

1                                **Board of Forestry and Fire Protection**

2                                **FOREST RESILIENCE EXEMPTION AND OAK WOODLAND EXEMPTION**

3                                **AMENDMENTS**

4                                **Title 14 of the California Code of Regulations**

5                                **Division 1.5, Chapter 4,**

6                                **Subchapter 7**

7  
8    **§ 1038. Exemption.**

9    Timber Operations conducted pursuant to this section are exempt from the Plan  
10   preparation and submission requirements (PRC § 4581) and from the completion report  
11   and Stocking report requirements (PRC §§ 4585 and 4587) of the FPA. Timber  
12   Operations conducted under any notice of exemption described herein shall be limited  
13   to one (1) year from the date of receipt by the Director, and shall comply with all  
14   operational provisions of the FPA and District Forest Practices Rules applicable to  
15   “Timber Harvest Plan”, “THP”, and “Plan” definitions per 14 CCR § 895.1. In-lieu  
16   practices within WLPZs as specified under Article 6 of these Rules, exceptions to the  
17   Rules, and alternative practices are not allowed. The following types of Timber  
18   Operations are exempt:

19    \*\*\*\*\*

20    (e) The cutting or removal of trees to restore and conserve California black (*Quercus*  
21   *kelloggii*) or Oregon white (*Quercus garryana*) oak woodlands and associated  
22   grasslands, if all the following requirements are met:

23                (1) The Harvest Area does not cumulatively exceed, during any five-(5) year  
24   period, three-hundred (300) acres per ownership in a Planning Watershed (CALWATER  
25   2.2), for the timberland owner(s) identified pursuant to 14 CCR § 1038.1(a)(2).

1 (2) Upon submission, the notice of exemption shall include:

2 (A) Total acreage of the exemption Harvest Area per Planning Watershed  
3 (CALWATER 2.2).

4 (B) A description of the pre-harvest and post-harvest stand structure  
5 including an estimate, by species, of diameter distribution, and basal area.

6 (C) A certification that states:

7 1. That a minimum of thirty-five (35) square feet of basal area per  
8 acre of California black or Oregon white oak, or both, occupy the  
9 Harvest Area at the time the notice is prepared prior to Timber  
10 Operations; and

11 2. That the proposed Timber Operations are designed to restore  
12 and conserve California black oak and Oregon white oak  
13 woodlands and associated grasslands that have been encroached  
14 upon by conifers.

15 (3) Unless it is necessary to achieve the goal of the oak woodland restoration,

16 nNo trees larger than ~~twenty-six (26) inches stump diameter, measured eight~~  
17 ~~(8) inches above ground level~~ thirty (30) inches dbh may be removed for  
18 commercial purposes.

19 (A) If removal of trees greater than thirty (30) inches dbh is necessary to  
20 achieve the goals of the oak woodland restoration, the RPF shall attach to  
21 the submitted notice of exemption a written explanation and justification  
22 for the harvest of the tree based on the RPF's finding that the removal of  
23 the tree is necessary for the long-term maintenance of the oak stand or  
24 associated grassland.

1                   (B) The RPF shall consult with the Director before felling any tree greater  
2                   than thirty (30) inches dbh.

3           (4) The post-harvest stand shall meet, at a minimum, the following criteria:

4                   (A) A minimum of eighty (80) percent of the pre-treatment basal area of  
5                   California black oak or Oregon white oak, or both, shall be retained; and

6                   (B) A minimum of thirty-five (35) square feet of basal area of California  
7                   black oak or Oregon white oak, or both, shall be retained; and

8                   (C) Conifer Stocking, measured in basal area, shall represent less than  
9                   twenty-five (25) percent of the total onsite Stocking of all trees within the  
10                  Harvest Area. Decadent and Deformed Trees of Value to Wildlife  
11                  (excluding hardwoods) shall not count towards this required stocking  
12                  standard.

13                  (D) All harvested conifers shall be within three-hundred (300) feet of a  
14                  California black oak or Oregon white oak that is a minimum of four (4)  
15                  inches dbh.

