

1 **Board of Forestry and Fire Protection**
2 **Forest Fire Prevention Exemption**
3 **January 9, 2019**

4
5 **Adopt: § 1038.4**

6 **§ 1038.4. Forest Fire Prevention Exemption.**

7 Persons who are engaged in the cutting or removal of trees, limited to those trees that eliminates the
8 vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of
9 reducing flammable materials and maintaining a Fuelbreak to reduce fire spread, duration and intensity
10 are exempt from the plan preparation and submission requirements (PRC § 4581) and from the
11 completion report and stocking report requirements (PRC §§ 4585 and 4587) of the FPA. This exemption
12 shall be known as the Forest Fire Prevention Exemption. Preparation and submittal of notices of
13 exemption under this section, or Timber Operations conducted thereunder, shall comply with the following
14 conditions, exceptions, or requirements as described.

15 (a) Comply with the requirements of Title 14 CCR §§ 1038.1 (c)(4),(5), (6), (7), and (9) through
16 (12) inclusive.

17 (b) This exemption shall only be used on Timberlands that are within the most recent version of
18 the Department's Fire Hazard Fire Severity Zone Map, which can be found on the
19 Department's website: <http://www.fire.ca.gov>, that shows the exemption will occur in areas
20 determined to be moderate, high and very high fire threat areas.

21 (c) The Harvest Area shall not cumulatively exceed three-hundred (300) acres.

22 (d) (1) Slash and Woody Debris shall be treated to achieve a maximum post-harvest depth of
23 eighteen (18) inches above the ground except within one-hundred-fifty (150) feet from
24 any point of an approved and legally permitted structure that complies with the California
25 Building Code.

Commented [EH1]: Decision Point: PRC 4584 allows for this exemptions for the purposes of maintaining a "fuelbreak". Does the Board find that their existing 14 CCR § 895.1 definition of Fuelbreak is appropriate for these purposes or should an alternative be chosen?

1 (2) All surface fuels within one-hundred-fifty (150) feet of an Approved and Legally
2 Permitted Structure, which could promote the spread of wildfire, including Slash and
3 Woody Debris, deadwood, branches exceeding one (1) inch in diameter, and brush,
4 shall be chipped, burned, or removed within forty-five (45) days from the start of Timber
5 Operations.

6 (3) All fuel treatments shall be completed within one (1) year from the date the Director
7 receives the notice. This requirement does not apply to burning, which instead shall be
8 completed within two (2) years from the date the Director receives the notice. Burning
9 operations shall be completed in conformance with 14 CCR § 917.2(a) [937.2(a),
10 957.2(a)].

11 (4) The requirements of this subsection shall not supersede the requirements of PRC §
12 4291.

13 (e) The construction or reconstruction of Temporary Roads on slopes of thirty (30) percent or less
14 shall be allowed if all of the following conditions are met:

- 15 (1) Temporary Roads or Landings shall not be located on Unstable Areas.
16 (2) Temporary Roads shall be single lane in width.
17 (3) Temporary Roads shall not be located across a Connected Headwall Swale.
18 (4) Construction or re-construction of Temporary Roads, Landings or Watercourse
19 crossings shall not occur during the Winter Period.

20 (A) Roads and Landings used for log hauling or other heavy equipment uses
21 during the Winter Period shall occur on a Stable Operating Surface and, if
22 necessary, be surfaced with rock to a depth and quantity sufficient to maintain
23 a Stable Operating Surface. No operation shall be permitted on roads that are
24 not subject to Hydrologically Disconnection, or which exhibit Saturated Soil
25 Conditions.

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(B) Timber Operations during the Winter Period shall comply with the applicable Rule sections under 14 CCR § 923 [943, 963] et seq.

(C) Use of Temporary Roads shall comply with the operational provisions of 14 CCR § 923 [943, 963] et seq., and be designed in conformance with Technical Rule Addendum #5.

(D) No Logging Road or Landings construction, or reconstruction, activities shall occur within two-hundred (200) feet of Class I and Class II Watercourses, or within fifty (50) feet of a Class III Watercourse.

(5) The RPF responsible for submission of the notice of exemption shall designate Temporary Road locations, Landing locations, Tractor Road crossings of Class III Watercourses, Unstable Areas, or Connected Headwall Swales on the ground prior to submission of the notice of exemption.

(6) Temporary Road construction or reconstruction, shall be limited to no more than two (2) miles of road per ownership within a single Planning Watershed (CALWATER 2.2) per any five (5) year period.

