

**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

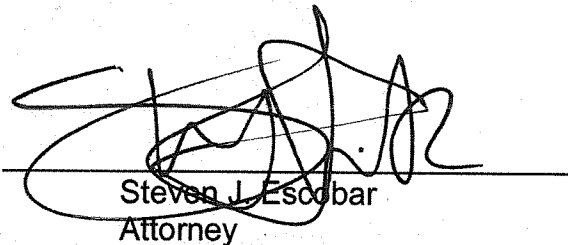
OAL Matter Type: Emergency (E)

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 J. Escobar
Attorney

Original: Matt Dias, Acting Executive
Officer
Copy: Eric Hedge

For: Debra M. Cornez
Director

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2019-0206-01E	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

2019 FEB -6 A 9:54

OFFICE OF ADMINISTRATIVE LAW

NOTICE REGULATIONS

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

FEB 19 2019
1:41 PM

AGENCY WITH RULEMAKING AUTHORITY
Board of Forestry and Fire Protection

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Emergency Post-Wildfire Recovery Regulations for Butte Co.	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 1038.6
	AMEND
TITLE(S) 14	REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)


<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input checked="" type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Eric Hedge	TELEPHONE NUMBER 916.653.9633	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) eric.hedge@bof.ca.gov
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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 HEAD OR DESIGNEE 	DATE 2/6/19
TYPED NAME AND TITLE OF SIGNATORY Eric Hedge, Regulations Coordinator, Board of Forestry and Fire Protection	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

FEB 19 2019

Office of Administrative Law

per agency request
2/19/2019

1 Board of Forestry and Fire Protection

2 Emergency Rulemaking to Facilitate Post-Fire Recovery Efforts within the County
3 of Butte

4 Title 14 of the California Code of Regulations (CCR),
5 Division 1.5, Chapter 4,
6 Subchapter 7, Article 2

7
8 Adopt:

9 § 1038.6 Butte County Post-Fire Recovery Exemption.

10 (a) Persons who harvest dead or Dying Trees of any size to facilitate the removal of
11 hazardous material and the reconstruction or construction of Approved and Legally
12 Permitted Structures that were damaged or destroyed by wildfire in the County of
13 Butte during 2018 are exempt from the Plan preparation and submission
14 requirements (PRC § 4581) and from the completion report and stocking report
15 requirements (PRC §§ 4585 and 4587) of the FPA with the following exceptions and
16 requirements:

17 (1) No tree that existed before 1800 A.D. and is greater than sixty (60) inches in
18 diameter at stump height for Sierra or Coastal Redwoods, and forty-eight (48)
19 inches in diameter at stump height for all other tree species shall be harvested
20 unless done so under the conditions or criteria set forth in subsection
21 1038.6(a)(12).

22 (2) The provisions of a Notice of Exemption submitted pursuant to this
23 subsection supersede the provisions of any other Notices of Exemption that are
24 submitted in the same Harvest Area.

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

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

6 (B) No construction of new Tractor Roads on slopes greater than 40
7 percent.

8 (C) Timber Operations within any Special Treatment Area, as defined in
9 14 CCR § 895.1, shall comply with the rules associated with that Special
10 Treatment Area.

11 (D) No tractor or heavy equipment operations on known slides or Unstable
12 Areas.

13 (E) No new road construction or Reconstruction, as defined in 14 CCR §
14 895.1.

15 (F) No heavy equipment operations within the standard width of a WLPZ,
16 as determined pursuant to 14 CCR § 936.5, except for maintenance of
17 roads and Drainage Facilities or Drainage Structures.

18 (G) No known sites of rare, threatened or endangered plants or animals
19 may be disturbed, threatened or damaged.

20 (H) No Timber Operations within the Buffer Zone of a Sensitive Species,
21 as defined in 14 CCR § 895.1.

22 (I) No timber harvesting within the standard width of a WLPZ, as
23 determined pursuant to 14 CCR § 936.5, except sanitation-salvage
24 harvesting, as identified within 14 CCR § 933.3, where immediately after
25 completion of operations, the area shall meet the Stocking Standards of

1 14 CCR § 932.7(b)(2), or, except the removal of dead or dying trees
2 where consistent with 14 CCR § 936.4(b). Trees to be harvested shall be
3 marked by, or under the supervision of, an RPF prior to Timber
4 Operations.