16                  (E) As well as compliance with applicable Slash requirements pursuant to  
17                  Table 1 of 14 CCR § 1038.1, all Slash shall be configured in a manner that  
18                  minimizes risk of fire related mortality to all retained California black oak  
19                  and Oregon white oak.

20           ~~(5) A notice of exemption pursuant to this subsection is not applicable within the~~  
21           ~~Southern Sub-District of the Coast Forest District or the Southern Forest District.~~

22           \*\*\*\*\*

23           **Authority cited:** Sections 4551, 4553, 4584 and 4584.1, Public Resources Code.

24           **Reference:** Sections 4290, 4291, 4516, 4527, 4584, 4584.1 and 4597, Public

Resources Code; and *EPIC v. California Department of Forestry and Fire Protection and Board of Forestry* (1996) 43 Cal. App.4th 1011.

### **§ 1038.3 Forest ~~Fire Prevention~~ Resilience Exemption**

Persons who are engaged in the ~~cutting or removal~~ harvesting of trees, limited to those trees that eliminate the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns, for the purpose of reducing flammable materials to reduce fire spread, duration and intensity, fuel ignitability, or ignition of tree crowns 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. Timber Operations conducted under any notice of exemption described herein shall be limited to one (1) year from the date of receipt by the Director, and shall comply with all operational provisions of the FPA and District Forest Practices Rules applicable to "Timber Harvest Plan", "THP", and "Plan" definitions per 14 CCR § 895.1. This exemption shall be known as the Forest ~~Fire Prevention~~ Resilience Exemption. Preparation and submittal of notices of exemption under this section, or Timber Operations conducted thereunder, shall comply with the following conditions, exceptions, or requirements as described.

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

(b) This exemption shall only be used on Timberlands that are within the most recent version of the Department's Fire Hazard Severity Zone Map, which can be found on the Department's website: <https://osfm.fire.ca.gov/divisions/community-wildfire-preparedness-and-mitigation/wildland-hazards-building-codes/fire-hazard-severity-zones-maps/>, that shows the exemption will occur in areas

determined to be moderate, high, or very high fire hazard severity zones. ~~threat areas.~~

**(c)** The Harvest Area shall not exceed ~~three~~ five hundred (300500) acres.

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

**(2)** All surface fuels within one-hundred-fifty (150) feet of an Approved and Legally Permitted Structure, which could promote the spread of wildfire, shall be chipped, burned, or removed within forty-five (45) days from the start of Timber Operations.

**(3)** Slash and woody debris, created during operations, within 50 feet of a public road or critical infrastructure, shall be chipped, burned, or removed. For purposes of this subsection, "critical infrastructure" means infrastructure so vital to the state that its incapacitation or destruction would have a debilitating impact on public health, safety, economic security, or any combination thereof, including, but not limited to, electrical distribution and transmission facilities, water reservoirs or other conveyances, wastewater facilities or conveyances, or communication and data transmission and distribution facilities.

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

1       **(35)** All fuel treatments shall be completed within one (1) year from the date the  
2       Director receives the notice. This requirement does not apply to burning, which  
3       instead shall be completed within two (2) years from the date the Director  
4       receives the notice.

5       ~~(4)~~**(6)** The requirements of this subsection shall not supersede the requirements  
6       of PRC § 4291.

7       **(e)** The construction or reconstruction of roads, other than Temporary Roads, is  
8       prohibited. The construction or reconstruction of Temporary Roads on slopes greater  
9       than thirty (30) percent is prohibited. The construction or reconstruction of  
10      Temporary Roads on slopes of thirty (30) percent or less shall be allowed if all of the  
11      following conditions are met:

12      **(1)** Temporary Roads or Landings shall not be located on Unstable Areas.

13      **(2)** Temporary Roads shall be single lane in width.

14      **(3)** Temporary Roads shall not be located across a Connected Headwall Swale.

15      **(4)** Construction or re-construction of Temporary Roads, Landings or  
16      Watercourse crossings shall not occur during the Winter Period.

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

23           **(B)** Timber Operations during the Winter Period shall comply with the  
24           applicable Rule sections under 14 CCR § 914.7 [934.7, 954.7](c)(1)&(2).

