# State of California Office of Administrative Law

In re:

**Board of Forestry and Fire Protection** 

**Regulatory Action:** 

Title 14, California Code of Regulations

Adopt section:

1038.6

NOTICE OF APPROVAL OF EMERGENCY REGULATORY ACTION

Government Code Sections 11346.1 and 11349.6

OAL Matter Number: 2019-0206-01

OAL Matter Type: Emergency (E)

In this emergency rulemaking, the Board of Forestry and Fire Protection is providing an exemption from the plan preparation and submission requirements and from the completion report and stocking report requirements of the Z'berg-Nejedly Forest Practice Act of 1973 (Public Resources Code section 4511, et seq.) to persons engaging in specified forest management activities, including the cutting or removal of dead or dying trees when within 300 feet of an Approved and Legally Permitted Structure that was damaged or destroyed by wildfire during the 2018 northern California wildfires in Butte County.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 2/19/2019 and will expire on 8/20/2019. The Certificate of Compliance for this action is due no later than 8/19/2019.

Date:

February 19, 2019

Steven I Escobar

Attorney

Original: Matt Dias, Acting Executive

Officer

Copy: Eric Hedge

For:

Debra M. Cornez

Director

ROMBERS Z.  For use by Office of Administrative Law (OAL) only  # 2019 FEB - b A 9-54  ADMINISTRATIVE LAW  **NOTICE OF ADMINISTRATIVE LAW  **NOTICE RECOVERY and FIRE NUMBER (FEB 1.9 2019)    1	STATE OF CALIFORNIA-OFFICE OF ADMINISTRATION /		MISSION \	(See instruction reverse)	ns on For use by Secretary of State only
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3. TYPE OF FILING    Regular Rulemaking (Gov. Code \$113446)   Certificate of Compliance: The agency officer named below certifies that this agency complied with the withdrawn nonemergency filing (Gov. Code \$911349.3), within the time period required by statute.   Side Print   Print Only   Print Only	additional sheet if needed.)		•		,
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S. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)  Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))  Effective on filing with Secretary of State Regulatory Effect other (Specify)  6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY  Department of Finance (Form STD. 399) (SAM §6660)  Other (Specify)  7. CONTACT PERSON  Eric Hedge  8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.  SIGNATURE OF AGENCY LADD A SESIGNEE  DATE  2/6/19  TYPED NAME AND TITLE OF SIGNATORY  Eric Hedge. Regulations Coordinator. Board of Forestry and Fire Protection				Other (Specify)	
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### Adopt:

#### § 1038.6 Butte County Post-Fire Recovery Exemption.

Subchapter 7, Article 2

(a) Persons who harvest dead or Dying Trees of any size to facilitate the removal of

hazardous material and the reconstruction or construction of Approved and Legally

Permitted Structures that were damaged or destroyed by wildfire in the County of

Butte during 2018 are exempt from the Plan preparation and submission

requirements (PRC § 4581) and from the completion report and stocking report

requirements (PRC § 4585 and 4587) of the FPA with the following exceptions and
requirements:

**Board of Forestry and Fire Protection** 

Emergency Rulemaking to Facilitate Post-Fire Recovery Efforts within the County

of Butte

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

Division 1.5, Chapter 4,

- (1) No tree that existed before 1800 A.D. and is greater than sixty (60) inches in diameter at stump height for Sierra or Coastal Redwoods, and forty-eight (48) inches in diameter at stump height for all other tree species shall be harvested unless done so under the conditions or criteria set forth in subsection 1038.6(a)(12).
- (2) The provisions of a Notice of Exemption submitted pursuant to this subsection supersede the provisions of any other Notices of Exemption that are submitted in the same Harvest Area.

(3) Only trees within three hundred (300) feet from any point of an Approved	d and
Legally Permitted Structure that was damaged or destroyed by wildfire may	<u>be</u>
harvested. The following conditions apply:	

- (A) No tractor or heavy equipment operations on slopes greater than 50 percent.
- (B) No construction of new Tractor Roads on slopes greater than 40 percent.
- (C) Timber Operations within any Special Treatment Area, as defined in 14 CCR § 895.1, shall comply with the rules associated with that Special Treatment Area.
- (D) No tractor or heavy equipment operations on known slides or Unstable Areas.
- (E) No new road construction or Reconstruction, as defined in 14 CCR § 895.1.
- (F) No heavy equipment operations within the standard width of a WLPZ, as determined pursuant to 14 CCR § 936.5, except for maintenance of roads and Drainage Facilities or Drainage Structures.
- (G) No known sites of rare, threatened or endangered plants or animals may be disturbed, threatened or damaged.
- (H) No Timber Operations within the Buffer Zone of a Sensitive Species, as defined in 14 CCR § 895.1.
- (I) No timber harvesting within the standard width of a WLPZ, as

  determined pursuant to 14 CCR § 936.5, except sanitation-salvage

  harvesting, as identified within 14 CCR § 933.3, where immediately after

  completion of operations, the area shall meet the Stocking Standards of

14 CCR § 932.7(b)(2), or, except the removal of dead or dying trees
where consistent with 14 CCR § 936.4(b). Trees to be harvested shall be
marked by, or under the supervision of, an RPF prior to Timber
Operations.

