

1 **Board of Forestry and Fire Protection**

2 **Potential Re-Adoption of:**

3 **Emergency Rulemaking to Facilitate Post-Fire Recovery Efforts within Counties**
4 **of Lake, Siskiyou, Mendocino, Shasta, Trinity and Napa**

5 **Title 14 California Code of Regulations**

6 **Division 1.5, Chapter 4**

7 **Subchapter 7, Article 2**

8 **Amend § 1038.5**

9 **§ 1038.5. Post-Fire Recovery Exemption**

10 Persons who conduct the following types of Timber Operations are exempt from the Plan preparation
11 and submission requirements (PRC § 4581) and from the completion report and Stocking report
12 requirements (PRC §§ 4585 and 4587) of the FPA with the following exceptions and requirements:

13 (1) no tree that existed before 1800 A.D. and is greater than sixty (60) inches in diameter at
14 stump height for Sierra or Coastal Redwoods, and forty-eight (48) inches in diameter at stump
15 height for all other tree species shall be harvested unless done so under the conditions or
16 criteria set forth in subsection 1038.5(d).

17 ~~(2) all timber operations conducted in the Lake Tahoe Region pursuant to 14 CCR § 1038.5~~
18 ~~must have a valid Tahoe Basin Tree Removal Permit (as defined by the Tahoe Regional~~
19 ~~Planning Agency) or shall be conducted under a valid TRPA Memorandum of Understanding~~
20 ~~(MOU), when such a permit is required by TRPA.~~

21 (a) Harvesting dead or Dying Trees of any size to facilitate the removal of hazardous material and the
22 reconstruction or construction of Approved and Legally Permitted Structures that were damaged or
23 destroyed by wildfire in the Counties of Lake, Siskiyou, Mendocino, Shasta, Trinity, and Napa during
24 2018. The provisions of a notice of exemption submitted pursuant to this subsection supersede the
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1 provisions of any other notices of exemption that are submitted in the same Harvest Area. In addition to
2 compliance with 14 CCR §§1038.1(c)(5) through (12) inclusive and 1038.3(p), the following apply:

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

5 (2) The notice of exemption shall include:

6 (A) the total acreage of the Harvest Area;

7 (B) an enlarged seven-and-one-half (7½) minute USGS quadrangle map, or its
8 equivalent, that is not less than one (1) inch equals one-thousand (1,000) feet showing
9 the location of the boundaries of the Harvest Area;

10 (C) a certification of ownership signed by the €Timberland owner and;

11 (D) the tentative commencement date of Timber Operations.

12 (3) Timber Operations conducted under this subsection shall conform to applicable city or county
13 general plans, city or county implementing ordinances, and city or county zoning ordinances
14 within which the Harvest Area is located. The Timber Operator or €Timberland owner shall certify
15 that the city or county has been contacted and the Timber Operations conducted under the
16 notice of exemption conforms with all city or county regulatory requirements.

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

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

1 (6) Except where necessary for safety, retain an average for the Harvest Area of not less than
2 one (1) Decadent and Deformed Tree of Value to Wildlife, Snag, or Dying Tree per acre that is
3 greater than sixteen (16) inches dbh and twenty (20) feet tall. This provision does not apply
4 within one-hundred-fifty (150) feet of Approved and Legally Permitted Structures, roads, fire
5 suppression ridges and infrastructure facilities such as transmission lines and towers, or water
6 conveyance and storage facilities.

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

16 (A) Timber Operations may not be conducted without a copy of the accepted notice of
17 exemption at the operating site, except where the Director has failed to act within the
18 five (5) working day review period.

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

20 (1) be limited to one year from the date of receipt by the Department, and;

21 (2) shall comply with all operational provisions of the Forest Practice Act and ~~District~~
22 ~~Forest~~ Rules applicable to "Timber Harvesting Plan", "THP", and "Plan".

23 (3) Before beginning Timber Operations, the Timber Operator shall notify the
24 Department of the actual commencement date of operations. The notification, by
25 telephone, mail, or email, shall be directed to the appropriate CAL FIRE Unit

1 Headquarters, Forest Practice Inspector or other designated personnel. If the notification
2 is provided by mail, Timber Operations may not commence until three (3) days after the
3 postmark date of notification.

4 (c) In-lieu practices of Watercourse and Lake Protection Zones as specified under Article 6 of these
5 Rules, exceptions to Rules, and alternative practices are not allowed.

6 (d) Harvesting of large old trees shall only occur when:

7 (1) the tree is not critical for the maintenance of a Late Successional Stand and

8 (2) an RPF attaches to the exemption an explanation and justification for the removal based on
9 the RPF's finding that one or more of the criteria or conditions listed under subparagraphs (A),
10 (B), or (C) are met. This requirement need not be met if an approved management document,
11 including but not limited to a HCP, SYP, NTMP, WFMP, or PTEIR, addresses large old tree
12 retention for the area in which the large old tree(s) are proposed for removal and the removal is
13 in compliance with the retention standards of that document.

14 (A) The tree(s) is a hazard to safety or property. The hazard shall be identified in writing
15 by an RPF or professionally certified arborist;

16 (B) The removal of the tree(s) is necessary for the construction of a building as
17 approved by the appropriate county/city permitting process and as shown on the
18 county/city approved site plan which shall be attached to the Notice of Exemption;

19 (C) The tree is dead or is likely to die within one year of the date of proposed removal,
20 as determined by an RPF or professionally certified arborist.

21 (e) A Person submitting an exemption under 14 CCR § 1038.5 shall submit to the Director a notice of
22 proposed Timber Operations, prior to commencement of Timber Operations, on a form provided by the
23 Department. The form shall contain the following information:

24 (1) Type of operation to be conducted.
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1 (2) Names, address, and telephone numbers of the Timber Owner, Timberland owners, and
2 Timber Operator.

3 (3) Legal description of the location of the Timber Operation.

4 (4) A 7 1/2 minute quadrangle map or its equivalent showing the location of the Timber
5 Operation.

6 (5) The tentative commencement date of ~~the~~ Timber ~~Operations~~

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8 Note: Authority cited: Sections 4551, 4553 and 4584, Public Resources Code. Reference: Sections
9 4290, 4291, ~~4516~~, 4527, 4527.5, 4584 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.