(A) Exemptions that are less than forty (40) acres, all Temporary Roads constructed and/or reconstructed shall not exceed a cumulative length of three-hundred (300) feet.

(B) Exemptions between forty (40) and eighty (80) acres, this standard shall not exceed three-hundred (300) to six-hundred (600) feet, as determined on a pro rata basis by total acreage affected by the exemption.

(C) Exemptions over eighty (80) acres, this standard shall not exceed six-hundred (600) feet.

1 (D) Temporary Roads constructed or reconstructed under this section shall not be
2 connected to other Temporary Roads constructed under previous or
3 subsequent exemptions filed pursuant to this section.

4 (E) Prior to completion of Timber Operations, all Temporary Roads constructed or
5 reconstructed under this section shall undergo Abandonment in a manner
6 which uses protective measures that will effectively remove them from the
7 Permanent Road Network, as defined in 14 CCR § 895.1.

8 (F) No tree larger than thirty-six (36) inches in diameter at stump height, measured
9 eight (8) inches above ground level, shall be removed for the purposes of road
10 construction or reconstruction as it applies to this exemption. Trees between
11 thirty (30) and thirty-six (36) inches in diameter at stump height, measured
12 eight (8) inches above ground level, may be removed for the purposes of road
13 construction or reconstruction when no other feasible option exists for road
14 construction activities.

15 (G) Except within constructed or reconstructed road prisms, only trees less than
16 thirty (30) inches in stump diameter, measured eight (8) inches above ground
17 level, may be removed.

18 (f) The QMD of trees greater than eight (8) inches dbh in the Harvest Area shall be increased in
19 the post-harvest stand. The submitted notice of exemption shall report the expected post-
20 harvest increase in QMD.

21 (g) All trees that are harvested or all trees that are retained shall be marked or sample marked by,
22 or under the supervision of, an RPF before felling operations begin.

23 (h) If the preharvest crown canopy of Dominants and Codominants is occupied by trees less than
24 fourteen (14) inches in diameter at breast height, a minimum of one-hundred (100) trees over
25 four inches in diameter at breast height shall be retained per acre for Site I, II, and III lands.

1 and a minimum of seventy-five (75) trees over four inches in diameter at breast height shall be
2 retained per acre for Site IV and V lands.

3 (i) The following canopy, retention, and spacing standards shall be achieved on at least eighty
4 (80) percent of the Harvest Area:

5 (1) Minimum post treatment canopy closure of trees which are Dominants and
6 Codominants shall be forty (40) percent for east side pine forest types;

7 (2) Minimum post treatment canopy closure of trees which are Dominants and
8 Codominants shall be fifty (50) percent for coastal redwood and Douglas-fir forest
9 types within one-quarter (¼) mile from Approved and Legally Permitted structures that
10 comply with the California Building Code. Such structures shall:

11 (A) be within or adjacent to a community listed in the "California Fire Alliance List
12 of Communities at Risk" (copyright date 2003), and;

13 (B) have densities greater than one (1) structure per twenty (20) acres.

14 (3) Minimum post treatment canopy closure of trees which are Dominants and
15 Codominants shall be fifty (50) percent for coastal redwood and Douglas-fir forest
16 types within five-hundred (500) feet of Approved and Legally Permitted Structures that
17 comply with the California Building Code (legal structure) and 1038.4 (i)(2)(A)&(B).

18 (4) Minimum post treatment canopy closure of dominant and codominant trees shall be
19 sixty (60) percent for coastal redwood and Douglas-fir forest types outside areas
20 referenced in 14 CCR § 1038.4 (i)(2)&(3)

21 (5) Minimum post treatment canopy closure of trees which are Dominants and
22 Codominants shall be fifty (50) percent for mixed conifer and all other forest types.

23 (6) Post treatment stand shall contain no more than two-hundred (200) trees per acre over
24 three (3) inches in dbh.

1 (7) Vertical spacing shall be achieved by treating dead fuels, excluding dead branches on
2 the trees retained for stocking, to a minimum clearance distance of eight (8) feet
3 measured from the base of the live crown of the post-harvest Dominants and
4 Codominants to the top of the dead surface or ladder fuels, whichever is taller.

5 (j) Helicopter Yarding shall be prohibited.

6 (k) The RPF shall also comply with Section 1035.2 of Title 14 of the California Code of
7 Regulations, relating to interaction between the LTO and the RPF.