- (J) No Timber Operations on any site that satisfies the criteria listed in 14

  CCR § 895.1 for a Significant Archaeological or Historical Site.
- (4) A Person submitting an exemption under 14 CCR § 1038.6 shall submit to the Director a notice of proposed Timber Operations, prior to commencement of Timber Operations, on a form provided by the Department. The form shall contain the following information:
  - (A) Type of operation to be conducted.
  - (B) Names, address, and telephone numbers of the Timber Owner, <u>Timberland owners, and Timber Operator.</u>
  - (C) Legal description of the location of the Timber Operation.
  - (D) An enlarged 7½ minute quadrangle map, or its equivalent, that is not less than one (1) inch equals 1,000 feet showing the location of the boundaries of the Harvest Area;
  - (E) The tentative commencement date of Timber Operations;
  - (F) The total acreage of the Harvest Area; and
  - (G) A certification of ownership signed by the timberland owner.
- (5) Timber Operations conducted under this subsection shall conform to applicable city or county general plans, city or county implementing ordinances, and city or county zoning ordinances within which the Harvest Area is located.

  The Timber Operator or timberland owner shall certify that the city or county has

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been contacted and the Timber Operations conducted under the Notice of Exemption conforms with all city or county regulatory requirements. (6) All Slash and Woody Debris greater than one (1) inch but less than eight (8) inches in diameter within one-hundred-fifty (150) feet of an Approved and Legally Permitted Structure that was damaged or destroyed by wildfire shall be removed, chipped or piled and burned. (7) All Slash created between one-hundred-fifty (150) feet and three hundred (300) feet of an Approved and Legally Permitted Structure that was damaged or destroyed by wildfire shall be treated by Lopping For Fire Hazard Reduction, removed, chipped or piled and burned within forty-five (45) days from the start of Timber Operations; except for the burning of piles, which shall be accomplished not later than April 1 of the year following their creation; or for piles created on or after September 1, not later than April 1 of the second year following creation. (8) Except where necessary to eliminate a striking hazard, retain an average for the Harvest Area of not less than one (1) Decadent and Deformed Tree of Value to Wildlife, Snag, or Dying Tree per acre that is greater than sixteen (16) inches DBH and twenty (20) feet tall. This provision does not apply within one-hundredfifty (150) feet of Approved and Legally Permitted Structures, roads, fire suppression ridges and infrastructure facilities such as transmission lines and towers, or water conveyance and storage facilities. (9) The Director shall notify the submitter of the date of the Director's receipt of the Notice of Exemption. Timber Operations pursuant to the Notice of Exemption may not commence for five (5) working days from the date of the Director's receipt of the Notice of Exemption unless this delay is waived by the Director. If

the Notice of Exemption is not complete and accurate, the Director shall notify

the submitter within five (5) working days from the date of the Director's receipt, and the Timber Operations may not commence. The Director shall determine whether the Notice of Exemption is complete, and if so, shall send a copy of a notice of acceptance to the submitter; provided, however, if the Director does not act within five (5) working days of receipt of the Notice of Exemption, Timber Operations may commence.

(A) Timber Operations may not be conducted without a copy of the

accepted Notice of Exemption at the operating site, except where the

Director has failed to act within the five (5) working day review period.

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

- (A) Be limited to one year from the date of receipt by the Department, and;
- (B) Shall comply with all operational provisions of the Forest Practice Act and District Forest Rules applicable to "Timber Harvesting Plan", "THP", and "Plan".
- (C) Before beginning Timber Operations, the Timber Operator shall notify the Department of the actual commencement date of operations. The notification, by telephone, mail, or email, shall be directed to the appropriate CAL FIRE Unit Headquarters, Forest Practice Inspector or other designated personnel. If the notification is provided by mail, Timber Operations may not commence until three (3) days after the postmark date of notification.

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

- (12) Harvesting of large old trees shall only occur when:
  - (A) The tree is not critical for the maintenance of a Late Successional Stand and
  - (B) An RPF attaches to the exemption an explanation and justification for the removal based on the RPF's finding that one or more of the criteria or conditions listed under subprovisions 1., 2., or 3. are met. The requirements of (a)(12)(B) need not be met if an approved management document, including but not limited to a HCP, SYP, NTMP, WFMP, or PTEIR, addresses large old tree retention for the area in which the large old tree(s) are proposed for removal and the removal is in compliance with the retention standards of that document.
    - 1. The tree(s) is a hazard to safety or property. The hazard shall be identified in writing by an RPF or professionally certified arborist;
    - 2. The removal of the tree(s) is necessary for the construction of a building as approved by the appropriate county/city permitting process and as shown on the county/city approved site plan which shall be attached to the Notice of Exemption;
    - 3. The tree is dead or is likely to die within one year of the date of proposed removal, as determined by an RPF or professionally certified arborist.

Note: Authority cited: Sections 4551, 4553 and 4584, Públic Resources Code. Reference: Sections 4290, 4291, 4527, 4584 and 4597, Public Resources Code.