1           **(C)** Use of Temporary Roads shall comply with the operational provisions of  
2           14 CCR § 923 [943, 963] *et seq.*,

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

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

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

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

15          **(C)** For exemptions over eighty (80) acres, this standard shall not exceed  
16          six-hundred (600) feet.

17          **(D)** Temporary Roads constructed or reconstructed under this section shall  
18          not be connected to other Temporary Roads constructed under previous or  
19          subsequent exemptions filed pursuant to this section.

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

24          **(F)** No tree larger than thirty-six (360) inches in diameter at stumpbreast  
25          height, ~~measured eight (8) inches above ground level~~, shall be removed for

1 the purposes of Temporary Road construction or reconstruction as it applies  
2 to this exemption. ~~Trees between thirty (30) and thirty-six (36) inches in~~  
3 ~~diameter at stump height, measured eight (8) inches above ground level,~~  
4 ~~may be removed for the purposes of Temporary Road construction or~~  
5 ~~reconstruction when no other feasible option exists for Temporary Road~~  
6 ~~construction activities.~~

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

11 **(g)** The QMD of trees greater than eight (8) inches dbh in the Harvest Area shall be  
12 increased in the post-harvest stand. The submitted notice of exemption shall report  
13 the expected post-harvest increase in QMD.

14 **(h)** ~~Except within constructed or reconstructed Temporary Road prisms, o~~Only trees  
15 less than thirty (30) inches in ~~stump diameter~~dbh, ~~measured eight (8) inches above~~  
16 ~~ground level,~~ may be removed.

17 **(i)** All trees that are harvested or all trees that are retained shall be marked or  
18 sample marked by, or under the supervision of, an RPF before felling operations  
19 begin. Sample marking shall be limited to homogeneous forest stand conditions  
20 typical of plantations. When trees are sample marked, the prescription for unmarked  
21 areas shall be in writing and the sample mark area shall include at least ten (10)  
22 percent of the harvest area to a maximum of twenty (20) acres per stand type which  
23 is representative of the range of conditions present in the area.

24 **(1)** Within the Coast District, ~~if~~ if the preharvest crown canopy of dominants and  
25 codominants is occupied by trees less than fourteen (14) inches in dbh, a



1 minimum of one hundred (100) trees over four (4) inches in dbh shall be  
2 retained per acre for Site I, II, and III lands, and a minimum of seventy-five (75)  
3 trees over four (4) inches in dbh shall be retained per acre for Site IV and V  
4 lands.

5 (2) Within the Northern District and Southern District, if the preharvest dominant  
6 and codominant crown canopy is occupied by trees less than fourteen (14)  
7 inches in dbh, a minimum of sixty-five (65) trees over four (4) inches in dbh shall  
8 be retained per acre on lands of all Site Classifications.

9 (j) Dead and dying trees in amounts less than ten (10) percent of the average  
10 volume per acre for trees up to thirty-six (36) inches dbh may be harvested.

11 (1) All trees over thirty (30) inches dbh that are harvested pursuant to this  
12 paragraph shall be marked by, or under the supervision of, a RPF before felling  
13 operations begin.

14 (2) The RPF shall consult with the Director before felling any dead or dying trees  
15 in excess of thirty (30) inches dbh.

16 (k) The six trees with the largest dbh per acre within the boundaries of a notice of  
17 exemption submitted pursuant to this section shall not be harvested.

18 (l) No trees of the genus *Quercus* that are greater than twenty-two (22) inches in dbh  
19 shall be harvested under a notice of exemption submitted pursuant to this section,  
20 except for those trees that need to be removed to mitigate safety issues.

21 (m) The postharvest composition of tree species shall be representative of the  
22 preharvest stand condition and demonstrate progression towards climax forest  
23 conditions, unless the registered professional forester provides information explaining  
24 how modification of species diversity will benefit forest health and resiliency.

1 **(kn)** The minimum post treatment Canopy closure of Dominant and Codominant trees  
2 shall be 30% for all forest types on approximately (80) percent of the Harvest Area.

