illustrated in Technical Rule  
8 Addendum No.4 within one year from the receipt of issuance of ~~N~~notice of  
9 Aacceptance.

10 (E) ~~(5)~~ In addition to the limitations listed in 14 CCR § 1038(b)(1)-(10), the  
11 following apply:

12 1. ~~(A)~~ The timber operator shall provide the Director the tentative  
13 commencement date of timber operations on the notice required in 14  
14 CCR § 1038.2. Within a fifteen (15) day period before beginning  
15 timber operations, the timber operator shall notify ~~CDF~~ the  
16 Department of the actual commencement date for the start of  
17 operations. The starting date shall be directed to the designated  
18 personnel at the appropriate ~~CDF Ranger~~ Department Unit  
19 Headquarters by telephone, email, or by mail.

20 2. ~~(B)~~ Timber operations conducted under this subsection shall  
21 conform to applicable city or county general plans, city or county  
22 implementing ordinances, and city or county zoning ordinances within  
23 which the exemption is located. The timber operator or timberland  
24 owner shall certify that the city or county has been contacted and the  
25 exemption conforms with all city or county regulatory requirements.

1                   3.       ~~(C)~~ Timber operations may not be conducted without a copy of  
2                   the Director's notice of acceptance of the exemption at the operating  
3                   site, except where the Director has failed to act within the 5 working-  
4                   day review period.

5       (2) One-Hundred and Fifty (150) to Three-Hundred (300) Foot Exemption:

6                   (A) Only trees that are located from one-hundred-fifty (150) feet up to three-  
7                   hundred (300) feet from any point of an approved and legally permitted  
8                   structure that complies with the California Building Code may be harvested.

9                   (B) The post-harvest stocking of treated areas shall be consistent with 14 CCR §  
10                  913.2 (933.2, 953.2).

11                  1. The quadratic mean diameter of the treated areas shall increase as a  
12                  result of harvest activity.

13                  2. The post-harvest stand shall be comprised of healthy and vigorous  
14                  dominant and codominant trees that are well distributed throughout  
15                  the treated area.

16                  (C) Post Harvest slash treatment and stand conditions will lead to more moderate  
17                  fire behavior in the professional judgment of the registered professional  
18                  forester who submits the notice of exemption. (STAFF OPTIONS: Adopt  
19                  only a performance standard, set a minimum treatment standard per  
20                  other fuel hazard reduction projects, adopt no language and rely on  
21                  statue for nonduplication. Refer to PRC § 4584(h)(6)(A)(II)(V))

22                  (D) In addition to the limitations listed in 14 CCR § 1038(b)(1)-(10), the following  
23                  apply:

24                  1. The Notice of Exemption is prepared, signed, and submitted by a  
25                  Registered Professional Forester (RPF) to CAL FIRE.

- 1                   2. The RPF shall provide the Director the tentative commencement date  
2                   of timber operations on the notice required in 14 CCR § 1038.2.  
3                   Within a fifteen (15) day period before beginning timber operations,  
4                   the timber operator shall notify CAL FIRE of the actual  
5                   commencement date for the start of operations. The starting date  
6                   shall be directed to the designated personnel at the appropriate Unit  
7                   Headquarters by telephone, email, or by mail.
- 8                   3. Timber operations conducted under this subsection shall conform to  
9                   applicable city or county general plans, city or county implementing  
10                   ordinances, and city or county zoning ordinances within which the  
11                   exemption is located. The RPF or timberland owner shall certify that  
12                   the city or county has been contacted and the exemption conforms  
13                   with all city or county regulatory requirements.
- 14                   4. Timber operations may not be conducted without a copy of the  
15                   Director's notice of acceptance of the exemption at the operating site,  
16                   except where the Director has failed to act within the 5 working-day  
17                   review period.

18                   (E) For this purpose of 14 CCR § 1038(c)(2), "habitable structure" means a  
19                   building that contains one or more dwelling units or that can be occupied for  
20                   residential use. Buildings occupied for residential use include single family  
21                   homes, multi-dwelling structure, mobile and manufactured homes, and  
22                   condominiums. A habitable structure does not include commercial, industrial,  
23                   or incidental buildings such as detached garages, barns, outdoor sanitation  
24                   facilities, and sheds.

25                   (F) The Department shall evaluate the effects of the exemption allowed under 14

1 CCR § 1038(c)(ii) and report any findings and recommendations to the  
2 legislature prior January 1, 2019.(Staff Note: Possible for Board to  
3 identify which aspects of exemption process that CAL FIRE shall  
4 evaluate and report upon. Also, the date is important to allow for  
5 legislative extension of the Exemption if the process is found to meet  
6 the intention of the legislature.)

7 (G) 14 CCR § 1038(c)(2) shall sunset on January 1, 2019.

8  
9 **§ 1038.2**

10 \*\*\*\*\* (f) In addition to (a) through (c) above, the following shall be included for exemptions  
11 conducted under 14 CCR § 1038(i), ~~and (j)~~ and (c)(2).\*\*\*\*\*

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