8 (l) All Timber Operations conducted in the Lake Tahoe Region pursuant to 14 CCR § 1038.4, if
9 applicable, must have a valid Tahoe Basin Tree Removal Permit (as defined by the Tahoe
10 Regional Planning Agency) or shall be conducted under a valid TRPA Memorandum of
11 Understanding, when such a permit is required by TRPA.

12 (m) Upon submission of the notice of exemption, a Confidential Archaeological Letter pursuant to
13 14 CCR § 929.1 [949.1; 969.1] must be provided to the Director and the RPF shall send a copy
14 of the notice of exemption to Native Americans as defined in 14 CCR § 895.1.

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

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

24 (B) If a site is preserved in place, the RPF preparing the notice of exemption shall
25 obtain written concurrence from a Department archaeologist prior to

1 submission indicating operations will not cause damage to a Significant
2 Archaeological or Historical site.

3 (C) The written concurrence from a Department archaeologist shall be submitted
4 with the notice of exemption.

5 (n) If a notice of exemption has been accepted by the Director and will use pesticides or herbicides
6 on the Harvest Area within one (1) calendar year of the date of acceptance, the timberland
7 owner shall notify the appropriate regional water quality control board within ten (10) days prior
8 to application of pesticides or herbicides.

9 (o) Subsequent to the completion of Timber Operations operating under this section, the
10 Department shall conduct an onsite inspection to determine compliance with this section. The
11 Department shall notify the appropriate RWQCB, the CDFW, and the CGS seven (7) days prior
12 to conduction the onsite inspection.

13 (p) The notice of exemption shall be prepared by, signed, and submitted by an RPF to the
14 Director. The RPF shall be retained to oversee all construction or reconstruction of Roads
15 and/or Landings, and provide for necessary mitigation to avoid potential impacts.

16 (1) The notice of exemption shall be submitted to the Director, on a form provided by the
17 Department, prior to the commencement of Timber Operations. The form shall contain
18 the following information:

19 (A) Name(s), address, and telephone number(s) of the Timber Owner(s),
20 timberland owner(s), and Timber Operator.

21 (B) Name, address, and telephone number and license number of the RPF
22 preparing and submitting the notice of exemption.

23 (C) Legal description of the location of the Timber Operations.

24 (D) The tentative date of commencement of Timber Operations.

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

3 (2) The notice of exemption shall include a description of preharvest stand structure, an
4 estimate of pre and post-harvest QMD and certification by the RPF that, in their
5 professional judgment, post-harvest slash treatment and stand conditions will lead to
6 more moderate fire behavior.

7 (3) The RPF shall, upon submission of the notice of exemption, certify that the level of
8 residual stocking shall be consistent with maximum sustained production of high
9 quality timber products. The residual stand shall consist primarily of healthy and
10 vigorous Dominants and Codominants from the preharvest stand. Trees retained to
11 meet the Basal Area stocking standards shall be selected from the largest trees
12 available on the project area prior to harvest. In no case shall stocking be reduced
13 below the standards found within 14 CCR § 913.3 [933.3, 953.3] (a).

14 (4) The RPF shall affirm that the construction or reconstruction of each Temporary Road is
15 necessary to provide access to Harvest Areas when no other feasible alternative
16 exists. The notice shall include the total number of and cumulative length of Temporary
17 Roads being constructed and/or reconstructed.

18 (5) The RPF shall, upon submission of the notice of exemption, provide the selection
19 criteria for the trees to be removed or the trees to be retained. In the development of
20 these criteria, and the fuel reduction prescriptions, the RPF should consider retaining
21 habitat elements, where feasible, including, but not limited to, ground level cover
22 necessary for the long-term management of local wildlife populations. The selection
23 criteria shall specify how the trees to be removed, or how the trees to be retained, will
24 be designated. Sample marking shall be limited to homogeneous forest stand
25 conditions typical of plantations. When trees are sample marked, the prescription for

1 unmarked areas shall be in writing and the sample mark area shall include at least ten
2 (10) percent of the harvest area to a maximum of twenty (20) acres per stand type
3 which is representative of the range of conditions present in the area.

4 (6) The Director shall notify the submitter of the date of the Director's receipt of the notice
5 of exemption. Timber Operations pursuant to the notice of exemption may not
6 commence for ten (10) working days from the date of the Director's receipt of the
7 notice of exemption unless the delay is waived by the Director. If the notice of
8 exemption is not complete and accurate, the Director shall notify the submitter within
9 five (5) working days from the date of the Director's receipt, and the Timber Operations
10 may not commence. The Director shall determine whether the notice of exemption is
11 complete, and if so, shall send a copy of a notice of acceptance to the submitter;
12 provided, however, if the Director does not act within ten (10) working days of receipt
13 of the notice of exemption, Timber Operations may commence. Timber Operations
14 may not be conducted without a copy of the Director's notice of acceptance of the
15 notice of exemption at the operating site, except where the Director has failed to act
16 within the ten (10) working-day review period.