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

5 ~~(1) Minimum post treatment Canopy cover of Dominant and Codominant trees~~  
6 ~~shall be 30% for east side pine forest types and 40% for coastal redwood forest,~~  
7 ~~Douglas fir forest, mixed conifer forest and all other forest types.~~

8 ~~(2) Post treatment stand shall contain no more than two hundred (200) trees per~~  
9 ~~acre over three (3) inches in dbh.~~

10 ~~(3) Vertical spacing shall be achieved by treating dead fuels, excluding dead~~  
11 ~~branches on the trees retained for Stocking, to a minimum clearance distance of~~  
12 ~~eight (8) feet measured from the base of the live crown of the post harvest~~  
13 ~~Dominants and Codominants to the top of the dead surface or ladder fuels,~~  
14 ~~whichever is taller.~~

15 **(lo)** Helicopter Yarding shall be prohibited.

16 **(mp)** The RPF shall comply with 14 CCR § 1035.2, relating to interaction between the  
17 LTO and the RPF.

18 **(ng)** All Timber Operations conducted in the Lake Tahoe Region, if applicable,  
19 ~~must~~shall have a valid Tahoe Basin Tree Removal Permit (as defined by the TRPA)  
20 or shall be conducted under a valid TRPA Memorandum of Understanding, when  
21 such a permit is required by TRPA.

22 **(or)** Upon submission of the notice of exemption, a Confidential Archaeological Letter  
23 pursuant to 14 CCR § 929.1 [949.1; 969.1] must be provided to the Director and the  
24 RPF shall send a copy of the notice of exemption to Native Americans as defined in  
25 14 CCR § 895.1.

1 **(ps)** No Timber Operations on any site that satisfies the criteria listed in 14 CCR §  
2 895.1 for a Significant Archaeological or Historical Site may be conducted  
3 (information on some of these sites may be available from the Information Centers of  
4 the California Historical Resources Information System within the Department of  
5 Parks and Recreation),

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

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

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

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

20 **(1)** Name(s), address, and telephone number(s) of the Timber Owner(s),  
21 timberland owner(s), and Timber Operator;

22 **(2)** Name, address, and telephone number and license number of the RPF  
23 preparing and submitting the notice of exemption;

24 **(3)** Legal description of the location of the Timber Operations;

25 **(4)** The tentative date of commencement of Timber Operations;

1 (5) 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 (6) A description of preharvest stand structure; and

4 (7) An estimate of pre and post-harvest QMD and certification by the RPF that, in  
5 their professional judgment, post-harvest slash treatment and stand conditions  
6 will lead to more moderate fire behavior.

7 **(ux)** The RPF shall, upon submission of the notice of exemption:

8 (1) Certify that the level of residual Stocking shall be consistent with maximum  
9 sustained production of high quality timber products. The residual stand shall  
10 consist primarily of healthy and vigorous Dominants and Codominants from the  
11 preharvest stand. Trees retained to meet the basal area stocking standards shall  
12 be selected from the largest trees available on the project area prior to harvest.

13 (A) In no case shall Stocking be reduced below the standards found within  
14 14 CCR § 913.3 [933.3, 953.3](d)(1)(A)(1)-(4) Commercial Thinning Stocking  
15 Standards or 14 CCR § 913.2 [933.2, 953.2](a)(2)(A)(1)-(4) Selection  
16 Stocking Standards.

17 (B) The RPF responsible for preparing the notice of exemption shall identify  
18 the designated postharvest stocking within the notice of exemption. The  
19 selected stocking shall be applicable to, and consistent with, silviculture that  
20 would apply to the preharvest stand condition provided pursuant to  
21 subparagraph (A).

22 (C) Additional information on preharvest stand conditions, including, but not  
23 limited to, stand ages, stand structure, past management activities, and  
24 landowner goals and objectives shall also be provided by the RPF preparing

1           and submitting the exemption that substantiates the selection of postharvest  
2           stocking.

3           **(2)** Affirm that the construction or reconstruction of each Temporary Road is  
4           necessary to provide access to Harvest Areas when no other feasible alternative  
5           exists. The notice shall include the total number of and cumulative length of  
6           Temporary Roads being constructed and/or reconstructed.