5 (J) No Timber Operations on any site that satisfies the criteria listed in 14
6 CCR § 895.1 for a Significant Archaeological or Historical Site.

7 (4) A Person submitting an exemption under 14 CCR § 1038.6 shall submit to
8 the Director a notice of proposed Timber Operations, prior to commencement of
9 Timber Operations, on a form provided by the Department. The form shall
10 contain the following information:

11 (A) Type of operation to be conducted.

12 (B) Names, address, and telephone numbers of the Timber Owner,
13 Timberland owners, and Timber Operator.

14 (C) Legal description of the location of the Timber Operation.

15 (D) An enlarged 7½ minute quadrangle map, or its equivalent, that is not
16 less than one (1) inch equals 1,000 feet showing the location of the
17 boundaries of the Harvest Area;

18 (E) The tentative commencement date of Timber Operations;

19 (F) The total acreage of the Harvest Area; and

20 (G) A certification of ownership signed by the timberland owner.

21 (5) Timber Operations conducted under this subsection shall conform to
22 applicable city or county general plans, city or county implementing ordinances,
23 and city or county zoning ordinances within which the Harvest Area is located.

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

1 been contacted and the Timber Operations conducted under the Notice of
2 Exemption conforms with all city or county regulatory requirements.

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

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

14 (8) Except where necessary to eliminate a striking hazard, retain an average for
15 the Harvest Area of not less than one (1) Decadent and Deformed Tree of Value
16 to Wildlife, Snag, or Dying Tree per acre that is greater than sixteen (16) inches
17 DBH and twenty (20) feet tall. This provision does not apply within one-hundred-
18 fifty (150) feet of Approved and Legally Permitted Structures, roads, fire
19 suppression ridges and infrastructure facilities such as transmission lines and
20 towers, or water conveyance and storage facilities.

21 (9) The Director shall notify the submitter of the date of the Director's receipt of
22 the Notice of Exemption. Timber Operations pursuant to the Notice of Exemption
23 may not commence for five (5) working days from the date of the Director's
24 receipt of the Notice of Exemption unless this delay is waived by the Director. If
25 the Notice of Exemption is not complete and accurate, the Director shall notify

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

7 (A) Timber Operations may not be conducted without a copy of the
8 accepted Notice of Exemption at the operating site, except where the
9 Director has failed to act within the five (5) working day review period.

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

12 (A) Be limited to one year from the date of receipt by the Department,
13 and;

14 (B) Shall comply with all operational provisions of the Forest Practice Act
15 and District Forest Rules applicable to "Timber Harvesting Plan", "THP",
16 and "Plan".

17 (C) Before beginning Timber Operations, the Timber Operator shall notify
18 the Department of the actual commencement date of operations. The
19 notification, by telephone, mail, or email, shall be directed to the
20 appropriate CAL FIRE Unit Headquarters, Forest Practice Inspector or
21 other designated personnel. If the notification is provided by mail, Timber
22 Operations may not commence until three (3) days after the postmark
23 date of notification.

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

4 (12) Harvesting of large old trees shall only occur when:

5 (A) The tree is not critical for the maintenance of a Late Successional
6 Stand and

7 (B) An RPF attaches to the exemption an explanation and justification for
8 the removal based on the RPF's finding that one or more of the criteria or
9 conditions listed under subdivisions 1., 2., or 3. are met. The
10 requirements of (a)(12)(B) need not be met if an approved management
11 document, including but not limited to a HCP, SYP, NTMP, WFMP, or
12 PTEIR, addresses large old tree retention for the area in which the large
13 old tree(s) are proposed for removal and the removal is in compliance
14 with the retention standards of that document.

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

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

21 3. The tree is dead or is likely to die within one year of the date of
22 proposed removal, as determined by an RPF or professionally
23 certified arborist.

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

2 Reference: Sections 4290, 4291, 4527, 4584 and 4597, Public Resources Code.

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