

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 § 1038.5**

7 **§895.1**

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

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

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22 **§ 1038. Exemption.**

23 Timber Operations conducted pursuant to this section are exempt from the Plan preparation and
24 submission requirements (PRC § 4581) and from the completion report and Stocking report
25 requirements (PRC §§ 4585 and 4587) of the FPA. Timber Operations conducted under any notice of

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

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7 (g) Harvesting dead or Dying Trees of any size to facilitate the removal of hazardous material and the
8 reconstruction or construction of Approved and Legally Permitted Structures that were damaged or
9 destroyed by wildfire. Such activities shall only be permitted when the proposed harvesting activities are
10 consistent with, and within the geographic scope of, an existing valid and effective declaration of
11 emergency or gubernatorial executive order. The provisions of a notice of exemption submitted pursuant
12 to this subsection supersede the provisions of any other notices of exemption that are submitted in the
13 same Harvest Area. The following conditions apply:

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

16 (2) The timberland owner shall submit a copy of the valid and effective declaration of emergency
17 or gubernatorial executive order with the notice of exemption described within 14 CCR § 1038.1.

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

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

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

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8 Note: Authority cited: Sections 4551, 4553 and 4584, Public Resources Code. Reference: Sections
9 4290, 4291, 4516, 4527, 4584, 4584.1, and 4597, Public Resources Code; and *EPIC v. California*
10 *Department of Forestry and Fire Protection and Board of Forestry* (1996) 43 Cal. App.4th 1011.(b) §

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12 **1038.1. Additional Exceptions or Requirements**

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

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

- 18 (1) The type of exemption.
- 19 (2) Name(s), address, and telephone number(s) of the Timber Owner(s), timberland
20 owner(s), and Timber Operator.
- 21 (3) Name, address, and telephone number and license number of the RPF, if applicable.
- 22 (4) Legal description of the location of the Timber Operation.
- 23 (5) The tentative date of commencement of Timber Operations.
- 24 (6) A signature of the landowner certifying that they are the landowner and have read and
25 understand the information contained within the notice of exemption.

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

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

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

8 (3) No helicopter yarding shall be allowed.

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

11 **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 (1) The notice of exemption shall be prepared, signed, and submitted to the Department by a
2 RPF.

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

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

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

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

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

21 (4) Fuel treatments as follows:

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

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

9 (5) No tractor or heavy equipment operations on slopes greater than fifty (50) percent.

10 No construction of new tractor roads on slopes greater than forty (40) percent.

11 (6) Timber Operations within any Special Treatment Area shall comply with the rules associated
12 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 defined in 14 CCR
16 § 916.4 [936.4, 956.4] (b), except for maintenance of roads and Drainage Facilities or
17 structures.

18 (10) No known sites of rare, threatened or endangered plants or animals will be disturbed,
19 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 14 CCR § 916.4
22 [936.4, 956.4] (b), except sanitation-salvage harvesting, as defined in 14 CCR § 913.3
23 [933.3, 953.3], where immediately after completion of operations, the area shall meet the
24 Stocking Standards of 14 CCR § 912.7 [932.7, 952.7] (b)(2), or, except the removal of dead
25 or dying trees where consistent with 14 CCR § 916.4 [936.4, 956.4] (b). Trees to be

1 harvested shall be marked by, or under the supervision of, an RPF prior to Timber
2 Operations.

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

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

16 (14) Before beginning Timber Operations, the LTO, RPF, or person responsible for submittal of
17 the notice of exemption shall notify CAL FIRE of the actual commencement date of
18 operations. The notification, by telephone, mail, or email, shall be directed to the appropriate
19 CAL FIRE Unit Headquarters, Forest Practice Inspector or other designated personnel. If the
20 notification is provided by mail, Timber Operations may not commence until three (3) days
21 after the postmark date of notification. The provisions of this paragraph do not supersede the
22 requirements of paragraph (13) above.

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

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

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

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

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

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

14 (C) An RPF's written explanation or justification need not be attached to the
15 submitted notice of exemption if an approved Habitat Conservation Plan,
16 Sustained Yield Plan, or Plan addresses large old tree retention for the area in
17 which the large old tree is proposed for removal and the removal is in
18 compliance with the retention standards of that document.

19 Note: Authority cited: Sections 4551, 4553, and 4584, Public Resources Code. Reference: Sections
20 4527, 4584, and 4584.1, Public Resources Code.

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22 **§ 1038.2. Mapping Standards for Notices of Exemption.**

23 A submitted notice of exemption shall include a seven-and-one-half (7½) minute USGS quadrangle map,
24 or its equivalent, depicting the information as required in Table 1 below. Additional maps, which may be
25 topographic or planimetric, may be used to provide additional information, to show specific details, and

1 to improve map clarity. A larger scale map such as an assessor parcel map showing the location of the
 2 Timber Operations shall be included for exemptions conducted under 14 CCR § 1038 (c). The
 3 Appurtenant Roads included within the Logging Area pursuant to subsection (b) below may be shown on
 4 a map which may be planimetric with a scale as small as one-half inch equals one mile. Color coding
 5 shall not be used. A legend shall be included indicating the meaning of the symbols used. The submitted
 6 notice of exemption shall indicate if more than one Yarding system is to be used and identify the
 7 systems (if more than one is used).

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 9 **Table 1: Mapping Requirements**

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)

- 18 (a) Boundaries of the Harvest Area.
- 19 (b) Boundaries of the Logging Area.
- 20 (c) Location of all Roads to be used for, or potentially impacted by, Timber Operations.
- 21 (d) The classification of all Roads as Permanent Roads, Seasonal Roads, or Temporary Roads.
- 22 (e) Road(s) and Landing(s) located in a Watercourse, Lake, WLPZ, Meadows and Wet Areas other
- 23 than at road Watercourse crossings.
- 24 (f) Location of water drafting sites.
- 25 (g) Public Roads within one-quarter (¼) mile of the Harvest Area.

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- (h) Location of portions of the Harvest Area with an Extreme Erosion Hazard Rating.
- (i) Location of all Watercourses and Lakes with Class I, II, III or IV waters.
- (j) Location of known Unstable Areas.
- (k) Location of any Special Treatment Areas.
- (l) 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 District Forest Practice Rules.

Note: Authority cited: Sections 4551, 4553, and 4584, Public Resources Code. Reference: Sections 4527, 4584, and 4584.1, Public Resources Code.