7           **(3)** Provide the selection criteria for the trees to be removed or the trees to be  
8           retained. In the development of these criteria, and the fuel reduction  
9           prescriptions, the RPF should consider retaining habitat elements, where  
10          feasible, including, but not limited to, ground level cover necessary for the long-  
11          term management of local wildlife populations. The selection criteria shall specify  
12          how the trees to be removed, or how the trees to be retained, will be designated.

13       ~~(v)~~ **(v)** The Director shall notify the submitter of the date of the Director's receipt of the  
14       notice of exemption. Timber Operations pursuant to the notice of exemption may not  
15       commence for ten (10) working days from the date of the Director's receipt of the  
16       notice of exemption unless the delay is waived by the Director. If the notice of  
17       exemption is not complete and accurate, the Director shall notify the submitter within  
18       five (5) working days from the date of the Director's receipt, and the Timber  
19       Operations may not commence. The Director shall determine whether the notice of  
20       exemption is complete and accurate, and if so, shall send a copy of a notice of  
21       acceptance to the submitter; provided, however, if the Director does not act within ten  
22       (10) working days of receipt of the notice of exemption, Timber Operations may  
23       commence. Timber Operations may not be conducted without a copy of the Director's  
24       notice of acceptance of the notice of exemption at the operating site, except where the  
25       Director has failed to act within the ten (10) working-day review period.

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

4 (~~wz~~) Before beginning Timber Operations, the RPF responsible for submittal of the  
5 notice of exemption shall notify the Department, the appropriate RWQCB, the CDFW,  
6 and the CGS of the actual commencement date of operations. The notification, by  
7 telephone, mail, or email, shall be directed to the appropriate agency personnel and  
8 contact information for the appropriate agency personnel shall be provided by the  
9 Department on the notice of exemption form. If the notification is provided by mail,  
10 Timber Operations may not commence for three (3) days after the postmark date of  
11 notification.

12 (~~xaa~~) This section will expire on January 1, 20262031.

13  
14 NOTE: Authority cited: Sections 4551, 4553 and 4584, Public Resources Code.

15 Reference: Sections 4527, 4527.5, 4584 and 4584.2, Public Resources Code.  
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18 **§ 1038.4. Mapping Standards for the Forest ~~Fire Prevention~~Resilience Exemption**

19 An exemption pursuant to this 14 CCR § 1038.4 will be mapped on a USGS 7 ½ minute  
20 quadrangle map, or equivalent topographic maps, and shall contain all required  
21 information stated within this section. Additional maps, which may be topographic or  
22 planimetric, may be used to provide the information required in this section, to show  
23 specific details, and to improve map clarity. Appurtenant Roads may be shown on a  
24 separate map which may be planimetric with a scale as small as one-half inch equals

one mile. Color coding may not be used. A legend shall be included indicating the meaning of symbols used.

(a) Boundaries of the Logging Area

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

(c) Location of all roads to be used for, or potentially impacted by, Timber Operations.

This shall include:

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

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

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

(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) For all constructed and reconstructed Temporary Roads and Landings, the following shall be mapped:

(1) Location of Temporary 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 Temporary Roads to be Reconstructed.

(3) Location of Landings, specifying those that require substantial excavation and those 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.

- 1 (e) Location of all Tractor Road Watercourse crossings of classified Watercourses.
- 2 (f) Location of Erosion Hazard Ratings, if more than one rating exists.
- 3 (g) Location of Watercourses and Lakes with Class I, II, III, or IV waters.
- 4 (h) Location of known Unstable Areas.
- 5 (i) Location of understocked areas prior to Timber Operations, and other areas not
- 6 normally bearing timber to at least a 20-acre minimum, or as specified in the district
- 7 rules.
- 8 (j) Location of boundaries of timber-site classes needed for determination of Stocking
- 9 Standards to be applied, down to at least a twenty (20) acre minimum, or as specified
- 10 in the District Rules.
- 11 (k) Location of any Special Treatment Areas.
- 12 (l) Boundaries of any areas where Tractor Operations are proposed for use on areas
- 13 designated for Cable Yarding.

14

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

16 Reference: Sections 4527, 4584 and 4584.2, Public Resources Code.