17 (7) Before beginning Timber Operations, the RPF responsible for submittal of the notice of
18 exemption shall notify the Department, the appropriate RWQCB, the CDFW, and the
19 CGS of the tentative commencement date of operations. The notification, by
20 telephone, mail, or email, shall be directed to the appropriate CAL FIRE Unit
21 Headquarters, forest practice inspector or other designated personnel. If the
22 notification is provided by mail, Timber Operations may not commence for three (3)
23 days after the postmark date of notification.

1 (8) Upon receipt of the filed notice of exemption, the Director shall place it, or a true copy
2 thereof, in a file available for public inspection, and shall transmit a copy to the CDFW,
3 the appropriate RWQCB, and the CGS.

4 (9) 14 CCR § 1038 (K)(1) shall expire on [REDACTED].

Commented [PC2]: This section will expire 5 years from when the Board adopts emergency regs.

5
6 **Adopt: § 1038.5**

7 **§ 1038.5. Mapping Standards for the Forest Fire Prevention Exemption.**

8 An exemption pursuant to this section will be mapped on a USGS 7 ½ minute quadrangle map, or an
9 equivalent topographic maps of a scale that is not less one (1) inch equals 1,000 feet, and shall contain
10 all required information stated within this section. Additional maps, which may be topographic or
11 planimetric, may be used to provide the information required in the this section, to show specific details,
12 and to improve map clarity. The Appurtenant Roads referenced in subsections (1), (2), (3)(A), (B) and (E),
13 ((3)(B), and (E) for sites within the harvest area), (6), (7), (9), and (10) may be shown on a separate map
14 which may be planimetric with a scale as small as one-half inch equals one mile. Color coding may be
15 used. A legend shall be included indicating the meaning of symbols used.

Commented [EH3]: Decision point: are planimetric maps still appropriate?

Commented [EH4]: Decision point: with the advent of CalTrees, is color coding acceptable?

16 (a) Boundaries of the Logging Area

17 (b) Boundaries of Yarding (logging) systems, if more than one system is used.

18 (c) Location of all roads to be used for, or potentially impacted by, Timber Operations. This shall
19 include:

20 (1) The classification of all roads as proposed, Permanent, Seasonal, Temporary, Deactivated,
21 or proposed for Abandonment.

22 (2) Roads and Landings located in Watercourses, Lakes, WLPZs, marshes, Wet Meadows and
23 other Wet Areas, other than at road Watercourse crossings.

24 (3) Logging Roads that provide access to rock pits and water drafting sites, and the location of
25 water drafting sites.

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(4) Public Roads within one-quarter (1/4) mile of the Harvest Area.

(5) The location of Significant or Existing Potential Erosion Sites on all Roads and Landings pursuant to 14 CCR § 923.1 (e).

(d) The following shall be mapped at the scale required under this section for all constructed and reconstructed Logging Roads and Landings, unless otherwise described:

(1) Location of Logging Road grades greater than fifteen (15) percent for over two-hundred (200) continuous feet or Logging Roads grades exceeding twenty (20) percent.

(2) Location of Road Failures on existing Logging Roads to be Reconstructed.

(3) Location of Landings that require substantial excavation and Landings in excess of one-quarter acre in size.

(4) Location of excess material disposal sites on slopes greater than forty (40) percent or on active Unstable Areas.

(e) Location of all tractor road Watercourse crossings of classified Watercourses except temporary crossings of Class III Watercourses, without flowing water during Timber Operations.

(f) Location of Erosion Hazard Ratings, if more than one rating exists.

(g) Location of Watercourses and Lakes with Class I, II, III, or IV waters.

(h) Location of known Unstable Areas.

(i) Location of understocked areas prior to Timber Operations, and other areas not normally bearing timber to at least a 20-acre minimum, or as specified in the district rules.

(j) Location of boundaries of timber-site classes needed for determination of Stocking Standards to be applied, down to at least a twenty (20) acre minimum, or as specified in the District Rules.

(k) Location of any Special Treatment Areas.

(l) Locations of Temporary Road locations, Landing locations, Tractor Road Crossings of Class III Watercourses, Unstable Areas, and Connected Headwall Swales.